

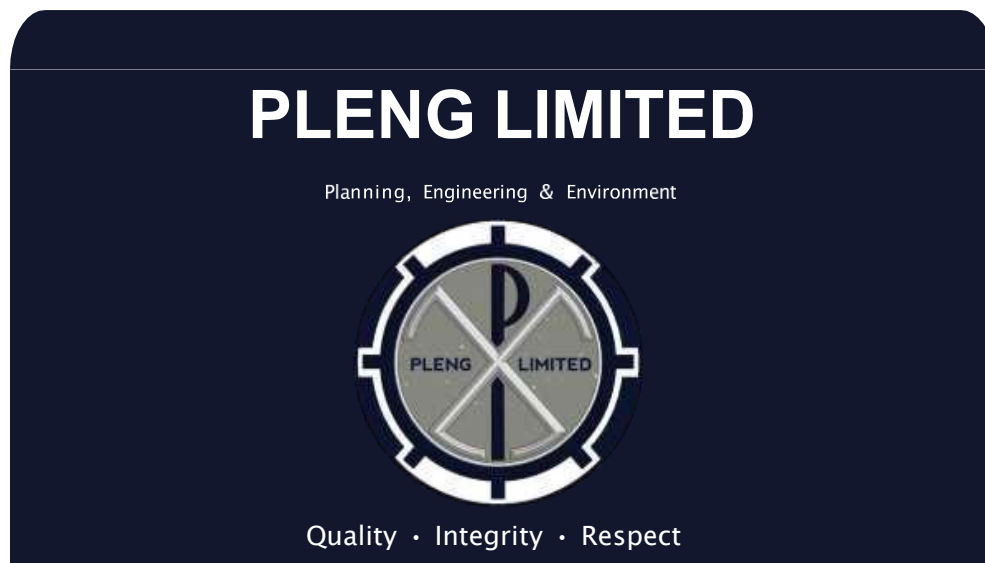
**PROPOSED FURNISHING AND EQUIPPING OF LANG'ATA TECHNICAL AND  
VOCATIONAL COLLEGE ICT HUB**

**TENDER NUMBER: LTVC/MF/T/2025/001**

**FUNDING INSTITUTION**



**PROJECT MANAGER**



**BENEFICIARY**

**LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE**

**Issued On: 2<sup>ND</sup> APRIL 2025**

## Table of Contents

Table of Contents.....	2
BIDDER'S DATA .....	5
SECTION I: INVITATION TO TENDER.....	6
SECTION II: INSTRUCTIONS TO TENDERERS .....	7
GENERAL.....	7
TENDER DOCUMENT.....	9
PREPARATION OF TENDERS .....	11
SUBMISSION OF TENDERS .....	14
AWARD OF CONTRACT .....	19
TENDER EVALUATION CRITERIA.....	21
STAGE 1: PRELIMINARY EVALUATION – MANDATORY REQUIREMENTS .....	22
STAGE 2 TECHNICAL EVALUATION .....	23
STAGE 3: FINANCIAL EVALUATION.....	27
SECTION III – TENDER DATA SHEET.....	30
SECTION IV: TERMS OF REFERENCE.....	34
1. Project Overview .....	35
2. Scope of work.....	35
2.1.1 Furnishing Works:.....	35
Builder's Works:.....	35
Electrical Works .....	35
3. Supervision and Quality Control:.....	36
4. Project Timeline:.....	36
5. Anticipated schedule .....	37
6. Project Deliverables .....	37
7. Key Personnel .....	37
8. Bonds and Insurances.....	38
9. Pricing .....	38

10.	Variations.....	39
11.	Interim Payments.....	39
12.	Supply Items.....	39
13.	Health, Safety, and Security.....	39
14.	Environmental Compliance.....	39
15.	Quality Assurance.....	40
16.	Warranty/ Defects Liability Period.....	40
17.	Subcontractors.....	40
18.	Dissolution of Contract by the Project Manager.....	41
19.	Dissolution of Contract by the Contractor.....	41
20.	Submission Details.....	42
21.	Disclaimer.....	43
SECTION V - TENDERING FORMS.....		44
FORM OF TENDER.....		45
TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE.....		48
CERTIFICATE OF INDEPENDENT TENDER DETERMINATION.....		52
SELF DECLARATION FORMS.....		54
	FORM SD1.....	54
	FORM SD2.....	55
DECLARATION AND COMMITMENT TO THE CODE OF ETHICS.....		56
Contractor's Equipment.....		57
	Form EQU.....	57
PERSONNEL.....		58
	Form PER -1- Proposed Personnel.....	58
	Form PER -2- Resume of Proposed Personnel.....	59
PROPOSED SUB-CONTRACTORS FOR MAJOR ITEMS OF WORKS.....		60
LITIGATION HISTORY.....		61
CURRENT CONTRACT COMMITMENTS / WORKS IN PROGRESS.....		62
	Form CCC.....	62
FINANCIAL SITUATION.....		63

Form FIN – 3.1: Historical Financial Situation.....	63
Form FIN – 3.2 – Average Annual Turnover .....	64
Form FIN3.3: Financial Resources.....	65
BIDDER’S EXPERIENCE .....	66
Form EXP 4.1: General Experience .....	66
Form EXP –4.2(a) Specific Experience .....	67
Form EXP –4.2(b) Specific Experience in Key Activities.....	68
BANK DETAILS FORM.....	69
SECTION VI – BILLS OF QUANTITIES .....	70
SECTION VII.....	71
CONDITIONS OF CONTRACT .....	71
PRE-BID ATTENDANCE FORM .....	72

**BIDDER'S DATA**

COMPANY NAME AND STAMP	
TELEPHONE NO.	
EMAIL ADDRESS	
P.O. BOX NUMBER	
SIGNATURE AND STAMP	

## SECTION I: INVITATION TO TENDER

Tender Name: **PROPOSED FURNISHING AND EQUIPPING OF LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE ICT HUB**

Tender Number: **LTVC/MF/T/2025/001**

Date: **2<sup>ND</sup> April, 2025.**

1. The M-Pesa Foundation through the project managers Pleng Limited invites sealed tender documents from eligible interested bidders for the Proposed Furnishing and Equipping Of Lang'ata Technical And Vocational College ICT Hub.
2. Interested eligible candidates may obtain tender documents from the Beneficiary, Lang'ata Technical and Vocational College, during normal working hours (9:00 am to 4:00 pm, Monday-Friday, with the exemption of public holidays) upon payment of a non-refundable fee of Kshs. 2,000 payable in cash to the beneficiary Lang'ata Technical and Vocational College.
3. Prices quoted should be net inclusive of all taxes, must be in Kenya Shillings, and should remain valid for 119 days.
4. Mandatory Site Visit will be held on **9<sup>th</sup> April, 2025.**
5. Complete tender documents (**Original and a copy**) enclosed in a plain sealed outer envelope clearly marked with tender name and tender number should be deposited in the Tender Box located at Lang'ata Technical and Vocational College P.O Box 5665-0506, Nairobi on or before **Wednesday, 16<sup>th</sup> April 2025 at 10.00 a.m.** East African time.
6. Tenders will be opened immediately thereafter at Lang'ata Technical and Vocational College in the presence of candidates or their representatives who choose to attend.
7. The Project manager reserves the right to reject or accept in whole or in part, any tender without obligation to give reasons for the decision.

All questions/clarifications regarding the project should be sent by email to [info@pleng.net](mailto:info@pleng.net) by **11th April 2025.**

Tenderers shall submit one **original copy** and a **copy of the original document** of all the tender documents in plain sealed envelopes, with the tender number clearly marked on the right-hand side corner and bearing the tenderer's name and the address of the beneficiary.

-----**Pleng Limited**-----

**M-Pesa Foundation Project Managers**

## SECTION II: INSTRUCTIONS TO TENDERERS

**Note:** The tenderer must comply with the following conditions and instructions and failure to do so makes them liable to rejection of the tender.

### GENERAL

#### 1. Definitions

**“Tenderer”** means any person or persons partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, Conditions of Contract, Specifications, Drawings, and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.

- a) **“Approved tenderer,”** means the tenderer who is approved by the Project manager.
- b) Any noun or adjective derived from the word “tender” shall be read and construed to mean the corresponding form of the noun or adjective “bid”. Any conjugation of the verb “tender” shall be read and construed to mean the corresponding form of the verb “bid.”
- c) **“Project manager”** means Pleng Limited.
- d) **“Financier”** means M-Pesa Foundation

#### 2. Eligibility and Qualification Requirements

- 2.1. This invitation to tender is open to all tenderers who are eligible as stated in the appendix.
- 2.2. To be qualified for the award of Contract, the tenderer shall provide evidence satisfactory to the Project manager of their eligibility under Sub-clause 2.1 above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to update the following information already submitted during prequalification: -
  - (a) Details of experience and past performance of the tenderer on the works of a similar nature within the past five years and details of current work on hand and other contractual commitments.
  - (b) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.
  - (c) Major items of construction plant and equipment proposed for use in carrying out the

Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.

- (d) Details of subcontractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Conditions of Contract.
- (e) A draft Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer.
- (f) Details of any current litigation or arbitration proceedings in which the Tenderer is involved as one of the parties

### **2.3. Joint Ventures**

Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements: -

- a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners.
- b) One of the partners shall be nominated as being in charge; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners.
- c) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.
- d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender).
- e) A copy of the agreement entered into by the joint venture partners shall be submitted with the



tender

**2.4. To qualify for contract awards, the tenderer shall have the following:**

- a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- b) Legal capacity to enter into a contract for procurement
- c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- d) Shall not be debarred from participating in public procurement.

**3. Cost of Tendering**

- 3.1. The tenderer shall bear all costs associated with the preparation and submission of his tender and the Project manager will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.2. The price to be charged for the tender document shall not exceed Kshs. 2,000/=

**4. Site Visit**

- 4.1. The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility.
- 4.2. The Project manager shall organize a site visit at a date specified in this document. Tenderers must provide their own transport.

**TENDER DOCUMENT**

**5. Tender documents**

- 5.1. The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.
  - a. Form of Invitation for Tenders
  - b. Instructions to Tenderers
  - c. General Conditions of Contract – Part I
  - d. Bills of Quantities

e. Drawings

- 5.2. The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 22 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.
- 5.3. All recipients of the documents for the proposed Contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as "private and confidential".

**6. Inquiries by tenderers**

- 6.1. A tenderer making inquiries relating to the tender documents may notify the Project manager in writing to [info@pleng.net](mailto:info@pleng.net). The Project manager will respond in writing to any request for clarification which he receives earlier than 7 days prior to the deadline for the submission of tenders. Written copies of the Project manager's response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.
- 6.2. Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders
- 6.3. The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

**7. Amendment of Tender Documents**

- 7.1. At any time prior to the deadline for submission of tenders the Project manager may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.
- 7.2. Any Addendum will be notified in writing to all prospective tenderers who have purchased the tender documents and will be binding upon them.
- 7.3. In order to allow prospective tenderers reasonable time in which to take the Addendum into

account in preparing their tenders, the Project manager may, at his discretion, extend the deadline for the submission of tenders.

## **PREPARATION OF TENDERS**

### **8. Language of Tender**

- 8.1. The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the Project manager shall be written in the English language. Supporting documents and printed literature furnished by the tenderer with the tender may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above-stated language. For the purpose of interpretation of the tender, the English language shall prevail.

### **9. Documents Comprising the Tender**

The tender to be prepared by the tenderer shall comprise: -

- i. The form of tender.
- ii. A tender security.
- iii. The priced Bill of Quantity and Schedule.
- iv. The information on eligibility and qualification.
- v. Any other materials required to be completed and submitted in accordance with the instructions to tenderers.

The Forms, Bills of Quantities, and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety).

### **10. Tender prices**

- 10.1. All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialled by the person or persons signing the tender.

10.2. A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not items against which no rate or price is entered by the tenderer will not be paid for by the Project manager when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.

The prices and unit rates in the Bills of Quantities are to be the full [all-inclusive] value of the work described under the items, including all costs and expenses that may be necessary and all general risks, liabilities, and obligations set forth or implied in the documents on which the tender is based. All duties and taxes and other levies payable by the Contractor under the Contract or for any other cause prior to the deadline for the submission of tenders shall be included in the rates and prices and the total tender prices submitted by the Tenderer.

Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.

Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Project manager shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Project manager to take full advantage of unbalanced low rates

10.3. Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.

10.4. The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of unit rates for the supply of items listed in the Conditions of Contract clause 47 where appropriate.

10.5. The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required under clause 47 of the Conditions of

**11. Currencies of the Tender**

- 11.1. Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.

**12. Tender validity**

- 12.1. The tender shall remain valid and open for acceptance for a period of one hundred and twenty (120) days from the specified date of tender opening or from the extended date of tender opening whichever is the later.
- 12.2. In exceptional circumstances prior to expiry of the original tender validity period, the Project manager may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

**13. Tender security**

- 13.1. The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instructions to Tenderers.
- 13.2. The tender security shall be in the amount specified in the tender document and made out to the financier of the project, the M-Pesa Foundation.
- 13.3. The tender security shall be valid for at least thirty (30) days beyond the tender validity period.
- 13.4. Any tender not accompanied by an acceptable Tender Surety will be rejected by the Project manager as non-responsive.

**14. Pre-Tender Meeting**

- 14.1. If a pre-tender meeting is convened the tenderer's designated representative is invited to attend a pre-tender meeting, which if convened, will take place at the venue and time stated in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 14.2. The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Project manager not later than seven days before the meeting. It may not be

practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:

- a. Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in --Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Project manager exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.

#### **15. Format and signing of Tenders**

- 15.1. The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set "ORIGINAL" and the other "COPY".
- 15.2. The copy of the tender and Bills of Quantities shall be typed and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialled by the person or persons signing the tender.
- 15.3. The complete tender shall be without alterations, interlineations, or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialled by the person or persons signing the tender.

#### **SUBMISSION OF TENDERS**

#### **16. Sealing and marking of tenders**

- 16.1. The tenderer shall seal the original and copy of the tender in separated envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope.
- 16.2. The inner and outer envelopes shall be addressed to the Project manager at the address stated in the Appendix to Instructions to Tenderers and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of tenders stated in the said Appendix.
- 16.3. The inner envelopes shall each indicated the name and address of the tenderer to enable the

tender to be returned unopened in case it is declared "late", while the outer envelope shall bear no mark indicating the identity of the tenderer.

- 16.4. If the outer envelope is not sealed and marked as instructed above, the Project manager will assume no responsibility for the misplacement or premature opening of the tender. A tender opened prematurely for this cause will be rejected by the Project manager and returned to the tenderer

**17. Deadline for submission of tenders**

- 17.1. Tenders must be received by the Project manager at the address specified in section 1 and on the date and time specified in the Letter of Invitation.

- 17.2. Tenders delivered by hand must be placed in the "tender box" provided in the office of the Beneficiary.

Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.

- 17.3. The Project manager may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Project manager and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended

Any tender received by the Project manager after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

## **TENDER OPENING AND EVALUATION**

### **18. Tender Opening**

- 18.1. The beneficiary will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender.  
The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 18.2. Tenders for which an acceptable notice of withdrawal has been submitted, will not be opened.  
The Project manager will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 18.3. At the tender opening, the employer will announce the tenderer's names, total tender price, tender price modifications, and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Project manager, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.
- 18.4. The Beneficiary shall prepare a tender opening register and minutes of the tender opening including the information disclosed to those present.
- 18.5. Tenders not opened and read out a tender opening shall not be considered further for evaluation, irrespective of the circumstances

### **19. Process to be Confidential**

- 19.1. After the public opening of tenders, information relating to the examination, clarification, evaluation, and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.
- 19.2. Any effort by a tenderer to influence the Project manager in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender

### **20. Clarification of tenders**

- 20.1. To assist in the examination, evaluation and comparison of tenders, the Project manager may



ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the project manager during the evaluation of the tenders.

- 20.2. No Tenderer shall contact the Project manager on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Project manager, he shall do so in writing.

## **21. Determination of Responsiveness**

- 21.1. Prior to the detailed evaluation of tenders, the Project manager will determine whether each tender is substantially responsive to the requirements of the tender documents.
- 21.2. For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Project manager's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.
- 21.3. Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Project manager's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.
- 21.4. A tender determined to be not substantially responsive will be rejected by the Project manager and may not subsequently be made responsive by the tenderer by correction of the nonconforming deviation or reservation

## **22. Correction of Errors**

Tenders determined to be substantially responsive shall be checked by the Project manager for any arithmetic errors in the computations and summations. Errors will be corrected by the Project manager as follows:

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless, in the opinion of the Project manager, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.
- (c) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 13.

### **23. Evaluation and Comparison of Tenders**

- 23.1. The Project manager will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 21.
- 23.2. In evaluating tenders, the Project manager will determine for each tender the evaluated tender price by adjusting the tender price as follows:
  - (a) Making any correction for errors pursuant to clause 22.
  - (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.
- 23.3. The Project manager reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Project manager, shall not be taken into account in tender evaluation.
- 23.4. Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.

- 23.5. If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Project manager's estimate of the items of work to be performed under the Contract, the Project manager may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Project manager may require that the amount of the Performance Security set forth in clause 29 be increased at the expense of the successful tenderer to a level sufficient to protect the Project manager against financial loss in the event of subsequent default of the successful tenderer under the Contract
- 23.6. The tender evaluation committee shall evaluate the tender within 14 days of the validity period from the date of opening the tender.

## **AWARD OF CONTRACT**

### **24. Award criteria**

- 24.1. Subject to clause 21, the Project manager will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works.
- 24.2. The Project manager reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Project manager's action.

### **25. Notification of Award and signing of contract**

- 25.1. Prior to the expiration of the period of tender validity prescribed by the Project manager, the Project manager will notify the successful tenderer in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Award") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Project manager will pay to the Contractor in consideration of the execution

and completion of the Works as prescribed by the Contract.

- 25.2. Upon the furnishing of a Performance Security by the successful tenderer, the unsuccessful tenderers will promptly be notified that their tenders have been unsuccessful.
- 25.3. At the same time the project manager notifies the successful tenderer that his tender has been accepted, the project manager shall notify the other tenderers that their tenders have been unsuccessful.
- 25.4. Within fourteen [14] days of receipt of the form of Contract Agreement from the Project manager, the successful tenderer shall sign the form and return it to the Project manager together with the required Performance Security.
- 25.5. The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 25.6. A tenderer who gives false information in the tender document about his qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

## **26. Performance guarantee**

- 26.1. Within fourteen [14] days of receipt of the notification of award from the Project manager, the successful tenderer shall furnish the Project manager with a Performance Security in an amount stated in the Appendix to Instructions to Tenderers.
- 26.2. The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by an established and a reputable Bank approved by the Project manager and located in the Republic of Kenya or Insurance bond from the firms approved by PPRA.
- 26.3. Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract the Project manager may award the Contract to the next ranked tenderer.

## **Corrupt and fraudulent practices.**

The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of the contract. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices

**TENDER EVALUATION CRITERIA**

The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the Appendix, the provisions of the Appendix herein shall prevail over those of the instructions to tenderers.

**(a) Submission of bids**

The Tenderer must submit ONE (1) ORIGINAL in a sealed envelope bid and ONE COPY in a sealed envelope bid

**(b) Sealing of the bids**

The inner envelopes should be clearly marked as follows:

ORIGINAL TENDER NO \_\_\_\_\_

**“PROPOSED FURNISHING AND \_\_\_\_\_”**

COPY TENDER NO \_\_\_\_\_

**“PROPOSED FURNISHING AND \_\_\_\_\_”**

The envelopes shall then be sealed in an outer envelope. The inner and outer envelopes shall be addressed to the beneficiary:

\_\_\_ LANG’ATA TECHNICAL AND VOCATIONAL COLLEGE \_\_\_

After tender opening, the tenders will be evaluated in 3 stages, namely:

1. Preliminary Evaluation - Mandatory Requirements
2. Technical Evaluation
3. Financial Evaluation.

The project manager may seek further clarification/confirmation if necessary to confirm authenticity/compliance of any condition of the tender

**STAGE 1: PRELIMINARY EVALUATION – MANDATORY REQUIREMENTS**

The bidders will be evaluated as "RESPONSIVE" or "NON-RESPONSIVE." Non-responsive submissions on any mandatory requirements will eliminate bidders from further evaluation. The submitted documents must be certified as true copies of the originals by an Advocate of the High Court. Both KRA & NCA documents will be verified on the respective online portals for authenticity:

ITEM	Requirements
<b>MR 1</b>	Tender Security of Kenya Shillings Five Hundred Thousand ( <b>Kshs. 400,000</b> ) valid for <b>119</b> days from the date of Tender opening and must be from a reputable bank recognized by the Central Bank of Kenya or Insurance bond from the firms approved by PPRA.  <b>NB: Bid bonds from <u>Directline Assurance Company Limited, Africa Merchant Assurance Company (AMACO) Limited and Sidian Bank</u> will NOT be accepted.</b>
<b>MR 2</b>	Must submit a copy of the Certificate of Incorporation (under Cap 486 of the Laws of Kenya) or a Certificate of Registration of Business Name. (Including for Subcontractors)
<b>MR 3</b>	Must submit a copy of valid CR12 or CR13 certificate showing the list of directors/ shareholding and issued within the last 12 months.
<b>MR 4</b>	A valid copy of the Current Single Business Permit issued by the County of Muranga or neighbouring counties, or evidence of renewal of the license.
<b>MR 5</b>	Must submit a valid KRA PIN Certificate under the Business Name with eligibility for VAT.
<b>MR 6</b>	Must Submit a copy of a Valid Tax Compliance Certificate, from Kenya Revenue Authority (TCC Checker will be done)
<b>MR 7</b>	Must Submit a pre-bid site visit certificate signed and stamped by the beneficiary.
<b>MR 8</b>	Must submit proof of power of Attorney to the Authorized person to sign the tender Document
<b>MR 9</b>	Must submit a form of tender duly filled, signed and stamped.
<b>MR 10</b>	Bid document MUST be submitted in two (2) copies clearly labelled as original and copy.

