

KENYA PORTS AUTHORITY



BURHANI ENGINEERS LIMITED

**SUPPLY INSTALLATION AND COMMISSIONING OF
POWER LINE AND METERING SUBSTATION FOR
LAMU PORT**

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SUPPLY INSTALLATION AND COMMISSIONING OF POWER LINE AND
METERING SUBSTATION FOR LAMU PORT
TENDER NO.KPA/079/2021-22/EE

THIS AGREEMENT made this.....16th.....day ofJune.....2022

BETWEEN,

KENYA PORTS AUTHORITY a statutory body established under the Keny Ports Authority Act. Cap. (391) Laws of Kenya of **P.O. Box 95009-80102 MOMBASA, KENYA** of the one-part, which expression shall include successors or assigns. (Hereinafter referred to as "**the Authority**")

AND

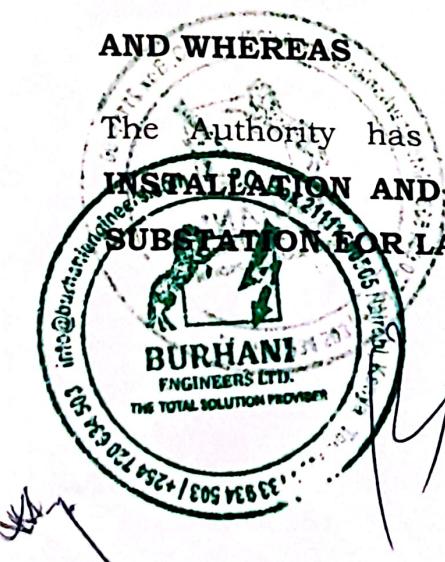
BURHANI ENGINEERS LIMITED (NO.C.31050) a Limited liability Compan incorporated under the Companies Act,2015 Laws of Kenya of **P.O. Box 2111 - 00505 NAIROBI, KENYA** of the other part, which expression shall include it successors or assigns (Hereinafter referred to as "**the Contractor**")

WHEREAS

The Authority tendered for **SUPPLY INSTALLATION AND COMMISSIONING OF POWER LINE AND METERING SUBSTATION FOR LAMU PORT TENDER NO KPA/079/2021-22/EE**

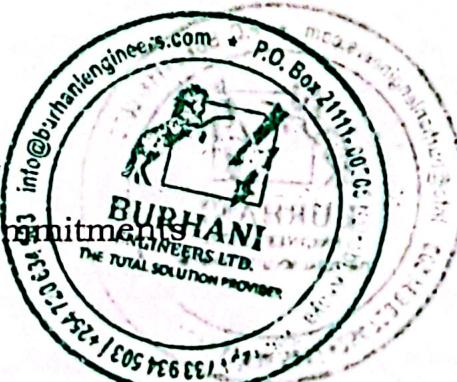
AND WHEREAS

The Authority has accepted the offer of the Contractor for **SUPPLY INSTALLATION AND COMMISSIONING OF POWER LINE AND METERING SUBSTATION FOR LAMU PORT.**



NOW THEREFORE the Authority and the Contractor hereby agree as follows: -

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement: -
 - a) Annex A: General Conditions of Contract
 - b) Annex B: Special Conditions of Contract Bill of Quantities and Priced Bill of Quantities
 - c) Annex C: Technical Specifications including Schedule of deviations and their resolutions (if any) and Addenda and clarifications
 - d) Annex D: Methodology, Work plan and Drawing(s)
 - e) Annex E: List of Major Equipment
 - f) Annex F: Letter of Notification of Award dated 11th April 2022 Ref: PSM/CTC/1/03(079) Vol. I and Letter of Acceptance dated 19th April 2022
 - g) Annex G: EPRA Class A1 certificate
 - h) Annex H: NCA Certificate Electrical Engineering NCA -5
 - i) Annex I: Form of Tender, Confidential Business Questionnaire and Declaration
 - j) Annex J: Power of Attorney
 - k) Annex K: Manufacturer Authorization
 - l) Annex L: Warranty and Defects Liability
 - m) Annex M: Written undertaking(s) and Commitments

