



**THE GENERAL CONTRACTUAL TERMS & CONDITIONS
FOR
SERVICES RENDERED TO
KENYA HOUSES INVESTMENTS LTD**

Last Updated: 2nd Jan. 2024

Note: This document is available and automatically downloaded from the Company website www.kenyahouses.co.

By signing up and submitting the Tender Application Form either physically or electronically by use of the website given, or receiving this document by email and paying any amount of money to the company, you (the Client) agree that you have fully read, understood and accepted this Agreement. If You do not agree to or do not wish to be bound by this Agreement, then do not access the company services.

Articles of the Contract

This Agreement is made in Eldoret – Kenya and legally binding;

Between:

Kenya Houses Investments Ltd (herein referred to as the “Company”) on one part; with its principal contacts and place of business as follows:

Telephone +254708806720 c/o P.O Box 2220-30100 Eldoret;

Located along Iten / Elgeyo Road, Opposite Administration Police Line,

Sagatia House, 1ST Floor, Room 13-15, Eldoret Town – Kenya;

Email address: kenyahouses5@gmail.com /or kenyahousesinvestmentsLtd@gmail.com or/ info@kenyahouses.co

Website: www.kenyahouses.co

The Company is in business of providing Housing, Conveyance, acquisition, water Drilling but not limited to Disposition of interest to the general public.

And

The person(s) or/ Entity (Herein referred to as the ‘Client’ / ‘Supplier’ / ‘the Contractor’ or/ “You” or/ “Your” or/ ‘I’) whose information is provided by the Tender Application Form physically or electronically signed up and submitted to the Company and the LPO/LSO that are read as part of this Contract, together forming this Contract. on other part.

Whereas

A. Offer, Negotiations and Appointment.

By using the Company website given hereinabove and having engaged in consultations, negotiations and understanding on how the Company operates, the Client/Supplier is desirous and willing to supply/render his/her services to the Company after submitting the Tender Application Form electronically to the Company.

B. Acceptance.

The Company hereby accepts the Client’s application by issuing the LPO or/ LSO subject to the following contractual terms and conditions.

C. Legal Capacity.

The Client hereby agrees that he is of sound mind with full requisite legal capacity, power and authority to enter into this Agreement - including on behalf of the entity (if mentioned) and agrees to save, hold harmless, and indemnify the Company from any claims.

D. Intention to Create Legal Relations.

The Client agrees to have further consulted with all of his associates concern such as his family members including seeking all the appropriate professional advices(s) independently regarding the nature, effects and the implications of this Contract after carefully reading, understanding together with any amendment(s) thereafter made from time to time.

E. Consideration.

The Client has willingly paid the Company the Tender Application Fees required and has agreed with the LPO/LSO issued by the Company.

F. Consent.

THEREFORE, the Company and the Client in consideration of the rights, privileges, obligations and covenants contained in this Agreement, agree freely and willingly to the following terms and conditions:

The General Terms and Conditions

1.0 The Client’s representations and warrants that:

- i) He has obtained all the necessary documents, approvals/permits/authorization from all the relevant Government authorities that may have jurisdiction over the project/services applied, including seeking all the appropriate professional advices(s) independently regarding the nature, effects and the implications of this Contract in engaging the Company.
- ii) Furthermore, the Client or any of his associates shall at all times promote and uphold the good name of the Company.
- iii) There is no claim or dispute against the said property regarding ownership, boundary, easement, rights of way or any other such matter and he has provided right-of-way, easement, or rights of ingress, egress, at site to the Company’s satisfaction for work performance.
- iv) Generally, there is no law or decree or similar enactment binding or notice from any person to /or against the client in so far as he is aware which could conflict with or prevent the Company from performing this agreement; and he has not engaged in or threatened by any litigation, arbitration or administrative proceedings relating to the property.
- v) The information given by the Client herein and in any other documents associated hereto, are true, current, correct and authentic all the time as if each was made with respect to the facts and circumstances at such time. The Client will provide the Company with such reasonable information, confirmations and approvals, as shall be necessary to facilitate the provision of the Services within a specified timeframe and without unreasonable withholding, conditions and delays.
- vi) He shall endeavor all rules of good conscience to perform this contract above board with integrity, transparency, required ethics and accountability.

1.1 Definitions and Interpretation:

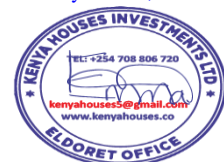
In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

- a) “**Business Day**” means any day of the week not being a weekend, gazette public holiday or designated bank holiday within the Republic of Kenya;

- b) “**Late Payment Charges**” – Means the payment payable by the Client to the Company in the event that any sum due in respect of the applied services is not paid on the due date.

- c) “**Parties**” shall mean the parties to this Agreement being Kenya Houses Investments Ltd and the Client and to “Party” shall mean either of them as context may indicate.

- d) The expression “**Client /or Party /or person**” include a natural person, body corporate, unincorporated, state, state agency, governmental authority or firm;





- e) **Words** denoting the singular shall include the plural and vice versa and reference to masculine gender shall include in reference to the feminine gender and neuter and vice versa.
- f) The part, numbers, headings, subheadings, paragraphs, subparagraphs, and associated numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this agreement.
- any written law includes that law as amended or re-enacted from time to time;
 - any agreement or other document includes that agreement or other document as varied or replaced by the Parties in writing from time to time;
 - a clause is to the relevant clause of this Agreement;
- g) **Site**—Shall be held to mean the Lands and other places on, under, in or through which the works are to be executed or carried out and other lands or places provided by the Client for the purpose of this Contract.
- h) **“Written” or ‘in writing’** means hand-written, type-written, printed or electronically made, and resulting in permanent record.
- i) **Specifications**—That part of the contract documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the work and certain administrative details applicable thereto.
- j) **Prime cost sum** – Is an allowance, usually calculated by the cost consultant, for the supply of work or materials to be provided.
- k) **Provisional sum** – Is an allowance, usually estimated by a cost consultant/ the Quantity Surveyor, for a specific element of works that is not yet defined in enough detail. It may be referred to as ‘defined’ or ‘undefined’
- l) **Main Contract /or The Contract** Means this Agreement Document including any other document (annexed hereto) incorporated by reference necessary for this contract performance.
- m) **The Company Documents** – Comprises this document, the calculations, computer programs and other software, drawings, manuals, models and other documents of technical nature (if any) supplied by the Company under this Contract.
- n) **“Cost”** means all expenditure reasonably incurred (or to be incurred) by either party, whether on or off the Site, including overhead and similar charges, but does not include profit.
- o) **The Contractual Sum/Price / The Project Cost** means the costs agreed to complete the said project.
- p) **“Materials”** means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.
- q) **“Works/Services”** consists of all labor (including supervision), materials, equipment, supplies and other items reasonably required to construct all or a portion of the Project according to this Contract. OR it means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the Company covered under this contract.
- r) **Claim**—A demand or assertion by either party seeking an adjustment of contract price or contract time, or both, or other relief with respect to the terms of this contract. A demand for money or services by a third party is not a claim.
- s) **“Property”** Means anything valuable without limitation to cash, all negotiable and non-negotiable instruments or controls representing money or other property (real or personal), precious metals in whatsoever form and articles made there from, gems, precious and semiprecious stones, certificates of stock, bonds, bills of exchange, title deed, certificates of title and other valuable papers used, deposited, presented or pledged by the Client as a guarantee of the fulfilment of an undertaking or the repayment of the Company services lend –
- And to be forfeited by the Company in case of any Client’s default.
- t) The term **“Debt”** includes any financial obligations or liability of the Client to the Company arising out of this Contract.
- u) **Lien**— Means any mortgage or charge (whether legal or equitable, pledge, encumbrance, hypothecation, assignment by way of security, option, security interest, restrictive covenant, title retention, leasing, sale-and-purchase, sale-and-leaseback arrangement, preferential right, counterclaim, trust arrangement or other restriction of any kind or other right securing or any right conferring a priority of payment in respect of any obligation of any person.
- v) Any Statute or any provision of any Statute shall be deemed to refer to any statutory modification or re-enactment thereof and to any statutory instrument, order or regulation made thereunder or under any such re-enactment;
- w) In this Agreement, any reference to any document means that document as supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.
- x) Any covenant by a party not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person in so far as it is within his power or control.
- y) **Logistics**— Means the contractual responsibility to provide;
 - i. Preliminary costs such as site visits, general consultations, other Contract documents preparations, Mobilization, demobilization & transportation of working equipment including technicians to and from the site, work inspections & supervisions.
 - z) any site encumbrances, right-of-way, easement, or rights of ingress, egress, sufficient utilities without limitation to temporary storage facility for goods and equipment, enough water, electricity, toilets, accommodation expenses, theft prevention measures and mitigation cost factors that may be required in connection with this Contract.
 - i) The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly.
 - ii) Performance specifications means the specifications expected to work in Company’s judgment on how best to achieve the performance standards of work.
 - iii) **“Local Purchase Order (LPO)” or “Local Service Order (LSO)”** means a written document executed by the Company authorizing Contractor or Supplier to perform Services and/or provide Deliverables in accordance with these Contractual Terms and Services.
- 1.2 The Scope of Works & Contract Documents**
- i) The aforementioned requirements/documents shall form the Contract and what is required by any one shall be as binding as if required by all.
- ii) The intention of the Contract Documents is to detail the project by including all labor, materials, equipment and other items necessary for proper execution of this Contract.
- 1.3 The Applicable Law & Jurisdiction**
- a) **Governing Law.** All matters pertaining to this agreement including its interpretation, disputes, application, validity, performance and breach in whatever jurisdiction action may be brought, shall be governed by, construed and enforced in accordance with the laws of Kenya.
- b) **Jurisdiction.** Parties hereby unequivocally agree and warrant that this Agreement is made in Eldoret and any action, claim or dispute that may arise, the litigation process shall at first instance be commenced in any court of proper jurisdiction located in Eldoret - Kenya and nowhere else - subject to Disputes Resolution Clause of this Contract.



The Company accepts no liability whatsoever, direct or indirect, for non-compliance with the laws of any country other than Kenya.

The fact that the services applied can be accessed by the Client in any Country other than Kenya, shall not be interpreted to imply that the laws of the said country govern this Contract.

- c) Unless otherwise specified, this Agreement, including any specified attachments, constitutes the entire agreement between parties herein; and shall supersede and replace any and all the previous agreements entered into and/or negotiated between the Company and the Client relating to the said services covered by this Agreement.

Oral discussions and representations made during the negotiations of this Contract shall not be construed to be terms and conditions of this Agreement.

The terms and conditions set out in this Agreement are the only terms on which the Company is prepared to deal with the Client and they shall govern their relationship.

Where the terms or warranties or promises of any Company document or any other document conflicts with the terms of this Contract, the terms and conditions of this Contract executed shall take the control – except for clause (1.9)(f).

- d) The expression of this Contract shall extend to include and bind upon the parties hereto and their respective personal representatives, heirs, administrators, executors, successors and assigns whether immediate or derivative who shall be entitled to enforce and proceed upon this Contract in the same manner as if named herein.