## STAGE 2 TECHNICAL EVALUATION

**Only tenderers who have satisfied the aforementioned mandatory requirements will proceed to the technical evaluation**

To ensure the suitability and experience of bidders, the technical evaluation criteria assign marks based on bidder responses. A score of 70 marks or above is required to advance to the next stage. A perfect technical score (100 marks) will be weighted at 70.

No.	Evaluation Attribute	Technical Score	Max. Score
1	Supplier details	Provide a copy of the detailed company profile describing the business, contact details, physical location, field of expertise, licenses, certifications & accreditations - (5 marks)	5
2	Supply and installation projects completed in the last five (5) years – Minimum of three (3) projects with mandatory documentary evidence i.e., award letter, client’s contacts, practical completion certificate, certificate of making good defects (all to be provided or no points shall be awarded)	<ul style="list-style-type: none"> <li>i. Projects of a similar nature and similar/or higher project value – (15 marks; 5 marks each)</li> <li>ii. Projects of a similar nature but of lower project value – (9 marks; 3 marks each)</li> <li>iii. Projects of a different nature – (6 marks; 2 marks each)</li> <li>iv. No completed projects – (0 marks)</li> </ul>	15
3	Ongoing supply and installation projects – Minimum of three (3) projects with mandatory documentary evidence i.e. award letter, client’s contacts (all to be provided or no points shall	<ul style="list-style-type: none"> <li>i. Projects of a similar nature and similar/or higher project value – (9 marks; 3 marks each)</li> <li>ii. Projects of a similar nature but of lower project value – (6 marks; 2 marks each)</li> <li>iii. Projects of a different nature – (3 marks; 1</li> </ul>	9

	be awarded)	mark each) iv. No ongoing projects – (0 marks)	
4	Qualifications of company director including their qualifications in built environment related fields and experience in ICT. Certificates, CVs with referees' contacts and copies of professional membership certificates to be provided.	<ul style="list-style-type: none"> <li>i. Degree holder in relevant technological or electrical related field – (6 marks; 2 marks for qualification &amp; 1 mark for each year of experience up to max of 4 marks)</li> <li>ii. Diploma holder in relevant technological or electrical related field – (4 marks; 1 mark for qualification &amp; 0.5 marks for each year of experience up to max of 3 marks)</li> <li>iii. Certificate holder in relevant technological or electrical related field – (3 marks; 0.5 marks for qualification &amp; 0.25 marks for each year of experience up to max of 2.5 marks)</li> <li>iv. Artisan grade holder in relevant technological or electrical related field – (3 marks; 0.2 marks for qualification &amp; 0.2 marks for each year of experience up to max of 2.8 marks)</li> </ul>	6
5	Qualifications of key personnel that will be running the project including their qualifications in technological or electrical environment related fields and experience in technological or electrical. Certificates, CVs with referees' contacts and copies of	<ul style="list-style-type: none"> <li>i. Degree holders in relevant fields, per role – (15 marks: 7 marks for qualification i.e. 3.5 marks for each role &amp; 1 mark for each year of experience up to max of 8 marks i.e. 4 marks each role)</li> <li>ii. Diploma holders in relevant fields, per role – (12 marks: 5 marks for qualification i.e. 2.5 marks each role &amp; 0.7 mark for each</li> </ul>	15



	<p>professional membership certificates to be provided. –</p> <p>Minimum of 2 personnel i.e., site supervisor and project manager roles.</p>	<p>year of experience up to max of 7 marks i.e. 3.5 marks each role)</p> <p>iii. Certificate holders in relevant fields – (9 marks: 3 marks for qualification i.e. 1.5 marks each role &amp; 0.5 marks for each year of experience up to max of 6 marks i.e. 3 marks each role)</p> <p>iv. Artisan grade holders in relevant fields – (6 marks: 1 marks for qualification i.e. 0.5 marks each role &amp; 0.25 marks for each year of experience up to max of 5 marks i.e. 2.5 marks each role)</p>	
6	<p>Evidence of ownership of relevant transportation means &amp; equipment to carry out the work – Include ownership/lease documents</p>	<p>i. Proof of ownership of relevant transport means &amp; equipment – (10 marks; 2 marks each)</p> <p>ii. Proof of lease of relevant transport means &amp; equipment – (5 marks; 1 mark each)</p> <p>iii. No proof of ownership of relevant transport means &amp; equipment – (0 marks)</p>	10
7	<p>Audited financial reports for the last three years. Must be signed by directors and auditors</p>	<p>i. Average annual turn-over equal to or greater than the cost of the project – (10 marks)</p> <p>ii. Average annual turn-over above 50% but below 100% of the cost of the project – (6 marks)</p> <p>iii. Average annual turn-over below 50% of the cost of the project – (3 marks)</p>	10

8	Availability of working capital & references from bank/financial institutions regarding access to credit.	<ul style="list-style-type: none"> <li>i. Has working capital or access to credit to finance the project to undertake at least 50% of the works – (10 marks)</li> <li>ii. Has working capital or access to credit to finance the project to undertake at least 25% of the works – (5 marks)</li> <li>iii. No submission – (0 marks)</li> </ul>	15
9	Works methodology	<ul style="list-style-type: none"> <li>i. Submission of detailed project method outline, including sequences and coordination of works among all parties, addressing materials and labour access, storage areas, traffic management, site plan with facilities and access details – (3 marks)</li> <li>ii. Submission of a detailed program of works in Gantt chart format – (3 marks)</li> <li>iii. Details of proposed sub- contractors to carry out specialist works under a domestic sub-contract (e.g. electrical, data works) – Attach their company profile &amp; work agreement with Main Contractor – (4 marks)</li> </ul>	10
10	Litigation history	Provide a copy of accurate information about any litigation or arbitration resulting from contracts completed or ongoing under execution over the last 5 years – (2 marks)	2
11	Presentation & response	Presentation of tender documents that are tidy, well bound, and sequentially serialized	3

	(paginated) back-to-back in the correct Sequence of 1, 2, 3, 4 .... on every page including the Table of contents. (3 marks)	
<b>Total Maximum Score (marks)</b>		<b>100</b>

### **STAGE 3: FINANCIAL EVALUATION**

**This will be carried out only for those tenders that have passed BOTH the Mandatory Requirements and the Technical Evaluation.**

The evaluation shall be in two sections

1. Preliminary examinations and
2. Tender sum Comparisons

#### **PRELIMINARY EXAMINATIONS**

Tenders that get to this stage of evaluation will be checked for arithmetic errors and corrected as outlined below. Under no circumstances can the tendered rates be changed.

- 1. Discrepancies in Figures & Words** – If there is a difference between the amount in figures and words, the amount in words will prevail.
- 2. Unit Rate vs. Line-Item Total** – If a discrepancy arises between the unit rate and the line-item total, the quoted unit rate will prevail unless a clear typographical error is identified, in which case the Project Manager will adjust accordingly.
- 3. Missing BoQ Pages** – If any BQ pages are missing, all rates on those pages will be marked as zero, and costs will be assumed to be covered elsewhere in the BQ.
- 4. Pre-Priced Items** – Any missing Provisional Sums, Contingency Sums, Prime Cost Sums, or other pre-priced items will be reinstated correctly.
- 5. Tender Addendum Adjustments:**
  - New items – Rate will be marked as zero.
  - Modified descriptions/quantities – Original rate applies.

- Deleted items – Removed as per the addendum.
- Modified measurement units – Rate adjusted to fit the new unit.

The tender amount will be adjusted based on these corrections. If the Tenderer does not accept the corrected amount, the tender may be rejected, and the Tender Security forfeited.

### **TENDER SUMS COMPARISON**

The corrected tender sums and breakdown for the successful bidders will be compared against the Project Manager's estimates for the works to be carried out.

Corrected tender sums eligible for further financial evaluation will be required to be within a deviation of not more than a margin of  $\pm 20\%$  to the QS estimate. Tenders that are not within this range shall not be evaluated further.

The proposal with the lowest eligible cost shall be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. A perfect financial score (100 marks) will be weighted at 30 with the following formula:

$$\mathbf{FS = (100 \times \{FM/F\}) \times FW}$$

Where FS = Financial Score, FM = Lowest evaluated priced tenderer, F = Price of the tenderer under consideration, and FW = Financial weighting of 30.

The total score will be the sum of the weighted technical and financial evaluation scores. The highest-scoring tenderer will undergo a rate review, including checks on major item rates against QS estimates, consistency of similar item rates across the BQ, completeness of costing, and preliminary Costs to prevent front-loading.

### **TENDER AWARD**

The Foundation reserves the right to accept or reject any tender, cancel the tender process, or reject all tenders at any time before contract award without liability or obligation to disclose reasons.

The successful Tenderer will be notified via email before the tender validity period expires. This Award Letter will specify the Contract Price, which the Foundation will pay for the execution, completion, and maintenance of the works. Unsuccessful tenderers will also be informed.

Within 21 days of receiving the Award Letter, the successful Tenderer must provide the Employer with the required Performance Security as stipulated in the contract conditions.

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**SECTION III - TENDER DATA SHEET**

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[Instructions for completing the Tender Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITT.]

ITEM	PARTICULARS OF THE APPENDIX TO INSTRUCTIONS TO TENDERS
<b>A. General</b>	
1.	<p>The reference number of the Invitation to Tender (ITT) is:</p> <p><b>TENDER NUMBER: LTVC/MF/T/2025/001</b></p> <p>The Procuring Entity is: <b>LANG’ATA VOCATIONAL AND TRAINING COLLEGE ICT HUB</b></p> <p>The name of the ITT is: PROPOSED FURNISHING AND EQUIPPING OF LANG’ATA VOCATIONAL AND TRAINING COLLEGE ICT HUB</p> <p>The number and identification of lots (contracts) comprising this ITT is: <b>[insert number and identification of lots (contracts) if any] N/A</b>_____</p>
2.	<p><b>The name of the Project is:</b> <u>PROPOSED FURNISHING AND EQUIPPING OF LANG’ATA VOCATIONAL AND TRAINING COLLEGE ICT HUB</u></p> <p>Electronic –Procurement System is <b>not applicable to this tender</b></p> <p>The Procuring Entity shall use the following electronic procurement system to manage this Tendering process: <b>N/A</b></p>
<b>B. Tendering Document</b>	
3.	<p>The pre-tender conference and site visit will be held on <b>9<sup>th</sup> April 2025, starting at 10:30 am East African Time.</b></p> <p>Prospective bidders will converge at the offices of LANG’ATA TECHNICAL AND VOCATIONAL COLLEGE administration block at exactly 10.00 am for debriefing before walking to the site.</p>
4.	<p><b>Any questions in writing shall reach the Facility/Project Manager no later than 11<sup>TH</sup> April, 2025</b></p>

5.	Minutes of the pre-tender meeting and the pre-arranged pretender visit to the site of the works will be published on the Facility's Noticeboard.
6.	The Procuring Entity shall publish its response at the facility's Noticeboard
<b>C. Preparation of Tenders</b>	
7.	The Tenderer shall submit the following additional documents in its Tender: <b>N/A</b>
8.	Alternative Tenders shall not be considered.
9.	Alternatives to the Time Schedule shall not be considered /permitted.
10.	<p>Tenderers shall quote for the following components or services on a single-responsibility basis:</p> <p><b>PROPOSED FURNISHING AND EQUIPPING OF LANG'ATA VOCATIONAL AND TRAINING COLLEGE ICT HUB</b></p> <p>The following components or services will be provided under the responsibility of the Procuring Entity: <b>NONE</b></p>
11.	Final destination (Project Site): <b>LANG'ATA VOCATIONAL AND TRAINING COLLEGE</b>
12.	The prices quoted by the Tenderer shall not be subject to adjustment during the performance of the Contract.
13.	The Tenderer is required to quote the entirety of the Tender Price in Kenyan Currency.
14.	The Tender validity period shall be 119 days.
15.	<p>A Tender Security shall be required of <b>Kshs. 400,000.00</b></p> <p>A Tender Security shall be required, the amount and currency of the Tender Security as stated above in the form of;</p> <p>Bank Guarantee or Guarantee by Insurance Company Registered by IRA and Listed by the Authority or Guarantee Issued by Financial Institutions Approved and licensed by Central Bank of Kenya.</p>



16.	In addition to the original of the Tender, the number of copies is <b>One</b> .
17.	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of:  <b>[Power of Attorney].</b>
<b>D. Submission and Opening of Tenders</b>	
18.	For Tender submission purposes, the Procuring Entity's address is:  <b>MR. SIMON NYAGA PRINCIPAL LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE, P.O BOX 5665-0506, NAIROBI</b>
19.	Tenders will be opened immediately thereafter in the presence of candidates or their representatives who choose to attend.  Attention:  <b>MR. SIMON NYAGA PRINCIPAL LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE, P.O BOX 5665-0506, NAIROBI</b>  <b>The deadline for Tender submission is;</b>  Date: <b>16<sup>th</sup> April 2025 at 10:00 am East African Time.</b>  Tenderers <b>shall not have</b> the option of submitting their Tenders electronically.
20.	The Tender opening shall take place at:  Physical Address <b>LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE</b>  Date: <b>16<sup>TH</sup> APRIL 2025 at 10:00 am East African Time.</b>

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## **SECTION IV: TERMS OF REFERENCE**

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## **1. Project Overview**

Lang'ata Technical and Vocational College, located in Nairobi County, has served as an educational cornerstone for the local community for several years. However, the school's infrastructure has not kept pace with modern educational demands. The facilities have deteriorated, resulting in worn-out classrooms, inadequate furnishings, and an overall un-conducive learning environment.

Recognizing these challenges, the M-Pesa Foundation has provided a grant to fund a comprehensive renovation project aimed at revitalizing the school's infrastructure to support effective learning and meet the community's educational needs.

Pleng Limited has been appointed as the project manager, responsible for overseeing the project from start to finish, ensuring that it is completed on time, within budget, and to the highest quality standards.

We are inviting qualified contractors to submit tenders for the Proposed Furnishing and Equipping of Lang'ata Technical and Vocational College. The chosen contractor will collaborate closely with Pleng Limited to deliver the project as specified, adhering to the proposed timeline, budget, and safety standards.

## **2. Scope of work**

Lang'ata Technical and Vocational College is set to undergo a transformation through a comprehensive furnishing and equipping initiative. The project will ensure that all aspects of equipping and necessary installations are completed to the highest standards. The specific tasks and requirements are outlined below:

### **2.1.1 Furnishing Works:**

#### **Builder's Works:**

The furnishing component of the project focuses on the installation of workstations as per the attached drawings. There is also need to supply chairs for the ICT hub.

Additionally, the scope includes equipping the ICT hub with computers and other ICT equipment to improve the functionality of the ICT hub.

#### **Electrical Works**

This involves the electrical and data connection and fittings to the ICT hub.

### **General Construction Requirements:**

The proposed renovations at Lang'ata Technical and Vocational College must strictly adhere to all relevant local building codes, regulations, and the detailed drawings provided. The highest standards of quality must be upheld throughout the project to guarantee the structure's durability and long-term functionality.

To achieve this, all materials used in the process must meet or exceed industry standards for quality. Only high-grade materials should be employed to ensure the resilience of the structure and to minimize the need for ongoing maintenance or repairs. This focus on material quality is essential to creating a safe and enduring environment for future generations.

### **3. Supervision and Quality Control:**

The contractor is responsible for ensuring that all work is overseen by qualified personnel to maintain the highest standards of workmanship. Additionally, the project manager will take a proactive role in guaranteeing that all quality standards are consistently met, with the goal of creating a safe and conducive environment for the students.

Regular inspections will be carried out to verify compliance with the project specifications and industry standards. Any deviations or issues identified during these inspections must be promptly addressed and rectified to ensure the project remains on track and meets the required quality benchmarks.

### **4. Project Timeline:**

The winning contractor is expected to complete the construction within the specified timeframe, ensuring minimal disruption to the school activities. Bidders are required to provide a work program showing the duration that they will take to a detailed construction schedule, including milestones and deadlines, which must be provided and adhered to.

## 5. Anticipated schedule

4.1	Issuance of RFP	25th March 2025	
4.2	Site visit – LANG’ATA TECHNICAL AND VOCATIONAL COLLEGE	9th April 2025	At <b>10:30 am</b> local time
4.3	Bid Closing	16th April 2025	At <b>10:00 am</b> local time
4.4	Bid opening	16th April 2025	At <b>10:00 am</b> local time
4.5	Site Completion/Delivery of Work	12 Weeks from the date of commencement.	

## 6. Project Deliverables

1. Daily Progress Report: A daily progress report must be submitted, detailing the work completed each day. This report should include a summary of daily activities, any issues encountered, and actions taken to address them. It should also document the number of workers on-site and the progress made relative to the project schedule.
2. Weekly Progress Report: A comprehensive weekly progress report is required, providing an overview of the week's activities. This report should include a detailed account of the work accomplished, any delays or issues and their resolutions, and updated information on the project's status relative to the timeline and milestones. Additionally, it should highlight upcoming tasks and any adjustments needed to stay on track.

## 7. Key Personnel

A detailed organizational chart including assigned tasks of personnel needed for this current project and CV including experience and qualifications of key personnel shall be provided:

Position	Required Number	Total Work Experience (Years)	Work Experience (years)
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Project Manager	1	5 Years	5 years working in one or more electrical installation and data structured cabling projects
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## 8. Bonds and Insurances

Interested bidders will be required to provide a bid security of **KSHS. 400,000.00** in favour of the M-Pesa Foundation in the form of a bank guarantee from a bank or insurances approved by the Public Procurement Regulatory Authority (PPRA). The hard copy of the Original Tender Security in the form and amount specified must be attached in the bid document to be delivered before the submission deadline.

Upon award of contract the contractor will be required to provide a performance bond in favour of the M-Pesa Foundation whose value will be equal to 10% of the grant amount. This is to be provided in form of a bank guarantee or insurances approved by the Public Procurement Regulatory Authority (PPRA). The hard copy of the Original Performance Bond in the form and amount specified must be submitted to the project manager before commencement of works.

No payments shall be made to the Contractor before the performance bond is provided.

The contractor will also be required to provide evidence of a Contractor's All Risk (CAR) insurance cover.

## 9. Pricing

All prices quoted should be net inclusive of all taxes and must be expressed in Kenya Shillings and shall remain valid for a period of 160 days from submission of the tender.

In their proposals, bidders shall affirm that the prices quoted for each work are valid regardless of whether the Procuring Entity decides to proceed with all the works included in the Scope of Works in whole or in part. Prices presented must cover all the services to be provided including cartage of all remaining materials upon completion of the works (**price "all inclusive"**). The Contractor shall be responsible for providing all the necessary personnel, supervision, tools, equipment, material, consumables, supplies, facilities including working and living accommodation, utilities (power and

water), transportation, personnel travel, administration, insurance and all other costs required to fulfil all its contractual obligations.

It should be noted that all mobilization and demobilization costs for the project should be included in the cost of preliminaries in the Bill of Quantities Section.

The cost of preparing a bid and of negotiating a contract, including any related travel, is not reimbursable nor can it be included as a direct cost of the assignment.

## **10. Variations**

All bidders should note that no variations will be done without proper approval from the relevant authority once the work commences.

## **11. Interim Payments**

All payments to the contractor will be made based on the works that have been done on site.

The contractor shall submit the invoice and progress report to the Project Manager. The payment will be initiated upon verification of achieved progress from the Project Management team.

## **12. Supply Items**

Supply of items indicated in the Bill of Quantities will not be limited to the Contractor. Should the beneficiary or the client undertake the supply of any of the items it shall be so allowable under this contract in which case the value of the item shall be deducted from the amount payable to the Contractor.

## **13. Health, Safety, and Security**

Bidders must provide a signed commitment to adhere to statutory obligations under OSHA 2007 and subsidiary legislations. Further, they will be required to provide evidence of a health and safety management plan/policies demonstrating their commitment to compliance throughout the project duration.

## **14. Environmental Compliance**

The contractor shall, to any extent possible, use environmentally friendly products.

- Flooding – awareness of any potential flooding zones and take appropriate action not to impede the works. This includes sustainable urban drainage within the area of works.
- Noise and vibration – timing of noisy activities e.g. drilling, excavating, etc. the contractor shall

perform such activities with minimal disruption to avoid complaints by neighbours.

- Machinery – The contractor shall operate and maintain the equipment and machinery used in the implementation activities in accordance with the relevant laws, standards, regulations and legislation, as well as the requirements under the contract, and the manuals and guidelines as provided by the manufacturers and suppliers of the equipment and machinery.
- Dust (pollution) – use of appropriate dust control mechanisms e.g. water, barriers, etc., where applicable, to minimize exposure to the dust.
- Waste Management – apply duty of care measures when handling debris and waste materials. The contractor shall safely remove and dispose of any debris in the designated landfill area.

### **15. Quality Assurance**

- The key project personnel must meet the relevant qualifications and experience, to perform the services to the required standard,
- The Project Manager will visit the site regularly to inspect the quality of work,
- All materials shall be inspected (by the Project Manager) for compliance to technical specifications and officially approved, prior to application
- Payment is linked to work done on site.

### **16. Warranty/ Defects Liability Period**

All works shall be warranted for 6 months; this liability will cover all material and workmanship defects arising during the warranty period.

The computers and ICT equipment delivered and installed to the institution should have a warranty of a minimum of 12 months.

