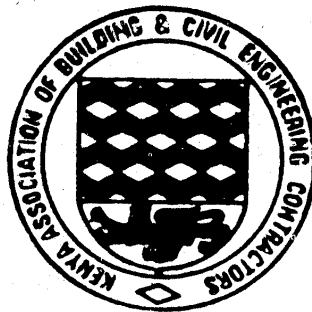


PART B

II. SUB-CONTRACT AGREEMENT (KABCEC)

**AGREEMENT AND CONDITIONS
OF SUB-CONTRACT FOR
BUILDING WORKS**



Published by:
**The Kenya Association of Building and
Civil Engineering Contractors**
with the sanction of:
The Joint Building Council, Kenya
and
The Architectural Association of Kenya

June 2002 Edition

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1.0 AGREEMENT

1.1 This agreement is made on
between
of (or whose registered office is situated at)
.....
(hereinafter called “the Contractor”) of the one part
and
of (or whole registered office is situated at)
.....
(hereinafter called “the Sub-Contractor”) of the other part:

1.2 SUPPLEMENTAL to an agreement(hereinafter referred to as the “the main contract”)
made on
Between
.....
(hereinafter called “the Employer”) of the one part and the Contractor of the other part based on the Agreement and Conditions of Contract for Building Works, published by the Joint Building Council, Kenya
..... edition.

1.3 WHEREAS the contractor is desirous of sub-letting to the Sub-Contractor
.....
.....
.....

hereinafter called “the sub-contractor works” at.....

on Land Reference No.....being part of the main contract works.

1.4 And whereas the Sub-Contractor has supplied the Contractor with a priced copy of the bills of quantities (hereinafter referred to as “the sub-contractor bills”), where applicable, which together with the drawings numbered.....

.....
(hereinafter referred to as “the sub-contract drawings), the specifications and the conditions of sub-contract have been signed by or on behalf of the parties thereto.

And whereas the Sub-Contractor has had reasonable opportunity of inspecting the main contract or a copy thereof except the detailed prices of the Contractor included in the bills of quantities or schedule of rates.

1.5 And whereas the Architect, with the approval of the Employer, has nominated the Sub-Contractor to carry out the works described at clause 1.3 herein:

NOW IT IS HEREBY AGREED AS FOLLOWS:

1.6 For the consideration herein stated, the Sub-Contractor shall upon and subject to the conditions annexed hereto carry out and complete the sub-contract works shown upon the sub-contract drawings and described by or referred to in the sub-contract bills, specifications and in the said conditions.

1.7 The Contractor shall pay the Sub-Contractor the sum of the Kshs (in words).....
.....
.....Kshs.....)
(hereinafter referred to as “the sub-contractor price”) or such sum as shall become payable hereinafter at the times and in manner specified in the said conditions.

1.8 The term ‘Architect’, ‘Quantity Surveyor’ and ‘Engineer’, where applicable, shall refer to the persons appointed by the Employer to

- 1.9 administer the sub-contract in accordance with the main contract agreement. Where applicable, reference to the Architect shall be deemed to include reference to the Engineer.
- 1.10 In the event of the need to appoint a replacement Architect, Quantity Surveyor, Engineer or other specialist (whether named in this agreement or not) the Employer shall make such appointment as soon as practicable after the need for such appointment arises and shall communicate the appointment to the Sub-Contractor through the Contract.
- 1.11 Where the sub-contract does not incorporate bills of quantities, the term “sub-contract bills” and “bills of quantities” wherever appearing shall be deemed deleted and replaced with the term “schedule of rates” as applicable.
- 1.12 The terms defined in clause 1.0 of the main contract shall have the same meaning in this sub-contract as that assigned to them therein.
- 1.13 AS WITNESS the hands of the said parties;

Signed by the said.....(Contractor)

In the presence of

Name

Address

Signed by the said.....(Sub-Contractor)

In the presence of

Name

Address

CONDITIONS OF SUB-CONTRACT

2.0 GENERAL OBLIGATIONS OF THE CONTRACTOR

The Contractor shall:

- 2.1 Timeously obtain from the Architect on behalf of the Sub-Contractor all drawings, necessary details, instructions and other information required by the Sub-Contractor for the proper carrying out of the sub-contract works.
- 2.2 Provide all such facilities and attend upon the Sub-Contractor as required and as provided in the specifications, bills of quantities and these conditions to the extent compatible with the provisions of the main contract
- 2.3 Observe, perform and comply with all the provisions of the main contract and of this sub-contract on the part of the Contractor to be observed, performed and complied with to ensure satisfactory completion of the sub-contract works.

3.0 GENERAL OBLIGATIONS OF THE SUB-CONTRACTOR

- 3.1 The Sub-Contractor shall be deemed to have notice of all the provisions of the main contract except the detailed prices of the Contractor included in the bills of quantities or in the schedule of rates.
- 3.2 The Sub-Contractor shall carry out and complete the sub-contract works in accordance with this sub-contract and in all respects to the reasonable satisfaction of the Contractor and of the Architect and in conformity with all reasonable directions and requirements of the Contractor regulating the due carrying out of the contract works.
- 3.3 The Sub-Contractor shall observe, perform and comply with all the provisions of the main contract on the part of the Sub-Contractor to be observed, performed and complied with so far as they relate and apply to the sub-contract works or any portion thereof and are not inconsistent with the expressions of this sub-contract as if all the same were set out herein.
- 3.4 Without prejudice to the generality of the foregoing requirements, the Sub-Contractor shall especially observe, perform and comply with the provisions of clauses 9.0, 18.0, 19.0 22.0, 30.0, 31.0, 34.0 and 36.0 of the main contract as they apply to the sub-contract works

4.0 SUB-CONTRACT DOCUMENTS

- 4.1 The sub-contract documents for use in the carrying out of the sub-contract works shall be:-
 - 4.1.1 The agreement and these conditions
 - 4.1.2 The sub-contract drawings as listed in the agreement
 - 4.1.3 The sub-contract bill of quantities or schedule of rates as applicable
 - 4.1.4 The specifications as separately supplied or as contained in the sub-contract bills.
- 4.2 Upon the execution of the sub-contract, the Contractor shall register the agreement with the relevant statutory authority and pay all fees, charges, taxes, duties and all costs arising therefrom.
- 4.3 The manner of supplying contract documents, their custody, display on site and their interpretation in the event of discrepancies shall be as provided in the main contract in respect of the main contract documents with the necessary amendments made to refer to the sub-contract.

5.0 GENERAL LIABILITY OF THE SUB-CONTRACTOR

- 5.1 The Sub-Contractor shall be liable for and shall indemnify the Contractor against and from:
 - 5.1.1 Any breach, non-observance or non-performance by the Sub-Contractor, his servants or agents of any of the said provisions of the main contract and of this sub-contract.
 - 5.1.2 Any act or omission of the Sub-Contractor, his servants or agents which involve the Contractor in any liability to the Employer under the main contract
 - 5.1.3 Any claim, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Sub-Contractor, his servants or agents.
 - 5.1.4 Any loss or damage resulting from any claim under any statute or common law by an employee of the Sub-Contractor in respect of personal injury or death arising out of or in the course of his employment.

- 5.2 Provided that nothing contained in this sub-contract shall impose any liability on the Sub-Contractor in respect of any negligence or breach of duty on the part of the Employer, the Contractor, other sub-contractors or their respective servants or agents nor create any privity of contract between the Sub-Contractor and the Employer or any other sub-contractor.

6.0 INSURANCE AGAINST INJURY TO PERSONS AND PROPERTY

- 6.1 Without prejudice to his liability to indemnify the Contractor under clause 5.0 above, the Sub-Contractor shall maintain:-
- 6.1.1 Such insurances as are necessary to cover the liability of the Sub-Contractor in respect of injury or damage to property including damage to the works arising out of or in the course of or by reason of the carrying out of the sub-contract works except for liability against the contingencies specified at clause 6.3 herein.
- 6.1.2 The insurances required under sub clause 6.1.1 and 6.1.2 above shall be placed with insurers approved by the Contractor and the Architect.
- 6.2 Notwithstanding the provisions of clause 23.0 of these conditions, the Contractor shall not be obliged to make payments to the Sub-Contractor before the said policies have been provided.
- 6.3 Where clause 13.0 of the main contract applies, the sub-contract works, including materials and goods of the sub-Contractor delivered to the works, shall as regards loss or damage by the contingencies stated at clause 13.0 therein, namely, fire, earthquake, fire following earthquake, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped there from, riot and civil commotion, be at the sole risk of the contractor. The Contractor shall cover his liability for the works by procuring insurances as required in the said clause.
- 6.4 Where clause 14.0 or 15.0 of the main contract applies, the sub-contract works, including materials and goods of the Sub-Contractor delivered to the works shall, as regards loss or damage by the contingencies stated therein be at the sole risk of the Employer. The Employer shall cover his liability for the works by procuring insurances as required in the said clause.

- 6.5** The Sub-Contractor shall observe and comply with the conditions contained in the policy or policies of insurance of the Contractor or of the Employer, as the case may be, as regards loss or damage which may be caused by the stated contingencies. For this purpose, the Contractor or the Employer as the case may be, shall avail the said policies to the Sub-Contractor for his perusal.
- 6.6** If any loss or damage affecting the sub-contract works or any part thereof or any unfixed goods or materials is occasioned by any one or more of the said contingencies, then,
- 6.6.1 The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Sub-Contractor under the sub-contract, and
- 6.6.2 The Sub-Contractor shall, with due diligence, restore the work damaged, replace or repair any unfixed materials or goods which have been destroyed or damaged, remove and dispose of any debris and proceed with the carrying out and completion of the sub-contract works.
- 6.6.3 The restoration of work damaged the replacement and repair of unfixed materials and goods and the removal of debris shall be deemed to be a variation required by the Architect. Such work shall be paid for in accordance with clause 30.0 of the main contract.

7.0 PERFORMANCE BOND

Before commencing the works, the Sub-Contractor shall provide one surety who must be an established bank or insurance company to the approval of the Contractor and who will be bound to the Contractor in the sum equivalent to ten per cent (10 %) of the sub-contract price for the due performance of the sub-contract until the certified date of practical completion. Notwithstanding the provisions of clause 23.0 of these conditions, no payments shall be made to the Sub-Contractor before the said bond is provided.

8.0 POSSESSION OF SITE AND COMMENCEMENT OF WORKS

8.1 Within the period stated in the appendix to these conditions, the Contractor shall give possession of the site works to the Sub-Contractor and such access as may be necessary to enable the Sub-Contractor to commence and proceed with the sub-contract works in accordance with the sub-contract.