Whenever reference to the parties hereto is made in this Contract, such reference shall be deemed to include the legal representatives, successors and assigns of both parties as if in each case expressed.

- e) Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, entering into and executing this Agreement has relied upon no warranties, representations, covenants or agreements, express or implied, to such party, other than those expressly set forth herein.

1.4 Contract Interpretation

- i) The Company shall be the initial interpreter of the requirements of this Contract and judge the acceptability of its execution thereon.
- ii) If any ambiguity or any discrepancy is found in these provisions of this Contract, the Company may render a written interpretation with reasonable promptness following a written request from the Client. Such interpretations shall be consistent with this General Contract. Therefore, the Client hereby irreversibly agrees to waive the right to object this Contract for reasons (if any) of its ambiguities or absurdity that may be construed against the Company.
- iii) Each Party hereby agrees to cooperate in the execution of this Agreement, in the event any:
- clerical error; or
 - misinterpretation of the law; or
 - error as to form; when such error(s) obviate or hinder the consideration, performance, or enforcement of this Agreement.
- iv) This Contract has been negotiated and concluded in Common English and it may be translated into any other language for practical purposes, but such English version shall prevail in the event of any misunderstanding, discrepancies or inconsistencies.

Counterparts. This Contract Document may be produced in any number of counterparts, each of which is an original, but all of which shall constitute one instrument.

- v) Non-exclusivity. The rights and remedies provided by this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

1.5 The Supplier's or/ Client's Responsibilities:

- i) Licenses/permits/authorizations. It shall be the Client's responsibility to obtain any and all the necessary licenses from all the relevant Government Authorities that may have jurisdiction over the services applied hereto and the Company shall bear no responsibility therefor; the Client shall promptly notify Company of the fact that it has obtained all the necessary licenses in order to prevent any delay to the Company in commencing works. The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, and licenses necessary for the execution of the Work at Contractor's expense. The Company is exempt from state and local sales and use taxes.
- ii) The Contractor shall comply with local and national building regulations imposed by appropriate government agencies, and shall keep the Company indemnified against all fines, penalties and losses incurred by reason of any breach of this clause.
- iii) The Contractor shall supervise and direct the Work, using Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.
- iv) Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, expertise, materials, freight/delivery equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.
- v) The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.
- vi) The Contractor shall comply with all OSHA and all applicable trade-related rules and regulations.
- vii) The Contractor warrants to the Company and the Company's Representative that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective.
- viii) The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work, and shall notify the Company Representative if the Drawings, Specifications and Provisions are at variance therewith.
- ix) The Contractor shall be responsible for the acts and omissions of all Contractor's employees and all Sub-Contractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.
- x) The Contractor shall review, stamp with his approval and submit all samples and shop drawings as directed for approval of the Company's Representative for conformance with the design concept and with the information given in the Contract Documents. The Work shall be in accordance with approved samples and shop drawings.
- xi) The Contractor at all times shall keep the premises free from accumulation of waste materials and debris caused by Contractor's operations. This provision is imperative.



- At the completion of the Work, Contractor shall leave the Project site in a neat and orderly condition.
- xii)** The Contractor shall assume full responsibility for the Works under this Agreement until its final acceptance by the Company as specified herein. The Contractor shall have entire control and supervision of the Works and services herein agreed upon and shall be solely liable for the salaries, wages and other employment benefits of all employees and sub-contractors. Should the Contractor breach this clause, the Company has the right to proceed against the Performance Bond or Bank Guarantee or to use the Retention Amount, without prejudice to demanding direct reimbursement from the Contractor in the event that the amount of the Performance Bond Bank Guarantee or Retention Amount is insufficient.
- xiii)** The Contractor shall be responsible for the safety of all activities on the site and for ensuring that relevant occupational health and safety laws and regulations are followed.
- xiv)** The Contractor shall be solely and fully accountable for ANY claim for losses, liabilities, injuries, or damages arising out of or in connection with the work done or to be performed under this Agreement including but not limited to any accident or injury of any of its employees or sub-contractors during the term of this Agreement, or for any injury to any person or damages or loss of properties arising from the construction or any act or omission of the Contractor or anyone in its employment, or its subcontractors.

1.6 The Company's Responsibilities

- i) To execute payments.
- ii) The Company has secured all necessary temporary easements or real property acquisitions necessary for the Project and shall advise Contractor of the boundaries of Company's easements or property.
- iii) The Company shall issue all instructions to the Contractor through the Company Representative.
- iv) The Company shall be under no duty to investigate or verify the Client's compliance with each and every provisions of this Contract.

1.7 The Company's Representative

- a) Notwithstanding other Company responsibilities stated herein, the Company may also by writing to the Client/Contractor/Supplier appoint his /her representative who shall execute the following:
 - b) The Company's Representative will provide general administration of the Contract and will be the Company's representative during construction and until issuance of the final Certificate for Payment.
 - c) The Company Representative shall at all times have access to the Work wherever it is in preparation and progress.
 - d) The Company Representative will make periodic visits to the site to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of on-site observations, the Company's Representative will keep the Company informed of the progress of the Work, and will endeavor to guard the Company against defects and deficiencies in the Work of the Contractor. The Company Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Company Representative will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

- e) Based on such observations and the Contractor's Applications for Payment, the Company Representative will determine the amounts owing to the Contractor by notification.
- f) The Company representative will be, in the first instance, the interpreter of the requirements of the Contract Documents. The Company Representative will make decisions on all claims and disputes between the Company and the Contractor.
- g) The Company Representative will have authority to reject Work not conforming to the Contract Documents.

1.8 Eligibility

- A. Upon the Contract Execution, the following shall be availed by the Client/Supplier
 - i) IDs, PIN Registration documents and clearances from any government revenue authorities and Resolution Letter(s) (where applicable), land ownership documents, Passport size photo of the persons identified in the submitted Service Application Form.
 - ii) Utilities. The Client shall provide sufficient water, sanitation, sewer, electricity, light, heat, gas, power, fuel, janitorial, and other services incident to Company's use of the project/services applied.
 - iii) Financial Statement. The Client shall furnish concurrently with the execution of this Contract, his/her financial statement prepared by an accountant.
The Client, both in corporate capacity, if applicable, and individually, hereby represents and warrants that all the information contained therein is complete, true, and correct.
The Client understands that the Company is relying upon the accuracy of the information contained therein.
Should there be found to exist any inaccuracy within the financial statement which adversely affects the Client's financial standing, or should the Client's financial circumstances materially change, the Company may demand an additional security or an amount satisfactory to the Company, or a fully executed guaranty by a third party acceptable to The Company, or elect to terminate this Contract, or hold the Client personally and individually liable hereunder subject to all terms and conditions herein.
- B. The Supplier / Client shall establish the eligibility of Goods and Related Services by furnishing the following documents to the Company where applicable:
 - i) All custom clearance documents from the relevant Authorities. This includes
 - a) the Performa invoice,
 - b) original bill lading,
 - c) commercial invoice (showing the goods description, quantity, unit price, total price),
 - d) packing list,
 - e) Pre-export Verification of Conformity (PVOC), and or/
 - f) Certificate of Conformity (COC) and
 - g) Delivery notes identifying contents of each package.
 - ii) The Acknowledgement letter from the Company. But this shall not relieve the Supplier/Client from any of his warranties or his other obligations under this Contract.
 - iii) The documentary evidence that the Goods conform to the technical specifications and standards specified. The documentary evidence may be in the form of;
 - a) Literature, specifications, dimensions, drawings, catalogues, two identical samples or demonstration of



each good(s) and capacities of the goods/products offered;

- b) Descriptions of the essential technical and performance characteristics of the Goods and Related Services, and if applicable, a statement of deviations and exceptions to these provisions.
- iv) The Supplier shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period specified following commencement of the use of the goods by the Purchaser.
- v) The Supplier shall offer standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified by the Company.
- vi) If the Bidder does not manufacture or produce the Goods it offers to supply, then it shall submit the using the form included Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's Country; In case of a Contractor/Client/Supplier does not do business within the Purchaser's Country, the Bidder is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts- stocking obligations prescribed.

1.9 The Contract Execution & Date

- a) Parties hereby unequivocally agree that this Contract is executed the date if any of the three (3) events (i, ii & ii) occurs as follows:
 - i) When / If the Client fill in the Tender Application Form, then clicks "I/you agree with Terms & Conditions", then completes the signing up, and submit the Tender Application Form including paying the Company any amount in prior or afterwards. Such payments shall stand as a sufficient proof of entering into this Contract with the Company. The Tender Application Form shall define the following items provided by the Client as true, current, accurate and correct to the best of his knowledge:
 - The Client's full name.
 - The Clients email address.
 - The Entity's name (optional) represented by the client.
 - The Client's telephone number.
 - The Client's national ID / passport number.
 - The Project Cost / Contractual Sum. (Which shall be overruled by the Quotations issued by the Company or Bills Quantities (if any).
 - Site/project location.
 - The Clients nationality.
 - Services applied by the Client
 - The Client's representative/contact person & contacts.
 - A consent that the Client has read and agreed with terms and conditions of this contract document
 - The arithmetic showing that the Client is a human with sound mind intentionally executed this contract willingly.
 - The Contract Execution Date of signing up the Tender Application Form;
 - Or
 - ii) When / If this contract document is emailed to the Client/Landlord, and the Client continues paying the Company any amount in prior or after such emailing. Such payments shall stand as a sufficient proof of entering into this Contract with the Company.

- iii) When / if both parties undersign hereto this Contract Document together with the Tender Application Form.
- iv) Any failure by any party herein to append signature in this Contract Document, shall not disqualify in any way however the validity and/or enforceability of this Contract.

1.10 The Contract Price

- i) The Contract Price/Sum or/ total agreed cost shall be specified in the LPO/LSO issued by the Company AND shall deem to include all duties, overheads, interest charges on materials and goods, travelling / transport expenses and other direct costs incurred for other local services required to convey the Goods from the named place of destination to their final destination specified by the Company.
- ii) For purposes of this clause, 'duties' shall include all customs and exercise charges, tariffs, V.A.T and other taxes and duties imposed by statutory or other authority in the country where the Works are being carried out.
- iii) The contract price tabled herein shall deem to have been negotiated by parties Ad valorem with the current prevailing market rates without any surcharges nor exaggerations.
- iv) The Client shall adequately cover up and protect the site to prevent injury and also to cover up and protect from damage all parts of the building or premises where work is being performed by the Company under the contract.
- v) Upon the Company completing the works, the Client shall at his own expense remove and clear away all plant, equipment, rubbish and unused materials, and shall leave the whole of the works in a clean and tidy state, to his satisfaction. Food, accommodation, sufficient water, electricity power, security against thefts without limitation to efficient accessibility to the working site by the Company personnel and working equipment shall always be available to the Company's satisfaction at the Client's expenses.

