

Republic of Kenya

Employer: Coast Water Works Development Agency



**Project: IMPROVEMENT OF DRINKING WATER AND SANITATION
SYSTEMS IN MOMBASA**

DESIGN, BUILD AND OPERATE OF MWACHE WATER TREATMENT PLANT

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

International Procurement Competition (IPC) No: CWWDA/AFD/PQ/W3/2022-2023

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Republic of Kenya

Coast Water Works Development Agency



IMPROVEMENT OF DRINKING WATER AND SANITATION SYSTEMS IN MOMBASA

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PART 3 – CONDITIONS OF CONTRACT

SECTION 8 – GENERAL CONDITIONS



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General Conditions of Contract (GCC)

The Conditions of Contract are the "General Conditions" which form part of the *Conditions of Contract for Design, Build and Operate Projects first edition 2008* published by the Fédération Internationale Des Ingénieurs–Conseils (FIDIC) and the following "Particular Conditions" which include amendments and addition to such General Conditions.

For the 2008 Gold Book:

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The Conditions of Contract are the "*General Conditions*" which form part of the "*Conditions of Contract for Design, Build and Operate Projects first edition 2008*" published by the Fédération Internationale Des Ingénieurs – Conseils (FIDIC) and the following "*Particular Conditions*" which comprise of AFD's amendments and additions to such General Conditions.

An original copy of the above FIDIC publication i.e. "*Conditions of Contract for Design, Build and Operate Projects*" must be obtained from FIDIC.

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**Appendix –
General Conditions of Dispute Adjudication
Agreement is replaced with the following:**

APPENDIX A – General Conditions of Dispute Board Agreement

- 1 Definition** Each "Dispute Board Agreement" is a tripartite agreement by and between:
- a) The "Employer";
 - b) The "Contractor"; and
 - c) The "Member" who is defined in the Dispute Board Agreement as being:
 - (i) The sole member of the DB ("Dispute Board") or the Operation Service DB (as appropriate), and, where this is the case, all references to the "Other Members" do not apply, or
 - (ii) One of the three persons who are jointly called the "DB" and, where this is the case, the other two persons are called the Other Members".
- The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.
- 2 General Provision** Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:
- a) The Commencement Date defined in the Contract;
 - b) When the Employer, the Contractor and the Member have each signed the Dispute Board Agreement; or
 - c) When the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a Dispute Board Agreement.
- This employment of the Member is a personal appointment. At any time, the Member may give not less than 70-days' Notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.
- The language to be used in all communications, reports, decisions and during all meetings and hearings relating to the business of either the DB or the Operation Service DB shall be the language for communications stated in the Contract Data.
- 3 Warranties** The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Employer's Representative. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.
- When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:
- a) Experienced in the work which the Contractor is to carry out under the Contract;
 - b) Experienced in the interpretation of contract documentation; and
 - c) Fluent in the language for communications defined in the Contract.
- If there is a challenge of a DB Member by either Party or, in the case of a three-person DB, jointly by the Other Members, for lack of independence, notwithstanding any disclosure made or not made by that Member under Clause

4 [General Obligations of the Member] of these General Conditions of Dispute Board Agreement, the challenging Party or Members (as the case may be) may refer the alleged lack of independence to the appointing entity named in the Contract Data under Sub-Clause 20.4 [Failure to Agree Dispute Board] of the General Conditions of Contract. If the appointing entity considers it to be prudent or necessary, it may refer the matter to an independent professional person or body (such as the International Chamber of Commerce) to review and assess the challenge. If such person or body is of the opinion that the Member in question is no longer independent as required by the terms of the Dispute Board Agreement, the Member shall be removed from the DB and the appointing entity shall, without delay, appoint a new Member. Any costs or fees due to the independent person or body shall be shared equally between the Parties.

4 General Obligations of the Member

The Member shall:

- a) Have no interest financial or otherwise in the Employer, the Contractor or Employer's Representative, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- b) Not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Employer's Representative, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- c) Have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Employer's Representative, and any previous involvement in the overall project of which the Contract forms part;
- d) Not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Employer's Representative, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- e) Comply with the annexed "Procedural Rules for Dispute Board Members" ("Rules") and with Sub-Clause 20.5 [Avoidance of Disputes] of the General Conditions of Contract;
- f) Not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural Rules;
- g) Not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Employer's Representative regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- h) Ensure his/her availability for all Site visits and hearings as are necessary;
- i) Become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- j) Treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- k) Be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

- 5 General Obligations of the Employers and the Contractor** The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- a) Be appointed as an arbitrator in any arbitration under the Contract;
- b) Be called as a witness to give evidence concerning any Dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- c) Be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a Dispute to the DB or the Operation Service DB under Sub-Clause 20.6 [*Obtaining Dispute Board's Decision*] or Sub-Clause 20.10 [*Disputes Arising during the Operation Service Period*] of the General Conditions of Contract, which will require the Member to make a Site visit and attend a hearing, the referring Party shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6 Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

- a) A retainer fee per calendar month, which shall be considered as payment in full for:
 - (i) Being available on 28 days' notice for all Site visits and hearings;
 - (ii) Becoming and remaining conversant with all project developments and maintaining relevant files, in accordance with sub-paragraph (i) of Clause 4 hereof [*General Obligations of the Member*];
 - (iii) (All office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
 - (iv) All services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Commissioning Certificate is issued for the whole of the Works.

During the periods when the Operation Service DB is acting, the retainer fee shall be paid monthly until the end of the month in which the appointment expires or is otherwise terminated, or the Member resigns.

- b) A daily fee which shall be considered as payment in full for:
 - (i) Each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the Site, or another location of a meeting with the Other Members (if any);

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- (ii) Each working day on Site visits, hearings or preparing decisions;
and
- (iii) Each day spent reading submissions in preparation for a hearing;
- c) All reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses, including visa charges) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges and faxes: a receipt shall be required for each item in excess of five percent (5%) of the daily fee referred to in sub-paragraph (b) of this Clause;
- d) Any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the Contract Data shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a Site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.9 [*Delayed Payment*] of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without Notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7 hereof.

7 Default and Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' Notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by Notice to the Member. The Notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it

by Notice to the Employer and the Contractor. The Notice shall take effect when received by them both.

Any such Notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a Notice by the Employer or the Contractor, but not by both, shall be of no effect.

If the Member fails to comply with any of his obligations under Clause 4 (a) - (d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB or the Operation Service DB which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

8 Disputes

Any Dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

PROCEDURAL RULES FOR DISPUTE BOARD MEMBERS

1. Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the Site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.
2. The timing of and agenda for each Site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of Site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming Disputes.
3. Site visits shall be attended by the Employer, the Contractor and the Employer's Representative and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each Site visit and before leaving the Site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
4. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
5. If any Dispute is referred to the DB in accordance with Sub-Clause 20.6 [Obtaining Dispute Board's Decision] or Sub-Clause 20.10 [*Disputes Arising during the Operation Service Period*] of the General Conditions of Contract, the DB shall proceed in accordance with the said Sub-Clauses 20.6 and 20.10, and these Rules, or as otherwise agreed by the Employer and the Contractor in writing. Subject to the time allowed to give Notice of a decision and other relevant factors, the DB shall:
 - a) Act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case; and
 - b) Adopt procedures suitable to the Dispute, avoiding unnecessary delay or expense.
6. The DB may conduct a hearing on the Dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
7. If, within 14 days after giving its decision, the members of the DB find and agree that such decision contained errors of fact or principle, the Chairman of the DB (or the sole Member if applicable) shall advise the Employer and the Contractor of the error and issue an addendum to its decision in writing to both Parties.
8. If, within 14 days of receiving a decision from the DB, either Party believes that such decision contains an ambiguity, that Party may seek clarification from the DB in writing with a copy of such request to the other Party. Within 14 days of receiving such a request, the DB shall respond with a copy to the other Party, and if the DB is of the opinion that the decision did contain an error or ambiguity, it may correct its decision by issuing an addendum to its original decision.
9. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Employer's

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Representative, and to proceed in the absence of any party who the DB is satisfied received Notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

10. The Employer and the Contractor empower the DB, among other things, to:
 - a) Establish the procedure to be applied in deciding a Dispute;
 - b) Decide upon the DB's own jurisdiction, and as to the scope of any Dispute referred to it;
 - c) Conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules;
 - d) Take the initiative in ascertaining the facts and matters required for a decision;
 - e) Make use of its own specialist knowledge, if any;
 - f) Decide upon the payment of financing charges in accordance with the Contract;
 - g) Decide upon any provisional relief such as interim or conservatory measures; and
 - h) Open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Employer's Representative, relevant to the Dispute.

11. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.6 [*Obtaining Dispute Board's Decision*], or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:
 - a) It shall convene in private after a hearing, in order to have discussions and prepare its decision;
 - b) It shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
 - c) If a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision; unless:
 - (i) Either the Employer or the Contractor does not agree that they do so; or
 - (ii) The absent Member is the chairman and he/she instructs the other Members not to make a decision.

APPENDIX B – Corrupt and Fraudulent Practices Policy – Social and Environmental Responsibility

1. Corrupt and Fraudulent Practices

The Contracting Authority and the suppliers, contractors, subcontractors, consultants or subconsultants must observe the highest standard of ethics during the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.

By signing the Statement of Integrity the suppliers, contractors, subcontractors, consultants or subconsultants declare that (i) “it did not engage in any practice likely to influence the contract award process to the Contracting Authority’s detriment, and that it did not and will not get involved in any anti-competitive practice”, and that (ii) “the procurement process and the performance of the contract did not and shall not give rise to any act of corruption or fraud”.

Moreover, AFD requires including in the Procurement Documents and AFD-financed contracts a provision requiring that suppliers, contractors, subcontractors, consultants or subconsultants will permit AFD to inspect their accounts and records relating to the procurement process and performance of the AFD-financed contract, and to have them audited by auditors appointed by AFD.

AFD reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- a) Reject a proposal for a contract award if it is established that during the selection process the bidder or consultant that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- b) Declare misprocurement when it is established that, at any time, the Contracting Authority, the suppliers, contractors, subcontractors, consultants, subconsultants or their representatives have engaged in acts of corruption, fraud or anti-competitive practices during the procurement process or performance of the Contract without the Contracting Authority having taken appropriate action in due time satisfactory to AFD to remedy the situation, including by failing to inform AFD at the time they knew of such practices.

AFD defines, for the purposes of this provision, the terms set forth below as follows:

- a) Corruption of a Public Officer means:
 - The act of promising, offering or giving to a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another Person¹ or entity, for such Public Officer to act or refrain from acting in his official capacity; or
 - The act by which a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another Person or entity, for such Public Officer to act or refrain from acting in his official capacity.
- b) A Public Officer shall be construed as meaning:
 - Any person who holds a legislative, executive, administrative or judicial mandate (within the country of the Contracting Authority) regardless of whether that natural Person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the natural Person occupies;

¹ Means any Person whether natural or legal, firm, company, corporation, government, state or state agency or any association, or group of two or more of the foregoing (whether or not having separate legal status).

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- Any other natural Person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
 - Any other natural Person defined as a Public Officer by the national laws of the country of the Contracting Authority.
- c) Corruption of a Private Person² means:
- The act of promising, offering or giving to any Private Person, directly or indirectly, an undue advantage of any kind for himself or for another Person or entity, for such Private Person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or;
 - The act by which any Private Person solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another Person or entity, for such Private Person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.
- d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.
- e) Anti-competitive practices mean:
- Any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply;
 - Any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it;
 - Any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

2. Environmental and Social Responsibility

In order to promote sustainable development, AFD seeks to ensure that internationally recognised environmental and social standards are complied with. Suppliers, contractors, subcontractors, consultants or subconsultants for AFD-financed contracts shall consequently undertake in the Statement of Integrity to:

- a) Comply with and ensure that all their subcontractors or subconsultants comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties;
- b) Implement environmental and social risks mitigation measures when specified in the environmental and social management plan (ESMP) provided by the Contracting Authority.

² Means any natural Person other than a Public Officer.

APPENDIX B-BIS– EIB COVENANT OF INTEGRITY’S TEMPLATE

“We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Conduct (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for [specify the contract or tender invitation] (the “Contract”) and covenant to so inform you if any instance of any such Prohibited Conduct shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, (i) is listed or otherwise subject to EU/UN Sanctions and (ii) in connection with the execution or supply of any works, goods or services for the Contract, will act in contravention of EU/UN Sanctions. We covenant to so inform you if any instance shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

If (i) we have been, or any such director, employee, agent or joint venture partner, where this exists, acting as aforesaid has been, convicted in any court or sanctioned by any authority of any offence involving a Prohibited Conduct in connection with any tendering process or provision of works, goods or services during the five years immediately preceding the date of this Covenant, or (ii) any such director, employee, agent or a representative of a joint venture partner, where this exists, has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Conduct, or (iii) we have been, or any of our directors, employees, agents or joint venture partners, where these exist, acting as aforesaid has been excluded or otherwise sanctioned by the EU Institutions or any major Multi-lateral Development Bank (including World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank or Inter-American Development Bank) from participation in a tendering procedure on the grounds of Prohibited Conduct, we give details of that conviction, dismissal or resignation, or exclusion below, together with details of the measures that we have taken, or shall take, to ensure that neither this company nor any of our directors, employees or agents commits any Prohibited Conduct in connection with the Contract [give details if necessary].

We acknowledge that if we are subject to an exclusion decision by the European Investment Bank (EIB), we will not be eligible to be awarded a contract to be financed by the EIB.

We grant [indicate the name of the Project Promoter], the European Investment Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right to inspect and copy our books and records and those of all our sub-contractors under the Contract. We accept to preserve these books and records generally in accordance with applicable law but in any case for at least six years from the date of tender submission and in the event we are awarded the Contract, at least six years from the date of substantial performance of the Contract.”

For the purpose of this Covenant, Prohibited Conduct has the meaning provided in the EIB’s Anti-Fraud Policy³.

³ EIB’s Anti-Fraud Policy for definitions (<http://www.eib.org/infocentre/publications/all/anti-fraud-policy.htm>)

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Note: This Covenant must be sent to the Bank together with the contract in the case of an international procurement procedure (as defined in article 3.3.2). In other cases, it must be kept by the promoter and available upon request from the Bank.