### **17. Subcontractors**

Once the Contract is awarded, the Contractor shall provide a complete list of subcontractors, if any, clearly indicating both qualitatively (by type of work to be performed) and quantitatively (percentage by aggregate value) of work which is to be subcontracted and the experience of the subcontractor to perform such work. The Procuring Entity may object to and require the replacement of any subcontractor at any time, at the Procuring Entity's sole discretion and without so incurring any liability to the main Contractor. The Contractor shall be fully responsible for the performance of



all services under the Contract and for all liability arising from the performance of the subcontractors. There shall be no contractual relationship between the Procuring Entity and any subcontractor used by the Contractor.

### **18. Dissolution of Contract by the Project Manager**

Without prejudice to any other rights and remedies which the project manager may possess, the project manager may terminate the contract if:

- i. The Contractor, without reasonable cause, wholly suspends the carrying out of the Works before completion thereof, for a period exceeding fourteen days.
- ii. The Contractor fails to proceed regularly and diligently with the Works.
- iii. The Contractor fails to commence the Works within thirty days of the date for commencement.
- iv. The Contractor persistently neglects to comply with a written notice from the Project Manager requiring him to remove defective work or improper materials or goods, and by such refusal or neglect, the Works are materially affected.
- v. The Contractor persistently neglects to comply with any of his obligations under the contract.

The Project Manager may give 14-day notice to the Contractor specifying the default. Should the Contractor continue with the default, the project manager might within another 14 days terminate the contract, provided that such a notice is not given unreasonably.

In the event of contract termination by the project manager, the Contractor shall vacate the site immediately.

The Quantity Surveyor shall then prepare a final account for the work done by the Contractor by the date of termination.

The Contractor shall NOT be relieved of his obligations or liabilities in regard to the part of the Works carried out by him.

### **19. Dissolution of Contract by the Contractor**

Without prejudice to any other rights and remedies which the Contractor may possess, the Contractor may terminate the contract if:

- i. The Contractor does not receive a payment certificate which he applied for within 14 days of the application and the default continues for 60 days after expiry of the initial 14 days.

- ii. The Project manager interferes with or obstructs the issue of any certificate due under this contract, and continues such act for sixty days after a notice of default has been issued by the Contractor.
- iii. There is delay in the Contractor receiving possession of or access to the site resulting in suspension of works for a continuous period of 60 days.
- iv. There is delay in appointment of a replacement architect, quantity surveyor, engineer or a delay on the part of artists, tradesmen or others engaged by the project manager in executing works not forming part of this contract resulting in suspension of works for a continuous period of 60 days.

Should the Contractor terminate the contract, the Contractor shall be paid by the Project manager the total value of work completed at the date of termination and the total value of work begun and executed but not completed at the date of termination. The Contractor will also be owed any sum assessed in respect of direct loss and or expense, the cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor shall be legally bound to pay, and which have been recorded, the reasonable cost of removal, and any direct loss and or damage caused to the Contractor by the termination

## **20. Submission Details**

The deadline for submission of bids is **16th April 2025 by 10:00 am**. The submission should be in 2 bound documents, each in a separate envelope clearly marked "TO LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE TENDER BOX". The submission should be made at the offices of the LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE.

### **NOTE:**

- i. Any bid received after the deadline will not be opened, and no amendments to the technical or financial proposals will be accepted after the deadline.
- ii. Proposals submitted contrary to the instructions given above will not be accepted.
- iii. All inquiries relating to the terms of reference shall be communicated in written form to the Lang'ata Technical and Vocational College offices or the Project Manager at <mailto:>

[info@pleng.net](mailto:info@pleng.net)

or

0724250556/

0111251975 from Monday to Friday between 9:00am to 4:00pm. The facility will ONLY respond to queries or clarifications sought in writing by interested bidders, which will be received not later than 11th April 2025

## **21. Disclaimer**

The procuring entity will not be bound to accept the lowest or any offer and reserve the right to accept or reject any offer, based on the terms of reference.

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## **SECTION V - TENDERING FORMS**

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## FORM OF TENDER

### INSTRUCTIONS TO TENDERERS

The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.

All italicized text is to help Tenderer in preparing this form.

Tenderer must complete and sign the following;

- Tenderer's Eligibility – Confidential Business Questionnaire
- Certificate of Independent Tender Determination
- The Self-Declaration of the Tenderer,

All attached to this Form of Tender.

Date of this Tender submission: *[insert date (as day, month and year) of Tender submission]*

**No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to Tenderers;

**Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with Instructions to Tenderers;

**Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with Instructions to Tenderers;

**Conformity:** We offer to provide supply of materials and execution of the Works in conformity with the Tendering document of the following: *[insert a brief description of the proposed works and services];*

### **Breakdown of the Tender Price**

<b>Item</b>	<b>Description</b>	<b>Amount (in Kshs)</b>
1	PROPOSED FURNISHING AND EQUIPPING OF LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE ICT HUB	
<b>TOTAL (KSHS)</b>		

**Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is: *[Insert one of the options below as appropriate]*

**Discounts:** The discounts offered and the methodology for their application are:

The discounts offered are: *[Specify in detail each discount offered.]*

**Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 14 (as amended if applicable) from the date fixed for the Tender submission deadline specified in TDS 19 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

**Performance Security:** If our Tender is accepted; we commit to obtain a Performance Security in accordance with the Tendering document;

**One Tender Per Tenderer:** We are not submitting any other Tender(s) as an individual Tenderer, and we are not participating in any other Tender(s) as a Joint Venture member, and meet the requirements of Instructions to Tenderers, other than alternative Tenders submitted in accordance with Instructions to Tenderers;

**Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;

**State-owned enterprise or institution:** *[select the appropriate option and delete the other]* [We are not a state- owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT4.6];

**Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: [insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]

Name of Recipient	Address	Reason	Amount

*(If none has been paid or is to be paid, indicate "none.")*

**Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed; Not Bound to Accept: We understand that you are not bound to

accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and

**Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

**Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent tender Determination" attached below.

**Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from [www.pppra.go.ke](http://www.pppra.go.ke) during the procurement process and the execution of any resulting contract.

We, the Tenderer, have fully completed and signed the following Forms as part of our Tender:

**Tenderer's Eligibility;** Confidential Business Questionnaire – to establish we are not in any conflict to interest.

**Certificate of Independent Tender Determination** – to declare that we completed the tender without colluding with other tenderers.

**Self-Declaration of the Tenderer** – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.

Declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya,

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in "**Appendix I- Fraud and Corruption**" attached to the Form of Tender.

**Name of the Tenderer:** \*[insert complete name of person signing the Tender]

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

**Title of the person signing the Tender:** [insert complete title of the person signing the Tender]

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

**Date signed** [insert date of signing] **day of** [insert month], [insert year].

## TENDERER'S ELIGIBILITY – CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

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

### Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business that the Tenderer Handles.	



10	State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of state which stock exchange	
11	<b>BANK DETAILS</b> BANK NAME: BANK ACCOUNT NO: (in case of change of bank details provide written communication after contract signing)	

**General and Specific Details**

Sole Proprietor, provide the following details.

Name in full \_\_\_\_\_ Age

Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_ Citizenship \_\_\_\_\_

Partnership, provide the following details.

	<b>Names of Partners</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

**Registered Company, provide the following details.**

Private or public Company: \_\_\_\_\_

State the nominal and issued capital of the Company: \_\_\_\_

Nominal Kenya Shillings (Equivalent): \_\_\_\_\_

Issued Kenya Shillings (Equivalent): \_\_\_\_\_

Give details of Directors as follows.

	<b>Names of Director</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
--	--------------------------	--------------------	--------------------	-----------------------

1				
2				
3				

**DISCLOSURE OF INTEREST-Interest of the Firm in the Procuring Entity.**

Are there any person/ persons in **LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE** who has/ have an interest or relationship in this firm?

Yes/No\_If yes, provide details as follows.

	<b>Names of Person</b>	<b>Designation in the Procuring Entity</b>	<b>Interest or Relationship with Tenderer</b>
1			
2			
3			

**Conflict of interest disclosure**

	<b>Type of Conflict</b>	<b>Disclosure YES OR NO</b>	<b>If YES provide details of the relationship with Tenderer</b>
1	Tenderer directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer,		

	or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the technical proposal of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

**Certification**

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

Full Name \_\_\_\_\_

Title or Designation \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

## CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the under signed, in submitting the accompanying Letter of Tender to the \_\_\_\_\_ **[Name of Procuring Entity]** for: \_\_\_\_\_ **[Name and number of tender]** in response to the request for tenders made by: \_\_\_\_\_ **[Name of Tenderer]** do hereby make the following statements that I certify to be true and complete in every respect:

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

I have read and I understand the contents of this Certificate;

I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect; I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;

For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:

Has been requested to submit a Tender in response to this request for tenders; could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;

The Tenderer discloses that [check one of the following, as applicable]:

The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;

The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;

In particular, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- prices;
- methods, factors or formulas used to calculate prices;
- the intention or decision to submit, or not to submit, a tender; or
- the submission of a tender which does not meet the specifications of the request for Tenders;

In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or

services to which this request for tenders relates, except as specifically authorized by the procuring authority;

The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**SELF DECLARATION FORMS**

**FORM SD1**

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

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

THAT I am the Company Secretary/ Chief Executive/ Managing Director/ Principal Officer/ Director of..... (*Insert name of the Company*) who is a Bidder in respect of Tender No..... for ..... (*Insert tender title/description*) for..... (*Insert name of the Procuring entity*) and duly authorized and competent to make this statement.

THAT the afore said Bidder, its directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

.....

(Title)

.....

(Signature)

.....

(Date)

Bidder's Official Stamp

**FORM SD2**

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

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

THAT I am the Chief Executive/ Managing Director/ Principal Officer/ Director of..... (*Insert name of the Company*) who is a Bidder in respect of Tender No..... for..... (*Insert tender title/description*) for ..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.

THAT the afore said Bidder, its servants and/ or agents/ subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... (*Insert name of the Procuring entity*) which is the procuring entity.

THAT the aforesaid Bidder, its servants and/ or agents/ subcontractor shave not offered any inducement to any member of the Board, Management, Staff and/ or employees and/ or agents of..... (*name of the procuring entity*).

THAT the aforesaid Bidder will not engage/ has not engaged in any corrosive practice with other bidders participating in the subject tender.

THAT what is deponed to here in above is true to the best of my knowledge information and belief.

.....

(Title)

Bidder's Official Stamp

.....

(Signature)

.....

(Date)

**DECLARATION AND COMMITMENT TO THE CODE OF ETHICS**

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

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

*(Company Seal/ Rubber Stamp where applicable)*

Witness Name.....

Sign.....

Date.....



## Contractor's Equipment

### Form EQU

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements of the proposed works. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment	
	<input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

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

## PERSONNEL

### Form PER -1- Proposed Personnel

Tenderers should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III. The data on their experience should be supplied using the Form below for each candidate.

<b>1.</b>	<b>Title of Position:</b>
	<b>Name:</b>
<b>2.</b>	<b>Title of Position:</b>
	<b>Name:</b>
<b>3.</b>	<b>Title of Position:</b>
	<b>Name:</b>
<b>4.</b>	<b>Title of Position:</b>
	<b>Name:</b>
<b>5.</b>	<b>Title of Position:</b>
	<b>Name:</b>
<b>6.</b>	<b>Title of Position:</b>
	<b>Name:</b>

**Form PER -2- Resume of Proposed Personnel**

**Name of Tenderer** \_\_\_\_\_

<b>Position</b>		
<b>Personnel information</b>	<b>Name</b>	<b>Date of birth</b>
	<b>Professional qualifications</b>	
<b>Present employment</b>	<b>Name of Procuring Entity</b>	
	<b>Address of Procuring Entity</b>	
	<b>Telephone</b>	<b>Contact (manager/personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present Procuring Entity</b>

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

<b>From</b>	<b>To</b>	<b>Company / Project / Position / Relevant technical and management experience</b>

**PROPOSED SUB-CONTRACTORS FOR MAJOR ITEMS OF WORKS**

The following Subcontractors and/or manufacturers are proposed for carrying out the item of the facilities indicated. Tenderers are free to propose more than one for each item.

<b>Major Items of Works</b>	<b>Proposed Subcontractors/Manufacturers</b>	<b>Nationality</b>

**LITIGATION HISTORY**

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), KSHS. (Equivalent exchange rate)
Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
[insert year]	[insert percentage]	Contract Identification: [indicate complete contract name, number, and any other identification]  Name of Procuring Entity: [insert fullname]  Address of Procuring Entity: [insert City/ street/building/floor number/room number/country]  Matter in dispute: [indicate main issues in dispute]  Party who initiated the dispute: [indicate "Procuring Entity" or "Contractor"]  Reason(s) for Litigation and award decision [indicate main reason(s)]	[insert amount]

## **CURRENT CONTRACT COMMITMENTS / WORKS IN PROGRESS**

### **Form CCC**

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

<b>Name of contract</b>	<b>Procuring Entity, contact address/Tel</b>	<b>Value of outstanding work (current K Shilling equivalent)</b>	<b>Estimated completion date</b>	<b>Average monthly invoicing over last six months (K Shilling /month)</b>
1.				
2.				
3.				
4.				
5.				
etc.				

## FINANCIAL SITUATION

### Form FIN – 3.1: Historical Financial Situation

Tenderer’s Legal Name: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

*To be completed by the Tenderer and, if JV, by each member*

Date: \_\_\_\_\_

<b>Financial information in Kenya Shilling equivalent</b>	<b>Historic information for previous _____ ( ) years (Kenya Shilling equivalent in000s)</b>						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg.Ratio
<b>Information from Balance Sheet</b>							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
<b>Information from Income Statement</b>							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

Must reflect the financial situation of the Tenderer or member to a JV, and not sister or parent companies. Historic financial statements must be audited by a certified accountant.

Historic financial statements must be complete, including all notes to the financial statements.

Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

**Form FIN - 3.2 - Average Annual Turnover**

Tenderer's Legal Name: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

<b>Annual turnover data</b>		
<b>Year</b>	<b>Amount and Currency</b>	<b>KSHILLING equivalent</b>
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Turnover	_____	_____

\*Average annual turnover calculated as total certified payments received for work in progress or completed, divided by the number of years specified in Section III, Evaluation Criteria, Sub-Factor 2.3.2.



**Form FIN3.3: Financial Resources**

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

<b>Source of financing</b>	<b>Amount (Kenya Shilling equivalent)</b>
1.	
2.	
3.	
4.	

**BIDDER'S EXPERIENCE**

**Form EXP 4.1: General Experience**

Tenderer's Legal Name: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Tenderer
			Contract name: Brief Description of the Works performed by theTenderer: Name of Procuring Entity: Address:	
			Contract name: Brief Description of the Works performed by theTenderer: Name of Procuring Entity: Address:	
			Contract name: Brief Description of the Works performed by theTenderer: Name of Procuring Entity: Address:	
			Contract name: Brief Description of the Works performed by theTenderer: Name of Procuring Entity: Address:	

\*List calendar year for years with contracts with at least nine (9) months activity per year starting with the earliest year

**Form EXP – 4.2(a) Specific Experience**

Tenderer's Legal Name: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

Similar Contract No.____[insert specific number] of ____ [total number of contracts] required.	Information
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:	
Amount	
Physical size	
Complexity	
Methods/Technology	
Physical Production Rate	

**Form EXP –4.2(b) Specific Experience in Key Activities**

Tenderer's Legal Name: \_\_\_\_\_ Subcontractor's Legal Name:

-----

JV Member Legal Name: \_\_\_\_\_ Date:

-----

	Information		
Contract Identification	_____		
Award date Completion date	_____		
Role in Contract	Contractor _____	Management Contractor _____	Subcontractor _____
Total contract amount	_____		KSHILLING _____
If member in a JV or subcontractor, specify participation of total contract Amount	_____ %	_____	KSHILLING _____
Procuring Entity's Name:	_____		
Address:	_____		
Telephone/fax number:	_____		
E-mail:	_____		

## BANK DETAILS FORM

BANK DETAILS FORM		
INSTITUTION/ COMPANY NAME		
	<u>ADDRESS:</u>	<u>OFFICIAL STAMP:</u>
AUTHORIZED PERSON'S NAME	1.	2.
POSITION		
TELEPHONE NUMBER		
SIGNATURE		
DATE		
ACCOUNT NUMBER		
<u>BANK NAME:</u>		<u>BANK CODE:</u>
BRANCH NAME		<u>BRANCH CODE:</u>
BANKER'S CONFIRMATION THAT ACCOUNT DETAILS ARE AS STATED ABOVE		
AUTHORIZED SIGNATORY:	1.	2.
BANKER'S STAMP		

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**SECTION VI – BILLS OF QUANTITIES**

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ITEM NO.	DESCRIPTION	UNIT	QTY	RATE KSHS.	TOTAL KSHS.
	<b><u>POWER AND DATA DISTRIBUTION</u></b>				
	Supply, install and commission the following: -				
A	Acti Isobar P.A Consumer Unit CU - 1' 6 way SP+N Incorporating 100A Integral isolator as Schneider	NO.	1		
	<b><u>Breakers for the above boards:</u></b>				
B	32A SP MCB , C Curve as Schneider Electric or approved equivalent	NO.	5		
	<b><u>TELEPHONE, DATA &amp; SMART BOARD OUTLET</u></b>				
C	Data/wifi outlet point with draw wire left in 25mm dia. PVC heavy gauge conduits concealed in the floor and walls but without the outlet plate	NO.	24		
D	Data outlet point in HG rigid 25mm Ø PVC conduits, with draw wire, with all the necessary materials	NO.	24		
E	Dual data Outlet Plates for the above	NO.	24		
	<b><u>Cabling</u></b>				
F	Sub-mains cables consisting of 16mm <sup>2</sup> CU cables from the meter box to DB and Cus	LM	80		
	<b><u>Trunking</u></b>				
G	200X50mm Powder-coated 2-compartment metal trunking insatlled at 450mm FFL to the bottom of the trunking	LM	45		
	<b>TOTAL CARRIED TO SUMMARY PAGE</b>				

ITEM NO.	DESCRIPTION	UNIT	QTY	RATE KSHS.	TOTAL KSHS.
	<b><u>CCTV INSTALLATIONS</u></b>				
	Supply, install and set to work Panasonic IP CCTV system or equal and approved with cables drawn neatly in 25mm diameter conduits or trunking provided elsewhere.  Rates to include labour, consumables and any others charges				
A	Supply and Installation of 1ph 850VA UPS as Mecer/Emerson to the approval of the engineer	ITEM	1		
B	Wiring of CCTV camera from NVR/Network switch to IP camera location average length of Cat 6 UTP cable 55m. Cable through 32mm diameter heavy guard conduits	NO.	13		
C	16 Channel Network Video Recorder (NVR) with 2 internal SATA HDDs, 8TB storage, inbuilt multiplexer, MPEG compression, playback support (both fast and slow), capable of simultaneous operation for preview, record, back-up and email, HDMI and VGA output, centralized monitoring, high quality image complete with software as Hikvision. (Attach catalogue). Complete with network monitoring software	NO.	1		
D	Bullet type IP Camera 3Megapixel HD IP network camera with motion detection, pan-tilt-zoom capability and night vision as Hikvision DS-2CD2032	ITEM	1		
E	IP Camera 3Megapixel HD IP network dome camera with motion detection, pan-tilt-zoom capability and night vision as Hikvision DS-2CD2132-I	ITEM	12		
F	9U free standing cabinet complete with locking glass, 2 fans 6 power outlet as Toten	NO.	1		
G	Category 6 24 port patch panel	NO.	2		
H	Supply, install and configure Dlink 24 port PoE network switch.	NO.	1		
I	2U Horizontal patch lead organiser	NO.	2		
J	22" Panasonic flat screen TV/monitor	NO.	1		
	<b>TOTAL CARRIED TO SUMMARY PAGE</b>				

