



**THE UNITED REPUBLIC OF TANZANIA
MINISTRY OF TRANSPORT
TANZANIA RAILWAYS CORPORATION**



REQUEST FOR TENDER

TENDER NO.: TR126/2023/2024/G/02

FOR

**Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by
June, 2024**

24/05/2024

LIST OF ABBREVIATIONS

AO	Accounting Officer
AGC	Attorney General Chamber
Cap	Chapter
DARB	Dispute Avoidance and Resolution Board
ES	Environmental and Social
FY	Financial Year
GCC	General Conditions of Contract
ICT	International Competitive Tendering
IFT	Invitation for Tenders
JV	Joint Venture
JVCA	Joint Venture, Consortium, or Association
NCT	National Competitive Tendering
OAG	Office of Attorney General
PE	Procuring Entity
PPAA	Public Procurement Appeals Authority
PPRA	Public Procurement Regulatory Authority
SCC	Special Conditions of Contract
SEA	Sexual Exploitation and Abuse
SH	Sexual Harassment
STD	Standard Tender Document
TDS	Tender Data Sheet
NeST	National e-Procurement System of Tanzania
ITT	Instruction to Tenderers

PART 1 - TENDERING PROCEDURES

SECTION I: INVITATION FOR TENDERS



**THE UNITED REPUBLIC OF TANZANIA
MINISTRY OF TRANSPORT
TANZANIA RAILWAYS CORPORATION**



**Tender No. TR126/2023/2024/G/02
for
Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June,
2024**

Invitation for Tenders

24/05/2024

1. This Invitation for Tenders follows the General Procurement Notice for this Project which appeared in the National Electronic Procurement System of Tanzania (NeST) dated 10/10/2023.
2. The Government of the United of Tanzania has set aside funds for the operation of the TANZANIA RAILWAYS CORPORATION during the financial year 2023/2024. It is intended that part of the proceeds of the fund will be used to cover eligible payment under the contract for the Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024
3. The TANZANIA RAILWAYS CORPORATION now invites tenders from eligible Company Local, Company Foreign, Special Group, Manufacturer Local, Sole Proprietor Local, Partnership Local, Manufacturer Foreign, Partnership Foreign and Sole Proprietor Foreign for carrying out the Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024.
4. Tendering will be conducted through the International Competitive Tendering specified in the Public Procurement Regulations, Government Notice No.446 of 2013 as amended in 2016 and is open to all Tenderers as defined in the Regulations unless otherwise stated in the Tender Data Sheet (TDS).
5. A complete set of tendering document in English may be accessed through NeST.
6. Tenderers are required to register on NeST and pay tender participation fee indicated in NeST to able to participate in this tendering process.
7. All tenders must be accompanied by a Tender Security Tender Security - Bank Guarantee in an acceptable form in the amount of 20,000,000.00 or freely convertible currencies in case of foreign Tenderers worth of Tender Security - Bank Guarantee.
8. All tenders must be properly filled in and submitted through NeST at or before 2:00 PM on 13/06/2024 Tenders will be opened promptly thereafter through NeST.
9. Tenders not received through NeST shall not be accepted for evaluation irrespective of the circumstances. Opening details will be available to the public through NeST.

DIRECTOR GENERAL
P.O.Box 76959

SECTION II: INSTRUCTION TO TENDERERS

A. INTRODUCTION

1. Scope of Tender and Tendering Method	1.1	The Procuring Entity (PE) indicated in the Tender Data Sheet (TDS) invites tenders for the supply and installation of plants and equipment as specified in the TDS and Section VII, Procuring Entity's Requirements. The successful Tenderer will be expected to supply and installing the goods within the period stated in the TDS from the start date (s) specified in the TDS. The duration of contract shall be specified in the TDS.
	1.2	Tendering will be conducted through the method of procurement indicated in TDS and is open to all Tenderers who meet the eligibility criteria stated in ITT3 [Eligible Tenderers]
	1.3	Unless otherwise stated, throughout this tendering document definitions and interpretations shall be as prescribed in GCC
2. Source of Funds	2.1	The Government of Tanzania has set aside funds for the operations of the PE named in the TDS during the Financial Year indicated in the TDS. It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the supply and installation of goods as described in the TDS. Or The Government of the of Tanzania through PE named in the TDS has received/has applied for/intends to apply for a [loan/credit /grant] from the financing institution named in the TDS towards the cost of the project described in the TDS, and it intends to apply part of the proceeds of this [loan/credit/grant] to payments under the contract described in the TDS.
	2.2	Payments will be made directly by the PE (or by financing institution specified in the TDS upon request by the PE to so pay) for each call-off order and will be subject in all respects to the terms and conditions of the resulting contract placed by the PE.
3. Eligible Tenderers	3.1	The invitation for Tenders (IFT) is open to all tenderers. A Tenderer may be a natural person, private Entity, public or semi-public owned enterprise, subject to ITT 3.5 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association (herein referred to as JVCA).
	3.2	In the case of a JVCA, all members shall be jointly and severally liable for the execution of the contract in accordance with the contract terms. The JVCA shall nominate a Lead Member who shall have the authority to conduct all business for and on behalf of any and all the members of the JVCA during the tendering process and, in the event the JVCA is awarded the Contract, during contract execution. Unless specified in the TDS, there is no limit on the number of members in a JVCA.
	3.3	The appointment of a Lead Member in the JVCA shall be confirmed by submission of a valid Power of Attorney to the PE.
	3.4	Any agreement that forms a JVCA shall be required to be submitted as part of the tender and shall be attested.
	3.5	Any Tender from a JVCA shall indicate the part of proposed contract to be performed by each party and each party shall be evaluated or post qualified with respect to its contribution only and the responsibilities of each party and shall not be substantially altered without prior written approval of the PE.
	3.6	National Tenderers shall satisfy all relevant licensing and/or registration requirements with the appropriate statutory bodies in Tanzania. Foreign Tenderers are exempted from this requirement but where selected as having submitted the lowest evaluated Tender the successful Tenderer shall register with the appropriate statutory body and shall be required to submit evidence of registration as an approved Service Provider in

		Tanzania before signing the Contract.
	3.7	<p>A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:</p> <p>a) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the PE to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the goods to be purchased under this Invitation for Tenders.</p> <p>b) have controlling shareholders in common; or</p> <p>c) receive or have received any direct or indirect subsidy from any of them; or</p> <p>d) have the same legal representative for purposes of this Tender; or</p> <p>e) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the PE regarding this Tendering process; or</p> <p>f) submit more than one Tender in this tendering process, However, this does not limit the participation of subcontractors in more than one Tender or as Tenderers and subcontractors simultaneously; or</p> <p>g) Participated as a consultant in the preparation of the design or technical specifications of the supplies and related installations that are the subject of the Tender.</p>
	3.8	<p>A Tenderer may be ineligible if –</p> <p>a) such Tenderer is declared bankrupt or, in the case of company or firm, insolvent;</p> <p>b) payments in favour of the person, company or firm is suspended in accordance with the judgment of a court of law other than a judgment declaring bankruptcy and resulting, in accordance with the national laws, in the total or partial loss of the right to administer and dispose of its property;</p> <p>c) legal proceedings are instituted against such person, company or firm involving an order suspending payments and which may result, in accordance with the national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of the property;</p> <p>d) the Tenderer is convicted, by a final judgment, of any offence involving professional conduct;</p> <p>e) the Tenderer is debarred and blacklisted or ineligible in accordance with Public Procurement Act or ineligible from participating in public procurement for corrupt, coercive, fraudulent or obstructive practices, failure to abide with a Tender Securing Declaration, breach of a procurement contract, making false representation about his qualifications during tender proceeding or other grounds as may be deemed necessary by the Authority; or</p> <p>f) A Tenderer is from an ineligible Country as specified under Section VI [Ineligible Country] of this tendering document.</p>
	3.9	<p>Public or Semi-public owned enterprises in the United Republic of Tanzania may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration boards or authorities and if they are not a dependent agency of the Government.</p>
	3.10	<p>Tenderers shall provide to the PE evidence of their eligibility, proof of compliance with the necessary legal, technical and financial requirements and their capability and, adequacy of resources to carry out the contract effectively.</p>
	3.11	<p>Tenderers shall submit proposals relating to the nature, conditions and modalities of sub-contracting wherever the sub-contracting of any</p>

		elements of the contract amounting to the more than ten (10%) percent of the tender price is envisaged.
	3.12	Firms shall be excluded if: a) as a matter of law or official regulation, the United Republic of Tanzania prohibits commercial relations with that country, provided that the PE is satisfied that such exclusion does not preclude effective competition for the supply of goods or related services required; or b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the United Republic of Tanzania prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.
4. Eligible Plant, Equipment and Services	4.1	All supplies and related installations to be supplied under the contract shall have their origin in eligible source countries, and all expenditures made under the contract will be limited to such goods and services. For purpose of this Tender, ineligible country is stated in the TDS.
	4.2	For the purposes of this clause, the term “goods” includes commodities, raw materials, machinery, equipment and industrial plants, and “related services” include services such as insurance, installation, training and initial maintenance.
	4.3	For purposes of this clause, “origin” means the place where the goods are mined, grown, cultivated, produced, manufactured, or processed, or through manufacture, procession, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components or the place from which the related services are supplied.
	4.4	The nationality of the firm that produces, assembles, distributes, or sells the goods and services shall not determine their origin.
	4.5	If so required in the TDS, the Tenderer shall demonstrate that it has been duly authorized by the manufacturer of the goods to supply in the United Republic of Tanzania, the goods indicated in its tender.
	4.6	To establish the eligibility of the supplies of Equipment and Machinery related services the Tenderer shall fill the Country of origin declarations in the price schedule including the form of tender.
5. One tender per tenderer	5.1	A Tenderer shall submit only one tender, in the same tendering process, either individually or as a partner in a joint venture.
	5.2	No Tenderer can be a subcontractor while submitting a tender individually or as a partner of a joint venture in the same tendering process.
	5.3	A Tenderer, if acting in the capacity of subcontractor in any tender, may participate in more than one tender but only in that capacity.
	5.4	A Tenderer who submits or participates in more than one tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals in which the Tenderer has participated to be disqualified
6. Cost of Tendering	6.1	The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the PE shall in no case be responsible or liable for those costs, except where the PE is ordered by the Public Procurement Appeals Authority (PPAA) to compensate the Tenderer following a successful Tenderer’s appeal of the procurement proceedings.
7.1 Site visit and pre-tender meeting	7.1	The Tenderer, at the Tenderer’s own responsibility and risk, is advised to visit and examine the site on which service(s) are to be provided and

		obtain for itself all information that may be necessary for preparing the tender and entering into a Contract for supply and installing of the goods. The costs of visiting the Site shall be at the Tenderer's own expense.
	7.2	The PE may conduct a site visit and a pre-Tender meeting whose purpose shall be to clarify issues and to answer questions on any matter that may be raised at that stage.
	7.3	The Tenderer's designated representative is invited to attend a site visit and/or pre-tender meeting which, if convened, will take place at the venue and time stipulated in the TDS. Non- attendance at the site visit and pre-tender meeting will not be a cause for disqualification of a Tenderer.
	7.4	The Tenderer may submit questions (if any) through NeST to the PE before the pre-Tender meeting. PE may respond to questions during the meeting however, all questions raised and their responses will be transmitted in accordance with ITT 7.6 and time stipulated in the TDS.
	7.5	Minutes of the pre-tender meeting, if applicable, including questions raised by the Tenderers without identifying the source and the responses given, together with any responses prepared after the meeting will be transmitted within three (3) working days to all participating Tenderers through NeST. Any modification of the Tendering Documents listed in ITT 8.1[Content of Tendering Documents] that may become necessary as a result of the pre-tender meeting shall be made by the PE exclusively through the issue of an Addendum pursuant to ITT 10.2 [Amendments of the Tendering Documents] and not through the minutes of the pre-tender meeting.

B: THE TENDERING DOCUMENTS

8. Content of Tendering Documents	8.1	The tendering documents are those stated below and should be read in conjunction with any addenda issued in accordance with ITT10.2 [Amendment of tendering documents]: PART 1: TENDERING PROCEDURES Section II Instructions to Tenderers (ITT) Section III Tender Data Sheet (TDS) Section IV Qualification and Evaluation Criteria Section V Tendering Forms Section VI Eligible Countries PART 2: PROCURING ENTITY'S REQUIREMENTS Section VII Schedule of Requirements PART 3: CONDITIONS OF CONTRACT AND CONTRACT FORMS Section VIII General Conditions of Contract (GCC) Section IX Special Conditions of Contract (SCC) Section X Contract Forms
	8.2	The Invitation for Tenders (Section I) issued by the PE is not part of the Tendering Documents and is included as a reference only. In case of discrepancies between the Invitation for Tender and the Tendering Documents listed in ITT 8.1 above, the said tendering documents will take precedence.
	8.3	The PE is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from NeST.
	8.4	The Tenderer is expected to examine all instructions, forms, terms, specifications, and other information in the Tendering Documents. Failure to furnish all information required by the tendering documents or submission of a Tender not substantially responsive to the Tendering Documents in every respect will be at the Tenderer's risk and may result in the rejection of its tender.
9. Clarification of Tendering Documents	9.1	A prospective Tenderer requiring any clarification of the Tendering Documents may notify the PE through NeST at least seven (7) days for open competitive methods and three (3) days in the case of other tendering methods prior to the tender submission deadline.
	9.2	The PE will within three (3) working days after receiving the request for clarification respond and publish responses, including a description of the inquiry, but without identifying its source, through NeST provided that such request is received within the time prescribe under ITT 9.1
	9.3	Should the PE deem it necessary to amend the Tendering Documents as a result of a clarification, it shall do so following the procedure under ITT 10.
10. Amendment of Tendering Documents	10.1	Before the deadline for submission of tenders, the PE, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the Tendering documents by issuing addenda.
	10.2	Any addendum thus issued shall be part of the Tendering Documents pursuant to ITT 8.1[Content of Tendering Document] and shall be communicated through NeST to participating tenderers.
	10.3	In order to allow prospective Tenderers reasonable time to take an addendum into account in preparing their tenders, the PE, at its discretion, may extend the deadline for the submission of tenders, pursuant to ITT23.2 [Deadline for Submission of Tenders].

C. PREPARATION OF TENDERS

<p>11. Language of Tender</p>	<p>11.1</p>	<p>The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the PE shall be written in the language specified in the TDS. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the Language of the Tender, in which case, for purposes of interpretation of the Tender, the translation shall govern.</p>
<p>12. Documents Constituting the Tender</p>	<p>12.1</p>	<p>The Tender prepared and submitted by the Tenderer shall constitute the following components:</p> <ul style="list-style-type: none"> a) Form of Tender and a Price Schedule completed in accordance with ITT15 [Form of Tender], ITT16 [Tender Prices], and ITT17 [Tender Currencies]; b) Documentary evidence established in accordance with ITT14 [Documents Establishing Eligibility and Qualifications of the Tenderer] that the Tenderer is eligible to Tender and is qualified to perform the contract if its Tender is accepted; c) Documentary evidence established in accordance with ITT14.3 [Documents Establishing Eligibility and Qualifications of the Tenderer] that the Tender has been authorized by the manufacturer to supply the goods into the United Republic of Tanzania, where required and where the supplier is not the manufacturer of those goods d) Documentary evidence established in accordance with ITT13 [Documents Establishing Eligibility of Supplies and Related Installations and Conformity to Tendering Documents] that the goods and ancillary services to be supplied by the Tenderer are eligible goods and services and conform to the Tendering documents; e) Tender security or Tender Securing Declaration furnished in accordance with ITT19 [Tender Security or Tender Securing Declaration]; f) Dully Notarized Power of Attorney (in the format provided in Section V – Tendering Forms) authorizing signatory of the Tender to commit the Tenderer, in accordance with ITT21 [Format and Signing of Tender. g) Code of Conduct for Contractor’s Personnel (ES) The Tenderer shall submit its Code of Conduct that will apply to the Contractor’s Personnel(as defined in GCC Sub- Clause 1)employed for the execution of Installation Services (defined in GCC Sub- Clause 1) at the Site (or other places in the country where the Site is located),to ensure compliance with the Contractor’s Environmental and Social (ES) obligations under the Contract. The Tenderer shall use for this purpose the Code of Conduct form provided in Section V. No substantial modifications shall be made to this form, except that the Tenderer may introduce additional requirements, including as necessary to take into account specific Contract issues/risks. h) Management Strategies and Implementation Plans (MSIP) to manage the (ES) risks The Tenderer shall submit Management Strategies and Implementation Plans(MSIPs) to manage key Environmental and Social (ES) risks i) Any information, other than the documents under ITT 12.1(a) – (h) above required to be completed and submitted by Tenderers, as specified in the TDS.

13. Documents Establishing Eligibility of Supplies and Related Installations and Conformity to Tendering Documents	13.1	Pursuant to ITT12 [Documents Constituting the Tender], the Tenderer shall furnish, as part of its Tender, documents establishing the eligibility and conformity to the Tendering documents of all supplies and related installations which the Tenderer proposes to supply under the contract.
	13.2	The documentary evidence of the eligibility of the goods and related installation shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.
	13.3	The documentary evidence of conformity of the supplies and related installations to the Tendering documents may be in the form of literature, drawings, and data, and shall consist of: <ul style="list-style-type: none"> a) a detailed description of the essential technical and performance characteristics of the Goods; b) an item-by-item commentary on the PE's Technical Specifications demonstrating substantial responsiveness of the Goods and Services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications; c) any other procurement specific documentation requirement as stated in the TDS.
	13.4	The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period as specified in the TDS following commencement of the use of the goods by the PE.
	13.5	For purposes of the commentary to be furnished pursuant to ITT13.3(c) above, the Tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the PE in its Technical Specifications, are intended to be descriptive only and not restrictive. The Tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the PE's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.
	13.6	The required documents and other accompanying documents must be in the language of the tender. In case any other language than the language of the tender is used the pertinent translation into the language of the tender shall be attached to the original version.
14. Documents Establishing Eligibility and Qualifications of the Tenderer	14.1	Pursuant to ITT12 [Documents Constituting the Tender], the Tenderer shall furnish, as part of its tender, documents establishing the Tenderers eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.
	14.2	The documentary evidence of the Tenderers eligibility to Tender shall establish to the PE's satisfaction that the Tenderer, at the time of submission of its Tender, is from an eligible country as defined under ITT4 [Eligible Plant, Equipment and Services].

	14.3	<p>The documentary evidence of the Tenderers qualifications to perform the contract if its Tender is accepted shall establish to the PE’s satisfaction:</p> <ul style="list-style-type: none"> a) that, in the case of a Tenderer offering to supply goods under the contract which the Tenderer did not manufacture or otherwise produce, the Tenderer has been duly authorized by the goods’ Manufacturer or producer to supply the goods in the United Republic of Tanzania; b) the Tenderer has the financial, technical, and production capability necessary to perform the Contract, meets the qualification criteria specified in Section IV – Qualification and Evaluation Criteria. If a pre-qualification process has been undertaken for the Contract, the Tenderer shall, as part of its Tender, update any information submitted with its pre-qualification as specified in Section IV – Qualification and Evaluation Criteria. c) that, in the case of a Tenderer not doing business within the United Republic of Tanzania, the Tenderer is or will be (if awarded the contract) represented by an Agent in that country equipped, and able to carry out the Supplier’s maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and d) that the Tenderer meets the qualification criteria specified in Section IV– Qualification and Evaluation Criteria.
	14.4	<p>When tendering for more than one Contract under the slice and package arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the slices or lots being applied for in regard to: -</p> <ul style="list-style-type: none"> a) average annual turnover; b) particular experience including key production rates; c) financial means, etc.; d) personnel capabilities; and e) equipment capabilities.
15. Form of Tender	15.1	<p>The Tenderer shall fill the Form of Tender furnished in the Tendering documents. The Form of Tender must be completed without any alterations to its format and no substitute shall be accepted.</p>
16. Tender Prices and Discounts	16.1	<p>Unless otherwise specified in the Technical Specifications, Tenderers shall quote for the entire facilities on a “single responsibility” basis such that the total Tender price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the Tendering documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the facilities. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the facilities and, where so required by the Tendering documents, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Tendering documents, all in accordance with the requirements of the General Conditions of Contract. Items against which no price is entered by the Tenderer will not be paid for by the PE when executed and shall be deemed to be covered by the prices for other items.</p>

	16.2	Tenderers are required to quote the price for the commercial, contractual and technical obligations outlined in the Tendering documents. If a Tenderer wishes to make a deviation, such deviation shall be listed in Attachment 6 of its Tender. The Tenderer shall also provide the additional price, if any, for withdrawal of the deviations.
	16.3	Tenderers shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section V, Tendering Form.
	16.4	<p>Depending on the scope of the Contract, the Price Schedules may comprise up to the six (6) schedules listed below. Separate numbered Schedules included in Section V, Tendering Forms, from those numbered 1-4 below, shall be used for each of the elements of the Plant and Installation Services. The total amount from each Schedule corresponding to an element of the Plant and Installation Services shall be summarized in the schedule titled Grand Summary, (Schedule 5), giving the total tender price(s) to be entered in the Letter of Bid.</p> <p>Schedule No. 1 Plant (including Mandatory Spare Parts) Supplied from Abroad</p> <p>Schedule No. 2 Plant (including Mandatory Spare Parts) Supplied from within the PE's Country</p> <p>Schedule No. 3 Design Services</p> <p>Schedule No. 4 Installation Services</p> <p>Schedule No. 5 Grand Summary (Schedule Nos. 1 to 4)</p> <p>Schedule No. 6 Recommended Spare Parts</p> <p>Tenderers shall note that the plant and equipment included in Schedule Nos. 1 and 2 above exclude materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation Services.</p>
	16.5	<p>In the Schedules, tenderers shall give the required details and a breakdown of their prices as follows:</p> <p>(a) Plant to be supplied from abroad (Schedule No. 1):</p> <p style="padding-left: 40px;">The price of the plant shall be quoted on CIP-named place of destination basis as specified in the TDS.</p> <p>(b) Plant manufactured within the United Republic of Tanzania (Schedule No. 2):</p> <p style="padding-left: 40px;">(i) The price of the plant shall be quoted on an EXW Incoterm basis (such as “ex-works,” “ex-factory,” “ex-warehouse” or “off-the-shelf,” as applicable),</p> <p style="padding-left: 40px;">(ii) Sales tax and all other taxes payable in the United Republic of Tanzania on the plant if the contract is awarded to the Tenderer.</p> <p>(c) Design Services (Schedule No. 3).</p> <p>(d) Installation Services shall be quoted separately (Schedule No. 4) and shall include rates or prices for local transportation to named place of final destination as specified in the TDS, insurance and other services incidental to delivery of the plant, all labor, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance</p>

		<p>manuals, training, etc., where identified in the Tendering Document, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the PE's country as of twenty-eight (28) days prior to the deadline for submission of tenders.</p> <p>(e) Recommended spare parts shall be quoted separately (Schedule 6) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.</p>
	16.6	The current edition of Incoterms, published by the International Chamber of Commerce shall govern.
	16.7	The prices shall be either fixed or adjustable as specified in the TDS .
	16.8	In the case of Fixed Price, prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and rejected.
	16.9	In the case of Adjustable Price as stipulated in the TDS , prices quoted by the Tenderer shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport and contractor's equipment in accordance with the procedures specified in the Adjustable Price Appendix to the Contract Agreement. A tender submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Tenderers are required to indicate the source of labor and material indices in the corresponding Form in Section IV, Tendering Forms.
	16.10	If so indicated in ITT1.1 [Scope of Tender], tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Tenderers wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package, and the manner in which the price reductions will apply
	16.11	Tenderers wishing to offer any unconditional discount shall specify in their Letter of Bid the offered discounts and the manner in which price discounts will apply.
17. Tender Currencies	17.1	<p>The unit rates and prices shall be quoted by the Tenderer entirely in Tanzania shillings or in foreign currencies or both as indicated in the TDS.</p> <p>Prices shall be quoted in the following currencies:</p> <p>a) Goods covered under ITT16.5 (a) [Tender Prices and Discounts] to be supplied from abroad shall be quoted entirely in Tanzanian shillings. If the Tenderer wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly, but use no more than three foreign currencies.</p> <p>b) Goods covered under ITT 16.5(b) to be supplied from within the United Republic of Tanzania shall be quoted in Tanzanian shillings unless otherwise specified in the TDS.</p>

		c) Unless otherwise specified in the TDS , local transportation, insurance and other services incidental to delivery of the goods covered under ITT 16.5(d) and installation services covered under ITT 16.4(d) shall be quoted in either foreign and/or local currency, depending upon the currency in which the costs are to be incurred and in accordance with the provisions of ITT 16.5(a) and (b) above.
	17.2	The rates of exchange to be used by the Tenderer in arriving at the local currency shall be the selling rates for similar transactions established by the Bank of Tanzania (BoT) specified in the TDS prevailing on the date 28 days prior to the latest deadline for submission of Tenders.
	17.3	Tenderers may be required by the PE to clarify their foreign currency requirements and to substantiate that the amounts included in Lump Sum and in the SCC are reasonable and responsive to ITT17.1
18. Tender Validity Period	18.1	Tenders shall remain valid for the period specified in the TDS after the Tender submission deadline prescribed by the PE, pursuant to ITT23 [Deadline for Submission of Tenders]. A Tender valid for a shorter period shall be rejected by the PE as non-responsive.
	18.2	In exceptional circumstances, prior to expiry of the original Tender validity period, the PE may request that the Tenderers to extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing through NeST. A Tenderer may refuse the request without forfeiting its Tender security or causing to be executed its Tender securing declaration.
	18.3	A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender but will be required to extend the validity of its Tender security or Tender Securing declaration for the period of the extension, and in compliance with ITT19 [Tender Security or Tender Securing Declaration] in all respects.
	18.4	In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial Tender validity period, the contract price may be adjusted by a factor specified in the request for extension.
19. Tender Security or Tender Securing Declaration	19.1	Pursuant to ITT12 [Documents Constituting the Tender], unless otherwise specified in the TDS , the Tenderer shall furnish as part of its tender, a Tender Security in original form and in the amount and currency specified in the TDS or Tender Securing Declaration as specified in the TDS in the format provided in Section V- Tendering Forms
	19.2	The Tender security or Tender securing declaration is required to protect the PE against the risk of Tenderers conduct which would warrant the security's forfeiture, pursuant to ITT 19.9.
	19.3	The Tender security shall be denominated in the currency of the Tender or in another freely convertible currency as stipulated in TDS , and shall be in one of the following forms: a) a bank guarantee, an irrevocable letter of credit issued by a reputable

