

**Order No.:** 18  
**Order Type:** Purchase Order

PURCHASE ORDER FORM	
<b>RABAI-KILIFI TRANSMISSION LINE</b> Cost Center: B8103	<b>Order No.:</b> 18 <b>Order Type:</b> Purchase Order
<b>CLIENT:</b>  <b>ACCIONA CONSTRUCCION S.A.</b>  Galana Plaza, 7th floor, Galana Road P. O Box 76378-00508 Nairobi, Kenya  PIN: P051750648H	<b>CONTRACTOR:</b>  <b>BURHANI ENGINEERS LTD.</b>  Chania Avenue P.O. Box 21111 - 00505 Nairobi, Kenya PIN: P000620705 info@burhaniengineers.com  Tel: +254 720 634 503

Nairobi, on 25<sup>th</sup> October 2021.

With this Order, CLIENT and CONTRACTOR (together, the "Parties") have agreed on the date set forth above that the CONTRACTOR shall carry out the Installation Works for the OHPL between Rabai – LILO New Bamburi, LILO New Bamburi and Rabai - Kipevu (hereinafter called "the Works") under the provisions of this Order and according to the documents listed below.

The total amount of this Order is **37,787,539.31 KES** only [Exclusive of V.A.T.] (hereinafter called "the Total Price").

#### WHEREAS

- A. The Client has been awarded a contract for the Construction of RABAI – NEW BAMBURI – KILIF and NEW BAMBURI – BAMBURI CEMENT Power Generation evacuation lines; Construction of Bamburi Cement Substation, Extension of existing RABAI, NEW BAMBURI and KILIFI substations (hereinafter referred to as "the Project") by HOMT ESPANA S.A (hereinafter referred to as "the Final Client").
- B. The Contract for the Project has been signed between the Client and the Final Client (hereinafter referred to as "the Main Contract").
- C. The Client is now desirous to appoint the Contractor, who accepts to perform the Works necessary for the performance of the Project.
- D. The Contractor made an offer to the Client and the Parties have negotiated the terms and conditions of the Works for the Project and agreed on the following.

#### NOW, THEREFORE, it is agreed as follows:

The following documents comprise the Order and are to be taken as complementary and mutually explanatory of one another:

1. This Order Form
2. General Contractual Conditions
3. Annex 1: Work Specifications and Drawings
4. Annex 2: Contractor's Bill of Quantities and Scope of Works
5. Annex 3: HSE Requirements
6. Annex 4: QA/QC Plan
7. Annex 5: Bank Guarantee Templates
8. Annex 6: Others

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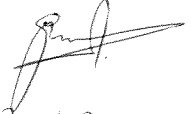
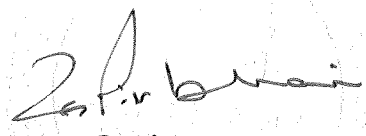
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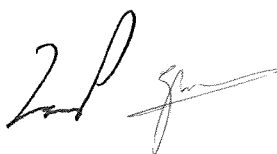
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9. Annex 7: Work Programme

For the purpose of interpretation, the priority of the documents shall be in accordance with the sequence stated above in the present Order Form.

IN WITNESS WHEREOF the parties hereto have signed this Order in duplicate as of the date first above written.

<b>ACCIONA CONSTRUCCION</b>  Signatory: Position:  Signatory:  Position: <i>Project Director</i>	<b>BURHANI ENGINEERS LTD.</b>  Signatory:  Position: <i>C.E.O.</i>
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## GENERAL CONTRACTUAL CONDITIONS

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The services contracted will be carried out in accordance with the terms indicated on the Purchase Order and the following stipulations:

### 1. EFFECTIVE DATE

The present Purchase Order shall be binding upon the Parties from the date of signature, which shall be indicated in the front page of the Purchase Order. Notwithstanding the date of signature, the Purchase Order shall become effective between the Parties from the date the Client issues a notice to proceed to the Contractor ordering the commencement of the Works (hereinafter, the "Notice to Proceed" or "NTP"), as long as the Client had received the NTP issued by the Final Client (KETRACO).

The Client reserves the right to issue more than one NTP in case there are different part of the Works to be executed.

### 2. DEFINITIONS

All the terms not specifically defined in the present General Conditions of the Purchase Order shall have the same meaning given to it in the Particular Conditions of the Purchase Order. In case of conflict between the present General Conditions and the Particular Conditions of the Purchase Order, the Particular Conditions shall prevail.

### 3. PRELIMINARIES

#### 3.1. Ethical principles applicable to the Contractor, suppliers, and Collaborators and the Ethical Channel

When ACCIONA Construcción became a signatory of the UN Global Compact it took on the challenge of gradually implementing the Ten Universal Principles on which the Pact bases its day-to-day activities. It also committed to keeping the Company's stakeholders up-to-date, in a totally transparent and objective manner, on the headway made in this process.

As a result, ACCIONA Construcción urges its suppliers, contractors and collaborators in general to become signatories of the UN Global Compact ([www.unglobalcompact.org](http://www.unglobalcompact.org)) and to provide regular information on the progress it makes in this sphere.

ACCIONA Construcción's aim is to extend its commitment to its suppliers, contractors and collaborators in order to establish stable and long-lasting co-operative commercial relationships underpinned by honesty, transparency and trust, capable of minimizing the risk of violating human and social rights, and ensuring strict compliance to laws and regulations, especially regarding issues related to the Company's environmental footprint. All of this must ensure the supply of goods and services.

ACCIONA Construcción applies a range of fair, objective and non-discriminatory criteria when it comes to choosing suppliers, contractors and collaborators. It promotes competition and fair treatment and avoids any kind of conflict of interest in an effort to become a yardstick in compliance to codes of ethics and the fight against fraud and corruption.

This way, ACCIONA Construcción commits to making a positive contribution to society through its activities and it expects that the Company's suppliers, contractors and collaborators cooperate by adopting these same principles in their own activities, in their parent company, subsidiaries and affiliates, as well as in all groups with which they have a commercial relationship, such as employees, subcontractors and third parties.

ACCIONA Construcción also encourages suppliers, contractors and collaborators to conduct their activities in accordance with best practices, and to meet all internationally recognized standards on Corporate Ethics and Transparency, Human and Social Rights, Health and Safety, and Quality and Environment.



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The breach by either Party of any of the above terms and conditions shall entail the other Party to automatically terminate the Agreement without prejudice to the claim of additional remedies.

### 3.2. Transparency and Ethics

For ACCIONA Construcción, corporate transparency, integrity and ethics are key to maintaining sustainable commercial relationships. Subsequently, it undertakes the commitment to carry out all its business and professional activities in accordance with the current law and regulations in the places and countries in which it operates, maintaining the highest standards of ethical behavior.

Subsequently, ACCIONA Construcción expects the following of all its suppliers, contractors and collaborators:

- Respect for current law, rules and regulations of the countries where they operate.
- Avoid all non-ethical conducts and behaviors; even though they may not entail violation of the law, they may be enough to damage ACCIONA Construcción's reputation.
- Do not take part in actions and activities that compromise or jeopardize legality and basic ethical principles.
- Display transparency and integrity when communicating financial, commercial or corporate information.
- Show the utmost respect for confidentiality; do not use or share information obtained confidentially by virtue of their commercial relationships unless they have been expressly authorized by ACCIONA Construcción, or owing to legal obligation or in compliance with legal or administrative rulings.
- Have the necessary means for guaranteeing the privacy of personal data to which they have access thanks to their activities.
- Adhere to the strictest ethical and moral standards, refraining from practices that involve all forms of corruption, including extortion and bribery.
- Do not offer, directly or indirectly, ACCIONA Construcción, its employees or other entities payments in cash or in kind with the intention of obtaining or maintaining illicit business or other advantages.

Subsequently, ACCIONA Construcción urges its suppliers, contractors and collaborators to have their own policies and codes of conduct in place aimed at guiding behavior in accordance with these fundamental ethical principles and to their stakeholders.

The breach by either Party of any of the above terms and conditions shall entail the other Party to automatically terminate the Agreement without prejudice to the claim of additional remedies.

### 3.3. Human and Social Rights

ACCIONA Construcción respects and embraces the values expressed in the Declaration of Human Rights, the Resolutions of the International Labor Organization (aimed at respecting the dignity of the individual) and the UNICEF Convention on the Rights of the Child.

Thus, ACCIONA Construcción expects all its suppliers, contractors and collaborators to:

- Uphold and respect the protection of universally recognized fundamental human rights, within their scope of influence, and make sure they are in no way complicit in human rights abuses or violations.
- Reject all types of physical, psychological or moral harassment or abuse of authority, or any other conduct that is intimidatory or offensive to a person's rights.
- Maintain an environment of dignity and respect for all workers, free of threats of violence, exploitation or sexual abuse, verbal and psychological abuse or maltreatment.
- Uphold the elimination of all forms of forced and compulsory labor, and adopt employment practices in accordance with ILO agreements on this issue.
- Comply with all laws and regulations concerning wages and working hours, respecting all the rights of workers: minimum wage, payment of overtime, breaks and vacations.

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The logo for ACCIONA Construcción is displayed, featuring the company name in a stylized font. Overlaid on the logo is a handwritten signature in dark ink.

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- Refuse to accept any action that entails discrimination in respect of employment and occupation on grounds of age, race, color, gender, religion, national extraction, sexual orientation, social or ethnic origin, physical ability, pregnancy, health, public opinion, union membership or marital status. And they must respect the legal obligation to hire people with disabilities in accordance with the law applicable in each country.
- Uphold the freedom of association and the effective recognition of the right to collective bargaining
- Uphold the effective abolition of child labor, refusing to hire minors for any kind of work. The minimum age for work should not be below the age for finishing compulsory schooling, according to local law. Young people should not engage in work that may be dangerous, interfere with their education or be harmful to their health or physical, mental, social or moral development.

ACCIONA Construcción urges its suppliers to put in place policies and practices that respect the abovementioned international standards, ensuring respect for the human and social rights of people related to their company's activities.

**The breach by either Party of any of the above terms and conditions shall entail the other Party to automatically terminate the Agreement without prejudice to the claim of additional remedies.**

### **3.4. Health and Safety**

ACCIONA Construcción fosters the adoption of the workplace health and safety policies laid down by law in each country where it operates, and provides a working environment that respects the health and safety of its employees.

ACCIONA Construcción works continuously to apply its workplace health and safety policies and expects its suppliers, contractors and collaborators to:

- Provide a safe and healthy workplace, and commit to meeting international safety standards.
- Ensure, at the very least, access to drinking water and sanitation facilities, fire prevention measures, industrial hygiene, sufficient lighting and ventilation and the right safety levels for each activity, including the achievement of the Covid 19 protocols as the PCR testing of all the employees involved in the site works previous the commencement of the works.
- Have the necessary safety measures in place to avoid workplace risks, and the right means of responding to accidents in the workplace.
- Give their employees the right training to ensure that they are familiar with these measures and know how to apply them in order to take care of their own safety and that of other employees, customers, suppliers, contractors and collaborators, and, overall, anyone affected by the company's activities.

Therefore, ACCIONA Construcción urges all its suppliers, contractors and collaborators who have workplace health and safety policies in place to provide all the aforementioned conditions and measures for their employees.

**The breach by either Party of any of the above terms and conditions shall entail the other Party to automatically terminate the Agreement without prejudice to the claim of additional remedies.**

### **3.5. Quality and Environment**

Conservation and respect for the environment make up a fundamental pillar of ACCIONA Construcción's activities and this is mirrored in the best environmental practices that the Company applies to all its activities and in its commitment to fostering initiatives that seek to combat climate change and preserve biodiversity.

In accordance with this philosophy and practice, ACCIONA Construcción expects all its suppliers, contractors and collaborators to:



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- Have an efficient environmental policy in place, compliant with current environmental protection laws and regulations.
- Make prevention a priority and encourage initiatives aimed at increasing environmental responsibility, and greater efficiency in their company's activities, facilities equipment and resources.
- Design production processes aimed at using available resources efficiently and reducing environmental impacts.
- Favor the development and spread of environment-friendly technologies.
- Have efficient systems in place for identifying, controlling and dealing with the main environmental impacts caused by their activities as regards consumption of natural resources, the management of emissions, waste, toxic substances and effluents.
- And, in the event of environmental damage, use all the necessary means for returning to the situation and conditions prior to the impact.

ACCIONA Construcción urges its suppliers, contractors and collaborators to have quality and environmental policies in place, ensuring a respectful and sustainable relationship and interaction with the environment.

These principles are applicable to all suppliers, contractors and collaborators of all ACCIONA Construcción companies.

ACCIONA Construcción reserves the right to terminate the contractual relationship with suppliers, contractors and/or collaborators who breach the ethical principles laid out herein.