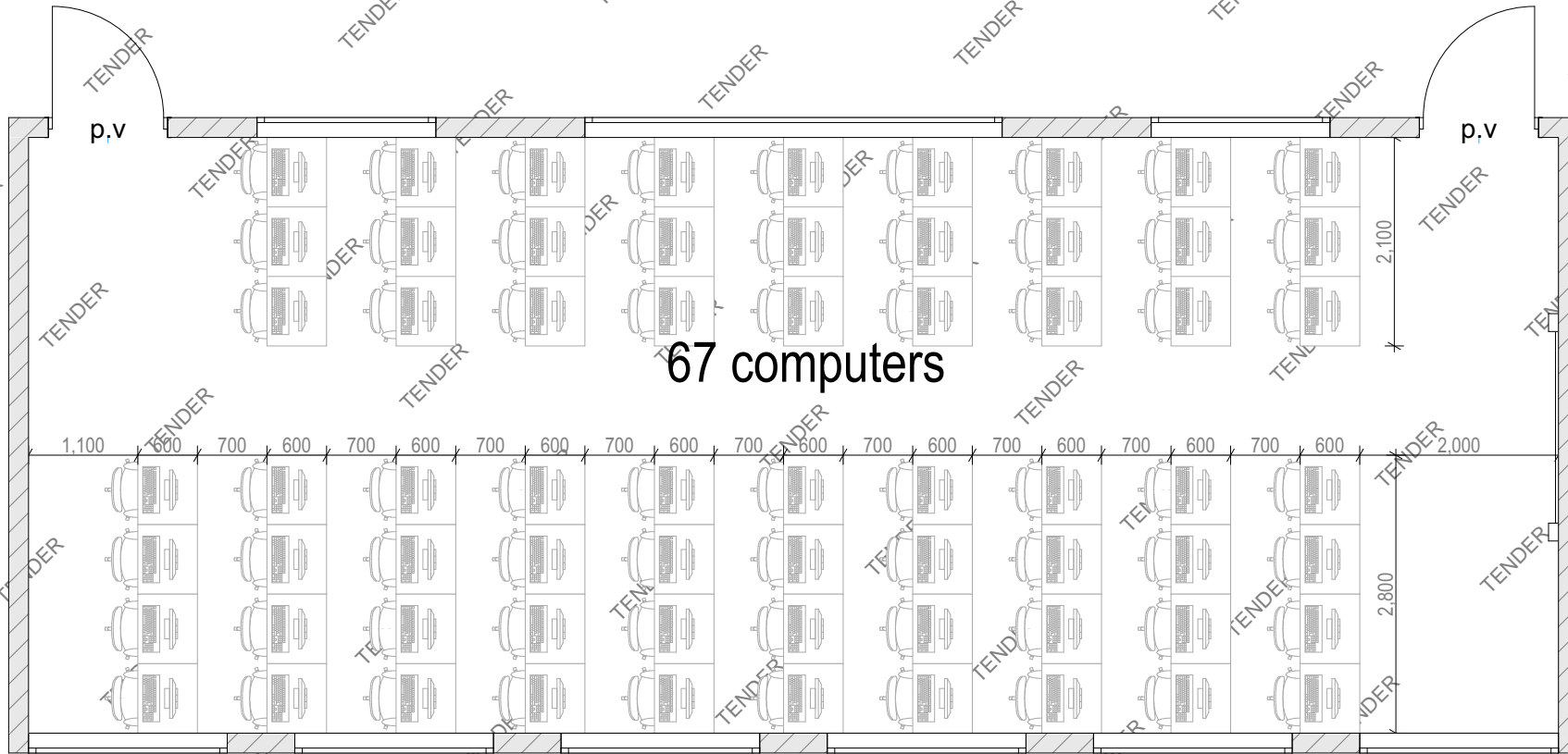


ITEM NO.	DESCRIPTION	UNIT	QTY	RATE KSHS.	TOTAL KSHS.
	<p><b><u>FURNISHINGS</u></b></p> <p><b><u>All items must be inclusive of branding, and transportation</u></b></p> <p>A Supply and install Bavarian Beech workstations size 2800mm X 600mm X 750mm high, comprising of Bavarian Beech board 2No. 460mm X 460mm high on the sides, and 2660mm X 460mm high modesty partition as per the attached drawings</p> <p>B Supply and install Bavarian Beech workstations size 2100mm X 600mm X 750mm high, comprising of Bavarian Beech board 2No. 460mm X 460mm high on the sides, and 2020mm X 460mm high modesty partition as per the attached drawings</p> <p>C Ergonomic Computer Chairs: Adjustable height, swivel function, lumbar support, and breathable mesh back Made of high-quality steel frame and durable fabric</p>	NO.	10		
	<b>TOTAL CARRIED TO SUMMARY PAGE</b>				

ITEM NO.	DESCRIPTION	UNIT	QTY	RATE KSHS.	TOTAL KSHS.
	<b><u>EQUIPMENT TO THE ICT HUB</u></b>				
	<b><u>All items must be inclusive of branding, and transportation</u></b>				
1	HP Desktop (New) ü Processor: Intel Core i5 (13 <sup>th</sup> Gen) ü 16GB DDR4 RAM (Expandable to 32GB) ü Storage: 512GB SSD ü Display: 21-inch Full HD (1920X1080) monitors with anti-glare coating (New) ü Multimedia-Integrated high-definition audio and video support ü Connectivity-Wi-Fi 6 and Ethernet-ready ü Complete with branded mouse and keyboard and connecting wires ü Preinstalled Windows 11 & Office 2022	NO.	70		
2	Heavy-Duty Color Printer: (New) ü Konica Minolta Bizhub C551i ü Print Speed: 30 pages per minute (ppm) in color ü Connectivity: Wireless and Ethernet	NO.	1		
3	ID Color Printer: ü ID Card Printer ü Printing Technology: Dye-sublimation thermal transfer ü Resolution: 300 dpi (dots per inch) ü Features: Dual-sided printing with encoding options for smart cards	NO.	1		
4	Smartboard: ü Features: 4K UHD resolution, multi-touch support, and integrated whiteboarding software ü Connectivity: Ethernet, Wireless and HDMI support ü 16GB RAM, 512GB SSD ü Windows 10 Pro	NO.	1		
5	Installation of Local Area Network (LAN): ü Switches: High-speed managed fibre and Ethernet switches three (4) 24-port and two (2) 48-port models ü Cabling: Category 6 (CAT6) cables with modular connectors ü 5 Wireless Access Points: Dual-band width ü 1.2Gbps speed ü Router: Minimum speed of 1Gbps, supporting multiple connections ü Accessories: 15U Cabinet, Patch panels, cable organizers, and power injectors	ITEM	1		
6	Computer Servers: ü Processor: Dual Intel Xeon Silver 4314 processors ü Memory: 64 GB ECC DDR4 RAM (expandable to 128GB) ü Storage: 4TB SSD with RAID 5 configuration ü Features: Redundant power supplies and remote management ü Display: 24-inch Full HD (1920x1080) monitors with anti-glare coating	NO.	1		
7	Projector: ü Epson EB-2250U 5000 Lumens ü Resolution: 4K UHD (3840x2160) ü Brightness: 5000 lumens ü Features: Wide-angle lens and wireless connectivity	NO.	1		
8	Projector: ü Epson EB-2250U 4000 Lumens ü Resolution: 4K UHD (3840x2160) ü Brightness: 4000 lumens Features: Wide-angle lens and wireless connectivity	NO.	1		
9	Tripod Projector Screens: ü Size: 150 inches ü Type: Portable	NO.	2		
11	Power Extensions: ü 6-Port Power Extension Cables ü Surge protection and high quality copper wiring	NO.	50		
12	Uninterruptible Power Supply: ü Capacity: 1,500VA with automatic voltage regulation (Server room) LCD 230V ü Back-up: Battery life to sustain operations for up to one hour	NO.	2		
	<b>TOTAL CARRIED TO SUMMARY PAGE</b>				

ITEM NO.	DESCRIPTION	UNIT	QTY	RATE KSHS.	TOTAL KSHS.
	<b><u>GRAND SUMMARY</u></b>				
	<b>POWER AND DATA DISTRIBUTION</b>				
	<b>CCTV INSTALLATIONS</b>				
	<b>FURNISHINGS</b>				
	<b>EQUIPMENT TO THE ICT HUB</b>				
	<b>GRAND TOTAL FOR LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE (INCL OF VAT)</b>				

200  
400  
1,200 900 1,800 1,500 4,200 1,500 1,800 900 1,200 400  
15,400



200 2,000 680 2,000 680 2,000 680 2,000 680 2,000 680 2,000 680 2,000 200 200  
15,400  
15,800

- Notes
- Architectural**
- All dimensions are in millimetres unless stated otherwise
  - All walls below 200mm are to be reinforced with hoops iron at every alternate course
  - Provide damp proof course (dpc) under all walls
  - Provide permanent vents (p.v.) above all doors and windows as indicated
  - All PVC work is to be per S.E.'s details
- Structural**
- All drawings shall be read in conjunction with the relevant General Arrangement, Mechanical & Electrical Services, Architectural Equipment Suppliers drawings and Contract Technical Specifications. Any Discrepancy shall be brought to the engineer's attention before commencing work. If any of the notes given in this drawing conflict with the requirements of the Contract Technical Specifications, Technical Specification shall take precedence. The conflicting note should in any case be brought to the attention of the Structural Engineer.
  - All dimensions are in millimetres unless noted otherwise.
  - All floor levels shown are Finished Concrete level (Structural Floor Level) unless indicated otherwise. Foundation formation levels for all columns, strip footings and rafts shall be excavated and prepared for the approval of the Engineer

- Construction**
- All slabs at ground level are to be poured over 500 gauge polythene sheeting, on a 50mm thick murrum blending layer minimum 300mm approved hardcore fill
  - All soils under slabs and around external foundations are to be treated against termites

- M.E.P**
- All workmanship and materials shall be as per all applicable building codes, local codes, rules and ordinances
  - All soil, waste vents and rainwater leaders shall be according to schedule

no	date	revision

Project Financier  
**m-pesa Foundation**

Beneficiary  
LANGATA TVC

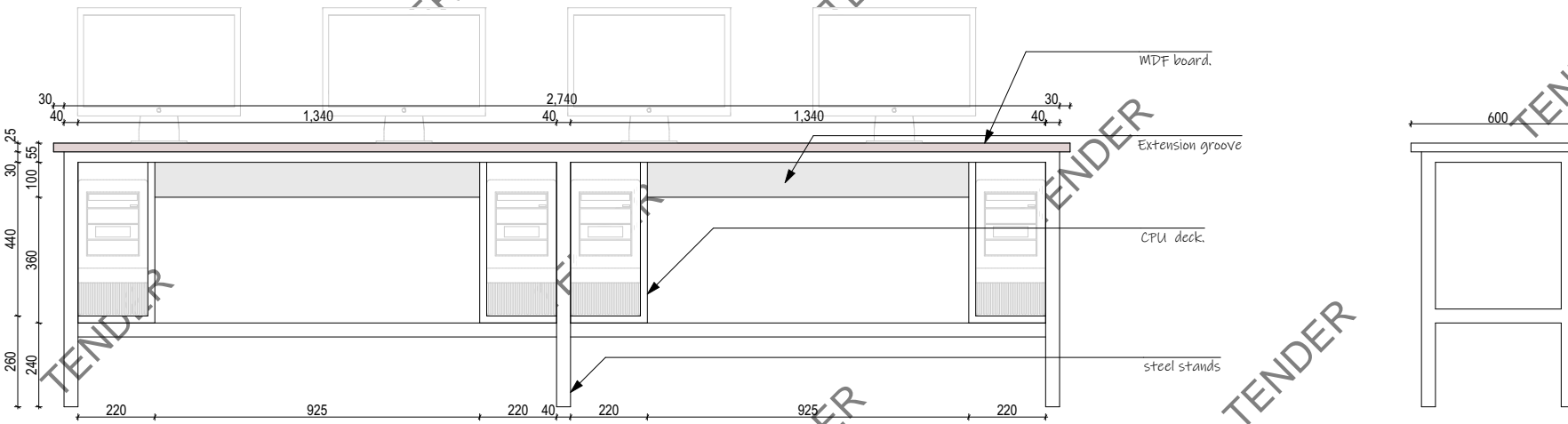
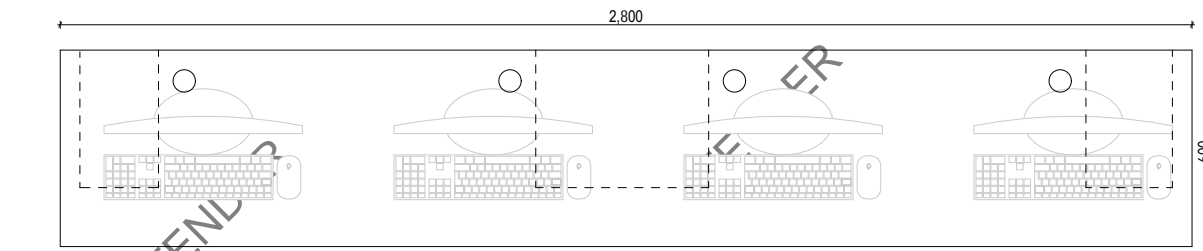
Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**PLENG LIMITED**  
Planning, Engineering & Environment  
P.O. Box 75461 00200 Nairobi  
Tel: 020-244658/9, 0722-387987 Fax: 020-31293  
Email: info@pleng.net Website: www.pleng.net

project title  
**PROPOSED ICT LAB LAYOUT AT LANGATA TVC**

site \_\_\_\_\_

drawn	checked	project no.
date		
scale		
As Shown		



- Notes**
- Architectural**
- All dimensions are in millimetres unless stated otherwise
  - All walls below 200mm are to be reinforced with hoop iron at every alternate course
  - Provide damp proof course (dpc) under all walls
  - Provide permanent vents (p.v.) above all doors and windows as indicated
  - All RC work is to be per S.E's details

- Structural**
- All drawings shall be read in conjunction with the relevant General Arrangement, Mechanical & Electrical Services, Architectural Equipment Schedules drawings and Contract Technical Specifications. Any Discrepancy shall be brought to the engineer's attention before commencing work. If any of the notes given in this drawing conflict with the requirements of the Contract Technical Specifications, Technical Specification shall take precedence. The conflicting note should in any case be brought to the attention of the Structural Engineer.
  - All dimensions are in millimetres unless noted otherwise.
  - All floor levels shown are Finished Concrete level (Structural Floor Level) unless indicated otherwise.
  - Foundation formation levels for all columns, strip footings and rafts shall be excavated and prepared for the approval of the Engineer

- Construction**
- All slabs at ground level are to be poored over 500 gauge polythene sheeting, on a 50mm thick masonry blinding layer minimum 300mm approved hardcore fill
  - All jobs under slabs and around external foundations are to be treated against termites

- M.E.P.**
- All workmanship and materials shall be as per all applicable building codes, local codes, rules and ordinances
  - Soil, waste vents and rainwater leaders shall be according to schedule

no	date	revision

Project Financier

**m-pesa Foundation**

Beneficiary

**LANGATA TVET**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



project title

**PROPOSED ICT LAB LAYOUT AT LANGATA TVET**

no

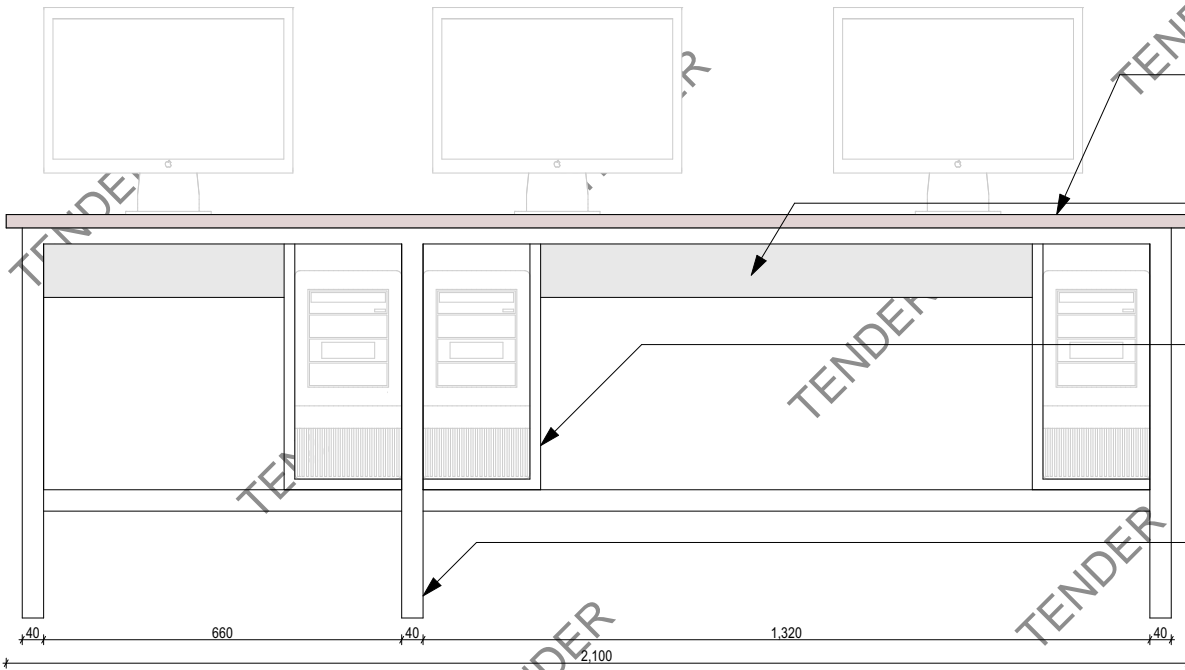
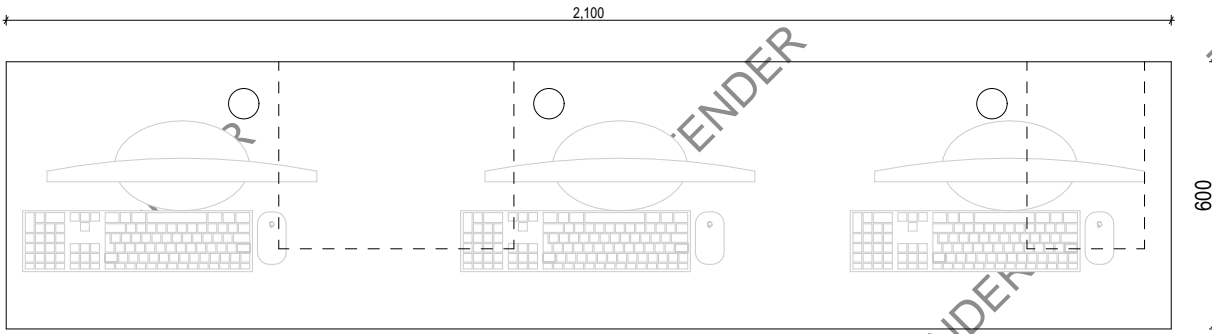
drawn    checked    project no.

date

scale

**NTS**

Name	<b>Computer desk (4 computers)</b>
Size	<b>2,800mm by 600mm by 750mm high</b>

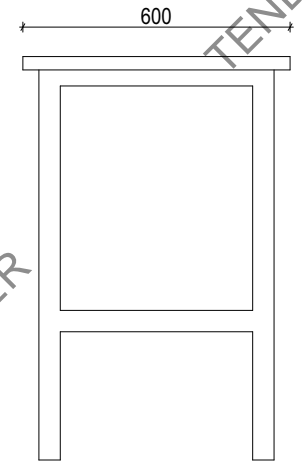


MDF board.

Extension groove

CPU deck.

steel stands



Name	Computer desk (3 computers)
Size	2100mm by 600mm by 750mm high

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**SECTION VII**

**CONDITIONS OF CONTRACT**

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## **1.0 DEFINITIONS**

- 1.1** Architects instructions - Means instructions issued by the Architect to the Contractor in accordance with these conditions and includes instructions issued by other agents of the Employer appointed under article 2.13 of the agreement.
- 1.2** Bills of quantities or contract bills - Means the document drawn up by the Quantity Surveyor and priced by the Contractor to arrive at the contract price.
- 1.3** Certificate of practical completion - Means a certificate issued by the Architect to the Contractor to signify a state of completion where, in the opinion of the Architect, the Works are substantially complete and can effectively and conveniently be used for the intended purposes.
- 1.4** Final certificate - Means a certificate issued by the Architect to the Contractor signifying that the Works have been carried out and completed in accordance with the terms of this contract and that all adjustments to the contract price have been made in accordance therewith.
- 1.5** Contract period - Means the period agreed for the construction of the Works and stated in the appendix to these conditions or extended in accordance therewith.
- 1.6** Contract price - Means the price for the Works as stated in article 2.5 of the agreement or as adjusted in accordance with the contract.
- 1.7** Contractor - Means the person or firm named in the articles of agreement with whom the Employer has entered into contract and includes the legal successors in title and permitted assigns.
- 1.8** Contractor's equipment - Means all machinery, vehicles, tools, apparatus and other things required for the carrying out and completion of the Works and the remedying of any defects.
- 1.9** Employer - Means the person or firm named in the articles of agreement with whom the Contractor has entered into contract and includes the legal successors in title and permitted assigns.
- 1.10** Defect - Means any aspect of the Works which is not in accordance with the contract or to the reasonable satisfaction of the Architect.
- 1.11** Force Majeure - means an event, occurrence or circumstance which;
- 1.11.1** is beyond a party's control,
- 1.11.2** such party could not reasonably have foreseen before entering into contract,
- 1.11.3** having arisen, such party could not reasonably have avoided or overcome,
- 1.11.4** and is not substantially attributable to either party.
- 1.12** Patent defect - Means a defect which a reasonable inspection by the Architect would disclose.
- 1.15** Latent defect - Means a defect which a reasonable inspection by the Architect would not disclose.



- 1.14** Final account - Means the document prepared by the Quantity Surveyor containing all the adjustments to the contract price in accordance with the conditions of contract and which in his opinion is the total value of the Works at final completion.
- 1.15** Materials and goods - Means things of all kinds and all supplies delivered by the Contractor, sub-contractors, suppliers or by others for incorporation in the Works whether stored on site or elsewhere but not yet incorporated in the Works.
- 1.16** Prime cost sum - Means a sum included in the contract bills for works or services to be executed by a nominated sub-contractor, statutory or other authority or for materials or goods to be obtained from a nominated supplier.
- 1.17** Provisional sum - Means a sum included in the contract bills for the execution of work which cannot be entirely foreseen, defined or detailed at the time the tender documents are issued.
- 1.18** Site - Means the place or places where the permanent Works are to be carried out and to which materials and goods are to be delivered and includes workshops or other places where materials, goods or work are being prepared for incorporation in the Works either by the Contractor, sub-contractors or by others.
- 1.19** Works - Means the permanent works designed for the Employer by the Architect or other agents for execution by the Contractor and as described in the contract documents. It shall include work of all sub- contractors and suppliers as well as materials and goods supplied for incorporation in the Works.
- 1.20** All reference to days shall mean calendar days of 24 hours duration and shall include non working days unless otherwise stated.
- 1.21** Unless inconsistent with the context, the masculine includes the feminine, the singular includes the plural and vice versa, and persons shall include bodies corporate.
- 1.22** Titles and headings are for reference purposes only and do not form part of these conditions. They shall not be taken into consideration in the interpretation of these conditions or the contract.

