

PART 3 – Conditions of Contract and Contract Forms	1
Section VII - General Conditions of Contract	3
Section VIII - Particular Conditions of Contract.....	25
Section IX - Contract Forms	28

PART 3 – Conditions of Contract and Contract Forms

Section VII - General Conditions of Contract

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

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language and **FIDIC Standards (particularly, the Red Book)**. The Conditions of Contract, General Conditions, shall be those forming the “Conditions of Contract for Building and Engineering works Designed by the Employer, First Edition 2017”, prepared by the Federation Internationale des Ingenieurs – Conseils (FIDIC). Where there is a conflict between these GCC and PCC and FIDIC, the FIDIC Standards shall take precedence.

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

Table of Clauses

A. General	6
1. Definitions	6
2. Interpretation	8
3. Language and Law	9
4. Project Manager's Decisions	9
5. Delegation	9
6. Communications	9
7. Subcontracting	9
8. Other Contractors	9
9. Personnel and Equipment	9
10. Employer's and Contractor's Risks	9
11. Employer's Risks	9
12. Contractor's Risks	10
13. Insurance	10
14. Site Data	11
15. Contractor to Construct the Works	11
16. The Works to Be Completed by the Intended Completion Date	11
17. Approval by the Project Manager	11
18. Safety	11
19. Discoveries	11
20. Possession of the Site	11
21. Access to the Site	11
22. Instructions, Inspections and Audits	12
23. Appointment of the Adjudicator	12
24. Procedure for Disputes	12
B. Time Control	13
25. Program	13
26. Extension of the Intended Completion Date	13
27. Acceleration	13
28. Delays Ordered by the Project Manager	14
29. Management Meetings	14
30. Early Warning	14
C. Quality Control	14
31. Identifying Defects	14
32. Tests	14
33. Correction of Defects	14
34. Uncorrected Defects	15
D. Cost Control	15
35. Contract Price	15
36. Changes in the Contract Price	15
37. Variations	15
38. Cash Flow Forecasts	16

39.	Payment Certificates	16
40.	Payments.....	16
41.	Compensation Events.....	17
42.	Tax	18
43.	Currencies.....	18
44.	Price Adjustment.....	18
45.	Retention.....	19
46.	Liquidated Damages	19
47.	Bonus.....	19
48.	Advance Payment.....	19
49.	Securities	20
50.	Dayworks.....	20
51.	Cost of Repairs.....	20
E. Finishing the Contract		20
52.	Completion	20
53.	Taking Over.....	21
54.	Final Account	21
55.	Operating and Maintenance Manuals	21
56.	Termination	21
57.	Fraud and Corruption	22
58.	Payment upon Termination	23
59.	Property.....	23
60.	Release from Performance.....	23
61.	Suspension of TMEA Funding or Credit.....	24

General Conditions of Contract

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

- (a) The Accepted Contract Amount means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- (d) TMEA means the financing institution **named in the PCC**.
- (e) Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.
- (f) Compensation Events are those defined in GCC Clause 41 hereunder.
- (g) The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 52.1.
- (h) The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- (i) The Contractor is the party whose Bid to carry out the Works has been accepted by the Employer.
- (j) The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.
- (k) The Contract Price is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (l) Days are calendar days; months are calendar months.
- (m) Day works are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (n) A Defect is any part of the Works not completed in accordance with the Contract.
- (o) The Defects Liability Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.

- (p) The Defects Liability Period is the period **named in the PCC** pursuant to Sub-Clause 33.1 and calculated from the Completion Date.
- (q) Adjudicator means the single person appointed under Clause 23.
- (r) Drawings means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (s) The Employer is the party who employs the Contractor to carry out the Works, **as specified in the PCC**.
- (t) Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (u) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (v) The Initial Contract Price is the Contract Price listed in the Employer's Letter of Acceptance.
- (w) The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (x) Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (y) Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (z) The Project Manager is the person **named in the PCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (aa) PCC means Particular Conditions of Contract
- (bb) The Site is the area **defined as such in the PCC**.
- (cc) Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (dd) Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

- (ee) The Start Date is **given in the PCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (ff) A Subcontractor is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (gg) Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (hh) A Variation is an instruction given by the Project Manager which varies the Works.
- (ii) The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, **as defined in the PCC**.