Furthermore, suppliers, contractors and collaborators have a channel at their disposal, the ACCIONA Construcción Ethical Channel ([canal-etico@acciona.es](mailto:canal-etico@acciona.es)), enabling them to report any actions that may be construed as a breach of the conducts and behavior laid down in this document. They should also use this channel for any queries on how to interpret these principles.

**The breach by either Party of any of the above terms and conditions shall entail the other Party to automatically terminate the Agreement without prejudice to the claim of additional remedies.**

#### **4. SCOPE OF THE PRICES**

##### **4.1. The Total Price mentioned in the Purchase Order comprises:**

- Installation with or without supply of materials, as stipulated in the Purchase Order, with the qualities defined in the specifications and approved by the Final Client or by the person designated by the Project Director.
- All wages, charges, travel allowances, per diems, and any other concepts, whether related with wages or not, Social Insurance payments, etc. for the personnel needed to execute the measures contracted.
- Auxiliary resources, tools, machinery and equipment needed for each type of job.
- Supply of the units under the contract, in the quantities determined on the specifications and approved by the Final Client or by the Site Management, their relevant conditioning, insurances and transport to the site (as well as unloading, hoisting and movement of materials within the site).
- Completeness of the Works engaged to the Contractor in accordance with all the applicable laws and regulations to the present Purchase Order.
- All documentation and certificates necessary from the party contracted and necessary for compiling the final dossier of the project.
- Site cleaning and removal of waste and surplus materials from the installation, to containers.





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- Assembly Drawings specific to each installation.
- Quality Assurance Plan specific to each installation.
- Definitive Project Drawings and As-Built Drawings specific to each installation.
- Scheduling, final testing, adjustment, balancing and commissioning of all work units, installations and equipment so requiring.
- Legalization of the installations vis-à-vis the corresponding Official Bodies and provision of the corresponding documentation accrediting the same. Should the installations in question have to be legalized by phases due to the staged delivery of the works, the obligations of the Contractor shall continue to be the same regardless of the number of phases in which the legalization has to be carried out and the dates on which these have to be done.
- Method statement for the installation.
- Documentation necessary for the preparation of the Building Record, requested by the Site Management.
- Any other activity or supply not specifically indicated herein but that, raised from the context of the Purchase Order and in order to fully comply with the object of it, result reasonably necessary for the dully performance of the Works object of the Purchase Order, in accordance with the good industry practices.

## 5. TAXES

- 5.1. All taxes, fees, charges, visas, etc, that may accrue as a result of the Purchase Order and its execution shall be for the account of the Contractor.

The Contractor acknowledges that the Client has obtained exemption of VAT from the Final Client. The Client shall seek from the Final Client, exemption of VAT for this purchase order.

The Contractor undertake to provide all documentation and evidence required in order for the VAT exemption to be obtained and maintained during the contract period.

The Contractor shall only invoice the Total Price or part thereof (as applicable) less VAT. The Client shall submit to the Contractor a valid approval of VAT exemption from the Final Client, within six (6) months of the invoice date (of being effective thereof). In the event the Client pays for the VAT within 6 months of the invoice date and the exemption of VAT has been obtained, the Contractor shall then issue a credit note within 7 days of the receipt of such VAT certificate. The VAT amount paid by the Client shall be refunded by the Contractor in equal monthly installments or alternatively as may be agreed in writing by the parties. Provided that if the Contractor defaults in all or part of any of the VAT refund installments then the entire outstanding amount of the VAT refund shall become due and payable forthwith and the Client shall be at liberty to avail all remedies against the Contractor to recover the outstanding amount including but not limited to summary legal action as a debt due and payable, set-off, claw-back, withholding, and/or deducting it from any payment for the Works or any part thereof executed by the Contractor. All taxes, except VAT, levies, fees, charges, duties, encumbrances, visas, permits, etc, that may accrue as a result of the Purchase Order and its execution shall be for the account of the Contractor.

- 5.2. The Client may require at any time to the Contractor to submit a certificate issued by the National Tax Authority of the country in which it is headquartered certifying that the Contractor is current with its tax obligations during the legally established time period, which shall be prior to the date of the issuance of the Purchase Order. Renewals of the certificate that may be required by law must also be provided to the Client.

- 5.3. The breaches of the provisions of the present clause by the Contractor, grants the Client the right to withhold any Money payable or due to become payable.

## **6. MEASUREMENT**

- 6.1. The offsetting of the Works to be executed shall be done by the personnel commissioned by the Contractor in accordance with the indications of the person designated by the Project Director.

Should there be any errors in the same, during the execution of the Works or subsequently, attributable to the Contractor, then the latter shall be liable for the total costs (supply of materials and services) arising out of the repairs, demolitions and re-constructions to be effected, as well as any penalties imposed by the client of Acciona Construcción (hereinafter, the "Final Client") to Acciona Construcción for said causes.

- 6.2. At the end of each month, the total measurement at source will be carried out for the Works effectively executed. Such measurement shall be effected by technical personnel of the Contractor and the person designated by the Project Director or a person authorized by the latter, in accordance with the criteria established in the project documents and in the present Purchase Order. The measurement to be billed by the Contractor must first be approved by the person designated by the Project Director.

- 6.3. The measurement will be effected by complete, totally installed and finished work units, with all of the elements for their support, fixation and connection, as well as any painting and insulation as and when required, with the tests mentioned in the Project and in any case those required by the current Regulations, and ready for operation.

- 6.4. If Works other than the ones included in this Purchase Order were necessary, the Contractor shall not authorise their commencement until an extension of the Purchase Order with Acciona Industrial has been executed, stating in detail all the modifications and/or additions to be executed and their relevant price.

## **7. TECHNICAL TERMS AND CONDITIONS**

### **7.1. Quality of the Works**

The Contractor shall execute the contracted units under strict observance of the Project documents and the Safety Plan of the Works and in accordance with the requirements laid down on the Technical Specifications for Purchasing of this Purchase Order, which the Contractor states to know for they have been submitted to it before signing this Purchase Order, and which it expressly undertakes, as well as the instructions given in this regard by the person designated by the Project Director and the rules and regulations in force, both European or national -whether regional, provincial, municipal or local- of official bodies or supply companies that shall be binding as a complement to the specifications contained in this Purchase Order. Acciona Construcción shall deem as incomplete or faulty any works unit that is not in strict compliance with applicable regulations.

Should Acciona Construcción and/or the Site Management observe a lack of quality in the execution of Works and if, as a consequence of this, any repair, replacement or demolition of executed Works had to be carried out, these shall be borne by the Contractor without any right to compensation, the company being hereby bound to the correct execution of Works and to the payment of resulting costs, as well as to the replacement of materials rendered useless as a result of the demolition. In case the Contractor did not carry out these works, Acciona Construcción shall be authorised to execute them at the expense of the former and to deduct the relevant costs from the invoices pending payment or to claim said costs in the way deemed appropriate.

### **7.2. Samples, Catalogues, etc.**

Furthermore, the Contractor shall provide Acciona Construcción with supporting documentation of the quality of

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materials and/or equipment (technical suitability documents, CE marking, tests, approvals, certificates, etc.) as may be requested, for all the different materials and their relevant partial components, and those expressly stated on the Technical Specifications for Purchasing.

Acciona Construcción shall request the certificate of the chain of custody of forest based-products -FSC, PEFC or similar- for all wood elements under this contract.

ACCIONA Construcción will request FSC, PEFC or similar certificates for all wooden products referred to in the present Purchase Order.

The person designated by the Project Director are hereby authorised to perform as many controls and tests of Works units as considered appropriate. The Contractor shall be exclusively responsible for potential non-compliances of the results of tests carried out as regards quality requirements or general requirements established by Regulations, Instructions, Rules and General Specifications.

### 7.3. Technical Building Code

All the materials that are the subject of this Purchase Order shall meet the specifications of the Technical Building Code and all the applicable regulations, when applicable, and the Contractor hereby undertakes to verify the suitability of the materials to be supplied, according to said Code, and expressly informing Acciona Construcción if that is not the case.

### 8. DEFICIENCIES IN THE MATERIALS

Should any of the material supplied be discarded, it will be removed from the site within the term set for the same by the person designated by the Project Director, at the expense of the Contractor, which shall also be obliged to replenish the material within the delivery times indicated in the present Purchase Order providing that the problem arises out of the a possible defect in manufacture or damage suffered during transportation.

### 9. DELIVERY SCHEDULE/DATE

The execution of Works shall be carried out in accordance with the works schedule attached to this Purchase Order as an integral part of it. All the Contract works shall be performed from the commencement date indicated in the Notice to Proceed and completed according the Annex 07: Work Programme (hereinafter called "the Time for Completion") with a minimum production ratio of 4 completed towers per week. The Contractor shall complete the whole of the works, and each section (if any), within the Time for completion date for the works or section (as the case may be) or the extended time that may be allowed under Sub-Clause 43 [Extension of Time for Completion] including;

- (a) Achieving the passing of the final testing and commissioning
- (b) Completing all the work which is stated in the contract as being required for the Works or Section to be considered to be completed for the purposes of taking over under Clause 37 [Acceptance of the Works].

The Contractor shall provide the following documents within the time limits specified hereunder;

1. Construction methodology he will adopt for the works, subject to approval by the Client; within 14 days from commencement date
2. Detailed Programme of Works, subject to approval by the Client in such form and detail that the Client shall prescribe; within 14 days from commencement date
3. Look Ahead Schedule and programme updates; Two (2) times a month at the dates communicated by the Client
4. Progress Reports; Two (2) times a month at the dates communicated by the Client. The progress report shall be in the form and manner communicated by the Client.

The Contractor shall make available on site the personnel, machinery and auxiliary means necessary for the fulfilment of the works schedule. Should there be any variations in the planned Works Schedule, this will be notified in due course so that a new schedule can be drawn up and accepted by both parties. Any variation in the deadlines for execution shall not imply any alteration in the Total Price.

The Contractor shall perform the Works and shall provide his own materials, equipment and labour at such times and in such manner as the Contractor shall direct or require.

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Should actual progress not match the detailed programme of works and/or the actual progress too slow to complete within the Time for Completion, then the Client may issue an instruction to the Contractor requiring the Contractor to submit an updated programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete the Works within the Time for Completion. Unless the Client notifies otherwise, the Contractor shall adopt these revised methods, which may require increase in the working hours and/or in the numbers of Contractor's Personnel and/or Contractor's goods, plant or equipment at the risk and cost of the Contractor. If these revised methods cause the Client to incur any additional cost, the Client shall be entitled to deduct this cost from the Total Price. In the event that the Contractor fails to submit or amend the detailed programme of works within a reasonable time after being so instructed by the Client, the Client may withhold the amount due to the Contractor in subsequent payment certificates until the default is rectified.

Should the Contractor refuse or be unable to perform itself the planned work for completing the Works under the contracted conditions within any agreed deadline/timelines, due to Contractor's responsibility, the Contractor expressly authorizes Acciona Construcción to perform these Works directly with the latter's own resources or entrust them to a third party and to charge the costs incurred against any pending invoicing due to the Contractor and/or the guarantees established under this Contract.

Neither the submission of the Programme by the Contractor nor its approval shall in any way relieve the Contractor from any of his duties and obligation under the Contract.

If the pace of the Works were not, in the opinion of ACCIONA Construcción, suitable to achieve the fulfilment of the (partial or final) deadline, it may request of the Contractor that the pace be accelerated, with the latter undertaking to provide such machinery, auxiliary means and personnel as may be requested. The Contractor will not be entitled to any claim whatsoever for this reason.

## 10. VARIATIONS

The Client will be entitled during the performance of the present Purchase Order to propose and demand to Contractor any change, modification, addition or deletion to the technical requirements and/or the Works and/or to change or restrict the conditions and methods of working of the Contractor (hereinafter, a "Variation").

Any Variation to the Purchase Order will be formalized by an amendment to the present Purchase Order.

## 11. RECEPTION, STORAGE AND CUSTODY OF MATERIALS/EQUIPMENT ON SITE

The Works referred to in the present Purchase Order are carried out at the risk and venture of the Contractor. The reception, storage, custody and safekeeping of all the materials and equipment supplied by it or by the Client (whether stockpiled or otherwise) shall be for the account of the Contractor; the same shall apply for any provisional site installations for personnel, machinery, materials, equipment and auxiliary means, as well as for the replacement of all material stolen, pilfered, lost or damaged, whether installed or stockpiled.

ACCIONA Construcción shall not at any time be responsible for the reception of materials and equipment; the Contractor must at all times have the necessary personnel and auxiliary means available in order to effect reception, unloading and storage of the same.

All materials and equipment will be supplied from origin suitably packaged and protected against the climate and impact during transportation, as well as during the time they remain in the storage location.

The Contractor shall punctually notify the person designated by the Project Director of the arrival of materials and equipment to the site in order to proceed with their inspection.