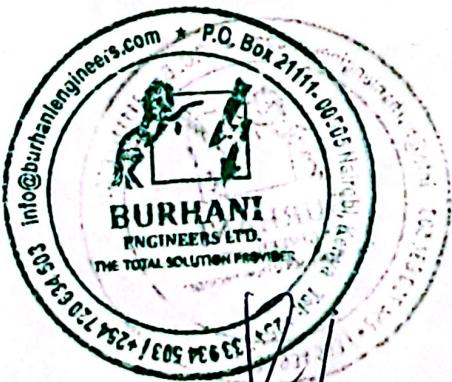


- n) Annex N: Performance Bond
- o) Annex O: Kenya Ports Authority Health Safety and Environment Policy statement

Technical and Financial Submissions (One Envelope) by Burhani Engineering Limited opened by the Authority's Tender Committee on 4th February 2022 shall form part of the Contract.

3. In consideration of the payments to be made by the Authority to the Contractor as hereinafter mentioned, the Contractor hereby Covenants with the Authority to execute and complete the Works and remedy any defects therein, in conformity with the provisions of the Contract.
4. The Authority hereby covenants to pay the Contractor, in consideration of the execution and completion of the Works and the remedying any defects therein, the quoted Contract Price of **KSHs.431,186,414.35 (KSHs. Four Hundred and Thirty-One Million One Hundred and Eighty-Six Thousand Four Hundred and Fourteen Shillings Thirty-Five Cents Only) VAT Inclusive** as per the Contractor's Letter of award at the times and in the manner prescribed by the Contract.

The Completion period is One Hundred and Fifty (150) days from date of contract signing, except for the defects Notification Period which shall be 12 months.



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IN WITNESS WHEREOF, the Parties have hereunto executed this Contract the day and year above written.

Signed by

AMB. JOHN MWANGEMI

For an on behalf of

KENYA PORTS AUTHORITY

AG. MANAGING DIRECTOR

In the presence of

Name..... ROBERT WARUI
ADVOCATE & COMMISSIONER
Designation..... FOR OATHS
P. O. Box 95009 - 80104
Signature..... M.O.M.B.A.S.A

Signed by: 

For and on behalf of

BURHANI ENGINEERS LIMITED

) **DIRECTOR** - MR. ZOHER PIRBHAJ.

In the Presence of

ERIC M. M. MUZYK

Designation: SALES MANAGER

Signature: John S.



ANNEX "A"

GENERAL CONDITIONS OF CONTRACT

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ANNEX "A"

GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller admeasurement contracts and lump sum contracts.

General Conditions of Contract

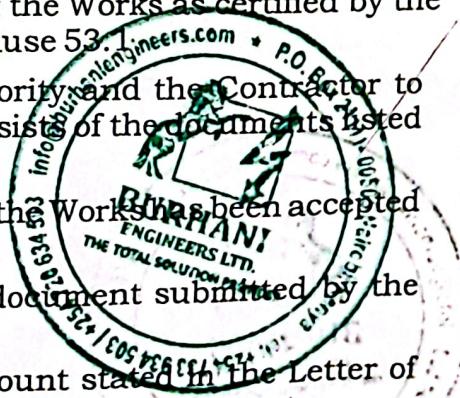
A. General

1. Definitions

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1.1 Bold face type is used to identify defined terms.

- a) **The Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- b) **The Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- c) **The Adjudicator** is the person appointed jointly by the Authority and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
- e) **Compensation Events** are those defined in GCC Clause 42 hereunder.
- f) **The Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 53.1.
- g) **The Contract** is the Contract between the Authority and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- h) **The Contractor** is the party whose Bid to carry out the Works has been accepted by the Procuring Entity.
- i) **The Contractor's Bid** is the completed bidding document submitted by the Contractor to the Authority.
- j) **The Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- k) **Days** are calendar days; months are calendar months.
- l) **Day works** are varied work inputs subject to payment on a time basis for the



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Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

- m) **A Defect** is any part of the Works not completed in accordance with the Contract.
- n) **The Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.
- o) **The Defects Liability Period** is the period named in the SCC pursuant to Sub-Clause 34.1 and calculated from the Completion Date.
- p) **Drawings** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Authority in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- q) **The Authority** is the party who employs the Contractor to carry out the Works, as specified in the SCC, who is also the Procuring Entity.
- r) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- s) **"In writing" or "written"** means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
- t) **The Initial Contract Price** is the Contract Price listed in the Authority's Letter of Acceptance.
- u) **The Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the SCC. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- v) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- w) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- x) **The Project Manager** is the person named in the SCC (or any other competent person appointed by the Authority and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- y) **SCC** means Special Conditions of Contract.
- z) **The Site** is the area of the works as defined as such in the SCC.
 - aa) **Site Investigation Reports** are those that were included in the bidding document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
 - bb) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
 - cc) **The Start Date** is given in the SCC. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
 - dd) **A Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
 - ee) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
 - ff) **A Variation** is an instruction given by the Project Manager which varies the Works.
 - gg) **The Works** are what the Contract requires the Contractor to construct,



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install, and turn over to the Authority, as defined in the SCC.