8.2 On or before the date for commencement of works stated in the appendix to these conditions, the Sub-Contractor shall commence the carrying out of the sub-contract works and shall proceed regularly and diligently with the same in accordance with the sub-contract programme, the main contract programme and or with the progress of the main contract works and complete on or before the date stated in the appendix to these conditions as the date for practical completion or within any extended time granted under clause 25.0 of these conditions.

9.0 ARCHITECT'S INSTRUCTIONS

9.1 The Sub-Contractor shall forthwith comply with all the instructions issued to him by the Architect, either directly or through the Contractor, in regard to any matter in respect of which the Architect is expressly empowered by the main contract conditions to issue instructions.

9.2 The manner of complying with or querying the validity of an Architect's instruction shall be as provided in clause 22.0 of the main contract. The Sub-Contractor shall not be obliged to carry out instructions not issued in the manner provided therein.

10.0 VARIATIONS

10.1 The term "variation" shall have the meaning assigned to it at clause 30.0 of the main contract.

10.2 The valuation of variations shall be made by the Quantity Surveyor in accordance with sub-clause 30.6 of the main contract.

10.3 Effect shall be given to the measurement and valuation of variations in interim certificates and by the adjustment of the sub-contract price.

11.0 LIABILITY FOR OWN EQUIPMENT

The construction equipment and other property belonging to or provided by the Sub-Contractor and brought onto the site for carrying out the works shall be at the sole risk of the Sub-Contractor. Any loss or damage to the same or caused by the same shall, except for any loss or damage due to any negligence, omission or default of the Contractor, be at the sole risk of the Sub-Contractor who shall indemnify the Contractor against loss, damage or claims in respect thereof. Insurance against any such loss, damage or claims shall be the sole responsibility of the Sub-Contractor.

12.0 PROVISION OF FACILITIES BY THE CONTRACTOR

- 12.1 Where provided in the main contract, the Contractor shall supply at his own cost all necessary water, lighting, electric power, telephones and security required for the sub-contract works. Where not so provided, the Sub-Contractor shall provide the said services at his own cost.
- 12.2 Except as otherwise provided in the main contract, the Sub-Contractor shall construct at his own expense all necessary workshops, stores, offices, workers' accommodation and other temporary buildings required for the carrying out of the works at such places on site as the Contractor shall identify. The Contractor undertakes to give the sub-Contractor the required space and all reasonable facilities for such construction. Upon practical completion of the works, the Sub-contractor shall remove the said facilities and reinstate disturbed surface to the satisfaction of the Contractor.
- 12.3 The Contractor shall provide, without charge, general attendance to the Sub-Contractor to facilitate the carrying out of the works which attendance shall include facilities for access to and movement within the site and sections or parts of the building or buildings where the sub-contract works are being carried out, the use of temporary roads, paths and access ways, sanitary and welfare facilities.
- 12.4 The Contractor shall permit the Sub-Contractor to use, without charge, at all reasonable times, any scaffolding and hoisting equipment belonging to or provided by the Contractor while it remains so erected upon the site. The use by the Sub-Contractor of any other equipment, facilities or services provided by the Contractor for the works shall be subject to private arrangements between the parties hereto and shall not be regulated by these conditions.
- 12.5 Provided that such use of the scaffolding and hoisting equipment shall be on the express condition that no warranty or other liability on the part of the Contractor shall be created or implied in regard to fitness, condition or suitability for the intended purpose except that the Sub-Contractor shall be liable for any damage caused thereto or thereby.
- 12.6 Where required, the Contractor shall provide the facilities, equipment and the like and carry out any necessary builder' works within a reasonable time of the request by the Sub-Contractor to enable timely performance of the sub-contract.

13.0 LIABILITY FOR OWN WORK

- 13.1 The Contractor and the Sub-Contractor shall be liable for the due carrying out of their respective works in accordance with their respective contracts without causing damage or injury to the works of the other sub-contractors, and in particular:
- 13.2 Should the carrying out of the sub-contract works cause injury or damage to the main contract works, or to the work of the other sub-contractors, the Sub-contractor shall rectify the damage so caused at his own cost.
- 13.3 Should the carrying out of the main contract works cause damage or injury to the sub-contract works, the Contractor shall rectify the damage at his own cost.
- 13.4 If in the course of carrying out the sub-contract works, the Sub-Contractor is required to carry out work not included in his sub-contract by reason of any materials or workmanship not being in accordance with the main contract or with other sub-contracts, the Contractor shall reimburse the Sub-Contractor the expenses incurred therein.

14.0 CO-OPERATION IN USE OF FACILITIES

- 14.1 The Contractor and the Sub-Contractor undertake to co-operate with each other and co-ordinate work arrangements and procedures required in carrying preventing interference, disruption or disturbance to the progress of the works or to the activities of other sub-contractors.
- 14.2 The Contractor and the Sub-Contractor undertake not to wrongfully use or interfere with equipment, scaffolding, appliances, ways, temporary works, temporary buildings and other property belonging to or provided by the other part or by other sub-contractors.
- 14.3 Provided that nothing contained in this clause shall prejudice or limit the rights of the Contractor or of the sub-Contractor in carrying out their respective statutory and or contractual duties under this sub-contract or under the main contract.

15.0 ASSIGNMENT AND SUBLETTING

- 15.1 Neither the Contractor nor the Sub-Contractor shall, without the written consent of the other and the Employer, assign this sub-contract.
- 15.2 The Sub-Contractor shall not sub-let the whole of the works without the written consent of the Contractor and the Architect.
- 15.3 Provided that any assignment and any sub-contracts as well as this sub-contract shall terminate immediately upon (for whatever reason) of the main contract.

16.0 WORK PRIOR TO APPOINTMENT OF CONTRACTOR

- 16.1 Where the Sub-Contractor is appointed before the Contractor is appointed, any work done by the Sub-Contractor prior to the said appointment shall be treated as a separate contract between the Employer and the Sub-Contractor and shall be valued by the Quantity Surveyor and paid for directly by the Employer without the involvement of the Contractor.
- 16.2 Where the Sub-Contractor is appointed before the Contractor is appointed, the Sub-Contractor shall be permitted, when the identity of the Contractor is known and within 30 days thereof, to raise objections (on reasonable grounds) against entering into a sub-contract with the Contractor
- 16.3 Where work which is outside the sub-contract is ordered directly by Employer or the Architect, that work shall be treated as a separate contract between the Sub-Contractor and the Employer and shall be valued and paid for directly to the Sub-Contractor in accordance with sub-clause 16.1 herein without the involvement of the Contractor. The cost of equipment, facilities and the like provided by the Contractor to the Sub-contractor and any builder's work carried out by the Contractor with regard to such work shall be paid directly by the Sub-Contractor to the Contractor.

17.0 SUB-CONTRACTOR DESIGN

Where the sub-contract includes a design component by the Sub-Contractor, the design shall be to the approval of the Architect and the Employer. Notwithstanding and approvals, the Sub-Contractor shall be liable directly to the Employer for any consequences of failure of the design to comply with the requirements of the Employer or to be fit or suitable for the purposes for which the sub-contract works or the relevant part thereof were intended.

18.0 SPECIFICATION OF GOODS, MATERIALS AND WORKMANSHIP

- 18.1 All materials, goods and workmanship shall, so far as procurable, be of the respective kinds and standards described in the sub-contract bills, specifications and drawings.
- 18.2 The provisions of clause 23.0 of the main contract regulating the procurement, specification and quality assurance of materials, processes and workmanship and the requirements of clause 24.0 therein dealing with the provision of samples and the carrying out of specified tests shall apply to the sub-contract in the same manner as they apply to the main contract.

19.0 COMPLIANCE WITH STATUTORY AND OTHER REGULATION

The Sub-Contract shall comply with all statutory and other regulations of competent authorities regulating the carrying out of the works in accordance with the provisions of clause 17.0 of the main contract, as applicable.

20.0 ROYALTIES AND PATENT RIGHTS

- 20.1 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions in carrying out the works as described by or referred to in the sub-contract bills, specifications or drawings shall be deemed to have been included in the sub-contract price.
- 20.2 The provision of clause 25.0 of the main contract dealing with the same shall apply to the sub-contract in the same manner as they apply to the main contract.

21.0 ANTIQUITIES AND OTHER OBJECTS OF VALUE

All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating the same during the progress of the sub-contract shall be dealt with in accordance with the provisions of clause 44.0 of the main contract.

22.0 SUSPENSION OF WORKS

- 22.1 An instruction by the Architect to postpone or suspend the works under clause 28.0 of the main contract shall have the same effect on the sub-contract works as it has on the main contract works.
- 22.2 If the suspension arises due to default by the contractor and the sub-contract works are adversely affected by the suspension, the sub-contractor shall be entitled to reimbursement by the contractor of all expenses arising there from.
- 22.3 If the suspension arises due to default by the sub-contractor, the sub-contractor shall be liable to the contractor for all expenses arising there from.

- 22.4 A notice by the contractor to suspend the works under clause 29.0 of the main contract shall have the same effect on the sub-contract works as it has on the main contract works.
- 22.5 Should the sub-contract works be adversely affected by suspension under clause 29.0 of the main contract, the sub-contractor shall be entitled to the remedies provided for at clauses 25.0 and 26.0 of this sub-contract.

23.0 PAYMENTS

- 23.1 Procedures for originating and processing applications for payments and payment certificates as regards the sub-contract works shall be the same as those prescribed for the Contractor in the main contract at clause 34.0. All references therein to the contractor shall be deemed to include references to the Sub-contractor.
- 23.2 Before submitting an application for payment to the Quantity Surveyor in accordance with clause 34.1 of the main contract, the Contractor shall give the Sub-Contractor a notice of not less than 7 days to submit the details of the amounts which the Sub-Contractor considers himself entitled to for the relevant period. Such details, when received, shall be annexed to the said Contractor's application.
- 23.3 Where it is necessary to measure the sub-contract works for purpose of interim valuation or for the preparation of the final account, the Quantity Surveyor shall give the Sub-Contractor a reasonable opportunity to be present at the time of the measurements and to take notes and measurements as he may require.
- 23.4 Neither the Quantity Surveyor nor the Architect shall be bound to issue a valuation or a payment certificate in respect of the sub-contract works, as the case may be, whose value is less than the amount stated in the appendix to these conditions as the minimum amount of a payment certificate before the issue of the certificate of practical completion of the main contract or of the sub-contract, as applicable.
- 23.5 Provided that where the minimum amount of a certificate inserted in the appendix to these conditions has been achieved but the corresponding minimum inserted in the appendix to the main contract in respect of the Contractor's work has not been achieved, or the Contractor has not applied for payment within the stated period, the Architect may with the consent of the Contractor, issue a payment certificate directly to the Sub-Contractor for payment by the Employer.