## 12. GUARANTEE / OBLIGATIONS

12.1. The Contractor expressly undertakes to subrogate any and all obligations and liabilities deriving for

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PO Box 100798-00101  
Nairobi (Kenya)  
PIN: P051750648H

 *2P* *[Signature]*

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ACCIONA Construcción as a consequence of material damage to the construction originating in a defect in the materials supplied or in the execution of the subcontracted Works.

The Contractor will guarantee the correct execution of each and all of the work units for a term of two (2) years from the date of Provisional Acceptance (hereinafter, the **"Warranty Period"**).

The Contractor shall, on receipt of written notification, repair any flaw observed during the Warranty Period, without expense for ACCIONA Construcción or the Final Client, due to any deficiencies in execution or in the materials, inappropriate repairs or hidden defects, together with any other work affected in the repair of the said defect.

Once the Warranty Period for the Works has elapsed and that Contractor has remedied all defects to the satisfaction of the Client in accordance with the present Purchase Order, the Client will issue to the Contractor a final acceptance certificate (hereinafter, the **"Final Acceptance Certificate"**), which marks the end of the duration and the termination of the Purchase Order. Notwithstanding the Final Acceptance Certificate, the Contractor will be liable against the Client pursuant to Kenyan law on Building, and other applicable legislation, for which the Contractor shall be liable to ACCIONA Construcción on the same terms and deadlines as ACCIONA Construcción may be liable to the Final Client or to third parties.

The Works shall be carried out at the risk of the Contractor until the acceptance thereof by the Final Client.

### 13. EMPLOYER RESPONSIBILITIES

The Contractor, as employer of all the personnel used on the site for the execution of this Purchase Order, shall be liable to the pertinent Authorities and Courts for the correct application of current legislation on employment and Social Security matters and is therefore obliged to justify to ACCIONA Construcción the fulfilment of all its obligations in the said matters as often and in the manner as it may be required to do so.

The contractor warrants that all the requisite documents were duly provided to the client during pre-qualification stage as listed below for which copies are in possession of the client and the contractor warrants to provide copies at the request of the client:

- Tax Compliance Certificate (TCC)
- Certificate of being registered as a Company with the Social Security, along with the registration number.
- List of the company personnel who will carry out the Works, with photocopies of their I.D., work and residence permits (in case of foreign workers). (Substitutions or new recruitments shall be notified to Acciona Construcción and equally documented).
- Official Certificate of the General Treasury of Social Security of being up to date with contribution payments.
- Insurance Policy covering compensations resulting from work accidents foreseen on the relevant Collective Labour Agreement.
- Certificate of being registered on the Registry of Accredited Companies.
- Documents or deeds certifying the ownership of the machinery to be used on the Works, as well as all the documents required by virtue of legal provisions (permits, licences, related ratings, etc.)
- Deed of incorporation of the Company.
- Certificate of business qualification.
- Association or Insurance Company with which coverage of work accidents and professional illnesses was arranged.

The above mentioned provision of the certificate of the General Treasury of Social Security of being up to date with contribution payments, may be required by Acciona Construcción as a prerequisite to process and pay the relevant invoice. Existing debts or failure to provide this certificate shall be enough cause for Acciona Construcción to terminate the Purchase Order or, as the case may be, any other agreement that may have been reached.

The specific certificate of being up to date with tax obligations shall be renewed every year, as a prerequisite for

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processing and payment of invoices. Failure to provide such certificate or the existence of tax debts shall be enough cause for Acciona Construcción to terminate this Purchase Order.

The Contractor shall comply with all the relevant laws applicable to the Contractor's personnel, including laws relating to their employment, health, safety, welfare, immigration, emigration, and shall allow them all their legal rights.

#### **14. CONTRACTOR PERSONNEL ASSIGNED TO THE SITE**

The Contractor will assign to the site, from the start of Works, the person approved by the Project Director, both with accredited professional experience and sufficiently empowered to receive and execute with full responsibility any and all instructions and indications given by ACCIONA Construcción, as well as to require the workforce to comply with the applicable Regulations on Health and Safety, Prevention of Work-Related Risks, and to attend, whenever they are invited, the sessions of the Health and Safety Committee.

The person approved by the Project Director must be equipped with mobile telephones.

The Contractor is obliged to replace any and all personnel assigned to the site but considered by ACCIONA Construcción to be unsuitable for carrying out the management of the same or for the execution of the work units referred to in the present Purchase Order.

#### **15. CO-OPERATION WITH OTHER BODIES AND CONTRACTORS**

The Contractor accepts and acknowledges the presence on site of other subcontractors awarded works or installations contracts and it undertakes not to lodge any claim whatsoever for the consideration of alleged interferences or potential reductions in performance that cannot be objectively quantified, in ACCIONA Construcción's opinion.

The Contractor must co-operate fully and effectively with the rest of the subcontractors and installation companies participating on the site from time to time by providing all information, drawings and technical documentation that may be requested at any time, so that the building works can progress without interference or delays.

Should the work units and installations in the present Purchase Order include commons points or interconnections with other installations executed by third parties, the interconnections between the same will be effected in the presence and with the collaboration of all parties, at the request of the subcontractor whose installation (cables, pipes, conduits, etc.) provides service or feeds into the second.

The Contractor is obliged to be present at all times for the commissioning of the installations or work units referred to in the present Purchase Order, as well as at the commissioning of any other installations executed by third parties where the Contractor is involved, collaborating in the process as often as may be required.

In the execution of mains connections and interconnections (cables, pipes, conduits, etc.) to elements, machinery and equipment supplied or installed by third parties, the Contractor is obliged to perform for itself the actions and verifications necessary to identify the exact and correct procedure for executing the same. Should it be necessary to effect perforations for the passage of conduits, the Contractor will effect all adequate drilling and will use connectors of the correct diameter needed to guarantee the watertightness of the whole. Should this task not be done or should it be done incorrectly, the Contractor shall be responsible for the repair or replacement works for any problems in execution or the operation of machinery or equipment connected up, as well as for the associated costs, and the consequences in terms of deadlines will be for the account of the Contractor.

The Contractor is obliged to attend and co-operate with the visits effected by the companies responsible for Quality Assurance, Project Management or Technical Assistance contracted by the Final Client. Similarly, the Contractor will duly and properly answer in writing all of the reports on deficiencies issued by the said companies, setting out its arguments with reliable and verifiable data against those points on which there might be discrepancy with the contents of the reports, and resolving the said deficiencies within a term of not more than fifteen (15) calendar days.

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#### 16. CANCELLATION OF ORDERS

ACCIONA Construcción reserves the right to cancel the Purchase Order if, due to lack of zeal, failure to comply with the clauses of the present Purchase Order, or alteration in the Total Price, there is any risk to the Client's building system or the schedule for execution of the Works, without this implying any compensation whatsoever for the Contractor, and the same shall further be held responsible for any damages that might be caused.

#### 17. ASSIGNMENT OF THE CONTRACT

The assignment to third parties of the rights and obligations arising out of the Purchase Order, of which these terms and conditions form an inseparable part, by the Contractor is prohibited, except where expressly authorized in writing and in advance by ACCIONA Construcción.

The Parties acknowledge, recognize and accepts that the Client may assign all of its rights and obligations of the present Purchase Order to any direct or indirect subsidiary or affiliate or company of the group Acciona, S.A. without the previous consent of the Contractor, being sufficient the communication of the assignment.

#### 18. ASSIGNMENT OF CREDITS

Should the Contractor assign its credits against ACCIONA Construcción arising out of the present Purchase Order, in whole or in part, to third parties, such assignment shall only bind ACCIONA Construcción if it is reflected in a public document and is notified by indisputable means:

The assignment shall only be effective from the date of its notification to ACCIONA Construcción, without prejudice to the provisions in this Purchase Order with regard to the fulfilment of the obligations by the Contractor and with regard to the approval of the invoices.

Should the Contractor assign all of its future credits against ACCIONA Construcción, the notification referred to in the preceding paragraph must be effected by a separate public document for each of the works of ACCIONA Construcción in which the Contractor is engaged in any kind of activity. If the assignment of credits affects specific invoices, the public assignment document must reflect each of the invoices individually.

ACCIONA Construcción shall not be bound and shall not, in consequence, acknowledge any assignments of rights arising out of this Purchase Order where the procedure foreseen in the various paragraphs of the present agreement have not been fully respected.

The rights of the assignee are constrained by the fulfilment of the Purchase Order by the Contractor, therefore ACCIONA Construcción may oppose the former with such demurrers as it could have brought against the Contractor regardless of whether or not they are subsequent to the moment of the assignment or the moment at which this was notified.

#### 19. CIVIL LIABILITY

The execution of the Works will be carried out by the Contractor with full autonomy and responsibility, subject to the Project and technical prescriptions of the work, and will, therefore, be liable for any damages to third parties that may arise during execution.

Before beginning the Works, the Contractor must provide ACCIONA Construcción with a photocopy, which will be duly compared with its original, of an Insurance Policy for GENERAL THIRD-PARTY LIABILITY, with the receipt accrediting that the company is up to date in its payment of the premium. The said Policy shall have a minimum coverage of the Contract Price for claims arising out of property and personal damages and will include, in addition, the THIRD-PARTY EMPLOYER'S LIABILITY with a minimum limit of [amount in words] ([amount in figures] USD) .

Any excesses that may be established in the Policy may never exceed twelve thousand dollars (12,000 USD ) and shall always be for the account of the Contractor.

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In addition to the aforementioned, the Contractor shall obtain and maintain in full force during the execution of the present Purchase Order a Worker's Compensation Insurance.

The Contractor undertakes to keep the aforesaid Insurance Policy in force throughout the whole time that it continues to render its services for ACCIONA Construcción and to provide at any time the documents that may be requested to prove the foregoing.

For the avoidance of doubt, the Contractor is required to maintain and effect the following insurances;

1. Insurance for the Works, Plant, and Contractor's documents for not less than the full reinstatement cost including the cost of demolition, removal of debris and professional fees and profit.
2. Insurance for the Contractor's equipment for not less than the full replacement value, including delivery to site
3. Insurance for any loss, damage, death or bodily injury which may occur to any physical property or to any person arising out of or in the course of or by reason of the carrying out of the Works. The insurance limit shall not be less than the values indicated above.
4. Insurance for theft of property, materials and goods.
5. Insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's personnel.

The insurances required under this clause shall be placed with insurers approved by the Client. The wordings of the cover note shall be shared by the Contractor to the Client for approval.

The Client shall not be obliged to make payments to the Contractor if the Contractor fails to provide insurance policies or fails to provide satisfactory evidence of any insurance and the receipt for the payment of the current premium.

Should the Contractor make default in insuring as aforesaid, the Client may himself insure against any risk of which the default has 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.

## **20. LIABILITY**

- 20.1. The Client shall not be liable against the Contractor for any special, indirect or consequential damage, or loss of profits, benefits, use, production or clients. In any case, the maximum liability from the Client to the Contractor shall be capped to the one hundred percent (100%) of the Total Price. Unless obliged by applicable law, the Client shall not be liable towards third parties.
- 20.2. The Contractor shall hold harmless the Client for any damage caused by any act or omission of the Contractor or any of its subcontractors.
- 20.3. When the Contractor is an entity formed by two or more persons or companies or a joint venture, each one of the person and/or entities forming the Contractor shall be jointly and severally liable towards the Client for the correct and complete performance of the Purchase Order.

### **20.4. Liability For Damage.**

Should any damage to third parties arise as a consequence of the Works executed by the Contractor and should these claim require compensation from ACCIONA Construcción, as the main contractor, payment shall be withheld from the sums outstanding up to the amount claimed, until such time as the liability incurred by the Contractor is determined.

The said liability shall be deemed to have been determined when ACCIONA Construcción is ordered, by means of a judgement or administrative resolution, whether jointly and severally or as the subsidiary party, to effect the payment of



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compensation for the said damage caused by the Contractor, or when ACCIONA Construcción agrees on an out of court settlement of such payment vis-à-vis a harmed third party, in the amount agreed between the same.

The foregoing notwithstanding, when the Contractor has to act on areas with the flooring already in place or in areas of the site with definitive finishings or installations executed by third parties, it will not use tools or auxiliary means capable of producing oil leaks or residues. In general, all of the tools, materials, equipment and auxiliary means used by the Contractor for the execution of the work units referred to in the present Purchase Order shall be protected in such a way that they cannot cause any harm whatsoever to the finishings and installations executed by third parties or, in the alternative, the Contractor shall protect any surface areas that may be affected. Any cost arising out of the omission of this point shall be borne by the Contractor.