		<p>bank, or an insurance bond issued by a reputable insurance of their choice located in any eligible country, in the form provided in the Tendering Documents Tendering or another form acceptable to the PE and valid for twenty-eight (28) days beyond the end of the validity of the Tender. This shall also apply if the period for Tender validity is extended. In either case, the form must include the complete name of the Tenderer; or,</p> <p>b) a cashier's or certified check.</p> <p>c) another security if indicated in the TDS</p>
	19.4	The Tender security or Tender Securing Declaration shall be in accordance with the Form of the Tender security included in Section V – Tendering Forms or another form approved by the PE prior to the Tender submission
	19.5	The Tender security shall be payable promptly upon written demand by the PE in case any of the conditions listed in ITT 19.9 are invoked.
	19.6	Any Tender not accompanied by a Tender Security or Tender Securing Declaration in accordance with ITTs 19.1 and 19.3 shall be rejected by the PE as non-responsive, pursuant to ITT29 .
	19.7	Unsuccessful Tenderers' Tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of Tender validity prescribed by the PE pursuant to ITT18 [Tender Validity Period].
	19.8	The successful Tenderers' Tender Security will be discharged upon the Tenderer furnishing the performance security, the Environmental and Social (ES) Security pursuant to ITT41 [Performance Security], and signing the contract pursuant to ITT42
	19.9	The Tender Security or the Tender Securing Declaration of a JVCA shall be in the name of the JVCA that submits the tender. If the JVCA has not been constituted into a legally-enforceable JVCA, at the time of tendering, the Tender Security or the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITT 3.1 [Eligible Tenders].
	19.10	<p>In the case of Tender Security, it shall be forfeited if ;</p> <p>a) a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Tender Form except as provided for in ITT23.2 [Deadline for Submission of Tenders]; or</p> <p>b) does not accept the correction of errors pursuant to ITT 30 [Correction of Errors]; or</p> <p>c) successful Tenderer, if the Tenderer fails: (i) to furnish performance security, and if required in TDS, the Environmental and Social (ES)N Security in accordance with ITT 41 [Performance Security] (ii) to sign the contract in accordance with ITT42 [Signing of Contract];</p>
	19.11	<p>In the case of Tender Securing Declaration, It shall be executed if ;</p> <p>(a) a the Tenderer withdraws its tender, except as provided in ITTs 18.2</p>

		[Tender Validity Period]; or (b) in the case of a successful Tenderer, if the Tenderer fails: (i) to furnish performance security in accordance with ITT41 [Performance Security] and if required in TDS , or (ii) fails to sign the contract in accordance with ITT42 [Signing of Contract].
	19.12	The failure of a Tenderer to abide to the terms of Tender Securing Declaration shall be reported to the Public Procurement Regulatory Authority (PPRA) for debarment for a period which they shall determine. A Tenderer debarred by PPRA shall be ineligible to participate in public procurement during the period of debarment
20. Alternative Tenders by Tenderers	20.1	Tenderers shall submit offers that comply with the requirements of the Tendering documents, including the basic Tenderers technical design as indicated in the specifications, Drawings and Schedule of Requirements. Alternatives will not be considered, unless specifically allowed for in the TDS . If so allowed, ITT 20.2 and 20.3 shall prevail.
	20.2	Where permitted, alternative Tenders do not need to conform precisely to the Schedule of Requirements, but must – a) meet the objectives and/or performance requirements prescribed in the Schedule of Requirements; b) be substantially within any delivery or completion schedule, budget or other performance parameters stated in the solicitation document; and c) clearly state the benefits of the alternative Tender over any solution which conforms precisely to the Schedule of Requirements, in terms of technical performance, price, operating costs or any other benefit.
	20.3	A Tenderer may submit both a main Tender which conforms precisely to the Schedule of Requirements and an alternative Tender.
	20.4	Where a Tenderer submits more than one Tender, each Tender shall be submitted as a completely separate Tender and shall conform to the instructions for preparation and submission of Tenders in its own right, without any reliance on any other Tender. In particular, each Tender shall be separately signed, authorized, sealed, labeled and submitted in accordance with the instructions for submission of Tenders and shall be accompanied by a separate Security, if so required. Such Tenders shall be labeled “Main Tender” and “Alternative Tender”.
	20.5	When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included in the TDS , and the method of evaluating different time schedules will be described in Section IV, Evaluation and Qualification Criteria
	20.6	When tenderers are invited in the TDS to submit alternative technical solutions for specified parts of the facilities, such parts shall be described in Section VII, Employer’s Requirements. Technical alternatives that comply with the performance and technical criteria specified for the Plant and Installation Services shall be considered by the PE on their own merits, pursuant to ITT32 [Evaluation and Comparison of Tenders].

	20.7	The evaluation of alternative Tenders shall use the same methodology, criteria and weights as the evaluation of main Tenders, except that the detailed technical evaluation shall take into account only the objectives and/or performance requirements prescribed in the Schedule of Requirements.
21. Format and Signing of Tender	21.1	The Tenderer shall prepare documents comprising the Tender as described in ITT 12 [Documents Constituting the Tender]
	21.2	The tender shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer and the authorization documents shall be submitted together with the tender indicating names and position of each signatory as specified in the TDS .
	21.3	The Tenderer shall furnish information as described in the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this tender and to contract execution if the Tenderer is awarded the contract

D. SUBMISSION OF TENDERS

22. Submission of Tenders	22.1	All tenders shall be submitted through NeST. Tenders submitted through NeST shall be considered to be true and legal version, duly authorized and duly executed by the Tenderer and intended to have binding legal effect. The tenderer shall properly name his soft copies of documents before submission through NeST.
	22.2	The tender shall bear e-signature or digital signatures, where applicable for identity and authentication purposes and the identity of the Tenderer may be verified with a follow-up due diligence process.
	22.3	Tenders submitted through NeST shall be received in full prior to the closing time and the Tenderers shall receive an acknowledgement of receipt of their tenders or amendment through the system.
	22.4	Tenderers must ensure the integrity, completeness and authenticity of their submission; and in case of electronic records entered online and files containing the tender being unreadable for any reason, the tender submitted shall not be considered.
23. Deadline for Submission of Tenders	23.1	Tenders shall be received by the PE through NeST in a manner specified under ITT 22 [Submission of Tender] not later than the date and time specified in the <i>TDS</i> and <i>NeST</i> .
	23.2	The PE may, in exceptional circumstances and at its discretion extend the deadline for the submission of Tenders by amending the Tendering documents in accordance with ITT10 [Amendment of Tendering Documents], in which case all rights and obligations of the PE and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.
24. Late Tenders	24.1	NeST does not allow a Tenderer from submitting a tender after the deadline for submission of tenders in accordance with ITT 23 [Deadline for Submission of Tenders].
25. Modification, Substitution and Withdrawal of Tenders	25.1	A Tenderer may modify or substitute or withdraw its Tender after it has been submitted to the PE through NeST, provided that such modification or substitution or withdraw is made prior to the deadline for submission of Tenders prescribed in ITT23.1 [Deadline for Submission of Tenders]. Tenderers shall receive an acknowledgement of receipt of any amendment of its submitted tender through the system.
	25.2	The Tenderers modification, substitution or withdrawal notice shall be prepared, and submitted through NeST in accordance with the provisions of ITT21 [Format and Signing of Tender]
	25.3	Tenders may only be modified by withdrawal of the original Tender and submission of a replacement Tender in accordance with ITT25.1. Modifications submitted in any other way shall not be taken into account in the evaluation of Tenders.
	25.4	Tenderers may only offer discounts to or otherwise modify the prices of their Tenders by substituting Tender modifications in accordance with this clause or included in the original Tender submission.
	25.2	No Tender may be withdrawn, substituted or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender. Withdrawal of a Tender during this interval shall result in the Tenderers forfeiture of its Tender Security or execution of the Tendering Securing

		Declaration, pursuant to the ITT19.9 [Tender Security or Tender Securing Declaration]
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E. OPENING AND EVALUATION TENDERS

26. Opening of Tenders	26.1	The opening shall be done by Tender Opening Committee. The tender opening records shall be made available in the appropriate section of the NeST.
	26.2	A Tenderer or any other person with interest in the tender process can access tender opening records on the appropriate section of NeST.
	26.3	No tender shall be rejected at tender opening.
27. Confidentiality	27.1	Information relating to the examination, clarification, evaluation, and comparison of tenders, and the recommendations for the award of a contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the notice of intention to award the contract to the successful Tenderer has been issued.
	27.2	Any effort by a Tenderer to influence the PE processing of Tenders or award decisions may result in the rejection of its Tender.
28. Clarification of Tenders	28.1	To assist in the examination, evaluation and comparison of tenders and post-qualification of the Tenderers, the PE may, at its discretion, ask any Tenderer for a clarification of its tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the PE shall not be considered.
	28.2	The request for clarification shall be communicated through NeST and the Tenderers shall respond through NeST.
	28.3	From the time of Tender opening to the time of Contract award if any Tenderer wishes to contact the PE on any matter related to the Tender it should do so through NeST.
29. Preliminary Evaluation of Tenders	29.1	<p>Prior to the detailed evaluation of Tenders, the PE will determine whether each Tender</p> <ul style="list-style-type: none"> (a) meets the eligibility criteria defined in ITT3 [Eligible Tenderer] & ITT4 [Eligible Plant, Equipment and Services]; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the Tendering documents. <p>The PE's determination of a Tender's responsiveness will be based on the contents of the Tender itself.</p>
	29.2	<p>A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation, omission or reservation. A material deviation or reservation is one that:-</p> <ul style="list-style-type: none"> a) affects in any substantial way the scope, quality, or performance of the Service(s); b) limits in any substantial way, inconsistent with the Tendering documents, the PE's rights or the Tenderers obligations under the Contract; or c) if rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

		<p>For the purpose of this section, the following definitions apply</p> <p>“Deviation” is a departure from the requirements specified in the Tendering Document;</p> <p>“Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tendering Document; and</p> <p>“Omission” is the failure to submit part or all of the information or documentation required in the Tendering Document.</p>
	29.3	The PE will confirm that the documents and information specified under ITT12 [Documents Constituting the Tender], ITT13 [Documents Establishing Eligibility of Supplies and Related Installations and Conformity to Tendering Documents] and ITT14 [Documents Establishing Eligibility and Qualifications of the Tenderer] have been provided in the Tender. If any of these documents or information is missing or is not provided in accordance with the Instructions to Tenderers, the tender shall be rejected.
	29.4	The PE may waive any minor informality, nonconformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer.
	29.5	Provided that a Tender is substantially responsive, the PE may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the tender. Failure of the Tenderer to comply with the request may result in the rejection of its tender
	29.6	Provided that a Tender is substantially responsive, the PE shall rectify quantifiable non-material non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method specified in Section IV, Qualification and Evaluation Criteria.
	29.7	If a Tender is not substantially responsive, it will be rejected by the PE, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
	29.8	<p>Material deviations to commercial terms and conditions, which justify rejection of a tender shall include the following:</p> <ul style="list-style-type: none"> a) failure to sign the tender form and price schedules by the authorized person or persons; b) failure to satisfy eligibility requirements; c) failure to submit a tender security as specified in the tendering documents; d) failure to satisfy the tender validity period; e) inability to meet the critical delivery schedule or work schedule clearly specified in the tendering documents, where such schedule is a crucial condition with which tenderers must comply; f) failure to comply with minimum experience criteria as specified in the tendering documents; g) conditional tenders such as conditions in a tender which limit the tenderer’s responsibility to accept an award; h) inability to accept the price adjustment formulae of the tendering documents; i) stipulating price adjustment when fixed price tenders were invited;

		<p>j) subcontracting in a substantially different amount or manner than that permitted;</p> <p>k) failure to submit major supporting documents required by the tendering documents to determine substantial responsiveness of a tender.</p>
	29.9	<p>All tenders shall be checked for substantial responsiveness to the technical requirements of the tendering documents in particular, to confirm that all requirements of Section VIII, Employer's Requirements have been met without any material deviation, reservation, or omission. Non-conformity to technical requirements, which are justifiable grounds for rejection of a tender includes the following:</p> <p>a) failure to tender for the required scope of plant and installation services as instructed in the tendering documents and where failure to do so has been indicated as unacceptable;</p> <p>b) failure to quote for a major item in the package;</p> <p>c) failure to meet major technical requirements, such as offering completely different types of equipment or materials from the types specified, plant capacity well below the minimum specified, equipment not able to perform the basic functions for which it is intended;</p> <p>d) presentation of absolutely unrealistic and inadequate implementation plans and schedules regarding performance, technical or service factors.</p>
30. Correction of Errors	30.1	<p>Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected by the Employer as follows: -</p> <p>a) if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the PE there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;</p> <p>b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail, and the total shall be corrected; and</p> <p>c) where there is a discrepancy between the amounts in figures and in words, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.</p>
	30.2	<p>The amount stated in the Tender will be adjusted by the PE in accordance with the above procedure for the correction of errors and, with the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and where Tender Security was submitted, it shall be forfeited in accordance with ITT19 [Tender Security or Tender Securing Declaration]</p>
31. Conversion to Single Currency	31.1	<p>To facilitate evaluation and comparison, the PE will convert all Tender prices expressed in the amounts in various currencies in which the Tender price is payable in Tanzanian shillings at the selling exchange rate established for similar transactions by the BoT twenty eight (28) days prior to the date specified for opening of tenders</p>
32. Detailed Evaluation and Comparison of	32.1	<p>The PE shall use the criteria and methodologies indicated in this Clause. No other evaluation criteria or methodologies shall be permitted.</p>

Tenders		
		Technical Evaluation
	32.2	<p>The PE will carry out a detailed technical evaluation of the tenders not previously rejected to determine whether the technical aspects are in compliance with the Tendering Document. The tender that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) requirements for specified functional guarantees, will be rejected for non-responsiveness. In order to reach its determination, the PE will examine and compare the technical aspects of the tenders on the basis of the information supplied by the Tenderers, taking into account the following:</p> <ul style="list-style-type: none"> (a) overall completeness and compliance with the Employer's Requirements; conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated in the Specification and in Section IV- Qualification and Evaluation Criteria; suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the tender; (b) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and © other relevant factors, if any, listed in Section IV- Qualification and Evaluation Criteria;
	32.3	Where alternative technical tenders have been allowed in accordance with ITT20 [Alternative Tender by Tenderers], and offered by the Tenderer, the PE will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.
		Economic Evaluation
	32.4	<p>To evaluate a Tender, the PE shall consider the following:</p> <ul style="list-style-type: none"> (a) the Tender price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules; (b) price adjustment for correction of arithmetic errors in accordance with ITT 30.1 [Correction of Errors] (c) price adjustment due to discounts offered in accordance with ITT 16.9 or ITT16.10 [Tender Prices and Discounts]; (d) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITT 29.6 [Preliminary Examination of Tenders]; (e) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITT 31 [Conversion to Single Currency]; and (f) the evaluation factors indicated in Section IV, Qualification and Evaluation Criteria.
	32.5	If price adjustment is allowed in accordance with ITT 16.7 [Tender Prices and Discounts], the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in tender evaluation.
	32.6	If this Tendering Document allows Tenderers to quote separate prices for different lots (contracts), and the award to a single Tenderer of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot

		(contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria
	32.7	If the tender, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Tenderer to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the methods and time schedule proposed. After evaluation of the price analyses, taking into consideration the terms of payments, the Employer may require that the amount of the performance security be increased at the expense of the Tenderer to a level sufficient to protect the Employer against financial loss in the event of default of the successful Tenderer under the Contract
	32.8	The PE shall compare all substantially responsive tenders in accordance with ITT 34.4 [Determination of Lowest Evaluated Tender] to determine the lowest evaluated tender.
33. National and Exclusive Preference	33.1	If the TDS so specifies, the PE will grant a margin of preference to goods manufactured in the United Republic of Tanzania for the purpose of Tender comparison, in accordance with the procedures outlined in subsequent paragraphs, provided the Tenderer shall have established to the satisfaction of the PE that its Tender complies with the criteria specified in ITT 14.3 [Documents Establishing Eligibility and Qualifications of the Tenderer].
	33.2	The Procuring Entity shall, in applying margin of preference, use the Authority's register of Tenderers and other statutory Professional bodies in United Republic to determine whether or not Tenderers are qualified for the margin of preference.
	33.3	A JVCA between a foreign and local firm shall also be eligible to participate in the exclusive preference scheme in accordance with Ninth Schedule of GN 446 of 2013
	33.4	The PE will first review the Tenders to confirm the appropriateness of, and to modify as necessary, the Tender group classification to which Tenderers assigned their Tenders in preparing their Forms of Tender and Price Schedules, pursuant to ITTs 15 [Form of Tender] and 16 [Tender Prices].
	33.5	Alternative tenders, where solicited or permitted, will be evaluated separately in accordance with the provisions of ITT 20 [Alternative Tenders], and shall be subject to margin of preference in accordance with ITT 33.1
34. Determination of Lowest Evaluated Tender	34.1	The Tender with lowest evaluated price from amongst those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender.
35. Post-qualification of Tenderer	35.1	The PE shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated and substantially responsive bid is eligible and meets the qualifying criteria specified in Section IV, Qualification and Evaluation Criteria.
	35.2	The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT14 [Documents Establishing Eligibility and Qualifications of the Tenderer]
	35.3	An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the tender, in which event the PE shall proceed to the next lowest evaluated

		tender to make a similar determination of that Tenderer's qualifications to perform satisfactorily.
	35.4	<p>Where the tender price of the lowest evaluate tenderer is considered to be abnormally low, the PE shall perform price analysis as part of the post-qualification. The following process shall apply:</p> <p>(a) The PE may reject a tender if the PE has determined that the price in combination with other constituent elements of the tender is abnormally low in relation to the subject matter of the procurement (scope of works or services) and raise concerns with the PE as to the ability of the tenderer that presented that tender to perform the contract.</p> <p>(b) Before rejecting an abnormally low tender the PE shall: request the tenderer an explanation of the tender or of those parts which it considers contribute to the tender being abnormally low; take account of the evidence provided in response to a request in writing or in electronic forms that provide record of the content of communication; and subsequently verify the tender or parts of the tender being abnormal</p> <p>(c) The decision of the PE to reject a tender and reasons for the decision shall be recorded in the procurement proceedings and promptly communicated to the tenderer concerned;</p> <p>(d) Neither the Authority nor the PE shall incur liability solely by rejecting abnormally tender; and</p> <p>An abnormally low tender means, in the light of the PE's estimate and of all the tenders submitted, the tender appears to be abnormally low by not providing a margin for normal levels of profit.</p>
	35.5	A PE may seek independent references of a tenderer and the results of reference checks may be used in determining award of contract.
	35.6	In case of a foreign company, a PE shall seek independent reference of legal existence of a tenderer from Tanzania diplomatic missions abroad or from any other reliable source.
	35.7	The capabilities of the vendors and subcontractors proposed in Attachment 5 to the Tender to be used by the lowest evaluated Tenderer will also be evaluated for acceptability. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a vendor or subcontractor be determined to be unacceptable, the Tender will not be rejected, but the Tenderer will be required to substitute an acceptable vendor or subcontractor without any change to the tender price.

F. AWARD OF CONTRACT

36. Criteria of Award	36.1	<p>Subject to ITT 32 [Evaluation and Comparison of Tenders] and ITT 34 [Determination of Lowest Evaluated Tender], The PE will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tendering documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:</p> <ul style="list-style-type: none"> a) eligible in accordance with the provisions of ITT 3, and b) qualified to perform the Contract satisfactorily c) successful negotiations have been concluded, if any.
	36.2	<p>If, pursuant to ITT 14.4[Documents Establishing Eligibility and Qualifications of the Tenderer], this Contract is being let on lots basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderers for award of more than one Contract.</p>
37. Negotiations	37.1	<p>Negotiations may be undertaken with the lowest evaluated Tenderer relating to the following areas:</p> <ul style="list-style-type: none"> a) a minor alteration to the technical details of the statement of requirements or specifications; b) reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the tendering documents; c) a minor amendment to the SCC; d) finalizing payment arrangements; e) delivering arrangements; f) the methodology or staffing g) clarifying details that were not apparent or could not be finalized at the time of Tendering. h) reduction of Tender Price to match the PEs Estimate, and commensurate with the market prices and provided such reduction shall not make the tender abnormally low in accordance ITT 35.2 [Post-qualification of Tenderers]
	37.2	<p>Where negotiation fails to result into an agreement, the PE may invite the next ranked Tenderer for negotiations. Where negotiations are commenced with the next ranked Tenderer, the PE shall not reopen earlier negotiations.</p>
38. Procuring Entities' Right to Accept Any Tender and to Reject Any or All Tenders	38.1	<p>Notwithstanding ITT 36 [Criteria of Award] The PE reserves the right to accept or reject any tender, and to annul the Tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to the affected Tenderer(s).</p>
	38.2	<p>Notice of the rejection of all Tenders shall be given promptly to all Tenderers that have submitted Tenders through NeST.</p>
	38.3	<p>The PE shall upon request from any Tenderer communicate the grounds for rejection of its tender(s) but is not obliged to justify those grounds.</p>
39. Procuring Entities' Right to Vary Quantities at the Time	39.1	<p>The PE reserves the right at the time of Contract award to increase or decrease by the percentage indicated in the TDS, the quantity of goods and services beyond that originally specified in the Schedule of Requirements</p>

of Award		without any change in unit price or other terms and conditions.
40. Notification of Award	40.1	Prior to awarding of the contract, the PE shall issue a notice of intention to award the contract in the format provided in Section V [Tendering Forms], The notice shall be issued through NeST to all Tenderers who participated in the Tender in question giving them Seven (7) working days within which to submit complaints to the PE thereof, if any.
	40.2	Where no complaints have been lodged, the Tenderer whose Tender has been accepted will be notified through NeST of the award by the PE prior to expiration of the Tender validity period. The Letter of Acceptance will state the sum that the PE will pay the successful Tenderer in consideration for the execution of the scope of works as prescribed by the Contract (hereinafter and in the Contract called "Contract Price).
	40.3	The notification of award will be part of the documents forming the Contract, subject to the Tenderer furnishing evidence of registration with relevant statutory bodies within the country and furnishing the Performance Security in accordance with ITT41 [Performance Security] and signing the Contract in accordance with ITT 42.2 [Signing of Contract]
41. Performance Security	41.1	Within fourteen (14) working days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the PE a Performance Security and if required in the TDS , the Environmental and Social (ES) Performance Security shall be delivered in accordance with the General Conditions of Contract in the amount stipulated in the TDS and SCC , denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.
	41.2	In case of Performance Security, it shall be in the form specified in the TDS and SCC , and shall be in any of the following : (a) cash, certified cheque, cashier's or manager's cheque, or bank draft; (b) irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the letter shall be confirmed or authenticated by a reputable local bank; (c) bank guarantee confirmed by a reputable local bank or, in the case of a successful foreign tenderer, bonded by a foreign bank; or (d) surety bond callable upon demand issued by any reputable surety or insurance company. Any Performance Security submitted shall be enforceable in the United Republic of Tanzania.
	41.4	Failure of the successful Tenderer to comply with the requirements of ITT 41.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender security or execution of the Tender securing declaration and any other remedy the PE may take under the Contract and the PE may resort to awarding the Contract to the next ranked Tenderer or call for new Tenders
42 Signing the Contract	42.1	Promptly after notification of award, the PE shall send the successful Tenderer the draft Contract, incorporating all terms and conditions as agreed by the parties to the contract.
	42.2	Within Fourteen (14) working days after furnishing the performance security, the successful Tenderer and the PE shall sign the contract.
	42.3	Upon parties signing the Contract, the PE will promptly notify unsuccessful

		Tenderers, the name of the winning Tenderer and the Contract amount and will discharge the Tender security or Tender securing declaration of the Tenderers pursuant to ITT 19.7 [Tender Security or Tender Securing Declaration].
43. Advance Payment	43.1	The PE will provide an Advance Payment on the Contract Price if stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the TDS .
	43.2	The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section XI, Contract Forms. For the purpose of receiving the Advance Payment, the Tenderer shall make an estimate of, and include in its Tender, the expenses that will be incurred in order to commence supply and installation. These expenses will relate to the purchase of equipment, machinery, materials, and on the engagement of labour during the first month beginning with the date of the PE's "Notice to Commence" as specified in the Conditions of Contract.
44. Dispute Avoidance and Resolution Board	44.1	<p>The PE proposes the person named in the TDS to be appointed as Sole Member of Dispute Avoidance and Resolution Board (DARB) under the Contract. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the PE has not agreed on the appointment of the Sole Member of DARB, the Adjudicator shall be appointed by the Appointing Authority named in the TDS and designated in the Special Conditions of Contract at the request of either party</p> <p>OR</p> <p>The PE proposes three names shown in the TDS and SCC, and whose CVs are appended, to be members of Dispute Avoidance and Resolution Board. The Tenderer, shall in his Form of Tender, propose three names as well. If the names are not agreed, the Appointing Authority named in the TDS shall be consulted to appoint members of Dispute Avoidance and Resolution Board[1].</p>
45. Fraud Corruption, Coercion, Collusion, Fraudulent and Obstruction Practices	45.1	<p>31) The Government requires that Procuring entities (including beneficiaries of Government funded projects and procurement) as well as Tenderers or Suppliers or Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government defines, for the purpose of this provision, the terms set forth below as follows: -</p> <p>“corrupt practice” means the offering, giving receiving or soliciting of anything of value to influence the action of a public officer in the procurement process or contract execution;</p> <p>“coercive practice” means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party for the purpose of influencing improperly the action or that party in connection with public procurement or in furtherance of corrupt practice or fraudulent practice;</p> <p>“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government or a public body and includes collusive practices among tenderers, prior to or after submission designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;</p>

		<p>“obstructive practice” means acts intended to materially impede access to required information in exercising a duty under this Act.</p> <p>b) The PE will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt, coercive, collusive, fraudulent or obstructive practices in competing for the contract;</p> <p>c) PPRA will Declare a firm ineligible for a period of ten years, to be awarded a public-financed contract if it at any time it determines that the firm has engaged in corrupt, coercive, collusive, fraudulent or obstructive practices in competing for, or in executing, a public – financed contract</p>
	45.2	The Government of Tanzania reserves the right, where a firm has been found by a foreign country, international organization or other foreign organization to have engaged in corrupt, coercive, collusive, fraudulent or obstructive practices, to declare that such a firm is ineligible, for a period of ten years to be awarded a public financed Contract in the United Republic of Tanzania.
	45.3	Any communication between the Tenderer and the PE related to matters of alleged fraud or corruption must be made in in writing or in electronic forms that provide record of the content of communication.