- 23.6 Within 7 days of receipt by the Contractor of payment by the Employer, the Contractor shall notify and pay to the Sub-Contractor the total value certified therein in respect of the sub-contract works less the portion of the retention money attributable to the sub-contract works and less amounts previously paid to the Sub-Contractor.
- 23.7 Where certificates are not paid by the Employer within the prescribed period, the Sub-Contractor shall be entitled to be paid by the Contractor, upon receipt of payment from the Employer, the interest certified for the delay in accordance with sub-clause 34.6 of the main contract in respect of the portion of the sub-contract works included in the certificate.
- 23.8 Where the Contractor has received payment from the Employer but has not released the appropriate amount to the Sub-Contractor within the stated period, the Contractor shall pay to the Sub-Contractor in addition to the amount not paid, simple interest on the unpaid amount for the period it remains unpaid at the commercial bank lending rate in force during the period of default.
- 23.9 If, upon application by the Sub-Contractor and Architect agree, or if the Contractor fails to make payment to the Sub-Contractor in accordance with sub-clause 23.6 herein and continues such default for 14 days thereafter, the Architect may issue a payment certificate directly to the Sub-Contractor for payment by the Employer, where applicable, and deduct the amount from subsequent payment to the Contractor.
- 23.10 Upon the issue of the certificate of practical completion and the release of one half of the total amount of the retention of money to the Contractor, the Contractor shall pay the portion attributable to the sub-contract to the Sub-Contractor within 7 days of receipt of the payment.
- 23.11 Upon the issue of the certificate of rectification of defects and receipt of the balance of the retention money by the Contractor, the Contractor shall pay the balance of the portion of the retention money attributable to the sub-contract to the Sub-Contractor within 7 days of receipt of the payment.
- 23.12 The sub-contract final account shall be agreed between the Sub-Contractor, the Contractor, the Quantity Surveyor and the Architect and shall be annexed to the Contractor's final accounts, which shall be agreed as provided for in the main contract. For purpose of finalizing the accounts, the Quantity Surveyor may request the Sub-Contractor to submit further documents, as he may deem necessary.

- 23.13 The final certificate issued under sub-clause 34.21 of the main contract shall be final and binding on the Sub-Contractor in the same manner it is binding on the Contractor.
- 23.14 If the Architect desires to secure final payment to the Sub-Contractor before final payment is due to the Contractor, the provisions of sub-clause 31.10 of the main contract shall apply.
- 23.15 The Contractor shall be entitled to deduct from or set off against any money due from him to the Sub-Contractor in interim certificates any sum or sums which the Sub-Contractor is liable to pay to the Contractor arising under or in connection with the sub-contract.

24.0 PRACTICAL COMPLETION AND DEFECTS LIABILITY

- 24.1 The Sub-Contractor shall proceed with the works regularly and diligently and complete the same within the period stated in the appendix to this sub-contract or within such extended period as may be granted under clause 25.0 of this sub-contract.
- 24.2 Where the sub-contract works are to be completed in sections or where the sub-contract works are to be completed in advance of the main contract works, the provisions of clause 42.0 of the main contract shall apply, as appropriate, to the sub-contractor in the same manner as they apply to the main contract.
- 24.3 The procedures for certifying practical completion and for dealing with defects in the sub-contract works as well as the main contract works are as prescribed at clause 41.0 of the main contract. Upon the issue of the certificate of practical completion of the whole of the works or of the sub-contract works, as applicable, the Sub-contractor shall be entitled to release of one half of the retention money attributable to the sub-contract works within 7 days after the Contractor has received payment.
- 24.4 The balance of the retention money shall be released to the Sub-Contractor after the defects appearing in the works have been rectified in accordance with sub-clause 41.6 and 41.7 of the main contract and after the Contractor has received the said payment as provided for in sub-clause 34.16.3 of the main contract.

25.0 EXTENSION OF TIME

- 25.1 Upon it becoming reasonably apparent that the progress of the sub-contract works is or will be delayed, the Sub-Contractor shall forthwith give written notice of the cause of the delay to the Contractor and to the Architect with supporting details showing the extent of delay caused or likely to be caused. Thereafter, the Architect shall evaluate the information supplied by the Sub-Contractor and if in his opinion the completion of the works is likely to be or has been delayed beyond the date for practical completion stated in the appendix to these conditions or beyond any extended time previously fixed under this clause, by any of the reasons entitling the Contractor to extension of time under sub-clause 36.1 of the main contract, then the Architect shall, so soon as he is able estimate the length of the delay beyond the date or time aforesaid, recommend to the Contractor a fair and reasonable extension of time to be granted for the completion of the sub-contract works.
- 25.2 Thereupon, the Contractor shall grant in writing to the Sub-Contractor the recommended time. Provided that the Contractor shall not grant any extension of time to the Sub-Contractor without the written recommendation of the Architect. And provided that the Sub-Contractor shall constantly use his best endeavors to prevent delay and shall do all that may be reasonably required to proceed with the works.
- 25.3 The procedures for dealing with requests for extension of time and the observance of time limits prescribed at clause 36.0 of the main contract shall apply to the sub-contract in the same manner as they apply to the main contract.

26.0 LOSS AND EXPENSE CAUSED BY DISTURBANCE OF REGULAR PROGRESS

- 26.1 If upon written application being made by the Sub-Contractor to the Contractor and to the Architect, the Architect is of the opinion that the Sub-Contractor has been involved in direct loss and or expense, for which he would not be reimbursed by a payment made under any other provision in this sub-contract, by reasons of the regular progress of the sub-contract works or any part thereof having been materially affected by any of the reasons which would entitle the Contractor to reimbursement under clause 37.0 of the main contract, the Quantity Surveyor shall assess the amount of such loss and or expense.
- 26.2 Any amount so assessed shall be added to the sub-contract price and if an interim certificate is issued after the date of assessment, any such amount shall be added to the amount which would otherwise be stated as due in such certificate as regards the Sub-Contractor's entitlement.
- 26.3 The procedures for dealing with loss and or expense claims prescribed at clause 37.0 of the main contract shall apply to the sub-contract in the same manner as they apply to the main contract, as appropriate.

27.0 DAMAGES FOR DELAY IN COMPLETION

- 27.1 If the Sub-Contractor fails to complete the sub-contract works by the date for practical completion stated in the appendix to these conditions or within any extended time fixed under clause 25.0 herein, and the Architect certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Sub-Contractor shall pay or allow to the Contractor a sum calculated at the rate stated in the said appendix as liquidated damages for the period during which the works shall so remain or have remained incomplete.
- 27.2 The Contractor may deduct such sum from any money due or to become due to the Sub-Contractor under the sub-contract or recover the same from the Sub-Contractor as a debt. Provided that the Contractor shall not be entitled to recover any liquidated damages from the Sub-Contractor without first obtaining the Architect's certificate of delay prescribed herein.

28.0 FLUCTATIONS

- 28.1 Unless otherwise stated in the sub-contract bills or specifications, the sub-contract price shall be deemed to have been calculated to include all duties and taxes imposed by statutory and other competent authorities in the country where the works are being carried out, and
- 28.2 The sub-contract price shall be deemed to be based on currency exchange rates current at the date of tender as regards materials or goods to be specifically imported for permanent incorporation in the works.
- 28.3 Should duties, taxes and exchange rates vary during the period of the contract, compensation thereof shall be calculated in accordance with sub-clause 35.1 and 35.2 of the main contract.
- 28.4 Compensation for change in prices of goods and materials incorporated in the works and in the rates of wages provided for at sub-clause 35.3, 35.4 and 35.5 of the main contract shall not apply to the sub-contract unless specifically provided for in the bill of quantities or specifications.

29.0 TERMINATION OF MAIN CONTRACT

- 29.1 If, for any reason, the contractor's employment is terminated either under **any relevant clauses** of the main contract, this sub-contract shall thereupon also terminate.
- 29.2 Upon termination, the sub-contractor shall cease all work and vacate the site. He shall not remove any equipment or any materials brought onto the site for the carrying out of the works without the written approval of the contractor and the Architect
- 29.3 Where the termination of the main contract occurs without the default of the sub-contractor, the sub-contractor shall be paid by the contractor for work done in the like manner as the Contractor is paid under **any relevant clauses in the main contract**.
- 29.4 Where the termination of main contract arises from the default by the sub-contractor, the adjustment of the sub-contract accounts shall be performed in the like manner as is provided at sub-clauses of the main contract regarding the main contract accounts.

30.0 TERMINATION OF SUB-CONTRACT.

- 30.1 Without prejudice to any other rights and remedies which the contractor may possess, if the sub-contractor shall make default in any one or more of the respects which would entitle the employer to terminate the main contract **under any relevant clauses in the main contract**, the contractor shall give the sub-contractor a notice, with a copy to the Architect and to the employer by registered post of recorded delivery specifying the default. Should the sub-contractor continue the default for 14 days after receipt of such notice or at any time thereafter repeat such default and should the Architect certify that the sub-contractor is in default, the contractor may terminate the Sub-contract forthwith after the expiry of the notice provided that the notice is not given unreasonably or vexatiously. The termination letter shall be copied to the Architect and to the Employer.
- 30.2 Where the sub-contract is terminated due to the default of the sub-contractor as in sub-clause 30.1 herein, the adjustment of sub-contract accounts shall be performed in the like manner as is provided at sub-clauses of the main contract regarding the main contract accounts.
- 30.3 Without prejudice to any other rights and remedies which the Sub-Contractor may possess, if the Contractor shall make default in one or more of the respects which, if committed by the Employer, would entitle the contractor to terminate the main contract **under clause 15.0 therein**, the Sub-Contractor shall give the Contractor a notice, with a copy to the Architect and to the Employer, by registered post or recorded delivery specifying the default. Should the contractor continue the default for 14 days after receipt of such notice or at any time thereafter repeat such default, and should the Architect certify that the contractor is in default, the Sub-Contractor may terminate the sub-contract forthwith after expiry of the notice, provided that the notice is not given unreasonably or vexatiously. The termination letter shall be copied to the Architect and to the Employer.
- 30.4 If the Sub-Contract is terminated due to the default of the Contractor as in sub-clause 30.3 herein, the Contractor shall pay the sub-contractor for work done in the like manner as the Contractor would be paid as **under any relevant clauses in the main contract** where the termination is done by the Contractor.

- 30.5 Where the sub-contract is terminated due to the default of the Contractor, all expenses arising from the termination shall be done wholly by the Contractor and the termination shall not create any liability on the Employer.
- 30.6 Where the sub-contract is terminated due to the default of the Sub-Contractor, the sub-contractor shall be liable to the contractor for all expenses arising there from.