The Contractor shall indemnify and hold the Client harmless at all times from and against all claims, damages, losses or expenses incurred by the Client (including in respect of any claim by the Final Client) arising out of or in consequence of the performance of the Contractor's obligation under this purchase order or by reason of any other act, negligence or default of the Contractor. The contractor shall however not be held liable where such claims, damages, losses or expenses arise from the acts of the Client or its personnel, negligence or default by the Client.

## **21. SUBCONTRACTING**

The Contractor may not subcontract any part of the Works that are the subject of this Purchase Order without the prior and express written authorisation of Acciona Construcción.

Subcontracting shall not entail any contract relation whatsoever between Acciona Construcción and the subcontractor of the Contractor, the latter being exclusively responsible for the performance of the subcontractor.

Everything stated in this Purchase Order about employer's responsibilities and damage to third parties shall also be applicable to the subcontractor of the Contractor and its personnel, the Contractor being liable before Acciona Construcción for the fulfilment of said obligation on the part of the subcontractor. Otherwise, the measures foreseen in this Purchase Order shall be applied to the Contractor.

The Contractor has the obligation of being up to date with payments to its suppliers, providers and subcontractors. The breach of this obligation by the Contractor shall entitle Acciona Construcción to withhold the payment of any pending amount, as well as to terminate this Purchase Order.

In case of breach of the above, the Contractor hereby irrevocably authorises Acciona Construcción to use, in full or in part, the invoicing of executed Works to the payment of said obligations, providing Acciona Construcción with supporting documentation for such payments.

The Contractor hereby undertakes to comply with and have its subcontractors strictly fulfil the provisions of Kenyan Law, regulating Subcontracting in the Construction Industry.

To that end, it shall inform Acciona Construcción in writing about any intended subcontracting, providing copies of the documents listed under the above terms and conditions about Employer's Responsibilities.

In this act, the Contractor received, for information and signature purposes, a copy of the explanatory table of legal limits to the subcontracting regime.

## **22. FORCE MAJEURE**

Under the present Purchase Order, it will be considered as force majeure event (hereinafter, "**Force Majeure Event**") any event or circumstance that: (i) is not under the control of any of the Parties affected by such event; (ii) the affected Party would have not reasonably partially or totally avoid, remedy or overcome being diligently; (iii) the affected Party would

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The block contains a handwritten signature in blue ink over the Acciona Construcción logo. The logo consists of a stylized 'A' inside a circle, followed by the word 'acciona' in a bold, lowercase sans-serif font, and 'Construcción' in a smaller, regular lowercase sans-serif font below it.

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have not been able to anticipate or foresee before the date of signature of the present Purchase Order; (iv) is not substantially attributable to any of the Parties; and (v) is an obstacle to the partial or total performance of the present Purchase Order. Force Majeure shall include, without limitation, earthquakes, hurricanes, tsunamis, volcanic eruptions, landslides, epidemics, plagues, strikes, wars, terrorism or revolutions.

Where a Force Majeure Event occurs:

- a) The affected Party shall notify it in writing to the other Party within the following (72) hours.
- b) The Parties shall act diligently and make all reasonable efforts to comply with their obligations, mitigate the damage and minimize the delay.
- c) No error or omission resulting directly as a consequence of a Force Majeure Event shall be considered to be a breach of any obligation affected by the Force Majeure Event, but the affected Party shall continue to perform the rest of its obligations under the Purchase Order not affected by the Force Majeure Event.
- d) Each Party shall bear its own additional costs and damages.
- e) In the event that the scheduled dates are affected by the Force Majeure Event, the Contractor shall be entitled to the minimum extension of time that may be strictly needed to fulfil its obligations under the Purchase Order, and it shall be confirmed in writing by the Client.

In the event of a delay or incidence having a potential impact on the due and timely performance of the Contractor's agreed obligations pursuant to the Works/Deliveries programme, where applicable, which is directly related with the uncertainty scenario arising from the SARS-CoV-2 virus outbreak (henceforth, "Covid-19") or caused by a Force Majeure event, the Client shall notify this circumstance via certified notice to the Client (Project Manager, Contract Manager, etc...) as soon as possible and in any event within 48 hours from the time when it became aware of such incidence or from the occurrence of its cause.

Should such delays or incidences impact the ability of the Contractor to comply with its obligations by the due date of performance thereof under the contract, the Contractor shall then indicate the estimated number of days of delay and the estimated extension of time needed, as well as any mitigation measures to be undertaken by the Contractor for such purposes. In the event that these requested extension of time have an impact on the final due date of completion of the works or its interim milestones, such extensions of time will only be granted to the extent and insofar as the equivalent extension of time is in turn granted to the Client, once conveyed by the Final Client. As to any other remaining events potentially impacting the performance of the Contractor's obligations by their relevant due dates, the Contractor shall equally provide any supporting documents evidencing the cause, foreseen impact and proposed mitigating measures to be undertaken by it.

Upon receipt of such information, the Client will assess whether such communication is duly substantiated and will notify such assessment to the Contractor. Should the Client determine that it is satisfied with the information provided, the Parties shall agree on the actions and measures to be carried out by the Contractor and the Client in order to mitigate any potential impacts, provided that this will not imply a penalty or an increase in any of the Parties' liability. In the event that the information provided by the Contractor is insufficient, the Client will notify so to the Contractor and the Contractor shall provide a satisfactory justification of this within 3 business days. If such additional justification is not provided or if such new information remains insufficient, such delay event will not be considered as being related to the Covid-19 or having its cause in a force majeure event, thereby remaining subjected to the consequences of breach foreseen in the contract, including any applicable remedies.

### 23. HEALTH AND SAFETY

Without prejudice to the responsibilities legally attributed to Acciona Construcción, the Contractor and its personnel shall be responsible for the strict observance of the Act on Occupational Risk Prevention, in everything related to the regulations in force for the construction industry, as well as for the compliance with legal and regulatory provisions on Health & Safety and Occupational Risk Prevention established by law at any moment, and with the Safety plan of the

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Works. They shall also be responsible for the implementation of such regulatory provisions and for the consequences derived from the breach thereof, both as regards the activity subcontracted as well as the activity it may subcontract to any third party.

Acciona Construcción shall not accept any claim from the Contractor due to time lost as a result of disruptions of activities caused by breaches of the personnel under its charge of the Health & Safety Rules and Occupational Risk Prevention Rules.

The Contractor undertakes to provide Acciona Construcción with a specific medical certificate and Covid PCR Test indicating (if necessary, they should be paid by the Contractor) that its employees are fit for work, before they start working on the Site. Furthermore, it shall determine the assistance procedure for victims of accidents, stating the entity, hospital, doctor, etc. where they will be looked after if necessary.

Acciona Construcción hereby provides the Contractor a copy of the Health & Safety Plan of the Works, the latter undertaking to fulfil all relevant provisions applicable to the contracted units.

Personal protection equipment used by employees of the Contractor shall be in accordance with current laws and the company shall be responsible for the adequate arrangement, specific use and maintenance of said equipment for the work to be performed by each of its employees.

If included under this Purchase Order, the Contractor shall place necessary collective protection resources and take any other prevention measures needed for carrying out the activities entrusted to it, taking responsibility for their appropriate placement and maintenance.

As regards collective protection elements installed, the Contractor shall be responsible for their adequate use and maintenance on the part of its employees. In this regard, when a collective protection element must be removed due to the execution of an activity, an adequate alternative protection must be used and the element removed shall be immediately restored when the situation that forced its removal ends. Acciona Construcción shall be notified through a reliable channel of these operations so that it can also remain vigilant.

The Contractor undertakes to provide Acciona Construcción with certificates accrediting that each of its employees associated to the Works received training on preventive matters specific to his/her post, and supporting documents of having informed and given instructions on all Health & Safety measures to all those employees as well as to freelance workers.

The Contractor undertakes to submit to Acciona Construcción the Prevention Plan, a document attesting the Risk Assessment for Works to be carried out within the Prevention Management system (Own Prevention Service, External Prevention Service or Appointed Workers) in order to perform the relevant prevention activities on site. This document must state the name, address and telephone of the relevant person designated by the Contractor as prevention responsible, who will be at all times following the instructions of the person designated by the Client as prevention responsible. This document must follow the Health and Safety Plan provided by Acciona Construcción and shall be issued by the Contractor to Acciona Construcción and approved by the former as condition precedent for the commencement of the Works in site. Timing for delivery dates according to the Schedule shall not commence without this condition having satisfied.

The Contractor guarantees that its personnel shall correctly use all auxiliary resources provided to them, as well as the installations, observing current regulations regarding such use, the instructions of the Client and avoiding to make changes to those auxiliary resources, unless previously authorised in writing.

The Contractor undertakes to submit to Acciona Construcción a document justifying the delivery and reception of approved Personal Protective Equipment to its employees.

Workers who do not meet the Safety measures included on the Safety Plan and/or prevention regulations in force, with a serious risk for their own life, integrity or health, or for that of other workers or third parties not related to the project, shall not be authorised to access or continue on the Works under this Purchase Order.

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The Contractor shall appoint a person as head of Prevention on the site, as indicated in this Clause, who shall compulsorily attend the meetings of the Health & Safety Commission and/or Health & Safety Committee of the Works as well as a permanent intermediary, who may be the same person as the head of Prevention, to implement the coordination obligations established on the regulations on occupational risk prevention.

## **24. SUSPENSION OF WORKS**

Stoppages that occur on the Works as a result of orders from the person designated by the Project Director, the Final Client, Acciona Construcción, or due to weather conditions, labour conflicts, etc., shall not entitle the Contractor to any compensation whatsoever. If said stoppages were absolutely unrelated to the will and actions of the Contractor, it shall be entitled to an extension of Purchase Order deadlines that in no case shall exceed the number of effective days of stoppage.

## **25. TERMINATION OF THE PURCHASE ORDER**

### **25.1. Provisional measures.**

If the Client considers that the Contractor is failing to comply with the Purchase Order, the Client may ask the Contractor to remedy this situation within eight (8) days, or within a term specified by the Client in said notification.

If, in the Client's opinion, the Contractor has not taken the necessary steps to remedy the situation within that period, the Client may take any measures it deems necessary.

### **25.2. Rejection of all or any part of the Work and Termination of the Purchase Order**

Even in the case that the transfer of ownership has occurred, the Client reserves the right to reject all or part of the Work and/or terminate the Purchase Order in the following cases:

- a) Delivery of all or part of the Work that does not fulfil the Contractual specifications or is not accompanied by the certificates or other required contractual documents;
- b) After unsatisfactory tests, the Contractor is unable to have the Goods complying with the Contract technical conditions;
- c) Before or during the warranty term, a failure occurs in the Goods or facility delivered that interferes with the regular operating conditions;
- d) The Contractor is in material breach of any of its contractual obligations, including:
  - (i) Exceeding one or several contractual dates for more than one (1) month, without a valid reason;
  - (ii) Not reaching the Minimum Guaranteed Values.
- e) The Contractor commits a Corrupt Act or breaches the applicable labor or social security legislation, or any other regulations of imperative application;
- f) The Contractor fails to deliver the undertakings as required by the Contract;
- g) The Contractor fails to provide or maintain any of the Financial Guarantees according to the present Contract;
- h) The Contractor reaches any of the limits of liquidated damages established herein;
- i) The Contractor is declared legally bankrupt;
- j) The abandonment of the Works or communication of the intention to abandon the Works by the Contractor; or
- k) The breach by the Contractor of any of his obligations and responsibilities under the Purchase Order.

If the Client elects to terminate this Purchase Order, he shall inform the Contractor by written notice and upon receipt of such notice, the Contractor shall cease all further work. However, in the case of Insolvency or bankruptcy, liquidation of the Contractor, or the Contractor has a receiving or administration order made against him, or compounds with its creditors, the Client may by notice terminate the Purchase Order immediately.

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The block contains a handwritten signature in black ink over the Acciona logo. The logo consists of a stylized 'A' followed by the word 'acciona' in a bold, sans-serif font, with 'Construcción' in a smaller font below it.

The Client shall be entitled to;

- withhold further payments to the Contractor, until the costs of employing a replacement Contractor to complete the Purchase Order and remedy any defect in the Works, the liquidated damages for delay in delivery (if any) and all other costs incurred by the Client, have been established, and
- recover from the Contractor any losses and damages incurred by the Client and any extra costs incurred in employing a replacement Contractor to complete the Purchase Order and remedy any defect in the Works; if such costs exceed the amounts due and remaining unpaid to the Contractor, the Contractor shall receive no further payment and shall pay the extra-costs remaining due to the Client. If the amounts due and remaining unpaid to the Contractor does not exceed such costs, the Client shall pay the remaining balance to the Contractor.

The Client's election to terminate the Purchase Order shall not prejudice any other rights of the Client, under the Purchase Order or otherwise.

### **25.3 Voluntary termination of the contract by the Client**

The Client may terminate the Contract at any time, either in full or in part, by issuing the appropriate notification.