2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
 - (a) Agreement,
 - (b) Letter of Acceptance,
 - (c) Contractor's Bid,
 - (d) Particular Conditions of Contract,
 - (e) General Conditions of Contract,
 - (f) Specifications,
 - (g) Drawings,
 - (h) Bill of Quantities as per the Letter of Financial Bid,¹ and
 - (i) Any other document **listed in the PCC** as forming part of the Contract.

¹ In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."

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| 3. Language and Law | 3.1 The language of the Contract and the law governing the Contract are stated in the PCC. |
| 4. Project Manager's Decisions | 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer. |
| 5. Delegation | 5.1 Otherwise specified in the PCC, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor. |
| 6. Communications | 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered. |
| 7. Subcontracting | 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations. |
| 8. Other Contractors | 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the PCC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification. |
| 9. Personnel and Equipment | <p>9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.</p> <p>9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.</p> |
| 10. Employer's and Contractor's Risks | 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks. |
| 11. Employer's Risks | <p>11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:</p> <p>(a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to</p> |

- (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
 - (ii) Negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
- (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to

- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
- (c) The activities of the Contractor on the Site after the Completion Date.

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

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

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

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

13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid

- from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 13.5 Both parties shall comply with any conditions of the insurance policies.
- 14. Site Data**
- 14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the PCC**, supplemented by any information available to the Contractor.
- 15. Contractor to Construct the Works**
- 15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 16. The Works to Be Completed by the Intended Completion Date**
- 16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 17. Approval by the Project Manager**
- 17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.
- 17.2 The Contractor shall be responsible for design of Temporary Works.
- 17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
- 18. Safety**
- 18.1 The Contractor shall be responsible for the safety of all activities on the Site.
- 19. Discoveries**
- 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- 20. Possession of the Site**
- 20.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the PCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
- 21. Access to the Site**
- 21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

22. Instructions, Inspections and Audits

- 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2 The Contractor shall permit, and shall cause its Subcontractors and sub consultants to permit, the TMEA and/or persons appointed by the TMEA to inspect the Site and/or the accounts and records of the Contractor and its sub-contractors relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the TMEA if requested by the TMEA. The Contractor's and its Subcontractors' and sub consultants' attention is drawn to Sub-Clause 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the TMEA's inspection and audit rights provided for under Sub-Clause 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the TMEA's prevailing sanctions procedures).

23. Appointment of the Adjudicator

- 23.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the PCC** at the request of either party, within 14 days of receipt of such request.

24. Procedure for Disputes

- 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the PCC**, together with reimbursable expenses of the types **specified in the PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.
- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified **in the PCC**.

B. Time Control

25. Program

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

26. Extension of the Intended Completion Date

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

27. Acceleration

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

- 28. Delays Ordered by the Project Manager**
- 28.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 29. Management Meetings**
- 29.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 29.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 30. Early Warning**
- 30.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 30.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

- 31. Identifying Defects**
- 31.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 32. Tests**
- 32.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 33. Correction of Defects**
- 33.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 33.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

34. Uncorrected Defects

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

D. Cost Control**35. Contract Price**

- 35.1 In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 35.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

36. Changes in the Contract Price

- 36.1 In the case of an admeasurement contract:
- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
 - (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
 - (c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

37. Variations

- 37.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.
- 37.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 37.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall

be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

- 37.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 37.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 37.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

**38. Cash Flow
Forecasts**

- 38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

**39. Payment
Certificates**

- 39.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 39.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 39.3 The value of work executed shall be determined by the Project Manager.
- 39.4 The value of work executed shall comprise:
- (a) In the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or
 - (b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.
- 39.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 39.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

40. Payments

- 40.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified

by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

- 40.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 40.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

41. Compensation Events

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

- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

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

41.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

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

42. Tax

42.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

43. Currencies

43.1 Where payments are made in currencies other than the currency of the Employer's country **specified in the PCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

44. Price Adjustment

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

$$P_c = A_c + B_c \text{ Imc/Ioc}$$

where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency "c."

A_c and B_c are coefficients² **specified in the PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and

I_{mc} is the index prevailing at the end of the month being invoiced and I_{oc} is the index prevailing 28 days before Bid opening for inputs payable; both in the specific currency “c.”

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

45. Retention

- 45.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the PCC** until Completion of the whole of the Works.
- 45.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 51.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” bank guarantee.

46. Liquidated Damages

- 46.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the PCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.
- 46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 40.1.