APPENDIX C – Eligibility Criteria

Eligibility in AFD-Financed Procurement

1. Financing allocated by AFD to a Contracting Authority has been entirely untied since 1st January 2002. To the exception of any equipment or any sector which is subject to an embargo by the United Nations, the European Union or France, all goods, works, plants, consulting services and non-consulting services are eligible for AFD financing regardless of the country of origin of the supplier, contractor, subcontractor, consultant or subconsultant inputs or resources used in the implementation processes. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.
2. Natural or legal Persons⁴ (including all members of a joint venture or any of their suppliers, contractors, subcontractors, consultants or subconsultants) shall not be awarded an AFD-financed contract if, on the date of submission of an application, a bid or a proposal, or on the date of award of a contract, they:
 - 2.1 Are bankrupt or being wound up or ceasing their activities, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from a similar procedure;
 - 2.2 Have been:
 - a) convicted, within the past five years by a court decision, which has the force of *res judicata* in the country where the contract is implemented, of fraud, corruption or of any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this conviction is not relevant in the context of the Contract;
 - b) subject to an administrative sanction within the past five years by the European Union or by the competent authorities of the country where they are constituted, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this sanction is not relevant in the context of the Contract;
 - c) convicted, within the past five years by a court decision, which has the force of *res judicata*, of fraud, corruption or of any other offense committed during the procurement process or performance of an AFD-financed contract;
 - 2.3 Are listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight-against-terrorist financing or threat to international peace and security;
 - 2.4 Have been subject within the past five years to a contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against them;
 - 2.5 Have not fulfilled their fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where they are constituted or the Contracting Authority's country;

⁴ Means any Person whether natural or legal, firm, company, corporation, government, state or state agency or any association, or group of two or more of the foregoing (whether or not having separate legal status).

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Section 8 – General Conditions of Contract

- 2.6 Are subject to an exclusion decision of the World Bank and are listed on the website <http://www.worldbank.org/debar>, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this exclusion is not relevant in the context of the Contract;
 - 2.7 Have created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of the Contract.
3. State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to AFD's satisfaction, through all relevant documents, including its Charter and other information AFD may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

Republic of Kenya

Coast Water Works Development Agency



IMPROVEMENT OF DRINKING WATER AND SANITATION SYSTEMS IN MOMBASA

DESIGN, BUILD AND OPERATE OF MWACHE WATER TREATMENT PLANT

PART 3 – Conditions of Contract

SECTION IX – Particular Conditions of Contract



INTRODUCTION

The **Conditions of Contract comprise the "General Conditions"**, which form part of the "Conditions of Contract for Design, Build and Operate Projects First Edition 2008" published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), **"Particular Conditions Part A - Contract Data" and "Particular Conditions Part B – Special Provisions"**, which include amendments and additions to the General Conditions.

The provisions in the Particular Conditions Part B – Special Provisions take precedence over the equivalent provisions under the same Sub-Clause number(s) in the General Conditions, and the provisions of the Particular Conditions Part A – Contract Data take precedence over the Particular Conditions Part B – Special Provisions. Any other parts of the General Conditions not referred to in the following Particular Conditions Part B – Special Provisions, shall remain unchanged and valid for the application of the Contract.

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Part A – Contract Data

Conditions	Sub-Clause	Data
Contract name and identification	N/A	CWWDA/AFD/W3/2022-2023
Contractor’s Key Personnel names and contact details:	1.1.21 & 6.9	To be determined upon contract signing
Cut-Off Date (number of days after the Time for Completion of Design-Build):	1.1.26	900 days
Employer’s name and address:	1.1.32	Coast Water Works Development Agency (CWWDA) P.O. Box 90417 – 80100, Nkrumah Road, Off Mikindani Street, Mombasa - Kenya Telephone: +254-041-2315230 Attention: Project Coordinator and Procurement Manager Electronic mail address: dkanui@gmail.com or info@cwvda.go.ke
Employer’s Representative’s name and address: – For the Design Build Period: – For the Operation Service Period:	1.1.35	To be determined upon contract signing _____ _____ <i>[insert the full name and address (street, number, city or town, country)]</i> _____ _____ <i>[insert the full name and address (street, number, city or town, country)]</i>
Parts of the Works that shall be designated a Section for the purposes of the Contract:	1.1.70	If Sections are to be used, refer to Table: Summary of Sections below. The Works are divided into 2 Parts: - Firm Part - Conditional Part
Time for Completion of Design-Build:	1.1.78 & 9.2	Refer to Table: Summary of Sections below.
Time for completion of each Section:	1.1.78 & 9.2	If Sections are to be used, refer to Table: Summary of Sections below.
Social Supervisor	1.1.84	"Social Supervisor" means the person appointed by the Employer, if the case may be, to act as the social supervisor, for the purposes of the Contract, in accordance with article 39.12 of the ESHS Specifications, and named in the Contract

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Conditions	Sub-Clause	Data
		Data at Article 1.1.2.4 above, or any other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 <i>[Replacement of the Engineer]</i> .
Social Supervisor	1.1.84	The Social Supervisor is <i>[insert name and address]</i>
ESHS Specifications:	1.1.85	ESHS Specifications are applicable: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/>
Social Inclusion	1.1.86	Social Inclusions are applicable: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/>
Agreed systems of electronic transmission:	1.3	These communications shall be in the form of an un-editable record attached to an electronic mail.
Employer's Representative contact details for communications: – For the Design-Build Period:	1.3	_____ _____ <i>[insert name, title of Employer's Representative, email address and telephone number]</i>
– For the Operation Service Period:		_____ _____ <i>[insert name, title of Employer's Representative, email address and telephone number]</i>
Contractor's name and address for communications:	1.3	To be determined upon contract signing
Governing Law:	1.4	Contract shall be governed by the law of Kenya
Ruling Language:	1.4	<i>English</i>
Language for communications:	1.4	<i>English</i>
Time for access to the Site:	2.1	No later than the Commencement Date, except for the following parts (if applicable), with detailed description of the parts concerned: none.
Employer's Representative's Duties and Authority:	3.1	The Employer's Representative shall obtain the specific approval of the Employer in the following instances: <ul style="list-style-type: none"> ✓ Issuing any instruction resulting in substantial changes to the Works, or an increase of the Contract Price and/or an extension of the Time for Completion; ✓ Proceeding to Determination under Sub-Clause 3.5; ✓ Issuing Interim Payment Certificate under Sub-Clause 14.7; ✓ Issuance of a Commissioning Certificate under Clause 10; ✓ Instructing a Variation under Sub-Clause 13.1, and/or approving a proposal for Variation under Sub-Clause 13.3 submitted by the Contractor in accordance with Sub-Clause 13.1 or 13.2;

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Conditions	Sub-Clause	Data
		<ul style="list-style-type: none"> ✓ Specifying the amount payable in each of the applicable currencies under Sub-clause 13.4; ✓ Acting under Sub-Clause 10.4; ✓ Instruction for use of Provisional Sums under Sub-Clause 13.5.
Performance Security:	4.2	The Performance Security will be in the form of a demand guarantee in the amount(s) of 10 percent of the Accepted Contract Amount for the Design Build and in the same currency(ies) of the Accepted Contract Amount.
Reduction in Performance Security at the end of the Retention Period:	4.2	50%
Subcontractors:	4.4	Direct payment of Subcontractors is allowed
Nominated Subcontractors	4.5	None
Period for notification of errors, faults and other defects in the Employer's Requirements:	5.1	90 days after the Commencement Date.
Contractor's Documents requiring approval.	5.2	<p>In addition to the documents listed in the Employer's Requirements, the Contractor shall provide the following documents as part of the Contract:</p> <ul style="list-style-type: none"> a) Shop drawings to be approved by the Employer's Representative prior to starting the Works; b) As-built drawings to be approved by the Employer's Representative prior to completion of the Works; and c) Operation and maintenance manuals.
Normal working hours on the Site:	6.5	<p>8:00 a.m. to 5:00 p.m. from Monday to Friday</p> <p>8:00 a.m to 1:00 p.m on Saturdays</p>
Locally recognized days of rest	6.5	Saturdays afternoon and Sundays
Ownership of the equipments that will be donated as specified in the social inclusion requirements	6.12	<p>The equipment listed in the ESHS Specifications for donation as per the social inclusion requirements shall be donated to the beneficiaries selected by the Contractor and confirmed in accordance with ESHS Specifications – Article 39.12.1.</p> <p>These equipment will be donated at the latest at the time Performance Certificate is issued by the Engineer, in exchange of a donation receipt signed by each targeted beneficiary.</p>
Commencement date	8.1	<p>The Commencement Date of the Firm Part shall be within 60 days after the Contractor receives the Letter of Acceptance.</p> <p>The maximum time period for the Employer to notify the Conditional Part is: 365 days.</p> <p>The Conditional Part (if decided by the Employer) will be notified by a Commencement Order and the Employer is not bound to notify the Conditional Part.</p>

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Conditions	Sub-Clause	Data
		The Commencement Date of the Conditional Part (if notified) is: within 60 days after the Contractor receives the Commencement Order of the Conditional Part.
Operation Service Period:	8.2	The Contractor shall be responsible for Operation Service Period of two (2) years after the issuance of Commissioning Certificate, for the firm part only or for both firm and conditional part (whether the conditional part is notified or not).
Extension of Time for Completion of Design-Build / Exceptionally adverse climatic conditions	9.3	Not applicable
Amount of delay damages	9.6	0.1 % of the Accepted Contract Amount for Design-Build.
Maximum amount of delay damages:	9.6	10 % of the Accepted Contract Amount for Design-Build.
Maximum amount of compensation payable by Contractor:	10.6(a)	100% of the Accepted Contract Amount]
Maximum amount of compensation payable by Employer:	10.6(b)	100% of the Accepted Contract Amount]
Percentage rate to be applied to Provisional Sums:	13.5	10%.
Contract Price and Rates and Prices to be adjusted for changes in cost as further detailed in the Schedule of Payments: a) Design-Build b) Operation Service	13.8	Yes Yes
The Contract Price:	14.1	The following taxes, duties and fees exemptions apply to the Contract: None.
Amount of Advance Payment (percent of Accepted Contract Amount for the Design-Build):	14.2	Percentage of the Accepted Contract Amount for the Design-Build payable in the currencies and proportions in which the Accepted Contract Amount for the Design-Build is payable: <i>10 % of the Accepted Design and Built Component</i>
Percentage deductions for the repayment of the Advance Payment:	14.2	<i>20 % of each IPC until complete repayment.</i>
Requirements for submission of Statements if different from the GCC and PCC:	14.3	<i>5 hard copies + 1 digital copy</i>
Percentage of Retention:	14.3	5%
Limit of Retention Money:	14.3	<i>5% of the Accepted Contract Amount</i>

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Conditions	Sub-Clause	Data
Minimum Amount of Interim Payment Certificate applicable for the Design-Build:	14.7(b)	2 % of the Accepted Contract Amount
Financing charges for delayed payment:	14.9	Libor + 2% (annual simple interest rate)
Currencies, proportions and rates of exchange of Contract Price:	14.17	As stated in the Appendix 1 to the Part 1 – Section 4 - Price Schedules of this Contract.
Currencies of Payment of damages shall be: – During the Design-Build – During the Operation Service:	14.17	<i>As stated in the Appendix 3 to the Contract Agreement – Performance Damages</i> <i>As stated in the Appendix 3 to the Contract Agreement – Performance Damages</i>
Maintenance Retention Fund	14.19	<i>The Employer chooses to create a Maintenance Retention Fund, by deducting five percent (5%) from the value of each interim payment during the Operation Service Period, until the last Interim Payment Certificate is issued.</i>
Maximum total liability of the Contractor shall not exceed:	17.8	100% of the Accepted Contract Amount
Insurance for the Works - Permitted deductible limits:	19.2(a)(i)	100 % of the Accepted Contract Amount excluded Design and Operation and Maintenance period
Insurance for the Works – Employer's Risks:	19.2(a)(4)	Employer's Risks under GCC Sub-Clause 17.1(b)(iii) to form part of the insurance cover provided by the Contractor: _____ <i>[List those operation of the forces of nature which are to be covered by the Contractor's insurance for the Works; otherwise state "None"]</i>
Insurance for the Works – Exceptional Risks:	19.2(a)(5)	Exceptional Event under GCC Sub-Clause 18.1(f) to form part of the insurance cover provided by the Contractor: Earthquake / Earth Movement Flood Hail Landslide Tsunami Volcanic eruption Windstorm
Insurance of Contractor's Equipment (minimum amount required):	19.2(b)	700,000 €
Minimum amount of professional liability insurance required during the Design-Build Period:	19.2(c)	5 % of the Accepted Contract Amount or 100% of the amount of the Design bill, whichever is the highest.

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Conditions	Sub-Clause	Data
Period for which professional liability insurance required during the Design-Build Period:	19.2(c)	<i>11 years</i>
Minimum amount of insurance required for injury to persons and damage to property:	19.2(d)	<i>700,000 €</i>
Minimum amount of fire extended cover insurance required:	19.3(a)	<i>An amount equal to full replacement value of the works.</i>
Minimum amount of insurance required to cover injury to any person and damage to property:	19.3(b)	<i>700,000 €</i>
Minimum amount of professional liability insurance required during the Operation Service Period:	19.3(f)	<i>5% of the Accepted Contract Amount for the Operation and Maintenance Period</i>
Period for which professional liability insurance required during the Operation Service Period:	19.3(f)	<i>11 years</i>
Date of appointment of the Dispute Board (or DB):	20.3	<i>28 days after the Commencement Date.</i>
The DB shall be comprised of:	20.3	<i>three Members</i>
List of potential DB sole members:	20.4	<i>[only when the Dispute Board is to be comprised of one sole member, list names of potential sole members; if no potential sole members are to be included, insert: "none"]</i>
Appointing entity (official) for DB members, if not agreed between Parties:	20.4	<i>President of FIDIC – International Federation of Consulting Engineers, Switzerland</i>
Institution and rules administering the arbitration	20.8(a)	<i>International arbitration shall be administered by and conducted in accordance with the rules of the International Chamber of Commerce</i>
The place of arbitration:	20.8(a)	<i>to be defined before signature. Shall be a neutral location (i.e. not located in the Employer's country nor in the Contractor's country).</i>

Table: Summary of Sections

Section Name/Description (Sub-Clause 1.1.70)	Time for Completion of Design Build (Sub-Clause 1.1.78)	Damages for Delay (Sub-Clause 9.6)
Firm Part (Phase 1, WTP 50%)	900 days	0.1 % of the Accepted Contract Amount for Design-Build of the Firm Part.
Conditional Part (Phase 2)	900 days upon reception of the corresponding commencement order (if notified)	0.1 % of the Accepted Contract Amount for Design-Build of the Conditional Part.