[1] For Large Contracts it may be desirable to use Dispute Avoidance and Resolution Board instead of an Adjudicator.

G. REVIEW OF PROCUREMENT DECISIONS

46. Right to Review	46.1	A Tenderer who claims to have suffered or that may suffer any loss or injury as a result of breach of a duty imposed on a PE by the Act or these Regulations in the course of these procurement proceedings may seek a review in accordance with the procedure set out hereunder this Section.
47. Time Limit on Review	47.1	The Tenderer shall submit an application for review within seven (7) working days of him becoming or should have become aware of the circumstances giving rise to the complaint or dispute.
48. Submission of Application for Review	48.1	Any application for administrative review shall be submitted through NeST to the Accounting Officer of a PE and a copy shall be served to the Public Procurement Regulatory Authority (PPRA).
	48.2	For PEs with delegated procurement function, applications for administrative review for tenders floated by the delegated Accounting Officers (AO) shall be submitted through NeST to the delegated Accounting Officer with a copy served to the Public Procurement Regulatory Authority (PPRA). The delegated Accounting Officer shall promptly forward the same to the Accounting Officer of the PE.
	48.3	<p>The application for administrative review shall include:</p> <ul style="list-style-type: none"> (a) details of the procurement or disposal requirements to which the complaint relates; (b) details of the provisions of the Act, Regulation or provision that has been breached or omitted; (c) an explanation of how the provisions of the Act, Regulation or provision has been breached or omitted, including the dates and name of the responsible public officer, where known; (d) documentary or other evidence supporting the complaint where available; (e) Remedies sought; and (f) any other information relevant to the complaint.
	48.3	The Accounting Officer (AO) of a PE shall not entertain a complaint or dispute or continue to do so after the procurement Contract has entered into force.
49. Decision by the Accounting Officer of a PE	49.1	<p>The AO of a PE shall, within seven (7) working days after receipt of the complaint or dispute, deliver a written decision through NeST which shall indicate:</p> <ul style="list-style-type: none"> a) whether the application is upheld in whole, in part or rejected; b) the reasons for the decision; and c) any corrective measures to be taken.
	49.2	Where the AO of the PE does not issue a decision within the time specified in ITT49.1, the supplier submitting the complaint or dispute or the PE shall be entitled immediately thereafter to institute proceedings under ITT 50.1 [Review by the PPAA] and upon instituting such proceedings, the competence of the head of PE to entertain the complaint or dispute shall cease.
50. Review by the Public Procurement Appeals Authority	50.1	<p>Complaints or disputes which-</p> <ul style="list-style-type: none"> a) are not settled within the specified period under ITT 49.1 [above];

		<p>b) are not amicably settled by the accounting officer; or</p> <p>c) arise after the procurement contract has entered into force,</p> <p>shall be referred to the Public Procurement Appeals Authority (PPAA) at the address specified in the TDS within seven (7) working days from the date when the tenderer received the decision of the accounting officer or, in case no decision is issued after the expiry of the time stipulated under ITT49.1 [above] or when the tender become aware or ought to have become aware of the circumstances giving rise to the complaint or dispute pursuant to ITT 48.1.</p>
	50.2	PPAA may be contacted at the address shown in the TDS .

SECTION III: TENDER DATA SHEET

A. INTRODUCTION

TDS No.	Required information/Data	ITT Clause	Information/Data to be filled by PE
1.	Name of the PE and Identification of tender	ITT 1.1& 2.1	The Name of Procuring Entity: TANZANIA RAILWAYS CORPORATION Tender No.: TR126/2023/2024/G/02
2.	Subject of Procurement	ITT 1.1 & 2.1	Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024
3.	Period of Supply of Goods	ITT1.1	360 days
4.	Commencement Date and contract duration	ITT1.1	The Contract will commence:14 days The Contract Duration: 360 days
5.	Method of Procurement	1.2	International Competitive Tendering
6.	Financial Year	ITT2.1	2023/2024
7.	Financing Institution and Loan or Credit Number	ITT 2.2	Not Applicable
8.	Project Description	2.1	Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024 TR126/2023/2024/G/02
11.	Members of the JVCA	ITT3.1& ITT 3.2	Maximum Numbers of member of JVCA shall be: 3
12.	Non-Eligible Countries	ITT4.1	Not Applicable.
13.	Manufacturer Authorization	ITT4.5	Not Required
14.	Site Visit	ITT 7.4	Not Applicable Not Applicable
15.	Pre-tender Meeting	ITT 7.4	A Pre-tender meeting will not be held.

B. PREPARATION OF TENDERS

16.	Language of the Tender	ITT11.1	English
17.	Additional Information/ Documents to be Submitted with the Tender	ITT12.1(g)	Not Applicable
18.	Other Procurement Specific Documentation Required	ITT13.3(c)	NOT_REQUIRED
19.	Period of provision of Spare Parts	ITT13.4	Spare parts are not required.
20.	Destination for Goods from Abroad	ITT 16.5(a)	The Final Place of Destination is Dar Es Salaam Port
21.	Final Destination of Goods /Service	ITT 16.5(d)	The Final Place of Destination is Dar Es Salaam
22.	Fixed Price	ITT 16.7	Not Applicable
23.	Adjustable Price	ITT 16.9	FIXED
24.	Currencies for Goods to be Supplied within Tanzania	ITT 17.1(b)	The Tanzanian Shilling
25.	Currencies for Transportation, Insurance and other Services Incidental to Delivery of Goods	ITT 17.1(c)	The Tanzanian Shilling
26.	Source of Exchange Rate	ITT 17.2	The rate of exchange to be used by tenderer shall be those established by Bank of Tanzania prevailing on 28 days before tender opening.
27.	Tender Validity Period	ITT 18.1	120 days
28.	Form of Tender Security	ITT 19.1	The required tender security is Tender Security - Bank Guarantee The amount of Tender Security shall be 20,000,000.00 The currency of the Tender Security shall be: The Tanzanian Shilling
29.	Other Forms of Security	ITT 19.3(c)	Not Applicable
30.	Alternative Tenders	ITT 20.1	Not Applicable
31.	Alternative Completion Time	ITT 20.5	Not Applicable
32.	Alternative Technical solutions	ITT 20.6	Not Applicable
33.	Tender Authorization documents	ITT 21.2	Authorization document(s) shall be shall Power of Attorney

C. SUBMISSION OF TENDERS

34.	Extension of Deadline for Submission of Tenders	ITT 24.1	Tender Submission Date: 13/06/2024. Tender Submission Time: 2:00 PM Hrs Local Time
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D. OPENING AND EVALUATION OF TENDERS

36.	National and Exclusive Preference	ITT 33.1	Refer to Section for Qualification and Evaluation Criteria
37.	Post-Qualification	ITT 35.1	APPLICABLE

E. CONTRACT AWARD

37.	Percentage for Increase and Decrease of Quantities	ITT 39.1	15 percent.
38.	Performance Security	ITT 19.10 (c), 19.11 (b)& ITT 41.1	Performance Security shall be applicable The Performance Security shall be in the form of: Performance Security - Bank Guarantee. Amount of Performance Security: 3 percent.
39	Environmental and Social Performance Security	ITT 41.2	Environmental and Social Performance Security is not applicable.
40.	Advance Payment	ITT43.1	The Advance Payment shall be limited to 15 Percent of the Contract Amount.
41.	Appointment of Members of Dispute Avoidance and Resolution Board	ITT 44.1	The Proposed Sole member of DARB for the Project is Tanzania. If the name(s) are not agreed, The Proposed Appointing Authority for Appointment of DARB is Appointed by Institute of Arbitration

F. REVIEW OF PROCUREMENT DECISION

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Address to Submit
Appeal to PPAA

ITT50.2

The address for Appeals to PPAA:
The Executive Secretary,
Public Procurement Appeals Authority,
Ministry of Finance and Planning,
Mkandarasi Place,
4th Floor
Jakaya Kikwete rd
P.O.BOX 1385,
Dodoma
Tanzania
Phone
Telephone:+255262962411,
Mobile:+255743505505
Fax + 255 022 2120460
Email: info@ppaa.go.tz or es@ppaa.go.tz
Website www.ppaa.go.tz

QUALIFICATION AND EVALUATION CRITERIA

EVALUATION CRITERIA

Commercial Evaluation

1. Eligibility

Litigation History (SCORE: N/A)

Tenderers are required to provide litigation records resulting from contracts completed or ongoing under their execution (In case of Joint Venture, compliance requirements are all Parties Combined – Must Meet requirements and Each Member – Must Meet requirements).

Litigation History Start Year	2023-01-01
Litigation History End Year	2024-04-30

Completion Period (SCORE: N/A)

Tenderers are required to comply with the completion period as proposed by the procuring entity unless alternative completion period is allowed.

Completion Time (Days)	360
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2. Standard Tender Forms

Tender Validity Period (SCORE: N/A)

Tenderers are required to confirm with the tender validity period specified by the Procuring Entity.

Tender Validity Period (Days)	120
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Notarized Special Power of Attorney (SCORE: N/A)

Tenderers must fill in Standard Power of Attorney as per the required format and upload into the system.

Tender Security (SCORE: N/A)

Tenderer should submit tender security as per instructions to tenderers.

3. Financial Situation and Performance

Financial Statement (SCORE: N/A)

Audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the PE, for mentioned duration shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability. (In case of Joint Venture, compliance requirements are: Each Member – Must Meet requirements).

Financial Statement Start Date	2022-01-01
Financial Statement End Date	2024-01-31
Minimum Current Ratio [Current Assets(CA)/Current Liabilities(CL)]	1
Minimum Cash Ratio [Cash and Bank(C&B)/Current Liabilities(CL)]	N/A
Minimum Working Capital [Current Assets(CA)-Current Liabilities(CL)]	1

Minimum Gross Profit Margin [Gross Profit(GP)/Total Revenue(TR)*100]	10
Minimum Debt to Equity Ratio [Total Liabilities(TL)/Total Equity(TE)]	1
Minimum Return on Assets [Profit before Tax(PBT)/Total Assets(TA)*100]	2

Average Annual Turnover (SCORE: N/A)

Average Annual Turnover of the mentioned amount, calculated as total certified payments received for contracts in progress and/or completed within the mentioned duration. (In case of Joint Venture, compliance requirements are: All Parties Combined – Must Meet requirements, Each Member – Must Meet percentage requirements and if One Member – Must Meet percentage requirements stated).

Average Annual Turnover Amount in TZS or any other freely convertible currency	4000000000
Turnover Start Date	2021-01-31
Turnover End Date	2024-03-31

Access to Financial Resources (Sources of Fund) (SCORE: N/A)

Tenderers are required to demonstrate details of their sources of finance that show their ability to access adequate finances to meet the cash flow requirements of current and future contracts. (In the case of a Joint Venture, compliance requirements are all Parties Combined – Must Meet requirements).

Average fund amount from all sources (any freely convertible currency proposed by bidder)	4000000000
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Technical Evaluation

1. Experience

Overall Firm's General Experience (SCORE: 5)

Tenderer is required to provide details of Firms General Experience, reputation and details of previous similar assignments

Firm's General Experience (SCORE: 20)

End Year for Firm's General Experience in assignments	2023-12-31
Start Year for Firm's General Experience in assignments	2021-01-01
Minimum number of general assignments	3
Minimum amount for general assignments (TZS)	6000000000

Reputation (SCORE: 20)

Reputation	Please demonstrate recognized reputation towards the performance
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Experience in Previous Similar Assignments (SCORE: 60)

Title of Specialization area or Similar Projects and Conditions	Please submit title of specialization area or similar projects required
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Minimum number of similar projects	3
Minimum amount for similar projects (TZS)	3000000000
Start Year for Experience in Similar Projects and Conditions	2021-01-01
End Year for Experience in Similar Projects and Conditions	2023-12-31

2. Technical Specifications

Key Equipment Strategy (SCORE: 5)

Tenderers are required to provide details of the Key Equipment Strategy.

Key Equipment Strategy	Please submit a details of the Key Equipment Strategy for the project
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Functional Guarantee Requirements (SCORE: 2)

Tenderers are required to submit a filled functional guarantee form as per the attached sample template.

Functional Guarantee	submit a filled functional Bank guarantee form as per the attached sample template.
Minimum Requirement	Please submit a functional Bank Guarantee 10% of the contract price

Compliance to Technical Specifications (Plant, Information or Design & Build) (SCORE: 10)

Tenderers are required to comply with technical requirements (Service specifications, Technology specifications, Security Specifications, Technical Architecture, Usability, Testing and Quality Assurance, Service Specifications, Conformity to Technical requirements).

3. Key Personnel

Qualifications of Key Personnel (SCORE: 30)

Tenderer has to provide details showing the qualifications of key personnel available for assignment based on the qualification criteria in the terms of reference.

General Qualifications (SCORE: 30)

Title of professional staff required	Please Mention title of professional key staff required
Minimum required Education level	Higher level
Specialized Education	Please specify specialized education for the assignment
Age of the Key Personnel	35 - 45
Required Similar Assignments	Please Mention similar assignments for the project
Professional Experience and Status	Please specify professional registration for the key staff

4. Technical Submission

Design Methodology (SCORE: 5)

The tenderer should provide methodology on how the assignment will be designed, i.e. Design, Development, and Implementation. The Tenderer is expected hereunder to detail clearly how he intends to execute the works and complete the entire work by the proposed program, thereafter upload the document into the system for submission.

Design Methodology	Please submit a statement for comply with design methodology for the project
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Performance capacity/functional features meeting or exceeding levels of specified performance (SCORE: 5)

Tenderers are required to explain the extent of Performance, capacity/functionality features meeting or exceeding levels specified in the performance functional requirement and/or influence of the life cycle cost and effectiveness of the plant, thereafter upload the document into the system for submission.

Compliance to Functional Requirements	Please submit documentary evidence for performance capacity or functional future exceeding levels of specified performance
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Degree of suitability of plant and installation services offered in relation to the environmental and climatic conditions prevailing at the site (SCORE: 4)

Tenderers are required to provide details on the Degree of the suitability of plant and installation services offered in relation to the environmental and climatic conditions prevailing at the site, thereafter upload the document into the system for submission.

Degree of suitability of plant and installation services offered in relation to the environmental and climatic conditions prevailing at the site	Please submit a document shows a degree of suitability of plant and installation services offered in relation to the environmental and climatic conditions prevailing at the site.
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Quality, Functional and Operational process control (SCORE: 5)

Tenderers are required to provide details of Quality, Functional, and Operational process control, thereafter upload the document into the system for submission.

Quality, Functional and Operational process control	Please submit a documentary shows quality, functional and operational process control
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Testing and Quality Assurance Requirements (SCORE: 4)

Tenderers are required to give details on Testing and Quality Assurance requirements.

Testing and Quality Assurance Requirements	Please submit a document demonstrate details on Testing and Quality Assurance requirements
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Extent of the Proposal in value addition in terms of performance, functionality and/or Operational and Maintenance costs. (SCORE: 8)

Tenderers are required to provide the extent of the Proposal in value addition in terms of performance, functionality, and/or Operational and Maintenance costs, thereafter upload the document into the system for submission.

Extent of the Proposal in value addition in terms of performance, functionality and/or Operational and Maintenance costs.	Please submit a proposal in value addition in terms of performance, functionality, and/or Operational and Maintenance costs
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Completeness of required Manufacturer Authorization (SCORE: 3)

Tenderers are required to conform to the requirements of Manufacturers' standards, thereafter upload the document into the system for submission.

Completeness of required Manufacturer Authorization	Please submit a conform demonstrate completeness of Manufacturers' standards
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Long terms availability of mandatory and recommended spare parts and maintenance services (SCORE: 2)

Tenderers are required to provide long terms availability of mandatory and recommended spare parts and maintenance services, thereafter upload the document into the system for submission.

Long terms availability of mandatory and recommended spare parts and maintenance services	Please submit a documentary evidence to elaborate availability of mandatory and recommended spare parts and maintenance services.
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Method Statement for key activities (SCORE: 4)

Tenderers are required to provide details of the Methodology Statement for key activities, thereafter upload the document into the system for submission.

Method Statement for key construction activities	Please provide details Methodology Statement for key construction activities
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Work Programme (SCORE: 2)

Tenderers are required to provide a Program of Work, and thereafter upload the document into the system for submission.

Work Programme	Please provide a chart of Program of Work
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Proposed Project Organization Chart (SCORE: 2)

Tenderers are required to provide details of the proposed Organization Chart required for the assignment, including a description of the Project Management System, and how it will be applied.

Project Organization Chart	Please submit a details proposal Organization Chart required for the assignment, including a description of the Project Management System, and how it will be applied
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Risk Assessment and Proposed Management Plan (SCORE: 4)

Tenderers are required to provide a detailed Risk Assessment and Proposed Management Plan, thereafter upload the document into the system for submission.

Risk Assessment and Proposed Management Plan	Please submit a detailed Risk Assessment and Proposed Management Plan
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Financial Evaluation**1. Price Schedule****Priced schedule (SCORE: N/A)**

The tenderer must quote for each item in the schedule of requirements provided by the procuring entity.

SECTION V. TENDERING FORMS

Below is a checklist of forms/documents required to be submitted by the Tenderer. Each Tenderer must ensure that all forms/documents are properly prepared and submitted with his Tender. Failure to fill in and submit or improper filling of the Forms/documents may result in the rejection of the Tender.

SN	Form Description	Remarks
1	Form of Tender	Form will be available in the system submission.
2	Schedules of Rates and Prices	Form will be available in the system submission.
3	Design Services	Form will be available in the system submission.
4	Installation and Other Services	Form will be available in the system submission.
5	Recommended Spare Parts	Form will be available in the system submission.
6	Technical Submission	Form will be available in the system submission.
7	Site Organization	Form will be available in the system submission.
8	Method Statement	Form will be available in the system submission.
9	Mobilization Schedule	Form will be available in the system submission.
10	Construction Schedule	Form will be available in the system submission.
11	ES Management Strategies and Implementation Plans	Form will be available in the system submission.
12	Code of Conduct for Contractor's Personnel (ES) Form	Form will be available in the system preparation.
13	Contractor's Equipment	Form will be available in the system registration.
14	Functional Guarantees	Form will be available in the system submission.
15	Personnel	Form will be available in the system registration.
16	Resume of Proposed Personnel	Form will be available in the system registration.
17	Proposed Subcontractors for Major Items of Plant and Installation Services	Form will be available in the system submission.
18	Others - Time Schedule (To be used when alternative time for completion is invited.	Form will be available in the system submission.
19	Tenderer Information Sheet	Form will be available in the system registration.
20	JVCA members Information Sheet	Form will be available in the system registration.
21	Historical Contract Non-Performance, Pending Litigation and Litigation History, And Conformance to Statutory Requirements	Form will be available in the system registration.
22	Current Contract Commitments / Works in Progress	Form will be available in the system registration.

SN	Form Description	Remarks
23	Financial Situation: Historical Financial Performance	Form will be available in the system registration.
24	Average Annual Turnover	Form will be available in the system registration.
25	Financial Resources	Form will be available in the system registration.
26	General Experience	Form will be available in the system registration.
27	Specific Experience	Form will be available in the system registration.
28	Specific Experience in Key Activities	Form will be available in the system registration.
29	Specific Experience in Managing ES aspects	Form will be available in the system registration.
30	Standard Power Of Attorney	Form will be available in the system submission.
31	Form of Tender Security (Bank Guarantee)	Form will be available in the system submission.
32	Form of Tender Security (Tender Bond)	Form will be available in the system submission.
33	Form of Tender Securing Declaration	Form will be available in the system submission.
34	Manufacturer's Authorization	Form will be available in the system submission.
35	Undertaking by Tenderer on Anti – Bribery Policy/ Code of Conduct and Compliance Programme	Form will be available in the system registration.

SECTION V: ELIGIBLE COUNTRIES

Procurement Reference Number:

All countries are eligible except countries subject to the following provisions.

A country shall not be eligible if:

- (a) as a matter of law or official regulation, the Government of Tanzania prohibits commercial relations with that country, provided that the Government of Tanzania is satisfied that such exclusion does not preclude effective competition for the provision of goods or related services required; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government of Tanzania prohibits any import of goods from that country or any payments to persons or entities in that country.

PART 2: PROCURING ENTITY'S REQUIREMENTS

SECTION VII: SCHEDULE OF REQUIREMENTS

SCOPE OF SUPPLY OF PLANT AND INSTALLATION SERVICES
List of Goods

Tender Description: Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024

Tender No: TR126/2023/2024/G/02

LOT NO. TR126/2023/2024/G/02

Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024

GFS Code: 31122229 - Lifts and cranes

S/N	Description	Unit of measure	Quantity
1	Screw Traversing Bed (Base) For Rolling stock vehicles traversing	Set	10
2	Machine Operated Hydraulic Re-Railing (for Lifting Rolling Stocks) Equipment.	Unit	2
3	Low profile hydraulic lifting jack	Pcs	5
4	Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 6” Plain ram 60 Tonnes.	Pcs	10
5	Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 18” Plain ram 60 Tonnes.	Pcs	40

Delivery Schedule

Tender Description: Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024

Tender No: TR126/2023/2024/G/02

LOT NO. TR126/2023/2024/G/02

Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024

GFS Code: 31122229 - Lifts and cranes

S/N	Description	Quantity	Delivery Site	Delivery Period (Days)
1	Screw Traversing Bed (Base) For Rolling stock vehicles traversing	10	Shauri moyo TRC warehouse - Dar es salaam	30
2	Machine Operated Hydraulic Re-Railing (for Lifting Rolling Stocks) Equipment.	2	TRC Shaurimoyo warehouse - Dar es salaam	30
3	Low profile hydraulic lifting jack	5	TRC shaurimoyo Warehouse - Dar es salaam	30
4	Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 6" Plain ram 60 Tonnes.	10	TRC Shaurimoyo Warehouse - Dar es salaam	30
5	Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 18" Plain ram 60 Tonnes.	40	TRC Shaurimoyo warehouse - Dar es salaam	30

List of related services and spare parts

Tender Description: Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024

Tender No: TR126/2023/2024/G/02

LOT NO. TR126/2023/2024/G/02

Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024

GFS Code: 31122229 - Lifts and cranes

Screw Traversing Bed (Base) For Rolling stock vehicles traversing

Not Applicable

Machine Operated Hydraulic Re-Railing (for Lifting Rolling Stocks) Equipment.