## **CONDITIONS OF CONTRACT**

### **3.0 GENERAL OBLIGATIONS OF THE EMPLOYER**

The Employer shall upon the execution of the agreement;

- 3.1** Clearly identify the site upon which the Works will be carried out and the access thereto.
- 3.2** Confirm that the said site is in his legal possession and that it is free from all material encumbrances.
- 3.3** Ascertain and confirm to the Contractor that the proposed Works comply with all statutory requirements, local authority planning and design by-laws or regulations as the case may be.
- 3.4** Make adequate financial arrangements to ensure that all payments to the Contractor under these conditions are made within the periods and in the manner stipulated in the contract and shall provide such evidence to the Contractor on request.

### **4.0 GENERAL OBLIGATIONS OF THE CONTRACTOR**

The Contractor shall upon the execution of the agreement;

- 4.1** Carry out, superintend upon and complete the Works and rectify any defects appearing therein in accordance with the contract and to the reasonable satisfaction of the Architect, unless it is legally or physically impossible to do so.
- 4.2** Give a written notice to the Architect specifying any discrepancy, ambiguity or divergence in these conditions, the contract drawings, the contract bills or specifications immediately such discrepancy or divergence is detected. The Architect shall thereupon issue instructions in regard thereto as soon as is practicable.
- 4.3** Notwithstanding any obligation of the Architect to the Employer and whether or not the Employer appoints a Clerk of Works, the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with the contract and whether or not the Architect or the Clerk of Works, if appointed, at any time goes on to the Works or to any workshop or other places where work is being prepared to inspect or approve the same or otherwise.

### **5.0 GENERAL OBLIGATIONS OF THE ARCHITECT**

The Architect shall upon the execution of the agreement;

- 5.1** Issue comprehensive drawings and all necessary details and other information required by the Contractor for the proper carrying out of the Works.
- 5.2** Expeditiously supply information, instructions and interpretations required or requested by the Contractor to ensure the timely carrying out of the Works.
- 5.3** Issue all necessary approvals and certificates and take other required action as soon as practicable.
- 5.4** Where the Architect is required under the contract to exercise his discretion by giving his

decision, opinion, consent or approval or by taking any other action which may affect the rights and obligations of the Employer or the Contractor, he shall exercise such discretion impartially within the terms of the contract.

## **6.0 GENERAL OBLIGATIONS OF THE QUANTITY SURVEYOR**

The Quantity Surveyor shall, upon the execution of the agreement;

- 6.1** Expeditiously provide the necessary advice, opinion, assessment, measurements, computations, or valuations as the case may be of any matter required of him under these conditions. While giving advice, opinion, assessment, measurements, computations or valuations, he shall carry out the task impartially within the terms of the contract.

## **7.0 CONTRACT DOCUMENTS**

- 7.1** The contract documents for use in the carrying out of the Works shall be:-

- 7.1.1** The agreement and these conditions.

- 7.1.2** Contract drawings as listed in the articles of agreement;

- 7.1.3** Contract bills of quantities or schedule of rates as applicable.

- 7.1.4** Specifications as separately supplied or as contained in the contract bills.

- 7.2** All the original contract documents shall remain in the custody of the Architect or the Quantity Surveyor during the construction period. They shall be available at all reasonable times for the inspection of the Employer or the Contractor. Upon the issue of the final certificate, the original contract documents shall be handed over to the Employer.

- 7.3** Upon the execution of the contract, the Employer shall register the agreement with the relevant statutory authority and pay all fees, charges, taxes, duties and all costs arising therefrom.

- 7.4** Immediately after the execution of the contract, the Architect or the Quantity Surveyor shall furnish the Employer with one certified set of all contract documents.

- 7.5** The Architect and the Quantity Surveyor shall, without charge to the Contractor, furnish him with: -

- 7.5.1** A registered counterpart of the agreement and these conditions.

- 7.5.2** One certified copy of the contract bills, where applicable.

- 7.5.3** Three certified copies of all contract drawings.

- 7.5.4** Two certified copies of the unpriced bills of quantities where applicable.

- 7.5.5** Two certified copies of the contract specifications, if not included in 7.5.4 above.

- 7.6** So soon as is practicable after the execution of this contract, the Architect shall, without charge to the Contractor, furnish him (unless he shall have been previously furnished) with three copies of the descriptive schedules or other like documents necessary for use in carrying out the Works. Provided that nothing contained in the said descriptive schedules or other documents shall impose any obligation beyond those imposed by the contract documents.
- 7.7** As and when necessary the Architect, without charge to the Contractor, shall furnish him with three copies of such further drawings or details as are reasonably necessary either to explain or amplify the contract drawings, or to enable the Contractor to carry out and complete the Works in accordance with these conditions.
- 7.8** The Contractor shall keep one copy of the contract drawings, a copy of the unpriced bills of quantities, one copy of the specifications descriptive schedules or other like documents referred to in sub-clause 7.5 of this condition, and one copy of the drawings, details and descriptive schedules referred to in sub-clauses 7.6 and 7.7 of this condition upon the Works so as to be available to the Architect or his representatives at all reasonable times.
- 7.9** Upon final payment under clause 34.0 of these conditions, the Contractor shall, if so requested by the Architect, forthwith return to the Architect all drawings, details, specifications, descriptive schedules and other documents of a like nature which bear the Architect's name.
- 7.10** The contract documents are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence;
- 7.10.1** The letter of award of contract
  - 7.10.2** The agreement and these conditions
  - 7.10.3** The bills of quantities
  - 7.10.4** The specifications
  - 7.10.5** The drawings
  - 7.10.6** The schedules and other documents forming part of the contract.
- 7.11** None of the documents hereinbefore mentioned shall be used by the Contractor or the Employer for any purpose other than this contract and neither the Employer, the Architect nor the Quantity Surveyor shall divulge or use any of the prices in the contract bills except for the purposes of this contract.

## **8.0 CONTRACT BILLS AND CONTRACT PRICE**

- 8.1** The Employer shall be deemed to have provided to the Contractor before the submission of the tender all available data concerning the site and its surroundings. The Contractor shall be responsible for interpreting such data.

- 8.2** Notwithstanding the above, the Contractor shall be deemed to have obtained all necessary information which may affect the tender or the Works and to have satisfied himself as to the correctness and sufficiency of his tender for the carrying out of the Works.
- 8.3** The quality and quantity of the work included in the contract price shall be deemed to be that which is set out in the contract bills. The bills, unless otherwise expressly stated therein, shall be deemed to have been prepared in accordance with the principles of the latest edition of the Standard Method of Measurement of Building Works for East Africa.
- 8.4** Any error in description or in quantity or any omission of items from the contract bills or specifications shall not vitiate this contract but shall be corrected and deemed to be a variation required by the Architect.
- 8.5** The contract price shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these conditions.
- 8.6** Subject to sub-clause 8.4 of this condition, any error whether arithmetical or not in the computation of the contract price shall be deemed to have been accepted by the parties hereto.

#### **9.0 CONTRACTORS SITE AGENT AND OTHER STAFF**

- 9.1** The Contractor shall constantly keep upon the Works a competent site agent who is able to understand and interpret the contract documents and to superintend upon the Works.  
The site agent shall be literate in the English language. Any instructions given to him by the Architect shall be deemed to have been issued to the Contractor.
- 9.2** The Contractor shall make his own arrangements for the engagement of all labour and other workmen, both local or otherwise, required for the Works and shall comply with statutory, industrial or other rules and regulations governing the employment and working terms and conditions of labour.
- 9.3** The Contractor shall be responsible for the observance, by all sub-contractors (whether nominated or not) of all the foregoing provisions.
- 9.4** The Architect may (but not unreasonably or vexatiously issue instructions requiring the dismissal from the Works of any person employed thereon.

#### **10.0 CLERK OF WORKS**

- 10.1** The Employer shall be entitled to appoint a Clerk of Works whose primary duty shall be to act as inspector of the Works on behalf of the Employer under the direction of the Architect. The Contractor shall afford every reasonable facility for the performance of that duty.
- 10.2** Where a Clerk of Works is appointed, the Employer may also appoint other persons to assist the Clerk of Works in the exercise of his functions. Directions given by the assistants shall be deemed to be those of the Clerk of Works unless otherwise stated in writing.

- 10.3** The employment of a Clerk of Works shall not relieve the Contractor from any of his duties and obligations under the contract.
- 10.4** Directions given by the Clerk of Works in writing to the Contractor or to his site agent shall be deemed to be Architect's instructions in respect of;
- 10.4.1** The interpretation of Architect's instructions, drawings, specifications or bills of quantities.
- 10.4.2** The removal from the site of any work, materials or goods which are not in accordance with the contract.
- 10.4.3** Matters of urgency involving the safety or protection of persons or property, and
- 10.4.4** Any other matters in respect of which the Architect is expressly empowered by these conditions to issue instructions and on which the Architect has authorized in writing the Clerk of Works so to act.
- 10.5** Any other directions given by the Clerk of Works to the Contractor or the site agent shall be of no effect.

#### **11.0 LIABILITY AGAINST INJURY TO PERSONS AND PROPERTY**

- 11.1** The Contractor shall be liable for and shall indemnify the Employer against any expenses, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, unless the injury or death is due to any act or neglect of the Employer or of any person for whom the Employer is responsible.
- 11.2** Except for such loss or damage as is at the risk of Employer under clause 14.0 or clause 15.0 of these conditions (if applicable), the Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal insofar as such injury or damage arises out of or in the course of or by reason of the carrying out of the Works. Provided always that the injury or damage is due to any negligence, omission or default of the Contractor his servants or agents or of any sub-contractor his servants or agents.

#### **12.0 INSURANCE AGAINST INJURY TO PERSONS AND PROPERTY**

- 12.1** Without prejudice to his liability to indemnify the Employer under clause 11.0 of these conditions, the Contractor shall maintain and shall cause any sub-contractor to maintain;
- 12.1.1** Such insurances as are necessary to cover the liability of the Contractor or as the case may be, of such sub-contractor, in respect of personal injuries or deaths arising out of or in the course of or caused by the carrying out of the Works, and
- 12.1.2** Such insurances as are necessary to cover the liability of the Contractor or as the case may be, of such sub-contractor, in respect of injury or damage to property real or personal arising out of or in the course of or by reason of the carrying out of the Works and caused by any negligence, omission or default of the Contractor, his servants or agents or, as the case may be, of such subcontractor,

his servants or agents.

**12.2** As and when he is reasonably required to do so by the Architect, the Contractor shall produce and shall cause any sub-contractor to produce for inspection by the Employer, documentary evidence that the insurances required by sub-clause 12.1.1 and 12.1.2 are properly maintained but, on occasion, the Employer may require to have produced for his inspection, the policy or policies and the receipts in question.

**12.3** The Contractor shall maintain in the joint names of the Employer and the Contractor, insurances for such amounts of indemnity as may be specified by way of provisional sum items in the contract bills in respect of any expenses, liability, loss, claim, or proceedings which the Employer may incur or sustain by reason of damage to any property other than the Works caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by the carrying out of the Works, excepting damage;

**12.3.1** Caused by the negligence, omission or default of the Contractor, his servants or agents or any sub-contractor, his servants or agents.

**12.3.2** Attributable to errors or omissions in the designing of the Works.

**12.3.3** Which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed or the manner of its execution.

**12.3.4** Which is at the risk of the Employer under clause 14.0 or clause 15.0 of these conditions (if applicable).

**12.3.5** Arising from a nuclear risk or war risk.

**12.4** The insurances shall be placed with insurers to be approved by the Employer. The Contractor shall deposit with the Quantity Surveyor the policy or policies and the receipts in respect of premiums paid.

**12.5** Should the Contractor or any sub-contractor make default in insuring or in continuing to insure as provided in sub-clauses 12.1.1, 12.1.2 and 12.3 of these conditions, the Employer may himself insure against any risk with respect to which the default shall have occurred and may deduct a sum equivalent to the amount paid by him in respect of premiums from any money due or to become due to the Contractor.

### **13.0 INSURANCE OF THE WORKS (CONTRACTOR'S LIABILITY)**

**13.1** In the erection of new buildings, if the Contractor is required by the contract to insure the Works, he shall before the commencement of the works, procure insurances in the Joint names of the Employer and the Contractor against loss and damage by fire, earthquake, fire following earthquake, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion for the full value thereof (plus the percentage, if any named in the appendix to these conditions to cover professional fees). The insurances shall cover all work executed and all unfixed materials and goods delivered to, placed on or adjacent to the Works and intended therefore but excluding

temporary buildings and equipment owned or hired by the Contractor or any sub-contractor. He shall keep such work, materials and goods so insured until practical completion of the Works.

**13.2** Such insurances shall be with insurers approved by the Employer. The Contractor shall deposit the policy or policies and the receipts in respect of premiums paid with the Quantity Surveyor. Should the Contractor make default in insuring or continuing to insure as aforesaid, the Employer may himself insure against any risk in respect of which the default shall have occurred and deduct a sum equivalent to the amount paid by him in respect of premiums from any money due or to become due to the Contractor.

**13.3** Provided always that if the Contractor shall independently of his obligations under this contract maintain a policy of insurance which covers (inter alia) the said work, materials and goods against the aforesaid contingencies to the full value thereof ( plus the aforesaid percentage, if any), then the maintenance by the Contractor of such policy shall, if the Employer's interest is endorsed thereon, be a discharge of the Contractor's obligation to insure in the joint names of the Employer and the Contractor.

**13.4** As long as the Contractor is able to produce for inspection documentary evidence that the said policy is properly endorsed and maintained as and when he is reasonably required to do so by the Architect, then the Contractor shall be discharged from his obligation to deposit a policy or policies and receipts with the Quantity Surveyor but on any occasion, the Employer may require to have produced for his inspection the policy and receipts in question.

**13.5** Upon settlement of any claim under the insurance aforesaid, the Contractor with due diligence shall restore work damaged, replace or repair any unfixed materials or goods which have been destroyed or injured, remove and dispose of any debris and proceed with the carrying out and completion of the Works. All money received from such insurances (less only the aforesaid percentage, if any), shall be paid to the Contractor by installments under certificates of the Architect issued at the periods of interim certificates stated in clause 34.0 of these conditions. The Contractor shall not be entitled to any payment in respect of the restoration of work damaged, the replacement and repair of any unfixed materials or goods, and the removal and disposal of debris other than the money received under the said insurances.

#### **14.0 INSURANCE OF THE WORKS (EMPLOYERS LIABILITY)**

**14.1** In the erection of new buildings, if the Employer is required by the contract to insure the Works, all work executed and all unfixed materials and goods, delivered to, placed on or adjacent to the Works and intended therefore but excluding temporary buildings and equipment owned or hired by the Contractor or any sub-contractor shall be at the sole risk of the Employer as regards loss or damage by fire, earthquake, fire following earthquake, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion. The Employer shall maintain a proper policy of insurance against such risks until practical completion of the Works.

The policy or policies and the receipts for the last premium paid for renewal shall, upon request, be produced for inspection by the Contractor.



**14.2** If the Employer shall at any time nil upon request to produce any receipt showing such a policy as aforesaid to be effective, the Contractor may in the name and on behalf of the Employer, insure all work executed and all unfixed materials and goods as aforesaid against loss or damage occasioned by the said contingencies and shall, upon production of the receipt for any premium paid by him, be entitled to have its amount added to the contract price.

**14.3** If any loss or damage affecting the Works or any part thereof, or any such unfixed materials or goods is occasioned by any one or more of the said contingencies, then;

**14.3.1** The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of the contract, and

**14.3.2** The Contractor with due diligence shall restore work damaged, replace or repair any unfixed materials or goods which have been destroyed or injured, remove and dispose of any debris and proceed with the carrying out and completion of the Works.

**14.3.3** The restoration of work damaged, the replacement and repair of unfixed materials and goods and the removal and disposal of debris shall be deemed to be a variation required by the Architect.

## **15.0 INSURANCE OF WORKS (WORKS OF ALTERATIONS etc.)**

**15.1** In works of alterations, repairs or extensions, the Employer shall solely take the risk for the existing structures together with all the contents thereof owned by him or for which he is responsible and the Works and all unfixed materials and goods intended for, delivered to and placed on or adjacent to the Works and intended therefore but excluding temporary buildings and equipment owned or hired by the Contractor or any sub-contractor.

The Employer shall maintain a proper policy of insurance against the risks of loss or damage by fire, earthquake, fire following earthquake, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion until practical completion of the Works. The policy and the receipts for the last premium paid for the renewal of the insurance cover shall, upon request, be produced for inspection by the Contractor.

**15.2** If the Employer shall at any time fail, upon request, to produce any receipt showing such a policy as aforesaid to be effective, the Contractor may in the name and on behalf of the Employer insure the existing structures together with all the contents thereof, the Works and all unfixed materials and goods as aforesaid against loss or damage occasioned by the said contingencies. He shall have such right of entry and inspection as may be required to make a survey and inventory of the existing structures and contents therein. Upon production of receipts for any premium paid by him, the Contractor shall be entitled to have its amount added to the contract price.

**15.3** If any loss or damage affecting the Works or any part thereof or any such unfixed materials or goods is occasioned by any one or more of the said contingencies, then;

**15.3.1** The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of this contract.

**15.3.2** If the contract is not terminated in accordance with sub- clause 40.3, the Contractor with due diligence shall reinstate or make good all loss or damage and proceed with the carrying out and completion of the Works.

**15.3.3** The Architect may issue instructions requiring the Contractor to remove and dispose of any debris, and

**15.3.4** The reinstatement and making good of such loss or damage and (when required) the removal and disposal of debris shall be deemed to be a variation required by the Architect.

## **16.0 PERFORMANCE BOND**

**16.1** Before commencing the Works, the Contractor shall provide one surety who must be an established bank or insurance company to the approval of the Employer and who will be bound to the Employer in the sum equivalent to ten per cent (10%) of the contract price for the due performance of the contract until the certified date of practical completion. No payments shall be made to the Contractor before the said bond is provided.

**16.2** Where stated in the contract, the Employer shall provide one surety who must be an established bank or insurance company to the approval of the Contractor who will be bound to the Contractor in the sum equal to one half of the limit of retention fund for the due performance of the Employer's payment obligations until the final certificate is issued and honoured.

## **17.0 COMPLIANCE WITH REGULATIONS, NOTICES, etc.**

**17.1** The Contractor shall comply with and give all notices required by any enactment or regulation of any statutory or other authority or of any public service company which has any jurisdiction with regard to the Works or with whose system the same are or will be connected. The Contractor, before making any variation from the contract drawings, specifications or the contract bills necessitated by such compliance, shall give to the Architect a written notice specifying and giving the reason for such variation and the Architect may issue instructions in regard thereto. If within fourteen days of having given the said notice the Contractor does not receive any instructions in regard to the matters therein specified, he shall proceed with the work complying with the enactment or regulation in question and any variation thereby necessitated shall be deemed to be a variation required by the Architect.

**17.2** The Employer shall be responsible for obtaining all planning and similar permits and approvals and shall serve all statutory and other notices and shall pay and indemnify the Contractor against liability in respect of any fees or charges (including any rates or taxes) legally demandable under any enactment or regulation of any statutory or other authority or any public service company in respect of the Works and the site upon which the Works are to be constructed.

**17.3** The Employer's responsibility and liability under sub-clause 17.2 herein shall subsist

irrespective of whether or not such fees, charges, rates, taxes etc. are covered by way of prime cost or provisional sums or arise as a result of an Architect's instruction issued under clause 22.0 of these conditions.

- 17.4** In the event of the Employer failing to comply with the provisions of sub-clause 17.2 herein, the Contractor may pay such fees, charges, rates, taxes, etc. Any costs or expenses incurred by the Contractor in making such payments shall be assessed by the Quantity Surveyor and added to the contract price and if an interim certificate is issued after the date of assessment, the said amount shall be added to the amount which would otherwise be stated as due in such a certificate.

## **18.0 PROGRAMME OF WORKS**

- 18.1** The Contractor shall, within the period stated in the appendix to these conditions, submit for the approval of the Architect a programme of Works in such form and detail as the Architect shall reasonably prescribe.

- 18.2** Should actual progress not match the programme, the Contractor shall amend the programme accordingly and submit the revisions to the Architect. In the event that a Contractor fails to submit or amend a programme within a reasonable time after being so instructed by the Architect, the Employer may withhold half of the amount due to the Contractor in subsequent payment certificates until the default is rectified.

- 18.3** Neither the submission of the programme by the Contractor nor its approval by the Architect shall in any way relieve the Contractor from any of his duties and obligations under the contract.

## **19.0 ACCESS TO THE WORKS**

- 19.1** The Employer, the Architect, Quantity Surveyor, Engineers and other agents of the Employer shall, at all reasonable times, have access to the Works and to the workshops or other places where work is being prepared for the contract.

- 19.2** Where work is to be prepared in workshops or other places of a subcontractor (whether nominated or not) the Contractor shall as far as possible secure a similar right of access to those places for the persons mentioned above.

## **20.0 POSSESSION OF SITE AND COMMENCEMENT OF WORKS**

- 20.1** Within the period stated in the appendix to these conditions, the Employer, or the Architect on his behalf, shall give possession of site to the Contractor and such access as may be necessary to enable the Contractor to commence and proceed with the Works in accordance with the contract.

- 20.2** On or before the date for commencement stated in the appendix to these conditions, the Contractor shall commence the execution of the Works and shall regularly and diligently proceed with the same and complete on or before the date stated in the appendix to these conditions as the date for practical completion.