31.0 SETTLEMENT OF DISPUTES

- 31.1 In case any dispute or difference shall arise between the Contractor and Sub-Contractor, either during the progress or after the completion or abandonment of the sub-contract works, such 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 30 days of the notice.
- 31.2 The dispute shall be referred to the arbitration and final decision of a person to be agreed by the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointment by the Chairman or Vice Chairman of the Architectural Association of Kenya or the Chairman or Vice Chairman of The Chartered Institute of Arbitrators, Kenya Branch, at the request of the applying party.
- 31.3 The arbitration may be on the construction of this sub-contract or on any matter or thing of whatsoever nature arising there under or in connection therewith including the rights and liabilities of the parties during the currency of the sub-contract and subsequent to the termination of the sub-contract.
- 31.4 Where the sub-contractor is aggrieved by the manner in which the Architect has exercised or failed to exercise his powers stipulated in the main contract, or in the sub-contact or by any action or inaction of the Employer, and in particular, if he is aggrieved by:
- 31.4.1 The failure or refusal of the Architect to recommend to the contractor an extension of sub-contract time, or
- 31.4.2 The extend of the recommended time, or

- 31.4.3 The amount certified to the sub-contractor either in an interim in a final certificate, or
 - 31.4.4 The issue of an instruction which the sub-contractor contends is not authorized by the main contract or the sub-contract, or
 - 31.4.5. Any other matter left to the discretion of the Architect in the main contract or in the sub-contract, then.
- 31.5 Subject to the Sub-Contractor giving the Contractor such indemnity and security as the Contractor may reasonably require, the Contractor shall allow the Sub-Contractor to use the contractor's name and, if necessary, shall join the Sub-Contractor in arbitration proceeding against the employer to decide the matters in dispute or in difference.
- 31.6 Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference where notice of a dispute or difference has not been given by the applying party within 90 days of the occurrence or discovery of the matter or issue giving rise to the dispute or difference.
- 31.7 Notwithstanding the issue of a notice as stated above, the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties.
- 31.8 In any event, no arbitration shall commence earlier than 90 days after the service of the notice of a dispute or difference, except as provided for at sub-clause 31.9 herein.
- 31.9 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 sub-contract without having to comply with sub clause 31.8 herein.

- 31.9.1 Whether or not the issue of an instruction by the Architect is authorized by the main contract or these conditions, and
- 31.9.2 Whether or not a payment certificate has been improperly withheld or is not in accordance with the main contract or these conditions or though issued, it has not been honoured.
- 31.10 All other matters in dispute shall only be referred to arbitration after the practical completion or alleged practical completion of the works or abandonment of the works or termination or alleged termination of the sub-contract, unless the Architect the contractor and the sub-contractor agree otherwise in writing.
- 31.11 The Arbitrator shall, without prejudice to the generality of his powers, have power 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 or included in any payment certificate.
- 31.12 The Arbitrator shall, without prejudice to the generality of his powers, have power to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion decision, requirement or notice had been given.
- 31.13 Provided that any decision of the Architect which is final and binding on the contractor under the main contract shall be final and binding between the contractor and the sub-contractor.
- 31.14 The award of such Arbitrator shall be final and binding upon the parties.

SUB CONTRACTOR'S PERFORMANCE BOND

BY THIS AGREEMENT we.....(SURETY)

Of.....

Are bound.....(CONTRACTOR)

in the sum of Kenya shillings.....

(Kshs.....)

to be paid by us to the said

.....(CONTRACTOR)

WHEREAS by an agreement in writing dated

.....

.....(SUB-CONTRACTOR)

entered into a sub

contract with.....(CONTRACTOR)

to carry out and complete the works therein stated in the manner and by the time therein specified all in accordance with he provisions of the said sub-contract, namely: (description of works)

.....

NOW the condition of the above written bond is such that if the said sub-contractor, his executors, administrator, successors or assigns shall duly perform his obligations under the sub-contract, or if on default by the sub-contractor the surety shall satisfy and discharge the damages sustained by the contractor thereby up to the amount of the above written bond, then this obligation shall be void, otherwise it shall remain in full force and effect. Upon default, and

without prejudice to his other rights under the sub-contract, the contractor shall be entitled to demand forfeiture of the bond and we undertake to honour the demand in the amount stated above.

PROVIDED always and it is hereby agreed and declared that no alteration in the terms of the said sub-contract or in the extent or nature of the works to be carried out and no extension of time by the contractor under the sub-contract shall in any way release the surety from any liability under the above written bond.

IN WITNESS whereof we have set out hand this..... day of

.....

Surety

Witness

Authorised of Power of Attorney No.....21

APPENDIX

Clause

Name of sub-contractor’s insurers

6.0.....

Name of sub-contractor’s surety

7.0

.....

Amount of surety

7.0

.....

Period of possession of site

8.1

.....

Date of commencement of works

8.2

.....

Date for practical completion

8.2

.....

Interval for application of payment certificates

23.1

.....

Minimum amount of payment certificate

23.4

.....

Percentage of certified value retained

23.6

.....

Limit of retention fund, if any	23.6
Name of the sub-contractor's bank for purposes of interest calculation.	23.7,23.8
Defects liability period	23.11
Period of final measurement and valuation	23.12
Damages of delay in completion at the rate of Kshs	27.1

.....

Signed by the said:

.....
.....

CONTRACTOR

SUB-CONTRACTOR

**1.70 APPENDIX TO THE AGREEMENT AND CONDITIONS OF
SUB- CONTRACT FOR BUILDING WORKS
Kenya Building and Civil Engineering Contractors (KABCEC)
document.**

1. CLAUSE 7.0

Change to read “.....in the sum equivalent to five per cent (5 %) of the subcontract.....”

SECTION C

SUB-CONTRACT PRELIMINARIES

AND

GENERAL CONDITIONS

1.10 **Execution of the Works**

CONTRACT PRELIMINARIES AND GENERAL CONDITIONS

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SECTION C

SUB-CONTRACT PRELIMINARIES AND GENERAL CONDITIONS

Examination of Tender Documents

The tenderer is required to check the number of pages of this document and should he find any missing or indistinct, he must inform the Engineer at once and have the same rectified.

All tenderers shall be deemed to have carefully examined the following:

Work detailed in the Specification and in the Contract Drawings.

The Republic of Kenya Document "General Conditions of Contract for Electrical and Mechanical Works".

Other documents to which reference is made:

He shall also be deemed to have included for any expenditure which may be incurred in conforming to the above items (a), (b), (c) and observe this expense as being attached to the contract placed for the whole or any part of the work.

The tenderer shall ensure that all ambiguities, doubts or obscure points of detail, are clarified with the Engineer before submission of his tender, as no claims for alleged deficiencies in the information given shall be considered after this date.

Discrepancies

The Contractor shall include all work either shown on the Contract Drawings or detailed in the specification. No claim or extra cost shall be considered for works which has been shown on the drawings or in the specification alone.

Should the drawing and the specification appear to conflict, the Sub-contractor shall query the points at the time of tendering and satisfy himself that he has included for the work intended, as no claim for extra payment on this account shall be considered after the contract is awarded.

Conditions of Contract Agreement

The Contractor shall be required to enter into a Sub-contract with the Main Contractor.

The Conditions of the Contract between the Main Contractor and any Sub-contractor as hereinafter defined shall be the latest edition of the Agreement and Schedule of Conditions of Kenya Association of Building and Civil Engineering Contractors as particularly modified and amended hereinafter.

For the purpose of this contract the Agreement and Schedule of Conditions and any such modifications and amendments shall read and construed together. In any event of discrepancy the modifications and amendments shall prevail.

1.04 Payment

Payment will be made through certificates to the Main Contractor. All payments will be less retention as specified in the Main Contract. No payment will become due until materials are delivered to site.

1.05 Definition of Terms

Throughout these contract documents units of measurements, terms and expressions are abbreviated and wherever used hereinafter and in all other documents they shall be interpreted as follows:

Employer: The term “**Employer**” shall mean **The County Assembly of Kilifi, Represented By:**

**The Clerk of the County assembly,
County Assembly of Kilifi,**

i) **Address: P.O. Box 332 - 80200 MALINDI.**

ii) **Architect:** The term “**Architect**” shall mean **The County Architect, Department of Public Works, Kilifi**

iii) **Quantity Surveyor:** The term “**Quantity Surveyor**” shall mean **The County Quantity Surveyor, Department of Public Works, County Government of Kilifi**

iv) **Civil/Structural Engineers:** The term “**Civil/Structural Engineers**” shall mean **The County Engineer (Structural), Department of Public Works, County Government of Kilifi**

v) **Engineer:** The term “**Engineer**” shall mean **Senior Superintendent Mechanical (BS), Department of Public Works, County Government of Kilifi**

vi) **Contractor:** The term “**Main Contractor**” shall mean the firm or company appointed to carry out the Works as specified in the Bills of Quantities and shall include his or their heir, executors, assigns, administrators, successors, and duly appointed representatives.

vii) **Sub-contractor:** The term “**Sub-contractor**” shall mean the persons or person, firm or Company whose tender for this work has been accepted, and who has entered into a contract agreement with the Contractor for the execution of the Sub-contract Works, and shall include his or their heirs, executors, administrators, assigns, successors and duly appointed representatives.

viii) **Sub-contract Works:** The term “**Sub-contract Works**” shall mean all or any portion of the work, materials and articles, whether the same are being manufactured or prepared, which are to be used in the execution of this Sub-contract and whether the same may be on site or not.

Contract Drawings: The term “**Contract Drawings**” shall mean those drawings required or referred to herein and forming part of the Bills of Quantities.

Working Drawings: The term “**Working Drawings**” shall mean those drawings required to be prepared by the Sub-contractor as hereinafter described.

xi) **Record Drawings:** The term “**Record Drawings**” shall mean those drawings required to be prepared by the Sub-contractor showing “as installed” and other records for the Sub-contract Works.

xii) **Abbreviations:**

CM shall mean **Cubic Metre**

SM shall mean **Square Metre**

LM shall mean **Linear Metre**

LS shall mean **Lump Sum**

mm shall mean **Millimeters**

No. Shall mean **Number**

Kg. shall mean **Kilograms**

KEBS or **KS** shall mean **Kenya Bureau of Standards**

BS shall mean. **Current standard British Standard Specification published by the British Standard Institution, 2 Park Street, London W1, England**

“**Ditto**” shall mean the whole of the preceding description in which it occurs. Where it occurs in description of succeeding item it shall mean the same as in the first description of the series in which it occurs except as qualified in the description concerned. Where it occurs in brackets it shall mean the whole of the preceding description which is contained within the appropriate brackets.

1.06 Site Location

The site of the Contract Works is situated **at Malindi Town**. The tenderer is recommended to visit the site and shall be deemed to have satisfied himself with regard to access, possible conditions, the risk of injury or damage to property on/or adjacent to the site, and the conditions under which the sub-contract Works shall have to be carried out and no claims for extras will be considered on account of lack of knowledge in this respect.