Part B – Specific Provisions

CLAUSE 1: GENERAL PROVISIONS	
Sub-Clause 1.1 - Definitions	
Sub-Clause 1.1.1: Accepted Contract Amount	<i>Delete reference to "Asset Replacement Fund".</i>
Sub-Clause 1.1.2: Asset Replacement Fund	<i>This Sub-Clause is not applicable, to be deleted.</i>
Sub-Clause 1.1.3: Asset Replacement Schedule	<i>This Sub-Clause is not applicable, to be deleted.</i>
Sub-Clause 1.1.4: Auditing Body	<i>This Sub-Clause is not applicable, to be deleted.</i>
Sub-Clause 1.1.11: Contract Agreement	<i>Delete "(if any)" from the definition.</i>
Sub-Clause 1.1.21: Key Personnel	<i>The following is added at the end of the sub-clause: "Contractor's Personnel includes Key Personnel as named in Part A - Contract Data."</i>
Sub-Clause 1.1.24: Cost Plus Profit	<i>Add the following new paragraph to the end of the Sub-Clause: "In these Conditions, provisions including the expression "Cost plus profit" require this profit to be one-twentieth (5%) of this Cost."</i>
Sub-Clause 1.1.27: DAB	<i>The whole Sub-Clause is replaced with: "DB means the person or three persons appointed under Sub-Clause 20.3 [Appointment of the Dispute Board] or Sub-Clause 20.4 [Failure to Agree on the Composition of the Dispute Board] or Sub-Clause 20.10 [Disputes Arising under the Operation Service Period]."</i>
Sub-Clause 1.1.33: Employer's Equipment	<i>Delete "Employer's Requirements" and replace with "Particular Conditions of Contract".</i>
Sub-Clause 1.1.49: Letter of Tender	<i>Insert "or Letter of Bid" after "Letter of Tender".</i>
Sub-Clause 1.1.51: Maintenance Retention Fund and Maintenance Retention Guarantee	<i>This Sub-Clause is not applicable, to be deleted.</i>
Sub-Clause 1.1.62: Plant	<i>Add to the end: "...including vehicles purchased for the Employer and relating to the construction or operation of the Works."</i>
Sub-Clause 1.1.66: Retention Period	<i>The following Sub-Clause is modified as follows: "Retention Period" means the period of 1 year after the date stated in the Commissioning Certificate.</i>
Sub-Clause 1.1.72: Site	<i>After "are to be executed", ", including storage and working areas," is added.</i>
New Sub-Clause 1.1.84: Accepted Contract Amount for the Design Build	<i>The following is added as a new Sub-Clause: "1.1.84 "Accepted Contract Amount for the Design Build" means the amount accepted in the Letter of Acceptance for the Design-Build of the Works;"</i>
New Sub-Clause 1.1.85: Accepted Contract Amount for the Operation Service	<i>The following is added as a new Sub-Clause: "1.1.85 "Accepted Contract Amount for the Operation Service" means the amount accepted in the Letter of Acceptance for the provision of the Operation Service;"</i>

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New Sub-Clause 1.1.86: AFD	<i>The following is added as a new Sub-Clause:</i> "1.1.86 "AFD" means <i>Agence Française de Développement</i> , being specified that, according to French laws and regulations, AFD is not a bank but a Specialized Financial institution ("Institution Financière Spécialisée")."
New Sub-Clause 1.1.87: EPP	<i>The following is added as a new Sub-Clause:</i> "1.1.87 "EPP" stands for stands for Environmental Protection Plan, and has the meaning defined in the ESHS Specifications."
New Sub-Clause 1.1.88: ESHS Specifications	<i>The following is added as a new Sub-Clause:</i> "1.1.88 "ESHS Specifications" means the document entitled environmental, social, health and safety specifications, as included in the Employer's Requirements, and any additions and modifications to it in accordance with the Contract. Such document specifies the environmental, social, health and safety obligations of the Contractor."
New Sub-Clause 1.1.89: Existing Facilities	<i>The following is added as a new Sub-Clause:</i> "1.1.89 "Existing Facilities" means the existing plant, equipment, buildings and other assets at the Site to be taken over and operated by the Contractor as further described in the Employer's Requirements."
New Sub-Clause 1.1.90: Influent	<i>The following is added as a new Sub-Clause:</i> "1.1.90 "Influent" means the untreated water/ wastewater entering the Works at the delivery point to the Works)."
New Sub-Clause 1.1.91: Influent Baseline	<i>The following is added as a new Sub-Clause:</i> "1.1.91 "Influent Baseline" means the quality characteristics of the untreated Influent as set out in the Employer's Requirements, used as the baseline for the design of the Works;"
New Sub-Clause 1.1.93: Performance Guarantees	<i>The following is added as a new Sub-Clause:</i> "1.1.93 "Performance Guarantees" means the standards to be achieved by the Contractor during the Operation Service Period and includes the standards specified in the Schedule of Performance Guarantees."
New Sub-Clause 1.1.94: Project Area	<i>The following is added as a new Sub-Clause:</i> "1.1.94 "Project Area" has the meaning defined in the ESHS Specifications."
New Sub-Clause 1.1.95: Schedule of Performance Guarantees	<i>The following is added as a new Sub-Clause:</i> "1.1.95 "Schedule of Performance Guarantees" means the schedule set out in Appendix 2 to the Contract Agreement specifying the core Performance Guarantees to be met by the Works and achieved by the Contractor at commissioning and throughout the whole Operation Service Period;"
New Sub-Clause 1.1.96: Worksite - ESMP	<i>The following is added as a new Sub-Clause:</i> "1.1.96 "Worksite - ESMP" stands for Worksite Environmental and Social Management Plan, and has the meaning defined in the ESHS Specifications."
Sub-Clause 1.2: Interpretation	<i>The following is added at the beginning of the Sub-Clause:</i> "Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of the Parties thereunder shall be prescribed by Incoterms. Incoterms means international rules for interpreting

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	<p>trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1^{er}, 75008 Paris, France".</p> <p><i>Add to the end of listing new items (g), (h) and (i):</i></p> <p>(g) "the word "Tender" is synonymous with "Bid" and "Tenderer" with "Bidder" and the words "Tender Documents" with "Bidding Documents";</p> <p>(h) the words "Schedule of Guarantees" are synonymous with "Schedule of Performance Guarantees" under the Contract;</p> <p>(i) the words "Contractor's Proposal" are synonymous with "Contractor's Technical Bid"."</p>
Sub-Clause 1.3: Notices and Other Communications	<p><i>In the first paragraph, delete "...and requests..." and replace with "...requests and discharges..."</i></p> <p><i>Add the following at the end of item (c), after "Contract Data" and before ";":</i></p> <p>". In case of electronic transmission, these communications shall be in the form of an un-editable record attached to an electronic mail, such as a PDF document for instance, and any other communication transmitted in a different manner, such as the email body text, shall not be construed as communication under the Contract;"</p> <p><i>Before the last paragraph, add the following sentence:</i></p> <p>"Delivery of communications, by any authorized method of transmission, shall be made against receipt."</p>
Sub-Clause 1.5: Priority of Documents	<p><i>At the end of sub-paragraph (a), delete "(if any)".</i></p>
Sub-Clause 1.6: Contract Agreement	<p><i>In the first sentence delete "...they agree otherwise." and replace with: "...these Particular Conditions establish otherwise."</i></p>
Sub-Clause 1.7: Operating License	<p><i>Delete the first two paragraphs and replace with the following:</i></p> <p>"In consideration of the Contractor's performance of the Operation Service, from the date of commencement of the Operation Service the Employer grants to the Contractor for the Operation Service Period, the exclusive right, license and authority to occupy, use and enjoy the Site free of charge for the purposes of carrying the Operation Services.</p> <p>Together with the Letter or Acceptance, the Employer shall, where necessary, issue, or cause to be issued, to the Contractor the Operating License or equivalent legal authorization to enable the Contractor to operate and maintain the Works during the Operation Service Period."</p> <p>This Operating License shall come into full force and effect upon the issue of the Commissioning Certificate required under Clause 11.7 and shall remain in force during the Operation Service Period."</p>
Sub-Clause 1.8: Assignment	<p><i>The whole sub-clause is replaced with the following:</i></p> <p>"(a) Except as provided in (b) and (c) below, neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract without the consent of the other Party.</p> <p>(b) The Contractor may as security in favour of a bank or financial institution, assign its right to any monies due, or to become due, under the Contract.</p> <p>(c) During the Operation Service Period, the Employer may assign the whole of the Contract to any third party, subject to the following:</p> <p>(i) The Employer shall provide at least 90 days' written Notice to the Contractor of its intention to assign the Contract. Such</p>

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	<p>Notice shall specify the financial arrangements that have been made for payment of the Contract Price to the Contractor.</p> <p>(ii) The Employer shall not assign the Contract until reasonable evidence has been provided to the Contractor that financial arrangements have been made, and will be maintained, which will enable the third party to pay the Contract Price at the times and in the manner prescribed by the Contract.</p>
Sub-Clause 1.9: Care and Supply of Documents	<p><i>Delete the 2nd sentence of the 1st paragraph in its entirety, and replace it by:</i></p> <p>"The Contractor shall supply to the Employer's Representative each of the Contractor's Documents in one (1) soft (digital) copy and two (2) hard (paper) copies".</p> <p><i>In the 1st sentence of the 2nd paragraph, delete "Employer's Requirements" and replace with "Particular Conditions of Contract".</i></p> <p><i>In the last paragraph delete "...of a technical nature...".</i></p>
Sub-Clause 1.13: Confidential Details	<p><i>Sub-Clause 1.13 is replaced with the following in its entirety:</i></p> <p>1.13 Confidential Details</p> <p>The Contractor's Personnel and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.</p> <p>Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However:</p> <p>a) The Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects;</p> <p>b) The Employer shall be permitted to disclose any detail that the Contractor has not classified as confidential; and</p> <p>c) Such restrictions shall not relate to the Employer, when exercising his rights under Sub-Clause 15.2 <i>[Termination for Contractor's Default]</i>."</p>
Sub-Clause 1.14: Compliance with Laws	<p><i>At the end of sub-paragraph (b) delete "; and" and add: "..., unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence; and"</i></p>
New Sub-Clause 1.16: Inspections and Audit by AFD	<p><i>The following is added as a new Sub-Clause:</i></p> <p>1.16 Inspections and Audit by AFD</p> <p>Pursuant to paragraph 2.2 e. of Appendix B to the General Conditions, the Contractor shall permit and shall cause its Subcontractors and subconsultants to permit, AFD and/or persons appointed by AFD to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or Contract execution, and to have such accounts and records audited by auditors appointed by AFD if requested by AFD."</p>
New Sub-Clause 1.17: Non Waiver	<p><i>The following is added as a new Sub-Clause:</i></p> <p>1.17 Non Waiver</p> <p>Except as otherwise specifically provided for in the Contract, no failure or delay by either Party in exercising any right or remedy provided by the Laws or pursuant to the Contract will impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy</p>

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	will preclude any other or further exercise of it or the exercise of any other right or remedy."
New Sub-Clause 1.18: Survival of Obligations	<p><i>The following is added as a new Sub-Clause:</i></p> <p>"1.18 Survival of Obligations</p> <p>Obligations under the Contract, which by their nature would continue beyond the termination or expiration hereof, including, by way of illustration only and not limitation, those in Clause 1 [<i>General Provisions</i>], Clause 12 [<i>Defects</i>], Clause 17 [<i>Risk Allocation</i>], Clause 19 [<i>Insurance</i>], and Clause 20 [<i>Claims and Disputes</i>] shall survive the termination or expiration of the Contract."</p>
New Sub-Clause 1.19: Severability	<p><i>The following is added as a new Sub-Clause:</i></p> <p>"1.19 Severability</p> <p>The Parties expressly declare that each section, clause or paragraph of this Contract will be considered separate in terms of its validity and enforceability. Therefore, if, for any reason, any provision of this Contract is declared null and void, or if a ruling states that any part of it runs contrary to governing law, said declaration will in no way affect the validity and enforceability of the other stipulations, which may be construed, understood and executed independently of the portion declared null and void. Thus, every part of this Contract not declared null and void in any way will be valid, enforceable and binding on the Parties.</p> <p>Likewise, if any provision of this Contract or its application to any individual or company or in a given circumstance is declared null and void, or if its enforceability is in any way limited, the other provisions herein, as well as also the application of the doubtful provision to other people or in other circumstances, will not be affected thereby, and they will be applied to the extent permitted by governing law.</p> <p>Notwithstanding the above, the Parties undertake to negotiate in good faith the terms of a mutually satisfactory provision to replace any clause that may be declared null and void or whose enforceability is in any way restricted."</p>
New Sub-Clause 1.20: No Partnership or Agency	<p><i>The following is added as a new Sub-Clause:</i></p> <p>"1.20 No Partnership or Agency</p> <p>Nothing contained in this Contract shall be construed to either constitute a partnership or constitute either Party an agent or employee of the other Party."</p>
New Sub-Clause 1.21: Amendment	<p><i>The following is added as a new Sub-Clause:</i></p> <p>"1.21 Amendment</p> <p>This Contract may not be altered, varied, changed, supplemented or amended except by a written instrument duly signed and executed by the Parties and expressly stated to be an amendment to this Contract. For the sake of clarity, any Variation under Clause 13 [<i>Variations and Adjustments</i>] which is leading to a substantial change to the Works, an increase of the Contract Price and/or to an extension of the Time for Completion shall be reflected in an amendment to this Contract."</p>
CLAUSE 2: THE EMPLOYER	
Sub-Clause 2.1: Right of Access to the Site	<p><i>In the 6th line of the 1st paragraph, delete "Employer's Requirements" and replace with "Particular Conditions of Contract".</i></p> <p><i>Delete at the end of the last paragraph: "...or cost." and replace with: "..., or Cost Plus Profit."</i></p>
Sub-Clause 2.4: Employer's Financial Arrangements	<p><i>Sub-Clause 2.4 is replaced with the following in its entirety:</i></p> <p>"2.4 Employer's Financial Arrangements</p>