Not Applicable

Low profile hydraulic lifting jack

Not Applicable

Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 6” Plain ram 60 Tonnes.

Not Applicable

Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 18” Plain ram 60 Tonnes.

Not Applicable

Technical; Specifications

Tender Description: Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024

Tender No: TR126/2023/2024/G/02

LOT NO. TR126/2023/2024/G/02

Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024

GFS Code: 31122229 - Lifts and cranes

Screw Traversing Bed (Base) For Rolling stock vehicles traversing

Technical Requirements	Description
Capacity	Atleast 100 tonnes
Length x Weight x Height	(1100 x 488 x 190) mm
Material	Cast steel
Traversing Lenght	At least 1 metre

Machine Operated Hydraulic Re-Railing (for Lifting Rolling Stocks) Equipment.

Technical Requirements	Description
Working Mechanism	Machine Operated, Hydraulic Power

Low profile hydraulic lifting jack

Technical Requirements	Description
Capacity	3.5 tonne
Maximum lifting heighth	At least 0.5 meter
Materials	Material used must allows for heavy duty use
Application	Lifting the alternator to the Rolling stock vehicles during Maintenance

Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 6” Plain ram 60 Tonnes.

Technical Requirements	Description
Capacity	Minimum lifting capacity should be 60 Tonnes
Material	The jacks shall be manufactured using lightweight robust materials mainly preferred Aluminum Alloy.
Ram type	It should be Plane Ram type with minimum lifting displacement of 6 inches

Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 18” Plain ram 60 Tonnes.

Technical Requirements	Description
Capacity	Minimum lifting capacity should be 60 Tonnes
Material	The jacks shall be manufactured using lightweight robust materials mainly preferred Aluminum Alloy.

Ram type	It should be Plane Ram type with minimum lifting displacement of 18 inches
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Drawings

LOT NO. TR126/2023/2024/G/02

**Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane
for SGR by June, 2024**

31122229 Lifts and cranes

Attachment is not Applicable for this item.

Inspection and Tests

LOT NO. TR126/2023/2024/G/02

Supply, testing and commissioning of re-railing equipments and rail mounted breakdown crane for SGR by June, 2024

GFS Code: 31122229 - Lifts and cranes

Screw Traversing Bed (Base) For Rolling stock vehicles traversing

This item does not require inspections

Machine Operated Hydraulic Re-Railing (for Lifting Rolling Stocks) Equipment.

This item does not require inspections

Low profile hydraulic lifting jack

This item does not require inspections

Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 6” Plain ram 60 Tonnes.

This item does not require inspections

Hand Operated Hydraulic Jacks for Lifting Rolling Stocks 18” Plain ram 60 Tonnes.

This item does not require inspections

PART 3: CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VIII: GENERAL CONDITIONS OF CONTRACT (GCC)

A. Contract and Interpretation

1. Definitions	1.1	<p>The following words and expressions shall have the meanings hereby assigned to them:</p> <ul style="list-style-type: none">a) “Contract” means the Agreement entered into between the Pruchaser and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.b) “Contract Documents” means the documents listed in Article 1.1 (Contract Documents) of the Form of Agreement (including any amendments thereto).c) “GCC” means the General Conditions of Contract hereof.d) “SCC” means the Special Conditions of Contract.e) “Day” means calendar day.f) “Month” means a calendar month.g) “Purchaser” means the person named as such in the SCC and includes the legal successors or permitted assigns of the Purchaser.h) “Project Manager” means the person (or any other competent person appointed by the Purchaser and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract. Details of the project manager will be available in the Contract Finalization Information Section in the Contract Agreement.i) “Tenderer” means the person(s) whose tender to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement and includes the legal successors or permitted assignees of the tenderer as specified in the Contract Finalization Information Section in the Contract Agreement.j) “Dispute Board” (DB) means the person or persons named as such in the PC appointed by agreement between the Purchaser and the Contractor to make a decision with respect to any dispute or difference between the Purchaser and the Contractor referred to him or her by the Parties pursuant to Sub-Clause 47.1 [Dispute Avoidance and Resolution Board].k) “Tenderer’s Representative” means any person nominated by the Contractor and named as such in the SCC and approved by the Purchaser in the manner provided in Sub-Clause16.2 [Tenderer’s Representative and Construction Manager] hereof to perform the duties delegated by the tenderer. Details of the tenderer representative will be available in the Contract Finalization Information Section in the Contract Agreement.l) “Subcontractor,” including vendors, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Goods, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.m) “Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.n) “Facilities” means the Goods to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.o) “Force Majeure” shall mean any event beyond the reasonable control of the Purchaser or of the Contractor, as the case may be, and which
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		<p>is unavoidable notwithstanding the reasonable care of the party affected. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances. and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood, epidemics, or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.</p> <p>p) “Goods” means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under Clause 6.3 [Scope of Facilities] hereof but does not include Contractor’s Equipment.</p> <p>q) “Installation Services” means all those services ancillary to the supply of the Goods for the Facilities, to be provided by the Contractor under the Contract; e.g., transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor’s Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc.</p> <p>r) “Contractor’s Equipment” means all plant, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Goods, or other things intended to form or forming part of the Facilities.</p> <p>s) “Country of Origin” means the countries specified and territories eligible under the PPA 2011 as Amended in 2016 and its corresponding Regulations as further elaborated in Section VI [Eligible Countries]. Country of Origin details will be available in the Contract Finalization Information Section in the Contract Agreement.</p> <p>t) “Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.</p> <p>u) “Effective Date” means the date of fulfilment of all conditions stated in Article 3 (Effective Date for Determining Time for Completion) of the Form of Agreement, for the purpose of determining the Time for Completion.</p> <p>v) “Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the specifications in the SCC and the relevant provisions of the Contract.</p> <p>w) “Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the SCC) have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Pre-commissioning of the Facilities or such specific part thereof has been completed; in other words, that the Facilities or specific part thereof are ready for Commissioning as provided in Clause 23[Completion of Facilities] hereof.</p>
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2. Interpretation	2.1	In interpreting these Conditions of Contract headings and marginal notes are used for convenience only and shall not affect their interpretations unless specifically stated; references to singular include the plural and vice versa; and masculine include the feminine. Words have their ordinary meaning under the language of the Contract specified in the SCC , unless specifically defined.
	2.2	If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under Sub-Clause 2.1 above, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.
	2.3	<p>The documents forming the Contract shall be interpreted in the following order of priority:</p> <ul style="list-style-type: none"> a) Form of Agreement b) Letter of Acceptance c) Special Conditions of Contract, d) General Conditions of Contract, e) Specifications f) Drawings g) Bills of Quantities h) Completed Schedules (including Price Schedules), and i) Any other document listed in the Special Conditions of Contract as

		forming part of the Contract be listed as Appendices: [Appendix-1 to Appendix-nth .
	2.4	<u>Persons</u> Words importing persons or parties shall include firms, corporations and government entities.
	2.5	<u>Incoterms</u> Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by <i>Incoterms</i> . <i>Incoterms</i> means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1 ^{er} , 75008 Paris, France.
	2.6	<u>Entire Agreement</u> Subject to Sub- Clause 15.4 [Confidential Information] hereof, the Contract constitutes the entire agreement between the Purchaser and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.
	2.7	<u>Amendment</u> No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.
	2.8	<u>Independent Contractor</u> The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Purchaser.
	2.9	<u>Joint Venture or Consortium</u> If the Contractor is a joint venture or consortium of two or more persons, all such firms shall be jointly and severally bound to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Purchaser.
	2.10	<u>Non-Waiver</u> 2.10.1 Subject to Sub- Clause 2.10.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract. 2.10.2 Any waiver of a party's rights, powers or remedies under the

		Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.
	2.11	<u>Severability</u> If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.
	2.12	<u>Country of Origin</u> “Origin” means the place where the materials, equipment and other supplies for the Facilities are mined, grown, produced or manufactured, and from which the services are provided.
3. Conditions Precedent	3.1	The Contract shall come into effect after the Contractor fulfilling the conditions precedent stated in the SCC
	3.2	If the Condition precedent stipulated on Sub-Clause 3.1 is not met by the date specified in the SCC this contract shall not come into effect;
	3.3	If the Purchaser is satisfied that each of the conditions precedent in this contract has been satisfied (except to the extent waved by him, but subject to such conditions as he shall impose in respect of such waiver) he shall promptly issue to the contractor a certificate of Contract commencement, which shall confirm the start date.
4. Notices	4.1	Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile or Electronic Data Interchange (EDI) to the address of the relevant party set out in the Contract Finalization Information Section in the Contract Agreement, with the following provisions: 4.1.1 Any notice sent by cable, telegraph, telex, facsimile or EDI shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract. 4.1.2 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier. 4.1.3 Any notice delivered personally or sent by cable, telegraph, telex, facsimile or EDI shall be deemed to have been delivered on date of its dispatch. 4.1.4 Either party may change its postal, cable, telex, facsimile or EDI address or addressee for receipt of such notices by ten (10) days’ notice to the other party in writing.
	4.2	Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.
5. Language and Law	5.1	The language of the Contract and the law governing the Contract are stated in the SCC .

B. Subject Matter of Contract

6. Scope of Facilities	6.1	Unless otherwise expressly limited in the Technical Specifications, the Contractor's obligations cover the provision of all Goods and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Pre-commissioning and delivery) of the Goods and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in Sub- Clause 6.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Purchaser, as set forth in the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement.
	6.2	The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.
	6.3	In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period specified in the SCC . However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Purchaser and the Contractor, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefore and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts.
7. Time for Commencement and Completion	7.1	The Contractor shall commence work on the Facilities within the period specified in the SCC and without prejudice to Sub- Clause 25.2 [Completion Time Guarantee] hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the corresponding Appendix (Time Schedule) to the Agreement.
	7.2	The Contractor shall attain Completion of the Facilities (or of a part where a separate time for Completion of such part is specified in the Contract) within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under Clause 39 [Extension of Time for Completion] hereof.
8. Contractor's Responsibilities	8.1	The Contractor shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities with due care and diligence in accordance with the Contract.
	8.2	The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities (including any data as to boring tests) provided by the Purchaser, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site (if access thereto was available) and of other data readily available to it relating to the Facilities as of the date twenty-eight

		(28) days prior to tender submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.
	8.3	The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the United Republic of Tanzania where the Site is located that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Purchaser under Sub- Clause 9.3 [Purchaser's Responsibilities] hereof and that are necessary for the performance of the Contract.
	8.4	The Contractor shall comply with all laws in force in the United Republic of Tanzania and local by-laws where the Facilities are installed and where the Installation Services are carried out. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to Clause 9.1 [Purchaser's Responsibilities] hereof.
	8.5	Any Plant, Material and Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under Clause 1 [Definitions-Country of Origin].
	8.6	The Contractor shall permit the Purchaser to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Purchaser, if so required by the Purchaser
9. Purchaser's Responsibilities	9.1	The Purchaser shall ensure the accuracy of all information and/or data to be supplied by the Purchaser as described in the corresponding Appendix 6 [Scope of Works and Supply by the Purchaser] to the Contract, except when otherwise expressly stated in the Contract.
	9.2	The Purchaser shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the corresponding Appendix 6 [Scope of Works and Supply by the Purchaser] to the Agreement. The Purchaser shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.
	9.3	The Purchaser shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the United Republic of Tanzania. Such authorities or undertakings require the Purchaser to obtain them in the Purchaser's name, are necessary for the execution of the Contract (they include those required for the performance by both the Contractor and the Purchaser of their respective obligations under the Contract), and are specified in the corresponding Appendix 6 [Scope of Works and Supply by the Purchaser] to the Agreement.
	9.4	If requested by the Contractor, the Purchaser shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the

		Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
	9.5	Unless otherwise specified in the Contract or agreed upon by the Purchaser and the Contractor, the Purchaser shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement at or before the time specified in the programme furnished by the Contractor under Sub-Clause 17.2 [Work Program] hereof and in the manner thereupon specified or as otherwise agreed upon by the Purchaser and the Contractor.
	9.6	The Purchaser shall be responsible for the continued operation of the Facilities after Completion, in accordance with Sub-Clause 23.8 [Completion of the Facilities] , and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with Sub-Clause 26.2 [Defects Notification Period] .
	9.7	All costs and expenses involved in the performance of the obligations under this Clause 9 [Purchasers Responsibility] shall be the responsibility of the Purchaser, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with Sub-Clause 26.2 [Defects Notification Period]

C. Payment

10. Contract Price	10.1	The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Form of Agreement.
	10.2	<p>Unless indicated otherwise in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.</p> <p>Price Adjustment Where the Contract Period(excluding the Defects Liability Period) exceeds eighteen (18) months,it is normal procedure that prices payable to the Supplier shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labour and material components. In such cases the Tendering documents shall include a formula as provided in the Price Adjustment Formula. Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included that the prices are to remain firm and fixed for the duration of the Contract.</p> <p>Price Adjustment Formula Prices payable to the Supplier, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labour and material components, in accordance with the following formula: $P_1 = P_0 \times ((a + b(L_1/L_0) + c(M_1/M_0)) - P_0)$ in which: P_1 = adjustment amount payable to the Supplier P_0 = Contract price (base price) a = fixed element representing profit and overhead in Contract price (a = %) b = estimated percent of labour component in Contract price (b = %) c = estimated percent of plant & equipment component in Contract price (c = %) L_0, L_1 = labour indexes applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively M_0, M_1 = material indexes for the major raw materials in the country of origin on the base date and the date for adjustment, respectively</p> <p>The sum of the three coefficients a, b and c shall be one (1) in every application of the formula.</p> <p>Conditions Applicable to Price Adjustment The Tenderer shall indicate the source of labour and materials indexes and the base date indexes in its tender.</p> <p>Item Source of Indexes Used Base Date Indexes The base date shall be the date thirty (30) days prior to the Tender closing date. The date of adjustment shall be the mid-point of the period of manufacture or installation of component or Plant. The following conditions shall apply: (a) Price adjustment will be applied only if the resulting increase or decrease is more than two percent (2%) of the Contract price. (b) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Purchaser under the terms of the Contract. No price increase will be allowed for periods of delay for which the Supplier is responsible. The Purchaser will, however, be entitled to any price decrease occurring during such periods of delay. (c) The total adjustment (plus or minus) shall be subject to a ceiling percent specified in SCC of the Contract price. (d) If the currency in which the Contract price, P_0, is expressed</p>

		<p>is different from the currency of the country of origin of the labour and/or materials indexes, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall be: Z_0/Z_1</p> <p>Where:</p> <p style="padding-left: 40px;">Z_0= the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price on the Base date, and</p> <p style="padding-left: 40px;">Z_1= the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price on the Date of Adjustment.</p> <p>(e) No price adjustment shall be payable on the portion of the Contract price paid to the Supplier as an advance payment.</p>
	10.3	<p>Subject to Sub-Clause8.2 [Contractor’s Responsibilities], Sub-Clause 9.1 [Purchaser’s Responsibilities] and Clause 34[Unforeseen Conditions] hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.</p>
11. Terms of Payment	11.1	<p>Terms and Procedures of Payment</p> <p>In accordance with the provisions of GCC Clause 14 (Terms of Payment), the Purchaser shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Tenderer unless otherwise agreed between the parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.</p> <p>a. Schedule No. 1. Goods Supplied from Abroad</p> <p>In respect of goods supplied from abroad, the following payments shall be made:</p> <p>An advance payment stated in SCC of the total CIF or CIP amount as payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Purchaser. The advance payment security may be reduced in proportion to the value of the goods shipped FOB or delivered to the site, as evidenced by shipping and delivery documents.</p> <p>After receipt of invoice and shipping documents stated in SCC of the total or pro-rata based on Incoterms stated in SCC "within sixty (60) days. In the event that shipping is delayed upon the written instruction of the Purchaser for more than twenty-eight (28) days beyond the date shown in the Programme of Performance provided in accordance with GCC sub-Clause 17.2, the Contractor may make application for this part of the payment against warehouse receipts, provided always that the goods are ready for shipment on the date shown in the said Programme.</p> <p>On Shipment Payment Percent stated in SCC of the total or pro rata based on Incoterms stated in SCC upon delivery to Site within sixty (60) days after receipt of invoice, less eighty percent (80%) of the FOB amount already paid or authorized for payment.</p> <p>On Completion Payment Percent as stated in SCC of the total or pro rata based on Incoterms stated in SCC upon issue of the Completion Certificate, within sixty (60) days after receipt of invoice.</p> <p>On Acceptance Payment Percent as stated in SCC of the total or pro rata based on Incoterms stated in SCC upon issue of the Operational Acceptance Certificate, within sixty (60) days after receipt of invoice.</p> <p>b. Schedule No. 2. Goods Supplied from within the United Republic of Tanzania</p> <p>In respect of goods supplied from within the, United Republic of Tanzania the following payments shall be made:</p> <p>An advance payment equivalent to amount stated in SCC of the total EXW amount as an advance payment against receipt of invoice, and an</p>

		<p>irrevocable advance payment security for the equivalent amount made out in favor of the Purchaser. The advance payment security may be reduced in proportion to the value of the goods delivered to the site, as evidenced by shipping and delivery documents.</p> <p>On Delivery Payment Percent of the amount stated in SCC of the total or pro rata EXW amount upon Incoterm “Ex-Works,” upon delivery to the site within forty-five (45) days after receipt of invoice.</p> <p>On Completion Payment Percent as stated in SCC of the total or pro rata EXW amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.</p> <p>On Acceptance Payment Percent as stated in SCC of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.</p> <p>c. Schedule No. 3. Local Transportation</p> <p>In respect of local transportation for both the foreign currency (where applicable) and the local currency portions, the following payments shall be made:</p> <p>An advance payment equivalent to percentage stated in SCC of the total local transportation amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Purchaser. The advance payment security may be reduced in proportion to the value of the Goods delivered to the site, as evidenced by shipping and delivery documents.</p> <p>On Transport Delivery Payment equivalent to Percent as stated in SCC of the total or pro rata local transportation amount upon delivery to the site within forty-five (45) days after receipt of invoice.</p> <p>d. Schedule No. 4. Installation Services</p> <p>In respect of installation services for both the foreign and local currency portions, the following payments shall be made:</p> <p>An advance payment equivalent to percentage stated in SCC of the total installation services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Purchaser. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.</p> <p>On Measured Installation Work Payment equivalent to percent stated in SCC of the measured value of work performed by the Contractor, as identified in the said Programme of Performance, during the preceding month, as evidenced by the Purchaser’s authorization of the Contractor’s application, will be made monthly within forty-five (45) days after receipt of invoice.</p> <p>On Delivery Payment equivalent to Percent stated in SCC of the total or pro rata value of installation services performed by the Contractor as evidenced by the Purchaser’s authorization of the Contractor’s monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.</p> <p>On Acceptance Payment equivalent to Percent stated in SCC of the total or pro rata value of installation services performed by the Contractor as evidenced by the Purchaser’s authorization of the Contractor’s monthly applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.</p>
	11.2	No payment made by the Purchaser herein shall be deemed to constitute acceptance by the Purchaser of the Facilities or any part(s) thereof.
	11.3	In the event that the Purchaser fails to make any payment by its respective due date or within the period set forth in the Contract, the Purchaser shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the corresponding Appendix (Terms and Procedures of Payment) to the Agreement for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.
	11.4	The currency or currencies in which payments are made to the Contractor

		under this Contract shall be specified in the corresponding Appendix (Terms and Procedures of Payment) to the Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's Tendering.
	11.5	All payments shall be made in the currency or currencies specified in the corresponding Appendix (Terms and Procedures of Payment) to the Agreement, pursuant to Sub- Clause 11.4.
12. Securities	12.1	<u>Issuance of Securities</u> The Contractor shall provide the securities specified below in favour of the Purchaser at the times, and in the amount, manner and form specified below.
	12.2	<u>Advance Payment Security</u> 12.2.1 The Contractor shall, within fourteen (14) working days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the corresponding Appendix (Terms and Procedures of Payment) to the Agreement, and in the same currency or currencies. 12.2.2 The security shall be in the form provided in the tendering documents or in another form acceptable to the Purchaser. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Purchaser. The security shall be returned to the Contractor immediately after its expiration.
	12.3	<u>Performance Security</u> 12.3.1 The Performance Security , and, if applicable, an ES Performance Security, shall be provided to the Purchaser no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Purchaser, and denominated in the types and proportions of the currencies in which the Contract Price is payable as specified in the SCC and in accordance with the conditions of contract. 12.3.2 The Performance Security, and, if applicable, an ES Performance Security as specified in the SCC , shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond. 12.3.3 Where circumstances necessitate the amendment of the contract after signature, and such amendment is affected, the Purchaser shall require the Contractor to provide additional Performance Security, and, if applicable, an ES Performance Security, to cover any cumulative increase of more than ten percent of the Initial Contract Price. 12.3.4 The Performance Security, and, if applicable, an ES Performance Security, shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the forms of bank guarantees provided in the tendering documents, as stipulated by the Purchaser in the SCC , or in another form acceptable to the Purchaser. 12.3.5 The Performance Security, and, if applicable, an ES Performance Security shall automatically be reduced by half on the date of the

		Operational Acceptance and shall become null and void, eighteen (18) months after Completion of the Facilities or twelve (12) months after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Notification Period has been extended on any part of the Facilities pursuant to Sub-Clause 26.8[Defects Notification Period Period] hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The Performance Security, and, if applicable, an ES Performance Security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to Clause 26.10 [Defects Notification Period], is liable for an extended warranty obligation, the performance security shall be extended for the period and up to the amount specified in the SCC .
13. Taxes and Duties	13.1	Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the United Republic of Tanzania where the Site is located.
	13.2	Notwithstanding Sub- Clause 13.1 above, the Purchaser shall bear and promptly pay all customs and import duties as well as other local taxes like, e.g., a value added tax (VAT), imposed by the law of the United Republic of Tanzania on the Goods specified in Price Schedule No. 1 and that are to be incorporated into the Facilities.
	13.3	If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the United Republic of Tanzania, the Purchaser shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
	13.4	For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Form of Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of tender submission in the United Republic of Tanzania (hereinafter called "Tax" in this Sub- Clause 13.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be, in accordance with Clause 35 [Changes of Law and Regulations] hereof.

D. Intellectual Property

14. Patent and Copyright	14.1	The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the United Republic of Tanzania.
	14.2	The copyright in all drawings, documents and other materials containing data and information furnished to the Purchaser by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Purchaser directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.
15. Confidential Information	15.1	Purchaser and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Purchaser to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause 15 .
	15.2	The Purchaser shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Purchaser for any purpose other than the design, procurement of Goods, construction or such other work and services as are required for the performance of the Contract.
	15.3	The obligation of a party under Sub- Clauses 15.1 and 15.2 above, however, shall not apply to that information which (a) now or hereafter enters the public domain through no fault of that party (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
	15.4	The above provisions of this Clause15 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.
	15.5	The provisions of this Clause15 shall survive termination, for whatever reason, of the Contract.