## **21.0 LEVELLING AND SETTING OUT**

- 21.1** The Employer shall be responsible for the proper identification of the site and the establishment of boundary pegs and beacons and the correctness of the datum levels *Jon* which the Architect's drawings are based. Such pegs, beacons and datum levels shall be identified to the Contractor by the Employer or by the Architect on his behalf.
- 21.2** The Contractor shall take all necessary precautions to preserve such pegs, beacons and datum levels and should they become disturbed he shall replace or reinstate them at his cost.
- 21.3** The Architect shall determine any levels which may be required for the execution of the Works and shall furnish to the Contractor, by way of accurately dimensioned drawings, such information as shall enable the Contractor to set out the Works.
- 21.4** The Contractor shall provide all necessary equipment and assistance to enable the accuracy of the setting out to be checked by the Architect. Checking of the setting out shall not relieve the Contractor of his responsibility for the correctness thereof. Unless the Architect shall otherwise instruct, the Contractor shall be responsible for and entirely at his own cost correct any errors arising from his own inaccurate setting out. If the Architect otherwise instructs, an appropriate deduction shall be made from the contract price to reflect the cost of such errors.

## **22.0 ARCHITECT'S INSTRUCTIONS**

- 22.1** The Contractor shall (subject to sub-clauses 22.3 and 22.4 of this condition) forthwith comply with all instructions issued to him by the Architect in regard to any matter in respect of which the Architect is expressly empowered by these conditions to issue instructions.
- 22.2** If within fourteen days after receipt of a written notice from the Architect requiring compliance with an instruction the Contractor does not comply therewith, then the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instructions. All costs incurred in connection with such employment shall be recoverable from the Contractor by the Employer as a debt or may be deducted by him from any money due or to become due to the Contractor under this contract.
- 22.3** Upon receipt of what purports to be an instruction issued to him by the Architect, the Contractor may request the Architect to specify in writing the provisions of these conditions which empower the issue of the said instruction. The Architect shall comply with any such request, and if the Contractor shall thereafter comply with the said instructions, then the issue of the same shall be deemed for all the purposes of this contract to have been empowered by these conditions.
- 22.4** All instructions issued by the Architect shall be in writing. Any instruction issued orally shall be of no immediate effect, but shall be confirmed in writing by the Contractor to the Architect within seven days. If not dissented from in writing by the Architect within seven days from receipt of the Contractor's confirmation, the oral instruction shall take effect as from the expiration of the latter said seven days. Provided always that;
- 22.4.1** If the Architect shall within seven days of giving such an oral instruction himself

confirm the same in writing, then the Contractor shall not be obliged to confirm as aforesaid and the said instruction shall take effect as from the date of the Architect's confirmation.

**22.4.2** If neither the Contractor nor the Architect shall confirm such an oral nevertheless, comply with the same, then the Architect may confirm the same **in** writing at any time prior to the issue of the final certificate and the said instruction shall thereupon be deemed to have taken effect on the date on **which it** was issued. -

**22.5** Any instructions given directly by the Employer to the Contractor shall be of no immediate effect but shall be confirmed by the Architect within seven days, failing which the Contractor shall confirm the same in writing in the same manner as is provided for in sub-clause 22.4. If confirmed by the Contractor, such instructions shall be deemed to be Architect's instructions.

## **23.0 SPECIFICATION OF GOODS, MATERIALS AND WORKMANSHIP**

- 23.1** All materials, goods and workmanship shall so far as procurable be of the respective kinds and standards described in the contract bills, the drawings and the specifications.
- 23.2** The Contractor shall, upon request by the Architect, furnish him with trade catalogues or manufacturer's brochures to prove that the materials and goods comply with sub-clause 23.1 of this condition.
- 23.3** If the Contractor shall fail to obtain materials or goods of the respective kinds and standards shown in the contract drawings and described or referred to in the contract bills and specifications, he shall forthwith give to the Architect a written notice specifying the non-availability. The Architect shall within fourteen days of receipt of such notice issue instructions in regard thereto.
- 23.4** Where not so described, the materials, goods and workmanship shall be to a standard appropriate to the Works and to the reasonable satisfaction of the Architect.
- 23.5** Notwithstanding the generality of his powers, if any work, materials or goods are not in accordance with the contract, the Architect may in his discretion allow any or all such work, materials or goods to remain in the Works. If so allowed, an appropriate deduction shall be assessed by the Quantity Surveyor and the contract price adjusted accordingly.
- 23.6** The Architect may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out tests of any materials or goods (whether or not already incorporated in the Works) or of any executed work. The cost of such opening up or testing, together with the cost of making good in consequence thereof, shall be added to the contract price unless provided for in the contract bills or unless the inspection or test shows that the work, materials or goods are not in accordance with the contract.
- 23.7** Where materials or goods are specified by a trade or brand name, the Contractor shall not be liable for any latent defects therein, if any. The Contractor shall be deemed to have assigned to the Employer any right of action that may exist against the supplier or the manufacturer in case of failure arising from such defects.
- 23.8** The Architect may issue instructions in regard to the removal from the site of any work, materials or goods which are not in accordance with the contract.

## **24.0 SAMPLES AND TESTS**

- 24.1** The Contractor shall arrange for and furnish to the Architect, samples of any materials, goods or workmanship and perform any tests that may be called for by the Architect for his approval. Any samples and tests approved by the Architect shall be deemed to represent the minimum standard for the part of the Works to which they apply.
- 24.2** Where the Contractor fails to comply with the provisions of sub-clause 24.1, the Architect may arrange with other parties to provide the requisite samples or carry out the necessary tests. The Contractor shall be obliged to conform to the standards set by such samples or tests. All costs and expenses incurred in the procurement of such samples and tests shall be borne by the Contractor.

## **25.0 ROYALTIES AND PATENT RIGHTS**

- 25.1** All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions in carrying out the Works as described by or referred to in the contract bills and the specifications, shall be deemed to have been included in the contract price.
- 25.2** The Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Employer or to which he may be put by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.
- 25.3** Where the Contractor shall supply and use in carrying out the Works any patented articles, processes or inventions in compliance with Architect's instructions, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any such articles, processes and inventions. All royalties, damages or other money which the Contractor may be liable to pay to the persons entitled to such patent rights shall be added to the contract price.

## **26.0 ASSIGNMENT**

- 26.1** Neither the Employer nor the Contractor shall, without the written consent of the other, assign this contract. Provided that the approval of assignment shall not relieve either party of his obligations for the part of the contract already performed or the part not assigned.
- 26.2** It shall be a condition of any assignment that the employment of any assigns shall terminate immediately upon the termination (for whatever reason) of the Contractor's employment under the contract.

## **27.0 SUBLETTING**

- 27.1** The Contractor shall not sublet the whole of the Works without the written consent of the Employer and the Architect. He may sub-let part of the Works upon giving notice to the Architect.
- 27.2** The Contractor shall remain liable under the contract for all work sublet under this clause as if he had himself carried out such work.
- 27.3** It shall be a condition in any sub-letting that the employment of the sub-contractor shall terminate forthwith upon the termination (for whatever reason) of the Contractor's employment under the contract.

## **28.0 SUSPENSION OF THE WORKS BY THE ARCHITECT**

- 28.1** The Architect may issue instructions to postpone the carrying out of any work included in this contract.
- 28.2** The Architect may issue instructions to suspend the carrying out of any work included in this contract, if;
- 28.2.1** The Contractor fails to comply with an Architect's instruction requiring the dismissal from the Works of any person employed thereon, or

- 28.2.2** There arises any matters of urgency involving the safety or protection of persons or property, or
- 28.2.3** The Contractor fails to comply with the contract provisions to insure the Works, or
- 28.2.4** The Contractor fails to comply with an Architect's instruction in regard to the removal from the site of any work, materials or goods which are not in accordance with the contract, or
- 28.2.5** The Contractor assigns the contract or sub-lets the whole of the Works without the written consent of the Employer.
- 28.3** Except for suspension under sub-clause 28.2.2, all other instructions to suspend shall be accompanied by a seven days' notice.
- 28.4** Instructions for postponement or suspension shall be copied to the Employer
- 28.5** The suspension shall not take effect if the matter occasioning the notice is rectified within the period of the notice. Such suspension shall cease immediately the matter occasioning the notice is rectified.
- 28.6** Should the Works be suspended under this clause, the Contractor shall be liable for all expenses arising therefrom.

## **29.0 SUSPENSION OF THE WORKS BY THE CONTRACTOR**

- 29.1** The Contractor may suspend the carrying out of the Works, if;
- 29.1.1** He has not received a payment certificate which he applied for in accordance with Clause 34.0 of these conditions and the default continues for thirty days after expiry of the stated period, or
- 29.1.2** He has not received payment within the period for honouring certificates provided in clause 34.0 of these conditions and the default continues for thirty days after expiry of the stated period, or
- 29.1.3** The Contractor notifies the Architect that it has become impossible to impracticable to procure goods and materials for the Works for reason beyond the Contractor's control and the Architect has not given appropriate instructions in accordance with sub-clause 23.3, or
- 29.1.4** Delay occurs in the nomination or renomination of a sub-contractor or supplier which delay materially affects the progress of the Works, or
- 29.1.5** Delay occurs in the appointment of a replacement Architect, Quantity Surveyor or Engineer which delay materially affects the progress of the Works.
- 29.2** Where the Contractor intends to suspend the carrying out of the Works, he shall give the Employer a seven days notice in writing to that effect, with a copy to the Architect.
- 29.3** The Contractor shall not suspend the carrying out of the Works if the matter occasioning the



notice is rectified within the period of the notice. Such suspensions shall cease immediately the matter occasioning the notice is rectified.

**29.4** During the period of suspension either under clause 28.0 or herein the Contractor shall properly protect and secure the Works to the reasonable satisfaction of the Architect.

### **30.0 VARIATIONS**

**30.1** The term 'variation' as used in these conditions shall mean the alteration or modification of the design, quality or quantity of the Works as shown upon the contract drawings and described by or referred to in the contract bills and specifications and includes:

**30.1.1** The addition, omission or substitution of any item of work.

**30.1.2** The alteration of the kind or standard of any of the materials or goods to be used in the Works.

**30.1.3** The removal from the site of any work, materials, or goods brought upon the Works by the Contractor for the purposes of the Works other than work, materials, or goods which are not in accordance with the contract.

**30.1.4** The issue of instructions by the Architect in regard to the expenditure of prime cost and provisional sums included in the contract bills and of prime cost sums which arise as a result of instructions issued in regard to the expenditure of provisional sums.

**30.2** The Architect may issue instructions requiring a variation and he may sanction in writing any variation made by the Contractor otherwise than pursuant to an instruction of the Architect. No variation required by the Architect or subsequently sanctioned by him shall vitiate this contract, provided that no such instructions shall substantially change the scope or object of the contract without the consent of the Employer and the Contractor.

**30.3** If the net value of all variations should equal 15% of the builder's work, the Architect shall not issue any further instructions requiring a variation for additional work without the consent of the Employer and the Contractor.

**30.4** All instructions for variations shall be copied to the Employer.

**30.5** All variations required by the Architect or subsequently sanctioned by him in writing and all work executed by the Contractor for which provisional sums are included in the contract bills (other than work for which a tender made under sub-clause 31.11 of these conditions has been accepted) shall be assessed by the Quantity Surveyor who shall give to the Contractor an opportunity of being present at the time of such assessment and of taking such notes and measurements as the Contractor may require.

**30.6** The valuation of variations and of work executed by the Contractor for which a provisional sum is included in the contract bills (other than work for which a tender has been accepted as aforesaid) unless otherwise agreed, shall be made in accordance with the following rules:

**30.6.1** The prices in the contract bills shall determine the valuation of work of similar character executed under similar conditions as work priced therein.

**30.6.2** The said prices, where work is not of a similar character or executed under similar conditions as aforesaid, shall be the basis of prices for the same so far *as may be* reasonable, failing which a fair valuation thereof shall be made.

**30.6.3** Where work cannot properly be measured and valued, the Contractor shall be allowed day-work rates on the prices prevailing when such work is carried out (unless otherwise provided in the contract bills). The day-work rates will be;

**30.6.3.1** Rates, if any, inserted by the Contractor in the contract bills or in a schedule of rates, or

**30.6.3.2** When no such rates have been inserted, at rates to be agreed between the Quantity Surveyor and the Contractor.

**30.6.3.3** Vouchers specifying the time daily spent upon the work (and if required by the Architect, the workmen's names) the equipment and the materials used shall be delivered for verification to the Quantity Surveyor not later than the end of the week following that in which the work was executed.

**30.6.4** The prices in the contract bills shall determine the valuation of items omitted. Provided that if omissions substantially vary the conditions under which any remaining items of work are carried out, the prices for such remaining items shall be valued as set out in sub- clause 30.6.2.

**30.7** Effect shall be given to the measurement and valuation of variations under sub-clause 30.6 of this condition in interim certificates and by adjustment of the contract price. Effect shall also be given to the measurement and valuation of work for which a provisional sum is included in the contract bills under the said sub-clause in interim certificates and by adjustment of the contract price in accordance with sub-clause 34.19.

**30.8** If upon written application being made by the Contractor, the Quantity Surveyor is of the opinion that a variation or the execution by the Contractor of work for which a provisional sum is included in the contract bills (other than work for which a tender made under clause 31.0 of these conditions has been accepted) has involved the Contractor in direct loss and or expense for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in sub-clause 30.6 of this condition and if the said application is made with supporting details within thirty days of the loss or expense having been incurred, the Quantity Surveyor shall assess the amount of such loss or expense. Any amount so assessed from time to time shall be added to the contract price, and if an interim certificate is issued after the date of assessment the said amount shall be added to the amount which would otherwise be stated as due in such certificate.

**30.9** Should any part of the Works be omitted from the contract and that part is carried out by others, the Contractor shall be entitled to reimbursement of the profit he would have made had he carried out the omitted part. Such loss of profit shall be assessed by the Quantity Surveyor and if an interim certificate is issued after the date of assessment the said amount shall be added to the amount which would otherwise be stated as due in such a certificate.

- 30.10** No instructions for variations shall be issued after the practical completion certificate is issued without the consent of the Contractor.
- 30.11** Where a variation is necessitated by the default or breach of the contract by the Contractor, any additional cost attributable to such a variation shall be borne by the Contractor.
- 30.12** Except as expressly stated in the contract, the Architect shall have no authority to alter or amend the terms and conditions of the contract or to relieve the Contractor of any of his obligations under the contract.
- 30.13** Where the Architect, with the consent of the Employer and the Contractor, issues instructions requiring a variation beyond the limit provided in sub-clause 30.3, the Employer may require an additional performance bond over and above that provided under sub-clause 16.1. The Contractor shall be reimbursed for the provision of the additional bond pro-rata to the amount priced for the bond in the contract.
- 30.14** The Architect shall not issue an instruction requiring a variation for additional work exceeding 0.01% of the contract price without the prior approval of the Employer unless otherwise communicated by the Employer to the Architect and to the Contractor.

### **31.0 NOMINATED SUB-CONTRACTORS**

- 31.1** The following provisions shall apply where prime cost sums are included in the contract bills or arise as a result of Architect's instructions given in regard to the expenditure of provisional sums in respect of persons to be nominated by the Architect to supply and fix or install materials or goods or to carry out work.
- 31.2** Such sums shall be expended in favour of such persons as the Architect shall instruct, with the consent of the Employer, and all specialists or others who are nominated by the Architect are hereby declared to be sub-contractors employed by the Contractor, and are referred to in these conditions as 'nominated sub-contractors'.
- 31.3** The Architect shall not nominate any person as a sub-contractor against whom the Contractor shall make reasonable objection.
- 31.4** The nominated sub-contractor shall carry out and complete the sub-contract works in every respect to the reasonable satisfaction of the Contractor and of the Architect and in conformity with all the reasonable directions and requirements of the Contractor.
- 31.5** The Contractor and the nominated sub-contractor shall enter into a sub-contract agreement which provides (inter alia):
- 31.5.1** That the nominated sub-contractor shall observe, perform and comply with all the provisions of this contract on the part of the Contractor to be observed, performed and complied with (other than clause 13.0 of these conditions, if applicable) so far as they relate and apply to the sub-contract works or to any , portion of the same.
- 31.5.2** That the nominated sub-contractor shall indemnify the Contractor against the same liabilities in respect of the sub-contract works as those for which the Contractor is liable to indemnify the Employer under this contract.
- 31.5.3** That the nominated sub-contractor shall indemnify the Contractor against claims in

respect of any negligence, omission or default of such subcontractor, his servants or agents or any misuse by him or them of any scaffolding or other equipment, and shall insure himself against any such claims and produce the policy or policies and receipts in respect of premiums paid as and when required by either the Architect or the Contractor.

- 31.5.4** That the sub-contract works shall be completed within the period or (where they are to be completed in sections) periods therein specified.
- 31.5.5** That the Contractor shall not without the written consent of the Architect, grant any extension of time for the completion of the sub-contract works or any section thereof, and that the Contractor shall inform the Architect of any representation made by the nominated sub-contractor as to the cause of any delay in the progress or completion of the sub-contract works or any section thereof.
- 31.5.6** That if the nominated sub-contractor shall fail to complete the sub-contract works or (where the sub-contract works are to be completed in sections) any section thereof, within the period therein specified or within any extended time granted by the Contractor with the written consent of the Architect and the Architect certifies in writing to the Contractor that the same ought reasonably so to have been completed, the nominated sub-contractor shall or allow to the Contractor either a sum calculated at the rate therein agreed as liquidated damages for the period during which the said works or any section thereof, as the case may be, shall so remain or have remained incomplete or where no such rate is therein agreed), a sum equivalent to any loss or damage suffered or incurred by the Contractor and caused by the failure of the nominated sub-contractor as aforesaid.
- 31.5.7** That payment in respect of any work, materials or goods comprised in the sub-contract shall be made within fourteen days after receipt by the Contractor of the sum to which the Contractor shall be entitled by virtue of the Architect's certificates issued under clause 34.0 of these conditions which states as due an amount calculated by including the total value of such work, materials or goods, and shall when due be subject to retention by the Contractor of the sums stated in sub-clause 31.5.8 of this condition.
- 31.5.8** That the Contractor shall retain from the sum directed by the Architect as having been included in the calculation of the amount stated as due in any certificate issued under clause 34.0 of these conditions in respect of the total value of work, materials or goods executed or supplied by the nominated subcontractor the percentage of such value named in the appendix to these conditions as percentage of certified value retained up to a total amount not exceeding a sum which bears the same ratio to the sub-contract price as the unreduced sum named in the appendix to these conditions as the limit of retention fund bears to the contract price.
- 31.5.9** That the Contractor's interest in any sums so retained (by whomsoever held)-shall be fiduciary as trustee for the nominated sub-contractor (but without obligation to invest), and that the nominated sub-contractor's beneficial interest in such sums shall be subject only to the right of the Contractor to have recourse thereto from time to time for payment of any amount which he is entitled under the sub-contract

to deduct from any sum due or to become due to the nominated sub-contractor; and that if and when such sums or any part thereof are released to the nominated sub-contractor, they shall be paid in full.

- 31.5.10** That the Employer, the Architect, Quantity Surveyor, Engineers and other agents of the Employer, shall have a right of access to the workshops and other places of the nominated sub-contractor where work is being prepared as provided for in clause 19.0 of these conditions.
- 31.6** The Architect shall direct the Contractor as to the total value of the work, materials or goods executed or supplied by a nominated sub-contractor included in the calculation of the amount stated as due in any certificate issued under clause 34.0 of these conditions and shall forthwith inform the nominated sub-contractor in writing of the amount of the said total value. The sum representing such total value shall be paid by the Contractor within fourteen days after receipt by the Contractor of the sum to which the Contractor shall be entitled by virtue of the certificate less only;
- 31.6.1** Any retention money which the Contractor may be entitled to deduct under the terms of the sub-contract, and
- 31.6.2** Any sum to which the Contractor may be entitled in respect of delay in the completion of the sub-contract works or any section thereof, and
- 31.6.3** Amounts already paid under previous certificates.
- 31.7** Before issuing any certificate under clause 34.0 of these conditions, the Architect may request the Contractor to furnish to him reasonable proof that all amounts included in the calculation of the amounts stated as due in previous certificates in respect of the total value of the work, materials or goods executed or supplied by any nominated subcontractor have been duly paid and if the Contractor fails to comply with any such request the Architect shall issue a certificate to that effect and thereupon the Employer may himself pay such amounts to any nominated sub-contractor concerned and deduct the same from any money due or to become due to the Contractor.
- 31.8** The Contractor shall not grant to any nominated sub-contractor any extension of the period within which the sub-contract works, or (where the sub-contract works are to be completed in sections) any section thereof is to be completed without the written consent of the Architect. Provided always that the Contractor shall inform the Architect of any representations made by the nominated sub-contractor as to the cause of any delay in the progress or completion of the sub- contract works or of any section thereof. The consent of the Architect shall not be unreasonably withheld. Any extension of time granted under this clause shall be copied to the Employer.
- 31.9** If any nominated sub-contractor fails to complete the sub-contract works or (where the sub-contract works are to be completed in sections) any section thereof within the period specified in the sub- contract or within any extended time granted by the Contractor with the written consent of the Architect, then if the same ought reasonably so to have been completed, the Architect shall certify in writing accordingly. Immediately upon issue, the Architect shall send a copy of any such certificate to the nominated sub-contractor and to the Employer.