	<p>The Employer shall submit, before the Commencement Date and thereafter within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment]. Before the Employer makes any material change to his financial arrangements, the Employer shall give Notice to the Contractor with detailed particulars.</p> <p>In addition, if AFD has notified to the Employer that AFD has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give Notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Employer's Representative, within 7 days of the Employer having received the suspension notification from AFD. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of AFD's notification of the suspension, the Employer shall provide reasonable evidence in his Notice of the extent to which such funds will be available."</p>
<p>CLAUSE 3: THE EMPLOYER'S REPRESENTATIVE</p>	
<p>Sub-Clause 3.1: Employer's Representative's Duties and Authority</p>	<p><i>Delete the 4th paragraph, starting with "The Employer undertakes..." and replace it with the following provision:</i></p> <p>"The Employer shall promptly inform the Contractor of any change to the authority attributed to the Employer's Representative."</p> <p><i>The following shall be added to paragraph 3.1(c):</i></p> <p style="padding-left: 40px;">"and</p> <p>(d) any act by the Employer's Representative in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within twenty-eight (28) days of receipt."</p> <p><i>The following shall be added to the end of the Sub-Clause:</i></p> <p>"Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Employer's Representative, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Employer's Representative, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Employer's Representative. As the case may be, the Employer's Representative shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer."</p>
<p>Sub-Clause 3.2: Delegation by the Employer's Representative</p>	<p><i>Delete the following text in the first paragraph: "... (other than the Auditing Body)..."</i></p>
<p>Sub-Clause 3.3: Instructions of the Employer's Representative</p>	<p><i>The last sentence in the second paragraph stating: "These instructions shall be given in writing." is replaced with: "Whenever practicable, their instructions shall be given in writing. If the Employer's Representative or a delegated assistant:</i></p> <p>(a) gives an oral instruction,</p> <p>(b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and</p> <p>(c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,</p>

	then the confirmation shall constitute the written instruction of the Employer's Representative or delegated assistant (as the case may be)."
Sub-Clause 3.4: Replacement of the Employer's Representative	<p><i>Sub-Clause 3.4 is replaced with the following in its entirety:</i></p> <p>3.4 Replacement of the Employer's Representative</p> <p>If the Employer intends to replace the Employer's Representative, the Employer shall, not less than 21 days before the intended date of replacement, give Notice to the Contractor of the name, address and relevant experience of the intended replacement Employer's Representative. If the Contractor considers the intended replacement Employer's representative to be unsuitable, he has the right to raise objection against him by Notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection."</p>
Sub-Clause 3.5: Determinations	<p><i>Delete the second paragraph, and replace with:</i></p> <p>"The Employer's Representative shall give Notice to both Parties of each agreement or determination, with supporting particulars, within twenty-eight (28) days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration]."</p>
CLAUSE 4: THE CONTRACTOR	
Sub-Clause 4.1: Contractor's General Obligations	<p><i>Insert the following at the end of the 2nd paragraph:</i></p> <p>"The Contractor commits to meet the AFD's eligibility criteria as listed under Appendix C to the General Conditions."</p> <p><i>Insert in the fifth paragraph after the sentence "The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works.", the following:</i></p> <p>"The Contractor shall not commence any Works, including mobilization and/or pre-construction activities (e.g. limited clearance for haul roads, site accesses and work site establishment, geotechnical investigations or investigations to select ancillary features such as quarries and borrow pits), unless the Engineer is satisfied that appropriate measures are in place to address environmental, social, health and safety risks and impacts. As defined in the ESHS Specifications (if any), the Contractor shall submit, on a continuing basis, for the Engineer's prior approval, a Contractor's Worksite Environmental and Social Management Plan (Worksite - ESMP) to manage the ESHS risks and impacts of the Works on any Project Area. The Worksite - ESMP and the annexed Environmental Protection Plan (EPP) corresponding to a Project Area shall be approved prior to the commencement of construction activities (e.g. excavation, earth works, bridge and structure works, stream and road diversions, quarrying or extraction of materials, concrete batching and asphalt manufacture). The approved Worksite - ESMP shall be reviewed, periodically (but not less than every 6 months), and updated in a timely manner, as required, by the Contractor to ensure that it contains measures appropriate to the Works activities to be undertaken. The updated Worksite - ESMP shall be subject to prior approval by the Engineer."</p>
Sub-Clause 4.2: Performance Security	<p><i>Delete the second paragraph, and replace with the following paragraph:</i></p> <p>"The Contractor becomes entitled to a reduction of the amount of the Performance Security, as stated in the Contract Data:</p> <p>(i) after the Employer's Representative certified, that the Contractor has carried out all minor outstanding work and defects as referred to under Sub-Clause 11.5 (i), or</p>

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	<p>(ii) on the last day of the period referred under the last paragraph of Sub-Clause 11.5, in case the Commissioning Certificate is deemed to have been issued."</p> <p><i>In the third paragraph, delete "...by an entity..." and replace with "...by a reputable bank or financial institution selected by the Contractor..."</i></p> <p><i>In sub-paragraph (a), delete "...or, in case of an earlier reduction, the reduced..."</i></p> <p><i>Add the following paragraph to the end of the Sub-Clause:</i></p> <p>"Without limitation to the provisions of the rest of this Sub-Clause, whenever the Employer's Representative determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation, or as a result of a Variation, amounting to more than twenty five percent (25%) of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Employer's Representative's request promptly increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage."</p>
<p>Sub-Clause 4.3: Contractor's Representative</p>	<p><i>The following sentence is added at the end of the Sub-Clause:</i></p> <p>"If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Employer's Representative."</p>
<p>Sub-Clause 4.4: Subcontractors</p>	<p><i>The following is added at the beginning of the Sub-Clause:</i></p> <p>"The Contractor shall only employ Subcontractors meeting the AFD's eligibility criteria as listed under Appendix C to the General Conditions.</p> <p>In case of failure by the Contractor to comply with this requirement, and irrespective of whether the Employer's Representative has given prior consent under this Sub-Clause, the Contractor shall forthwith cease any business dealing with any ineligible Subcontractor and replace such Subcontractor by an eligible one, all at the Contractor's risk and cost. Otherwise, the Employer shall be entitled to terminate the Contract in accordance with Sub-Clause 15.2 [Termination by Employer]."</p> <p><i>In (a), "solely" is added after: "suppliers".</i></p> <p><i>The following is added at the end of the Sub-Clause:</i></p> <p>"The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.13 [Confidential Details] apply equally to each Subcontractor. Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors."</p> <p>If the option for direct payment of Subcontractors has been selected in Sub-Clause 4.4 of the Contract Data, then the following provisions shall apply:</p> <p>A Subcontractor named in the Contract or designated after Contract signing with the Employer's consent may be paid directly by the Employer for work done, and/or supplies or services provided by the said Subcontractor for which the Contractor has not been already paid, if (a) the Employer and the relevant authorities whose approval of the Contract is required so agree, or (b) the Employer's country laws and regulations so require.</p> <p>In such case, the Contractor shall furnish a statement to the Employer, prior to any commencement of the subcontracted work including the following:</p> <ul style="list-style-type: none"> a) The nature and scope of work or activities intended to be subcontracted; b) The name, registration information and address of the proposed Subcontractor; and

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	<p>c) The payment terms and conditions intended in the subcontract agreement, and the intended amount of the subcontract, including the date of establishment of the price, and if applicable, the modalities for price variation, advance payment, progress payment mechanism, price reductions, bonuses and penalties.</p> <p>Within one (1) month of their receipt the Employer shall either accept all supporting documents relating to direct payment or reject them in full or in part with justification to the Contractor, failing which the Employer shall be deemed to have accepted all supporting documents which the Employer did not explicitly reject.</p>
Sub-Clause 4.5: Nominated Subcontractors	<i>In the 2nd sentence of the paragraph, delete "Employer's Requirements" and replace with "Particular Conditions of Contract".</i>
Sub-Clause 4.6: Co-operation	<i>In the second paragraph "to suffer Unforeseeable delays and/or" is added before "to incur Unforeseeable Cost."</i>
Sub-Clause 4.8: Safety Procedures	<p><i>At the end of the Sub-clause add:</i></p> <p>"These provisions are complemented by those listed under the ESHS Specifications which the Contractor must ensure full compliance with."</p>
Sub-Clause 4.12: Unforeseeable Physical Conditions	<p><i>The last paragraph is replaced with:</i></p> <p>"The Employer's Representative shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence."</p>
Sub-Clause 4.15: Access Route	<i>"at Base Date" is added at the end of the first sentence.</i>
Sub-Clause 4.18: Protection of the Environment	These provisions are complemented by those listed under the ESHS Specifications which the Contractor must ensure full compliance with.
Sub-Clause 4.20: Employer's Equipment and Free-Issue Materials	<i>In the 1st and 3rd paragraphs, delete "Employer's Requirements" and replace with "Particular Conditions of Contract".</i>
Sub-Clause 4.21: Progress Reports	<p><i>Add to the end of sub-paragraph (a):</i></p> <p>"...and including these stages for work by each nominated Subcontractor (as defined in Sub-Clause 4.5 [<i>Nominated Subcontractors</i>]),"</p> <p><i>Sub-Clause 4.21(g) is replaced by the following:</i></p> <p>"4.21(g) the Environmental, Social, Health and Safety (ESHS) activity report specified in Clause 6 of the ESHS Specifications of the Employer's Requirements;"</p> <p><i>At the end of, and as part of Sub-Clause 4.21 add a new paragraph as follows:</i></p> <p>"The Contractor shall provide immediate notification to the Employer's Representative of incidents in the following categories. Full details of such incidents shall be provided to the Employer's Representative within the timeframe agreed with the Employer's Representative:</p> <ul style="list-style-type: none"> (a) confirmed or likely violation of any law or international agreement; (b) any fatality or serious injury; (c) significant adverse effects or damage to private property (e.g. vehicle accident, damage from fly rock, working beyond the boundary) (d) major pollution of drinking water aquifer or damage or destruction of rare or endangered habitat (including protected areas) or species; or

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	(e) any allegation of gender-based violence (GBV), sexual harassment or sexual misbehaviour, child abuse, defilement, or other violations involving children."
New Sub-Clause 4.26: Demolition	<p><i>The following is added as a new Sub-Clause:</i></p> <p>"4.26 Demolition</p> <p>The Contractor shall not demolish any building or structure except where specified in the Employer's Requirements, or with the prior written approval of the Employer's Representative.</p> <p>The conditions for the re-use, sale and disposal of demolished materials shall be as specified in the Employer's Requirements."</p>
New Sub-Clause 4.27: Existing Facilities	<p><i>The following is added as a new Sub-Clause:</i></p> <p>"4.27 Existing Facilities</p> <p>The Contractor shall take over, rehabilitate, upgrade, operate and maintain the Existing Facilities to the extent specified in the Employer's Requirements.</p> <p>Unless stated otherwise in the Employer's Requirements, the Contractor shall provide, and pay for, all labour, equipment, materials (including spare parts and consumables), and electricity necessary to operate and maintain the Existing Facilities.</p> <p>Throughout the Contract Period,</p> <p>(a) the Contractor shall use all reasonable endeavours to meet the standards of performance specified for the Existing Facilities in the Employer's Requirements;</p> <p>(b) The Employer shall indemnify and hold harmless the Contractor against any and all claims made against it in respect of the operation of the Existing Facilities to the extent that the Unforeseeable condition of the Existing Facilities renders them unable to meet the applicable Performance Guarantees."</p> <p>As at the date of commencement of the Operation Service the Existing Facilities, unless specified otherwise in the Employer's Requirements, will be deemed to form part of the Works, and all references in the Contract to Works, Permanent Works, Plant and Site etc. shall be deemed to include the Existing Facilities."</p>
New Sub-Clause 4.28: On-Site Log Book	<p><i>The following is added as a new Sub-Clause:</i></p> <p>"The Contractor shall maintain on Site a log book, in a form approved by the Employer's Representative and which shall integrate the fields required in the Employer's Requirements. It will be used to record the Contractor's activities on a daily basis, and any instruction from the Employer's Representative given on Site. The Employer's Personnel shall have the right of access to this document at all times, and one copy of each daily record shall be promptly provided by the Contractor to the Employer's Representative."</p>
CLAUSE 5: DESIGN	
Sub-Clause 5.1: General Design Obligations	<p><i>Add to the end of the last sentence in the first paragraph:</i></p> <p>"...within 21 days after Contractor's receipt of the Letter of Acceptance. All the designers and design Subcontractors shall have their seat of incorporation / origin in any eligible source country as per AFD's eligibility criteria as listed under Appendix C to the General Conditions."</p>
Sub-Clause 5.5: As-Built Documents	<p><i>In the last paragraph, delete "the Employer's Requirements" and replace with "Sub-Clause 1.9 of the Particular Conditions of Contract".</i></p>

CLAUSE 6: STAFF AND LABOUR	
Sub-Clause 6.1: Engagement of Staff and Labour	<p><i>Sub-Clause 6.1: Delete and replace with:</i></p> <p>"Except as otherwise stated in the Employer's Requirements, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, feeding, transport, and, when appropriate, housing.</p> <p>The Contractor shall, to the extent practicable and reasonable, employ staff and labour with appropriate qualifications and experience from sources within the Country."</p>
Sub-Clause 6.2: Rates of Wages and Conditions of Employment	<p><i>Add the following new paragraph at the end of the Sub-Clause:</i></p> <p>"The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws."</p>
Sub-Clause 6.7: Health and Safety	<p><i>Add to the end of the Sub-Clause:</i></p> <p>"HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.</p> <p>The Contractor shall throughout the contract (including the Operation Service Period): (i) conduct Information, Education and Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Subcontractors and any other Contractor's or Employer's personnel employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to, of Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labour.</p> <p>The Contractor shall include in the programme to be submitted for the execution of the Works under Sub-Clause 8.3 [Programme] an alleviation programme for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation programme shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related Employer's Requirements. For each component, the programme shall detail the resources to be provided or utilised and any related sub-contracting proposed. The programme shall also include provision of a detailed cost estimate with supporting documentation.</p> <p>These provisions are complemented by those listed under the ESHS Specifications which the Contractor must ensure full compliance with."</p>
Sub-Clause 6.9: Contractor's Personnel	<p><i>"Or" at the end of (c) is deleted and the following is added as (e) and (f):</i></p> <p>"(e) based on reasonable evidence, is determined to have engaged in Corrupt or Fraudulent Practices, as defined in Appendix B to these General Conditions, during the execution of the Works; or</p> <p>(f) Commits serious misconduct (e.g. spreading communicable diseases, sexual harassment, gender-based violence (GBV), illicit activity or crime,</p>