E. Execution of the Facilities

16. Representatives	16.1	<p><u>Project Manager</u></p> <p>If the Project Manager is not named in the Contract, then within Seven (7) working days of the Effective Date, the Purchaser shall appoint and notify the Contractor in writing of the name of the Project Manager. The Purchaser may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Purchaser at all times during the currency of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided. All notices, instructions, information and other communications given by the Contractor to the Purchaser under the Contract shall be given to the Project Manager, except as herein otherwise provided.</p>
	16.2	<p><u>Contractor's Representative & Project Manager</u></p> <p>16.2.1 If the Contractor's Representative is not named in the Contract, then within Seven (7) working days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Purchaser in writing to approve the person so appointed. If the Purchaser makes no objection to the appointment within Seven (7) working days, the Contractor's Representative shall be deemed to have been approved. If the Purchaser objects to the appointment within Seven (7) working days giving the reason thereof, then the Contractor shall appoint a replacement within Seven (7) working days of such objection, and the foregoing provisions of this Sub-Clause 16.2.1 shall apply thereto.</p> <p>16.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the currency of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract.</p> <p>16.2.3 All notices, instructions, information and all other communications given by the Purchaser or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.</p> <p>16.2.4 The Contractor shall not revoke the appointment of the Contractor's Representative without the Purchaser's prior written consent, which shall not be unreasonably withheld. If the Purchaser consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in Sub-Clause 16.2.1.</p> <p>16.2.5 The Contractor's Representative may, subject to the approval of the Purchaser (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has</p>

		<p>been delivered to the Purchaser and the Project Manager. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this Sub-Clause16.2.5 shall be deemed to be an act or exercise by the Contractor’s Representative.</p> <p>16.2.6 From the commencement of installation of the Facilities at the Site until Completion, the Contractor’s Representative shall appoint a suitable person as the construction manager (hereinafter referred to as “the Construction Manager”). The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.</p> <p>16.2.7 The Purchaser may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Purchaser, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under Sub-Clause 21.3 [Installation]. The Purchaser shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.</p> <p>16.2.8 If any representative or person employed by the Contractor is removed in accordance with Sub-Clause16.2.5, the Contractor shall, where required, promptly appoint a replacement.</p>
17. Work Programme	17.1	<p><u>Contractor’s Organization</u></p> <p>The Contractor shall supply to the Purchaser and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within twenty-one (21) days of the Effective Date. The Contractor shall promptly inform the Purchaser and the Project Manager in writing of any revision or alteration of such an organization chart.</p>
	17.2	<p><u>Programme of Performance</u></p> <p>Within twenty-eight (28)days after the date of signing the Agreement, the Supplier shall prepare andsubmit to the Project Manager a detailed programme of performance of theContract shall be in the form of the Critical Path Method (CPM), the PERT network,or other internationally used programs showing the sequence in which itproposes to design, manufacture, transport, assemble, install andpre-commission the Facilities, as well as the date by which the Supplierreasonably requires that the Purchaser shall have fulfilled its obligationsunder the Contract so as to enable the Supplier to execute the Contract inaccordance with the programme and to achieve Completion, Commissioning andAcceptance of the Facilities in accordance with the Contract. The programme ssubmitted by the Supplier shall accord with the Time Schedule included in thecorresponding Appendix (Time Schedule) to the Agreement and any other dates andperiods specified in the Contract. The Supplier shall update and revise theprogramme as and when appropriate or when required by the Project Manager, butwithout modification in the Times for Completion given under GCC 7.2 [Time forCommencement and Completion] and any extension granted in accordance withClause 39 [Extension of Time for Completion], and shall submit all</p>

		suchrevisions to the Project Manager.
	17.3	<p><u>Progress Report</u></p> <p>The Contractor shall monitor progress of all the activities specified in the programme referred to in Sub-Clause17.2above and supply a progress report to the Project Manager every month.</p> <p>The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the programme, giving comments and likely consequences and stating the corrective action being taken.</p>
	17.4	<p><u>Progress of Performance</u></p> <p>If at any time the Contractor’s actual progress falls behind the programme referred to in Sub-Clause 17.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Purchaser or the Project Manager, prepare and submit to the Project Manager a revised programme, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under Sub-Clause 7.2, any extension thereof entitled under Sub-Clause39.1, or any extended period as may otherwise be agreed upon between the Purchaser and the Contractor.</p>
	17.5	<p><u>Work Procedures</u></p> <p>The Contract shall be executed in accordance with the Contract Documents and the procedures given in the section on Sample Forms and Procedures of the Contract Documents.</p> <p>The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.</p>
18. Subcontracting	18.1	<p>The corresponding Appendix (List of Approved Subcontractors) to the Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including vendors. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Purchaser for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Purchaser for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.</p>
	18.2	<p>The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in Sub-Clause18.1.</p>
	18.3	<p>For items or parts of the Facilities not specified in the corresponding Appendix 5 [List of Major Items of Plant and Installation Services and List of Approved Subcontractors] to the Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.</p>
	18.4	<p>Each sub-contract shall include provisions which would entitle the Purchaser to require the sub-contract to be assigned to the Purchaser under Sub-Clause 18.5 (if and when applicable), or in event of termination by the Purchaser under Sub-Clause 41.2 [Termination].</p>
	18.5	<p>If a sub-contractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such</p>

		obligations to the Purchaser, then the Contractor shall do so.
19. Design and Engineering	19.1	<p><u>Specifications and Drawings</u></p> <p>19.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.</p> <p>19.1.2 The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Purchaser.</p> <p>19.1.3 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Project Manager.</p>
	19.2	<p><u>Codes and Standards</u></p> <p>Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of tender submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Purchaser and shall be treated in accordance with Clause 38 [Changes of Facilities].</p>
	19.3	<p><u>Approval/Review of Technical Documents by Project Manager</u></p> <p>19.3.1 The Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in the corresponding Appendix (List of Documents for Approval or Review) to the Agreement for its approval or review as specified and in accordance with the requirements of Sub-Clause 17.2 [Programme of Performance].</p> <p>19.3.2 Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.</p> <p>19.3.3 Sub-Clauses 19.3.2 through 19.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.</p> <p>19.3.4 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with Sub-Clause 19.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefore and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the said fourteen (14) working days, then the said document shall be deemed to have been approved by the Project Manager.</p> <p>19.3.5 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.</p> <p>19.3.6 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project</p>

		<p>Manager’s approval in accordance with Sub-Clause19.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.</p> <p>19.3.7 If any dispute or difference occurs between the Purchaser and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to Dispute Avoidance and Resolution Board for determination in accordance with Sub-Clause46.1 [Obtaining Dispute Avoidance and Resolution Board’s Decision] hereof. If such dispute or difference is referred to an Dispute Avoidance and Resolution Board, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager’s instructions, provided that if the Dispute Avoidance and Resolution Board upholds the Contractor’s view on the dispute and if the Purchaser has not given notice under Clause46.1 hereof, then the Contractor shall be reimbursed by the Purchaser for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Completion shall be extended accordingly.</p> <p>19.3.8 The Project Manager’s approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.</p> <p>19.3.8 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager’s approval thereof, pursuant to the provisions of this Sub-Clause19.3.</p> <p>19.3.9 If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of Clause 38[Change of Facilities] shall apply to such request.</p>
20. Procurement	20.1	<p><u>Goods</u></p> <p>Subject to Sub-Clause 13.2 [Taxes and Duties], the Contractor shall manufacture or procure and transport all the Goods in an expeditious and orderly manner to the Site.</p>
	20.2	<p><u>Purchaser-Supplied Plant, Equipment, and Materials</u></p> <p>If the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement provides that the Purchaser shall furnish any specific items of machinery, equipment or materials to the Contractor, the following provisions shall apply:</p> <p>20.2.1 The Purchaser shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Contractor at the time specified in the programme furnished by the Contractor, pursuant to Sub-Clause 17.2 [Work Program], unless otherwise mutually</p>

		<p>agreed.</p> <p>20.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Purchaser shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Purchaser, remedy such shortage, defect or default at the Purchaser's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this Sub-Clause 20.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.</p> <p>20.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Purchaser of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under Clause 26 [Defects Notification Period] or under any other provision of Contract.</p>
	20.3	<p><u>Transportation</u></p> <p>20.3.1 The Contractor shall at its own risk and expense transport all the Goods and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.</p> <p>20.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the Goods and the Contractor's Equipment.</p> <p>20.3.3 Upon dispatch of each shipment of the Goods and the Contractor's Equipment, the Contractor shall notify the Purchaser by telex, cable, facsimile or Electronic Data Interchange (EDI) of the description of the Goods and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the United Republic of Tanzania, if applicable, and at the Site. The Contractor shall furnish the Purchaser with relevant shipping documents to be agreed upon between the parties.</p> <p>23.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Goods and the Contractor's Equipment to the Site. The Purchaser shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Purchaser from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Goods and the Contractor's Equipment to the Site.</p>
	20.4	<p><u>Customs Clearance</u></p> <p>The Contractor shall, at its own expense, handle all imported Goods and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Purchaser's obligations under Sub-Clause 13.2 [Taxes and Duties], provided that if applicable laws or regulations require any application or act to be made by or in the name of the Purchaser, the Purchaser shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to Clause 39 [Extension of Time for Completion].</p>
21. Installation	21.1	<u>Setting Out/Supervision/Labour</u>

		<p>21.1.1 <i>Benchmark</i>: The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Purchaser. If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Purchaser, the expense of rectifying the same shall be borne by the Purchaser.</p> <p>21.1.2 <i>Contractor's Supervision</i>: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.</p> <p>21.1.3 <i>Labour</i>:</p> <ul style="list-style-type: none"> (a) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills. (b) Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith. (c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on the Site into the United Republic of Tanzania and in the exact region where the Site is located. (d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Purchaser may provide the same to such personnel and recover the cost of doing so from the Contractor. (e) The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labour of its Subcontractors. (f) The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.
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21.1.4 Rates of Wages and Conditions of Labor

The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Purchasers whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

21.1.5 Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours **stated in the SCC**, unless:

- (a) otherwise stated in the Contract,
- (b) the Project Manager gives consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.

If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.

This Sub-Clause shall not apply to any work which is customarily carried out by rotary or double-shifts.

21.1.6 Facilities for Staff and Labor

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Purchaser's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

21.1.7 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Purchaser's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the

		<p>Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.</p> <p>The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.</p> <p>The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Sub-Contractors and Purchaser's and Project Manager's' employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.</p> <p>The Contractor shall include in the program to be submitted for the execution of the Facilities under Sub-Clause 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.</p> <p>21.1.8 Funeral Arrangements</p> <p>In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return and burial, unless otherwise specified in the SCC.</p> <p>21.1.9 Records of Contractor's Personnel</p> <p>The Contractor shall keep accurate records of the Contractor's personnel, including the number of each class of Contractor's Personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.</p>
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	21.2	<p><u>Contractor’s Equipment</u></p> <p>21.2.1 All Contractor’s Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager’s consent that such Contractor’s Equipment is no longer required for the execution of the Contract.</p> <p>21.2.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.</p> <p>21.2.3 The Purchaser will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export</p>

		of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.
	21.3	<p><u>Site Regulations and Safety</u></p> <p>The Purchaser and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Purchaser, with a copy to the Project Manager, proposed Site regulations for the Purchaser's approval, which approval shall not be unreasonably withheld.</p> <p>Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.</p>
	21.4	<p><u>Opportunities for Other Contractors</u></p> <p>21.4.1 The Contractor shall, upon written request from the Purchaser or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Purchaser on or near the Site.</p> <p>21.4.2 If the Contractor, upon written request from the Purchaser or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Purchaser shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.</p> <p>21.4.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Purchaser in regard to their work.</p> <p>21.4.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.</p>
	21.5	<p><u>Emergency Work</u></p> <p>21.5.1 If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.</p> <p>21.5.2 If the Contractor is unable or unwilling to do such work immediately, the Purchaser may do or cause such work to be done as the Purchaser may determine is necessary in order to prevent damage to the Facilities. In such event the Purchaser shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons, therefore. If the work done or</p>

		caused to be done by the Purchaser is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Purchaser in connection therewith shall be paid by the Contractor to the Purchaser. Otherwise, the cost of such remedial work shall be borne by the Purchaser.
	21.6	<p><u>Site Clearance</u></p> <p>21.6.1 <i>Site Clearance in Course of Performance:</i> In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.</p> <p>24.6.2 <i>Clearance of Site after Completion:</i> After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities clean and safe.</p>
	21.7	<p><u>Watching and Lighting</u></p> <p>The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.</p>
	21.8	<p><u>Work at Night and on Holidays</u></p> <p>21.8.1 Unless otherwise provided in the Contract, no work shall be carried out during the night and on public holidays of the United Republic of Tanzania without prior written consent of the Purchaser, except where work is necessary or required to ensure safety of the Facilities or for the protection of life, or to prevent loss or damage to property, when the Contractor shall immediately advise the Project Manager, provided that provisions of this Sub-Clause 21.8.1 shall not apply to any work which is customarily carried out by rotary or double-shifts.</p> <p>21.8.2 Notwithstanding Sub-Clauses 21.8.1 or 21.1.3, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Purchaser's consent thereto, the Purchaser shall not unreasonably withhold such consent.</p>
22. Test and Inspection	22.1	The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Goods and any part of the Facilities as are specified in the Contract.
	22.2	The Purchaser and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Purchaser shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
	22.3	Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser and the Project Manager (or their designated representatives) to attend the test and/or inspection.
	22.4	The Contractor shall provide the Project Manager with a certified report

		<p>of the results of any such test and/or inspection.</p> <p>If the Purchaser or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.</p>
	22.5	<p>The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected</p>
	22.6	<p>If any Goods or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Goods or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under Sub-Clause 22.3.</p>
	22.7	<p>If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Goods or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to a Dispute Avoidance and Resolution Board for determination in accordance with Clause46.1.</p>
	22.8	<p>The Contractor shall afford the Purchaser and the Project Manager, at the Purchaser's expense, access at any reasonable time to any place where the Goods are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.</p>
	22.9	<p>The Contractor agrees that neither the execution of a test and/or inspection of Goods or any part of the Facilities, nor the attendance by the Purchaser or the Project Manager, nor the issue of any test certificate pursuant to Sub-Clause 22.4, shall release the Contractor from any other responsibilities under the Contract.</p>
	22.10	<p>No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.</p>
	22.11	<p>The Contractor shall uncover any part of the Facilities or foundations or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.</p> <p>If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of Sub-Clause 22.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Purchaser, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.</p>
23. Completion of the Facilities	23.1	<p>As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a</p>

		tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Purchaser in writing.
	23.2	<p>Within seven (7) working days after receipt of the notice from the Contractor under Sub-Clause 23.1 [Completion of the Facilities], the Purchaser shall supply the operating and maintenance personnel specified in the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement for Pre-commissioning of the Facilities or any part thereof.</p> <p>Pursuant to the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement, the Purchaser shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Pre-commissioning of the Facilities or any part thereof.</p>
	23.3	As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Purchaser and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Purchaser in accordance with Sub- Clause 23.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning subject to Clause 24 [Commissioning and Operational Acceptance].
	23.4	As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.
	23.5	<p>23.5.1 The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under Sub-Clause 23.4, either issue a Completion Certificate in the form specified in the Sample Forms and Procedures section in the tendering documents, stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under Sub-Clause 23.4, or notify the Contractor in writing of any defects and/or deficiencies.</p> <p>23.5.2 If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies and shall repeat the procedure described in Sub-Clause 23.4.</p> <p>23.5.3 If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.</p> <p>23.5.4 If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.</p>
	23.6	If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under Sub- Clause 23.4 or within seven (7) days after receipt of the Contractor's repeated notice under Sub- Clause 23.5, or if the Purchaser makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Purchaser's use of

		the Facilities, as the case may be.
	23.7	As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Purchaser will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.
	23.8	Upon Completion, the Purchaser shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.
24. Commissioning and Operational Acceptance	24.1	<p><u>Commissioning</u></p> <p>24.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to Clause 23.5 [Completion of facilities], or immediately after issue of the deemed Completion, under Clause 23.6.</p> <p>24.1.2 The Purchaser shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.</p>
	24.2	<p><u>Guarantee Test</u></p> <p>24.2.1 The Guarantee Test (and repeats thereof) shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Technical Specifications. The Contractor's and Project Manager's advisory personnel shall attend the Guarantee Test and shall advise and assist the Purchaser. The Purchaser shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).</p> <p>24.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Purchaser and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and Sub-Clauses 27.2 and 27.3 [Functional Guarantees] shall not apply.</p>
	24.3	<p><u>Operational Acceptance</u></p> <p>24.3.1 Subject to Sub-Clause 24.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when</p> <ul style="list-style-type: none"> (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion or any other agreed upon period as specified in Sub-Clause 24.2.2 above; or (c) the Contractor has paid the liquidated damages specified in Sub-Clause 26.3 [Defects Notification Period] hereof; and (d) any minor items mentioned in Sub-Clause 23.7 [Completion

		<p>of the Facilities] hereof relevant to the Facilities or that part thereof have been completed.</p> <p>24.3.2 At any time after any of the events set out in Sub-Clause 24.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Tendering Documents or in another form acceptable to the Purchaser in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.</p> <p>24.3.3 The Project Manager shall, after consultation with the Purchaser, and within seven (7) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.</p> <p>24.3.4 If within seven (7) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.</p>
	24.4	<p><u>Partial Acceptance</u></p> <p>24.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.</p> <p>24.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.</p>

F. Guarantees and Liabilities

25. Completion Time Guarantee	25.1	The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the SCC) within the Time for Completion specified in the SCC pursuant to Sub- Clause 7.2 [Time for Commencement and Completion], or within such extended time to which the Contractor shall be entitled under Clause 39 [Extension of Time for Completion] hereof.
	25.2	<p>If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under Clause 39 [Extension of Time for Completion], the Contractor shall pay to the Purchaser liquidated damages in the amount specified in the SCC as a percentage rate of the Contract Price, or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as “Maximum” in the SCC. Once the “Maximum” is reached, the Purchaser may consider termination of the Contract, pursuant to Sub-Clause 41.2.2 [Termination].</p> <p>Such payment shall completely satisfy the Contractor’s obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under Clause 39 [Extension of Time for Completion] The Contractor shall have no further liability whatsoever to the Purchaser in respect thereof.</p> <p>However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.</p> <p>Save for liquidated damages payable under this Sub-Clause 25.2 [Completion Time Guarantee], the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the corresponding Appendix (Time Schedule) to the Agreement and/or other programme of work prepared pursuant to Sub-Clause 17.2 [Work Program] shall not render the Contractor liable for any loss or damage thereby suffered by the Purchaser.</p>
	25.3	If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under Clause 39 [Extension of Time for Completion], the Purchaser shall pay to the Contractor a bonus in the amount specified in the SCC . The aggregate amount of such bonus shall in no event exceed the amount specified as “Maximum” in the SCC .
26. Defect Liability	26.1	The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Goods supplied and of the work executed.
	26.2	<p>The Defect Notification Period shall be eighteen (18) months from the date of Completion of the Facilities (or any part thereof) or twelve (12) months from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC.</p> <p>If during the Defect Notification Period any defect should be found in the design, engineering, materials and workmanship of the Goods supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Purchaser regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:</p>

		<p>(a) improper operation or maintenance of the Facilities by the Purchaser</p> <p>(b) operation of the Facilities outside specifications provided in the Contract</p> <p>(c) normal wear and tear.</p>
	26.3	<p>The Contractor's obligations under this Clause 26 shall not apply to</p> <p>(a) any materials that are supplied by the Purchaser under Sub-Clause 20.2 [Procurement], are normally consumed in operation, or have a normal life shorter than the Defects Notification Period stated herein</p> <p>(b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Purchaser or any matters for which the Contractor has disclaimed responsibility herein</p> <p>(c) any other materials supplied, or any other work executed by or on behalf of the Purchaser, except for the work executed by the Purchaser under Sub-Clause 26.7.</p>
	26.4	<p>The Purchaser shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Contractor to inspect any such defect.</p>
	26.5	<p>The Purchaser shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this Clause 26.</p> <p>The Contractor may, with the consent of the Purchaser, remove from the Site any Goods or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.</p>
	26.6	<p>If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Purchaser may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.</p> <p>If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests shall be agreed upon by the Purchaser and the Contractor.</p>
	26.7	<p>If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Purchaser may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Purchaser in connection therewith shall be paid to the Purchaser by the Contractor or may be deducted by the Purchaser from any monies due the Contractor or claimed under the Performance Security.</p>
	26.8	<p>If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defects Notification Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Purchaser because of any of the aforesaid reasons.</p>
	26.9	<p>Except as provided in this Clauses 2 and 31 [Care of Facilities], the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Goods, design or engineering or work</p>

		executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Contractor.
	26.10	In addition, the Contractor shall also provide an extended warranty for any such component of the Facilities and during the period of time as may be specified in the SCC . Such obligation shall be in addition to the defect liability specified under Sub- Clause 26.2 .
27. Functional Guarantees	27.1	The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the corresponding Appendix (Functional Guarantees) to the Agreement, subject to and upon the conditions therein specified.
	27.2	If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the corresponding Appendix (Functional Guarantees) to the Agreement are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Purchaser upon completion of the necessary changes, modifications and/or additions, and shall request the Purchaser to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Purchaser may consider termination of the Contract, pursuant to Sub- Clause 41.2.2 [Termination].
	27.3	If, for reasons attributable to the Contractor, the Functional Guarantees specified in the corresponding Appendix (Functional Guarantees) to the Agreement are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Agreement is met, the Contractor shall, at the Contractor's option, either (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Purchaser to repeat the Guarantee Test or (b) pay liquidated damages to the Purchaser in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the corresponding Appendix (Functional Guarantees) to the Agreement.
	27.4	The payment of liquidated damages under Sub- Clause 27.3 , up to the limitation of liability specified in the SCC , shall completely satisfy the Contractor's guarantees under Sub- Clause 27.3 , and the Contractor shall have no further liability whatsoever to the Purchaser in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.
28. Patent Indemnity	28.1	The Contractor shall, subject to the Purchaser's compliance with Sub- Clause 28.2 , indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the United Republic of Tanzania; and (b) the sale of the products produced by the Facilities in United Republic of Tanzania.

		Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Agreement.
	28.2	<p>If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in Sub-Clause 28.1, the Purchaser shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.</p> <p>If the Contractor fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Purchaser within the twenty-eight (28) day period, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim.</p> <p>The Purchaser shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.</p>
	28.3	The Purchaser shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.
29. Limitation of Liability	29.1	<p>Except in cases of criminal negligence or willful misconduct,</p> <p>(a) the Contractor shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Purchaser and</p> <p>(b) the aggregate liability of the Contractor to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Purchaser with respect to patent infringement.</p>

G. Risk Distribution

30. Transfer of Ownership	30.1	Ownership of the Goods (including spare parts) to be imported into the United Republic of Tanzania shall be transferred to the Purchaser upon loading on to the mode of transport to be used to convey the Goods from the country of origin.
	30.2	Ownership of the Goods (including spare parts) procured in the United Republic of Tanzania where the Site is located shall be transferred to the Purchaser when the Goods are brought on to the Site.
	30.3	Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
	30.4	Ownership of any Goods in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Purchaser and the Contractor agree that the Goods in question are no longer required for the Facilities.
	30.5	Notwithstanding the transfer of ownership of the Goods, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to Clause 31 [Care of Facilities] hereof until Completion of the Facilities or the part thereof in which such Goods are incorporated.
31. Care of Facilities	31.1 a. The	Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to Clause 23 [Completion of the Facilities] or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to Clause 26 [Defects Liability] . Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of Sub-Clauses 31.2 and 37.1 [War Risks].
	31.2	<p>If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of</p> <p>(a) (insofar as they relate to the United Republic of Tanzania, where the Site is located) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under Clause 33 [Insurance] hereof</p> <p>(b) any use or occupation by the Purchaser or any third party (other than a Subcontractor) authorized by the Purchaser of any part of the Facilities</p> <p>(c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Purchaser, or any such matter for which the Contractor has disclaimed responsibility herein,</p> <p>the Purchaser shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all</p>

		temporary facilities and all parts thereof lost, destroyed or damaged. If the Purchaser requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Purchaser in accordance with Clause 38 [Change in the Facilities]. If the Purchaser does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Purchaser shall either request a change in accordance with Clause 38 , excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Purchaser shall terminate the Contract pursuant to Sub-Clause 42.1 hereof.
	31.3	The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in Sub-Clause 31.2 [Care of the Facilities] (with respect to the Contractor's temporary facilities), and (ii) where such loss or damage arises by reason of any of the matters specified in Sub-Clauses 31.2 (b) and (c) and 37.1 [War Risks].
	31.4	With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in Sub-Clause 37.1 , the provisions of Sub-Clause 37.3 shall apply.
32. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification	32.1	Subject to Sub-Clause 32.3 , the Contractor shall indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Purchaser, its contractors, employees, officers or agents.
	32.2	<p>If any proceedings are brought or any claim is made against the Purchaser that might subject the Contractor to liability under Sub-Clause 32.1, the Purchaser shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.</p> <p>If the Contractor fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Purchaser within the twenty-eight (28) day period, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim.</p> <p>The Purchaser shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.</p>
	32.3	The Purchaser shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Purchaser, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under Clause 33 [Insurance], provided that such fire, explosion or other perils were not

		caused by any act or failure of the Contractor.
	32.4	The party entitled to the benefit of an indemnity under this Clause 32 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.
33. Insurance	33.1	<p>The Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in SCC. The identity of the insurers and the form of the policies shall be subject to the approval of the Purchaser, who should not unreasonably withhold such approval.</p> <p>(a) <u>Cargo Insurance During Transport</u>: Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Goods (including spare parts therefore) and to the Contractor's Equipment.</p> <p>(b) <u>Installation All Risks Insurance</u>: Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Notification Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Notification Period.</p> <p>(c) <u>Third Party Liability Insurance</u>: Covering bodily injury or death suffered by third parties (including the Purchaser's personnel) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.</p> <p>(d) <u>Automobile Liability Insurance</u>: Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.</p> <p>(e) <u>Workers' Compensation</u>: In accordance with the statutory requirements applicable in United Republic of Tanzania.</p> <p>(f) <u>Purchaser's Liability</u>: In accordance with the statutory requirements applicable in United Republic of Tanzania.</p> <p>(g) <u>Other Insurances</u>: Such other insurances as may be specifically agreed upon by the parties hereto as listed in SCC.</p>
	33.2	The Purchaser shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to Sub- Clause 33.1 , except for the Third Party Liability, Workers' Compensation and Purchaser's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured's under all insurance policies taken out by the Contractor pursuant to Sub- Clause 33.1 except for the Cargo Insurance During Transport, Workers' Compensation and Purchaser's Liability Insurances. All insurer's rights of subrogation against such co-insured's for losses or claims arising out of the performance of the Contract shall be waived under such policies.
	33.3	The Contractor shall, in accordance with the provisions of the corresponding Appendix (Insurance Requirements) to the Agreement, deliver to the Purchaser certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Purchaser by insurers prior to cancellation or material modification of a policy.
	33.4	The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their

		personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
	33.5	The Purchaser shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the corresponding Appendix (Insurance Requirements) to the Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insured's under all such policies. All insurers' rights of subrogation against such co-insured's for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Purchaser shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Purchaser shall provide copies of the policies taken out by the Purchaser under this Sub- Clause 35.5.
	33.6	If the Contractor fails to take out and/or maintain in effect the insurances referred to in Sub- Clause 33.1, the Purchaser may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Purchaser shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Purchaser fails to take out and/or maintain in effect the insurances referred to in Sub- Clause 33.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Purchaser under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Purchaser. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Purchaser, and the Contractor shall have full recourse against the Purchaser for any and all liabilities of the Purchaser herein.
	33.7	Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this Clause 37, and all monies payable by any insurers shall be paid to the Contractor. The Purchaser shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Purchaser's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Purchaser. With respect to insurance claims in which the Contractor's interest is involved, the Purchaser shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.
34.. Unforeseen Conditions	34.1	If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities (including any data as to boring tests) provided by the Purchaser, and on the basis of information that it could have obtained from a visual inspection of the Site (if access thereto was available) or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in