2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is specified in the SCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
- Agreement,
 - Letter of Acceptance,
 - Contractor's Bid,
 - Special Conditions of Contract,
 - General Conditions of Contract, including Appendices,
 - Specifications,
 - Drawings,
 - Bill of Quantities6, and
 - any other document listed in the SCC as forming part of the Contract.

3. Language and Law

- 3.1 The language of the Contract is English Language and the law governing the Contract are the Laws of Kenya.
- 3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Authority's Country when
- as a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

4. Project Manager's Decisions

- 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Authority and the Contractor in the role representing the Procuring Entity.

5. Delegation

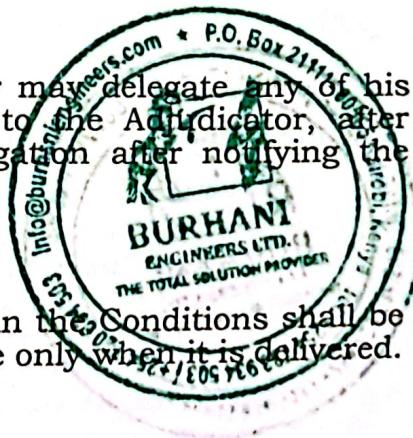
- 5.1 Otherwise specified in the SCC, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.

6. Communications

- 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

7. Subcontracting

- 7.1 The Contractor may subcontract with the approval of the Project Manager, but



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may not assign the Contract without the approval of the Authority in writing. Subcontracting shall not alter the Contractor's obligations.

8. Other Contractors

- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Authority between the dates given in the Schedule of Other Contractors, as referred to in the SCC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Authority may modify the Schedule of Other Contractors and shall notify the Contractor of any such modification.

9. Personnel and Equipment

- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
 - 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
 - 9.3 If the Procuring Entity, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in Fraud and Corruption during the execution of the Works, then that employee shall be removed in accordance with Clause 9.2 above.

10. Authority's and Contractor's Risks

- 10.1 The Authority carries the risks which this Contract states are Authority's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

11. Authority's Risks

- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Authority's risks:

- a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to

 - i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
 - ii) negligence, breach of statutory duty, or interference with any legal right by the Authority or by any person employed by or contracted to him except the Contractor.

The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Authority or in the Authority's design, or due to war, or radioactive contamination directly affecting the country where the Works are to be executed.

- 1.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is a Authority's risk except loss or damage due to

 - aa) a Defect which existed on the Completion Date,
 - bb) an event occurring before the Completion Date, which was not itself an Authority's risk, or
 - cc) the activities of the Contractor on the Site after the Completion Date.

12. Contractor's Risks

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12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Authority's risks are Contractor's risks.

13. Insurance

13.1 The Contractor shall provide, in the joint names of the Authority and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the SCC for the following events which are due to the Contractor's risks:

- a) loss of or damage to the Works, Plant, and Materials.
- b) loss of or damage to Equipment.
- c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, the Authority may effect the insurance which the Contractor should have provided and recover the premiums the Authority has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

14. Site Data

14.1 The Contractor shall be deemed to have examined any Site Data referred to in the SCC, supplemented by any information available to the Contractor.

15. Contractor to Construct the Works

15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

16. The Works to Be Completed by the Intended Completion Date

16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

17. Approval by the Project Manager

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The Contractor shall be responsible for design of Temporary Works.

17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

17.5 All Drawings prepared by the Contractor for the execution of the temporary or



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permanent Works, are subject to prior approval by the Project Manager before this use.

18. Safety

18.1 The Contractor shall be responsible for the safety of all activities on the Site.

19. Discoveries

19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

20. Possession of the Site

20.1 The Authority shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the SCC, the Authority shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

21. Access to the Site

21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

22. Instructions, Inspections and Audits

22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

22.2 The Contractor shall keep and shall make all reasonable efforts to cause its Subcontractors and sub-consultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.