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	<p>or any activity listed in Sub-Clauses 7.5 and 7.6 of the ESHS Specifications of the Employer's Requirements)."</p> <p><i>After the sentence:</i> "If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person."</p> <p><i>the following is added as a new paragraph:</i></p> <p>"The Contractor's Personnel includes Key Personnel. The Key Personnel listed in the Contractor's Bid shall remain available for the whole duration of the Contract, starting from the expected Commencement Date stipulated in the Data Sheet. In exceptional cases where the Contractor intends to replace a Key Personnel, the Contractor shall, not less than thirty (30) days before the intended date of replacement, give Notice to the Employer's Representative of the name, address, academic qualifications and relevant experience of the intended replacement Key Personnel. Replacement of Key Personnel shall be subjected to prior Consent of the Employer and shall be proposed with a Personnel having equal or higher qualifications. Except in case of illness, death or resignation of a Key Personnel, the Contractor shall not, without the prior consent of the Employer's Representative, revoke the appointment of the Key Personnel or appoint a replacement."</p>
<p>New Sub-Clause 6.12: Foreign Personnel</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.12 Foreign Personnel</p> <p>The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, and national or government permission required for bringing in the Contractor's personnel.</p> <p>The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.</p>
<p>New Sub-Clause 6.13: Supply of Foodstuffs</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.13 Supply of Foodstuffs</p> <p>The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Employer's Requirements at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract."</p>
<p>New Sub-Clause 6.14: Supply of Water</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.14 Supply of Water</p> <p>The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel."</p>
<p>New Sub-Clause 6.15: Measures against Insect and Pest Nuisance</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.15 Measures against Insect and Pest Nuisance</p> <p>The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide."</p>

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<p>New Sub-Clause 6.16: Alcoholic Liquor of Drugs</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.16 Alcoholic Liquor of Drugs</p> <p>The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel."</p>
<p>New Sub-Clause 6.17: Arms and Ammunition</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.17 Arms and Ammunition</p> <p>The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so."</p>
<p>New Sub-Clause 6.18: Festivals and Religious Customs</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.18 Festivals and Religious Customs</p> <p>The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs."</p>
<p>New Sub-Clause 6.19: Funeral Arrangements</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.19 Funeral Arrangements</p> <p>The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works."</p>
<p>New Sub-Clause 6.20: Prohibition of Forced or Compulsory Labour</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.20 Prohibition of Forced or Compulsory Labour</p> <p>The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements."</p>
<p>New Sub-Clause 6.21: Prohibition of Harmful Child Labour</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.21 Prohibition of Harmful Child Labour</p> <p>The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the Country have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work."</p>
<p>New Sub-Clause 6.22: Employment Records of Workers</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.22 Employment Records of Workers</p> <p>The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Employer's Representative. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment]."</p>
<p>New Sub-Clause 6.23: Workers' Organisations</p>	<p><i>Add the following new Sub-Clause:</i></p> <p>"6.23 Workers' Organisations</p> <p>In countries where the relevant labour laws recognise workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the</p>

	relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce."
New Sub-Clause 6.24: Non-Discrimination and Equal Opportunity	<i>Add the following new Sub-Clause:</i> "6.24 Non-Discrimination and Equal Opportunity The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination."
CLAUSE 7: PLANT, MATERIALS, AND WORKMANSHIP	
Sub-Clause 7.4: Testing	<i>The second paragraph shall start as: "Except as otherwise specified in the Contract, the Contractor shall..."</i>
Sub-Clause 7.7: Ownership of Plant and Materials	<i>In each of point (b) and (c), "when the Contractor is paid the value of the Plant and Materials..." is replaced with: "when the Contractor is paid the corresponding value..."</i> <i>The following is added at the end of the Sub-Clause:</i> "Unless otherwise specified in the Employer's Requirements, vehicles, trucks, mobile plant and Site equipment (other than temporary mobile plant and temporary Site equipment brought onto the Site to undertake specific remedial tasks), tools, office equipment, software and office consumables used by the Contractor for the Operation Service shall become the property of the Employer. Vehicles used for personal transportation of the Contractor's Personnel and computers and mobile devices allocated for the personal use of the Contractor's Personnel shall be Contractor's Equipment. The Contractor shall maintain up-to-date inventories of the Contractor's Equipment, Materials and Temporary Works throughout the term of the Contract."
Sub-Clause 7.8: Royalties	<i>In the 1st paragraph, delete "Employer's Requirements" and replace with "Particular Conditions of Contract".</i>
CLAUSE 8: COMMENCEMENT DATE, COMPLETION AND PROGRAMME	
Sub-Clause 8.1: Commencement Date	<i>Delete the text of the whole Sub-Clause and replace with the following:</i> "Except as otherwise specified in the Contract, the Commencement Date shall be the date at which the following conditions precedent have all been fulfilled and the Employer's Representative's notification recording the agreement of

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	<p>both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:</p> <p>(a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;</p> <p>(b) effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.14 <i>[Compliance with Laws]</i> as required for the commencement of the Works.</p> <p>If the said Employer's Representative's notification is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 <i>[Termination by Contractor]</i>, unless the Contractor has caused, or contributed in any respect to, any non-fulfilment of one or all of these conditions precedent.</p>
Sub-Clause 8.3: Programme	<p><i>Add to the end of sub-paragraph (a):</i></p> <p>"... and each of these stages for work by each nominated Subcontractor (as defined in Sub-Clause 4.5 <i>[Nominated Subcontractors]</i>);"</p>
CLAUSE 9: DESIGN-BUILD	
Sub-Clause 9.1: Commencement of Design-Build	<p><i>Delete the text of the whole Sub-Clause and replace with the following:</i></p> <p>"The Contractor shall commence the design and execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Design-Build with due expedition and without delay.</p> <p>Notwithstanding the above, there shall be no work authorized to proceed on any Project Area until such time the Contractor has:</p> <p>a) effected the insurances defined under Sub-Clause 19.2 <i>[Insurances to be provided by the Contractor during the Design-Build Period]</i> in accordance with the provisions under Sub-Clause 19.1 <i>[General Requirements]</i>; and</p> <p>b) obtained the approval of the Employer's Representative of the Contractor's Worksite Environmental and Social Management Plan (Worksite - ESMP) for the corresponding Project Area."</p>
Sub-Clause 9.3: Extension of Time for Completion of Design-Build	<p><i>At the end of sub-paragraph (c) add: "..., as defined under Sub-Clause 9.3 of the Contract Data."</i></p> <p><i>At the end of sub-paragraph (e) delete: "...on the Site".</i></p>
Sub-Clause 9.5: Rate of Progress	<p><i>The following is added as the last paragraph of the Sub-Clause:</i></p> <p>"Additional costs of revised methods including acceleration measures, instructed by the Employer's Representative to reduce delays resulting from causes listed under Sub-Clause 9.3 <i>[Extension of Time for Completion of Design-Build]</i> shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor."</p>
Sub-Clause 9.7: Suspension of Work	<p><i>Add the following after the last sentence of the Sub-Clause:</i></p> <p>"As an example, and without limitation to other possible causes, any suspension of work caused by any failure from the Contractor to comply with the obligations stated:</p> <p>a) Under the ESHS Specifications (if any), in the event of a level 3 non-compliance;</p> <p>b) Under Sub-Clause 4.8 as to safety procedures;</p> <p>c) Under Sub-Clause 4.9 as to the quality assurance;</p> <p>d) Under Sub-Clause 4.18 as to the protection of the environment; or</p> <p>e) Under Sub-Clause 6.7 as to health and safety;</p>

	shall be considered as cause of suspension which is the responsibility of the Contractor."
Sub-Clause 9.11: Resumption of Work	<i>The following is added at the end of the sub-clause after "suspension":</i> "after receiving from the Employer's Representative an instruction to this effect."
CLAUSE 10: OPERATION SERVICE	
Sub-Clause 10.1: General Requirements	<i>Add the following, in the first paragraph, after "Operation Management Requirements":</i> ", and Performance Guarantees," <i>Replace the second paragraph with the following:</i> "The Contractor shall follow the requirements of the operation and maintenance manuals and any additional Operation Service plans and manuals, prepared by the Contractor in accordance with the Operation Management Requirements. No significant alteration to such arrangements and methods shall be made without the prior approval of the Employer's Representative."
Sub-Clause 10.2: Commencement of Operation Service	<i>Replace the first paragraph with the following:</i> "Unless otherwise stated in the Contract Data, the date of commencement of the Operation Service shall be the date seven days following the date of issuance of the Commissioning Certificate issued under Sub-Clause 11.7 [Commissioning Certificate], or such earlier date the Parties may agree to." <i>The following is added after the second paragraph:</i> "The Operation Service shall not commence until such time the Contractor has effected the insurances defined under Sub-Clause 19.3 [Insurances to be provided by the Contractor during the Operation Service Period] in accordance with the provisions under Sub-Clause 19.1 [General Requirements]."
Sub-Clause 10.3: Independent Compliance Audit	<i>This Sub-Clause is not applicable, to be deleted.</i>
Sub-Clause 10.4: Delivery of Raw Materials	<i>Add the following text at the end of the Sub-Clause:</i> "Change in Influent quality: In case an Unforeseeable change, against the Influent Baseline, occurs in the characteristics of the Influent received at the delivery point to the Works and the Contractor incurs Cost as a result of such Unforeseeable change, then the Contractor shall be entitled, subject to Sub-Clause 20.1 [Contractor's Claims] and Sub-Clause 3.5 [Determinations], to the payment of any such Cost. In case the Unforeseeable change is held to persist in time and be sustainable, the Employer's Representative shall be entitled, at his sole and absolute discretion, to: a) request a proposal from the Contractor for overcoming such change in accordance with the last paragraph of Sub-Clause 13.1 [Right to Vary]. Any resulting Variation may include a change to the to the Works in order to ensure sustained compliance with the Performance Guarantees; and/or b) adjust the Performance Guarantees, subject to Sub-Clause 3.5 [Determinations], so that the Contractor does not incur Cost which would have not been incurred had such change against the Influent Baseline not occurred. The Contractor may also submit a proposal in accordance with Sub-Clause 13.2 [Value Engineering]."
Sub-Clause 10.7: Failure to Reach Productions Outputs	<i>Replace entire sub-clause with the following:</i>

	<p>"In the event that the Contractor fails to achieve the Performance Guarantees required under the Contract, the Parties shall jointly establish the cause of such failure.</p> <p>(a) If the failure is due to the Employer or any of his servants or agents, then, after consultation with the Contractor, the Employer shall give written instruction to the Contractor of the measures which the Employer requires the Contractor to take.</p> <p>If the Contractor suffers any additional cost as a result of the failure or the measures instructed by the Employer, the Employer, subject to Sub-Clause 3.5 <i>[Determinations]</i> and Sub-Clause 20.1 <i>[Contractor's Claims]</i>, shall pay the Contractor his Cost Plus Profit.</p> <p>(b) If the failure is due to the Contractor then, after due consultation with the Employer, the Contractor shall at its own expense make any changes, modifications or additions to the Works, to its operating procedures, and/or to the Contractor's Personnel, as may be necessary to bring the Works and Operation Service into compliance with the Performance Guarantees set out under the Schedule of Performance Guarantees.</p> <p>If the failure relates to a Performance Guarantee for which damages are specified in the Appendix 3 to the Contract Agreement (Performance damages), then the Contractor, subject to Sub-Clause 3.5 <i>[Determinations]</i>, shall pay the Employer the performance damages specified in the Appendix 3 to the Contract Agreement. The Employer shall be entitled to recover the amount due by making corresponding deductions from the payments due to the Contractor.</p> <p>These performance damages shall be the only damages due from the Contractor for such failure, other than in the event of termination under Clause 15 <i>[Termination by Employer]</i> and of failure to pass Tests Prior to Contract Completion under Sub-Clause 11.11 <i>[Failure to Pass Tests Prior to Contract Completion]</i>.</p> <p>The payment of such performance damages shall not relieve the Contractor of any duties, obligations or responsibilities he has under the Contract, including, for the avoidance of doubt, the obligation to ensure that the Works remain in accordance with the Contract during the Operation Service Period.</p> <p>Unless otherwise stated in the Contract Data, if the failure continues for a period of more than 84 days and the Contractor is unable to achieve the required Performance Guarantee(s) set out under the Schedule of Performance Guarantees, the Employer may either:</p> <p>(i) continue with the Operation Service at a reduced level of compensation determined in accordance with Sub-Clause 3.5 <i>[Determinations]</i>; or</p> <p>(ii) if the production outputs fail to reach the minimum values required in the Contract Data, give Notice to the Contractor not less than 56 days prior to terminating the Contract, in accordance with Sub-Clause 15.2 <i>[Termination for Contractor's Default]</i>. In such an event, the Employer shall be free to continue the Operation Service himself or by others."</p>
CLAUSE 11: TESTING	
<p>Sub-Clause 11.1: Testing of the Works</p>	<p><i>Delete the fifth paragraph and replace with the following:</i></p> <p>"During trial operation, when the Works are operating under stable conditions, the Contractor shall give Notice to the Employer's Representative that the Works are ready for any other Tests on Completion of Design-Build, including performance tests to demonstrate whether the Works conform with criteria</p>