		<p>consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Goods or Contractor's Equipment, notify the Project Manager in writing of</p> <p>(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen</p> <p>(b) the additional work and/or Goods and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions</p> <p>(c) the extent of the anticipated delay</p> <p>(d) the additional cost and expense that the Contractor is likely to incur.</p>
	34.2	On receiving any notice from the Contractor under Sub- Clause 34.1, the Project Manager shall promptly consult with the Purchaser and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Purchaser, of the actions to be taken.
	34.3	Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in Clause 34.1 [Unforeseen Conditions] shall be paid by the Purchaser to the Contractor as an addition to the Contract Price.
	34.4	If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in Clause 34.1, the Time for Completion shall be extended in accordance with Clause 39 [Extension of Time for Completion]
35. Change in Laws and Regulations	35.1	If, after the date twenty-eight (28) days prior to the date of Tender submission, in the United Republic of Tanzania, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the SCC .
36. Force Majeure	36.1	<p>Force majeure shall include, without limitation, the following:</p> <p>(a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war</p> <p>(b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts</p> <p>(c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local</p>

		<p>state or national government authority</p> <p>(d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague</p> <p>(e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster</p> <p>(f) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.</p>
	36.2	If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.
	36.3	The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with Clause 39 {Extension of Time for Completion}.
	36.4	The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under Sub- Clauses 36.6 and 37.5 [War Risks].
	36.5	<p>No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall</p> <p>(a) constitute a default or breach of the Contract</p> <p>(b) (subject to Sub-Clauses 31.2 [Care of Facilities], and 37.3 and 37.4 [War Risks] give rise to any claim for damages or additional cost or expense occasioned thereby</p> <p>if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.</p>
	36.6	If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under Sub- Clause 37.5 [War Risks].
	36.7	In the event of termination pursuant to Sub- Clause 36.6 [Force Majeure], the rights and obligations of the Purchaser and the Contractor shall be as specified in Sub- Clauses 41.1.2 and 41.1.3 [Termination].
	36.8	Notwithstanding Sub- Clause 36.5 , Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Contractor herein.
37. War Risks	37.1	"War Risks" shall mean any event specified in paragraphs (a) and (b) of Sub Clause 36.1 [Force Majeure] and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the United Republic of Tanzania where the Site is located.

	37.2	<p>Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to</p> <ul style="list-style-type: none"> (a) destruction of or damage to Facilities, Goods, or any part thereof (b) destruction of or damage to property of the Purchaser or any third party (c) injury or loss of life <p>if such destruction, damage, injury or loss of life is caused by any War Risks, and the Purchaser shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.</p>
	37.3	<p>If the Facilities or any Goods or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Purchaser shall pay the Contractor for</p> <ul style="list-style-type: none"> (a) any part of the Facilities or the Goods so destroyed or damaged (to the extent not already paid for by the Purchaser) (b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged (c) replacing or making good any such destruction or damage to the Facilities or the Goods or any part thereof so far as may be required by the Purchaser, and as may be necessary for completion of the Facilities. <p>If the Purchaser does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Purchaser shall either request a change in accordance with Clause 38 [Change in the Facilities], excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to Sub-Clause 41. [Termination].</p>
	37.4	<p>Notwithstanding anything contained in the Contract, the Purchaser shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Purchaser in writing of any such increased cost.</p>
	37.5	<p>If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.</p>
	37.6	<p>In the event of termination pursuant to Sub-Clauses 37.3 or 37.5, the rights and obligations of the Purchaser and the Contractor shall be specified in Sub-Clauses 41.1.2 and 41.1.3 [Termination].</p>

H. Change in Contract Elements

<p>38. Change in the Facilities</p>	<p>38.1</p>	<p><u>Introducing a Change</u></p> <p>38.1.1 Subject to Sub-Clauses 38.2.5 and 38.2.7, the Purchaser shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities (hereinafter called “Change”), provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.</p> <p>38.1.2 The Contractor may from time to time during its performance of the Contract propose to the Purchaser (with a copy to the Project Manager) any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Purchaser may at its discretion approve or reject any Change proposed by the Contractor, provided that the Purchaser shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.</p> <p>38.1.3 Notwithstanding Sub-Clauses 38.1.1 and 38.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.</p> <p>38.1.4 The procedure on how to proceed with and execute Changes is specified in Sub-Clauses 38.2 and 38.3, and further details and sample forms are provided in the Sample Forms and Procedures section in the Tendering Documents.</p>
	<p>38.2</p>	<p><u>Changes Originating from Purchaser</u></p> <p>38.2.1 If the Purchaser proposes a Change pursuant to Sub-Clause 38.1.1, it shall send to the Contractor a “Request for Change Proposal,” requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:</p> <ul style="list-style-type: none"> (a) brief description of the Change (b) effect on the Time for Completion (c) estimated cost of the Change (d) effect on Functional Guarantees (if any) (e) effect on any other provisions of the Contract. <p>38.2.2 Prior to preparing and submitting the “Change Proposal,” the Contractor shall submit to the Project Manager an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.</p> <p>38.2.3 Upon receipt of the Contractor’s Estimate for Change Proposal, the Purchaser shall do one of the following:</p> <ul style="list-style-type: none"> (a) accept the Contractor’s estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate

		<p>(c) advise the Contractor that the Purchaser does not intend to proceed with the Change.</p> <p>38.2.4 Upon receipt of the Purchaser’s instruction to proceed under Sub-Clause 38.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with Sub- Clause 38.2.1.</p> <p>38.2.5 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.</p> <p>38.2.6 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this Clause 38 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Purchaser accepts the Contractor’s objection, the Purchaser shall withdraw the proposed Change and shall notify the Contractor in writing thereof. The Contractor’s failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.</p> <p>38.2.7 Upon receipt of the Change Proposal, the Purchaser and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Purchaser shall, if it intends to proceed with the Change, issue the Contractor with a Change Order. If the Purchaser is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.</p> <p>38.2.8 If the Purchaser decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with Sub-Clause 38.2.3.</p> <p>38.2.9 If the Purchaser and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Purchaser may nevertheless instruct the Contractor to proceed with the Change by issue of a “Pending Agreement Change Order.”</p> <p>38.2.10 Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.</p> <p>38.2.11 If the parties cannot reach agreement within sixty (60) days from</p>
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		the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Avoidance and Resolution Board in accordance with the provisions of Clause 46 [Obtaining Disputes Adjudication Board Decision].
	38.3	<p><u>Changes Originating from Contractor</u></p> <p>38.3.1 If the Contractor proposes a Change pursuant to Sub-Clause 38.1.2, the Contractor shall submit to the Project Manager a written “Application for Change Proposal,” giving reasons for the proposed Change and including the information specified in Sub-Clause 38.2.1.</p> <p>38.3.2 Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in Sub-Clauses 38.2.6 and 38.2.7. However, should the Purchaser choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.</p>
39. Extension of Time for Completion	39a	<p>The Time(s) for Completion specified in the SCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:</p> <ul style="list-style-type: none"> (a) any Change in the Facilities as provided in Clause 38 [Change in the Facilities] (b) any occurrence of Force Majeure as provided in Clause 36, unforeseen conditions as provided in Clause 34, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of Sub-Clause 31.2 [Care of Facilities] (c) any suspension order given by the Purchaser under Clause 40 hereof or reduction in the rate of progress pursuant to Clause 40.2 or (d) any changes in laws and regulations as provided in Clause 35 or (e) any default or breach of the Contract by the Purchaser, specifically including failure to supply the items listed in the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement, or any activity, act or omission of any other contractors employed by the Purchaser or (f) any other matter specifically mentioned in the Contract by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.
	39.2	Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Purchaser and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Purchaser’s estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter the Dispute Avoidance and Resolution Board, pursuant to Clause 46.1 .
	39.3	The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.
	39.4	In all cases where the Contractor has given a notice of a claim for an extension of time under Sub- Clause 39.2 , the Contractor shall consult

		with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under Sub-Clause 39.1, the amount of such extra costs shall be added to the Contract Price.
40. Suspension	40.1	The Purchaser may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons thereof. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Project Manager.
	40.2	If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Purchaser shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with Clause 38 [Change in the Facilities] , excluding the performance of the suspended obligations from the Contract.
	40.3	If the Purchaser fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with Clause 38 [Change in the Facilities] or, where it affects the whole of the Facilities, as termination of the Contract under Sub-Clause 41.1 .
	40.4	If: (a) the Purchaser has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the corresponding Appendix (Terms and Procedures of Payment) to the Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Purchaser that requires payment of such sum, with interest thereon as stipulated in Sub-Clause 11.3 [Terms of Payment] , requires approval of such invoice or supporting documents, or specifies the breach and requires the Purchaser to remedy the same, as the case may be. If the Purchaser fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser, including but not limited to the Purchaser's failure to provide possession of or access to the Site or other areas in accordance with Sub-Clause 9.2 [Purchaser's Responsibilities] , or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, then the Contractor may by fourteen (14) days' notice to the Purchaser suspend performance of all or

		any of its obligations under the Contract or reduce the rate of progress.
	40.5	If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this Clause 40 , then the Time for Completion shall be extended in accordance with Sub- Clause 39.1 [Extension of Time for Completion], and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Purchaser to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.
	40.6	During the period of suspension, the Contractor shall not remove from the Site any Goods, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Purchaser.
41. Termination	41.1	<p><u>Termination for Purchaser's Convenience</u></p> <p>41.1.1 The Purchaser may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this Sub-Clause 41.1.</p> <p>41.1.2 Upon receipt of the notice of termination under Sub-Clause 41.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination</p> <ul style="list-style-type: none"> (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to paragraph (d) (ii) below c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition (d) In addition, the Contractor, subject to the payment specified in Sub-Clause 41.1.3, shall <ul style="list-style-type: none"> (i) deliver to the Purchaser the parts of the Facilities executed by the Contractor up to the date of termination (ii) to the extent legally possible, assign to the Purchaser all right, title and benefit of the Contractor to the Facilities and to the Goods as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Contractor and its Subcontractors (iii) deliver to the Purchaser all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities. <p>41.1.3 In the event of termination of the Contract under Sub-Clause 41.1.1, the Purchaser shall pay to the Contractor the following amounts:</p>

		<ul style="list-style-type: none"> (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges (d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of Sub-Clause 41.1.2 (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.
	41.2	<p><u>Termination for Contractor's Default</u></p> <p>41.2.1 The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons thereof to the Contractor, referring to this Sub-Clause 41.2:</p> <ul style="list-style-type: none"> (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of Clause 42 [Assignment]. (c) if the Contractor, in the judgment of the Purchaser has engaged in corrupt, coercive, collusive, obstructive or fraudulent practices in competing for or in executing the Contract. <p>For the purpose of this paragraph:</p> <ul style="list-style-type: none"> i. "corrupt practice" means the offering, giving receiving or soliciting of anything of value to influence the action of a public officer in the procurement process or contract execution; ii. "coercive practice" means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party for the purpose of influencing improperly the action or that party in connection with public procurement or in furtherance of corrupt practice or fraudulent practice; iii. "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government or a public body and includes collusive practices among tenderers, prior to or after submission designed to establish tender prices at artificial

		<p>non-competitive levels and to deprive the Government of the benefits of free and open competition;</p> <p>iv. “obstructive practice” means acts intended to materially impede access to required information in exercising a duty under this Act;</p> <p>41.2.2 If the Contractor</p> <ul style="list-style-type: none"> (a) has abandoned or repudiated the Contract (b) has without valid reason failed to commence work on the Facilities promptly or has suspended (other than pursuant to Sub-Clause 40.2 [Suspension]) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Purchaser to proceed (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause (d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Facilities in the manner specified in the programme furnished under Sub-Clause 17.2 [Work Program] at rates of progress that give reasonable assurance to the Purchaser that the Contractor can attain Completion of the Facilities by the Time for Completion as extended, <p>then the Purchaser may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Purchaser may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this Sub-Clause 41.2.</p> <p>41.2.3 Upon receipt of the notice of termination under Sub-Clauses 41.2.1 or 41.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,</p> <ul style="list-style-type: none"> (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to paragraph (d) below (c) deliver to the Purchaser the parts of the Facilities executed by the Contractor up to the date of termination (d) to the extent legally possible, assign to the Purchaser all right, title and benefit of the Contractor to the Facilities and to the Goods as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Contractor and its Subcontractors (e) deliver to the Purchaser all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.
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		<p>41.2.4 The Purchaser may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third party. The Purchaser may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Purchaser and with an indemnification by the Purchaser for all liability including damage or injury to persons arising out of the Purchaser's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Purchaser considers expedient for the supply and installation of the Facilities.</p> <p>Upon completion of the Facilities or at such earlier date as the Purchaser thinks appropriate, the Purchaser shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.</p> <p>41.2.5 Subject to Sub-Clause 41.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Goods on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of Sub-Clause 41.2.3. Any sums due the Purchaser from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.</p> <p>41.2.6 If the Purchaser completes the Facilities, the cost of completing the Facilities by the Purchaser shall be determined.</p> <p>If the sum that the Contractor is entitled to be paid, pursuant to Sub-Clause 41.2.5, plus the reasonable costs incurred by the Purchaser in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.</p> <p>If such excess is greater than the sums due the Contractor under Sub-Clause 41.2.5, the Contractor shall pay the balance to the Purchaser, and if such excess is less than the sums due the Contractor under Sub-Clause 41.2.5, the Purchaser shall pay the balance to the Contractor.</p> <p>The Purchaser and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.</p>
	41.3	<p><u>Termination by Contractor</u></p> <p>41.3.1 If</p> <p>(a) the Purchaser has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the corresponding Appendix (Terms and Procedures of Payment) of the Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Purchaser that requires payment of such sum, with interest thereon as stipulated in Sub-Clause 11.3 [Terms of Payment], requires approval of such invoice or supporting documents, or specifies the breach and requires</p>

the Purchaser to remedy the same, as the case may be. If the Purchaser fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser, including but not limited to the Purchaser's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may give a notice to the Purchaser thereof, and if the Purchaser has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Purchaser referring to this Sub-Clause 41.3.1, forthwith terminate the Contract.

41.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Purchaser to that effect, referring to this Sub-Clause 41.3.2, if the Purchaser becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Purchaser takes or suffers any other analogous action in consequence of debt.

41.3.3 If the Contract is terminated under Sub-Clauses 41.3.1 or 41.3.2, then the Contractor shall immediately

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to paragraph (d) (ii)
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site.
- (d) In addition, the Contractor, subject to the payment specified in Sub-Clause 41.3.4, shall
 - (i) deliver to the Purchaser the parts of the Facilities executed by the Contractor up to the date of termination
 - (ii) to the extent legally possible, assign to the Purchaser all right, title and benefit of the Contractor to the Facilities and to the Goods as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Contractor and its Subcontractors

		<p>(iii) deliver to the Purchaser all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.</p> <p>41.3.4 If the Contract is terminated under Clauses 41.3.1 or 41.3.2, the Purchaser shall pay to the Contractor all payments specified in Sub-Clause 41.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.</p> <p>41.3.5 Termination by the Contractor pursuant to this Sub-Clause 41.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by Sub-Clause 41.3.</p>
	41.4	In this Clause 41 , the expression “Facilities executed” shall include all work executed, Installation Services provided, and all Goods acquired (or subject to a legally binding obligation to purchase) by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.
	41.5	In this Clause 41 , in calculating any monies due from the Purchaser to the Contractor, account shall be taken of any sum previously paid by the Purchaser to the Contractor under the Contract, including any advance payment paid pursuant to the corresponding Appendix (Terms and Procedures of Payment) to the Agreement.
42. Assignment	42.1	Neither the Purchaser nor the Contractor shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

I. Claims, Disputes and Arbitration

43. Contractor's Claims	43.1	If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.
	43.2	If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Purchaser shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.
	43.3	The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
	43.4	The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Purchaser's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.
	43.5	<p>Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:</p> <p style="padding-left: 40px;">(a) this fully detailed claim shall be considered as interim;</p> <p style="padding-left: 40px;">(b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and</p> <p style="padding-left: 40px;">(c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.</p>
	43.6	Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.
	43.7	The Project Manager shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Clause 39 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

	43.8	Each Payment Certificate shall include such additional payment for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.
	43.9	If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer it to the Dispute Avoidance and Resolution Board in accordance with Sub-Sub-Clause 46.4 [Obtaining Dispute Avoidance and Resolution Board's Decision].
	43.10	The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.
44. Appointment of the Dispute Avoidance and Resolution Board	44.1	Disputes shall be referred to a DARB for decision in accordance with Sub-Clause 46.4 [Obtaining Dispute Avoidance and Resolution Board's Decision]. The Parties shall appoint a DARB by the date stated in the SCC .
	44.2	The DARB shall comprise, as stated in the SCC , either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DARB shall comprise three persons, one of whom shall serve as chairman.
	44.3	If the Parties have not jointly appointed the DARB 21 days before the date stated in the SCC and the DARB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.
	44.4	The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Avoidance and Resolution Board Agreement contained in the Appendix B to these General Conditions, with such amendments as are agreed between them.
	44.5	The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DARB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.
	44.6	If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.
	44.7	The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Purchaser or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DARB (including each member) shall expire when the discharge referred to in Sub-Clause 50.1 shall have become effective.
45. Failure to Agree on	45.1	If any of the following conditions the Parties fail to agree upon the

<p>the Composition of the Dispute Avoidance and Resolution Board</p>		<p>appointment of the sole member of the DARB by the date stated in the first paragraph of Clause 44, [Appointment of the Dispute Avoidance and Resolution Board],</p> <p>a) either Party fails to nominate a member (for approval by the other Party) or fails to approve a member nominated by the other Party, of a DARB of three persons by such date,</p> <p>b) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DARB by such date, or</p> <p>c) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,</p> <p>then the Appointing Entity or official named in the SCC shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DARB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.</p>
<p>46 Obtaining Dispute Avoidance and Resolution Board's Decision</p>	<p>46.1</p>	<p>If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DARB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.</p>
	<p>46.2</p>	<p>For a DARB of three persons, the DARB shall be deemed to have received such reference on the date when it is received by the chairman of the DARB.</p>
	<p>46.3</p>	<p>Both Parties shall promptly make available to the DARB all such additional information, further access to the Site, and appropriate facilities, as the DARB may require for the purposes of making a decision on such dispute. The DARB shall be deemed to be not acting as arbitrator(s).</p>
	<p>46.4</p>	<p>Within 84 days after receiving such reference, or within such other period as may be proposed by the DARB and approved by both Parties, the DARB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.</p>
	<p>46.5</p>	<p>If either Party is dissatisfied with the DARB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DARB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.</p>
	<p>46.6</p>	<p>In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Clause 44 [Failure to Comply with Dispute Avoidance and Resolution Board's Decision] and</p>

		Clause 50 [Expiry of Dispute Avoidance and Resolution Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Clause.
	46.7	If the DARB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DARB's decision, then the decision shall become final and binding upon both Parties.
47. Amicable Settlement	47.1	Where notice of dissatisfaction has been given under Sub-Clause 46.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which a notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.
48. Arbitration	48.1	Unless indicated otherwise in the SCC , any dispute not settled amicably and in respect of which the DARB's decision (if any) has not become final and binding shall be finally settled by arbitration with proceedings conducted in accordance with the laws of the United Republic of Tanzania.
	48.2	The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision of the DARB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
	48.3	Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DARB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DARB shall be admissible in evidence in the arbitration.
	48.4	Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Project Manager and the DARB shall not be altered by reason of any arbitration being conducted during the progress of the Works.
49 Failure to Comply with Dispute Avoidance and Resolution Board's Decision	49.1	In the event that a Party fails to comply with a DARB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Clause 48 [Arbitration]. Clause 46 [Obtaining Dispute Avoidance and Resolution Board's Decision] and Clause 47 [Amicable Settlement] shall not apply to this reference.
50. Expiry of Dispute Avoidance and Resolution Board's Appointment	50.1	If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DARB in place, whether by reason of the expiry of the DARB's appointment or otherwise: <ul style="list-style-type: none"> a) Clause 46 [Obtaining Dispute Avoidance and Resolution Board's Decision] and Clause 47 [Amicable Settlement] shall not apply, and b) the dispute may be referred directly to arbitration under Clause 48 [Arbitration].