1.11 The Scope of Works:

- i) The Supplier shall deliver the said goods and services as directed by the Company.
- ii) The Supplier shall carry out all tests and/or inspections of the Goods including any Related Services without limitation to:
 - a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
 - b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
 - c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
 - d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier from any warranty obligations under this Contract; and
 - e) training of the Purchaser's personnel, at the Supplier's plant and/or on- site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

2.0 Termination of Contract

2.1 Termination by the Company

- The Company may terminate this Contract with or without prior notice to the Client if the Client:
- a) Fails to fulfill any of the other covenants, undertakings, obligations or conditions set herein and the continuance of any such default for a period of ninety (90) days or more.
 - b) Either in person or the Client's directors and/or senior managers is convicted of a criminal offence other than an offence which, in the reasonable opinion of the Company, does not affect the Company's operations and obligations;
 - c) If any pre-contractual statements made by the Client and on which the Company has relied upon are found to have been false or misleading. For the avoidance of doubt, such pre



contractual statements include but are not limited to the Client's proposals to provide the Services, subject to any mutually agreed changes made in such proposal by virtue of this Agreement;

- d) If the Client is found to have been fraudulent in the course of fulfilling its obligations under this Agreement or If the Client or any of his/her permitted delegates and/or servants shall offer or agree to give any person any bribe, gift, gratuity or commission as an inducement or regard for doing or forbearing to do any action in relation to the this Agreement or any other contract with the Principal or for showing or fore bearing to show favor or disfavor to any person in relation to this Agreement or any other contract with the Company, then the Company may terminate this Agreement effectively, and reserves the right to institute criminal proceedings against such Client on the grounds specified herein.
- e) If any Kenyan court or competent authority should take any decision or make the Client unable to perform its commitments under this Agreement; or
- f) If the Client fails to perform any of its obligations and fails to remedy such failure within a reasonable time as is prescribed by the Company and declares that it will not be able to remedy the default within 90 days. Immediate termination will however apply in circumstances where the Client has consistently failed to remedy defaults.
- g) Client's employee, servant, sub-contractor, authorized delegate or agent is found guilty of any gross misconduct or habitually neglects his/her or their duties as contemplated by this Agreement;
- h) Becomes insolvent or applies to a Court to be adjudged a voluntary liquidation or makes any arrangement with its creditors or if a bankruptcy receivership liquidation or any nature of winding up proceedings is instituted against it, save for the purposes of a genuine amalgamation or reconstruction.
- i) Ceases or threatens to cease to carry on its business.
- j) Is the Client or his agents are associated with theft, fraud, negligence, or other knowing, misconduct or intentional acts or omissions.
- k) If there is any material loss or damage the Company attributable to Client's acts or omissions, and which result in compliance sanctions, loss of tax credits, or penalties or sanctions imposed against the Company by any governmental authority.
- l) The Company completes its services as agreed herein and provided that no party will be prejudiced by such works completion.
- m) Mutually agree to terminate this Agreement PROVIDED THAT no Party will be prejudiced by the termination.

2.2 Termination by the Client For Convenience

In the event the Client terminates this Contract for convenience, the Client unequivocally agrees to pay the Company 35% of the Contractual Sum agreed herein within 7 days prior termination.

For the purpose of this clause, termination for convenience by the Client in this context means, the Client willingly ending/winding-up this Contract without cause.

2.3 Termination by the Client for Cause

In the event the Company breaches or/ the Client suffers from any claims/loss/liabilities whatsoever resulting from any acts or omissions or negligence or delays or defaults of any responsible person acting for or under the Company's direction, control, or on behalf at any time in any connection with this Contract;

The Client shall issue a written notice of one (1) year for such default to the Company, and if such breach has not been cured or if efforts

to cure such breach has not been commenced within the said one (1) year;

Then the Client hereby unequivocally agrees that the Company shall not primarily be responsible for the acts and omissions of its agents or sub-contractors and the Client agrees to waive any/all rights or claims (if any) against the Company permissible by law. Instead, the Client agrees to cooperate with the Company in any proceedings/steps that may be brought by (the Company) and giving the Company a reasonable time to solve matter(s) raised to a conclusion, hence, indemnifying the Company from any such claims / liabilities.

Therefore, Client shall be bound by any possible steps taken by the Company in resolving such claims.

"Reasonable time" In this Context, shall be determined according to the relevant circumstances, but in no event shall be in less than the time, the Company requires pursuing remedy efforts to its conclusion pursuant to provisions of this Contract.

2.4 Consequences of Termination

- a) Upon termination, the Company shall immediately: -
 - i) Terminate all subcontracts in line with the termination notice to the extent they relate to the provision of the Services under this Agreement.
 - ii) Cease offering services to the Client.
- b) Upon termination, the Client shall irreversibly
 - i) pay the Company 35% of the agreed Contractual Sum within 7 days following such termination as the indemnity incurred by the Company in connection with the negotiations or preparations or expenses incurred on reconciliatory meetings, overhead, contract administration, logistic costs, preliminary services and execution of this Contract but excluding any materialistic work delivered (if any) which shall be separately calculated.
 - ii) Continue to abide by the obligations of refraining from sharing with any third party any of the Company's confidential information.
 - iii) Settle any uncontested invoices for services that shall have been rendered by the Company under this agreement.
 - iv) Return to the Company any documents pertaining to the Company's business or any of its trade secrets which are in the Client's possession containing confidential information.
- c) **Survival.** This Agreement shall survive the termination of this Agreement and the Client's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until the Company sends the Client a written notice releasing the Client from this Agreement, whichever occurs first.
- d) The expiration or termination of this Agreement shall be without prejudice to all accrued rights and obligations of the Parties under this Agreement expressed to continue or take effect after expiration or termination.

2.5 The Company's Refund Policy:

- i) The Client hereby agrees that in any event the Client is in view that the Company owes him, the Client shall directly notify the Company in writing or through his lawyer or any representative, then after 14 days of such notification, the Client shall avail to the Company by accompanying his licensed practicing quantity surveyor and accountant with the accounting records for the auditing purposes. Such auditing shall be conducted in accordance with the current prevailing standard rates, principles and practices accepted or/ applied in Kenya.



- ii) The Client hereby unequivocally agrees that in the event the Company owes the Client or/ is indebted/obligated upon conducting the necessary auditing or/ assessments, the refund shall be processed to the Client within three (3) years from the date such audits are issued by the Company – less thirty (35%) of the current prevailing Contractual Sum agreed herein.
- iii) The Client hereby irreversibly accepts that such Company's deductions shall be conclusive in the absence of manifest error.

3.0 Conflicts of Interest

- a) This Contract shall not in any way entertain any act that causes conflicts of interest as per the Company observations/determinations. The Client may be considered to have conflicting interest if:
 - i) The Client has a relationship with his representative, directly or through their parties, that puts them in a position that have access to information about or influence on quotation or any data or influence the Company regarding any data that is incidental to this Contract.
 - ii) The Client or his kin acting at the same time as a consultant participating in preparation of any contract document.
- b) For the purpose of this clause, Subcontractor is any person who has a contract with the Company to perform any of the Work project referred in this (main) Contract.
- c) The Client represents that the execution and performance of this Agreement does not conflict with or breach any contractual, fiduciary or other duty or obligation to which the Subcontractor is bound.

3.1 Dues

- a) Any advance payments to the Supplier/The Client shall not be applicable until absolute work completion.
- b) After full completion of the Work, the Company shall pay the Client subject to the provisions herein.
- c) Payments may be withheld on account of:
 - i) Incomplete or/ defective Work or/ nonconforming work not remedied,
 - ii) Claims asserted or evidence which indicates probable assertion of claims,
 - iii) Failure of the Contractor to make payments properly to Sub-Contractors or for labor, materials, or equipment,
 - iv) Damage to another Contractor or the Company, or
 - v) Unsatisfactory prosecution of the Work by the Contractor, Damages/delays caused to the Company or another party by the Client/Supplier or those under the Client's/Supplier's control either directly or indirectly responsible.
- d) Final payment shall not be due until:
 - i) The Contractor has delivered to the Company a bond, a clean irrevocable letter of credit, cash or other security satisfactory to the Company indemnifying Company against any claim which has been asserted by anyone for labor, materials, equipment or otherwise arising out of the contract or on account of any claim which either Company or Contractor believes may be asserted,
 - ii) The Company has inspected and approved the Work as complying with the contract,
 - iii) Written consent of surety, if any is given,
 - iv) Any manufacturers or suppliers warranties and equipment literature, and any as built plans required are delivered to the Company, and
 - v) The Company and Contractor have complied with all requirements for Final Settlement imposed by applicable law.
- e) The Company may brand/re-paint or service goods delivered where possible with or without Client's consent.
- f) The Company shall possess all surplus materials including

wastage, fossils, and minerals, any object of value or antiquity, structures and other remains or items of geological found on the Site and the client shall apply appropriate disposal means of such materials during and after work performance in consultation with the Company.

3.2 Force Majeure

a) Definition of Force Majeure

For the purposes of this Deed, "Force Majeure" means an event which could not reasonably have been avoided by the parties in the circumstances, which is beyond the reasonable control of a party and which makes a party's performance of its responsibilities hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances and includes, but is not limited to, war, riots, civil disorder, earthquake, storm, flood or adverse weather conditions, strikes, lockouts or other industrial action, terrorist acts, confiscation, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, act of authority whether lawful or unlawful, compliance with any law or governmental order, rules, regulations or directions, curfew restrictions, expropriations, compulsory acquisition, seizure of works, requisition, nationalization, Act of God or natural disaster such as but not limited to violent storms, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage, or destruction by lightning, drought, explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break down of transport, telecommunication or electric current, general labour disturbance, such as but not limited to boycott, strike and lockout, go-slow, occupation of premises and factories, storage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party or any other action by government agencies.

- b) Force Majeure shall not include availability or unavailability of funds to either party or shall not include any event which is caused by the negligence or intentional action of a Party or such Party's subcontractors or agents or employees, or by a failure to observe good professional practice or policies or procedures.
- c) The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Deed insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this Deed.
- d) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay. The Parties shall take all reasonable measures to minimize the consequence of any event of Force Majeure.
- e) A Party affected by an event of Force Majeure shall notify in writing the other Party of such event as soon as possible, and in any event not later than thirty (30) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- f) Not later than 45 days after a Party, as a result of an event of Force Majeure, has become unable to discharge a material portion of its obligations, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

3.3 Liens

- a) The Client shall create and issue any property as the Security acceptable by the Company.