Should it terminate the Purchase Order in accordance with this clause, the Client shall pay the Contractor the price of the materials already supplied and work done, after deducting all the payments made, according to documentary proof plus the 5% as loss of profit. The Client shall then own the part of the Work executed and may, if it wishes, ask the Contractor to hand it over.

In no case shall the Client be liable for indirect or consequential damages of any kind whatsoever, under any construction of law, such as (without limitation) loss of profit, loss of production, etc. arising out of or in connection with any such voluntary termination.

### **25.4 Termination for the Client's default**

If

- (a) the Client fails to pay the Contractor within the time period specified in Clause 33 [Payment method and deadline], the Contractor shall be entitled, by written notice to require the Client to make good the failure and to remedy it within a period of thirty (30) days.
- (b) The Client substantially fails to perform his obligations under the purchase order; or
- (c) The Client or the Final Client become bankrupt or insolvent, goes under liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee, or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or event

Then, the Contractor may, upon giving 21 days' notice to the Client, terminate the purchase order. This shall not prejudice the Contractor's right to financing charges as defined in the purchase order.

Should the Contractor terminate the Purchase Order in accordance with this clause, the Client shall pay the Contractor the price of the materials already supplied and work done, after deducting all the payments made, according to documentary proof. The Client shall then own the part of the Work executed and may, if it wishes, ask the Contractor to hand it over.

### **25.5 Termination of the Main Contract**

This Purchase Order shall be automatically terminated in case of termination of the Main Contract.

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Where the termination of the main contract occurs without default of the Contractor, the contractor shall be paid by the Client for work done in the like manner as the Client is paid in the Main Contract. The Contractor understands and agrees that it will be paid if, and only after, the Client is paid by the Final Client.

#### **25.6 Termination of Main Contract in consequence of Contractor Breach**

If the Main Contract is terminated as a consequence of any breach of the Contractor, the Client shall be entitled to withhold further payments to the Contractor and recover from the Contractor any losses and damages incurred by the Client in accordance with Sub-Clause 25.2 [Rejection of all or any part of the Work and Termination of the Purchase Order].

#### **26. REJECTION OF THE CONTRACTOR BY THE FINAL CLIENT**

The Purchase shall be automatically terminated if and when the Final Client rejects the Contractor in accordance with the Main Contract provisions and/or applicable laws.

If the Final Client rejects the Contractor as a consequence of any breach of the Contractor, the Client shall be entitled to withhold further payments to the Contractor and recover from the Contractor any losses and damages incurred by the Client in accordance with Sub-Clause 25.2 [Rejection of all or any part of the Work and Termination of the Purchase Order].

Where the rejection of the Contractor occurs without default of the Contractor, the Client shall pay the Contractor the price of the materials already supplied and work done, after deducting all the payments made, according to documentary proof. The Client shall then own the part of the Work executed and may, if it wishes, ask the Contractor to hand it over

#### **27. ENVIRONMENT**

The Contractor must comply with the legal and practical environmental requirements that may be applicable to the Works referred to in the present Purchase Order, particularly those related to:

- Waste management.
- Discharges into water and soil contamination.
- Emissions into the surroundings (dust, noise, gases, etc.).
- Inputs to landfills and other actions related to the management of natural resources.

The incorrect execution of its environmental liabilities by the Contractor shall in no case generate any cost not explicitly foreseen in the Purchase Order for ACCIONA Construcción.

The Contractor is obliged to comply strictly with the guidelines established by the person designated by the Project Director, for which it shall have at its disposal the procedures and complementary documentation of ACCIONA Construcción. When faced with a failure to comply with these General Conditions, ACCIONA Construcción may proceed to suspend work, with the subsequent losses being for the account of the Contractor.

The Contractor shall be responsible for the fulfilment of these clauses by its subcontractors, if any.

#### **Waste management.**

The Contractor shall make available adequate human and material resources to remove all waste that may be generated as a consequence of its work on installations under the responsibility of ACCIONA Construcción. This includes hazardous

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and inert waste, as well as those that can be assimilated to municipal waste if an appreciable amount of this is generated. The Contractor shall effect the collection and separation of the waste produced into the appropriate containers.

Should the waste not be managed by the Contractor directly, ACCIONA Construcción shall place the necessary means at the disposal of the Contractor for the correct storage and separation of the waste, reserving the right to pass on the costs derived from such waste management to the Contractor proportionally.

When the waste management is carried out by the Contractor, it must provide ACCIONA Construcción with a copy of all the documentation evidencing such waste management (up-to-date authorizations of waste managers and transport companies, re-use certificates, landfilling permits and recycling plants, vouchers and delivery notes or Monitoring and Follow-up Documents, etc.).

The Contractor shall ensure the daily cleaning and removal of packaging, containers, metal remains, plastics, wood, remains of bricks and concrete, litter and all types of waste generated in the work area.

It is absolutely prohibited to abandon any type of waste on public roads or in rural areas.

**Discharges into water or Soil contamination.**

The Contractor shall guarantee the proper storage and handling of chemicals and hazardous products or hazardous waste, the prevention of leaks, spillages and contamination of the soil, collection boxes or channels, and is prohibited from carrying out any unmonitored discharge.

Specific areas will be defined for the washing of concrete delivery trucks and for the elements used for spreading of concrete, so that all waste generated can be collected at the conclusion of the Works. These areas will always be outside loading areas and will be correctly signposted and separated by cones.

It is absolutely forbidden to burn any kind of waste or to light any bonfires in the work area or adjacent areas.

The Contractor undertakes to supply ACCIONA Construcción immediately with information on any environmental incident arising in the course of the work entrusted to it. ACCIONA Construcción may subsequently require a written report setting out the facts and the causes of the same.

**Emissions into the surroundings (dust, noise, gases, etc.).**

The Contractor shall guarantee the use of approved machinery in a perfect state of operation and that has passed the appropriate technical inspections defined in the applicable regulations (Technical Inspection of Vehicles) in order to comply with Kenyan Law on atmospheric pollution with respect to the emissions and inmissions of pollutants from natural and human activities.

The site machinery will be approved as per Kenyan Law regulating the levels of noise emissions by site machinery.

The Works will be carried out with minimization of the dust emissions bearing in mind the prescriptions marked by the regulations with regard to acceptable values for the concentration of particulates. Special attention will be given to the covering of lorries transporting powdery material and the reduction of transport operations for powdery materials during periods with strong winds. The protection of materials capable of producing dust will be guaranteed during their storage or stockpiling, particularly in periods with strong winds.

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The Works will be carried out within the hours allowed under the current municipal regulations. All Works approaching maximum sound levels will take place intermittently during times when the background noise is greatest and for short periods of time.

## **28. INTELLECTUAL AND/OR INDUSTRIAL PROPERTY**

### **- Ownership rights over Acquired Information and results**

The legal ownership of the Acquired Information and the results obtained as a consequence of the execution of the present Purchase Order shall correspond solely and exclusively to ACCIONA Construcción.

Acquired Information is deemed to be all inventions, patents, innovations, works, data, reports, outcomes or any other rights capable of being protected by means of industrial or intellectual property rights and have been obtained as a consequence of the research related to the Purchase Order.

ACCIONA Construcción shall be the only body authorized to carry out the commercial exploitation of the Acquired Information and the results obtained as a consequence of the present Purchase Order and to submit applications for patents covering inventions resulting therefrom.

Without prejudice to the foregoing, on Patents, the inventor shall be entitled to be mentioned as such on the patent vis-à-vis the Client as the party appearing on the application for the patent or the patent.

The Contractor undertakes to provide all necessary collaboration and to execute and authorize any and all public and private documents, declarations and requests as may be necessary or appropriate for ACCIONA Construcción to obtain the aforesaid registration of rights in its name as well as their exploitation in the widest sense.

### **- Ownership rights over Prior Information**

Any and all Prior Information communicated by either of the Parties to the other in the course of the present Purchase Order shall continue to be the property of their initial owner and shall not be used by the other Party without the scope of collaboration object of the present Purchase Order.

Prior Information is deemed to include all non-public data and information including industrial secrets, patent applications, techniques, processes, experimental protocols, designs, etc. in the possession of one of the Parties, whether prior to the date of the start of the Purchase Order, or else developed or acquired after the said date, without the framework of the research related to the present Purchase Order, and notified by the Party owning it to the other, whether orally, in writing or in graphic and/or electronic format.

### **- Intellectual Property**

All publication effected from the date of signing of the present Purchase Order in connection with the purpose of the same shall be exclusively owned by ACCIONA Construcción, and such information shall be protected by the national or international rules on intellectual and industrial property. The exclusive exercise of the rights to reproduce, distribute, communicate, publish and transform the same corresponds to ACCIONA Construcción. The design, images, maps, graphic material, trademarks, signs, distinctive marks, logos, etc. of ACCIONA Construcción contained in publications are the exclusive property of ACCIONA Construcción. The copying, modification, distribution, transmission, reproduction, publication, assignment, sale or the total or partial disclosure by any other means is hereby prohibited without the express authorization of the Client of any publications arising out of the Purchase Order.



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## 29. CONFIDENTIALITY

The Parties expressly agree that all legal documentation, whether descriptive or otherwise and other information or documents submitted by the Client to the Contractor in relation to this Purchase Order, shall be confidential information (hereinafter referred to as "**Confidential Information**").

The Parties undertake to keep the confidentiality of the Confidential Information and only use it to fulfil their obligations pursuant to the provisions in this Purchase Order and not to reveal said information to any person or entity (except for their advisers, employees and managers involved in this Purchase Order who agree to submit to the terms thereof), without the prior consent given in writing by the other Party.

The provisions contained in the preceding paragraph shall not apply to (i) Confidential Information that becomes publicly known but not revealed by any of the Parties (or by any other person or entity who received the said information from the disclosing party), or (ii) Confidential Information acquired by any of the Parties from a source that is not forbidden to disclose the said Confidential Information under a legal provision or under any contractual obligation, or (iii) Confidential Information which by law or court order or an order from a government or regulatory authority to any of the Parties hereto must be disclosed, or (iv) Confidential Information developed in an independent manner and legally by any of the Parties.

The obligations contained in this clause shall remain valid even after the termination of this Purchase Order and shall be in force during five (5) years after the termination of the present Purchase Order.

Notwithstanding the above, upon termination of this Purchase Order, irrespective of the grounds therefor, the Parties undertake to mutually and immediately return to the other party the Confidential Information. Should this not be possible, the Parties shall destroy all the Confidential Information of the other Party, including any copies, which they had access to for the performance of their Services.

The breach by either Party of any of the above terms and conditions shall entail the other Party to automatically terminate the Purchase Order without prejudice to the claim of additional remedies.

## 30. DOCUMENT CONFIDENTIALITY

The Parties shall consider this document confidential and undertake not to disclose it to any third party without express authorisation from the other Party except in cases where required by a Court or Tribunal.

## 31. INNOVATION CLAUSE- ACKNOWLEDGMENT OF COLLABORATION

The Contractor expressly acknowledges that in certain situations the Client may cooperate in the design of the Product to better meet its needs, manufacture or development of processes derived from the implementation thereof, which implies an improvement or different use thereof. Under these circumstances, the Parties shall agree on the acknowledgement by the Contractor of such cooperation which will be done by issuing a Certificate of Collaboration Acknowledgement at the request of the Client by the Contractor to specify the nature of the collaboration, the sum and costs paid by the Client and the provision by the Contractor of all complementary documentation required by the Client to justify the certified collaboration. In this respect, the Client shall provide the Contractor with a sample Certificate of Collaboration Acknowledgement to be filled in.

## 32. ECONOMIC TERMS AND CONDITIONS

32.1. N/A

32.2. Bank Guarantees

ACCIONA Construcción S.A.  
Galana Plaza, 7th floor, Suite 01  
PO Box 100798-00101  
Nairobi (Kenya)  
PIN: P051750648H

The block contains a handwritten signature in dark ink, followed by a circular stamp. The stamp features a shield-like emblem with a star and the word 'ACCIONA' in bold, uppercase letters. Below the stamp, the word 'Construcción' is written in a smaller, sans-serif font.

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The Contractor shall issue the Bank Guarantees described under the present Purchase Order as a condition precedent for any payment to be made by Acciona Construcción to the Contractor.

**32.2.1. Advance Payment Guarantee.**

Unless otherwise indicated in the Particular Conditions, for any advanced payments made by Acciona Construcción under the present Purchase Order, the Contractor must furnish an advance payment guarantee in line with Acciona Construcción form, issued by the bank in Kenya of a solvent and renowned bank to the satisfaction of the Client. by an acceptable bank to Acciona Construcción (the "**Advance Payment Guarantee**"). The Advance Payment Guarantee shall be in an amount equal to the value of the advance payment, ten percent (10%) of the Total Price, and currencies corresponding to the advance payment, and shall remain in force until the advance payment has been repaid.