1.07 **Duration of Sub-Contract**

The Contractor shall be required to phase his work in accordance with the Main contractor's programme (or its revision).

1.08 **Scope of Contract Works**

The contractor shall supply, deliver, unload, hoist, fix, test, commission and hand-over in satisfactory working order the complete installations specified hereinafter and/or as shown on the Contract Drawings attached hereto, including the provision of labour, transport and plant for unloading material and storage, and handling into position and fixing, also the supply of ladders, scaffolding the other mechanical devices to plant, installation, painting, testing, setting to work, the removal from site from time to time of all superfluous material and rubbish caused by the works.

The contractor shall supply all accessories, whether of items or equipment supplied by the Sub-Contractor but to be fixed and commissioned under this contract.

1.09 **Extent of the Sub-contractor's Duties**

At the commencement of the works, the contractor shall investigate and report to the Engineer if all materials and equipment to be used in the work and not specified as supplied by the others are available locally. If these materials and equipment are not available locally, the contractor shall at this stage place orders for the materials in question and copy the orders to the Engineer. Failure to do so shall in no way relieve the contractor from supplying the specified materials and equipment in time.

Materials supplied by others for installation and/or connection by the Contractor shall be carefully examined in the presence of the supplier before installation and connection. Any defects noted shall immediately be reported to the Engineer.

The contractor shall be responsible for verifying all dimensions relative to his work by actual measurements taken on site.

The Contractor shall mark accurately on one set of drawings and indicate all alterations and/or modifications carried out to the designed System during the construction period. This information must be made available on site for inspection by the Engineer.

1.10 **Execution of the Works**

The works shall be carried out strictly in accordance with:

- a) All relevant Kenya Bureau of Standards Specifications.
- b) All relevant British Standard Specifications and Codes of Practice (Hereinafter referred to B.S. and C.P. respectively).
- c) General specifications of materials and works Section D of this document

- d) The Contract Drawings.
- e) The Bye-laws of the Local Authority.
- f) The Architect's and/or Engineer's Instructions.

The Contract Drawings and Specifications are to be read and construed together.

1.11 **Validity of Tender**

The tender shall remain valid for acceptance within 150 days from the final date of submission of the tender, and this has to be confirmed by signing the Tender Bond. The tenderer shall be exempted from this Bond if the tender was previously withdrawn in writing to the Employer before the official opening.

1.12 **Firm – Price Contract**

Unless specifically stated in the documents or the invitation to tender, this is a firm-price Contract and the contractor must allow in his tender for the increase in the cost of Labour and/or materials during the duration of the contract. No claims will be allowed for increased costs arising from the fluctuations in duties and/or day to day currency fluctuations. The Sub-contractor will be deemed to have allowed in his tender for any increase in the cost of materials, which may arise as a result of currency fluctuation during the contract period.

1.13 **Variation**

No alteration to the Contract Works shall be carried out until receipt by the Contractor of written instructions from the Project Manager.

Any variation from the contract price in respect of any extra work, alteration or omission requested or sanctioned by the Engineer shall be agreed and confirmed in writing at the same time such variations are decided and shall not affect the validity of the Contract. Schedule of Unit Rates shall be used to assess the value of such variations. No allowance shall be made for loss of profit on omitted works.

Where the Architect requires additional work to be performed, the Sub-contractor, if he considers it necessary, will give notice within seven (7) days to the Main Contractor of the length of time he (the Sub-contractor) requires over and above that allotted for completion of the Contract.

If the Sub-contractor fails to give such notice he will be deemed responsible for the claims arising from the delay occasioned by reason of such extension of time.

1.14 **Prime Cost and Provisional Sums**

A specialist Sub-contractor may be nominated by the Project Manager to supply and/or install any equipment covered by the Prime Cost or Provisional Sums contained within the Contract documents.

The work covered by Prime Cost and Provisional Sums may or may not be carried out at the discretion of the Project Manager.

The whole or any part of these sums utilized by the Contractor shall be deducted from the value of the Contract price when calculating the final account.

1.15 **Bond**

The tenderer must submit with his tender the name of one Surety who must be an established Bank only who will be willing to be bound to the Government for an amount equal to 5 % of the Contract amount as Clause 28 of the Conditions of Contract.

1.16 **Government Legislation and Regulations**

The Contractor's attention is called to the provision of the Factory Act 1972 and subsequent amendments and revisions, and allowance must be made in his tender for compliance therewith, in so far as they are applicable.

The Contractor must also make himself acquainted with current legislation and any Government regulations regarding the movement, housing, security and control of Labour, Labour camps, passes for transport, etc.

The Contractor shall allow for providing holidays and transport for work people, and for complying with Legislation, Regulations and Union Agreements.

1.17 **Import Duty and Value Added Tax**

The Sub-contractor will be required to pay full Import Duty and Value Added Tax on all items of equipment, fittings and plant, whether imported or locally manufactured. The tenderer shall make full allowance in his tender for all such taxes.

1.18 **Insurance Company Fees**

Attention is drawn to the tenderers to allow for all necessary fees, where known, that may be payable in respect of any fees imposed by Insurance Companies or statutory authorities for testing or inspection.

No allowance shall be made to the contractor with respect to fees should these have been omitted by the tenderer due to his negligence in this respect.

1.19 **Provision of Services by the Main Contractor**

In accordance with Clause 1.08 of this Specification the Contractor shall make the following facilities available to the Sub-contractor:

- a) Attendance on the Sub-Contractor and the carrying out of all work affecting the structure of the building which may be necessary, including all chasing, cutting away and making good brickwork, etc., except that all plugging for fixing, fittings, machinery, fan ducting, etc., and all drilling and tapping of steel work shall be the responsibility of the Sub-contractor. Any purpose made fixing brackets shall not constitute Builder's Work and shall be provided and installed by the Sub-contractor unless stated hereinafter otherwise.
- b) The provision of temporary water, lighting and power: the Contractor pay for all these services utilized.
- c) Fixing of anchorage and pipe supports in the shuttering, shall be supplied by the Contractor who shall also supply the Project Manager with fully dimensioned drawings detailing the exact locations.
- d)
 - i) Provision of scaffolding, cranes, etc. It shall be the Contractor's responsibility to liaise with the Project Manager to ensure that there is maximum co-operation with other nominated Sub-contractors in the use of scaffolding, cranes, etc.
 - ii) Any specialist scaffolding, cranes, etc. by the Contractor for his own exclusive use shall be paid for by the Sub-contractor.

1.20 **Suppliers**

The Contractor shall submit names of any supplier for the materials to be incorporated, to the Engineer for approval. The information regarding the names of the suppliers may be submitted at different times, as may be convenient, but no sources of supply will be changed without prior approval.

Each supplier must be willing to admit the Engineer or his representative to his premises during working hours for the purpose of examining or obtaining samples of the materials in question.

1.21 **Samples and Materials Generally**

The Contractor shall, when required, provide for approval at no extra cost, samples of all materials to be incorporated in the works. Such samples, when approved, shall be retained by the Engineer and shall form the standard for all such materials incorporated.

1.22 **Administrative Procedure and Contractual Responsibility**

Wherever within the Specification it is mentioned or implied that the Contractor shall deal direct with the Employer or Engineer, it shall mean “through the Project Manager who is responsible to the Employer for the whole of the works including the Sub-contract Works.

1.23 **Bills of Quantities**

The Bills of Quantities have been prepared in accordance with the standard method of measurement of Building Works for East Africa, first Edition, Metric, 1970. All the Quantities are based on the Contract Drawings and are provisional and they shall not be held to gauge or to limit the amount or description of the work to be executed by the Contractor but the value thereof shall be deducted from the Contract Sum and the value of the work ordered by the Engineer and executed there under shall be measured and valued by the Engineer in accordance with the conditions of the Contract.

All work liable to adjustment under this Contract shall be left uncovered for a reasonable time to allow measurements needed for such adjustment to be taken by the Quantity Surveyor or Engineer. Immediately the work is ready for measuring the Contractor shall give notice to the Quantity Surveyor or Engineer to carry out measurements before covering up. If the Contractor shall make default in these respects he shall, if the Engineer so directs, uncover the work to enable the necessary measurements to be taken and afterwards reinstate at his own expense.

1.24 **Contractor's Office in Kenya**

The Contractor shall maintain (after first establishing if necessary) in Kenya an office staffed with competent Engineer Manager and such supporting technical and clerical staff as necessary to control and coordinate the execution and completion of the Contract Works.

The Engineer Manager and his staff shall be empowered by the Contractor to represent him at meetings and in discussions with the Project Manager, the Engineer and other parties who may be concerned and any liaison with the Contractor's Head Office on matters relating to the design, execution and completion of the Contract Works shall be effected through his office in Kenya.

It shall be the Contractor's responsibility to procure work permits, entry permits, licenses, registration, etc., in respect of all expatriate staff.

The Contractor shall prepare a substantial proportion of his Working Drawings at his office in Kenya. No reasons for delays in the preparation or submission for approval or otherwise of such drawings or proposals will be accepted on the grounds that the Sub-contractor's Head Office is remote from his office in Nairobi or the site of the Contract Works or otherwise.

1.25 **Builder's Work**

All chasing, cutting away and making good will be done by the Contractor. The Contractor shall mark out in advance and shall be responsible for accuracy of the size and position of all holes and chases required.

The Contractor shall drill and plug holes in floors, walls, ceiling and roof for securing services and equipment requiring screw or bolt fixings.

Any purpose made fixing brackets shall be provided and installed by the Contractor.

1.26 **Structural Provision for the Works**

Preliminary major structural provision has been made for the Contract Works based on outline information ascertained during the preparation of the Specification.

The preliminary major structural provision made will be deemed as adequate unless the Contractor stated otherwise when submitting his tender.

Any major structural provision or alteration to major structural provisions required by the Contractor shall be shown on Working Drawings to be submitted to the Engineer within 30 days of being appointed.

No requests for alterations to preliminary major structural provisions will be approved except where they are considered unavoidable by the Engineer. In no case will they be approved if building work is so far advanced as to cause additional costs or delays in the works.

1.27 **Position of Services, Plant, Equipment, Fittings and Apparatus**

The Contract Drawings give a general indication of the intended layout. The position of the equipment and apparatus, and also the exact routes of the ducts, main and distribution pipework shall be confirmed before installation is commenced. The exact siting of appliances, pipework, etc., may vary from that indicated.

The routes of services and positions of apparatus shall be determined by the approved dimensions detailed in the Working Drawings or on site by the Engineer in consultation with the Contractor.

Services through the ducts shall be arranged to allow maximum access along the ducts and the services shall be readily accessible for maintenance. Any work, which has to be re-done due to negligence in this respect, shall be the Sub-contractor's responsibility.