- b) The Company shall have a general lien over all Client's property for security until all debt due to the Company by the Client is realized. If the debt is not discharged fully (whether under any judgement or court order or otherwise) by the Client within seven (7) days on Company's demand either in writing or not, the Company shall realize sufficient relief of the Client's property to discharge the debt.
- c) Any proceeds from the realization such as valuation, assessment, transportation, litigations costs will be perfected at the Client's expense.
- d) Other Company's rights to enforce the claim against the Client will not be prejudiced as a result of exercising the right of lien and the realization of proceed therein if such realization is not sufficient to discharge off the entire debt.
- e) Property Valuation. The Client shall be submitting a periodic valuation report from the Company's accepted valuers for the properties charged /or indicted to the Company. The Company shall also, if the circumstances so warrant, ask for periodic valuation of the properties or any of them.
- f) Unless otherwise stated in this Contract, the said property shall be a continuing security, notwithstanding any intermediate payments or settlements of services, or winding up, liquidation or dissolution of the Client, as the case may be, or any change in the Client's status, constitution, control or ownership for the payment of all sums including any liabilities, fees, charges, costs, future absolute or contingent for which the Client now is or may at any time hereafter be liable to the Company and is to be in addition to and without prejudice to any other security which the Company may now or subsequently hold in respect of such liabilities.
- g) Unless otherwise explicitly stated in this Contract, it is hereby acknowledged and agreed by the Client that there shall be no restriction on the right of the Company of consolidating all properties which the Company may time to time hold from the Client on any account whatsoever and it is hereby declared that no such property in favour of the Company shall be redeemed and /or discharged except on payment not only of the monies secured by the said property but also of all monies secured by every such other property for security.
- h) The Client agrees that in the event of devaluation of the Security, the Company may at its sole and absolute discretion, require that the Client provides additional properties to adequately secure the Company services and /or require the Client to reduce the amount owing under the services offered to match the appropriate loss in market value of the Security. If the Client fails to comply with such requirement within seven (7) business days, then the Company may at its sole absolute discretion exercise any or all of its rights herein stated.
- i) All property received or held by the Company under the Security may be from time to time converted into currency as the Company considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Client.
- j) The Client hereby irrevocably agree that this Contract and the Company's rights shall be in addition to and shall not merge with or prejudice or affect any right, remedy, guarantee, indemnity, lien, pledge, bill, note, mortgage charge or other security that the Company may now or subsequently hold whether from the Client or from any other person (his associates) and the release of any such securities held with or without the consent of the Client shall not discharge the Client from other liabilities if any.
- k) Except otherwise as agreed herein, the Client agrees that any other acts of exercising his right of lien and the realization of all debts against the Company shall prejudice and impair this Contract.
- l) Any attempt by the Client's creditor to obtain an interest in Client's rights herein, whether by attachment, levy, garnishment or otherwise, shall render this Agreement voidable at the Company's option.

3.4 Taxes Obligations

- a) Definition.
The word "tax" shall be construed so as to include any tax (including value added tax) levy, impost, assessment, duty or other charge of similar nature (including, without limitation, value added tax, stamp duty and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and "taxation" shall be construed accordingly and the expression "competent taxing authority" means, in respect of any state or administrative division thereof, any governmental or local authority, monetary agency or central bank having power to collect or levy taxes;
- b) The Contractual Sum agreed herein shall deem to exclude, any value added tax or similar tax chargeable in respect thereof. Where the Company is required by law to make any deduction or withholding from any payment under this Contract, the sum due from the Client in respect of such Client's payment shall be increased to the extent necessary to ensure that after the making of such deduction or withholding, the Company receives a net amount equal to the contractual sum agreed herein as if it had no such deduction or withholding required.
- c) While the Client may be considered non-resident for tax purposes, he still has to pay the applicable taxes arising from this Contract.
- d) Unless exemption is received from the Tax Revenue Authority allowing the Client to account for tax himself under the self-assessment regime, the Company is obliged to deduct tax appropriately as required. The Client is responsible for obtaining his own exemption. It should be noted that exemptions are not transferable.
- e) No interest is paid to the Client on tax retentions held by the Company.
- f) Where the Client is considered non-resident for taxation purposes and is not in possession of an exemption from the Tax Revenue Authority, a reasonable charge will be made for the work carried out in submitting quarterly returns, for annual returns and the preparation of final certificates.

3.5 The Contract Amendment & Variations

- a) 'Variation' means the alteration or modification, adjustment or substitution of and without limitation to the design, quality or quantity of the materials/work applied herein.
- b) This Contract shall not be modified in any way except as expressly provided in this Agreement. The Company reserves the right to change, modify, amend, or update this Agreement from time to time and such amended provisions of the Agreement shall be effective immediately upon being posted on the company website given herein. If the Client do not agree to such provisions, he must stop accessing the Company services with immediate effect. His continuous access/use of the Company services will deem to signify his acceptance of the amended provisions of this Agreement.
- c) At any time, the Company may with or without further reference to the Client, revise, review, vary the contractual sum/price, rates, including choosing, replacing and substituting the construction materials for any reason. Such amendments or variations shall be binding fully upon the Client as if the same were contained in this Contract.
- d) In the event of any conflict or inconsistency between any provision of this Agreement and any additional or amended terms and conditions applicable in respect of this Agreement, save for Clause (c) above, the provisions of this Agreement shall prevail over such additional terms and conditions.

3.6 Accuracy of Information

- i) The Client undertakes to provide accurate information and disclosures wherever required and shall be responsible for the



accuracy, authenticity, validity, regularity or value of any information /or documents provided by the Client or any third party.

- ii) The Company reserves the right to demand the Client other additional information or document(s) that it may require either for;
- a) For establishment and compliance of this Contract/or
 - b) For satisfactory proof of the subject matter inquired of and;

It may terminate this contract, upon investigations if such document is neither provided nor is found to be on corrupt, coercive, fraudulent or on conflict of interest whatsoever.

3.7 Tests & Inspections

- i) The inspections and tests shall be conducted at point of delivery or at the Goods' final destination as specified by the Company.
- ii) The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred, provided that the Client bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and accommodation expenses.
- iii) Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice of seven (7) days including the place (as shall be stipulated by the Company) and time.
- iv) The Supplier shall obtain the necessary consent from his subcontractor assigned to enable the Purchaser or its designated representative to attend the test and/or inspection.
- v) Without any cost to the Company, the Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract.
- vi) The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- vii) The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications.
- viii) The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser and this shall not relieve the Supplier from any delay claims.

The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to this Contract, shall release the Supplier from any warranties or other obligations under this Contract.

3.8 The Liquidated damages

- a) The Parties herein recognize that time is of the essence here and the Company will suffer the financial loss in the event of any work suspension or any work delays beyond a specified time limit, resulting from any failure or negligent act or omission or willful misconduct or breach of any provision by the Client or anyone acting under the Client's direction, control, or on behalf in connection with or incidental to this Contract;
- Then, in view of the difficulty or impossibility of determining or proving the accuracy of such damages/losses incurred by the Company from such work delays or/ suspension(s),

the Client shall (without prejudice to other Company's rights) pay the Company Kenya shillings thirty thousand (Ksh30,000/-) daily from the date the work delayed or/ suspended or/ from the date of the same amount becoming due

until the date of the cause of the such delays/suspension is solved or mediated or remedied by the Client or the actual full repayment of such monies demanded by the Company is settled.

The Client acknowledges and agrees that such charges represent a reasonable pre-estimate of the loss deemed to have suffered by the Company in only maintaining or managing the default/delays or additional requirements of the Client.

- b) The said liquidated damages shall only apply to the Clients' delay in performance of his contractual obligations as stipulated herein and intended only to compensate the Company for additional personnel efforts in administering the Contract regarding normal scheduled completion dates, Company's inconvenience, lost opportunities, and lost Company's confidence and morale in work.
- c) Liquidated damages are not intended to penalize or to include any litigation costs or attorney fees incurred by the Company, or other incidental or consequential damages suffered by the Company due to the Client's default.
- d) The Client agrees that the liquidated damages specified herein are reasonable in amount and not disproportionate to actual anticipated damages. Any other Company's determination without limitation as to the rate, mode, variations, formulas or amount of any extra charges payable, shall be conclusive in the absence of manifest error and therefore the Company shall not be obligated to prove the actual damages incurred and the calculation used to charge against the Client.
- e) The liquidated damages shall not preclude the Company from commencing an action against the Client for any harm caused to the Company resulting from the Client's performance, including but not limited to any other liabilities from time to time. Every right and remedy given by this Agreement to the Company may be exercised from time to time and as often as may be deemed expedient by the Company.
- f) In the event of such work suspension by the Company, the Client shall be responsible for the safety of the project/site including all the valuables left at work.
- g) The Company may resume work within ninety (90) business days from the date of the cause of the suspension is solved or mediated or remedied by the Client and the Company being notified thereof.
- h) Any faults identified on the project either directly or indirectly caused, shall be assumed to be normal shortcomings and/or defects that could be due to unanticipated site conditions, and shall be rectified on Client's expense.

3.9 Communication

- a) Any communications such as complains, approvals, certificates, consents, determinations, notices, requests, inquiries, clarifications and discharges shall be in writing in English language and must be delivered whether in person (against receipt) or by email address hereinabove specified and if intended for Client, the same shall be emailed to the Client at the address defined in the Service Application Form or in other Contract Documents referred hereto.

b) The Company's Authorized Person

- i) The Company's Managing Director is the Company's authorized person appointed by the Company's board from time to time available Registrar of Company data records at that particular time.
- ii) The Managing Director shall have all authority necessary for the Company in directing work performance and signing any contractual negotiations including this Contract document.
- iii) The Company's Managing Director may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation.
- iv) Any delegation or revocation shall not take effect until the Client has received prior notice signed by the



- Company's Managing Director, naming the person and specifying the powers, functions and authority being delegated or revoked.
- v) Unless otherwise advised by the Company in writing, all communications, Project reports and other issues whatsoever arising under this Agreement shall be addressed to the Managing Director and sent through the Company email address specified herein. If such communications are sent to any other person/s or address, even if they are the Company staff, the Company shall have no obligation to respond nor confirm their respective receipt. Therefore, indemnifying the Company against any/all liabilities.
 - vi) The Client shall not be authorized in any way to receive any document or execute any contractual business or make any variation / amendment with any Company staff/agent other than the Managing Director.
 - vii) Unless otherwise delegated in writing, no one apart from the Company Managing Director shall take any action on behalf of the Company.
- c) The Company may reply within thirty (30) business days from the receiving date of the subject matter inquired of or notified or complained of
 - d) Any delay in any Company's response shall not deem that the subject matter inquired of or notified by the Client has been approved/accepted by the Company.
 - e) The Company may refuse to act upon the Client's communication, if:
 - i) The communication(s) is/are not clear.
 - ii) The Company has a reason to believe that the communications did not originate from the Client.
 - iii) The Company believes that in carrying out such communications a law, regulation, code or other duty or obligation which the Company is required to comply with, may be breached.
 - f) The Company shall not be responsible for ensuring the delivery or reconfirming the receipt of any communications to or from the Client; and the Client hereby acknowledges that any review, dissemination, distribution, printing, or copying of any communication by any other party is outside the control of the Company which shall not be liable should such communications be sent out to the wrong person.
 - g) The Company shall not guarantee the integrity and security of any company communication over the internet.
 - h) The Company shall not be responsible for verifying the identity of the recipient of any address and shall not be responsible if any communications emailed that is/are intended for the Client are received by a non-intended recipient.
 - i) In the event the Client or the person addressed has not responded in writing within three (3) days after delivery or website postings/changes or e-mailing thereof, it shall be deemed to have been accepted/approved by the Client or the party addressed, and shall not thereafter be challenged by the Client on any ground whatsoever.
 - j) It is the responsibility of the Client to ensure that his personal information is current, true, correct and accurate. This includes, but not limited to his name, address, mobile numbers and email address. Changes can be made can be made by contacting the Company via email addresses given.
 - k) Until and unless otherwise the Client notifies the Company in writing, any communication the Company receives which are associated with the Client's mobile phone or email address, shall deem to have come from the Client, and the company shall be entitled to rely on such particular communication, whether originated from the client or not.