The advance payment shall be repaid through percentage deductions in the interim payments made to the Contractor at the amortization rate of 10% of the amount of each payment certificate (excluding the advance payment and deductions and repayments of retention) in the currencies and proportions of the advance payment, until such time as the advance payment has been repaid. Deductions shall commence when the total of all interim payments made to the Contractor (excluding the advance payment and deductions and repayments of retention) exceeds twenty percent (20%) of the Total Price.

If the advance payment has not been repaid prior to the taking over of the Works or prior to termination of the Purchase Order, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Client.

**32.2.2. Performance Guarantee.**

Unless otherwise indicated in the Particular Conditions, the Contractor shall provide Acciona Construcción, at the date of signature of the present Purchase Order, with a bank guarantee payable on first demand for an amount equal to ten percent (10%) of the Total Price of this Purchase Order, guaranteeing both the quality of materials and their correct assembly, as well as the fulfilment of the deadline established for all units to be carried out and the dully performance of the obligations of the Contractor under the Warranty Period (hereinafter, the "**Performance Guarantee**").

The validity term of this Performance Guarantee shall be from the date of signature of the Purchase Order to the date of issuance of the Final Acceptance Certificate of the Works. The validity and maintenance of the Performance Guarantee herein defined in accordance with the provisions of the present Purchase Order is a condition precedent for any payment to be done from the Client to the Contractor.

In case any part of the Works was executed by assignees and/or subcontractors, the Contractor shall obtain from them a written guarantee for the Final Client, covering their parts of the jobs for the periods specified. Said guarantees shall be submitted along with the Contractor's own guarantee. The guarantees of assignees and/or subcontractors shall expressly state to be enforceable by the Final Client and shall enter into force along with the guarantee of the Contractor.

If at the time period when the Contractor is executing its scope of works the Total Price is increased, the Contractor must at its own cost increase the amount of the Performance Guarantee accordingly. However, from the time the Contractor has accomplished its scope of work, duly certified and signed by the Parties, until December 2022, the Client must, in the event the Total Price is increased and/or the end of the Warranty Period is extended and/or delayed by any reason, at its own cost increase the amount and/or extend the time validity of the Performance Guarantee accordingly

The Performance Guarantee shall be issued by the bank in Kenya of a solvent and renowned bank to the satisfaction of the Client.

Any amount payable by the Contractor to the Client under this Purchase Order as liquidated damages, penalties, indemnification, or return of any excess payment may, at Client' sole discretion, either be withheld from amounts outstanding and due to the Contractor or by enforcing the appropriate Performance Guarantee, within five (5) calendar

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days after receipt of Client's written demand.

**32.3. Penalties**

Unless otherwise indicated in the Particular Conditions, if the Contractor does not meet the partial or final deadlines indicated herein, Acciona Construcción shall be automatically entitled to apply a penalty of zero point zero five percent (0,05%) of the Total Price of the Purchase Order for each day of delay up to a maximum of ten (10%) of the Total Price.

Beyond said percentage, Acciona Construcción may also choose to:

- a) Terminate the Purchase Order with a total loss of the deductions made, if any.
- b) Suspend the payment of any or all the invoices due upon termination of the Purchase Order.
- c) To call part or the full amount of any or all of the bank guarantees provided in the Purchase Order.
- d) To take legal actions in order to claim any applicable damage and losses.

**32.4. Compensation**

ACCIONA Construcción will be entitled to effect a deduction on the withholdings or invoices pending settlement whenever it holds any credit against the Contractor, regardless of the origin of such credit.

**33. INVOICING**

Contractor may invoice according to the Real measurements according to drawings. Drawings must be approved for construction and duly stamped.

The Progress invoice shall deduct all previously invoiced amounts and including the breakdown of each of the supplies, Works or services performed up to the relevant invoice date, considering only and exclusively the units executed and at the indicated prices. The invoice shall be submitted together with supporting documents.

The Invoice shall include the following items, as applicable:

Project Name: Rabai-Kilifi Transmission Line – B8103

Purchase Order Number

The estimated contract value of the Works executed, Certificate of executed works signed by the representative of the 2 parties.

The unit price of works achieved;

All Deductions and Adjustments

The total amount invoiced excluding VAT;

The VAT rate legally applicable;

The total amount including VAT;

The repayment of advance payment;

The total amount to pay;

The Contractor bank account details.

Invoices, in duplicate, and with an express indication of the number of the Contract/Purchase Order must be made out to the address indicated in the purchase order, indicating its own Tax Identification Number, without which the invoice shall be returned.

The last invoice issued under this Purchase Order must indicate that it is the "settlement" invoice.

All payments effected prior to the final settlement shall be deemed payments on account and as an advance of the said settlement; such payments shall not represent any acceptance of supplies and/or Works executed, nor the amount thereof.

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Invoices, in duplicate, and with an express indication of the number of the Purchase Order must be made out to:

ACCIONA CONSTRUCCION S.A.  
Galana Plaza, 7th floor, Galana Road  
P. O Box 76378-00508  
Nairobi, Kenya  
PIN: P051750648H

And shall be sent to the following address:

ATT: FINANCE MANAGER  
ACCIONA CONSTRUCCION S.A.  
Galana Plaza, 7th floor, Galana Road  
P. O Box 76378-00508  
Nairobi, Kenya  
PIN: P051750648H

And by email to: [fhidalgoa@acciona.com](mailto:fhidalgoa@acciona.com) / [cnyurinyagah@acciona.com](mailto:cnyurinyagah@acciona.com)

**33.1. Terms and conditions for invoicing.**

The Parties hereto agree that the Contractor shall issue its invoices on the date of delivery of goods or on the date of provision of services or Works.

The Client undertakes to indicate its agreement or to set out its observations regarding the invoice within a term of not more than fourteen (14) calendar days from the date of its receipt at technical address of the Client indicated above.

In the event of a discrepancy, the Client shall return the invoice within the term indicated above, indicating the reasons for its return.

The acceptance of the invoice does not imply the acceptance of the Works delivered, which shall be subject to the rest of provisions of the present Purchase Order.

Prior to the acceptance of the sole or "settlement" invoice, the Contractor must have delivered to the Client all of the documentation, of any kind, requested previously and the said invoice shall not be accepted until this requirement is met.

**33.2. Final Settlement**

In order to make the final settlement at completion for the Contractor, the Client shall perform at the source measurement of the Works performed by the Contractor in the presence of the Contractor. Should the Contractor not be present or should no agreement be reached between the parties, the Client will report the values measured, so that within a period of fifteen days from receipt thereof the Contractor may make such representations as it may deem appropriate. Should the Contractor not indicate its disagreement with specific items or units within the period of fifteen (15) days, it shall be deemed to have accepted the values. In Case the Contractor is in disagreement with the measurements, it shall within Fifteen(15) days send out its Notice outlining the specific items it disagrees with, The Client shall immediately arrange a date for the joint measurement for which both parties shall attend. In case the contractor fails to attend at the said date, the initial measurements done by the Client shall be deemed to be final.

The final settlement of the Works performed by the Contractor will be included in the final settlement form, which must be signed by the Contractor as a necessary condition for payment of the settlement amount, which payment shall be

ACCIONA Construcción S.A.  
Galana Plaza, 7th floor, Suite 01  
PO Box 100798-00101  
Nairobi (Kenya)  
PIN: P051750648H

The block contains a handwritten signature in black ink over a circular stamp. The stamp features the ACCIONA logo, which consists of a stylized 'A' inside a circle, followed by the word 'acciona' in a bold, lowercase sans-serif font, and 'Construcción' in a smaller, regular sans-serif font below it.

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without prejudice to the provisions established herein for rectification of defects in accordance with Clause 12 [Guarantee / Obligations], Clause 37 [Acceptance of the Works] and liabilities in accordance with Clause 20 [Liability]

#### **34. PAYMENT METHOD AND DEADLINE**

34.1. Effective payment will be made by bank transference (or other method agreed between the Parties) within the maximum term of sixty (60) days from the date of acceptance of the invoice.

In accordance with the provisions established in the corresponding clause in the group on SCOPE OF THE PRICES, the Contractor has incorporated into the Total Price of this Purchase Order all the financial expenses arising out of the discount applied by the financial institution to the face value of the price on the invoices accepted, when the Contractor request payment of the same.

Payments will be effected by means of bank transfer through a financial institution. These payments shall be process on day 10<sup>th</sup> and 25<sup>th</sup> of each month, and consequently the payments shall be received on the course of the following 5 days. Therefore, the payments terms shall be deemed overdue once the five days have elapsed.

Any delays that may arise in the payments shall accrue interest at a rate which will be calculated by adding one percent (1%) point to the interest the interest rate of the Central Bank of Kenya, as published in the Official State Gazette every six (6) months.

#### **35. TRAINING COURSES**

The Contractor shall, according the Contractor's offer, provide such training courses for the maintenance personnel designated in due course by the Final Client as may be necessary to convey the required understanding of the operation of each of the work units or installations referred to in the present Purchase Order.

The said courses (one for each installation referred to in the present Purchase Order) shall be taught in the places and on the dates indicated by the Client, after the conclusion of the corresponding installations.

#### **36. DOCUMENTATION PRIOR TO THE START OF THE WORKS**

Without any additional charge and sufficiently in advance of the start of the assembly work for the work units or installations referred to in the present Purchase Order, the Contractor must supply the following documentation:

##### **36.1. WORK METHOD STATEMENT**

Taking the Project as its basis, the Contractor shall draw up and deliver in electronic format and hard copy, in the form and number of copies to be indicated in due course, the Assembly Drawings defining and depicting in sufficient detail and specificity each of the installations referred to in the present Purchase Order for their proper manufacture, construction or assembly.

The said drawings must take into account the real characteristics and dimensions of the equipment and elements to be installed on site, as well as the geometric reality, distribution and construction details of the Building.

The Assembly Drawings must be drawn up taking into account the necessary co-ordination that must exist between all the installations in the Building, and between these and the furniture, particularly with regard to the spaces available for equipment, pipes, conduits, trays and other systems for channelling services through courtyards, gaps in walls and floor slabs, false ceilings, corridors, tunnels, galleries, technical facilities and installation rooms.

The Contractor will provide the details, diagrams and cross-sections accrediting the said co-ordination and the resolution of all interferences arising.

The Assembly Drawings will complete the Project and develop those units that are not sufficiently well defined.

ACCIONA Construcción S.A.  
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The Assembly Drawings will correct any and all errors that may exist and will include the modifications that the Site Management and/or the Client may in each case consider appropriate. Whenever any of the two preceding circumstances occurs, the Assembly Drawings will be accompanied by a brief memorandum describing the solution adopted, together with the necessary calculations justifying the same.

The Assembly Drawings must be delivered to the Client sufficiently in advance of the start of the corresponding work units for their review and subsequent approval or comments, as appropriate, by the Client and, if the latter considers it appropriate, by the person designated by the Project Director. The Contractor is obliged to submit as many revisions of the said Drawings as may be necessary until the same are approved.

The Contractor will not be able to start the assembly of any work unit without the mandatory prior approval of the corresponding Assembly Drawings by the Client.

### 36.2. Quality Assurance Plan (QAP).

The Contractor must draw up a QAP in accordance with the ISO 9001 standard, based on its Quality System and specifically applied to the design and construction of each of the installations referred to in the present Purchase Order.

The documentation making up the QAP for each Installation will be adjusted for the organization, contents and headings detailed below:

#### 36.2.1. Definition and Scope.

This heading sets out the contents of the procedure, mentioning the kinds of activities to be described in the same and their scope of application, as well as the concepts and definitions commonly used in the technical jargon of the matter in hand.

#### 36.2.2. Applicable Regulations and Documentation.

This heading will list the contractual documents, general prescriptions, rules and procedures applicable to the execution of the activities described in the procedure.

#### 36.2.3. Technical Execution Procedure - TEP.

##### Means to be used.

Details will be established for the materials, machinery and human or auxiliary means required.

##### Prior operations.

This heading details the terms and conditions to be complied with prior to the start of the activities described in the procedure with regard to documentation, information or prior activities.

##### Methodology and phases in the execution process.

This heading will define the logical sequence of operations to be carried out in order to execute the activity, describing them with the necessary degree of detail in the light of their difficulty and the expertise for their execution, in order to be able to ensure that the activity is carried out with the appropriate requirements.

The person responsible for carrying out each operation will be indicated, with the possibility of including the checks to be made during the process or referring to the applicable Programmes for Inspection Points ("PIP"). Reference will be made to other procedures where applicable.

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Reference will be made to any Disconformities and the most frequent defects arising in the process, their possible causes and the recommendations for their prevention.