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	specified in the Employer's Requirements and comply with the production outputs specified in the Schedule of Performance Guarantees."
Sub-clause 11.4: Failure to Pass Tests on Completion of Design-Build	<p><i>Replace this Sub-Clause in its entirety by the following:</i></p> <p>"If the Works, or a Section, fail to pass the Tests on Completion of Design-Build repeated under Sub-Clause 11.3 [<i>Retesting of the Works</i>] the Employer's Representative shall be entitled to:</p> <ol style="list-style-type: none"> a) order further repetition of Tests on Completion of Design-Build under Sub-Clause 11.3 [<i>Retesting of the Works</i>]; b) issue a Notice under Sub-Clause 15.1 [<i>Notice to Correct</i>]; or c) issue the Commissioning Certificate to the Contractor subject to the payment of performance damages as per the provisions of Sub-Clause 10.7 [<i>Failure to Reach Production Outputs</i>], in which case the Employer shall also be entitled to forthwith apply the provisions found under Sub-Clause 10.7(b)(ii) without waiting for the prescribed period expiry."
Sub-Clause 11.5: Completion of the Works and Sections	<p><i>Delete the last paragraph and replace with the following:</i></p> <p>"If the Employer's Representative does not issue the Completion Certificate or reject the Contractor's application within this period of 28 days, and the Works or Section (as the case may be) are substantially in accordance with the Contract, the Works or Section shall be deemed to have been completed in accordance with the Contract on the fourteenth day after the Employer's Representative receives the Contractor's Notice of application and the Completion Certificate shall be deemed to have been issued on the same day."</p>
Sub-Clause 11.8: Joint Inspection Prior to Contract Completion	<p><i>In the beginning of the first sentence of the first paragraph delete: "Not less than two years..." and replace with "Not less than a half year..."</i></p> <p><i>Delete the third paragraph and replace with:</i></p> <p>"Following receipt of the Contractor's report, the Employer's Representative may, throughout the remainder of the Operation Service Period, instruct the Contractor to carry out all or part of the works identified in the Contractor's report. Such works shall be carried out at the Contractor's cost."</p>
Sub-Clause 11.11: Failure to Pass Tests Prior to Contract Completion	<p><i>Replace sub-paragraph(c) in its entirety by the following</i></p> <p>"(c) issue a Contract Completion Certificate, if the Employer so requires. The Contractor, subject to Sub-Clause 3.5 [<i>Determinations</i>] and to Contractor's adjustments or modifications as laid down below, shall pay the Employer the performance damages specified in Appendix 3 to the Contract Agreement for this failure. These performance damages shall be the only damages due from the Contractor for such failure, other than in the event of termination under Clause 15 [<i>Termination by Employer</i>]."</p>
CLAUSE 13: VARIATIONS AND ADJUSTMENTS	
Sub-Clause 13.1: Right to Vary	<p><i>Delete: "...(iii) it will have an adverse impact on the achievement of the Schedule of guarantee; or (iv) it will have an adverse effect on the provision of the Operation Service under the Contract." and replace with the following: "...(iii) it will have an adverse impact on the achievement of the Schedule of Performance Guarantees; (iv) it triggers a substantial change in the sequence or progress of the Works; or (v) it will have an adverse effect on the provision of the Operation Service under the Contract."</i></p> <p><i>Insert after the second paragraph (before the last paragraph):</i></p>

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	"The Contractor shall not make any alteration and/or modification of the Permanent Works, neither deviate from the Employer's Requirements, unless and until the Employer's Representative instructs or approves a Variation."
Sub-Clause 13.2: Value Engineering	<p><i>Add to the end of the Sub-Clause:</i></p> <p>"If a Contractor's value engineering proposal, which is approved by the Employer's Representative, results in a reduction in the Contract Price, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:</p> <ul style="list-style-type: none"> (i) such reduction in Contract Price, resulting from the approved value engineering, excluding adjustments under Sub-Clause 13.6 [Adjustments for Changes in Legislation], Sub-Clause 13.7 [Adjustments for Changes Technology], and Sub-Clause 13.8 [Adjustments for Changes in Cost], and (ii) the reduction (if any) in the value to the Employer of the varied Works, taking account of any reductions in quality, anticipated life or operational efficiencies. <p>However, if amount (i) is less than amount (ii), there shall not be a fee."</p>
Sub-Clause 13.3: Variation Procedure	<p><i>Add the following to the end of Sub-Clause 13.3(a):</i></p> <p>"... and sufficient ESHS information to enable an evaluation of ESHS risks and impacts;"</p> <p><i>In the last sentence of the last paragraph, delete the following: "...include reasonable profit...", and replace with: "...include the Profit as set out under Sub-Clause 1.1.24 in Particular Conditions Part B..."</i></p>
Sub-Clause 13.5: Provisional Sums	<p><i>Delete the first sentence of sub-paragraph (b) and replace with the following:</i></p> <p>"(b) Plant, Materials or services to be purchased by the Contractor from a nominated Subcontractor (as defined in Sub-Clause 4.5 [Nominated Subcontractors]) or otherwise; and, for which there shall be included in the Contract Price:"</p> <p><i>Add the following at the end of this Sub-Clause:</i></p> <p>"As an exception to the above, the Provisional Sum for the cost of the DB, if any, shall be used to pay the Contractor of the Employer's one-half share of the invoices of the DB for its fees and expenses, in accordance with Clause 20 [Claims, Disputes and Arbitration]. No prior instruction of the Employer's Representative shall be required with respect to the work of the DB. The Contractor shall produce the DB invoices and satisfactory evidence of having paid the entirety of such invoices as part of the substantiation of those Statements submitted under Sub-Clause 14.3 [Application for Interim Payment Certificates]. The Employer's Representative certification of such Statements shall be based upon such invoices and such evidence of their payment by the Contractor. No sum for Contractor's overhead charges and profit shall apply in addition to the DB invoices amounts."</p>
Sub-Clause 13.6: Adjustments for Change in Legislation	<p><i>The following is added at the end of the Sub-Clause:</i></p> <p>"Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost]."</p>

CLAUSE 14: CONTRACT PRICE AND PAYMENT	
Sub-Clause 14.1: The Contract Price	<p><i>Delete the first paragraph and replace with:</i></p> <p>"The Contract Price shall be the lump-sum amount or amounts submitted by the Contractor for the Design-Build and the amount or amounts submitted for the Operation Service priced at the Base Date, and due to be paid to the Contractor in accordance with the Contract together with any adjustments as provided for under Clause 13 [<i>Variation and Adjustments</i>] or arising as a result of claims under Clause 20 [<i>Claims, Disputes and Arbitration</i>]."</p>
Sub-Clause 14.2: Advance Payment	<p><i>Delete the first paragraph of Sub-Clause and replace with:</i></p> <p>"The Employer shall make an advance payment, as an interest-free loan for the Design-Build Period, when the Contractor submits an advance payment guarantee in accordance with this Sub-Clause The amount of the advance payment and the applicable currencies shall be as stated in the Contract Data."</p> <p><i>Delete the last sentence of the third paragraph and replace with the following:</i></p> <p>"This guarantee shall be issued by a reputable bank or financial institution and from within a country (or other jurisdiction), as selected by the Contractor and approved by the Employer, and shall be based on the sample form included in the Tender Documents or in another form approved by the Employer."</p> <p><i>Delete sub-paragraph (b) and replace with the following:</i></p> <p>"(b) deductions shall be made at the amortisation rate of twice the percentage amount of the Advance Payment (expressed in percent of Accepted Contract Amount) deducted from the sum of each Interim Payment Certificate (excluding the advance payment and deductions and repayments of retention) issued during the Design-Build Period."</p>
Sub-Clause 14.3: Application for Advance and Interim Payment Certificates	<p><i>Add to the end of the second paragraph:</i></p> <p>"The Contractor shall prepare separate Statements for the Design-Build and for the Operation Service."</p> <p><i>Delete sub-paragraphs (h) and (i).</i></p>
Sub-clause 14.5: Asset Replacement Schedule	This Sub-Clause is not applicable. To be deleted.
Sub-Clause 14.6: Payment for Plant and Materials intended for the Works	This Sub-Clause is not applicable. To be deleted.
Sub-Clause 14.7: Issue of Advance and Interim Payment Certificates	<p><i>In the third sentence of the first paragraph, after "issue to the Employer" add the following ", with a copy to the Contractor,"</i></p> <p><i>The following is added to the third paragraph as (c):</i></p> <p>If the Contractor was, or is, failing to perform any ESHS obligations of work under the contract, as determined by the Engineer, a penalty/deduction shall be effected in the subsequent payment certificate for each failure which will vary based on the level of non-conformity as defined in the ESHS requirements:</p> <ol style="list-style-type: none"> i. A minimum of 15,000 EUR or as otherwise determined by the Engineer for Level 1 non-conformity. ii. A minimum of 40,000 EUR or as otherwise determined by the Engineer for Level 2 non-conformity. iii. A minimum of 75,000 EUR or as otherwise determined by the Engineer for Level 3 non-conformity. <p>Failure to perform includes, but is not limited to the following:</p> <ol style="list-style-type: none"> i. Failure to comply with any ESHS obligations or work described in the Works' Requirements which may include: working outside side boundaries, excessive dust, failure to keep public roads in a safe

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	<p>usable condition, damage to offsite vegetation, pollution of water courses from oils or sedimentation, contamination of land e.g. from oils, human waste, damage to archaeology or culture heritage features, air pollution as a result of unauthorized and/or inefficient combustion;</p> <ul style="list-style-type: none"> ii. Failure to regularly review C-ESMP and/or update it in a timely manner to address emerging ESHS issues, or anticipated risks or impacts; iii. Failure to implement the C-ESMP e.g. failure to provide required training or sensitization; iv. Failure to have appropriate consents/permits prior to undertaking Works or related activities; v. Failure to submit ESHS reports or failure to submit such reports in a timely manner; vi. Failure to implement remediation action as instructed by the Engineer within the specified timeframe
<p>Sub-Clause 14.8: Payment</p>	<p><i>Add the following at the end of the Sub-Clause:</i></p> <p>"The payment period defined above can be suspended for reasons defined in the Contract, in particular in the event of an unresolved level 3 non-compliance specified in the ESHS Specifications if any. Such suspension shall not entitle the Contractor to any additional payment under Sub-Clause 14.9 <i>[Delayed Payment]</i> or otherwise.</p> <p>If the option for direct payment of Subcontractors has been selected in Sub-Clause 4.4 of the Contract Data, then the following provisions shall apply:</p> <p>Payment for work by a Subcontractor which is entitled to be paid directly by the Employer shall be made in accordance with the Contract.</p> <p>When a Subcontractor is entitled to be paid directly by the Employer, the Subcontractor must submit to the Contractor a direct payment request with supporting documents. Within fifteen (15) days from the date of receipt of the latter documents, the Contractor shall either:</p> <ul style="list-style-type: none"> a) give his acceptance of the direct payment request and supporting documents; or b) notify his refusal, with justification, of full or part of the direct payment request and supporting documents <p>to the Subcontractor and the Employer, failing which:</p> <ul style="list-style-type: none"> (i) the Contractor shall be deemed to have accepted whichever supporting documents he did not expressly accept or reject; and (ii) the Subcontractor is entitled to send a copy of the direct payment request directly to the Employer, together with a copy of the proof of receipt of the original by the Contractor. <p>Thereafter the Employer shall (i) promptly request the Contractor to submit evidence within fifteen (15) days that the Contractor rejected the said request for direct payment with justification within the time specified above, and (ii) inform the Subcontractor accordingly. If the Contractor fails to provide the requested evidence within 15 days, the Employer may directly pay the Subcontractor, up to the amount due to the Contractor under the relevant Payment Certificates.</p> <p>When a Subcontractor is entitled to be paid directly by the Employer, the Contractor must furnish, together with:</p> <ul style="list-style-type: none"> – the application for Interim Payment Certificate as per Sub-Clause 14.3; – the application for Final Payment Certificate Design Build as per Sub-Clause 14.11; or – the application for Final Payment Certificate Operation Service as per Sub-Clause 14.13,

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	<p>a Statement indicating the amount to be deducted from the Payment Certificate and to be paid directly by the Employer to the said Subcontractor, as well as the various payment currencies and amounts. Payments to the Subcontractor shall be made on the basis of the Statement submitted by the Contractor as mentioned here above, and as accepted by the Contractor as due to the Subcontractor.</p> <p>The aggregate amount of direct payments to a Subcontractor, calculated under the conditions prevailing at the Base Date, may not exceed the amount of the subcontract as shown in the Contract.</p> <p>Upon receipt of the Contractor Statement requesting direct payment of the Subcontractor, the Employer shall directly notify the Subcontractor of the date of receipt and the amounts accepted by the Contractor for direct payment. Direct payments of the Subcontractor must be effected within the time specified in this Sub-Clause 14.8 for payment of the Contractor. A notification of the direct payment shall be issued by the Employer to the Contractor and the Subcontractor."</p>
<p>Sub-Clause 14.9: Delayed Payment</p>	<p><i>Delete the second paragraph and replace with the following:</i></p> <p>"Unless otherwise stated in the Contract Data, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency (or currencies if more than one) of payment, or if not available, the interbank offered rate, and shall be paid in such currencies."</p>
<p>Sub-Clause 14.10: Payment of Retention Money</p>	<p><i>Delete the second paragraph and replace with the following:</i></p> <p>"The Contractor shall be entitled to include the second half of the Retention Money in the Final Statement Operation Service.</p> <p>Unless otherwise stated in the Contract, when the Commissioning Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Employer's Representative, the Contractor shall be entitled to substitute a guarantee for the second half of the Retention Money. The guarantee shall be based on the sample form included in the Tender Documents, or in another form approved by the Employer, and issued by a reputable bank or financial institution selected by the Contractor. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has been entitled to receive the Contract Completion Certificate. On receipt by the Employer of the required guarantee, the Employer's Representative shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Contract Completion Certificate."</p>
<p>Sub-Clause 14.12: Issue of Final Payment Certificate Design-Build</p>	<p><i>Delete sub-paragraph (a) and replace with the following:</i> "the amount which he fairly determines is finally due for the Design Build; and".</p>
<p>Sub-Clause 14.13: Application for Final Payment Certificate Operation Service</p>	<p><i>Delete sub-paragraphs (a) and (b) and replace with the following:</i></p> <p>(a) the value of all work done in respect of the Operation Service;</p> <p>(b) the second half of the Retention Money, if not replaced by a Retention Guarantee; and</p> <p>(c) any further sums which the Contractor considers to be due to him under the Contract."</p>