APPENDIX A

Environmental, Social, Health and Safety (ESHS)

Metrics for Progress Reports

[Note to Purchaser: the following metrics may be amended to reflect the specifics of the Contract. The Purchaser shall ensure that the metrics provided are appropriate for the Works and impacts/key issues identified in the environmental and social assessment]

Metrics for regular reporting:

- a) environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;
- b) health and safety incidents, accidents, injuries that require treatment and all fatalities;
- c) interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);
- d) status of all permits and agreements:
 - i). work permits: number required, number received, actions taken for those not received;
 - ii). status of permits and consents:
 - list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);
 - list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);
 - identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);
 - for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).
- e) health and safety supervision:
 - i). safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;
 - ii). number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
- f) worker accommodations:
 - i). number of expats housed in accommodations, number of locals;
 - ii). date of last inspection, and highlights of inspection including status of accommodations' compliance with national and local law and good practice, including sanitation, space, etc.;
 - iii). actions taken to recommend/require improved conditions, or to improve conditions.
- g) Health services: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);
- h) gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);
- i) training:
 - i). number of new workers, number receiving induction training, dates of induction training;
 - ii). number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;
 - iii). number and dates of communicable diseases (including STDs) sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.
 - iv). number and date of SEA and SH prevention sensitization and/or training events, including number of workers receiving training on Code of Conduct for Contractor's Personnel (in the reporting period and in the past), etc.
- j) environmental and social supervision:
 - i) environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
 - ii) sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements

- observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
 - iii) community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist/construction/site management.
- k) *Grievances*: list new grievances (e.g. number of allegations of SEA and SH) received in the reporting period and number of unresolved past grievances by date received, complainant's age and sex, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed).
- i. Worker grievances;
 - ii. Community grievances
- l) Traffic, road safety and vehicles/equipment:
- i) traffic and road safety incidents and accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
 - ii) traffic and road safety incidents and accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
 - iii) overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
- m) Environmental mitigations and issues (what has been done):
- i) dust: number of working bowlers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/spoil lorries with covers, actions taken for uncovered vehicles;
 - ii) erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
 - iii) quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
 - iv) blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
 - v) spill cleanups, if any: material spilled, location, amount, action taken, material disposal (report all spills that result in water or soil contamination);
 - vi) waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
 - vii) details of tree plantings and other mitigations required undertaken in the reporting period;
 - viii) details of water and swamp protection mitigations required undertaken in the reporting period.
- n) compliance:
- i) compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
 - ii) compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
 - iii) compliance status of SEA and SH prevention and response action plan: statement of compliance or listing of issues and action taken (or to be taken) to reach compliance
 - iv) compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and action taken (or to be taken) to reach compliance
 - v) other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

APPENDIX B

A General Conditions of Dispute Avoidance and Resolution Board Agreement

1. Definitions	<p>Each "Dispute Avoidance and Resolution Board Agreement" is a tripartite agreement by and between:</p> <ul style="list-style-type: none"> (a) the "Purchaser"; (b) the "Contractor"; and
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	<p>(c) the “Member” who is defined in the Dispute Avoidance and Resolution Board Agreement as being</p> <p>i). the sole member of “Dispute Avoidance and Resolution Board” and, where this is the case, all references to the “Other Members” do not apply, or</p> <p>ii). one of the three persons who are jointly called the “DARB” (or “Dispute Adjudication Panel”) and, where this is the case, the other two persons are called the “Other Members.”</p>
	<p>The Purchaser and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Avoidance and Resolution Board Agreement, which incorporates this Appendix. In the DARB Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.</p>
2. General Provisions	<p>Unless otherwise stated in the DARB Agreement, it shall take effect on the latest of the following dates:</p> <p>(a) the Commencement Date defined in the Contract,</p> <p>(b) when the Purchaser, the Contractor and the Member have each signed the DARB Agreement, or</p> <p>(c) when the Purchaser, the Contractor and each of the Other Members (if any) have respectively each signed a Dispute Avoidance and Resolution Board agreement.</p> <p>This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days’ notice of resignation to the Purchaser and to the Contractor, and the Dispute Agreement shall terminate upon the expiry of this period.</p>
3. Warranties	<p>The Member warrants and agrees that he/she is and shall be impartial and independent of the Purchaser, the Contractor and the Project Manager. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.</p>
	<p>When appointing the Member, the Purchaser and the Contractor relied upon the Member’s representations that he/she is:</p> <p>(a) experienced in the work which the Contractor is to carry out under the Contract,</p> <p>(b) experienced in the interpretation of contract documentation, and</p> <p>(c) fluent in the language for communications defined in the Contract.</p>
4. General Obligations of the Member	<p>The Member shall:</p> <p>(a) have no interest financial or otherwise in the Purchaser, the Contractor or Project Manager, nor any financial interest in the Contract except for payment under the DARB Agreement;</p> <p>(b) not previously have been employed as a consultant or otherwise by the Purchaser, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Purchaser and the Contractor before they signed the DARB Agreement;</p> <p>(c) have disclosed in writing to the Purchaser, the Contractor and the Other Members (if any), before entering into the DARB Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Purchaser, the Contractor or the</p>

	<p>Project Manager, and any previous involvement in the overall project of which the Contract forms part;</p> <p>(d) not, for the duration of the DARB Agreement, be employed as a consultant or otherwise by the Purchaser, the Contractor or the Project Manager, except as may be agreed in writing by the Purchaser, the Contractor and the Other Members (if any);</p> <p>(e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;</p> <p>(f) not give advice to the Purchaser, the Contractor, the Purchaser's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;</p> <p>(g) not while a Member enter into discussions or make any agreement with the Purchaser, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the DARB Agreement;</p> <p>(h) ensure his/her availability for all site visits and hearings as are necessary;</p> <p>(i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;</p> <p>(j) treat the details of the Contract and all the DARB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Purchaser, the Contractor and the Other Members (if any); and</p> <p>(k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Purchaser and the Contractor, subject to the agreement of the Other Members (if any).</p>
<p>5. General Obligations of the Purchaser and the Contractor</p>	<p>The Purchaser, the Contractor, the Purchaser's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DARB's activities under the Contract and the DARB Agreement. The Purchaser and the Contractor shall be responsible for compliance with this provision, by the Purchaser's Personnel and the Contractor's Personnel respectively.</p>
	<p>The Purchaser and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Purchaser, the Contractor, the Member and the Other Members (if any):</p> <p>(a) be appointed as an arbitrator in any arbitration under the Contract;</p> <p>(b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or</p> <p>(c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.</p>
	<p>The Purchaser and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.</p>
	<p>Whenever the Purchaser or the Contractor refers a dispute to the DARB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to</p>

	make a site visit and attend a hearing, the Purchaser or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.
6. Payment	<p>The Member shall be paid as follows, in the currency named in the DARB Agreement:</p> <p>(a) a retainer fee per calendar month, which shall be considered as payment in full for:</p> <ul style="list-style-type: none"> (i) being available on 28 days' notice for all site visits and hearings; (ii) becoming and remaining conversant with all project developments and maintaining relevant files; (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and (iv) all services performed hereunder except those referred to in subparagraphs (b) and (c) of this Clause.
	The retainer fee shall be paid with effect from the last day of the calendar month in which the Adjudication Panel Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.
	<p>With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the DARB Agreement is otherwise terminated.</p> <p>(b) a daily fee which shall be considered as payment in full for:</p> <ul style="list-style-type: none"> (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any); (ii) each working day on Site visits, hearings or preparing decisions; and (iii) each day spent reading submissions in preparation for a hearing. <p>(c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in subparagraph (b) of this Clause;</p> <p>(d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.</p>
	The retainer and daily fees shall be as specified in the DARB Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Purchaser, the Contractor and the Member, at each anniversary of the date on which the DARB Agreement became effective.
	If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the SCC shall determine the amount of the fees to be used.

	The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.
	The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Purchaser (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Purchaser shall then pay the Contractor in accordance with the Contract.
	If the Contractor fails to pay to the Member the amount to which he/she is entitled under the DARB Agreement, the Purchaser shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DARB; and without prejudice to the Purchaser's rights or remedies. In addition to all other rights arising from this default, the Purchaser shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 11.3 of the Conditions of Contract.
	If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.
7. Termination	At any time: (i) the Purchaser and the Contractor may jointly terminate the DARB Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.
	If the Member fails to comply with the DARB Agreement, the Purchaser and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.
	If the Purchaser or the Contractor fails to comply with the DARB Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Purchaser and the Contractor. The notice shall take effect when received by them both.
	Any such notice, resignation and termination shall be final and binding on the Purchaser, the Contractor and the Member. However, a notice by the Purchaser or the Contractor, but not by both, shall be of no effect.
8. Default of the Member	If the Member fails to comply with any of his obligations under Clause 4 (a) - (d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Purchaser and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DARB which are rendered void or ineffective by the said failure to comply.
	If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Purchaser and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DARB which are rendered void or ineffective by the said failure to comply.
9. Disputes	Any dispute or claim arising out of or in connection with this DARB Agreement, or the breach, termination or invalidity thereof, shall be finally settled by Arbitration.

PROCEDURAL RULES

Unless otherwise agreed by the Purchaser and the Contractor, the DARB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Purchaser or the Contractor. Unless otherwise agreed by the Purchaser, the Contractor and the DARB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

The timing of and agenda for each site visit shall be as agreed jointly by the DARB, the Purchaser and the Contractor, or in the absence of agreement, shall be decided by the DARB. The purpose of site visits is to enable the DARB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.

Site visits shall be attended by the Purchaser, the Contractor and the Project Manager and shall be co-ordinated by the Purchaser in co-operation with the Contractor. The Purchaser shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DARB shall prepare a report on its activities during the visit and shall send copies to the Purchaser and the Contractor.

The Purchaser and the Contractor shall furnish to the DARB one copy of all documents which the DARB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DARB and the Purchaser or the Contractor shall be copied to the other Party. If the DARB comprises three persons, the Purchaser and the Contractor shall send copies of these requested documents and these communications to each of these persons.

If any dispute is referred to the DARB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DARB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DARB shall:

- (a) act fairly and impartially as between the Purchaser and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
- (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

The DARB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Purchaser and the Contractor be presented to it prior to or at the hearing.

Except as otherwise agreed in writing by the Purchaser and the Contractor, the DARB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Purchaser, the Contractor and the Project Manager, and to proceed in the absence of any party who the DARB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

The Purchaser and the Contractor empower the DARB, among other things, to:

- (a) establish the procedure to be applied in deciding a dispute,
- (b) decide upon the DARB's own jurisdiction, and as to the scope of any dispute referred to it,
- (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
- (d) take the initiative in ascertaining the facts and matters required for a decision,
- (e) make use of its own specialist knowledge, if any,
- (f) decide upon the payment of financing charges in accordance with the Contract,
- (g) decide upon any provisional relief such as interim or conservatory measures, and
- (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute.

The DARB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DARB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Purchaser and the Contractor in writing. If the DARB comprises three persons:

- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
- (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Purchaser and the Contractor; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless

proceed to make a decision, unless:

(i) either the Purchaser or the Contractor does not agree that they do so, or

(ii) the absent Member is the chairman and he/she instructs the other Members not to make a decision.

SECTION IX: SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (Clause). Whenever there is a conflict, the provisions herein shall prevail over those in the Clause. The corresponding clause number of the Clause is indicated in parentheses.

SCC No.	Conditions	GCC Sub-Clause	Data
1.	Purchaser's name and address	1.1(g)	TANZANIA RAILWAYS CORPORATION P.O.Box 76959
2.	Time for Completion	1.1.(v)&25.1	360 days
3.	Conditions Precedent	3.1& 3.2	Not Applicable
4.	Purchaser's Address for Notices	4.1	TANZANIA RAILWAYS CORPORATION P.O.Box 76959
5.	Governing Laws and Language	2.1&5.1	The Contract shall be interpreted according to the Laws of the United Republic of Tanzania. The Language of the contract shall be ENGLISH.
6.	Spare Parts	6.3	The Supplier is required to agree the supply of spare parts for a period of 5years.
7.	Time for Commencement	7.1	The Supplier shall commence work on the facilities within 14 days after signing the contract.
8.	Time for Completion	1.1 (v) &7.2	The Completion of the facilities shall be attained within 360 days after commencement.
9.	Price Adjustment	10.2 & 35.1	Price is fixed
10.	Terms of Payment	11.1 (a)	<p>Payment for Goods supplied from Abroad:</p> <p>(i) Advance Payment:15 % percent of the Incoterms 2020 amount as payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Purchaser.</p> <p>(ii) On Shipment Payment Percent 15 of the total or pro rata based on Incoterms 2020 upon delivery to Site.</p> <p>(iii) On Completion Payment Percent 0.1 of the total or pro rata based on Incoterms 2020 upon issue of the Completion Certificate.</p> <p>(iv) On Acceptance Payment Percent 70 of the total or prorata based on Incoterms 2020 upon issue of the Operational Acceptance Certificate.</p> <p>Payment of local currency portion shall be made in 100 % and Foreign Currency Portion of 0%.</p> <p>After receipt of invoice and shipping document together with</p> <p align="center">Supplier's Invoice</p> <p align="center">Parking list</p> <p align="center">Insurance Certificate</p> <p align="center">Bill of Landing</p> <p>of the total or pro-rata based on Incoterms 2020 within sixty (60) days.</p>
		11.1.(b)	<p>Payment for Goods supplied from within the United Republic of Tanzania:</p> <p>(i) An advance payment 15 percent equivalent to the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for</p>

SCC No.	Conditions	GCC Sub-Clause	Data
			<p>the equivalent amount made out in favor of the Purchaser.</p> <p>(ii) On Delivery Payment Percent 30 of the total or pro rata EXW amount upon Incoterm "Ex-Works," upon delivery to the site.</p> <p>(iii) On Completion Payment Percent 0.1 of the total or pro rata EXW amount upon issue of the Completion Certificate.</p> <p>(iii) On Acceptance: The remaining 55 percent of the total or prorata EXW amount upon issue of the Operational Acceptance Certificate</p>
		11.1. (c)	Local Transportation: Not Applicable
		11.1. (d)	Installation Services: An Advance Payment Percent equivalent to 15 percent of the total installation services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Purchaser.
			<p>Payment on Measured Installation Work equivalent to 15 percent of work performed by the Contractor, as identified in the said Programme of Performance, during the preceding month, as evidenced by the Purchaser's authorization of the Contractor's application, will be made monthly within forty-five (45) days after receipt of invoice.</p>
			<p>On Delivery Payment equivalent to 20 percent of the total or pro rata value of installation services performed by the Contractor as evidenced by the Purchaser's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.</p>
			<p>On Acceptance Payment equivalent to 50 percent of the total or pro rata value of installation services performed by the Contractor as evidenced by the Purchaser's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.</p>
11.	Environmental and Social Performance Security	12.3.2	Environmental and Social Performance Security is not applicable.
12.	Form of Performance Security	12.3.4	Performance Security shall be applicable. The Performance Security shall be in the form of: Performance Security - Bank Guarantee. Amount of Performance Security: 3 percent.
13.	Reduction of Value of Performance Security	12.3.5	The performance security will be discharged: 3 Percent of the Contract Amount
14.	Working Hours	21.1.5	Not Applicable hours.
15.	Funeral Arrangements	21.1.8	Not applicable.

SCC No.	Conditions	GCC Sub-Clause	Data
16.	Completion of Guarantee Test	24.2.2	Guarantee test of the facilities shall be successfully completed within 28 days from the date of completion.
17.	Liquidated Damages	25.2	The liquidated damages is 0.2 percent of the contract value. Maximum deduction: is equal to the performance security. Note: 0.1 to 0.2 percent of the contract value per day of delayed services, up to a sum equivalent to the maximum percentage of liquidated damage.
18.	Bonus for Early Completion	25.3	No bonus will be given for earlier completion of the facilities or part thereof.
19.	Alternative Defects Notification Period	26.2	Defects liability period shall be Not Applicable days from the date of completion of the facilities. Defects liability period shall be Not Applicable days from the date of Operational Acceptance.
20.	Period of Extension of Warranty	26.10	The period of extension of warranty for critical components is not applicable.
21.	Insurance	33.1	(a) Cargo Insurance During Transport: 0 (b) Installation All Risks Insurance: 0 (c) Third Party Liability Insurance 3,000,000.00 (d) Third Party Motor Vehicle Insurance: 3,000,000.00 (e) Workers Compensations Insurance 0.00 (f) Third Party Professional Liability Insurance N/A (g) Insurance against loss or damage 59,850,000.00
22.	Date by which the DARB shall be appointed	44.1	DARB Appointment date is 31/05/2024 days after commencement of the contract.
23.	The DARB shall be comprised of	44.2	The Proposed Sole member of DARB for the Project is Tanzania
24.	List of proposed members of DARB	44.3	If the name(s) are not agreed within 21 days before 31/05/2024.
25.	Appointment (if not agreed) to be made by	45.1	If the name(s) are not agreed, The Proposed Appointing Authority for Appointment of DARB is Appointed by Institute of Arbitration
26.	Rules of arbitration	48.1	Tanzania Rule

SECTION X:

CONTRACT FORMS

This Section contains forms which, once completed and submitted, will form part of the Contract. The forms for Performance Security or Securing Declaration shall be completed and submitted by the successful Tenderer before signing of the contract, and when advance payment is required, Advance Payment Security shall be completed and submitted after contract signature. The Section also contains the Letter of Intention to Award the Contract, which shall not form part of the contract.

Notice of Intention to Award a Contract

[Letter head paper of the PE]

Ref No: *[insert Ref. No.]*..... Date:

To: *[name and address of the Service Provider]*

RE:NOTIFICATION OF THE INTENTION TO AWARD CONTRACT NUMBER*[insert No of contract]* **FOR**
[insert description]

Reference is made to the above subject matter.

The submitted tenders were evaluated according to the criteria stated in the tender documents. In accordance with the requirements of Public Procurement Act, Cap 410, we announce our intention to award a contract to *M/s: (Insert the name of the firm)* for a contract price of *(insert the contract award price and currency)* and for a completion period/delivery period of *(insert the duration)*.

Your tender was not considered for award of the contract due to the following reasons^[1]

- 1)
- 2)
- 3)

Be informed that, you have seven (7) working days from the date of this letter, within which to submit any complaints you may have regarding this award decision and/or circumstances surrounding the rejection of your tender for administrative review. The complaints must be in writing, clearly identifying the tender in question, detailing ground(s) of the complaint and should be submitted to *(insert the title of Accounting Officer)* through TANePS.

We appreciate your interest in doing business with us and encourage you to participate in our future tenders.

Authorized Signature:

Name and Title of Signatory:

Name of PE:

^[1] Insert the reasons for non-selection of the tenderer for the award of contract. The reasons given here should be those which appears in the evaluation report and which were approved by the Tender Board as justifiable reasons to turn down the offer given by the tenderer.

Letter of Acceptance
[Letter head paper of the PE]

[date]

To: *[name and address of the Service Provider]*

RE: NOTIFICATION OF AWARD OF CONTRACT FOR TENDER NO. *[insert tender number]* FOR *[insert tender description]*

This is to notify you that, your tender dated *[insert date]* for execution of the Contract Number *[insert Contract number and description, as provided in the Special Conditions of Contract]* for the Accepted Contract Amount of the equivalent of *[insert amount in numbers and words and name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted.

In the case of Sole member of Dispute Avoidance and Resolution Board

(a) We accept that *[name proposed by Tenderer]* be appointed as Sole Member of Dispute Avoidance and Resolution Board

OR

(b) We do not accept that *[name proposed by Tenderer]* be appointed as Sole Member of Dispute Avoidance and Resolution Board, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the Sole Member of Dispute Avoidance and Resolution Board in accordance with Clause 44.1 of the Instructions to Tenderers. [\[1\]](#)

In the case of Three Members of Dispute Avoidance and Resolution Board

(a) We accept that 1..... 2.....and 3..... *[names proposed by Tenderer]* be appointed as Members of Dispute Avoidance and Resolution Board

OR

(b) We do not accept that 1..... 2..... And 3..... *[names proposed by Tenderer]* be appointed as Members of Dispute Avoidance and Resolution Board, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the Members of Dispute Avoidance and Resolution Board in accordance with Clause 44.1 of the Instructions to Tenderers. [\[2\]](#)

You are requested to furnish the Performance Security within 14 days in accordance with the Conditions of Contract, using for that purpose the Forms included in Section X, Contract Forms of the Tendering Document.

Authorized Signature:

Name and Title of Signatory:.....

Name of Agency:.....

Attachment: Contract Agreement

Copy: PPRA, CAG, Office of Attorney General, GAMD, IAG, TRA and Adjudicator’s Appointing Authority (where applicable).

[\[1\]](#) To be used only if the Contractor disagrees in the Tender with the Sole Member of DARB proposed by the Employer in the Instructions to Tenderers, and has accordingly offered another candidate. If the Employer does not accept the counterproposal, the sentence should so state, and be followed by an additional sentence: “We therefore shall request the *[name of Appointing Authority as named in the Special Conditions of Contract]* to appoint the Sole Member of DARB in accordance with Clause 44 of the Instructions to Tenderers.”

[\[2\]](#) To be used only if the Contractor disagrees in the Tender with the Members of DARB proposed by the Employer in the Instructions to Tenderers, and has accordingly offered another candidate. If the Employer does not accept the counterproposal, the sentence should so state, and be followed by an additional sentence: “We therefore shall request the *[name of Appointing Authority as named in the Special Conditions of Contract]* to appoint the Members of DARB in accordance with Clause 44 of the Instructions to Tenderers.”

Form of Agreement

THIS AGREEMENT (hereinafter called the ‘‘Contract’’) is made this [day of month] day of [insert amonth], [insert a year] between [insert name and address of Employer(hereinafter called the ‘‘ Employer’’)] and [insert name and address of Contractor(hereinafter called the ‘‘ Contractor’’)] of the other part.

[Note: In the text below, text in brackets is optional; all notes should be deleted in the final text. If the Contractor consists of more than one Entity, the above should be partially amended to read as follows:]

‘‘[insert the name of ‘‘PE’’] (hereinaftercalled ‘‘the Employer’’) and, on the other hand, a jointventure/consortium/association consisting of the following entities namely, [insert of name of entity] and [insert name of entity] and [etc.](hereinafter called ‘‘the Contractor’’) each ofwhich shall be jointly and severally liable to the Employer for all the Contractor’s obligations under this Contract.

WHEREAS,

- a) the Employer desires that Plant/Equipment be supplied and installed known as *[nameof the Contract]*. shouldbe executed by the Contractor, and has accepted a Tenderfor the supplyand installation of Plant/Equipment
- b) the Contractorhaving represented to the Employer that they have the required professionalskills, and personnel and technical resources, have agreed to deliver,install, complete and commission the Plant/Equipment onthe terms and conditions set forth in this Contract at a contract price of[insert the figures and words and the currency];
- c) the Employer has set aside committed funds towards the costof the supply and installation of Plant/Equipmentand intends to apply a portion of the proceeds of these funds toeligible payments under this Contract, it being understood that such paymentswill be subject, in all respects, to the terms and conditions of the Contractproviding for the funds and that no party other than the Contractor shall derive any rights from the Contract providing forthe funds or have any claim to the funds proceeds;

NOWIT IS HEREBY AGREED as follows:

<p>Article 1. Contract Documents</p>	<p>1.1 Contract Documents (Reference GCC 2) The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:</p> <ul style="list-style-type: none"> (a) This form of Agreement and the Appendixes hereto (b) Letter of Acceptance. (c) Minutes of Negotiations, if any (d) Addendum Notice, if any (e) Form of Tender (f) Price Schedules (g) Special Conditions of Contract (h) General Conditions of Contract (i) Technical Specifications and Drawings (j) Contract Securities (k) Any other document listed in the Special Conditions of Contract as forming part of the Contract (l) Contract Appendices: <p>Appendix 1: Terms and Procedures of Payment</p> <p>Appendix 2: Price Adjustment</p>
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	<p>Appendix 3: Insurance Requirements</p> <p>Appendix 4: Time Schedule</p> <p>Appendix 5: List of Major Items of Plant and Installation Services and List of Approved Subcontractors</p> <p>Appendix 6: Scope of Works and Supply by the Employer</p> <p>Appendix 7: List of Documents for Approval or Review</p> <p>Appendix 8: Functional Guarantee</p> <p>1.2 <u>Order of Precedence</u> (Reference GCC 2) In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.</p> <p>1.3 <u>Definitions</u> (Reference GCC 1) Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of Contract.</p>
<p>Article 2. Contract Price and Terms of Payment</p>	<p>2.1 <u>Contract Price</u> (Reference GCC 10) The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: <i>[amount of foreign currency in words]</i>, <i>[amount in figures]</i> as specified in Price Schedule No. 5 (Grand Summary) and <i>[amount of local currency in words]</i>, <i>[amount in figures]</i>, or such other sums as may be determined in accordance with the terms and conditions of the Contract.</p> <p>2.2 <u>Terms of Payment</u> (Reference GCC 11) The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the corresponding Appendix (Terms and Procedures of Payment) hereto. The Employer shall instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit shall be for an amount of <i>[insert an amount equal to the total named in Schedule 1 less the advance payment to be made for Goods supplied from abroad]</i>. In the event that the amount payable under Schedule No. 1 is adjusted in accordance with GCC 10.2 or with any of the other terms of the Contract, the Employer shall arrange for the documentary credit to be amended accordingly. <i>[The Employer may want to insert a similar provision for the payment of the items listed in Schedule 2.]</i></p>
<p>Article 3. Effective Date for Determining Time for Completion</p>	<p>3.1 <u>Effective Date</u> (Reference GCC 1) The Time of Completion of the Facilities shall be determined from the date when all of the following conditions have been fulfilled: (a) The Employer has paid the Contractor the advance payment (b) The Contractor has been advised that the documentary credit referred to in Article 2.2 above has been issued in its favor. Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.</p> <p>3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract notification because of reasons not attributable to the Contractor, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.</p>
<p>Article 4. Appendixes</p>	<p>4.1 The Appendixes listed in the attached List of Appendixes shall be deemed to form an integral part of this Contract.</p>

	4.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.
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IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

SIGNED, SEALED AND DELIVERED FOR AND ON BEHALF OF:

THE PROCURING ENTITY

THE CONTRACTOR SUPPLIER

Name:

Name:

(Authorized Representative) (Authorized Representative)

Designation:

Designation:

Signature:

Signature:

Date:.....

Date:.....

WITNESS

WITNESS

Name:

Name:

Designation:

Designation:

Signature: **Signature:**

APPENDICES

Appendix 1: Terms and Procedures of Payment

In accordance with the provisions of GCC Clause 14 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Tenderer unless otherwise agreed between the parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

TERMS OF PAYMENT

Schedule No. 1. Goods Supplied from Abroad

In respect of goods supplied from abroad, the following payments shall be made:

Ten percent(10%) of the total CIF or CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced proportionately to the value of the goods shipped FOB or delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata FOB or FCA amount upon *Incoterm* “FOB” or “FCA,” within forty-five (45) days after receipt of invoice and shipping documents. In the event that shipping is delayed upon the written instruction of the Employer for more than twenty-eight (28) days beyond the date shown in the Programme of Performance provided in accordance with GCC sub-Clause 17.2, the Contractor may make an application for this part of the payment against warehouse receipts, always provided that the goods are ready for shipment on the date shown in the said Programme.

Eighty percent (80%) of the total or pro rata CIF or CIP amount upon *Incoterm* “CIF” or “CIP,” upon delivery to site within forty-five (45) days after receipt of invoice, less eighty percent (80%) of the FOB amount already paid or authorized for payment.

Five percent(5%) of the total or pro rata CIF or CIP amount upon issue of the CompletionCertificate, within forty-five (45) days after receipt of invoice.

Five percent(5%) of the total or pro rata CIF or CIP amount upon issue of the OperationalAcceptance Certificate, within forty-five (45) days after receipt of invoice.