4.0 Disputes Resolution

Parties hereby agree that any disputes relating to this agreement including its interpretation, application, validity, performance and

breach of this Contract shall at the first instance be commenced in any court of proper jurisdiction located in Eldoret - Kenya and nowhere else as follows:

- Part 1: Notice of Dispute
- Part 2: Resolution by Parties
- Part 3: Technical Disputes
- Part 4: Arbitration

The Client hereby irrevocably agrees at all-time to relieve the Company from any costs involved in any dispute resolution relating to this Contract.

Part 1: Notice of Dispute

- 1.1 The Party wishing to declare any Dispute/claim shall deliver to the other Party a notice identifying the issue in Dispute.

Part 2: Resolution by Parties

- 2.1 Within thirty (30) days after delivery of a notice of a Dispute, the Parties shall attempt in good faith to settle amicably such Dispute by mutual consultation/discussions among those representatives of each Party with the appropriate decision-making authority to resolve it.
- 2.2 In the event the representatives referred in Paragraph 2.1 are unable to reach agreement within thirty (30) days, or such longer period as they may agree, then either Party may refer the matter to an expert in accordance with Part 3 or, if the Dispute is not a Technical Dispute, they may commence arbitration of the Dispute in accordance with Part 4.
- 2.3 The right to have Disputes determined by an expert or by an arbitrator accordingly, shall survive termination of this Agreement.

Part 3: Technical Disputes

- 3.1 In the event that the Parties are unable to resolve a Technical Dispute in accordance with Part 2, then any Party may refer the Technical Dispute to an expert for determination, in which case the provisions of Paragraphs 3.2 to 3.3 shall apply. In the event of any conflict between the terms of this Part 3 and the terms of the remainder of this Agreement other than Parts 1, 2 and 4, the terms of the remainder of this Agreement other than Parts 1, 2 and 4 shall take precedence.
- 3.2 The expert shall have demonstrated expertise in the area to which the Technical Dispute relates and shall not directly or indirectly be associated with either Party as agent, employee, consultant, and contractor or otherwise. In the event that the Parties cannot agree within thirty (30) days as to whether a Dispute falls within the definition of a Technical Dispute, this Part 3 shall not be used to resolve the Dispute and the Parties shall proceed directly to arbitration under Part 4 to resolve the Dispute.
- 3.3 The Party initiating submission of a Technical Dispute to an expert shall provide the other Party with a notice stating that it is submitting the Technical Dispute to an expert and nominating the person it proposes to be the expert. The other Party shall, within 30 days after receiving such notice, notify the initiating Party as to whether the proposed expert is acceptable. No progress in respect of this matter may be commenced unless such notice is given to the other party. If the non-initiating Party fails to respond or notifies the initiating Party that the proposed expert is not acceptable, either Party may request the Chairman for the time being of Kenya Branch of Chartered Institute of Arbitrators of the United Kingdom to nominate an expert as quickly as possible. If the Chairman for the time being of Kenya Branch of Chartered Institute of Arbitrators of the United Kingdom is unwilling or unable to appoint an expert, the Dispute shall not be referred to an expert and either Party may, by notice to the other Party, refer the Dispute to arbitration in accordance with Part 4.



The expert shall be engaged on such reasonable terms as the expert shall accept. The following procedure shall apply to determination of a Dispute by an expert and the Parties shall procure that it is reflected in the expert's terms of engagement:

3.3.1 The expert shall:

- a) give each of the Parties the opportunity of making oral and/or written representations to him on the matter in Dispute within thirty (30) days of the referral of the Dispute to him;
- b) give his decision within thirty (30) days (or such longer period as may be decided by the expert but not exceeding 60 days) from the earlier of the cessation of the period specified in Paragraph 3.3.1(a) or the date that the expert is satisfied that it has received adequate representations from both Parties;
- c) give written reasons for his decision;
- d) determine the amount of his fees and the costs of referral to him in accordance with the terms of his engagement and which Party shall be responsible for such fees and costs; and
- e) Give copies of his decision and the reasons for his decision in writing to each of the Parties.

3.3.2 The Parties shall promptly provide the expert and each other with all such evidence and information within their respective possession or control as the expert may consider necessary for determining the Dispute or which is relevant to and bears upon the Dispute.

3.3.3 If the expert shall fail to give his decision pursuant to Paragraph 3.3.1 within the period specified in Paragraph 3.3.1(b), either Party may by notice to the other require that the Dispute is decided by reference to arbitration pursuant to Part 4, whereupon the expert shall be instructed not to consider the matter further.

3.3.4 The expert shall not act as arbitrator and shall decide the Dispute referred to him using his skill, experience and knowledge and with regard to such matters as are expressly specified in this Agreement to be considered by him and as the expert in his sole discretion considers appropriate. The decision of the expert pursuant to this Part 3 shall (subject to Paragraph 3.3.3) be final and binding on the Parties, save in respect of fraud or manifest error.

3.3.5 Unless the expert's decision is set aside for reasons specified in Paragraph 3.3.4, the Parties agree to be bound by this Agreement in accordance with, and undertake to implement, as the case may be, the determination of the expert.

If a Dispute concerning the expert's determination is submitted to arbitration in accordance with Part 4, the arbitrator shall be bound by the determination of the expert and the only issue for the arbitrator to determine shall be whether the Parties have complied with the determination of the expert.

3.3.6 In the event that the Parties do not agree to be bound by, this Agreement in accordance with, and undertake to implement, as the case may be, the determination of the expert in accordance with Paragraph 3.3.5, such non-compliance with the determination of the expert shall be referred to an arbitrator, in accordance with Part 4.

The arbitrator shall be bound by the determination of the expert given in accordance with Paragraph 3.3.1, and the only issue for the arbitrator to determine shall be the Parties' compliance with the determination of the Expert.

3.3.7 In the event that the expert fails or is unable to act in relation to the Dispute for a continuous period of one month or (being a firm or partnership) is dissolved or discontinued or (being a company) goes into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or commences carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors, then the Parties shall agree on a substitute expert. The substitute expert shall be selected in accordance with the procedure specified in this Paragraph 3.3.

Part 4: Arbitration

4.1 Either Party may refer, by notice to the other Party, any Dispute that is not resolved pursuant to Part 2 or is not required by this Agreement to be determined by an expert under Part 3 shall finally and bindingly determined by an arbitrator in accordance with the Arbitration Act 1995 (Act No. 4 of 1995) of the Laws of Kenya (or any other enabling Law) or any statutory modification thereof, as amended from time to time. The arbitrator shall possess skills in the interpretation, negotiation or implementation of said service performance (as appropriate) and shall not, directly or indirectly, be associated with either Party as officer, employee, consultant, contractor or otherwise.

The Parties will jointly appoint an arbitrator after thirty (30) days of the referral of the Dispute to arbitration.

If an arbitrator is not appointed after thirty (30) days of such referral, either Party may request the Chairman for the time being of Kenya Branch of Chartered Institute of Arbitrators of the United Kingdom to appoint an arbitrator as quickly as possible (and the [the Chairman for the time being of Kenya Branch of Chartered Institute of Arbitrators of the United Kingdom] shall be the appointing authority under the Arbitration Act 1995 (Act No. 4 of 1995) of the Laws of Kenya (or any other enabling Law) or any statutory modification thereof.

The arbitrator shall be engaged on such reasonable terms as shall be accepted/agreed.

The Parties undertake to implement the arbitration award.

4.2 In the event that the arbitrator fails or is unable to act in relation to the Dispute for a continuous period of one month or (being a firm or partnership) is dissolved or discontinued or (being a company) goes into liquidation other than for the purpose of a scheme of reconstruction or amalgamation, or commences carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors, then the Parties shall agree on a substitute arbitrator.

The substitute arbitrator shall be selected in accordance with the procedure specified in Paragraph 4.1

4.3 The arbitrator shall apportion the costs of the arbitration including incidental expenses between the Parties as he shall think fit. The award rendered shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the arbitrator's decision.

4.4 During the course of any arbitration hereunder:

a) The Company may (on her own discretion) suspend the said Works to facilitate an amicable solution of the said discrepancy.

b) Neither Party shall exercise any other remedies arising under this Agreement with respect to the matters in Dispute.

4.5 The arbitrator may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to one or more of other Agreements that provides for arbitration in accordance with the Arbitration Act 1995 (Act No. 4 of 1995) of the Laws of Kenya (or any other enabling Law) or any statutory modification thereof, as amended from time to time;

4.6 If the subject matter of the disputes arises out of or relates to essentially the same facts or transactions. Such consolidated arbitration shall be determined by the arbitrator appointed for the arbitration proceeding that was commenced first in time.

5.0 The Confidentiality

a) **Definition:** The Confidential Information of the Company shall constitute the following without limitation to this Agreement and its existence, the relationship between the Company and the Client, and any other information issued under this Agreement.



- b) Without the express written permission from the Company, the Client shall not at any time publish or cause to be published orally or in writing to any other person whatsoever (including to the public or any section of the public) any information concerning this Agreement or any other information of any nature whatsoever concerning the Company or any other matter regarding the internal affairs of the Company, whether such information or matter is stated to be confidential or not. All information which comes into the Client's possession or knowledge in connection with this Agreement is to be treated as strictly confidential. The Client shall not communicate such information to any third party without a written approval of the Company. The Client shall comply with all provisions of this Contract in the event that it collects, receives, uses, transfers or stores any personal data in the performance of this Agreement. This obligation shall survive the expiration or termination of this Agreement.
- c) Upon termination or upon temporary suspension of works/services, the Client shall return to the Company all or any Confidential Information, including all notes, data, reference materials, sketches, drawings, memorandums, documentations and records which in any way incorporate Confidential Information.
- d) The Client warrants that the Company shall fully own unrestricted right to publicly disclose, use, edit, publish, distribute or display any work done or any of his/her Confidential Information or any of his or her Intellectual Property in any form as may deem appropriate, without incurring any legal claims / implications either for the purposes of when:
- i) Raising cases of conflicts of interest.
 - ii) Preventing any fraud activities.
 - iii) Complying with a legal process or
 - iv) Enforcing the terms of this Agreement or,
 - v) Responding to any claims raised by any third party pursuant to this Contract; or
 - vi) Protecting the rights, property, or
 - vii) For safety of the Company and the public members or
 - viii) Establishing qualification for tender competence of other projects to be carried elsewhere or
 - ix) When engaging in any advertisements or marketing activities.
- e) The Client hereby agrees that the aforesaid disclosure may be made without reference to or from the Client and without inquiry by the Company as the justification or validity of such disclosure.
- f) Unless the Client obtains a written consent from the Company prior any recording, the Client shall not make any audio/video record from any Company representative.