**36.2.4. Inspection Schedule.**

The Programmes for Reception of Supplies ("PRS") will be listed with their corresponding technical characteristics of the materials together with the applicable PIP attached in Appendices A1 and A2.

**36.2.5. Protocols for Final Tests.**

This heading will list the applicable Protocols for Final Tests ("PFT") attached as Appendix A3. The test protocols must contain all the necessary information to be able to identify the equipment or installation tested, the type of test performed, the applicable regulations, the procedure used, the technical resources employed, the acceptance or rejection criteria, as well as the outcome sheets indicating the values obtained, the corresponding result of PASS or FAIL, the date of the test and the name and signature of the person responsible for it.

**36.2.6. Appendices.**

This heading will list the specific forms referenced in the procedure as well as any documentation that may be necessary or improve the understanding of the procedure. The appendices listed below will be included. Any other appendix considered necessary will be identified as Appendix A4 and so on.

**APPENDIX A1: PROGRAMMES FOR RECEPTION OF SUPPLIES (PRS)**

**APPENDIX A2: PROGRAMMES FOR INSPECTION POINTS (PIP)**

**APPENDIX A3: PROTOCOLS FOR FINAL TESTS (PFT)**

The QAP must be delivered to the Client sufficiently in advance of the start of the corresponding work units for their review and subsequent approval or comments, as appropriate. The Contractor is obliged to submit as many revisions of the said QAP as may be necessary until the approval of the same is obtained; the Contractor will not be able to begin the assembly of any work unit without the prior approval of the QAP by the Client.

**36.3. List of Materials and Equipment. Complementary Technical Documentation.**

The Contractor shall draw up and deliver in electronic format and hard copy, in the form and number of copies to be indicated in due course, the List of Materials and Equipment making up each of the installations referred to in the present Purchase Order, indicating the manufacturer or supplier of each one, the make, model and most important technical characteristics defining it.

For each material or equipment included on the preceding list, the Contractor must accompany the Complementary Technical Documentation (catalogues, technical information sheets, certificates, approvals, etc.) accrediting the quality of the same and the fulfilment of the applicable Regulations, in accordance with the Project.

The preceding list must be delivered to the Client sufficiently in advance of the start of the corresponding work units for their review and subsequent approval or comments, as appropriate, by the Client and, if the latter considers this appropriate, by the person designated by the Project Director.

The Contractor will not be able to begin the assembly of any work unit without the mandatory prior approval of the corresponding materials and equipment by the Client.

**37. FINAL WORKS DOCUMENTATION**

The Contractor must provide, without any additional charge, the following documentation on conclusion of the installations referred to in the present Purchase Order:

**37.1. Definitive Project and As-Built Drawings.**

The Contractor must draw up and deliver in electronic format and hard copy the Definitive Project (Bill of Materials and the Appendix with Calculations, Drawings, Specification of Technical Conditions, Measurements and Budget) for the work units or installations referred to in the present Purchase Order, in the form and number of copies to be indicated in due course, having regard for the current Regulations and the specifications and guidelines for the Project.

Similarly, the Contractor shall draw up and deliver in electronic format and hard copy the As-Built Drawings for each of the installations referred to in the present Purchase Order, co-ordinated with the person designated by the Project Director, in the form and number of copies to be indicated in due course, reflecting with sufficient detail and accuracy the Works really executed, including all the changes or modifications effected during the construction phase with respect to the Assembly Drawings.

The As-Built Drawings must be delivered to ACCIONA Construcción on the conclusion of the installations referred to in the present Purchase Order, for their review and subsequent approval or comments, as appropriate, by ACCIONA Construcción and, if the latter considers this appropriate, by the person designated by the Project Director. The Contractor is obliged to submit as many revisions of the said Drawings as may be necessary until the approval of the same is obtained.

**37.2. Documentation accrediting the realization of the final tests.**

The Contractor shall draw up and deliver the documentation accrediting the protocols applied, the calibration certificates in force for the instrumentation and equipment used in the tests, as well as the outcome sheets for each and every one of the tests carried out.

**37.3. Certificates for the Legalization of the Installations.**

The Contractor must provide the original Legalization and Authorization certificates for the commissioning of each of the installations referred to in the present Purchase Order, duly issued by the corresponding to Public Administrations and Official Bodies, free of all charges and taxes and, in general, all the documentation required by any department of the Central, Regional or Local Administrations as well as by the Utilities Companies for the commissioning and operation of the said installations.

**37.4. Method statement for the Installations.**

The Contractor shall draw up and deliver in electronic format and hard copy the Operation and Maintenance Manuals for each of the installations referred to in the present Purchase Order, in the form and number of copies indicated in due course, containing all the necessary information for the correct operation and maintenance of the same.

The Manuals will include at least the following:

- General Operation of the Installation or System.
- Starting Diagram.
- Cabling and Control Diagrams.
- Preventive Maintenance Instructions.
- List of Components (materials and equipment).
- List of recommended Spare Parts for a period of two years.
- Troubleshooting.



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All of the above documentation must be delivered in correct Spanish or English, as indicated by the Client.

The above-mentioned Manuals must be delivered to ACCIONA Construcción at the conclusion of the installations referred to in the present Purchase Order, for their review and subsequent approval or comments, as appropriate, by ACCIONA Construcción and, if the latter considers this appropriate, by the person designated by the Project Director. The Contractor is obliged to submit as many revisions of the said Manuals as may be necessary until the approval of the same is obtained.

**37.5. Warranty and Approval Certificates for the equipment.**

The Contractor must provide the warranty and approval certificates for all materials and equipment requiring these. The said certificates will be included under the corresponding heading in the Maintenance and Operation Manuals for each installation referred to in the Purchase Order.

**38. ACCEPTANCE OF THE WORKS**

On the complete conclusion of the subcontracted Works, including the final tests, commissioning, adjustments and legalization of each of the installations, ACCIONA Construcción and the Contractor will proceed with the verification of their conformity with the terms and conditions of the Purchase Order.

Among others, the following points will be verified:

- Proper execution of each and every one of the installations contracted, which must have been correctly constructed, interconnected and tested until their total completion and finishing, in accordance with the specifications in the Project, the instructions of ACCIONA Construcción and the person designated by the Project Director, and the terms of the present Purchase Order in its widest scope.
- Elimination of all defects observed.
- General cleaning of the installations.
- Delivery of the Final Works Documentation.
- Dismantling and removal by the Contractor of all provisional implementations and installations at the site.

Should the works be acceptable, ACCIONA Construcción will proceed to receive the same and the Final Statement will be issued. The Warranty Period shall begin to run from the date of issuance of the Provisional Acceptance Certificate, or from the date on which provisional acceptance of the Works is signed by the Final Client, whichever is later.

Should the Works be found to be unacceptable, the Contractor will be given precise instructions in order to remedy the deficiencies observed, within a deadline, without prejudice to the power of ACCIONA Construcción to terminate the Purchase Order, if appropriate, due to failure to comply by the Contractor.

Where:

- (a) Completion of the Works has been achieved in accordance with the above; and
- (b) There is no requirement for the Provisional acceptance of the Works by the Client before taking over by the Final Client

the Works shall be deemed to have been provisionally accepted when a Taking Over certificate in respect of the Main Contract Works, or a Section or part of the Main Contract Works of which the Works are part has been issued or deemed to have been issued under the Main Contract. The date of Provisional acceptance of the Works shall be the date stated

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in the Main Contract Taking-over certificate

### 39. DATA PROTECTION

The Parties undertake to comply with personal data protection mandatory regulations, applicable to the data owned by each Party and/or to third parties.

For such purposes, the Parties shall be bound by the Law to which they submit the Purchase Order, to the Laws applicable to the Project and to, as the case may be, their national Law.

The breach by either Party of any of the above terms and conditions shall entail the other Party to automatically terminate the Purchase Order without prejudice to the claim of additional remedies.

### 40. ADDITIONAL CLAUSES ON DATA PROTECTION

#### Additional Clause on Data Protection - Basic Level

The Contractor shall process the data at the expense of Acciona Industrial. Therefore, the Contractor shall have access to Clients' data and information contained in the file, for the purpose of performing its obligations under the present Purchase Order.

The Contractor shall only process the data previously indicated pursuant to the instructions of the Client and shall not apply or use them for a purpose other than the one stated in this clause or section and shall not communicate them, not even for conservation purposes, to any third party.

Furthermore, once the relationships between both Parties are terminated, the Contractor shall destroy or return to the Client, as requested by the Client, the aforementioned file, along with any medium or document containing any personal data provided by the Client.

The Contractor shall adopt the Basic Level security measures in accordance with the provisions according Kenyan Law, on personal data protection, as regards the above mentioned file of the Client.

#### Additional Clause on Data Protection - Intermediate Level

The Contractor shall process the data at the expense of Acciona Construcción. Therefore, the Contractor shall have access to (for example: Workers' data and information, Clients' data and information etc), contained in the file, for the purpose of (DESCRIPTION OF THE PURPOSE FOR WHICH SAID DATA IS USED).

The Contractor shall only process the data previously indicated pursuant to the instructions of the Company and shall not apply or use them for a purpose other than the one stated in this clause or section and shall not communicate them, not even for conservation purposes, to any third party.

Furthermore, once the relationships between both parties are terminated, the Contractor shall destroy or return to the Company, as requested by the Company, the aforementioned file, along with any medium or document containing any personal data provided by the Company.

The Contractor shall adopt the Basic Level security measures in accordance with the provisions according Kenyan Law, on personal data protection, as regards the above mentioned file of the Company.]

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Additional Clause on Data Protection - High Level

The Contractor shall process the data at the expense of Acciona Construcción. Therefore, the Contractor shall have access to information regarding the Project contained in the file, for the purpose of performing its obligations under the present Purchase Order.

The Contractor shall only process the data previously indicated pursuant to the instructions of the Client and shall not apply or use them for a purpose other than the one stated in this clause or section and shall not communicate them, not even for conservation purposes, to any third party.

Furthermore, once the relationships between both Parties are terminated, the Contractor shall destroy or return to the Client, as requested by the Client, the aforementioned file, along with any medium or document containing any personal data provided by the Client.

The Contractor shall adopt the Basic Level security measures in accordance with the provisions according Kenyan Law, on personal data protection, as regards the above mentioned file of the Client.

**41. APPLICABLE LAW, JURISDICTION AND ARBITRATION**

40.1 The Purchase Order shall be governed by the Laws of Kenya.

40.2 The parties shall try and settle amicably all disputes that might occur with respect to this purchase order.

All disputes which could not be settled amicably within 30 days (thirty days) from the date upon which written notice of dispute or disagreement has been given, shall be submitted to the Board of Directors of the Parties, and, if an agreement is not reached within 20 days, the dispute shall be finally settled by an arbitration proceeding under the Rules of the International Chamber of Commerce before a single arbitrator appointed in accordance with such rules. The venue of the Arbitration proceedings shall be Nairobi, Kenya and the arbitration shall be conducted in English. All legal and associated costs of the case, irrespective of the verdict pronounced, shall be borne by each party itself. The award shall be binding and final.

40.3 Should a dispute occur between the Client and the Final Client with respect to the Works, the Parties shall meet to ensure the defense of their interests in the best possible conditions.

40.4 The terms of this Order shall not prevent or delay the parties from seeking orders for specific performance or interim or final injunctive relief on a without notice basis or otherwise and the terms of clause 40.2 above shall not apply to any circumstances where such remedies are sought

**42. MISCELLANEOUS**

42.1. Any provision of this Purchase Order which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof.

42.2. Any modification of the Purchase Order shall only have effect if the Purchase Order is amended in writing for such purpose and executed by both Parties.

42.3. No right of the Purchase Order shall be waived or be deemed to have been waived by either Party, unless such waiver is in writing and addressed to the Contractor.

42.4. No single or partial exercise of any right or remedy under this Purchase Order by either Party shall preclude any other or further exercise of that right or remedy. The rights and remedies of either Party shall be

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cumulative and not exclusive of any rights under applicable law.

42.5. Any formal notices required under the Purchase Order shall be made in writing to the addresses communicated by the Parties. Communications be e-mail with return receipt and the use of soft copies of documents are accepted. Drawings, Maintenance manuals, notifications and any other documents meant for approval must be submitted also in hard copies in order to be effective unless otherwise instructed by the Client.

42.6. The language of the Purchase Order shall be English.

#### **43. ERRORS IN CONTRACT DOCUMENTS**

Upon the commencement date, the Contractor shall scrutinize the drawings, specifications and the bills of quantities and shall within 21 days after the effective date, give notice to the Client of any discrepancy, ambiguity, divergence, error, fault or other defect found in the drawings, specifications and bills of quantities. After receiving this notice. The Client shall thereupon issue instructions in regard thereto as soon as is practicable.