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Sub-Clause 14.15: Issue of Final Payment Certificate Operation Service	<i>Delete sub-paragraphs (a) and (b) and replace with the following:</i> a) "the amount which he fairly determines is finally due for the Operation Service; and b) the amount which he fairly determines is finally due for the Contract; and"
Sub-Clause 14.17: Currencies of Payment	<i>In the second sentence of the first paragraph, "Unless otherwise stated in the Particular Conditions," is deleted.</i>
Sub-clause 14.18: Asset Replacement Fund	This Sub-Clause is not applicable, to be deleted.
Sub-Clause 14.19: Maintenance Retention Fund	This Sub-Clause is not applicable, to be deleted.
CLAUSE 15: TERMINATION BY EMPLOYER	
Sub-Clause 15.2: Termination for Contractor's Default	<i>In the first paragraph, the following is added as (h), (i) and (j), and the existing paragraph (h) is renumbered (k):</i> "(h) based on reasonable evidence, has engaged in Corrupt or Fraudulent Practices as defined in the Appendix B to these General Conditions, in competing for or in executing the Contract; (i) substantially fails to comply with the ESHS Specifications; (j) in breach of Sub-Clause 4.4 [Subcontractors], subcontracts any work to any ineligible person as defined by AFD's criteria set out in Appendix C to the General Conditions;" <i>Further in the second paragraph, "or (h) or (i) or (j)" are added after "or (g)".</i>
Sub-Clause 15.5: Termination for Employer's Convenience	<i>The last paragraph shall be replaced with the following:</i> "The Employer shall not terminate the Contract under this Sub-Clause in order to execute or operate the Works (or any part thereof) himself, or arrange for the Works (or any part thereof) to be executed or operated by another contractor, or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor]"
CLAUSE 16: SUSPENSION AND TERMINATION BY CONTRACTOR	
Sub-Clause 16.1: Contractor's Entitlement to Suspend Work	<i>Insert the following paragraph after the first paragraph:</i> "Notwithstanding the above, if AFD has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer's Financial Arrangements], the Contractor may by Notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Employer having received the suspension notification from AFD."
Sub-Clause 16.2: Termination by Contractor	<i>Add to the end of sub-paragraph (d):</i> "...in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract," <i>After sub-paragraph (g), add the following new sub-paragraph:</i> "(h) the Contractor does not receive the Employer's Representative's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works]."
Sub-Clause 16.3: Cessation of Work and Removal of Contractor's Equipment	<i>In paragraph (b), add after "received payment" ", including those items listed in the Employer's Requirements".</i>

Sub-Clause 16.4: Payment on Termination	Delete sub-paragraph (b) and replace with the following: "(b) pay the Contractor in accordance with Sub-Clause 18.5 [Optional Termination, Payment and Release]; and"
CLAUSE 17: RISK ALLOCATION	
Sub-Clause 17.8: Limitation of Liability	Delete Sub-Clause and replace with the following: "Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 9.6 [Delay Damages relating to Design Build], Sub-Clause 10.6 [Delays and Interruption during the Operation Service], Sub-Clause 10.7 [Failure to Reach Production Outputs], Sub-Clause 15.4 [Payment after Termination for Contractor's Default], Sub-Clause 16.4 [Payment on Termination], Sub-Clause 17.9 [Indemnities by the Contractor], Sub-Clause 17.10 [Indemnities by the Employer] and Sub-Clause 17.12 [Risk of Infringement of Intellectual and Industrial Property Rights]. The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employer's Equipment and Free-Issue Materials], Sub-Clause 17.9 [Indemnities by the Contractor], Sub-Clause 17.10 [Indemnities by the Employer] and Sub-Clause 17.12 [Risk of Infringement of Intellectual and Industrial Property Rights], shall not exceed the sum stated in the Contract Data or (if a sum is not so stated) the Accepted Contract Amount. This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party."
Sub-Clause 17.9: Indemnities by the Contractor	Sub-paragraph (b) is replaced with: "(b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the design, the execution and completion or operation and maintenance of the Works, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel."
New Sub-clause 17.13: Use of Employer's Accommodation/Facilities	The following is added as a new Sub-Clause: "17.13 Use of Employer's Accommodation/Facilities The Contractor shall take full responsibility for the care of the Employer provided accommodation and facilities, if any, as detailed in the Employer's Requirements, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Commissioning Certificate for the Works). If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Employer's Representative."
CLAUSE 18: EXCEPTIONAL RISKS	
Sub-Clause 18.1: Exceptional Risks	The following is added in sub-paragraph (b) before "rebellion": "sabotage by persons other than the Contractor's Personnel". Delete in sub-paragraph (c) after "Contractor's Personnel": "and other employees of the Contractor and Subcontractors". The following additional paragraphs are added at the end of the Sub-Clause: "(g) upstream pollution of the Influent that prevents the Contractor from providing the Operation Service in accordance with this Contract;"

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	<p>(h) if provided for in the Contract Data and for water treatment plant, events of high Influent turbidity in which the suspended solids exceed the value specified in the Contract Data and which prevent the Contractor from providing the Operation Service in accordance with this Contract; and</p> <p>(i) for wastewater treatment plant, the wastewater Influent flow exceeds a capacity Performance Guarantees for the Works and prevents the Contractor from providing the Operation Service in accordance with this Contract."</p>
<p>Sub-Clause 18.4: Consequences of an Exceptional Event</p>	<p><i>Sub-paragraph (b) is replaced with:</i></p> <p>"(b) if the event or circumstance is of the kind described in sub-paragraphs (a) to (i) but not (f) of Sub-Clause 18.1 [<i>Exceptional Risks</i>] and, in the case of sub-paragraphs (b) to (e), and (g) to (i), occurs in the Country, payment of any such Cost."</p>
<p>Sub-Clause 18.5: Optional Termination, Payment and Release</p>	<p><i>In sub-paragraph (c), "and necessarily" is inserted after "reasonably".</i></p>
<p>Sub-Clause 18.7: Suspension or termination on the grounds of the Security of the Contractor's Personnel</p>	<p><i>The following is added as a new Sub-Clause:</i></p> <p>"18.7 Suspension or termination on the grounds of the Security of the Contractor's Personnel</p> <p>This Sub-Clause is applicable if, and only if, security specifications are included in the Contract.</p> <p>If it believes, acting reasonably, that the physical integrity of its Personnel is seriously and imminently threatened by a danger in the performance of the Contract, the Contractor may decide, without prior notice:</p> <p>a) to demobilise its Personnel and Equipment from the area affected by the danger; and</p> <p>b) immediately suspend the performance of all or part of its obligations under the Contract that the demobilisation referred to in sub-paragraph (a) above prevents it from performing.</p> <p>The Contractor shall notify its decision to the Employer, within a maximum period of seven (7) days therefrom, furnish proof thereof and inform the Employer of the foreseeable impact of its decision on the Contract Price and the Completion of the Works, as well as the reasonable measures proposed to mitigate these impacts.</p> <p>The Contractor shall take all reasonable steps to minimise any delay in the performance of the Contract and any Cost resulting from its decision.</p> <p>The Contractor shall continue to perform its contractual obligations that the danger does not reasonably prevent it from performing.</p> <p>If the Contractor suffers delays and/or incurs Costs as a result of its decision, the Contractor shall be entitled to obtain, in accordance with the provisions of Sub-Clause 20.1 [<i>Contractor's Claims</i>]:</p> <p>(i) an extension of time for such delay, if completion is or will be delayed, in accordance with Sub-Clause 9.3 [<i>Extension of Time for Completion of Design-Build</i>]; and</p> <p>(ii) the payment of such Costs, including the costs of repairing and replacing Works and/or Goods damaged or destroyed by the danger, provided they are not covered by the insurance policy referred to in Sub-Clause 19.2 [<i>Insurances to be provided by the Contractor during the Design-Build Period</i>].</p> <p>After receiving this notification, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [<i>Determinations</i>] to reach an agreement or</p>

	<p>determine (1) if and (if applicable) to what extent the Contractor's decision was justified by the circumstances, and (2) the matters described in sub-paragraphs (i) and (ii) above in due proportion.</p> <p>If, due to a danger notified in accordance with the provisions of this Sub-clause, the completion of most of the Works is prevented for a continuous period of eighty four (84) days or for multiple periods exceeding one hundred and forty (140) days, each Party may notify the other Party of the termination of the Contract in accordance with Sub-Clause 18.5 [<i>Optional termination, payment and release</i>]."</p>
CLAUSE 19: INSURANCE	
Sub-Clause 19.2: Insurances to be provided by the Contractor during the Design-Build Period	<p><i>The following is added at the end of the Sub-Clause:</i></p> <p>"For those insurances required under this Sub-Clause to be in the joint names of the Parties, the Parties shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage."</p>
Sub-Clause 19.3: Insurances to be provided by the Contractor during the Operation Service Period	<p><i>At the beginning of the Sub-Clause, add "unless otherwise stated in the Contract Data,"</i></p> <p><i>The following sub-paragraph is added at the end of the Sub-Clause:</i></p> <p>"(f) Liability for breach of professional duty</p> <p>The Contractor shall insure the legal liability of the Contractor arising out of the negligent fault, defect, error or omission of the Contractor or any person for whom the Contractor is responsible in the carrying out their professional duties in an amount not less than that stated in the Contract Data.</p> <p>Such insurance shall contain an extension indemnifying the Contractor for his liability arising out of negligent fault, defect, error or omission in the carrying out his professional duties which result in the Works not being fit for the purpose specified in the Contract and resulting in any loss and/or damage to the Employer.</p> <p>The Contractor shall maintain this insurance for the period specified in the Contract Data.</p> <p>For those insurances required under this Sub-Clause to be in the joint names of the Parties, the Parties shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage."</p>
CLAUSE 20: CLAIMS, DISPUTES AND ARBITRATION	
and its Appendix A to the General Conditions:	
"DB" and "Dispute Board" replace "DAB" and "Dispute Adjudication Board" respectively. The term "adjudicator" is also deleted.	
Sub-Clause 20.1: Contractor's Claims	<i>In the penultimate paragraph, delete "Engineer's Representative" and replace with "Employer's Representative".</i>
Sub-clause 20.2: Employer's Claims	<p><i>Delete the second paragraph and replace with the following:</i></p> <p>"The Notice shall be given as soon as practicable and no longer than 28 days after the Employer became aware, or should have become aware, of the event or circumstances giving rise to the claim."</p> <p><i>In the fourth paragraph, delete "Engineer's Representative" and replace with "Employer's Representative".</i></p>

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<p>Sub-Clause 20.3: Appointment of the Dispute Board</p>	<p><i>In the paragraph commencing "The terms of the remuneration", the following is added after "members": ", including the remuneration of any expert whom the DB consults,"</i></p>
<p>Sub-Clause 20.5: Avoidance of Disputes</p>	<p><i>Insert the text below after the first paragraph and before the second paragraph of this Sub-Clause:</i></p> <p>"The DB shall act, as far as reasonable and practicable, in the spirit of preventing potential problems or claims in between the Parties from becoming Disputes. The DB shall take reasonable and relevant initiatives in this respect, including, but not necessarily limited to, suggesting the Parties to refer a matter to the DB in accordance with this Sub-Clause. The DB shall however not act in a way which may be inconsistent with its obligations under the agreement referred to in Sub-Clause 20.3 [Appointment of the Dispute Board] and under Sub-Clause 20.6 [Obtaining Dispute Board's Decision], and which may render any of its decision unenforceable for breach of natural justice or any other procedural shortcoming or matter. In particular, when acting under this Sub-Clause 20.5, the DB shall accordingly always meet the Parties jointly, and shall not meet a Party in the absence of the other Party."</p>
<p>Sub-Clause 20.6: Obtaining Dispute Board's Decision</p>	<p><i>Delete the first paragraph and replace with the following:</i></p> <p>"If a Dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works during the Design-Build Period, including any Dispute as to any certificate, determination, instruction, opinion or valuation of the Employer's Representative, either Party may refer the Dispute in writing to the DB for its decision, with copies to the other Party and the Employer's Representative. Such reference shall state that it is given under this Sub-Clause. The other Party shall then have 21 days to send a response to the DB with copies to the referring Party and the Employer's Representative.</p> <p><i>In paragraph 5, "and intention to commence arbitration" is added in both instances after "dissatisfaction".</i></p>
<p>Sub-Clause 20.8: Arbitration</p>	<p><i>Delete the first paragraph and replace with the following:</i></p> <p>"Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.7 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:</p> <p>(a) if the contract is with foreign contractors, unless otherwise specified in the Contract Data, international arbitration in accordance with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules. The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].</p> <p>(b) if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country."</p>
<p>Sub-Clause 20.10: Disputes Arising during the Operation Service Period</p>	<p><i>The third and the penultimate paragraph shall be deleted.</i></p> <p><i>Insert at the end of the first paragraph "...and shall serve as the DB during the entire Operation Service Period. The appointment of the DB shall expire when the discharge referred to in Sub-Clause 14.14 [Discharge] shall have become effective."</i></p>

Republic of Kenya

Coast Water Works Development Agency



IMPROVEMENT OF DRINKING WATER AND SANITATION SYSTEMS IN MOMBASA

DESIGN, BUILD AND OPERATE OF MWACHE WATER TREATMENT PLANT

PART 3 – Conditions of Contract and Contract Forms (GCC)

SECTION 10 – Contract Forms



Section X – Contract Forms

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Notification of Award

Letter of Acceptance

[Letterhead paper of the Employer]

Date: _____ *[Insert Date]*

To: _____ *[Name and address of the Contractor]*

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[insert amount in figures and letters] [insert name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

The amount is made up of the following components:

The Accepted Contract Amount for the _____
Design-Build of: _____ *[currency and amount in figures]*

The Accepted Contract Amount for the _____
Operation Service of: _____ *[currency and amount in figures]*

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section X, Contract Forms of the Bidding Documents.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of institution: _____

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (hereinafter "**the Employer**"), of the one part, and _____ of _____ (hereinafter "**the Contractor**"), of the other part:

WHEREAS the Employer desires that the Works known as _____ should be designed, executed and operated by the Contractor, and has accepted a Bid by the Contractor for the design, execution, completion and operation and maintenance of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other these following documents.
 - (i) the Letter of Acceptance;
 - (ii) the Bid Submission Forms - Technical Bid and Financial bid (including the signed Statement of Integrity);
 - (iii) the addenda Nos _____ (if any);
 - (iv) the Particular Conditions;
 - (v) the General Conditions;
 - (vi) the Employer's Requirements;
 - (vii) the completed Schedules;
 - (viii) The Operating License; and
 - (ix) The Contractor's Bid and any other documents forming part of the Contract.
3. In consideration of the payments to be made by the Employer to the Contractor as specified in the Contract, the Contractor hereby covenants with the Employer to design, execute, complete, operate and maintain the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract and Operating License.
4. The Employer hereby covenants to pay the Contractor in consideration of the design, execution, completion operation and maintenance of the Works and the remedying of defects therein, the Contract Price, or such other sum as may become payable under the provisions of the Contract, at the times and in the manner prescribed by the Contract and to grant the Contractor (or cause the Contractor to be granted) a royalty-free license to enable him to operate and maintain the Works during the Operation Service Period

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ on the day, month and year specified above.