ScheduleNo. 2. Goods Supplied from within the United Republic of Tanzania

In respect of goods supplied from within the United Republic of Tanzania the following payments shall be made:

Ten percent(10%) of the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced proportionately to the value of the goods delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata EXW amount upon *Incoterm* “Ex-Works,” upon delivery to the site within forty-five(45) days after receipt of invoice.

Five percent(5%) of the total or pro rata EXW amount upon issue of the CompletionCertificate, within forty-five (45) days after receipt of invoice.

Five percent(5%) of the total or pro rata EXW amount upon issue of the OperationalAcceptance Certificate, within forty-five (45) days after receipt of invoice.

ScheduleNo. 3. Local Transportation

In respect of local transportation for both the foreign currency (where applicable) and the local currency portions, the following payments shall be made:

Ten percent (10%) of the total local transportation amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the Goods delivered to the site, as evidenced by shipping and delivery documents.

Ninety percent (90%) of the total or pro rata local transportation amount upon delivery to the site

within forty-five (45) days after receipt of invoice.

Schedule No. 4. Installation Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (10%) of the total installation services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Eighty percent (80%) of the measured value of work performed by the Contractor, as identified in the said Programme of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of *[insert a figure that may be different for the foreign and local currency portions and a figure that reflects the cost of money in the respective currencies]* percent (___%) per month for period of delay until payment has been made in full.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

Appropriate procedures, normally through letters of credit, are to be inserted (including forms and certificates annexed as appropriate) by the Employer in the Tendering documents.

Appendix 2: Price Adjustment

Note: Where the contract Period (excluding the **Defects Liability Period** Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labour and material components. In such cases, the Tendering documents shall include in Appendix 2 a formula of the following general type, pursuant to GCC sub-Clause 10.2.

Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under appendix 2 that the prices are to remain firm and fixed for the duration of the contract.

Sample Price Adjustment Formula

Prices payable to the contractor, in accordance with the Contract, shall be subject to adjustment during the performance of the Contract to reflect changes in the cost of labour and material components, in accordance with the following formula:

in which:

P_1 = adjustment amount payable to the Contractor

P_0 = Contract price (base price)

a = fixed element representing profit and overhead in Contract price ($a = \%$)

b = estimated percent of labour component in Contract price ($b = \%$)

c = estimated percent of plant & equipment component in Contract price ($c = \%$)

L_0, L_1 = labour indexes applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

M_0, M_1 = material indexes for the major raw materials in the country of origin on the base date and the date for adjustment, respectively

The sum of the three coefficients $a, b,$ and c shall be one (1) in every application of the formula.

Conditions Applicable To Price Adjustment

The Tenderer shall indicate the source of labour and materials indexes and the base date indexes in its tender.

Item Source of Indexes Used BaseDate Indexes

The base date shall be the date thirty (30) days prior to the Tender closing date.

The date of adjustment shall be the mid-point of the period of manufacture or installation of the component or Plant.

The following conditions shall apply:

- (a) Price adjustment will be applied only if the resulting increase or decrease is more than two percent (2%) of the Contract price.
- (b) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.
- (c) The total adjustment (plus or minus) shall be subject to a ceiling amount of percent (___%) of the Contract price.
- (d) If the currency in which the Contract price, P_0 , is expressed is different from the currency of the country of origin of the labour and/or materials indexes, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.
- (e) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

Note: For complex Plant supply and installation involving several sources of supply and/or a substantial amount of installation works, a family of formulas may be necessary, with provision for the usage of Contractor's equipment in the works formula.

Appendix 3: Insurance Requirements

Note: Details to be completed by the Employer prior to issuing the Tendering documents. In the event that the Employer provides any insurances under the Contract, appropriate details must also be given.

Insurances to be Taken Out by the Contractor

In accordance with the provisions of GCC Clause 33, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefor), and to the construction equipment to be provided by the Contractor or its Subcontractors.

Amount Deductible limits Parties insured From To

[in currency(ies)] [names] [place] [place]

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the contractor's liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

Amount Deductible limits Parties insured From To

[in currency(ies)] [names] [place] [place]

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

Amount Deductible limits Parties insured From To

[in currency(ies)] [names] [place] [place]

(d) Automobile Liability Insurance

Covering the use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in United Republic of Tanzania

(f) Employer's Liability

In accordance with the statutory requirements applicable in United Republic of Tanzania

(g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

Amount Deductible limits Parties insured From To

[in currency(ies)] [names] [place] [place]

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC sub-Clause 36.1, except for the Third-Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured's under all insurance policies taken out by the Contractor pursuant to GCC sub-Clause 33.1, except for the Cargo, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insured's for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Insurances to be taken out by the Employer

Note: If the Employer is proposing to take out any or all of the above insurances itself, or any other insurances in respect of the Facilities, either in its own name or in the joint names of itself and the Contractor, it shall give details below prior to issuing the Tendering documents. Under the terms of the Contract, the Contractor and the Contractor's Subcontractors shall be named as co-insured's under all such policies.

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

Details:

Amount Deductible limits Parties insured From To

[in currency(ies)] [names] [place] [place]

Appendix 4: Time Schedule

The Employer should normally provide a Time Schedule to be followed by the Contractor during the performance of the Contract. This schedule should be provided with the Tendering documents under this Appendix. All completion times indicated must be by the information regarding Time(s) for Completion given in the Tender Data Sheet.

Except under exceptional circumstances, the TimeSchedule should indicate periods (e.g., weeks or months) and not specify calendar dates. All periods should be shown from the Effective Date of the Contract.

Should it become necessary to amend the Time Schedule to reflect any agreements made with the selected Tenderer before the award of the Contract, the amended Time Schedule shall replace the original Time Schedbefore to the signature of the Contract Agreement.

If the Tendering documents contain no Time Schedule, the Tenderer shall be required to submit with its Tender a detailed program, normally in the form of a bar chart, showing how and the order in which it intends to perform the Contract and showing the key events requiring action or decision by the Employer. In preparing this Programme, the Tenderer shall adhere to the Time(s) for Completion given in the Tender Data Sheet or give its reasons for not adhering thereto. The Time Schedule submitted by the selected tenderer and amended as necessary before the award of the Contract shall be included as Appendix to the Contract Agreement before the Contract is signed.

If Tenderers, under the provisions of the instructions to Tenderers, are to be permitted to offer an Alternative Tenderbased on a different Time Schedule, details of this and any resulting reduction in Price from their conforming tender based on the Time Schedule included in the Tendering documents shall be submitted as an Attachment to their tender.

Appendix 5: List of Approved Subcontractors

Note: Prior to the award of the contract, the following details shall be completed, indicating those Subcontractors proposed by the Tenderer in the corresponding Attachment to its tender that are approved by the Employer for engagement by the Contractor during the performance of the Contract.

The following subcontractors are approved for carrying out the items of the facilities indicated. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GCC Sub-Clause 18.1, the Contractor is free to submit proposals for subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of approved Subcontractors.

Item of FacilitiesApproved Subcontractors Nationality

Appendix 6: Scope of Works and Supply by the Employer

Note: Prior to issuing the Tendering documents, the Employer shall indicate in this Appendix details of all personnel and Facilities it will provide for use by the Contractor and indicate, where applicable, the charges that it will make in respect of their use.

The Employer shall also identify any part(s) of the facilities it intends to carry out itself (or by other contractors), and any plant, equipment, or materials that it proposes to purchase itself and supply to the Contractor for incorporation in the facilities, indicating, where applicable, the charges that it will make in respect thereof.

The following personnel, facilities, works, and supplies will be provided/supplied by the Employer, and the provisions of GCC Clauses 12, 23, and 26 shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Programme of Performance under GCC sub-Clause 17.2.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the Contractor.

Personnel Charge to Contractor (if any)

Facilities Charge to Contractor (if any)

Works Charge to Contractor (if any)

Supplies Charge to Contractor (if any)

Appendix 7: List of Documents for Approval or Review

According to GCC sub-Clause 19.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager following the requirements of GCC sub-Clause 17.2 (Programme of Performance), the following documents for

A. Approval

- 1.
- 2.
- 3.

B. Review

- 1.
- 2.
- 3.

Appendix 8: Functional Guarantees

1. General

This Appendix sets out

- (a) the functional guarantees referred to in GCC Clause 27 (Functional Guarantees)
- (b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below
- (c) the minimum level of functional guarantees
- (d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

2. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

[List any conditions for the carrying out of the Guarantee Test referred to in GCC sub-Clause 24.2.]

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

3.1 Production Capacity

[List here the production capacity that the Contractor is to guarantee, **making sure to use, as functional guarantees, the figures offered by the Contractor in its tender.**]
and/or

3.2 Raw Materials and Utilities Consumption

[List here the guaranteed items of consumption per unit of production (e.g., kg, tons, kcal, kWh, etc.) that the Contractor is to guarantee, **making sure to use, as functional guarantees, the figures offered by the Contractor in its tender.**]

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GCC sub-Clause 24.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications, and/or additions to the Facilities, pursuant to GCC sub-Clause 27.3, then the Contractor shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete one percent (1%) of the deficiency in the production capacity of the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

4.2 Raw Materials and Utilities Consumption in excess of Guaranteed Level

[To be specified in the appropriate wording for the type of facilities if there are consumption guarantees.]

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figures specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GCC sub-Clause 24.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the employer in lieu of making changes, modifications and/or additions to the Facilities pursuant to GCC sub-Clause 27.3, then the Contractor shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete one percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%).

[The rate of liquidated damages specified in paras. 4.1 and 4.2 above shall be at least equivalent to the rate specified in the SCC for the comparison of functional guarantees provided by the Tenderers]

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its cost make good any deficiencies until the Facilities reach any of such minimum performance levels, under GCC sub-Clause 27.2:

- (a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity

and/or

- (b) the average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures.

4.4 Limitation of Liability

Subject to para. 4.3 above, the Contractor's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed _____ percent (___ %) of the Contract price *[the percentage specified shall not exceed ten percent (10%)].*

Performance Bank Guarantee (Unconditional)

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: [Name and Address of Employer]

Date: _____

PERFORMANCE GUARANTEE No.: _____

We have been informed that [name of Contractor] (hereinafter called "the Contractor") has to be awarded a contract No. [reference number of the contract] dated [insert date] with you, for the execution of [name of contract and brief description of Facilities] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert amount in figures] (____) [amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall be reduced by half upon our receipt of:

- (a) a copy of the Operational Acceptance Certificate; or
- (b) a registered letter from the Contractor (i) attaching a copy of its notice requesting issuance of the Operational Acceptance Certificate and (ii) stating that the project manager has failed to issue such Certificate within the time required or provide in writing justifiable reasons why such Certificate has not been issued, so that Operational Acceptance is deemed to have occurred.

This guarantee shall expire no later than the earlier of:

- (a) twelve months after our receipt of either (a) or (b) above; or
- (b) eighteen months after our receipt of:
 - (i) a copy of the Completion Certificate; or
 - (ii) a registered letter from the Contractor, attaching a copy of the notice to the project manager that the Facilities are ready for commissioning, and stating that fourteen days have elapsed from receipt of such notice (or seven days have elapsed if the notice was a repeated notice) and the project manager has failed to issue a Completion Certificate or inform the Contractor in writing of any defects or deficiencies; or
 - (iii) a registered letter from the Contractor stating that no Completion Certificate has been issued but the Employer is making use of the Facilities; or
- (c) the ____ day of _____, 20____.

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

[signature(s)]

Bank Guarantee—Conditional

[Name of Contract]

To: [Name and address of Employer]

Dear Ladies and/or Gentlemen,

We refer to the Contract Agreement (“the Contract”) signed on [date] between you and [name of Contractor] (“the Contractor”) concerning design, execution and completion of [Brief description of the Facilities].

By this letter we, the undersigned, [name of Bank], a Bank (or company) organized under the laws of [country of Bank] and having its registered/principal office at [address of Bank], do hereby jointly and severally with the Contractor irrevocably guarantee payment owed to you by the Contractor, pursuant to the Contract, up to the sum of [amount], equivalent to [number] percent (%) [amount shall not exceed ten percent (10%) in any case] of the Contract Price until the date of the Operational Acceptance Certificate and thereafter up to a sum of [amount], equivalent to [number] percent (%) [amount shall not exceed five percent (5%) in any case] of the Contract Price, until twelve (12) months after the date of Operational Acceptance, or eighteen (18) months after Completion of the Facilities, whichever comes first.

Where it is agreed between you and the Contractor that the Facilities are to be accepted in parts, and thus where there are separate Completion and Operational Acceptance Certificates for each part, this Letter of Guarantee shall be apportioned to the value of each such part and shall reduce or expire as provided above on or following Completion or Operational Acceptance of each part.

We shall only undertake to make payment under this Letter of Guarantee upon our receipt of a written demand signed by your duly authorized officer for a specified sum, where such demand sets out the reasons for your claim under this Letter of Guarantee and is accompanied by

- (a) a copy of the written notice sent by you to the Contractor before making the claim under this Guarantee, specifying the Contractor’s breach of contract and requesting the Contractor to remedy it
- (b) a letter signed by your duly authorized officer certifying that the Contractor has failed to remedy the default within the period allowed for remedial action
- (c) a copy of your written notice to the Contractor stating your intent to claim under this Letter of Guarantee because of the Contractor’s failure to remedy the default in accordance with the request referred to in para. (a) above.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid from the date of issue until the earlier of twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the Facilities or, where the Facilities are to be accepted in parts, twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the last part or [date], whichever comes first.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

If the Defect Liability Period is extended with respect to any part of the Facilities in accordance with the Contract, you shall notify us, and the validity of this Letter of Guarantee shall be extended with respect to the percentage of the Contract Price stipulated in the notification until expiry of such extended Defect Liability Period.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Yours truly,

[Name of the Bank]

Authorized Signature

Bank Guarantee Form for Advance Payment

[Bank's Name and Address of Issuing Branch or Office]

Beneficiary: *[Name and Address of Employer]*

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the contract]* dated *[date]* with you, for the execution of *[name of contract and brief description of Facilities]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[amount in figures]* (____) *[amount in words]* is to be made against an advance payment guarantee.

At the request of the Contractor, we *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (____) *[amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than toward the execution of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on his account number _____ at *[name and address of Bank]*.

The maximum amount of this guarantee shall be progressively reduced in proportion to the value of each part-shipment or part-delivery of goods to the site, as indicated in copies of the relevant shipping and delivery documents that shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Contractor of the amount of the advance payment, or on the ___ day of _____, 2____, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[signature(s)]

FORMS AND PROCEDURES

Form of Completion Certificate

Date: _____

TENDERNO. N°: _____

[Name of Contract]

To: *[Name and address of Contractor]*

Dear Ladies and/or Gentlemen,

Pursuant to **GCC 23** (Completion of the Facilities) of the **GCC** entered into between yourselves and the Employer dated *[insert date]*, relating to the *[brief description of the Facilities]*, we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the Employer hereby takes over the said part(s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the Facilities or part thereof: *[description]*
2. Date of Completion: *[date]*

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

Title
(Project Manager)

Form of Operational Acceptance Certificate

Date:

TENDERNO. N°:

[Name of Contract]

To: *[Name and address of Contractor]*

Dear Ladies and/or Gentlemen,

Pursuant to **GCC 24.3** (Commissioning and Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated *[insert date]*, relating to the *[brief description of the Facilities]*, we hereby notify you that the Functional Guarantees of the following part(s) of the Facilities were satisfactorily attained on the date specified below.

1. Description of the Facilities or part thereof: *[description]*

2. Date of Operational Acceptance: *[insert date]*

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

Title

(Project Manager)

Change Order Procedure

1. General

This section provides samples of procedures and forms for implementing changes in the Facilities during the performance of the Contract in accordance with **GCC Clause 38** (Change in the Facilities) of the General Conditions of Contract.

2. Change Order Log

The Contractor shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Changes authorized or pending, as Annex 8. Entries of the Changes in the Change Order Log shall be made to ensure that the log is up-to-date. The Contractor shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Employer.

3. References for Changes

- (1) Request for Change as referred to in **GCC Clause 38** shall be serially numbered CR-X-nnn.
- (2) Estimate for Change Proposal as referred to in **GCC Clause 38** shall be serially numbered CN-X-nnn.
- (3) Acceptance of Estimate as referred to in **GCC Clause 38** shall be serially numbered CA-X-nnn.
- (4) Change Proposal as referred to in **GCC Clause 38** shall be serially numbered CP-X-nnn.
- (5) Change Order as referred to in **GCC Clause 38** shall be serially numbered CO-X-nnn.

Note: (a) Requests for Change issued from the Employer's Home Office and the Site representatives of the Employer shall have the following respective references:

Home Office CR-H-nnn

Site CR-S-nnn

- (b) The above number "nnn" is the same for Request for Change, Estimate for Change Proposal, Acceptance of Estimate, Change Proposal and Change Order.

Annex 1. Request for Change Proposal

(Employer's Letterhead)

To: *[Contractor's name and address]* Date:

Attention: *[Name and title]*

ContractName: *[Contract name]*

ContractNumber: *[Contract number]*

Dear Ladies and/or Gentlemen:

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within *[number]* days of the date of this letter *[or on or before (date)]*.

1. Title of Change: *[Title]*

2. Change Request No./Rev.: *[Number]*

3. Originator of Change: Employer: *[Name]*

Contractor (by Application for Change Proposal No. *[Number]*)^[1]:

4. Brief Description of Change: *[Description]*

5. Facilities and/or Item No. of equipment related to the requested Change: *[Description]*

6. Reference drawings and/or technical documents for the request of Change:

Drawing No./Document No. Description

7. Detailed conditions or special requirements on the requested Change: *[Description]*

8. General Terms and Conditions:

- (a) Please submit your estimate to us showing what effect the requested Change will have on the Contract Price.
- (b) Your estimate shall include your claim for the additional time, if any, for completion of the requested Change.
- (c) If you have any opinion negative to the adoption of the requested Change in connection with the conformability to the other provisions of the Contract or the safety of the Plant or Facilities, please inform us of your opinion in your proposal of revised provisions.
- (d) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.
- (e) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

(Employer's Name)

(Signature)

(Name of signatory)

(Title of signatory)

^[1] Refer to Annex 7.

Annex 2. Estimate for Change Proposal

(Contractor's Letterhead)

To: *[Employer's name and address]* Date:

Attention: *[Name and title]*

Contract Name: *[Contract name]*

Contract Number: *[Contract number]*

Dear Ladies and/or Gentlemen:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change Proposal in accordance with **GCC38.2.1** of the General Conditions of Contract. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with **GCC38.2.2**, is required before estimating the cost for change work.

1. Title of Change: *[Title]*

2. Change Request No./Rev.: *[Number]*

3. Brief Description of Change: *[Description]*

4. Scheduled Impact of Change: *[Description]*

5. Cost for Preparation of Change Proposal: *[Cost]* [\[1\]](#)

(a) Engineering (Amount)

(i) Engineer hrs x rate/hr =

(ii) Draftsperson hrs x rate/hr =

Sub-total hrs

Total Engineering Cost

(b) Other Cost

Total Cost(a) + (b)

(Contractor's Name)

(Signature)

(Name of signatory)

(Title of signatory)

[\[1\]](#) Costs shall be in the currencies of the Contract.

Annex 3. Acceptance of Estimate

(Employer's Letterhead)

To: *[Contractor's name and address]*

Date: _____

Attention: *[Name and title]*

ContractName: *[Contract name]*

ContractNumber: *[Contract number]*

Dear Ladies and/or Gentlemen:

We hereby accept your Estimate for Change Proposal and agree that you should proceed with the preparation of the Change Proposal.

1. Title of Change: *[Title]*
2. Change Request No./Rev.: *[Request number/revision]*
3. Estimate for Change Proposal No./Rev.: *[Proposal number/revision]*
4. Acceptance of Estimate No./Rev.: *[Estimate number/revision]*
5. Brief Description of Change: *[Description]*
6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of Change Proposal described in your Estimate for Change Proposal mentioned in para. 3 above in accordance with **GCC Clause 38** of the General Conditions.

(Employer's Name)

(Signature)

(Name and Title of signatory)

Annex 4. Change Proposal

(Contractor's Letterhead)

To: [Employer's name and address] Date:

Attention: [Name and title]

Contract Name: [Contract name]

Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. [Number], we hereby submit our proposal as follows:

1. Title of Change: [Name]

2. Change Proposal No./Rev.: [Proposal number/revision]

3. Originator of Change: Employer: [Name]

Contractor: [Name]

4. Brief Description of Change: [Description]

5. Reasons for Change: [Reason]

6. Facilities and/or Item No. of Equipment related to the requested Change: [Facilities]

7. Reference drawings and/or technical documents for the requested Change:

Drawing/Document No. Description

8. Estimate of increase/decrease to the Contract Price resulting from Change Proposal: [\[1\]](#)

(Amount)

(a) Direct material

(b) Major construction equipment

(c) Direct field labor (Total hrs)

(d) Subcontracts

(e) Indirect material and labor

(f) Site supervision

(g) Head office technical staff salaries

Process engineer hrs @ rate/hr

Project engineer hrs @ rate/hr

Equipment engineer hrs @ rate/hr

Procurement hrs @ rate/hr

Draftsperson hrs @ rate/hr

Total hrs

(h) Extraordinary costs (computer, travel, etc.)

(i) Fee for general administration, % of Items

(j) Taxes and customs duties

Total lump sum cost of Change Proposal

(Sum of items (a) to (j))

Cost to prepare Estimate for Change Proposal

(Amount payable if Change is not accepted)

9. Additional time for Completion required due to Change Proposal

10. Effect on the Functional Guarantees

11. Effect on the other terms and conditions of the Contract

12. Validity of this Proposal: within [Number] days after receipt of this Proposal by the Employer

13. Other terms and conditions of this Change Proposal:

(a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within _____ days from your receipt of this Proposal.

(b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.

(c) Contractor's cost for preparation of this Change Proposal: [2](#)

(Contractor's Name)

(Signature)

(Name of signatory)

(Title of signatory)

[\[1\]](#) Costs shall be in the currencies of the Contract.

[2](#) Specify where necessary.

Annex 5. Change Order

(Employer's Letterhead)

To: *[Contractor's name and address]*

Date: _____

Attention: *[Name and title]*

ContractName: *[Contract name]*

ContractNumber: *[Contract number]*

Dear Ladies and/or Gentlemen:

We approve the Change Order for the work specified in the Change Proposal (No. *[Number]*), and agree to adjust the Contract Price, Time for Completion and/or other conditions of the Contract in accordance with **GCC38** of the General Conditions of Contract.

1. Title of Change: *[Name]*
2. Change Request No./Rev.: *[Request number/revision]*
3. Change Order No./Rev.: *[Order number/revision]*
4. Originator of Change: Employer: *[Name]*
Contractor: *[Name]*
5. Authorized Price:
Ref. No.: *[Number]* Date: *[Date]*
Foreign currency portion *[Amount]* plus Local currency portion *[Amount]*
6. Adjustment of Time for Completion
None Increase _____ days Decrease _____ days
7. Other effects, if any

Authorized by: _____ Date: _____
(Employer)

Accepted by: _____ Date: _____
(Contractor)

Annex 6. Pending Agreement Change Order

(Employer's Letterhead)

To: *[Contractor's name and address]*

Date: _____

Attention: *[Name and title]*

ContractName: *[Contract name]*

ContractNumber: *[Contract number]*

Dear Ladies and/or Gentlemen:

We instruct you to carry out the work in the Change Order detailed below in accordance with **GCC38** of the General Conditions of Contract.

1. Title of Change: *[Name]*
2. Employer's Request for Change Proposal No./Rev.: *[Number/revision]* dated: *[Date]*
3. Contractor's Change Proposal No./Rev.: *[Number/revision]* dated: *[Date]*
4. Brief Description of Change: *[Description]*
5. Facilities and/or Item No. of equipment related to the requested Change: *[Facilities]*

6. Reference Drawings and/or technical documents for the requested Change:

<u>Drawing/Document No.</u>	<u>Description</u>
-----------------------------	--------------------
7. Adjustment of Time for Completion:
8. Other change in the Contract terms:
9. Other terms and conditions:

(Employer's Name)

(Signature)

(Name of signatory)

(Title of signatory)

Annex 7. Application for Change Proposal

(Contractor's Letterhead)

To: *[Employer's name and address]* Date:

Attention: *[Name and title]*

Contract Name: *[Contract name]*

Contract Number: *[Contract number]*

Dear Ladies and/or Gentlemen:

We hereby propose that the below-mentioned work be treated as a Change in the Facilities.

1. Title of Change: *[Name]*

2. Application for Change Proposal No. /Rev.: *[Number/revision]* dated: *[Date]*

3. Brief Description of Change: *[Description]*

4. Reasons for Change:

5. Order of Magnitude Estimation (in the currencies of the Contract):

6. Scheduled Impact of Change:

7. Effect on Functional Guarantees, if any:

8. Appendix:

(Contractor's Name)

(Signature)

(Name of signatory)

(Title of signatory)