- 31.10** If the Architect desires to secure final payment to any nominated sub-contractor before final payment is due to the Contractor, and if such sub-contractor has satisfactorily indemnified the Contractor against any latent defects, then the Architect may in an interim certificate include an amount to cover the said final payment, and the Contractor shall pay to such nominated sub-contractor the amount so certified within fourteen days of receipt of the payment. Upon such final payment, the amount named in the appendix to these conditions as limit of retention fund shall be reduced by the sum which bears the same ratio to the said amount as does such sub-contractor's subcontract price to the contract price, and save for latent defects, the Contractor shall be discharged from all liability for the work, materials or goods executed or supplied by such sub-contractor under the sub-contract to which the payment relates.
- 31.11** Where the Contractor in the ordinary course of his business directly carries out works for which prime cost sums are included in the contract bills and where he has so informed the Architect, the Contractor shall be permitted to tender for the same or any of them but without prejudice to the Employer's right to reject the lowest or any tender.
- 31.12** Where a prime cost sum arises under Architect's instructions issued under sub-clause 30.1.4, of these conditions, it shall be deemed for the purposes of this sub-clause to have been included in the contract bills.
- 31.13** It shall be a condition of any tender accepted under sub-clause 31.11 that clause 30.0 of these conditions shall apply in respect of the items of work included in the tender as if the reference therein to the contract drawings, specifications and the contract bills were references to the equivalent documents included in or referred to in the tender.
- 31.14** Where the terms of a contract between the Contractor and a nominated sub-contractor so require or the Architect shall so authorize in writing, the Contractor shall make advance payment to the sub-contractor before delivery of the materials or goods, and the Contractor shall be allowed simple interest for the period of such advance payment calculated at the commercial bank lending rate in force at the time of the advance until the value of the said materials or goods is included in a certificate in accordance with clause 34.0.
- 31.15** If a nominated sub-contractor terminates the sub-contract or the Contractor terminate the sub-contract on the advice of the Architect, the Architect shall make a further nomination of a sub-contractor as may be necessary to carry out and complete the work left incomplete by the sub-contractor whose employment has been terminated Any additional costs arising therefrom shall be borne by the Employer.
- Notwithstanding the above, the Architect may instruct, with the consent of the Contractor, that the incomplete work shall be executed by the Contractor and such instruction shall be deemed to be a variation to the contract.
- 31.16** Provided that where a nominated sub-contractor terminates the sub-contract as a result of a default by the Contractor, or the Contractor terminates the sub-contract without the written advice of the Architect, the Contractor shall be liable to the Employer to any additional costs arising therefrom.
- 31.17** Where a nominated sub-contract provides a defects liability period which extend beyond the Contractor's defects liability period, the Contractor's obligations and liabilities in connection

with the defects of the nominated sub-contract shall nevertheless terminate at the end of the Contractor's defects liability period. The remaining portion of the nominated sub-contractor's defects liability period shall be subject to a direct agreement between the Employer and the nominated sub-contractor and shall not form part of this agreement

**31.18** Where a sub-contractor is required to give a guarantee or warranty relating to the subcontract works such guarantee or warranty shall be assigned by the sub-contractor to the Employer prior to the issue of the final certificate.

**31.19** The employment of a nominated sub-contractor under these conditions shall terminate forthwith upon the termination (for any reason) of the Contractor's employment under the contract.

**31.20** Neither the existence nor the exercise of the foregoing powers nor anything else contained in these conditions shall render the Employer in any way liable to any nominated sub-contractor.

## **32.0 NOMINATED SUPPLIERS**

**32.1** The following provisions shall apply where prime cost sums are included in the contract bills, or arise as a result of Architect's instructions given in regard to the expenditure of provisional sums in respect of any materials or goods to be supplied by others and fixed or installed by the Contractor.

**32.2** Such sums and the term prime cost, when included or arising as aforesaid, shall be understood to mean the net cost to be defrayed as a prime cost after deducting any trade or other discount and shall include customs duty or other taxes, and the cost of packing, carriage and delivery.

Provided that, where in the opinion of the Architect the Contractor has incurred expense for special packing or special carriage, such special expenses shall be allowed as part of the sums actually paid by the Contractor.

**32.3** Such sums shall be expended in favour of such persons as the Architect shall instruct. All specialists, merchants; tradesmen or others who are so nominated by the Architect to supply materials or goods are hereby declared to be suppliers to the Contractor and are referred to in these conditions as 'nominated suppliers'.

**32.4** The Architect shall not nominate as a supplier, a person who will not enter into a contract of sale which provides (inter alia):

**32.4.1** That the materials or goods to be supplied shall be to the reasonable satisfaction of the Architect.

**32.4.2** That the nominated supplier shall make good by replacement or otherwise any defects in the materials or goods supplied which appear within such period as is therein stated and shall bear any expenses reasonably incurred by the Contractor as a direct consequence of such defects provided that: -

**32.4.2.1** Where the materials or goods have been used or fixed such defects are not such that examination by the Contractor ought to have revealed them before using or fixing, and

**32.4.2.2** Such defects are due solely to defective workmanship or defects in the materials or goods supplied and shall not have been caused by

improper storage by the Contractor or by misuse or by any act or neglect of either the Contractor, the Architect or the Employer or by any person or persons for whom they may be responsible.

**32.4.3** That delivery of the materials or goods supplied shall be commenced and completed at such times as the Contractor may reasonably direct.

**32.4.4** All payments by the Contractor for materials or goods supplied by a nominated supplier shall be in full and shall be paid within thirty days of the end of the month during which delivery is made. Failure by the Contractor to pay the nominated supplier as stipulated shall entitle the Employer to pay the relevant sums direct and deduct the same from any money due or to become due to the Contractor.

**32.4.5** Where the terms of a contract between the Contractor and a nominated supplier so require, or the Architect shall so authorize in writing, the Contractor shall make advance payments to the supplier before delivery of the materials or goods. The Contractor shall be allowed simple interest for the period of such advance payment calculated at the commercial bank lending rate in force at the time of the advance until the value of the said materials or goods is included in a certificate in accordance with clause 34.0.

### **33 WORKS BY OTHER PERSONS ENGAGED BY THE EMPLOYER**

**33.1** The Contractor shall permit the carrying-out of work not forming part of this contract, but described in the contract bills, by the Employer or by other persons employed or otherwise engaged by him.

**33.2** Where the work is not described in the contract bills, the Employer may arrange the carrying out of such work only with the consent of the Contractor, which consent shall not be unreasonably withheld.

**33.3** Every person employed or otherwise engaged by the Employer under this clause shall be deemed to be a person for whom the Employer is responsible and not a subcontractor.

### **34.0 PAYMENTS**

**34.1** At intervals stated in the appendix to these conditions, the Contractor shall submit to the Quantity Surveyor an application for payment giving sufficient details of the works done and the materials on site and the amounts which the Contractor considers himself to be entitled to. The application for payment shall be copied to the Architect and the Employer.

**34.2** Upon receipt of the application and after verifying the amounts, the Quantity Surveyor shall prepare within seven days an interim valuation of work done and materials on site during the relevant period and forward the same to the Architect. The valuation shall be copied to the Employer.

**34.3** The Architect shall issue an interim payment certificate within seven days from the date of receipt of the Quantity Surveyor's valuation. The payment certificate shall be copied to the Employer.

**34.4** Neither the Quantity Surveyor nor the Architect shall be bound to issue a valuation for a payment certificate, as the case may be, whose value is less than the amount stated in the appendix to these conditions as the minimum amount of a payment certificate before the issue of the certificate of practical completion of the whole of the Works or any section



thereof.

- 34.5** The Contractor shall, on presenting any interim payment certificate to the Employer be entitled to payment thereof within fourteen days from presentation.
- 34.6** If a certificate remains unpaid beyond the period for honoring certificates stated herein, the Employer shall pay or allow to the Contractor simple interest on the unpaid amount for the period it remains unpaid at the commercial bank lending rate in force during the period of default. The Quantity Surveyor shall assess the amounts to be included in an interim certificate as the interest due for the delay and if an interim certificate is issued after the date of any such assessment, the amount shall be added to the amount which would otherwise be stated as due in such a certificate.
- 34.7** The payment of interest for late payment of certified sums shall not relieve the Employer from his obligation to honour payment certificates when due.
- 34.8** The Architect may, by a subsequent or supplementary certificate, make any correction, amendment or modification to any previously issued certificate and shall have the authority, if work is not carried out to his satisfaction, to omit or reduce the value of such work in any certificate.
- 34.9** The amount stated as due in an interim certificate shall, subject to any agreement between the parties as to stage payments, be the total value of work properly executed and the value of materials and goods required for use in the Works which have been delivered to the Works.
- 34.10** The Architect may, with the consent of the Employer, include in an interim certificate the value of materials and goods which have been stored elsewhere in safe custody by the Contractor.
- 34.11** Provided that such interim certificate shall only include the value of such materials and goods as and from such time as they are reasonably, properly and not prematurely brought to the Works or stored as aforesaid and are adequately stored and protected against weather and other casualties and are covered by proper insurance and have passed to the legal ownership of the Contractor. There shall be deducted from the amount of the certificate such sums as may be retained by the Employer as hereinafter provided and less any amounts previously certified under this clause.
- 34.12** The Employer may retain the percentage of the total value of the work, materials and goods referred to in sub-clause 34.9 of this condition, which is named in the appendix to these conditions as percentage of certified value retained. Provided always that when the sum of the amounts so retained equals the amount named in the said appendix as limit of retention fund, or that amount as reduced pursuant to sub-clause, 31.10, 42.7, and 42.8 of these conditions, as the case may be, no further amount shall be retained by virtue of this clause.
- 34.13** Where any certificate of which the Contractor has received payment in accordance with sub-clause 34.5 of these conditions, includes the value of any unfixed materials and goods required for use in the Works, such materials and goods shall become the property of the Employer and shall not be removed without the authority of the Architect except for use upon the Works. The Contractor shall remain responsible for any loss of or damage to

such materials and goods whether the same are stored on site or elsewhere.

**34.14** The following amounts, when included in interim certificates, shall not be subject to retention:-

**34.14.1** Payment for taxes, levies and charges in respect of which the Contractor pays or indemnifies the Employer under the provisions of sub-clause 17.4 of these conditions.

**34.14.2** Payment made for inspections and tests carried out by the Contractor or by third parties under clauses 23.0 and 24.0.

**34.14.3** Payment to the Contractor for the provision of a performance bond under clause 16.1 of these conditions.

**34.14.4** Payment to the Contractor for the provision of insurances under clauses 12.0, 13.0,14.0 and 15.0 of these conditions, as applicable.

**34.14.5** Payment for goods and materials supplied by nominated suppliers under clause 32.0.

**34.14.6** Any amounts to which the Contractor is entitled in accordance with sub-clause 34.28.

**34.15** The Employer and the Contractor may agree to open a joint interest earning bank account where all retention money shall be deposited. Such account, if opened, shall be operated jointly by the Employer and the Contractor. All interest accruing to the deposited retention fund shall be periodically released to the Contractor at the times agreed between the parties and inserted in the appendix to these conditions.

**34.16** The amounts retained by virtue of sub-clause 34.12 of this condition shall be subject to the following rules;

**34.16.1** The Employer's interest in any amount so retained shall be fiduciary a trustee for the Contractor (but without obligation to invest) and the Contractor's beneficial interest therein shall be subject only to the right of the Employer to have recourse thereto from time to time for payment of an amount which he is entitled under the provisions of this contract to deduct from any sum due or to become due to the Contractor.

**34.16.2** On the issue of the certificate of practical completion, the Architect shall issue a certificate for one half of the total amount then so retained and the Contractor shall, on presenting any such certificate to the Employer, be entitled to payment of the said amount within fourteen days from presentation.

**34.16.3** On the expiration of the defects liability period named in the appendix to these conditions, or on the issue of the certificate of completion of rectification of defects, whichever is the later, the Architect shall issue a certificate for the balance of the amount then so retained and the Contractor shall be entitled to payment of the said balance within fourteen days from presentation.

**34.17** The measurement and valuation of the Works shall be completed within the period of final measurement and valuation stated in the appendix to these conditions calculated from the date

of practical completion, and the Contractor shall be supplied with a copy of the final account not later than the end of the said period and before the issue of the final certificate under sub-clause 34.21 of this condition.

**34.18** Either before or within a reasonable time after practical completion of the Works, the Contractor shall send to the Quantity Surveyor all documents and calculation necessary for the purposes of the computations required by these conditions including all documents relating to the accounts of nominated sub-contractors and nominated suppliers. The Quantity Surveyor may request the Contractor to submit further documents as he may deem necessary for the computation of the final account.

**34.19** In the settlement of accounts, the amounts paid or payable under the appropriate contracts by the Contractor to nominated sub-contractors or nominated suppliers, the amount paid or payable by virtue of clause 17.0 of these conditions in respect of fee or charges for which a provisional sum is included in the contract bills, the amount paid or payable in respect of any insurances maintained in compliance with sub-clause 12.3 of these conditions, the tender price (or such other sum as may be appropriate or accordance with the terms of the tender) for any work for which a tender made under sub-clause 31.11 of these conditions is accepted and the value of any work executed by the Contractor for which a provisional sum is included in the contract bills, shall be set against the relevant prime cost sum or provisional sum included in the contract bills or arising under Architect's instructions issued under clause 30.1.4 of these conditions as the case may be. The balance, after allowing in all cases pro rata for the Contractor's profit at the rates shown in the contract bills, shall be added to 01 deducted from the contract price. Provided that no deduction shall be made in respect of any damages paid or allowed to the Contractor by any sub-contractor or supplier.

**34.20** The final account shall be agreed between the Quantity Surveyor, the Contractor and the Architect. If the Contractor does not sign the final account within thirty days after being so requested to do, the Architect may issue the final certificate based on the final account prepared by the Quantity Surveyor. The final account shall be copied to the Employer.

**34.21** So soon as the Quantity Surveyor has prepared the final account but before the expiration of sixty days from the end of the defects liability period stated in the appendix to these conditions, or from completion of rectification of defects under clause 41.6 of these conditions, or from receipt by the Quantity Surveyor of the documents referred to in paragraph 34.18 of this condition, whichever is the latest, the Architect shall issue the final certificate.

The final certificate shall state;

**34.21.1** The sum of the amounts certified to the Contractor under interim certificates and the amount named in the said appendix as limit of retention fund, and

**34.21.2** The contract price adjusted as necessary in accordance with the terms of these conditions, and as reflected in the final account.

**34.21.3** The difference (if any) between the two sums shall be expressed in the said certificate

as a balance due to the Contractor from the Employer or to the Employer from the Contractor, as the case may be. Subject to any deductions authorized by these conditions, the said balance as from the fourteenth day after presentation of the final certificate by the Contractor to the Employer shall be a debt payable by the Employer to the Contractor or by the Contractor to the Employer, as the case may be.

**34.22** Unless a written request to concur in the appointment of an Arbitrator shall have been given under clause 45.0 of these conditions by either party before the final certificate has been issued, or within thirty days after such issue, the said certificate shall be conclusive evidence in any proceedings arising out of this contract (whether by arbitration under clause 45.0 of these conditions or otherwise) that the Works have been properly carried out and completed in accordance with the terms of this contract and that any necessary effect has been given to all the terms of this contract which require an adjustment to be made to the contract price, except and insofar as any sum mentioned in the said certificate is erroneous by reason of;

**34.22.1** Fraud, dishonesty or fraudulent concealment relating to the Works, or any part thereof, or to any matter dealt with in the said certificate, or

**34.22.2** Any defect including any omission in the Works or any part thereof which reasonable inspection or examination at any reasonable time during the carrying out of the Works or before the issue of the said certificate would not have disclosed, or

**34.22.3** Any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation.

**34.23** Save as aforesaid, no certificate of the Architect shall of itself be conclusive evidence that any Works, materials or goods to which it relates are in accordance with this contract.

**34.24** If the Architect shall delete or reduce any sum in the final certificate which was previously certified in respect of work done or goods and materials supplied or services rendered by a nominated sub- contractor or supplier, which sum has already been paid by the Contractor to the nominated sub- contractor or supplier, the Employer shall reimburse the Contractor the amount of any sum so overpaid to the extent that the Contractor is unable to recover the said overpayment.

**34.25** The Employer shall be entitled to deduct from or set off against any money due from him to the Contractor in interim certificates any sum or sums which the Contractor is liable to pay to the Employer arising under or in connection with the contract.

**34.26** Where in these conditions it is provided that an amount is to be added to or deducted from the contract price, then as soon as such an amount is assessed in whole or in part, it shall be reflected in the next payment certificate following such assessment.

**34.27** All certificates to be issued by the Architect under these conditions shall be issued to the Contractor except that the Architect may issue a special payment certificate to others for payment by the Employer where the Employer;

**34.27.1** Engages others to execute work in accordance with sub-clause 22.2.

**34.27.2** Elects to pay nominated sub-contractors or nominated suppliers direct in accordance with clauses 31.7 and 32.4.4.

**34.27.3** Elects to pay direct statutory and similar services providers in accordance with clause 17.2.

**34.28** Any penalties or fines imposed on the Contractor by the relevant authority for delay in the payment of Value Added Tax and other taxes levied in the building industry arising from a delay in the honouring of a payment certificate shall be reimbursed by the Employer to the Contractor.

### **35.0 FLUCTUATIONS**

**35.1** The contract price shall be deemed to have been calculated to include all duties on materials and goods to be incorporated into the finished Works unless otherwise stated in the contract. If at any time during the period of the contract the duties shall be varied and this shall affect the cost to the Contractor of such materials, then the Quantity Surveyor shall assess the net difference in cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the contract price, as the case may be. For purposes of this clause, 'duties' shall include all customs and excise charges, tariffs, V.A.T and other taxes and duties imposed by statutory or other authority in the country where the Works are being carried out.

**35.2** The contract price shall be deemed to be based on exchange rates current at the date of tender in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the contract bills or specifications) for permanent incorporation in the Works. Unless otherwise stated in the contract, if at any time during the period of the contract the exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Quantity Surveyor shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the contract price, as the case may be.

**35.3** Unless otherwise stated in the contract, the contract price shall be deemed to have been calculated in the manner set out below and in sub-clauses 35.4 and 35.5 and shall be subject to adjustment in the events specified there under.

**35.3.1** The prices contained in the contract bills shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C) and set out in the schedule of basic rates annexed to the contract bills.

**35.3.2** Upon J.B.C determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the contract price shall be increased or decreased by the amount assessed by the Quantity Surveyor based upon the difference, expressed as a percentage, between the rate set out in the annexed schedule of basic rates and the rate published by the J.B.C and applied to the quantum of labour incorporated within the amount of work remaining to be executed at the date of publication of such increase or decrease.

- 35.3.3** No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of practical completion except during such other period as may be granted as an extension of time under clause 36.0 of these conditions.
- 35.4** The prices contained in the contract bills shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Works as determined by the J.B.C and set out in the schedule of basic rates annexed to the contract bills.
- 35.5** Upon the J.B.C determining that any of the said basic prices are increased or decreased then the contract price shall be increased or decreased by the amount to be assessed by the Quantity Surveyor based upon the difference between the price set out in the schedule of basic rates and the rate published by the J.B.C and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 34.0 of these conditions issued before the date of publication of such increase or decrease.
- 35.6** No adjustment shall be made in respect of changes in basic prices which occur after the date for practical completion except during such other period as may be granted as an extension of time under clause 36.0 of these conditions.
- 35.7** The provisions of sub-clauses 35.1 and 35.2 herein shall not apply in respect of any materials included in the annexed schedule of basic rates.
- 35.8** The provision of sub-clause 35.3 to 35.5 shall not apply to nominated sub-contractors and nominated suppliers except in so far as shall be specifically provided in any subcontract agreement.

## **36.0 EXTENSION OF TIME**

- 36.1** Upon it becoming reasonably apparent that the progress of the Works is delayed, the Contractor shall forthwith give written notice of the cause of the delay to the Architect with supporting details showing the extent of delay caused or likely to be caused. Thereafter the Architect shall evaluate the information supplied by the Contractor and if in his opinion the completion of the Works is likely to be or has been delayed
- 36.1.14** By reason of delay caused by nominated subcontractors or nominated suppliers which delay the Contractor has taken all reasonable measures to avoid or reduce the effects of, or
- 36.1.15** By reason of the Contractor's inability, for reasons beyond his control, to secure such skilled labour and other workmen essential to the proper carrying out of the Works, or
- 36.1.16** By delay arising from the nomination or renomination of a sub-contractor or supplier, or
- 36.1.17** By delay in receiving possession of or access to the site.
- 36.2** Then the Architect shall so soon as he is able to estimate the length of the delay beyond the date or time aforesaid, but in any case not later than thirty days after receiving an application for extension of time in the manner prescribed, make in writing a fair and reasonable extension of time for the completion of the Works.

- 36.3** Provided always that should a cause of delay be of continuing effect, the Architect shall make an interim decision within the said thirty days and a final decision made within thirty days of the end of the cause of delay.
- 36.4** The Contractor shall use constantly his best endeavors to prevent delay and shall do all that may reasonably be required of him to the satisfaction of the Architect to proceed with the Works.
- 36.5** If the Architect's decision on extension of time is not communicated to the Contractor within the said thirty days, and no justifiable grounds are given for the failure to act, the time applied for by the Contractor shall be deemed to have been accepted by the Architect as being a fair extension of time for the completion of the Works. Such a decision shall take effect not earlier than fourteen days after the expiry of the thirty day period.
- 36.6** If by the Architect's instructions the scope of the Works is reduced and in the opinion of the Architect the time for completion of the Works has been or is likely to be reduced, the Architect shall as soon as he is able to estimate the reduction in time, make in writing a fair and reasonable reduction to the time for completion of the Works. Provided always that such a reduction in the time for completion of the Works shall be notified to the Contractor within thirty days from the date of issue of such Architect's instructions.
- 36.7** The Architect shall not be bound to evaluate a request for extension of time which is submitted more than thirty days after the events listed in sub-clause 36.1 have occurred.
- 36.8** All applications for extension of time and all decision on the same shall be copied to the Employer at the time of application or decision, as the case may be.