22.3 The Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Authority and/or persons appointed by the Public Procurement Regulatory Authority to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Public Procurement Regulatory Authority. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 25.1 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Public Procurement Regulatory Authority's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Public Procurement Regulatory Authority's prevailing sanctions procedures).

23. Appointment of the Adjudicator

23.1 The Adjudicator shall be appointed jointly by the Authority and the Contractor, at the time of the Authority's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Authority does not agree on the appointment of the Adjudicator, the Authority will request the Appointing Authority designated in the SCC, to appoint the Adjudicator within 14 days of receipt of such request.

23.2 Should the Adjudicator resign or die, or should the Authority and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Authority and the Contractor. In case of disagreement between the Authority and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the SCC at the request of either party, within 14 days of receipt of

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such request.

24. Settlement of Claims and Disputes

24.1 Contractor's Claims

- 24.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.
- 24.1.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Authority shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clause shall apply.
- 24.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- 24.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Authority's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record- keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records and shall (if instructed) submit copies to the Project Manager.
- 24.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
- a) this fully detailed claim shall be considered as interim.
 - b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
 - c) the Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.
- 24.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars but shall nevertheless give his response on the principles of the claim within the above defined time period.
- 24.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause
- 24.1.8 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- 24.1.9 Each Payment Certificate shall include such additional payment for any claim

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as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

24.1.10 If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 24.4 [Arbitration].

24.1.11 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 24.3.

24.2 Amicable Settlement

24.2.1 Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 24.1 above should move to commence arbitration after the fifty-sixth day from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

24.3 Matters that may be referred to arbitration

24.3.1 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:

- The appointment of a replacement Project Manager upon the said person ceasing to act.
- Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- Any dispute arising in respect of war risks or war damage.
- All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Authority and the Contractor agree otherwise in writing.

24.4 Arbitration

24.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 24.3 shall be finally settled by arbitration.

24.4.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

24.4.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

24.4.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included

in any certificate.

- 24.4.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision or requirement or notice had been given.
- 24.4.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
- 24.4.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.
- 24.4.8 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the Works.
- 24.4.9 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

24.5 Arbitration with National Contractors

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

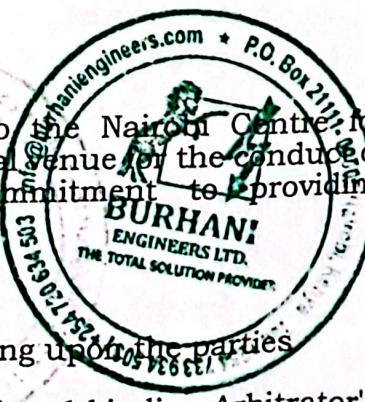
- 24.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

24.6 Alternative Arbitration Proceedings

- 24.6.1 Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

24.7 Failure to Comply with Arbitrator's Decision

- 24.7.1 The award of such Arbitrator shall be final and binding upon the parties.
- 24.7.2 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.



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24.8 Contract operations to continue

- 24.8.1 Notwithstanding any reference to arbitration herein,
- a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - b) the Authority shall pay the Contractor any monies due the Contractor.

25. Fraud and Corruption

- 25.1 The Government requires compliance with the country's Anti-Corruption laws and its prevailing sanctions policies and procedures as set forth in the Constitution of Kenya and its Statutes.
- 25.2 The Authority requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

B. Time Control

26. Program

- 26.1 Within the time stated in the SCC, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 26.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the SCC. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the SCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.
- 26.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

27. Extension of the Intended Completion Date

- 27.1 The Project Manager ^{shall} extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 27.2 The Project Manager ^{shall} decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

28. Acceleration

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- 28.1 When the Authority wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Authority accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Authority and the Contractor.
- 28.2 If the Contractor's priced proposals for an acceleration are accepted by the Procuring Entity, they are incorporated in the Contract Price and treated as a Variation.

29. Delays Ordered by the Project Manager

- 29.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

30. Management Meetings

- 30.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 30.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

31. Early Warning

- 31.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 31.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

32. Identifying Defects

- 32.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

33. Tests

- 33.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

34. Correction of Defects

- 34.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in



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the SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

34.2 Every time notice of a Defect is given; the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

35. Uncorrected Defects

35.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

D. Cost Control

36. Contract Price⁷

36.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

37. Changes in the Contract Price⁸

37.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Procuring Entity.