If and to the extent that (taking account of cost and time) an experienced Contractor exercising due care would have discovered the discrepancy, ambiguity, divergence, error, fault or other defect when examining the site and the drawings, specifications and bills of quantities before submitting the tender, the Time for completion shall not be extended and the Total price shall not be adjusted. Contractor shall be entitled subject to Sub-Clause 44.2 [Contractor's Claims], to an extension of the Time for Completion if and to the extent that the completion of the Works is delayed by any of the following causes:

- (a) A Variation or other substantial change in the quantity of any item of work included in the Purchase Order
- (b) A cause of delay giving an entitlement to an extension of the Time for Completion under a Sub-Clause of these conditions;
- (c) Any delay, impediment or prevention caused by or attributable to the Final Client, Client, the Client personnel or the other Contractors; or
- (d) Any one of the causes set out in the Main Contract

When deciding each extension of time under Sub-Clause 44.2 [Contractor's Claims], the Client may review previous decisions and may increase, but shall not decrease the total extension of time.

#### **44. EXTENSION OF TIME FOR COMPLETION**

The Contractor shall be entitled subject to Sub-Clause 44.2 [Contractor's Claims], to an extension of the Time for Completion if and to the extent that the completion of the Works is delayed by any of the following causes:

- (a) A Variation or other substantial change in the quantity of any item of work included in the Purchase Order
- (b) A cause of delay giving an entitlement to an extension of the Time for Completion under a Sub-Clause of these conditions;
- (c) Any delay, impediment or prevention caused by or attributable to the Final Client, Client, the Client personnel or the other Contractors; or
- (d) Any one of the causes set out in the Main Contract

When deciding each extension of time under Sub-Clause 44.2 [Contractor's Claims], the Client may review previous decisions and may increase, but shall not decrease the total extension of time.

#### **45. NOTICES, CONTRACTOR'S CLAIM**

45.1 Notices

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Whenever the Client is required by the terms of the Main Contract to give any notice or other information to the Final Client, or to keep contemporary records (whether in relation to a claim or otherwise), to the extent that these terms apply to the Purchase Order, the Contractor shall give a similar notice or other information in writing to the Client and keep the contemporary records that will enable the Client to comply with these terms of the Main Contract. The Contractor shall do so in good time to enable the Client to comply with these terms, otherwise the Contractor shall be deemed to have waived its rights resulting from such notice or contemporary records or such other information. Provided always that the Contractor shall be excused from any non-compliance with this requirement for so long as he could not have reasonably known of the Contractor's need of the notice or information from him or the contemporary records.

#### 45.2 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Purchase Order, the Contractor shall give notice to the Client, describing the event or circumstance giving rise to the Claim. The notice shall be given as soon as practicable, and not later than 14 days after the Contractor became aware, or should have become aware of the event or circumstance. If the Contractor fails to give notice of a claim within such 14 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Client shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Purchase Order and supporting particulars for the claim, all as relevant to such event or circumstance.

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 Client. Without admitting liability, the Client 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 Client to inspect all these records and shall (if instructed) submit copies to the Client.

Within 28 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 Client, the Contractor shall send to the Client 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 Client may reasonably require; and
- (c) The Contractor shall send a final claim within 21 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

The Client shall consult with the Contractor in an endeavor to reach agreement on the extension of the Time for Completion and/or additional payment to which the Contractor may be entitled for his claim. If agreement is not reached, the Client shall within 49 days after receiving the Contractor a fully detailed claim or any further particulars requested by the Client, or within such other period agreed between the parties;

- i. Make a fair decision, having due regard to the Contractor's submissions, the extent to which his claim for additional payment and/or extension of time has been substantiated, and all other relevant circumstances;
- ii. Notify the Contractor, with reasons and making reference to this sub-paragraph, of the appropriate and applicable additional payment (if any) and/or extension (if any) of the Time for Completion; and

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iii. Make the additional payment (if any) to the Contractor, and grant the extension (if any) of the Time for Completion

In the event that the requested extension of time and/or additional payment have an impact on the Main Contract Time for Completion or its interim milestones, such extension of time and/or additional payment will only be granted to the extent and insofar as the equivalent extension of time is in turn granted to the Client by the Final Client.

#### 45.4 Final Client Claims in connection with the Main Contract

If the Client receives from the Final Client any notice and particulars of the Final Client claim which concerns the Contractor, the Client shall immediately send a copy to the Contractor. The Contractor shall then provide all reasonable assistance to the Client in relation to the Final Client claim.



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**46. ANNEX 1: WORK SPECIFICATIONS AND DRAWINGS TECHNICAL**

References as listed below:

1. 074A-02-EE-DW-SSR-0001\_132 OHPL Situation Draw
2. 074A-02-EE-TS-ACC-0001\_132 OHPL. Tower Design Specification
3. 074A-02-EE-TS-ACC-0002\_132 OHPL. Conductor Specification
4. 074A-02-EE-TS-SSR-0001\_132 OHPL OPGW Conductor Specification
5. 074A-02-EE-TS-SSR-0002\_132 OHPL. Hardware and Fittings Conductor Specification
6. 074A-02-EE-TS-SSR-0003\_132 OHPL. Hardware and Fittings OPGW Specification
7. 074A-02-EE-TS-SSR-0005\_132 OHPL Insulators Specification
8. 074A-02-EE-TS-SSR-0007\_132 OHPL Erection and Stringing Specification
9. 074A-02-EE-TS-SSR-0010\_132 OHPL. Electromechanical Design Criteria

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**47. ANNEX 2: BILL OF QUANTITY AND SCOPE OF SUPPLY**

SCOPE OF SUPPLY: Tower Erection and Stringing

BILL OF QUANTITY (BOQ):

Slazs No.	DESCRIPTION	QUANTITIES	UNIT	UNIT PRICE	TOTAL AMOUNT
<b>ESTIMATED QUANTITIES 132KV RABAT - RILIFI TRANSMISSION LINES</b>					<b>37.787.539,31</b>
<b>1</b>	<b>TOWER ERECTION</b>				<b>17.254.514,92</b>
	<b>Lattice Steel Towers</b>				<b>11.707.911,45</b>
1.1	Erection of lattice steel towers	602,51	Tn	19.431,77	11.707.911,45
	<b>Additional Works</b>				<b>5.546.603,47</b>
1.2	Tightening (with torque wrench)	100,00	Towers	18.545,68	1.854.567,81
1.3	Transport of material from warehouse to site (max. distance 50km) with truck mounted crane/hlab	100,00	Towers	36.920,36	3.692.035,66
<b>2</b>	<b>CONDUCTOR STRINGING</b>				<b>20.533.024,38</b>
	<b>Installation of Accessories</b>				<b>7.486.983,91</b>
2.1	Fixing complete accessories (strings insulators, danger plates, identification signs, dampers etc.)	100,00	Towers	74.869,84	7.486.983,91
	<b>Stringing Works</b>				<b>10.781.217,75</b>
2.2A	ACSR/Lynx Conductor (three phase, double circuit, simplex) and OPGW 48 fibers (one wire)	28,59	km	377.097,51	10.781.217,75
2.2B	ACSR/Lynx Conductor (three phase, simple circuit, simplex) and OPGW 48 fibers (one wire) or common ground wire	If necessary	km	287.346,00	
	<b>Additional Works</b>				<b>2.264.822,73</b>
2.3	Installation of fiber optic joint boxes, including splicing, fixing and fibers jointing (48 fibers)	9,00	Unit	73.245,32	659.207,92
2.4	Installation of bird diverters and/or warning spheres	If necessary	Unit	37.875,81	-
2.5	Anti-Climbing device/barrier (either spikes or barbed wire)	100,00	Towers	16.056,15	1.605.614,82

**TOTAL (KES) 37.787.539,31**

**[Inclusions and exclusions in the scope]**

The rate for Testing of Fiber Optic Link End-to-End with OTDR shall be 51,296.00 KES per unit (VAT excl.).

In the event of a de-mobilization and re-mobilization, the Contractor shall be compensated with 250,000.00 KES (VAT excl.).



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#### 48. ANNEX 3: HSE REQUIREMENTS

References as listed below:

1. 074A-00-HS-PL-ACC-0001\_HEALTH AND SAFETY PLAN Revision 1
2. 074A-00-EN-PL-ACC-0001\_Environmental Plan REV00

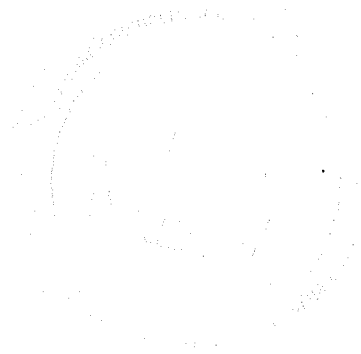


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**49. ANNEX 4: QA/QC PLAN**

References as listed below:

1. 074A-00-QA-PL-ACC-0001-Rev00\_Project Quality Plan
2. 074A-00-QA-PR-ACC-0001-Rev00\_Preparation and Contents of Final Dossiers
3. 074A-00-QA-PR-ACC-0005-Rev01\_Subcontractor QA QC Req



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## 50. ANNEX 5: BANK GUARANTEE TEMPLATES

[Date]

ACCIONA CONSTRUCCION SA,  
GALANA PLAZA 7<sup>TH</sup> FLOOR  
P.O. BOX 76378-00508,  
NAIROBI, KENYA.  
PIN NO: P051750648H

Dear Sirs,

**RE: ADVANCE PAYMENT GUARANTEE NO.: XXXXX**

We, [Name of Bank/Entity] of P. O. BOX XXXXX – XXXXX, NAIROBI (hereinafter called “the Bank”) have been informed that [Name of Contractor] of P.O. Box XXXXX-XXXXX, Nairobi, Kenya (the “Guaranteed Entity”) is your contractor under the contract for **CONSTRUCTION OF THE RABAI – NEW BAMBURI - KILIFI AND NEW BAMBURI - BAMBURI CEMENT 132KV POWER GENERATION & EVACUATION LINES AND ASSOCIATED SUBSTATIONS** dated [date of subcontract] signed between ACCIONA CONSTRUCCION SA (the “Beneficiary”) and the Guaranteed Entity (the “Contract”) and that the Guaranteed Entity wishes to receive an advance payment, for which the Contract requires the Guaranteed Entity to obtain a guarantee.

As instructed by the Contractor, the Bank, as extensively as is required by law, hereby unconditionally and irrevocably and with express waiver of the right of excussion, order and division undertakes to pay the beneficiary, any sum or sums up to the maximum aggregate amount of KES [Advance Payment amount] (KENYA SHILLINGS Amount in words) (the “Guaranteed Amount”) by way of a first demand upon receipt by us of this guarantee, your written demand and your written statement stating:

- (a) that the Contractor has failed to fulfil its obligations in accordance with the conditions of the Contract; and
- (b) the amount equivalent to the works that the Contractor has failed to perform.

This guarantee is valid until 31<sup>st</sup> December 2022 at 5:00 p.m. (the “Expiry Date and Time”), when it will be automatically cancelled and without value or effect.

It is condition that for any claim, and payment, under this guarantee to be made, the Guaranteed Amount, without any deduction or withholding, must have been received in full by the Guaranteed Entity in account number XXXXXXXXX at [Name of Bank], Nairobi Kenya, [branch name] branch.

This guarantee constitutes an obligation of the autonomous and independent Bank and is not ancillary to the obligations existing between the Guaranteed Entity and the Beneficiary.

The Bank agree, without going into the substance of the matter, simply by receiving a compliant demand for payment informing of the existence of a breach of the obligations arising from the Contract (and without the need for such breach to be the subject of a description), to paying the entire amount claimed and up to the maximum amount of the Guaranteed Amount, within ten (10) days following the receipt of the aforementioned order in writing.

The Beneficiary may make multiple requests for payment under this guarantee for up to the Guaranteed Amount.

This guarantee is subject to the Uniform Rules for Guarantees 2010 Revision, ICC Publication No. 758 by the International Chamber of Commerce and shall be governed by the laws of Kenya. The courts of the Republic of Kenya shall have sole jurisdiction.

In [guarantee's location of issue], on [date of guarantee's signature].

**AUTHORISED SIGNATORY**

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**AUTHORISED SIGNATORY**



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**51. ANNEX 6: OTHERS**

Ref.: 074A-00-SO-PL-ACC-0001\_Social Management Plan-Acciona



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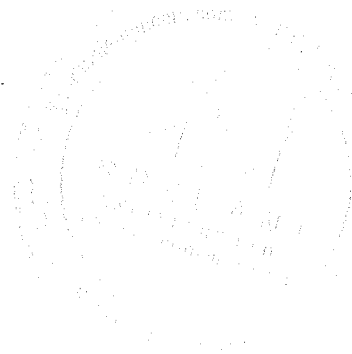


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**52. ANNEX 7: WORK PROGRAMME**

To be provided later.



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