**37.0 LOSS AND EXPENSE CAUSED BY DISTURBANCE OF REGULAR PROGRESS OF  
THE WORKS**

**37.1** If upon written application being made to him by the Contractor the Architect is of the opinion that the Contractor has been involved in direct loss and or expense for which he would not be reimbursed by a payment made under any other provision in this contract by reason of the regular progress of the Works or of any part thereof having been materially affected by;

**37.1.1** The Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing, on a date which having regard to the date for practical completion stated in the appendix to these conditions or to any extension of time then fixed under clause 36.0 of these conditions was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

**37.1.2** The opening up for inspection of any work covered up or the testing of any work, materials or goods in accordance with clause 23.0 of these conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials, or goods were not in accordance with this contract, or

**37.1.3** Delay in appointing a replacement Architect, Quantity Surveyor or Engineer, **or**

**37.1.4** Any discrepancy in or divergence in these conditions, **the contract drawings,** specifications and or the contract bills, or

**37.1.5** Delay on the part of artists, tradesmen or others engaged by the Employer **in** executing work not forming part of this contract; or

**37.1.6** Delay by statutory or other services providers or similar bodies engaged directly by the Employer, or

**37.1.7** Architect's instruction issued in regard to the postponement of any work **to be** carried out under the provisions of this contract, or

**37.1.8** Delay arising from the nomination or renomination of a sub-contractor or supplier, or

**37.1.9** The Contractor suspending the carrying out of the Works in accordance with clause 29.0 of these conditions, except under sub-clause 29.1.3., or

**37.1.10** Delay caused by the late supply of goods or materials or in executing work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or

**37.1.11** Delay in receiving possession of or access to the site.

**37.2** And if the written application is accompanied by detailed particulars of the claim and it is made within the period stated in sub-clause 37.4 herein upon it becoming apparent that the progress of the Works or of any part thereof has been affected as aforesaid, then the Quantity Surveyor shall as soon as practicable assess the amount of such loss and or expense. Any amount from time to time so assessed shall be added to the contract price, and if an interim certificate is issued after the date of assessment, any such amount shall be added to the amount which would otherwise be stated as due in such a certificate.

**37.3** Upon the happening of any of the events listed at sub-clause 37.1.1 to 37.1.11, the Contractor shall maintain such records as may be necessary to support any claim he may wish to make. The Quantity Surveyor may request any further information as he may deem necessary for a fair and just assessment of the claim.

**37.4** The Contractor shall give written notice to the Architect of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

**37.5** Provided always that should the event giving rise to the claim be of continuing effect, the Contractor shall submit an interim claim within the said thirty days and a final claim within thirty days of the end of the event giving rise to the claim.

**37.6** If the Contractor fails to comply with any of the provisions of this clause in respect of any claim he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Quantity Surveyor or any Arbitrator appointed under clause 45.0 shall consider to be verified by contemporary records submitted at the time the event occurred.

**37.7** All applications for the reimbursement of loss and or expense made by the Contractor, and all assessments of loss and expense made by the Quantity Surveyor, shall be copied to the Employer.

## **TERMINATION OF THE CONTRACT BY THE EMPLOYER**

**38.1** Without prejudice to any other rights and remedies which the Employer may possess, if the Contractor shall make default in any one or more of the following respects, that is



to say,

- 38.1.1** If he without reasonable cause wholly suspends the carrying out of the Works before completion thereof, for a period exceeding fourteen days, or
  - 38.1.2** If he fails to proceed regularly and diligently with the Works, or
  - 38.1.3** If he fails to commence the Works within thirty days of the date for commencement, or
  - 38.1.4** If he refuses or persistently neglects to comply with a written notice from the Architect requiring him to remove defective work or improper materials or goods, and by such refusal or neglect the Works are materially affected, or
  - 38.1.5** If he fails to comply with the provisions of clause 26.0 and 27.0 of these conditions, or
  - 38.1.6** If despite previous notices from the Architect in writing he persistently or flagrantly neglects to comply with any of his obligations under the contract,
- 38.2** Then the Architect may give to the Contractor a notice by registered post or recorded delivery specifying the default, and if the Contractor either shall continue such default for fourteen days after receipt of such notice or shall at any time thereafter repeat such default then the Employer may within fourteen days after such continuance or repetition by notice by registered post or recorded delivery, forthwith terminate the contract, provided that such notice shall not be given unreasonably or vexatiously.
- 38.3** In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for purposes of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed or possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge, then the contract shall automatically terminate but it may be reinstated and continued if the Employer and the Contractor, his trustee in bankruptcy, receiver or manager, as the case may be, shall so agree.
- 38.4** In the event of the contract being terminated as aforesaid and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the Employer and the Contractor;
- 38.4.1** The carrying out of the Works by the Contractor shall cease forthwith and the Contractor shall vacate the site thereby relinquishing possession thereof and the responsibility and care of the site and the Works shall henceforth pass to the Employer.
  - 38.4.2** So soon as it is practicable, the Architect shall arrange a joint inspection with the Contractor and the Quantity Surveyor for the purpose of taking a record of the work done, materials and goods delivered on site, the contractor's equipment, and temporary buildings.
  - 38.4.3** The Quantity Surveyor shall, within a reasonable time after the inspection, prepare

a final account for that part of the Works carried out by the Contractor by the date of termination of the contract.

- 38.5** The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and he or they may enter upon the Works and use all temporary buildings, equipment, goods and materials intended for, delivered to and placed on or adjacent to the Works, and may purchase all materials and goods necessary for the carrying out and completion of the Works.
- 38.6** The Contractor shall, if so required by the Employer, within fourteen days of the date of termination, assign to the Employer without payment the benefit of any agreement for the supply of materials or goods and or for the execution of any work for the purposes of this contract, but on the terms that a supplier or sub-contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Employer. In any case, the Employer may pay any supplier or sub-contractor for any materials or goods delivered or works executed for the purpose of this contract (whether before or after the date of termination) insofar as the cost thereof has not already been paid by the Contractor. The Employer's rights under this sub-clause are in addition to his rights to pay nominated sub-contractors as provided in sub-clause 31.7 of these conditions and payments made under this sub-clause may be deducted from any money due or to become due to the Contractor.
- 38.7** The Contractor shall as and when required in writing by the Architect so to do (but not before) remove from the Works any temporary buildings, equipment, goods and materials belonging to or hired by him. If within thirty days after any such requirement has been made the Contractor has not complied therewith, then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor holding the proceeds less all costs incurred to the credit of the Contractor.
- 38.8** The Contractor shall allow or pay to the Employer in the manner hereinafter appearing, the amount of any direct loss and or damage caused to the Employer by the termination. Until after completion of the Works under sub-clause 38.5, the Employer shall not be bound by any provision of this contract to make any further payments to the Contractor, but upon such completion and the verification within a reasonable time of the accounts therefore, the Quantity Surveyor shall assess the amount of expenses properly incurred by the Employer and the amount of any direct loss and or damage caused to the Employer by the termination and, if such amounts when added to the money paid to the Contractor before the date of termination exceed the total amount which would have been payable on due completion in accordance with this contract, the difference shall be a debt payable to the Employer by the Contractor. If the said amounts when added to the money paid to the Contractor be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.
- 38.9** The Contractor shall not be relieved of any of his obligations and liabilities in regard to that part of the Works carried out by him.

### **39.0 TERMINATION OF THE CONTRACT BY THE CONTRACTOR**

- 39.1** Without prejudice to any other rights and remedies which the Contractor may possess, if:

**39.1.1** The Contractor does not receive a payment certificate which he applied for in accordance with clause 34.1 of these conditions within fourteen-days of the application

and the default continues for sixty days after expiry of the stated period, or

**39.1.2** The Employer does not pay to the Contractor the amount due on any certificate within the period for honouring certificates named in clause 34.5 of these conditions and continues such default for sixty days after expiry of that period, or

**39.1.3** The Employer interferes with or obstructs the issue of any certificate due under this contract, and continues such act for sixty days after a notice of default has been issued by the Contractor, or

**39.1.4** The carrying out of the whole or substantially the whole of the uncompleted Works (other than the execution of work required under sub-clause 41.6 of these conditions) is suspended for a continuous period of sixty days by reason of;

**39.1.4.1** Delay in receiving possession of or access to the site, or

**39.1.4.2** Architect's instructions issued under clauses 22.0, 28.1, or 30.0 of these conditions, or

**39.1.4.3** The Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the date for practical completion stated in the appendix to these conditions, or to any extension of time granted under clause 36.0 of these conditions, was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

**39.1.4.4** Delay in appointing a replacement architect, Quantity Surveyor, Engineer, or

**39.1.4.5** Delay on the part of artists, tradesmen or others engaged by the employer in executing works not forming part of this contract, or

**39.1.4.6**

**39.5** After taking into account amounts previously paid under this contract, the Contractor shall be paid by the Employer;

**39.5.1** The total value of work completed at the date of termination.

**39.5.2** The total value of work begun and executed but not completed at the date of termination, the value being assessed in accordance with clause 30.6 of these conditions as if such work were a variation required by the Architect.

**39.5.3** Any sum assessed in respect of direct loss and or expense under clause 37.0 of these

conditions (whether assessed before or after the date of termination).

**39.5.4** The cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor shall be legally bound to pay, and which have been recorded in accordance with sub-clause 39.4.2, and on such payment by the Employer, any materials or goods so paid for shall become the property of the Employer and shall not be removed from the site without the authority of the Employer.

**39.5.5** The reasonable cost of removal under sub-clause 39.4.3

**39.5.6** Any direct loss and or damage caused to the Contractor by the termination.

#### **40.0 TERMINATION OF THE CONTRACT BY EITHER PARTY**

**40.1** If during the progress of the Works the Government and people of the country in which the site is located shall become engaged in war, warlike operations or hostilities or kindred activities which either directly or indirectly involve or would involve either party in loss or expense beyond that provided for in or reasonably contemplated by this contract, then the contract may be terminated by either party giving to the other fourteen days notice by registered post or recorded delivery. Upon termination the Contractor shall be paid by the Employer in respect of the work carried out before such termination in accordance with the provisions of sub-clauses 39.5.1 to 39.5.5 of these conditions.

**40.2** In the event of the Works or any part thereof or any goods or materials brought on the site for use in the Works being destroyed or damaged by war, warlike operations or hostilities or kindred activities as the case may be, the Contractor shall be under no liability whatsoever to repair, reinstate or make good the destruction or damage so caused and shall be entitled;

**40.2.1** To be paid the full value of all work carried out before such event and for all materials on the site for use in the works (including the work or materials so damaged or destroyed), and

**40.2.2** To be paid for any work done and materials or goods supplied in the reinstatement or making good of any destruction or damage so caused upon such terms as may be agreed between the parties, and in default of agreement, upon the basis of prime cost plus a reasonable profit to be assessed by the Quantity Surveyor.

**40.3** In the case of works of alterations, repairs or extensions, if the Works are damaged by any of the contingencies referred to in clause 15.0 and if it is just and equitable to do so, the contract may within sixty days of the occurrence of such loss or damage be terminated at the option of either party upon giving a fourteen days notice by registered post or recorded delivery. Within fourteen days of receiving such a notice either party may give to the other a written request to concur in the appointment of an Arbitrator under clause 45.0 of these conditions in order that it may be determined whether such termination will be just and equitable. Upon the giving or receiving by the Employer of such a notice of termination or, where a reference to arbitration is made as aforesaid, upon the Arbitrator upholding the notice of termination, the provisions of sub-clause 39.5.1 to 39.5.5 of these conditions shall apply.

**40.4** If the carrying out of the whole or substantially the whole of the uncompleted Works (other than the execution of work required under sub-clause 41.6 of these conditions) is

suspended for a continuous period of sixty days by reason of;

**40.4.1** Force majeure, or

**40.4.2** Loss or damage occasioned by any one or more of the contingencies referred to in clauses 13.0 and 14.0 of these conditions (if applicable), or

**40.4.3** Loss or damage arising from nuclear activity,

**40.5** Then either party may, upon giving a fourteen days notice by registered post or recorded delivery, terminate the contract, provided that such notice shall not be given unreasonably or vexatiously. Upon such termination, the Contractor shall be paid by the Employer in respect of the work executed before such termination in accordance with the provisions of clause 39.5.1 to 39.5.5.

#### **41.0 PRACTICAL COMPLETION AND DEFECTS LIABILITY**

**41.1** When in the opinion of the Contractor the whole of the Works are practically complete, he shall give a notice in writing to the Architect to that effect. The notice shall be accompanied by an undertaking to complete any outstanding work within a reasonable time or within such time as the Architect may direct.

**41.2** Within fourteen days of the issue of such notice, the Architect shall inspect the Works and if in his opinion the Works are practically complete, he shall issue the certificate of practical completion, and the defects liability period shall be deemed to commence on the date of issue of the said certificate. If the Works are not practically complete, he shall specify in writing to the Contractor the work which in his opinion requires to be completed before the certificate can be issued.

**41.3** The Contractor shall retain possession of the site of the Works up to and including the date of issue of the certificate of practical completion and subject to clause 42.0 hereof, the Employer shall not be entitled to take possession of any part or parts of the Works until that date.

**41.4** Upon the Employer taking possession of the whole or any part of the Works, (hereinafter referred to as the relevant part), the relevant part of the Works taken over shall be at the sole risk of the Employer in every respect as from the date of such taking over.

**40.3** In the case of works of alterations, repairs or extensions, if the Works are damaged by any of the contingencies referred to in clause 15.0 and if it is just and equitable to do so, the contract may within sixty days of the occurrence of such loss or damage be terminated at the option of either party upon giving a fourteen days notice by registered post or recorded delivery. Within fourteen days of receiving such a notice either party may give to the other a written request to concur in the appointment of an Arbitrator under clause 45.0 of these conditions in order that it may be determined whether such termination will be just and equitable. Upon the giving or receiving by the Employer of such a notice of termination or, where a reference to arbitration is made as aforesaid, upon the Arbitrator upholding the notice of termination, the provisions of sub-clause 39.5.1 to 39.5.5 of these conditions shall apply.

**40.4** If the carrying out of the whole or substantially the whole of the uncompleted Works (other than the execution of work required under sub-clause 41.6 of these conditions) is suspended for a continuous period of sixty days by reason of;

**40.4.1** Force majeure, or

**40.4.2** Loss or damage occasioned by any one or more of the contingencies referred to in clauses 13.0 and 14.0 of these conditions (if applicable), or

**40.4.3** Loss or damage arising from nuclear activity,

**40.5** Then either party may, upon giving a fourteen days notice by registered post or recorded delivery, terminate the contract, provided that such notice shall not be given unreasonably or vexatiously. Upon such termination, the Contractor shall be paid by the Employer in respect of the work executed before such termination in accordance with the provisions of clause 39.5.1 to 39.5.5.

#### **41.0 PRACTICAL COMPLETION AND DEFECTS LIABILITY**

**41.1** When in the opinion of the Contractor the whole of the Works are practically complete, he shall give a notice in writing to the Architect to that effect. The notice shall be accompanied by an undertaking to complete any outstanding work within a reasonable time or within such time as the Architect may direct.

**41.2** Within fourteen days of the issue of such notice, the Architect shall inspect the Works and if in his opinion the Works are practically complete, he shall issue the certificate of practical completion, and the defects liability period shall be deemed to commence on the date of issue of the said certificate. If the Works are not practically complete, he shall specify in writing to the Contractor the work which in his opinion requires to be completed before the certificate can be issued.

**41.3** The Contractor shall retain possession of the site of the Works up to and including the date of issue of the certificate of practical completion and subject to clause 42.0 hereof, the Employer shall not be entitled to take possession of any part or parts of the Works until that date.

**41.4** Upon the Employer taking possession of the whole or any part of the Works, (hereinafter referred to as the relevant part), the relevant part of the Works taken over shall be at the sole risk of the Employer in every respect as from the date of such taking over.

**41.5** Should the employer take over the whole or any part of the Works before the issue of a certificate of practical completion, practical completion shall be deemed to have taken place on the date of taking over of the whole or any part of the Works.

**41.6** Any defects, shrinkages or other faults which shall appear within the defects liability period stated in the appendix to these conditions and which are due to materials or workmanship not being in accordance with the contract shall be specified by the architect in a schedule of defects which he shall deliver to the Contractor not later than thirty days after the expiry of the said defects liability period. Within a reasonable time after receipt of such schedule,

the defects, shrinkages and other faults therein specified shall be rectified by the contractor and (unless the Architect shall otherwise instruct,) entirely at his own cost.

- 42.3** For the purposes of sub clauses 41.2, 41.6 and 41.7 of these conditions, practical completion of the relevant part shall be deemed to have occurred and the defects liability period in respect of the relevant part shall be deemed to have commenced on the date on which the Employer shall have taken possession thereof.
- 42.4** When in the opinion of the Architect any defects, shrinkages or other faults in the relevant part which he may have required to be rectified under sub-clause 41.6 and 41.7 of these conditions shall have been rectified he shall issue a certificate to that effect.
- 42.5** The Contractor shall reduce the value insured under sub-clause 13.1 of these conditions (if applicable) by the full value of the relevant part, and the said relevant part shall as from the date on which the Employer shall have taken possession thereof, be at the sole risk of the Employer as regards any of the contingencies referred to in the said sub-clause.
- 42.6** In lieu of any sum to be paid or allowed by the Contractor under clause 43.0 of these conditions in respect of any period during which the Works may remain incomplete occurring after the date on which the Employer shall have taken possession of the relevant part, there shall be paid or allowed such sum as bears the same ratio to the sum which would be paid or allowed apart from the provisions of this condition, as does the contract price less the total value of the said relevant part to the contract price.
- 42.7** Within thirty days of the date on which the Employer shall have taken possession of the relevant part, there shall be paid to the Contractor from the sums then retained under clause 34.0 of these conditions (if any), one half of such amount as bears the same ratio of the unreduced amount named in the appendix to these conditions as limit of retention fund as does the total value of the said relevant part to the contract price, and the amount named in the appendix to these conditions as limit of retention fund shall be reduced by the amount so paid to the Contractor.
- 42.8** On the expiration of the defects liability period named in the appendix to these conditions in respect of the relevant part, or on the issue of the certificate of completion of rectification of defects in respect of the relevant part, whichever is the later, there shall be paid to the Contractor from the sums then retained under sub-clause 34.12 of these conditions (if any), the balance of the amount referred to in sub-clause 42.7 and the amount named in the appendix to these conditions as limit of retention fund shall be reduced by the amount of such payment.

### **43.0 DAMAGES FOR DELAY IN COMPLETION**

- 43.1** If the Contractor fails to complete the Works by the date for practical completion stated in the appendix to these conditions, or within any extended time fixed under clause 36.0 of these conditions, and the Architect certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the said appendix as liquidated damages for the period during which the Works shall so remain or have remained incomplete, and the Employer may deduct such sum from any money due or to become due to the Contractor under the contract or recover the same from the Contractor as a debt.

- 43.2** The payment or deduction of such damages shall not relieve the Contractor from his obligations to complete the Works or any part thereof or from any other obligations and liabilities under the contract.

#### **44.0 ANTIQUITIES AND OTHER OBJECTS OF VALUE**

- 44.1** All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating the same during the progress of the work, shall become the property of the Employer. The Contractor shall carefully take out and preserve all such objects and shall immediately or as soon as convenient after the discovery of such articles, deliver the same into the possession of the Architect or of the Clerk of Works uncleaned and as excavated.
- 44.2** If in the opinion of the Architect, compliance with the provisions of the preceding sub-clause has involved the Contractor in direct loss and or expense for which he would not be reimbursed by a payment made under any other provision in this contract, then the Quantity Surveyor shall assess the amount of such loss and or expense. Any amount from time to time so assessed shall be added to the contract price, and if an interim certificate is issued after the date of assessment, any such amount shall be added to the amount which would otherwise be stated as due in such a certificate.

#### **45.0 SETTLEMENT OF DISPUTES**

- 45.1** In case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or after the completion or abandonment of the Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of The Architectural Association of Kenya or by the Chairman or Vice Chairman of The Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.
- 45.2** The arbitration may be on the construction of this contract or on any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any matter or thing left by this contract to the discretion of the Architect, or the withholding by the Architect of any certificate to which the Contractor may claim to be entitled or the measurement and valuation referred to in clause 34.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of contract.
- 45.3** Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 45.4** Notwithstanding the issue of a notice as stated above, the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties.



- 45.5** In any event, no arbitration shall commence earlier than ninety days after the service of the notice of a dispute or difference.
- 45.6** Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the contract by either party:
- 45.6.1** The appointment of a replacement Architect, Quantity Surveyor or Engineer upon the said persons ceasing to act.
- 45.6.2** Whether or not the issue of an instruction by the Architect is empowered by these conditions.
- 45.6.3** Whether or not a certificate has been improperly withheld or is not in accordance with these conditions.
- 45.6.4** Any dispute or difference arising in respect of war risks or war damage.
- 45.7** All other matters in dispute shall only be referred to arbitration after the practical completion or alleged practical completion of the Works, or abandonment of the Works, or termination or alleged termination of the contract, unless the Employer and the Contractor agree otherwise in writing.
- 45.8** The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 45.9** The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.
- 45.10** The award of such Arbitrator shall be final and binding upon the parties.

**PRE-BID ATTENDANCE FORM**

**LTVC/MF/T/2025/001**

(To be returned signed and stamped with the tender document)

This is to confirm that \_\_\_\_\_ (Company Name) ATTENDED A  
MANDATORY PRE-BID MEETING AT LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE

**COMPANY REPRESENTATIVE**

NAME \_\_\_\_\_

DESIGNATION \_\_\_\_\_

COMPANY TEL. NUMBER:

COMPANY EMAIL:

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

OFFICIAL STAMP

**LANG'ATA TECHNICAL AND VOCATIONAL COLLEGE REPRESENTATIVE**

NAME \_\_\_\_\_

DESIGNATION \_\_\_\_\_

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

OFFICIAL STAMP