5.1 Intellectual Property Rights.

- i) Intellectual Property-means world-wide, common-law and statutory rights associated with.
- a) Patentable inventions, patents and patent applications.
 - b) Copyrights, copyright applications and copyright registrations.
 - c) The protection of trade and industrial secrets and confidential information.
 - d) Trademarks, trade names, service marks, and logos.
 - e) The Deliverables, discoveries, ideas, concepts, designs, drawings, specifications,
 - f) Techniques, models, data, source code, source files and documentation,
 - g) Object code, documentaries, diagrams, flow charts, research, development, images, photos, videos.
 - h) The Company's trade secrets, processes, procedures, "know-how", techniques and materials, marketing and development plans,

- ii) Each party will retain all right, title, and interest in and to its own pre-existing Intellectual Property irrespective of any disclosure of such Intellectual Property to the other party, subject to any licenses/conditions granted herein.
- iii) The Client will not use any of the Company's or any third party's Intellectual Property in connection with this Agreement unless authorized. Hence relieving the Company from any claim.
- iv) Where the Client is not the owner of such Intellectual Property, the Client will at his own cost obtain from the owner as necessary to enable him to comply with this Agreement.
- v) Subject to the Client's rights in Intellectual Property, all Deliverables, whether complete or in progress, and all Intellectual Property Rights related thereto shall belong to Company, and the Client hereby assigns such rights to Company.
- vi) The Client agrees that the Company will own all patents, inventor's certificates, utility models or other rights, copyrights or trade secrets covering the Deliverables and she (the Company) will have full rights to use Deliverables/skills without any claim on the part of the Client or interference by the Client; And he (the Client) will cause each of its personnel/representative/agents to, waive their respective moral rights therein.
- vii) Except for the limited license to use materials provided by the Company, the Client is granted no right, title, or interest in any Company's Intellectual Property.
- viii) The Client warrants that he is a legal competent adult and a parent/guardian/custodian of the minor, and that he has every right to contract and bind for the minor (if any) to this contract where necessary.
- ix) The copyright of this entire Contract including the content of other Contract Documents (if any) is vested in the Company and no part thereof may be reproduced without their express permission given in writing.

The paper on which this Contract is written shall remain at all times the property of the Company.

5.2 Subcontracting & Assignment

- a) The Company may sub-contract any of its obligations under this Agreement with or without the prior written consent of the Client.
- b) The Company shall have a full and unfettered right to assign the whole or any part of the benefit /or liability of this Contract.
- c) The Client agrees that the Company at all time may engage third parties to provide some or all of the services with or without prior notice.
- d) Neither this agreement nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred by the Client without the prior written consent of the Company.

Third party rights. No one other than a party to this agreement shall have any right to enforce any of its terms.

5.3 Indemnity

- a) Definition. Indemnifying any person against any circumstance includes indemnifying and keeping harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance.
- b) The Client shall always observe and perform all the terms and conditions, covenants and provisions as contained in this Agreement and shall not do, omit or suffer to be done anything whereby the right of the Company is violated or forfeited or jeopardized or extinguished and;



The Client (and any of his agents) shall always indemnify, protect, defend and hold harmless the Company (including any of his agents) from all loss and damage and against all law suits, arbitrations, actions, legal or administrative proceedings, claims, debts, demands, awards, fines, judgments, consequential damages, liabilities, interest, attorney's fees, costs, and expenses of any kind or nature whatsoever whether they may arise before, during or after the execution of this agreement, which are in any manner directly or indirectly caused or contributed in whole or in part, or claimed to be caused in whole or in part through any act, omission, fault or negligence whether active or passive of the Client, or anyone acting under his direction, control, or on his behalf in connection with or incidental to the work under this Agreement.

The phrase "acts or omissions" as used in this section shall mean, any reasonable delay on the part of any party, whether due to negligence, gross negligence, inadvertence or any other cause.

The Client hereby agrees to indemnify and hold harmless the Company from and against all claims, liabilities, losses, damages, and expenses incurred (including any legal costs or penalties and liabilities awarded or imposed by a court or expenses properly incurred) by the Company pursuant to any breach or non-observance by the Client of any of its obligations or representations under this Agreement.

Indemnification shall extend to claims occurring after this Agreement is terminated regardless of any active and/or passive negligent act or omission of client or Company, or their agents or employees.

- c) In consideration of the Client using its best endeavors to promote and protect the interests of the Client, the Client indemnifies the Company in respect of all costs and expenses reasonably incurred on behalf of the Client and in particular all rates, taxes, costs or repairs and alternative, the costs of any litigation, the amount of any damages or penalties that may be recovered against or ordered to be paid by the Company in any way arising out of this Agreement.
- d) The Company's determination as to the amount of such losses, costs, liabilities, claims and expenses shall be conclusive in the absence of manifest error.
- e) The Client's obligation to indemnify shall not only be limited by insurance requirements or by any other provision of this Agreement or by any Law.
- f) If any purported obligation or liability of the Client to the Company which, if valid, would have been the subject of this Contract is not or ceases to be valid or enforceable against the Client on the ground whatsoever, whether or not known to the Company, including, without limitation any illegality or defect in or want of power of the Client or any irregular exercise of such power or any lack of authority by any person purporting to act on behalf of the Client or any legal or other limitation (whether under the limitation of Actions Acts or otherwise), disability, incapacity or any change in the constitution of or any amalgamation, reconstruction or liquidation of the Client, the Client shall nevertheless be liable to the Company in respect of that purported obligation or liability as if were fully valid and enforceable and keep the Company fully indemnified against all damage, loss, costs and expenses arising from any failure of the principal to carry out or discharge any such purported obligation or liability.
- g) Every provision of this agreement by which the Client is obligated in any way shall deem to include the words "at the expense of the Client" unless the context otherwise requires.

- h) Any failure by the Company to notify the Client any undertakings/events, shall not preclude in any way however the validity and/or enforceability of this Contract.
- i) In reference to this Section, 'Indebtedness' shall include any obligation for the payment or repayment of any money (whether present or future, actual or contingent). For the Company to work on credit, or with no or less payments from the Client or if the Client becomes obligated /or indebted to the Company;
The Company rights and remedies available under this contract shall be in addition to any rights and remedies allowed by law.
- j) The Company shall be under no duty to investigate or verify client's compliance with the each and every provisions of this Contract.
- k) Survival. All indemnities contained in this Agreement shall survive the expiration or termination of this Agreement.

5.4 Representations and Warranty.

- i) The Client/Supplier/Contractor shall endeavor all rules of good conscience to conduct his business above board with integrity, transparency, required standards of professional ethics and accountability.
- ii) The warranty provided herein shall not be limited to any other warranty or remedy required by the Contract Documents hereto attached and any applicable laws.
- iii) The Supplier warrants that all Goods
 - a) Are new, unused, and of the most recent or current models,
 - b) Fault-free and to the required standards,
 - c) In good functioning condition, and
 - d) They incorporate all recent improvements in design and materials, The Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier.
- iv) The warranty shall remain valid for twelve (12) months from delivery date of all goods.
- v) The Client/Supplier guarantees to deliver services according to agreed delivery time, required standards, right quantity and quality.
- vi) The Contractor represents and warrants that it is financially sound and duly licensed, with the adequate labor/human resources, equipment and tools, competence, expertise and skills necessary to carry out fully and satisfactorily, within the stipulated completion period, the Works in accordance with this Agreement .
- vii) The Contractor must furnish the company with general written warranty covering quality of workmanship, materials, and equipment and be compelled and held liable thereby for a five year period after practical completion of the contract, except for latent defects, which shall be warranted for ten years.
 - i) The Contractor must make good at his own expense, such repairs and replacements as may be required as a consequence of negligent workmanship or defective material. The Contractor must also produce such warrants and guarantees as described aforesaid from all manufacturers and/or suppliers of materials or equipment incorporated in the project under this contract.
 - ii) The Contractor guarantees and warrants the performance and completion of the design and construction work to the full and complete satisfaction of the Company.
The Contractor remains responsible for the damages caused or identified within 12 (twelve) months after work completion - on account of defects in the construction, or the use of materials of inferior quality furnished by it, or due to any violation of the terms of the Agreement.
- iii) In case of any defect in workmanship or materials, which may become apparent in the course of construction, the Contractor shall, within 7 (seven) calendar days from the



Company's demand, at Contractor's own cost and expense, remedy such portion of the Works done by the Contractor as in the opinion or judgment of the Company is unsound, incorrect or defective or not in accordance with the plans and specifications.

- iv) In case of Contractor's default, failure or refusal to carry out such order to remove and replace the unsound, incorrect or defective portion of the Works within 7 (seven) days as required by the previous clause, the Company may terminate this Agreement and/or engage the services of other persons to carry out the same. The Contractor shall bear all expenses arising there from or incidental thereto.

The Company may require direct reimbursement for the cost of such action from the Contractor, deduct the expenses from any amount due to the Contractor, or deduct the amount from Performance Bond, the Bank Guarantee or the Retention Amount.

- v) If any defects or imperfections are discovered by the Company and communicated to the Contractor after provisional acceptance but prior to final acceptance of the Works due to defective or improper workmanship and/or inferior quality of the material used, the Contractor shall immediately correct such defects within a period of 5 (five) days of receipt of written notice from the Company.

Where the Contractor fails to act within this period, IOM may engage the services of a third party to correct the defect and hold the Contractor liable for the cost of such services. In such circumstances the Contractor shall reimburse the Company the cost of such repair, with interest at 2% (two per cent) per month from the time such expenses were incurred until fully reimbursed.

The Performance Bond, Bank Guarantee and Retention, if not yet released at the time the said defects are found, may be used for this purpose.

- vi) The Contractor shall perform repair work with the utmost care and diligence to protect existing facilities and prevent damage thereto.

In the event that damage to existing facilities is caused by such repairs, the Contractor shall repair such damage at its own expense and to the Company's satisfaction and acceptance.

- vii) The Contractor further warrants that: In all circumstances it shall act in the best interests of the Company;

- a) It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement;
- b) No official or employee of the Company or any third party has received or will receive from, will be offered by, the Contractor any direct or indirect benefit arising from the Agreement or award thereof;
- c) It has not misrepresented or concealed any material facts in the procuring of this Agreement;
- d) All materials used are new, legally sourced and fit for their particular purpose;
- e) No asbestos or any other health hazard materials (lead paints etc.) will be used in the course of the construction;
- f) The Contractor, its staff or shareholders have not previously been declared by the Company ineligible to be awarded contracts by the Company;
- g) It shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child;
- h) The remuneration of the Contractor under this Article 3.1 shall constitute the sole remuneration in connection with this Agreement.

The Contractor, its officers and employees shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or the discharge of its obligations thereunder.

The Contractor shall ensure that any subcontractors, as well as the officers, personnel and agents of either of them, similarly, shall not receive any such additional remuneration.

- iv) The Contractor further warrants that it shall:

Take all appropriate measures to prohibit and prevent actual, attempted and threatened sexual exploitation and abuse (SEA) by its employees or any other persons engaged and controlled by it to perform activities under this Agreement ("other personnel").