Signed by _____ (for the Employer)

Signed by _____ (for the Contractor)

Appendices to the Contract Agreement:

- Appendix 1: Schedule of Payments
- Appendix 2: Schedule of Performance Guarantees
- Appendix 3: Schedule of Performance Damages

Appendix 1 – Schedule of Payments

[Note: The following terms and procedures of payment are given as guidance. If additional price schedules are introduced, suitable terms of payment in respect of such additional schedules must be added.]

In accordance with the provisions of:

- GCC Sub-Clause 14.3 [Application for Advance and Interim Payment Certificates], 14.4 [Schedule of Payments], the Contractor shall apply for payment,
- GCC Sub-Clause 14.7 [Issue of Advance and Interim Payment Certificates], the Employer's Representative shall certify for payment, and
- GCC Sub-Clause 14.8 [Payment],

the Employer shall pay the Contractor as per the following instalments, based on the Contract Price breakdown given, and the currencies stated, in the Price Schedules.

The instalments provided below for Schedules No.1 to No.4 serve the purpose of providing values according to sub-paragraph (a) of GCC Sub-Clause 14.3.

The instalments provided below for Schedule No.5 serve the purpose of providing values according to sub-paragraph (g) – Operation Service - of GCC Sub-Clause 14.3.

For the avoidance of doubt, other items of GCC Sub-Clause 14.3 shall also apply and be used by the Contractor when preparing his Statements, and by the Employer's Representative when preparing his Payment Certificates.

For example, Retention Money under sub-paragraph (c) shall accordingly apply to these instalments.

(A) PAYMENT INSTALMENTS

Payments during the Design-Build Period

Price Schedule No. 1 – Preliminary Items

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

- Hundred percent (100%) of the total or pro rata Preliminary Items amount upon consent and/or approval of design by the Employer's Representative in accordance with the provisions of Sub-Clause 5.2 [Contractor's Documents].

Price Schedule No. 2 – Equipment, Materials, Tools and mandatory Spare Parts supplied from abroad

In respect of equipment, Materials, tools and mandatory spare parts supplied from abroad, the following payments shall be made:

- Seventy percent (70%) of the total or pro rata CIP amount upon delivery to the Site.
- Twenty percent (20%) of the total or pro rata CIP amount upon electrical connection and dry commissioning
- Ten percent (10%) of the total or pro rata CIP amount upon issue of the Taking-Over Certificate.

Price Schedule No. 4 – Civil Engineering and Building Works

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

- Seventy percent (70%) of the measured value of work performed by the Contractor as certified by the Engineer in accordance with the provisions of GCC Sub-Clause 14.6 [Issue of Interim Payment Certificates] during the execution of the Works.

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- Thirty percent (30%) of the measured value of work performed by the Contractor as certified by the Engineer in accordance with the provisions of GCC Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] upon issue of the Taking-Over Certificate.
- Provisional Sums shall be certified and paid as and when used in accordance with Sub-Clause 13.5 [Provisional Sums].

Price Schedule No. 5 – ESHS Cost schedule

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

- Hundred percent (100%) of the total or pro rata ESHS Cost schedule amount upon consent and/or approval of design by the Employer's Representative in accordance with the provisions of GCC Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] during the execution of the Works.

Price Schedule No. 6 – Security Cost schedule

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

- Hundred percent (100%) of the total or pro rata Security Cost schedule amount upon consent and/or approval of design by the Employer's Representative in accordance with the provisions of GCC Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] during the execution of the Works.

Payments during the Operation Service Period

Price Schedule No. 8 – Operation Service

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

- No advance payment applies.
- Each monthly instalment is the sum of:
 - 1/12th of the Annual Fixed Fee per month introduced under Price Schedule 8.1.1,
 - Contractor's Variable Fee (CVF) introduced under Price Schedule 8.1.2 multiplied by the monthly volume of production recorded as per the measurement methodology defined in the Employer's Requirements, and
 - Unless electricity bills are paid by the Employer, the amount of the monthly electricity consumption paid by the Contractor to the local power supplier, but only up to a maximum amount which is the price which would be paid for the Guaranteed Maximum Energy Consumption.
- The monthly Guaranteed Maximum Energy Consumption introduced above is defined as the multiplication of:
 - The Contractor's Guaranteed Maximum Energy Consumption Rate, in kWh per m³ of production, as stated by the Contractor in the Schedule of Performance Guarantees, by
 - The monthly volume of production recorded as per the measurement methodology defined in the Employer's Requirements.

In furtherance to the above, there shall be no payment to the Contractor for any electricity consumption in excess of the monthly Guaranteed Maximum Energy Consumption, and the Contractor shall solely bear the risk of such excess.

If electricity bills are paid by the Employer, any excess shall be deducted from payments to the Contractor.

At the end of every year after the commencement of the Operation Service Period, if the annual electricity consumption of the plant over the elapsed year is lower than the annual Guaranteed

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Maximum Energy Consumption, calculated under the same mechanism as above but over a year and not over a month, the Employer's Representative shall fairly determine the savings generated to the Employer due to this lower consumption than anticipated. Savings shall be the additional amount that the Employer would have had to pay to the Contractor, in case the annual electricity consumption had equated the annual Guaranteed Maximum Energy Consumption.

The savings shall be equally split in between the Parties, and the Contractor's share be included by the Contractor in the next Contractor's Statement in accordance with Sub-Clause 14.3 *[Application for Advance and Interim Payment Certificates]*.

(B) PAYMENT PROCEDURES

When applying for certification and making payments, the procedures shall be as follows: *[Insert appropriate procedures]*

(C) COST INDEXATION

[Cost indexation shall be carried out in accordance with Appendix 1 to Financial Bid – Schedule of Cost Indexation]

Appendix 2 – Schedule of Performance Guarantees

*[Insert Schedule of Performance Guarantees as completed by the Bidder in his Bid
(Section IV – Bidding Forms)]*

Appendix 3 – Performance damages

1) Introduction and scope of application of performance damages

This Appendix defines the performance damages which are to be paid by the Contractor in case the Contractor does not comply, during the Operation Service Period, with the Performance Guarantees defined under the Schedule of Performance Guarantees.

Such performance damages apply in furtherance to the provisions contained in:

- a) GCC Sub-Clause 10.7 [*Failure to Reach Production Outputs*]; and
- b) GCC Sub-Clause 11.11 [*Failure to pass tests Prior to Contract Completion*].

These performance damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Clause 15 [*Termination by Employer*].

The payment of such performance damages shall not relieve the Contractor of any duties, obligations or responsibilities he has under the Contract, including, for the avoidance of doubt, the obligation to ensure that the Works remain in accordance with the Contract during the Operation Service Period.

2) Failure to meet Performance Guarantees during the Operation Service Period:

The performance damages referred to under GCC Sub-Clause 10.7, due by the Contractor to the Employer, shall be as follows:

No.	KPI Description	KPI Breach	Performance Damages
1	<i>Compliance with the drinking water quality standards defined in the Employer's Requirements</i>	<i>Non-compliance</i>	<i>No Operation Service payment for the non-compliant water produced</i>
3	<i>Production of a minimum of 50% of the design capacity m³/day at the outlet of the Water Treatment plant at any time of the year</i>	<i>Lower production than the minimum set</i>	<i>USD X per m³ of production below the minimum production set in KPI</i>
4	<i>Continuous water supply (24x7) to the water supply network</i>	<i>Non-compliance exceeds A% Non-compliance is calculated as being the ratio of the number of non-supply hours, divided by hours in the month</i>	<i>[Operation Service payment over the month is reduced by the A percentage of non-compliance</i>

3) Failure to pass Tests Prior to Contract Completion:

The performance damages below correspond to the amount to be paid by the Contractor to the Employer for failure to pass the Tests Prior to Contract Completion, as laid down under sub-paragraph (c) of PCC Sub-Clause 11.11.

No.	KPI Description	KPI Breach	Performance Damages
1	Guaranteed Maximum Energy Consumption Rate	Failure to meet the rate by less than 5%	No damages apply
		Failure to meet the rate by more than 5%	Calculated as per formulae below
2	Guaranteed Minimum Sludge Dry Solids Contents	Failure to meet the rate by less than 5%	No damages apply
		Failure to meet the rate by more than 5%	Calculated as per formulae below
3	Guaranteed Maximum Chemicals Consumption Rate	Failure to meet the rate by less than 5%	No damages apply
		Failure to meet the rate by more than 5%	Calculated as per formulae below

Formulae for performance damages under item 1:

$$PD = (AECR - (GMECR \times 1,05)) \times V \times RLE \times CE \times I$$

Where:

- PD =** Performance damages in currency
- AECR =** Actual Energy Consumption Rate (in kWh per m³ of water production)
- GMECR =** Guaranteed Maximum Energy Consumption Rate (in kWh per m³ of water production) as defined in the Schedule of Performance Guarantees
- V =** Production Volume (in m³/year)
- RLE =** Residual Life Expectancy of the facility, being the difference in between the life span expectancy of the facility, as defined in the Schedule of Performance Guarantees, and the Operation Service Period
- CE =** Cost of Electricity, in currency per kWh
- I =** Inflation rate over the RLE, in percentage

Formulae for performance damages under item 2:

$$PD = [((GMDSC \times 0,95) - SDSC) / SDSC] \times AR \times COD \times RLE \times CSD \times I$$

Where:

- PD =** Performance damages in currency
- SDSC =** Actual Sludge Dry Solids Contents (in percentage)
- GMDSC =** Guaranteed Minimum Dry Solids Contents (in percentage) as defined in the Schedule of Performance Guarantees
- AR =** Average sludge production Ratio (in kg of Dry Solids per kg of COD at the inlet of the wastewater treatment plant)
- COD =** Cumulated COD per year (in kg)
- RLE =** Residual Life Expectancy of the facility, being the difference in between the life span expectancy of the facility, as defined in the Schedule of Performance Guarantees, and the Operation Service Period
- CSD =** Cost of Sludge Disposal, in currency per kg of Dry Solids
- I =** Inflation rate over the RLE, in percentage

Formulae for performance damages under item 3:

$$PD = (ACCR - (GMCCR \times 1,05)) \times V \times RLE \times CC \times I$$

Where:

PD =	Performance damages in currency
ACCR =	Actual Chemical Consumption Rate (in kg per m ³ of water production or kg per ton of DS)
GMCCR =	Guaranteed Maximum Energy Consumption Rate (in kWh per m ³ of water production or kg per ton of DS) as defined in the Schedule of Performance Guarantees
V =	Production Volume (in m ³ /year or tDS/year)
RLE =	Residual Life Expectancy of the facility, being the difference in between the life span expectancy of the facility, as defined in the Schedule of Performance Guarantees, and the Operation Service Period
CC =	Cost of Chemical, in currency per kg
I =	Inflation rate over the RLE, in percentage

The performance damages used in conjunction with Sub-Clause 11.11 are meant to cover the likely losses of the Employer, over the remaining life span of the facility beyond the Contract completion, and therefore beyond the Operation Service completion.

Accordingly, if the Tests Prior to Contract Completion reveal that, for example, the consumption of energy or of chemicals is still higher than the Contractor's Performance Guarantees in the Schedule of Performance Guarantees, this means that the Employer will suffer from the consequences of such breach of Contract once the Employer takes over the facility from the Contractor and until the end of the life span of the facility; it was the Contractor who suffered from the consequences of such breach during the Operation Service Period.

The performance damages shall be set to remedy such breach, by providing adequate compensation to the Employer.

Performance Security

Demand Guarantee

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: _____ *[insert name and address of Employer]*

Date: _____ *[insert date of issue]*

PERFORMANCE GUARANTEE No.: _____ *[insert guarantee reference number]*

Guarantor: _____
[insert name and address of place of issue, unless indicated in the letterhead]

We have been informed that _____ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "**the Applicant**") has entered into Contract No. _____ *[insert reference number of the Contract]* dated _____ with the Beneficiary, for the execution of _____ *[insert name of contract and brief description of Works]* (hereinafter called "**the Contract**").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Security is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *[insert the amount in figures and letters]*¹, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the _____ day of _____ 2____², and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

¹ The Guarantor shall insert an amount representing the percentage stated in the Contract Data of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

² Insert the date twenty-eight days after the expected Contract Completion Date as described in GCC Clause 8.6. The Employer should note that in the event of an extension of this date for completion of the Contract, the Contractor would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Advance Payment Security

Demand Guarantee

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: _____ [insert name and address of Employer]

Date: _____ [insert date of issue]

ADVANCE PAYMENT GUARANTEE No.: _____ [insert guarantee reference number]

Guarantor: _____
[insert name and address of place of issue, unless indicated in the letterhead]

We have been informed that _____ [insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture] (hereinafter called "**the Applicant**") has entered into Contract No. _____ [insert reference number of the Contract] dated _____ with the Beneficiary, for the execution of _____ [insert name of contract and brief description of Works] (hereinafter called "**the Contract**").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum _____ [indicate the amount in figures and letters] is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ [insert the amount in figures and letters]¹, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant:

- a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
- b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number _____ at _____ [insert name and address of Applicant's bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or Payment Certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the Interim Payment Certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the _____ day of _____ 2____²,

¹ The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

² Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

[signature(s)]

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

Retention Money Security

Demand Guarantee

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: _____ *[insert name and address of Employer]*

Date: _____ *[insert date of issue]*

RETENTION MONEY GUARANTEE No.: _____ *[insert guarantee reference number]*

Guarantor: _____
[insert name and address of place of issue, unless indicated in the letterhead]

We have been informed that _____ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "**the Applicant**") has entered into Contract No. _____ *[insert reference number of the Contract]* dated _____ with the Beneficiary, for the execution of _____ *[insert name of contract and brief description of Works]* (hereinafter called "**the Contract**").

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("**the Retention Money**"), and that when the Commissioning Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of the second half of the Retention Money is to be made against a Retention Money guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *[insert amount in figures and letters]* upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Applicant on its account number _____ at _____ *[insert name and address of Applicant's bank]*.

This guarantee shall expire no later than the _____ day of _____ 2____¹, and any demand for payment under it must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

¹ Insert the same expiry date as set forth in the Performance Security, representing the date twenty-eight days after the expected Contract Completion Date as described in GCC Clause 8.6. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."