37.2 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

38. Variations

38.1 All Variations shall be included in updated Programs⁹ produced by the Contractor.

38.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

38.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

38.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

38.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning

38.6 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 39.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work

38.7 **Value Engineering:** The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following.

- a) the proposed change(s), and a description of the difference to the existing contract requirements.
- b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Authority may incur in implementing the value engineering proposal; and
- c) a description of any effect(s) of the change on performance/functionality.

38.8 The Authority may accept the value engineering proposal if the proposal demonstrates benefits that:

- a) accelerate the contract completion period; or
- b) reduce the Contract Price or the life cycle costs to the Procuring Entity; or
- c) improve the quality, efficiency, safety or sustainability of the Facilities; or
- d) yield any other benefits to the Procuring Entity, without compromising the functionality of the Works.

38.9 If the value engineering proposal is approved by the Authority and results in:

- a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the **percentage specified in the SCC** of the reduction in the Contract Price; or
- b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in
- c) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

39. Cash Flow Forecasts

39.1 When the Program 11, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

40. Payment Certificates

40.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

40.3 The value of work executed shall be determined by the Project Manager.

40.4 The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed.

40.5 The value of work executed shall include the valuation of Variations and Compensation Events.

40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

40.7 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (which would be the tender price), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: $\frac{(\text{corrected tender price} - \text{tender price})}{\text{tender price}} \times 100$.



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41. Payments

- 41.1 Payments shall be adjusted for deductions for advance payments and retention. The Authority shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of each certificate. If the Authority makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 41.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 41.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 41.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Authority and shall be deemed covered by other rates and prices in the Contract.

42. Compensation Events

- 42.1 The following shall be Compensation Events:

- a) The Authority does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
- b) The Authority modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- e) The Project Manager unreasonably does not approve a subcontract to be let.
- f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Procuring Entity, or additional work required for safety or other reasons.
- h) Other contractors, public authorities, utilities, or the Authority does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- i) The advance payment is delayed.
- j) The effects on the Contractor of any of the Authority's Risks.

42.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

3 As soon as information demonstrating the effect of each Compensation Event

upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

42.4 The Contractor shall not be entitled to compensation to the extent that the Authority's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

43. Tax

43.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 30 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

44. Currency of Payment

44.1 All payments under the contract shall be made in Kenya Shillings

45. Price Adjustment

45.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the SCC. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:

$$P = A + B I_m / I_o$$

where: P is the adjustment factor for the portion of the Contract Price payable.

A and B are coefficients¹³ specified in the SCC, representing the non-adjustable and adjustable portions, respectively, of the Contract Price payable and I_m is the index prevailing at the end of the month being invoiced and I_{O_c} is the index prevailing 30 days before Bid opening for inputs payable.

45.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected, and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

46. Retention

46.1 The Authority shall retain from each payment due to the Contractor the proportion stated in the SCC until Completion of the whole of the Works.

46.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 53.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an "on demand" Bank guarantee.

47. Liquidated Damages

47.1 The Contractor shall pay liquidated damages to the Authority at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the

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amount defined in the SCC. The Authority may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

47.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 41.1.

48. Bonus

48.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the SCC for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

49. Advance Payment

49.1 The Authority shall make advance payment to the Contractor of the amounts stated in the SCC by the date stated in the SCC, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Authority in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

49.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

49.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

50. Securities

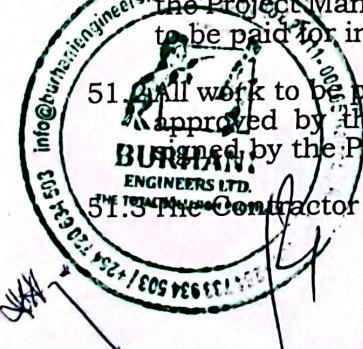
50.1 The Performance Security shall be provided to the Authority no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the SCC, by a bank or surety acceptable to the Authority, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 day from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

51. Dayworks

51.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

51.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

51.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks



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forms.

52. Cost of Repairs

52.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

53. Completion

53.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

54. Taking Over

54.1 The Authority shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

55. Final Account

55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

56. Operating and Maintenance Manuals

56.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.