For the purpose of this Agreement, SEA shall include:

1. Exchanging any money, goods, services, preferential treatment, job opportunities or other advantages for sexual favors or activities, including humiliating or degrading treatment of a sexual nature; abusing a position of vulnerability, differential power or trust for sexual purposes, and physical intrusion of a sexual nature whether by force or under unequal or coercive conditions.
2. Engaging in sexual activity with a person under the age of 18 ("child"), except if the child is legally married to the concerned employee or other personnel and is over the age of majority or consent both in the child's country of citizenship and in the country of citizenship of the concerned employee or other personnel.
 - a) Strongly discourage its employees or other personnel having sexual relationships with the Company's beneficiaries.
 - b) Report timely to the company any allegations or suspicions of SEA, and investigate and take appropriate corrective measures, including imposing disciplinary measures on the person who has committed SEA.
 - c) Ensure that the SEA provisions are included in all subcontracts.
 - d) Adhere to above commitments at all times. Failure to comply with any of these provisions, shall constitute grounds for immediate termination of this Agreement.
3. The above warranties survive the expiration or termination of this Agreement.

5.5 Waiver

- i) The Company's waiver of all or any portion of this agreement must, without exception, be in writing and signed by the Company's Managing Director, and any action that fails to comply with this requirement will under no circumstances be considered or construed to be a waiver.
- ii) All original rights and powers of the Company under this Agreement will remain in full force, notwithstanding any delay, forbearance failure, omission, delay or neglect or any single or partial exercise of the Company to enforce the rights conferred by this Agreement on any particular matter or by law shall not be deemed to constitute a waiver of other rights or remedies relating to this Contract.
- iii) Any and all rights and remedies which either party may have under this Contract or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other; and any



two or more or all of such rights and remedies may be exercised at the same time.

- iv) At all time the Client expressly agrees to waive in pleading limitations under Limitation of Actions Act (Chapter 22 of the Laws of Kenya) or any other similar enactment or application law that may prevent the further exercise of the right or remedy provided by this Contract or by law preventing further exercise of the right or remedy or the exercise that favors the Company.
- v) Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Contract.
- vi) The rights and remedies of the Company provided by this Contract are cumulative and not exclusive of any right or remedy provided by law.

5.6 Insurance

- a) All such insurance shall be primary and noncontributory.
- b) Prior commencing any work by the Company, the Client agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed pursuant to this Contract. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Client shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to any provision of this Contract by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- c) During construction or any service delivery by the Company, the Client shall, at its cost, keep in full force and effect a policy of builder's risk and liability insurance in a sum equal, from time to time, to three times the amount expended for construction of the project. All risk of loss or damage to the project during the course of construction shall be on Client with the proceeds from insurance thereon payable to the Company.
- d) Without limiting the Client's liability pursuant to the provisions of this Contract, the following insurance cover shall be provided and maintained by the Client for the entire duration of this Agreement:
 - i) Third party liability for any one claim or series of claims arising out of any one accident or event;
 - ii) Workmen's compensation and/or employer's liability insurance which complies with applicable legislation;
 - iii) Automobile public liability and property damage insurance; and
 - iv) Cover against loss or damage to the Works and materials during the construction.
- e) The amount of coverage for each type of insurance is to be in line with relevant industry standards and in an amount acceptable by the Company.
- f) Policies and certificates of insurance are to be provided to the Company prior to the commencement of any Works.
- g) The Client shall sufficiently and comprehensively insure all insurable assets forming part of the Security, any third party claims, loss or destruction or damage to the project and any equipment including without limitations to destruction or loss by fire, theft and such other risks, until duly termination of this Contract.
- h) Provided however that the amount of insurance against loss or destruction or damage to the project and Equipment shall not be less than the greater full replacement value of the project and Equipment entered into pursuant to this Agreement.
- i) Each insurance policy will name the Client as insured and note the Company as the 'First loss payee'.

- j) The Client shall furnish the Company a certificate of insurance or other satisfactory evidence that such insurance coverage is in effect.
- k) The Client shall also take out the Professional Indemnity cover for key personnel involved in work, and a third party liability insurance coverage that will adequately cover the Company against any third party claims until termination of this Contract.
- l) In the event of any damages of any kind the Client's insurance shall operate as the primary insurance and no other insurance of the Company shall be called on to contribute to a loss related to this Contract.
- m) The insurance requirements stated herein are the minimum requirements for this Contract and in no way shall limit the indemnity covenants contained in this Contract.
- n) The Client shall ensure the said project / Premises and the fit-outs are insured during the period of this Contract against structural damage, damage by fire, earthquake, riots and other risks at their own cost.
- o) Any insurance purchases by the Client, shall/must be approved by the Company in prior.
- p) At all-time and throughout this contract performance, the Client agrees not to plead any benefits from the Company under the WIBA Act and OSHA, tax laws (of the Laws of Kenya) or any other similar enactment.
- q) The Client shall be responsible for the safety of all activities on the site and for ensuring that relevant occupational health and safety laws and regulations are followed.

5.7 Discoveries & Site Conditions

- a) All reusable materials (or including remains/wastages) arising from work, shall be the property of the Company. The Client shall deem to have given due credit to the Company, hence indemnifying the Company from any claim(s).
- b) The Company shall own fifty (50%) percent of anything of historical or proceeds or other interest or of significant value unexpectedly discovered work site.
- c) With or without consent from the Client, the Company (without accounting any liability/claim on her side), may use the Client's electricity power, storage facilities and water where necessary without limitation to anything on site that may deem fit for service delivery.

5.8 Severability & Survivability

- a) Each of the provisions of these Contract Terms and Conditions is severable and distinct from each other.
- b) If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect, by any court of competent jurisdiction. Such invalidity, illegality or unenforceability shall not affect any other provision(s) hereof.
- c) If any provision or part-provision of this agreement is deemed deleted under clause 5.6(b), the parties shall negotiate in good faith to agree a replacement provision to the greatest extent possible achieves the intended commercial result of the original provision.
- d) Every provision of this Agreement by its language or context, implies its survival and shall survive any amendment or termination or expiry of this Agreement.

5.9 Joint Drafting

- i) If the Client is more than one person, or is a joint venture, a limited entity, a consortium, or an association, all of the persons shall be jointly and severally liable for each other's acts, omissions and liabilities and references to the Client shall be construed as including a reference to each such person, notwithstanding any change in the constitution of such Client's structure.



- ii) The Client may release or discharge any person(s) or otherwise vary or agree to vary the liability of or to grant time or indulgence to or make other arrangement with any such persons without prejudicing or affecting the rights and remedies of the Company.
- iii) The Company shall be informed prior making changes in any of its legal registration or structure or composition or the constitution of the Client, including but not be restricted to changes in shares or management, business alteration, industrial or labor disputes, industrial or economic downturn, diversification plans, capital expenditure commitments and change in objectives.
- iv) This Contract shall remain a continuing security as to any other persons comprising the Client and such notice shall not diminish or affect the liability of such person and provided further that any person/client giving notice pursuant to the provision of this clause shall remain liable under this Contract:
 - a) In respect of all obligations of the Client to the Company outstanding at the Termination Date together with other company charges on such obligations until actual payment at the rate charged by the Company against the Client;
 - b) In respect of all money, interest, fees, commissions, charges, costs and expenses which will or may become due to the Company from the Client under or in respect of any dealing, transaction or engagement effected or entered into either prior to the Termination Date or on or after the Termination date pursuant to any commitment, express or implied, or undertaken by the Company to the Client prior to the Termination Date; and
 - c) For all legal and other costs, charges and expenses which the Company may incur in preparing, completing, stamping or enforcing this Contract or obtaining payment of any money from the Client or attempting to do so.
- iii) The Company shall be acting in the capacity of an independent person with respect to the Client and nothing herein shall constitute to be or create any kind of partnership or joint venture between the Client and the Company nor the company be deemed to be an employee or agent of the Client.
- iv) This agreement shall not benefit or create any enforceable right cause of action on behalf of any other party.
- v) The Client shall have no power or authority to act for the Client or bind the Client in any manner.
The Client hereby agrees that the Company shall have all powers or authority to act on behalf of the Client or in its name or bind the Client in any manner or including making any representations otherwise to any person.

6.2 Title, Identification & Ownership of Goods Tendered

- i) Without recourse of warranty and upon delivery of goods, the Client/Supplier will transfer/pass to the Company all of his right, title and interest, if any, in such items/good/equipment tendered.
- ii) The Company shall have the right to have and retain possession and use of the Equipment fully without any control or interference from the Client directly or indirectly.
- iii) Parties hereby confirm that the Equipment/goods shall at all times remain the property of the Company.
- iv) The Client/Supplier also agrees and undertakes that the supplied goods can uncontrollably be sold, assigned, hired or pledged by the Company with or without notice to the Client.

6.3 Maintenance of Equipment/Goods Procured.

- i) The Client shall at all time avail spare parts within 24hrs after requisition by the Company and the Company, at its own cost and expenses will keep all Equipment in good repair, condition and working order and shall furnish all parts, mechanisms, devices and servicing required thereof.
- ii) All such parts, mechanisms and devices shall immediately be deemed part of the Equipment for all purposes hereof and shall become the property of the Company.
- iii) In the event, any item of Equipment/goods is lost, stolen or destroyed or damaged beyond repair for any reason, Section 2.9 herein stated shall prevail in remedying for any loss incurred.
- iv) If, however, the insurance claim received by the Company exceeds the amount demanded, the Company shall forthwith pay the difference to the Client.
- v) The Client indisputably agrees and authorize the Company whenever wish to rebrand or alter the said equipment/goods/items tendered.

6.4 Labor Relations, Safety, Health and Welfare.

6.0 Effects of Death or Incapacity of the Client

- a) This Contract shall not be determined or affected by the absenteeism, death, bankruptcy, insanity or incapacity of the Client or of any one or more of the persons constituting the Client.
- b) In the event of absenteeism, death, incapacity, liquidation, bankruptcy or winding up, the Client's estate administrator will be granted upon production of letters of administration or grand of probate for the purposes specified in such letters of administration and to enforce this contract in accordance with the confirmed grant or letters of administration or confirmed grant of probate.
- c) In the event any person(s) constituting a client becomes dead, incapacity, liquidated, bankrupted or wound up, this Contract shall still be inforce by the survivors without reference to the deceased joint client member's family or estate.
- d) The survivor joint client shall furnish the Company with copies ID and copy of the deceased joint client's death certificate and Notification of death or any other requirements the Company deems fit.

6.1 Contractual Relationship

- i) Nothing in this Agreement nor in any purchase order raised is intended to or shall operate to create a partnership, agency or joint venture of any kind between the Parties and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power on behalf of the other Party).
- ii) Nothing contained herein shall deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of a joint venture in between other than the relationship expressed herein.
- e) The Client shall ensure that its equipment is well adapted to the operation at hand and is properly maintained so as to avoid injury to any personnel, damage to Company equipment and /or obstruction of the Company operations;
- d) Any accidents must also be reported within one (1) hour from occurrence to facilitate corrective measures to ensure accidents do not occur.
- e) All accidents shall be investigated jointly by the Company and the Client shall be under obligation to put in place any actions or measures recommended by the Company to avoid future occurrence of such accidents;



- f) The Client warrants that none of its employees shall perform any of the specified for the Company while under the influence of alcohol and/or drugs.
- g) The Company reserves the right to instruct the Client to remove any of its employees or the Subcontractor from work on its reason.