The Sub-contractor shall be deemed to have allowed in his Contract Sum for locating terminal points of services (e.g. lighting, switches, socket outlets, lighting points, control switches, thermostats and other initiating devices, taps, stop cocks) in positions plus or minus 1.2m horizontally and vertically from the locations shown on Contract Drawings. Within these limits no variations in the Contract Sum will be made unless the work has already been executed in accordance with previously approved Working Drawings and with the approval of the Engineer.

1.28 **Checking of Work**

The Contractor shall satisfy himself to the correctness of the connections he makes to all items of equipment supplied under the Contract agreement and equipment supplied under other contracts before it is put into operation. Details of operation, working pressures, temperatures, voltages, phases, power rating, etc., shall be confirmed to others and confirmation received before the system is first operated.

1.29 **Setting to Work and Regulating System**

The Contractor shall carry out such tests of the Contract Works as required by British Standard Specifications or equal and approved codes as specified hereinafter and as customary.

No testing or commissioning shall be undertaken except in the presence of and to the satisfaction of the Engineer unless otherwise stated by him (Contractor's own preliminary and proving tests exempted).

It will be deemed that the Contractor has included in the Contract Sum for the costs of all fuel, power, water and the like, for testing and commissioning as required as part of the Contract Works. He shall submit for approval to the Engineer a suitable programme for testing and commissioning. The Engineer and Employer shall be given ample warning in writing, as to the date on which testing and commissioning will take place.

The Contractor shall commission the Contract Works and provide attendance during the commissioning of all services, plant and apparatus connected under the Contract Agreement or other Sub-contract Agreements, related to the project.

Each system shall be properly balanced, graded and regulated to ensure that correct distribution is achieved and where existing installations are affected, the Contractor shall also regulate these systems to ensure that their performance is maintained.

The proving of any system of plant or equipment as to compliance with the Specification shall not be approved by the Engineer, except at his discretion, until tests have been carried out under operating conditions pertaining to the most onerous conditions specified except where the time taken to obtain such conditions is unreasonable or exceeds 12 months after practical completion of the Contract Works.

1.30 **Identification of Plant Components**

The Contractor shall supply and fix identification labels to all plant, starters, switches and items of control equipment including valves, with white traffolyte or equal labels engraved in red lettering denoting its name, function and section controlled. The labels shall be mounted on equipment and in the most convenient positions. Care shall be taken to ensure the labels can be read without difficulty. This requirement shall apply also to major components of items of control equipment.

Details of the lettering of the labels and the method of mounting or supporting shall be forwarded to the Engineer for approval prior to manufacture.

1.31 **Contract Drawings**

The Contract Drawings when read in conjunction with the text of the Specification, have been completed in such detail as was considered necessary to enable competitive tenders to be obtained for the execution and completion of the Contract works.

The Contract Drawings are not intended to be Working Drawings and shall not be used unless exceptionally they are released for this purpose.

1.32 **Working Drawings**

The Contractor shall prepare such Working Drawings as may be necessary. The Working Drawings shall be complete in such detail not only that the Contract Works can be executed on site but also that the Engineer can approve the Contractor's proposals, detailed designs and intentions in the execution of the Contract Works.

If the Contractor requires any further instructions, details, Contract Drawings or information drawings to enable him to prepare his Working Drawings or proposals, the Contractor shall accept at his own cost, the risk that any work, commenced or which he intends to commence at site may be rejected.

The Engineer, in giving his approval to the Working Drawings, will presume that any necessary action has been, or shall be taken by the Contractor to ensure that the installations shown on the Working Drawings have been cleared with the Project Manager and any other Sub-contractors whose installations and works might be affected.

If the Contractor submits his Working Drawings to the Engineer without first liaising and obtaining clearance for his installations from the Project Manager and other Sub-contractors whose installations and works might be affected, then he shall be liable to pay for any alterations or modification to his own, or other Sub-contractor's installations and works, which are incurred, notwithstanding any technical or other approval received from the Engineer.

Working Drawings to be prepared by the Contractor shall include but not be restricted to the following:

Any drawings required by the Engineer to enable structural provisions to be made including Builder's Working Drawings or Schedules and those for the detailing of holes, fixings, foundations, cables and pipe work ducting below or above ground or in or outside or below buildings.

General Arrangement Drawings of all plant, control boards, fittings and apparatus or any part thereof and for installation layout arrangement of such plant and apparatus.

Schematic Layout Drawings of services and of control equipment.

Layout Drawings of all embedded and non-embedded pipe work, ducts and electrical conduits.

Complete circuit drawings of the equipment, together with associated circuit description.

Such other drawings as are called for in the text of the Specification or Schedules or as the Engineer may reasonably require.

Three copies of all Working Drawings shall be submitted to the Engineer for approval. One copy of the Working Drawings submitted to the Engineer for approval shall be returned to the Contractor indicating approval or amendment therein.

Six copies of the approved Working Drawings shall be given to the Project Manager by the Sub-contractor for information and distribution to other Sub-contractors carrying out work associated with or in close proximity to or which might be affected by the Sub-contract Works.

Approved Working Drawings shall not be departed from except as may be approved or directed by the Engineer.

Approval by the Engineer of Working Drawings shall neither relieve the Contractor of any of his obligations under the Sub-contract nor relieve him from correcting any errors found subsequently in the Approved Working Drawings or other Working Drawings and in the Sub-contract Works on site or elsewhere associated therewith.

The Contractor shall ensure that the Working Drawings are submitted to the Engineer for approval at a time not unreasonably close to the date when such approval is required. Late submission of his Working Drawings will not relieve the Contractor of his obligation to complete the Contract Works within the agreed Contract Period and in a manner that would receive the approval of the Engineer.

1.33 **Record Drawings (As Installed) and Instructions**

During the execution of the Contract Works the Contractor shall, in a manner approved by the Engineer record on Working or other Drawings at site all information necessary for preparing Record Drawings of the installed Contract Works. Marked-up Working or other Drawings and other documents shall be made available to the Engineer as he may require for inspection and checking.

Record Drawings, may, subject to the approval of the Engineer, include approved Working Drawings adjusted as necessary and certified by the Contractor as a correct record of the installation of the Contract Works.

They shall include but not restricted to the following drawings or information:

- a. Working Drawings amended as necessary but titled "Record Drawings" and certified as a true record of the "As Installed" Sub-contract Works. Subject to the approval of the Engineer such Working Drawings as may be inappropriate may be omitted.
- b. Fully dimensioned drawings of all plants and apparatus.
- c. General arrangement drawings of equipment, other areas containing plants forming part of the Contract Works and the like, indicating the accurate size and location of the plant and apparatus suitably cross-referenced to the drawings mentioned in (b) above and hereinafter.
- d. Routes, types, sizes and arrangement of all pipe work and duct work including dates of installation of underground pipe work.
- e. Relay adjustment charts and manuals.
- f. Routes, types, sizes and arrangement of all electric cables, conduits, ducts and wiring including the dates of installation of buried works.
- g. System schematic and trunking diagrams showing all salient information relating to control and instrumentation.
- h. Grading Charts.
- i. Valve schedules and locations suitability cross-referenced.

- j. Wiring and piping diagrams of plant and apparatus.
- k. Schematic diagrams of individual plant, apparatus and switch and control boards. These diagrams to include those peculiar to individual plant or apparatus and also those applicable to system operation as a whole.

Operating Instruction

Schematic and wiring diagrams shall not be manufacturer's multipurpose general issue drawings. They shall be prepared specially for the Contract Works and shall contain no spurious or irrelevant information.

Marked-up drawings of the installation of the Contract Works shall be kept to date and completed by the date of practical or section completion. Two copies of the Record Drawings of Contract Works and two sets of the relay adjustment and grading charts and schematic diagrams on stiff backing shall be provided not later than one month later.

The Contractor shall supply for fixing in sub-stations, switch-rooms, boiler houses, plant rooms, pump houses, the office of the Maintenance Engineer and other places, suitable valve and instructions charts, schematic diagrams of instrumentation and of the electrical reticulation as may be requested by the Engineer providing that the charts, diagrams, etc., relate to installations forming part of the Contract Works. All such charts and diagrams shall be of suitable plastic material on a stiff backing and must be approved by the Engineer before final printing.

Notwithstanding the Contractor's obligations referred to above, if the Contractor fails to produce to the Engineer's approval, either:-

The Marked-up Drawings during the execution of the Contract Works or

The Record Drawings, etc., within one month of the Section or Practical Completion

The Engineer shall have these drawings produced by others. The cost of obtaining the necessary information and preparing such drawings, etc., will be recovered from the Contractor.

1.34 **Maintenance Manual**

Upon Practical Completion of the Contract Works, the Contractor shall furnish the Engineer four copies of a Maintenance Manual relating to the installation forming part of all of the Contract Works.

The manual shall be loose-leaf type, International A4 size with stiff covers and cloth bound. It may be in several volumes and shall be sub-divided into sections, each section covering one Engineering service system. It shall have a ready means of reference and a detailed index.

There shall be a separate volume dealing with Air Conditioning and Mechanical Ventilation installation where such installations are included in the Contract Works.

The manual shall contain full operating and maintenance instructions for each item of equipment, plant and apparatus set out in a form dealing systematically with each system. It shall include as may be applicable to the Contract Works the following and any other items listed in the text of the Specifications:

System Description:

Plant

Valve Operation

Switch Operation

Procedure of Fault Finding

Emergency Procedures

Lubrication Requirements

Maintenance and Servicing Periods and Procedures

Colour Coding Legend for all Services

Schematic and Wiring Diagrams of Plant and Apparatus

Record Drawings, true to scale, folded to International A4 size

Lists of Primary and Secondary Spares:

The manual is to be specially prepared for the Contract Works and manufacturer's standard descriptive literature and plant operating instruction cards will not be accepted for inclusion unless exceptionally approved by the Engineer. The Contractor shall, however, affix such cards, if suitable, adjacent to plant and apparatus. One spare set of all such cards shall be furnished to the Engineer.

1.35 **Hand-over**

The Contract Works shall be considered complete and the Maintenance and Defects Liability Period shall commence only when the Contract Works and supporting services have been tested, commissioned and operated to the satisfaction of the Engineer and officially approved and accepted by the Employer.

The procedure to be followed will be as follows:

On the completion of the Contract Works to the satisfaction of the Engineer and the Employer, the Contractor shall request the Engineer, at site to arrange for handing over.

The Engineer shall arrange a Hand-over Meeting or a series thereof, at site.

The Contractor shall arrange with the Engineer and Employer for a complete demonstration of each and every service to be carried out and for instruction to be given to the relevant operation staff and other representatives of the Employer.

In the presence of the Employer and the Engineer, Hand-over will take place, subject to Agreement of the Hand-over Certificates and associated check lists.

1.36 **Painting**

It will be deemed that the Contractor allowed for all protective and finish painting in the Contract Sum for the Contract Works, including colour coding of service pipework to the approval of the Engineer. Any special requirements are described in the text of the Specifications.