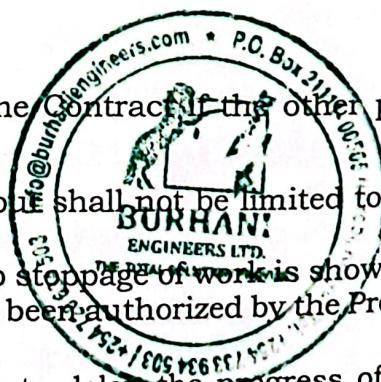
56.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC pursuant to GCC Sub-Clause 56.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the SCC from payments due to the Contractor.

57. Termination

57.1 The Authority or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

57.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager.
- b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days.
- c) the Authority or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation.
- d) a payment certified by the Project Manager is not paid by the Authority to the Contractor within 84 days of the date of the Project Manager's certificate.
- e) the Project Manager gives Notice that failure to correct a particular Defect is



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- a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager.
- f) the Contractor does not maintain a Security, which is required.
 - g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the SCC; or
 - h) if the Contractor, in the judgment of the Authority has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix A to the GCC, in competing for or in executing the Contract, then the Authority may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.

57.3 Notwithstanding the above, the Authority may terminate the Contract for convenience.

57.4 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

57.5 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

58. Payment upon Termination

58.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as specified in the SCC. Additional Liquidated Damages shall not apply. If the total amount due to the Authority exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.

58.2 If the Contract is terminated for the Authority's convenience or because of a fundamental breach of Contract by the Procuring Entity, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

59. Property

59.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Authority if the Contract is terminated because of the Contractor's default.

60. Release from Performance

If the Contract is frustrated by the outbreak of war or by any other event entirely beyond the control of either the Authority or the Contractor, the Project Manager shall declare that the Contract has been frustrated. The Contractor shall make the Site safe and work as quickly as possible after receiving this certificate and shall be paid for work carried out before receiving it and for any work certified off site afterwards to commitment.

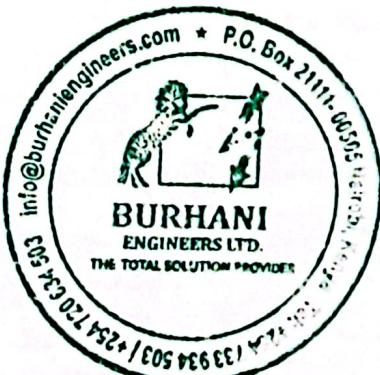
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ANNEX "B":

SPECIAL CONDITIONS OF CONTRACT AND PRICED BILL OF QUANTITIES

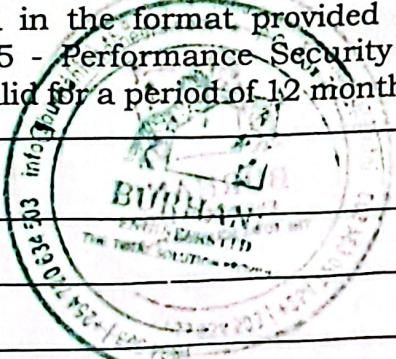
Except where otherwise specified, all Special Conditions of Contract should be filled in by the Authority prior to issuance of the bidding document. Schedules and reports to be provided by the Authority should be annexed.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
A. General	
GCC 1.1 (q)	<p>The Authority is KENYA PORTS AUTHORITY P.O. BOX 95009-80104 MOMBASA.</p> <p>The Authorized Representatives for the Authority:</p> <p>THE HEAD OF PROCUREMENT AND SUPPLIES KENYA PORTS AUTHORITY KIPEVU HEADQUARTERS 4TH FLOOR FINANCE BLOCK III, DOOR BLK-3.4.3 <u>KILINDINI MOMBASA</u></p> <p>Phone: +254 (41) 2113600/ 2113999 . E-mail: tenders@kpa.co.ke</p> <p>The Contractor is BURHANI ENGINEERS LIMITED P.O. BOX 21111-00505 NAIROBI.</p> <p>The Authorized Representatives for the Contractor:</p> <p>DIRECTOR BURHANI ENGINEERS LIMITED P.O. BOX 21111-00505 <u>NAIROBI</u></p> <p>Phone: +254 (20) 3871237 E-mail: info@burhaniengineers.com</p> <p style="text-align: center;">000027</p> 