6.5 Performance and Security

- a) Upon execution of this Contract, the Supplier shall unconditionally provide a security deposit to the Company amount of shillings equivalent to 30% of value of goods and services tendered.
- b) The proceeds of such Performance Security shall be payable to the Purchaser as compensation for any damages or loss resulting from the Supplier's acts or omissions or negligence.
- c) The Company shall not just be limited to the security deposit amount and the Client remains liable for any balance.
- d) The Performance Security shall be discharged by the Purchaser and returned to the Supplier in not later than ninety (90) days following the date of Completion of the Supplier's performance obligations under this Contract, including any warranty obligations.

6.6 ACCEPTANCE OF THE WORK

- i) The Contractor shall correct any Work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the Date of Final Settlement of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor, and are in addition to any other remedies or warranties provided by law.
- ii) No act of the Owner or the Company's Representative, either in superintending or directing the Work, or any extension of time for the completion of the Work, shall be regarded as an acceptance of such Work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final notice of the Company. Before any final certificate shall issue, Contractor shall execute an affidavit on the certificate that it accepts the same in full payment and settlement of all claims on account of Work done and materials furnished under this Contract, and that all claims for materials provided or labor performed have been paid or set aside in full. No waiver of any breach of this Contract by the Company or anyone acting on Company's behalf shall be held as a waiver of any other subsequent breach thereof.
- iii) Contractor agrees to guarantee all work under this Contract for a period of one year from the date of Final Settlement by the Company.
If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the Contract, as reasonably determined by the Company or the Company's Representative, then the Contractor shall, when notified by the Company or Company representative, immediately place such guaranteed Work in a condition satisfactory to the Company or Company's Representative.

6.7. PARTICULAR SPECIFICATIONS FOR BOREHOLE DRILLING AND EQUIPPING

I. Purpose The borehole to be drilled, constructed, test pumped and equipped with a submersible pump under this contract shall provide water intended for human use.

The maximum ground water abstraction permitted from the borehole shall be at least 40m³/day with the maximum abstraction period not exceeding 10 hours per day.

The Contractor is deemed to have visited the site, and if unable to locate it or its details he shall apply to the Company for direction.

No claims will be allowed for the traveling or other expenses, which may be incurred by the Contractor's works.

2. Scope of the Work

The works included in this contract consist of two stages:-

STAGE 1:

Stage one comprises of:

A. Hydrological Study and Survey to confirm opportunity of borehole

The Contractor will be required to conduct a hydrological site survey using an established hydrologist to establish the best point to drill a borehole within the plot.

A detailed report is to be given to the Company. The report should clearly indicate if it is viable to drill a borehole.

B. Formal Submittal to governing agencies

The Contractor will have to make applications and acquire permits for drilling a bore hole from relevant authorities.

This include WRMA and NEMA licenses and all other necessary documents as per the local authority requirements at the time of application.

This will necessitate the activity of the next event.

NOTE: - Stage 2 (Borehole drilling) shall take place if items A and B in stage 1 are successful.

STAGE 2: Stage 2 consist of the following:

- i) The drilling of one borehole of sufficient diameter to provide for a finished cased and screened borehole of 200mm diameter to the provisional depth of about 350metres.
- ii) The provision and installation of plain high density synthetic, slotted synthetic casings, and gravel pack, borehole cap, together with cementation works necessary.
- iii) The collection of formation samples at 2 meter interval of drilling progress to the bottom and also water sample at every aquifer struck and at the beginning and at the end of test pumping operation for both chemical and biological analysis.

NOTE: - These depths and any other works can be varied by the Company depending on the actual conditions encountered in the process of executing of the works.

- iv) The supply and installation of the Submersible pump, complete with the necessary accessories / controls. Connection of water from the borehole to the water storage tank.

3. Local Conditions

The borehole will be drilled, constructed and test pump in both unconsolidated and consolidated formation and the Contractor must be prepared to carry out the required work through any type of formation in the project area.

4. Borehole Data

Total depth – 350m of 200mm diameter from surface (**Provisional**)

- a) Casings to be 152mm diameter and screened depth to be determined after borehole construction.
- b) Static water level – not known
- c) Dynamic water level – not known
- d) Recommended pumping rate – 8-12m³/hr (for the purpose of quotation but to be confirmed after testing)
- e) (Pump) setting level – 20m (for the purpose of quotation but to be confirmed after testing)



f) Total dynamic head to be determined on site

5. Casings

- a) Casings to be used as part of the permanent borehole structure shall be stainless steel suitable for borehole and having nominal diameter of 200mm.
- b) If any casing other than that to be left permanently in the borehole is required temporarily for execution of work, it shall be supplied by the Contractor free of charge.

6. Screens

The screens to be furnished and installed shall be of the pipe size variety having a minimum nominal diameter of 152mm and can be fabricated in three meter lengths.

The screens shall be of continuous slot type and constructed entirely of stainless steel suitable for borehole installation. The screen shall have slot size opening of 1.4mm.

7. Grouting

Grouting shall be done by either cement or bentonite to seal off unwanted upper aquifers under direction of the Company.

8. Construction Method

The borehole to be constructed shall be drilled by cable-tool percussion method or the combination air/ hydraulic rotary method.

The method of drilling shall be left to the discretion of the Contractor. After drilling to the final depth the Contractor shall proceed to insert permanent casings and screens as directed by the Company.

9. Gravel Pack

If filter gravel will be necessary, it will consist of durable, naturally rounded quarzitic particles properly washed and cleaned prior to insertion in the borehole.

The gravel shall be introduced in the annular space between the wall of the borehole and the 200mm casing from the bottom to about 2 meters below surface.

The final casing and screens must be centralized before gravel back and the Contractor must supply suitable equipment for lowering of gravel pack.

10. Cementation

The space above the gravel pack shall be grouted with a mix of one part of cement to two parts of sand and two parts of ballast, in order of 1:2:2 concrete may be used near the surface to form an annular plug around the casing of dimensions 1.0 x 1.0 x 1.0 meters.

There shall be 2000mm diameter concrete plinth on top of the borehole and shall be constructed as shall be directed by the Company.

Any other cementation works to be done as directed by the Company.

11. Development

The Contractor shall furnish all necessary pumps, compressor, plungers, bailing or other needed equipment and shall develop the borehole by such approved methods as shall be necessary to give the maximum yield of water per increment of drawdown and extract from the formation of maximum practical quality of such sands as may, during the life of the borehole, be drawn through the screens when the borehole is operating under maximum conditions of draw down.

12. Test Pumping

After the borehole has been completed, constructed and developed, the Contractor shall make necessary arrangements for conducting a 24 hour continuous test pumping up to a maximum of 30hr and 12 hour recovery test under the supervision of the Company.

Where the Company or his representative cannot be present on such pumping test, the Contractor may continue without him keeping accurate records of the test in terms of discharge and drawn down but must seek permission from the Company. Should the Contractor fail to keep such records, the Company shall order the test to be repeated at no extra cost.

13. Sample Formation

The Contractor shall keep an accurate record of the top and bottom of each stratum penetrated and shall save and deliver to the Company a sample of materials taken from each 1m of formation, or at every change of formation and at such other intervals as may be ordered by the Company.

Those samples shall be placed in approved supplied containers with labels which indicate the depth at which the sample was obtained.

14. Water Samples

Water samples shall be collected at every water struck while drilling and also shall be collected at the start of every test and toward the end of the test in a three litres sterilized plastic container for both chemical and bacteriological analysis and submitted in a competent laboratory for analysis.

15. Reports

The Contractor shall submit to the Company daily progress reports showing:-

The depth each day indicating drilling in meters per hour with comments on degree of hardness of materials being penetrated.

- i) Depth at which each water bearing zone is encountered and the rise and fall of water level in different formations.
- ii) The full details of work carried out in respect of operations which are paid for at hourly rate.
- iii) The full details of the number of hours worked each day.

16. Cessation of Work

The Company reserves the rights to stop drilling operations if in his opinion:-

- a) A sufficient supply of water has been obtained.
- b) The work is not being carried out in a satisfactory manner or
- c) Further drilling is unlikely to be advantageous or for any other reason

In this event, payment shall be made only for the amount of work done up to the date of stoppage.

17. Supply and Installation of Pump

The Contractor shall supply and install:-

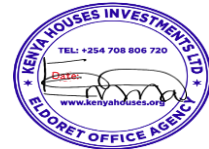
- a) One electric submersible pump which will conform to the specification stated, for operation on 415 volt, 3-phase.
- b) All necessary electrical equipment for the pump such as control panel with starter, ammeter, single phasing cut-out, low voltage cut-out and all necessary cables for connection.
- c) Suitable diameter Galvanized Steel pipe class 'C' to carry water to the surface/ to water storage tank
- d) Low level cut-out switch
- e) Airline 20mm galvanized steel pipe for water level measurements
- f) Pressure gauge
- g) The gate valves, non-return valves before the master meter
- h) Master meter for measuring the water from the borehole.

In addition the Contractor shall carry out 24 hours test run at the completion of the works. This test has to be certified by the Company.

Note on Pump Installation

The Contractor shall install the borehole pump complete with all necessary accessories.

The Contractor shall make the necessary electrical connections and include in his prices all cable, starter-panel, switches etc. required to put the pump in operation while tendering for this



part of the document and return it with full description literature and performance curves for the proposed equipment together with the tender for drilling works.

The installation of the submersible pump into the borehole shall be done immediately the borehole drilling is completed, test pumped and water analyzed for suitability for human consumption.

The final production pump to be installed in the newly drilled borehole shall be determined and installed as per the actual conditions encountered on completion of the drilling works. Hence the specifications given under the section of 'borehole data' are only for the purpose of quotation.

After establishing the actual conditions of the drilled borehole, only the Company's approved submersible pump shall be installed.

18. Electrical works

It shall be the responsibility of the Contractor to provide all electrical wiring between all items of his Contract to ensure the correct function of his equipment.

The Contractor's electrical works shall start from the nearest electrical isolator which is available within the site.

19. Trade Names

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

20. Time for Completion

i) There is need to complete the works in the time stated in the LPO/LSO document.

ii) The Contractor shall make all due preparation safeguard against factors such as labour, shifts fluctuation, weather patterns etc. that might slow his progress and no claims for extras will be considered on account of his failure to do so.

iii) Samples

The Contractor shall furnish at his own cost any samples materials or workmanship that may be called for by the Company for his approval, and any further samples in the case of rejection until such samples are approved by the Services Company, and the Company may reject any materials or workmanship not in his opinion up to the approved samples.

iv) Site conditions

The Contractor shall be deemed to have visited the site to ascertain all condition affecting this contract. It is therefore necessary for the tenderer to ascertain for him/herself before filling in the Bill of Qualities.

It will be presumed that the tenderer will have visited the site, and to have taken into consideration any special difficulties and requirements not referred to herein but associated with a new plant being installed to serve new or existing buildings, as the case may be, and to have made allowance for such in this tender.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement /or have caused this Contract to be executed by the day pursuant to Contract Execution & Date provisions stated herein.