1.37 **Spares**

The Contractor shall supply and deliver such spares suitably protected and boxed to the Engineer's approval as are called for in the Specifications or in the Price Schedules.

1.38 **Testing and Inspection – Manufactured Plant**

The Engineer reserves the right to inspect and test or witness of all manufactured plant equipment and materials.

The right of the Engineer relating to the inspection, examination and testing of plant during manufacture shall be applicable to Insurance companies and inspection authorities so nominated by the Engineer.

The Contractor shall give two week's notice to the Engineer of his intention to carry out any inspection or tests and the Engineer or his representative shall be entitled to witness such tests and inspections.

Six copies of all test certificates and performance curves shall be submitted as soon as possible after the completion of such tests, to the Engineer for his approval.

Plant or equipment which is shipped before the relevant test certificate has been approved by the Engineer shall be shipped at the Contractor's own risk and should the test certificate not be approved new tests may be ordered by the Engineer at the Contractor's expense.

The foregoing provisions relate to tests at manufacturer's works and as appropriate to those carried out at site.

1.39 **Testing and Inspection -Installation**

Allow for testing each section of the Contract Works installation as described hereinafter to the satisfaction of the Engineer.

1.40 **Labour Camps**

The Contractor shall provide the necessary temporary workshop and mess-room in position to be approved by the Architect.

The work people employed by the Contractor shall occupy or be about only that part of the site necessary for the performance of the work and the Contractor shall instruct his employees accordingly.

If practicable, W.C. accommodation shall be allocated for the sole use of the Contractor's workmen and the Sub-contractor will be required to keep the same clean and disinfected, to make good any damage thereto and leave in good condition.

1.41 **Storage of Materials**

The Contractor shall provide storerooms and workshop where required. He shall also provide space for storage to nominated sub-contractors who shall be responsible for these lock-up shades or stores provided.

Nominated Sub-contractors are to be made liable for the cost of any storage accommodation provided specially for their use. No materials shall be stored or stacked on suspended slabs without the prior approval of the Project manager.

1.42 **Initial Maintenance**

The Contractor shall make routine maintenance once a month during the liability for the Defects Period and shall carry out all necessary adjustments and repairs, cleaning and oiling of moving parts. A monthly report of the inspection and any works done upon the installation shall be supplied to the Engineer.

The Contractor shall also provide a 24 -hour break-down service to attend to faults on or malfunctioning of the installation between the routine visits of inspection.

The Contractor shall allow in the contract Sum of the initial maintenance, inspection and break-down service and shall provide for all tools, instruments, plant and scaffolding and the transportation thereof, as required for the correct and full execution of these obligations and the provision, use or installation of all materials as oils, greases, sandpaper, etc., or parts which are periodically renewed such as brake linings etc., or parts which are faulty for any reason whatsoever excepting always Acts of God such as storm, tempest, flood, earthquake and civil revolt, acts of war and vandalism.

1.43 **Maintenance and Servicing After Completion of the Initial Maintenance**

The Contractor shall, if required, enter into a maintenance and service agreement with the employer for the installation for a period of up to five years from the day following the last day of the liability for Defects Period which offers the same facilities as specified in Clause 1.41 (Initial Maintenance).

The terms of any such agreement shall not be less beneficial to the employer than the terms of Agreements for either similar installation.

The Contractor shall submit with his tender for the works, where called upon a firm quotation for the maintenance and service of the installation as specified herein, which shall be based upon the present day costs and may be varied only to take into account increases in material and Labour unit rate costs between the time of tendering and the signing of the formal maintenance and service agreement and which shall remain valid and open for acceptance by the Employer to and including the last day of the fifth complete calendar month following the end of the liability for Defects Period.

1.44 **Trade Names**

Where trade names of manufacturer's catalogue numbers are mentioned in the Specification or the Bills of Quantities, the reference is intended as a guide to the type of article or quality of material required. Alternate brands of equal and approved quality will be acceptable.

1.45 **Water and Electricity for the Works**

These will be made available by the Contractor who shall be liable for the cost of any water or electric current used and for any installation provided especially for his own use.

1.46 **Protection**

The Contractor shall adequately cover up and protect his own work to prevent injury and also to cover up and protect from damage all parts of the building or premises where work is performed by him under the Contract.

1.47 **Defects After Completion**

The defects liability period will be 6 months from the date of practical completion of the Works in the Contract and certified by the Engineer.

1.48 **Damages for Delay**

Liquidated and Ascertained damages as stated in the Contract Agreement will be claimed against the Contractor for any unauthorized delay in completion. The Contractor shall be held liable for the whole or a portion of these damages should he cause delay in completion.

1.49 **Clear Away on Completion**

The Contractor shall, upon completion of the works, at his own expense, remove and clear away all plant, equipment, rubbish and unused materials, and shall leave the whole of the works in a clean and tidy state, to the satisfaction of the Engineer. On completion, the whole of the works shall be delivered up clean, complete and perfect in every respect to the satisfaction of the Engineer.

1.50 **Final Account**

On completion of the works the Contractor shall agree with the Engineer the value of any variations outstanding and as soon as possible thereafter submit to the Engineer his final statement of account showing the total sum claimed sub-divided as follows:

Statement A - detailing the tender amounts less the Prime Cost and Provisional Sums, included therein.

Statement B - detailing all the variation orders issued on the contract.

Statement C - Summarizing statement A and B giving the net grand total due to the Contractor for the execution of the Contract.

1.51 **Fair Wages**

The Contractor shall in respect of all persons employed anywhere by him in the execution of the contract, in every factory, workshop or place occupied or used by him for execution of the Contract, observe and fulfil the following conditions:

The Contractor shall pay rates of the wages and observe hours and conditions of labour not less favorable than those established for the trade or industry in the district where work is carried out.

In the absence of any rates of wages, hours or conditions of labour so established the Contractor shall pay rates and observe hours and conditions of labour are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

1.52 **Supervision**

During the progress of the works, the Contractor shall provide and keep constantly available for consultation on site experienced English - speaking Supervisor and shall provide reasonable office facilities, attendance, etc., for the Supervisor.

In addition, during the whole of the time the works are under construction, the Contractor shall maintain on site one experienced foreman or charge-hand and an adequate number of fitters, etc., for the work covered by the Specification. The number of this staff shall not be reduced without the prior written approval of the Project manager or Engineer.

Any instructions given to the Supervisor on site shall be deemed to have been given to the sub-contractor.

One copy of this Specification and one copy of each of the Contract Drawings (latest issue) must be retained on site at all times, and available for reference by the Engineer or sub-contractor.

1.53 **Test Certificates**

The Contractor shall provide the Engineer with three copies of all test reports or certificates that are or may be required by this Specification.

1.54 **Labour**

The Contractor shall provide skilled and unskilled labour as may be necessary for completion of the contract.

1.55 **Discount to the Main Contractor**

No discount to any Sub-Contractor will be included in the tender for this installation.

1.56 **Guarantee**

The whole of the work will be guaranteed for a period of six months from the date of the Engineer's certification of completion and under such guarantee the Sub-contractor shall remedy at his expense all defects in materials and apparatus due to faulty design, construction or workmanship which may develop in that period.

1.57 **Direct Contracts**

Notwithstanding the foregoing conditions, the Government reserves the right to place a "Direct Contract" for any goods or services required in the works which are covered by a P.C Sum in the Bills of Quantities and to pay for the same direct. In any such instance, profit relative to the P.C Sum in the priced Bills of Quantities will be adjusted as deserved for P.C Sum allowed.

1.58 **Attendance Upon the Tradesmen etc**

The Contractor shall allow for the attendance of trade upon trade and shall afford any tradesmen or other persons employed for the execution of any work not included in this contract every facility for carrying out their work and also for the use of ordinary scaffolding. The contractor however, shall not be required to erect any special scaffolding for them.

1.59 **Trade Unions**

The contractor shall recognize the freedom of his work people to be members of trade unions.

1.60. Local and other Authorities notices and fees

The contractor shall comply with and give all notices required by any Regulations, Act or by Law of any Local Authority or of any Public Service, Company or Authority who have any jurisdiction with regard to the works or with those systems the same are or will be connected and he shall pay and indemnify the Government against any fees or charges legally demandable under any regulation or by-law in respect of the works; provided that the said fees and charges if not expressly included in the contract sum or stated by way of provisional sum shall be added to the contract sum.

The contractor before making any variation from the contract drawings or specification necessitated by such compliance shall give the Project Manager written notice specifying and giving the reason for such variation and applying for instructions in reference thereto.

If the contractor within seven days of having applied for the same does not receive such instructions, he shall proceed with the works in conforming to the provision regulation or by-law in question and any variation thereby necessitated shall be deemed to be a variation in accordance to the conditions of contract.

1.61. Assignment or subletting

The contractor shall not without the written consent of the Project Manager assigns this contract or sublet any portion of the works, provided that such consent shall not be unreasonably withheld to the prejudice of the contractor.

1.62 Partial Completion

If the Government shall take over any part or parts works, apparatus, equipment etc. then within seven days from the date on which the Government shall have taken possession of the relevant part, the Project Manager shall issue a Certificate stating his estimate of the approximate total value of the works which shall be the total value of that part and practical completion of the relevant part shall be deemed to have occurred, and the Defects Liability Period in respect of the relevant part be deemed to have commenced on the date Government shall have taken possession thereof.

The contractor shall make good any defects or other faults in the relevant part that had been deemed complete.

The contractor shall reduce the value of insurance by the full value of the relevant part

The contractor shall be paid for the part of works taken possession by the Government

1.63 Temporary Works

Where temporal works shall be deemed necessary, such as Temporary lighting, the contractor shall take precaution to prevent damage to such works.

The contractor shall include for the cost of and make necessary arrangements with the Project Manager for such temporary works. For temporary lighting, electricity shall be metered and paid for by the contract

1.64. Patent Rights

The contractor shall fully indemnify the Government of Kenya; against any action, claim or proceeding relating to infringement of any patent or design rights, and pay any royalties which may be payable in respect of any article or any part thereof, which shall have been supplied by the contractor to the Project Manager. In like manner the Government of Kenya shall fully indemnify the contractor against any such action, claim or proceedings for infringement under the works, the design thereof of which shall have been supplied by the Project Manager to the contractor, but this indemnify shall apply to the works only, and any permission or request to manufacture to the order of the Project Manager shall not relieve the contractor from liability should he manufacture for supply to other buyers.