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 1.1 (u)	The Intended Completion Date for the whole of the Works shall be 150 days from date of contract signing.
GCC 1.1 (x)	The Project Manager is <i>Head of Port Electrical Engineering</i>
GCC 1.1 (z)	The Site is located at Lamu Port
GCC 1.1 (cc)	The Start Date shall be: Fourteen (14) days upon production of Works Program.
GCC 1.1 (gg)	The Works consist of SUPPLY, INSTALLATION AND COMMISSIONING OF POWER LINE AND METERING SUBSTATION FOR LAMU PORT.
GCC 2.2	Sectional Completions are: As agreed upon time of Award.
GCC 5.1	The Project manager <i>may</i> delegate any of his duties and responsibilities.
GCC 8.1	Schedule of other contractors: <i>Not Applicable</i>
GCC 9.1	<p>Key Personnel GCC 9.1 is replaced with the following:</p> <p>9.1 Key Personnel are the Contractor's personnel named in this GCC 9.1 of the Special Conditions of Contract. The Contractor shall employ the Key Personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of Key Personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid. [insert the name/s of each Key Personnel agreed by the Authority prior to Contract signature.]</p>
GCC 13.1	<p>The minimum insurance amounts and deductibles shall be:</p> <ul style="list-style-type: none"> (a) for loss or damage to the Works, Plant and Materials: 110% of contract value. (b) For loss or damage to Equipment 110% of contract value. (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract 110% of contract value. (d) for personal injury or death: <ul style="list-style-type: none"> (i) of the Contractor's employees: <i>[amount].</i> (ii) of other people: <i>[amount].</i>
GCC 14.1	Site Data are: to be determined on site.
GCC 20.1	The Site Possession Date(s) shall be: Agreed upon delivery of Works Program
GCC 23.1 & GCC 23.2	The Appointment of an Adjudicator shall be in accordance with the provisions of the Arbitration Act Cap 49 of the Laws of Kenya.

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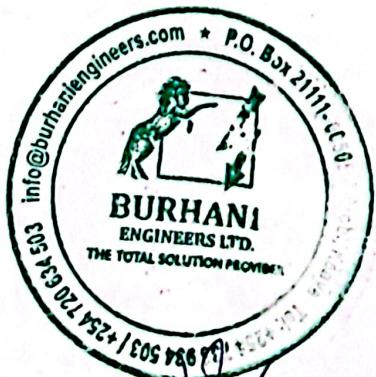
Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
B. Time Control	
GCC 26.1	The Contractor shall submit for approval a Program for the Works within 7 days upon receiving Purchase Order.
GCC 26.3	The period between Program updates is: 30 days. The amount to be withheld for late submission of an updated Program is: Kes.100,000.00.
C. Quality Control	
GCC 34.1	The Defects Liability Period is: <i>12 months</i>
D. Cost Control	
GCC 38.9	The value of engineering is subject to FIDIC Conditions of contract 13.2
GCC 41.0	Payment terms shall be made based on the following milestones: <ul style="list-style-type: none"> • 20% Advance payment against Bank Guarantee after signing of the Contract and issuance of LPO • 60% Upon Submission of evidence of shipping for major components • 10% on installation and commissioning • 10% retention
GCC 44.1	The currency of the Authority's Country is: <i>Kenya Shillings</i>
GCC 45.1	The Contract price adjustment is subject to FIDIC Conditions of contract Clause 13.8
GCC 46.1	The proportion of payments retained is <i>5 percent</i> .
GCC 47.1	The liquidated damages for the whole of the Works are <i>0.10 per day</i> . The maximum amount of liquidated damages for the whole of the Works is <i>10 percent</i> of the final Contract Price.
GCC 48.1	Not Applicable
GCC 49.1	The Advance Payments shall be: <i>Not Applicable</i> .
GCC 50.1	Performance Security shall be 10% in form of performance guarantee from a bank with its operations in Kenya in the format provided in Section X - (Contract Forms - Form No. 5 - Performance Security - (Unconditional Demand Bank Guarantee) valid for a period of 12 months
E. Finishing the Contract	
GCC 56.1	Not Applicable.
GCC 56.2	Not Applicable.
GCC 57.2	The maximum number of days is: <i>30 days</i> .



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Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
(g) GCC 58.1	The percentage to apply to the value of the work not completed, 110% of the value of uncompleted works.

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