1.65 Mobilization and Demobilization

The contractor shall mobilize labour plant and equipment to site according to his programme and schedule of work. He shall ensure optimum presence and utilization of labour, plant and equipment. He should not pay and maintain unnecessary labour force or maintain and service idle plant and equipment. Where necessary he shall demobilize and mobilize the labour, plant and equipment, as he deems fit to ensure optimum progress of the works and this shall be considered to be a continuous process as works progress. He shall make provision for this item in his tender. No claim will be entertained where the contractor has not made any provision for mobilization and demobilization of labour, plant and equipment in the preliminary bills of quantities or elsewhere in this tender.

1.66 Extended Preliminaries

Where it shall be necessary to extend the contract period by the Project manager the contractor shall still ensure availability on site, optimum labour, materials, plant and equipment. The contractor shall make provision for extended preliminaries, should the contract period be extended and this shall be in a form of a percentage of the total Contractor works. Where called upon in the Appendix to these Preliminaries the Contractor shall insert his percentage per month for extended preliminaries that shall form basis for compensation.

Lack of inserting the percentage shall mean that the sub-contractor has provided for this requirement elsewhere in the Bills of Quantities.

1.67 Supervision by Engineer and Site Meetings

A competent Project Engineer appointed by the Engineer as his representative shall supervise the Contract works. The Project Engineer shall be responsible for issuing all the site instructions in any variations to the works and these shall be delivered through the Contractor with the authority of the Project Manager. Any instructions given verbal shall be confirmed in writing.

The project engineer and (or) the Engineer shall attend management meetings arranged by the Project Manager and for which the Contractor or his representative shall also attend. For the purpose of supervising the project, provisional sums are provided to cover for transport and allowances. The Contractor shall in his tender allow for the provision of management meetings and site inspections, as instructed by the Engineer, and also profit and attendance on these funds. The funds shall be expended according to Project Manager's instructions to the contractor.

1.68 Amendment to Scope of Contract Works

No amendment to scope of sub-contract works is expected and in case of amendment or modification to scope of work, these shall be communicated to all tenderers in sufficient time before the deadline of the tender submission. However during the contract period and as the works progress the Project Manager may vary the works as per conditions of contract by issuing site instructions.

No claims shall be entertained on account of variation to scope of works either to increase the works (pre-financing) or reduction of works (loss of profit-see clause 1.70)

1.69 Contractor Obligation and Employers Obligation

The sub-contractor will finance all activities as part of his obligation to this contract. The employer shall pay interim payment for materials and work completed on site as his obligation in this contract, as the works progresses. No claims will be entertained for pre-financing of the project by the sub-contractor, or for loss of profit (expectation loss) in case of premature termination, reduction or increase of works as the sub-contractor shall be deemed to have taken adequate measures in programming his works and expenditure and taken necessary financial precaution while executing the works. No interest shall be payable to the Contractor, except as relates to late payment as in the conditions of contract clause 23.3. The contractor shall where called upon, insert his price to compensate for any of the occurrence stated here (premature termination, reduction or increase of works), as a percentage of the contract sum in the Appendix to this section.

**1.70 APPENDIX TO SUB-CONTRACT PRELIMINARIES AND
GENERAL CONDITIONS**

1 ADD TO CLAUSE 1.40

There are no labour camps.

2 ADD TO CLAUSE 1.17

Prices quoted shall include 16% VAT. In accordance with Government policy, the 16% VAT and 3% Withholding Tax shall be deducted from all payments made to the sub-contractor and the same shall subsequently be forwarded to the Kenya Revenue Authority (KRA).

3. ADD TO CLAUSE 1.66

The amount or percentage that may be inserted in the bills of quantities for this item should not exceed the anticipated Liquidated damages amount for the same period.

4 OMIT CLAUSE 1.12

SECTION H:

BILLS OF QUANTITIES

AND

SCHEDULE OF UNIT RATES

BILLS OF QUANTITIES AND SCHEDULE OF UNIT RATES

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SPECIAL NOTES

1. The Bills of Quantities form part of the contract documents and are to be read in conjunction with the contract drawings and general specifications of materials and works.
2. The prices quoted shall be deemed to include for all obligations under the sub-contract including but not limited to supply of materials, labour, delivery to site, storage on site, installation, testing, commissioning and all taxes (**including 16% VAT**).

In accordance with Government policy, the 16% VAT and 3% Withholding Tax **shall be deducted** from all payments made to the Tenderer, and the same shall be forwarded to the **Kenya Revenue Authority (KRA)**.

3. All prices omitted from any item, section or part of the Bills of Quantities shall be deemed to have been included to another item, section or part thereof.
4. The brief description of the items given in the Bills of Quantities are for the purpose of establishing a standard to which the sub-contractor shall adhere. Otherwise alternative brands of **equal** and **approved** quality will be accepted.

Should the sub-contractor install any material not specified here in before receiving **written** approval from the Project Manager, the sub-contractor shall remove the material in question and, **at his own cost**, install the proper material.

5. The grand total of prices in the price summary page must be carried forward to the **Form of Tender for the tender to be deemed valid**.
6. Tenderers must enclose, together with their submitted tenders, detailed manufacturer's Brochures detailing Technical Literature and specifications on the equipment they intend to offer (As indicated in the Technical schedule).

1. **Statement of Compliance**

- a) I confirm compliance of all clauses of the General Conditions, General Specifications and Particular Specifications in this tender.
- b) I confirm I have not made and will not make any payment to any person, which can be perceived as an inducement to win this tender.

Signed:*for and on behalf of the Tenderer*

Date:

Official Rubber Stamp:

BILLS No. 1

A) PRICING OF PRELIMINARIES ITEMS.

Prices will be inserted against item of preliminaries in the sub-contractor's Bills of Quantities and specification. These Bills are designated as Bill 1 in this Section. Where the sub-contractor fails to insert his price in any item he shall be deemed to have made adequate provision for this on various items in the Bills of Quantities. The preliminaries form part of this contract and together with other Bills of Quantities covers for the costs involved in complying with all the requirements for the proper execution of the whole of the works in the contract.

The Bills of Quantities are divided generally into three sections:-

Preliminaries – Bill 1

Sub-contractors preliminaries are as per those described in section C – sub-contractor preliminaries and conditions of contractor. The sub-contractor shall study the conditions and make provision to cover their cost in this Bill. The numbers of preliminary items to be priced by the Tenderer have been limited to tangible items such as site office, temporary works and others. However the Tenderer is free to include and price any other items he deems necessary taking into consideration conditions he is likely to encounter on site.

Installation Items – Other Bills

The brief description of the items in these Bills of Quantities should in no way modify or supersede the detailed descriptions in the contract Drawings, conditions of contract and specifications.

The unit of measurements and observations are as per those described in clause 3.05 of the section C.

(c) Summary

The summary contains tabulation of the separate parts of the Bills of Quantities carried forward with provisional sum, contingencies and any prime cost sums included. The sub-contract shall insert his totals and enter his grand total tender sum in the space provided below the summary.

This grand total tender sum shall be entered in the Form of Tender provided elsewhere in this document

SCHEDULE 1:

Bills No. 1-PRELIMINARIES

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS	CTS
1	Discrepancies clause 1.02					
2	Conditions of sub-contract Agreement clause 1.03					
3	Payments clause 1.04					
4	Site location clause 1.06					
5	Scope of Contract Works clause 1.08					
6	Extent of the Contractor's Duties clause 1.09					
7	Firm price contract clause 1.12					
8	Variation clause 1.13					
9	Prime cost and provisional sum clause 1.14 (insert profit and attendance which is a percentage of expended PC or provisional sum.)					
10	Bond clause 1.15					
11	Government Legislation and Regulations clause 1.16					
12	Import Duty and Value Added Tax clause 1.17 (Note this clause applies for materials supplied only. VAT will also be paid by the sub-contractor as allowed in the summary page)					
13	Insurance company Fees clause 1.18					
14	Provision of services by the Main contractor clause 1.19					
15	Samples and Materials Generally clause 1.21					
SUB-TOTAL CARRIED TO PAGE I-6						

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS	CTS
16	Supplies clause 1.20					
17	Bills of Quantities clause 1.23					
18	Contractor's Office in Kenya clause 1.24					
19	Builder's Work clause 1.25					
20	Setting to work and Regulating system clause 1.29					
21	Identification of plant components clause 1.30					
22	Working Drawings clause 1.32					
23	Record Drawings (As Installed) and Instructions clause 1.33					
24	Maintenance Manual clause 1.34					
25	Hand over clause 1.35					
26	Painting clause 1.36					
27	Testing and Inspection – manufactured plant clause 1.38					
28	Testing and Inspection – Installation clause 1.39					
29	Storage of Materials clause 1.41					
30	Initial Maintenance clause 1.42					
	SUB-TOTAL CARRIED TO PAGE I-6					

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS	CTS
31	Attendance Upon Tradesmen, etc. (Insert percentage only) clause 1.58					
32	Local and other Authorities notices and fees clause 1.60					
33	Temporary Works clause 1.63					
34	Patent Rights clause 1.64					
35	Mobilization and Demobilization Clause 1.65					
36	Extended Preliminaries Clause 1.66(see appendix on page C- 24)					
37	Supervision by Engineer and Site Meetings Clause 1.67					
38	Allow for profit and Attendance for the above					
39	Amendment to Scope of Sub-contract Works Clause 1.68					
40	Contractor Obligation and Employers Obligation clause 1.69(see appendix page C- 24)					
41	Any other preliminaries;					
	Subtotal above					
	Subtotal brought forward from page H-4					
	Subtotal brought forward from page H-5					
	TOTAL FOR BILL NO. 1- PRELIMINARIES CARRIED FORWARD TO PRICE MAIN SUMMARY PAGE/19					

SECTION I:

**TECHNICAL SCHEDULE OF ITEMS TO BE
SUPPLIED**

CONTENTS

<u>CLAUSE No.</u>	<u>PAGE</u>
1. GENERAL NOTES TO THE TENDERER.....	I-1

TECHNICAL SCHEDULE

1. General Notes to the Tenderer

- 1.1 The tenderer shall submit technical schedules for all materials and equipment upon which he has based his tender sum.
- 1.2 The tenderer shall also submit separate comprehensive descriptive and performance details for all plant apparatus and fittings described in the technical schedules. Manufacturer's literature shall be accepted. Failure to comply with this may have his tender disqualified.
- 1.3 Completion of the technical schedule shall not relieve the Contractor from complying with the requirements of the specifications except as may be approved by the Engineer.

d) TECHNICAL SCHEDULE (MUST BE COMPLETED IN FULL)

ITEM No.	Description	Manufacturer	Country Of origin	Particulars
1	Water closet			
2	Wash hand basin			
3	Urinal system			
4	Water Tanks			
5	Booster Pumps			
6	Air conitioners			
7	Co2 fire extinguishers			
8	Co2/water fier extinguishers			
9	Hose reels			

SECTION J:

SCHEDULE OF CONTRACT DRAWINGS

As will be issued by the Engineer during project implementation.