47. Bonus

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

48. Advance Payment

- 48.1 The Employer shall make advance payment to the Contractor of the amounts **stated in the PCC** by the date **stated in the PCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a

² The sum of the two coefficients A_c and B_c should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A , for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price. [To be transferred to the User Guide]

form and by an acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

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

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

49. Securities

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

50. Dayworks

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

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

50.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

51. Cost of Repairs

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

E. Finishing the Contract

52. Completion

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

- 53. Taking Over** 53.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 54. Final Account** 54.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 55. Operating and Maintenance Manuals** 55.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the PCC**.
- 55.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC** pursuant to GCC Sub-Clause 55.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the PCC** from payments due to the Contractor.
- 56. Termination** 56.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 56.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
 - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
 - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
 - (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
 - (f) the Contractor does not maintain a Security, which is required;

- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**; or
- (h) If the Contractor, in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC Clause 57.1.

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

56.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

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

57. Fraud and Corruption

57.1 If the Employer determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, subconsultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 56 shall apply as if such expulsion had been made under Sub-Clause 56.5 [Termination by Employer].

57.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.

57.3 For the purposes of this Sub-Clause:

- (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party³;
- (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation⁴;

³ "Another party" refers to a public official acting in relation to the procurement process or contract execution]. In this context, "public official" includes TMEA staff and employees of other organizations taking or reviewing procurement decisions.

⁴ "Party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

- (iii) “collusive practice” is an arrangement between two or more parties⁵ designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁶;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a TMEA investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (bb) acts intended to materially impede the exercise of the TMEA’s inspection and audit rights provided for under Sub-Clause 22.2.

58. Payment upon Termination

- 58.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the PCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 58.2 If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

59. Property

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

60. Release from Performance

- 60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

⁵ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁶ “Party” refers to a participant in the procurement process or contract execution.

**61. Suspension of
TMEA Funding or
Credit**

61.1 In the event that the TMEA suspends the Funding or Credit to the Employer, from which part of the payments to the Contractor are being made:

- (a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the TMEA's suspension notice.
- (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 40.1, the Contractor may immediately issue a 14-day termination notice.

Section VIII - Particular Conditions of Contract

A. General	
GCC 1.1 (d)	The financing institution is: TradeMark East Africa
GCC 1.1 (s)	The Client/Employer is: Kenya Ports Authority
GCC 1.1 (v)	The Intended Completion Date for the whole of the Works shall be: 6 months (see Section VI)
GCC 1.1 (z)	<p>The Project Manager is:</p> <p><i>The General Manager Infrastructure Development of Kenya Ports Authority. The Project Manager shall delegate its duties and responsibilities to the Entity specified under GCC 5.1 below.</i></p> <p>The Deputy Project Manager is: (Manager Projects Development & Management)</p>
GCC 1.1 (aa)	The Site is located at: Mombasa Port for Lot 2A and covers berth No. 15, 16 and 17
GCC 1.1 (dd)	The Start Date shall be <i>immediately upon signing of contract but not later than 2 weeks thereafter.</i>
GCC 1.1 (hh)	<p>The Works consist of:</p> <p>Civil Works for Implementation of Proposed Gate and Traffic Management Plan for Mombasa Port and Nairobi ICD: LOT 2A</p>
GCC 2.2	Sectional Completions are: Not Applicable
GCC 2.3(i)	<p>The following documents also form part of the Contract:</p> <p><i>a) Agreement;</i> <i>b) Letter of Acceptance;</i> <i>c) Contractor's Bid;</i> <i>d) Performance bond;</i> <i>e) Advance payment guarantee;</i> <i>f) Pre-contract clarification meeting minutes;</i> <i>g) Particular Conditions of Contract;</i> <i>h) General Conditions of Contract;</i> <i>i) Specifications;</i> <i>j) Drawings;</i> <i>k) Bill of Quantities; and</i> <i>l) Any other document listed by the Procuring Entity in the course of the tendering process.</i></p>
GCC 3.1	The language of the contract is: English

	The law that applies to the Contract is the law of: Kenya
GCC 5.1	The Project manager <i>may delegate</i> any of his duties and responsibilities to <i>Principal Projects Engineer - Design</i>
GCC 8.1	Schedule of other contractors: <i>N/A</i>
GCC 13.1	<p>The minimum insurance amounts shall be:</p> <ul style="list-style-type: none"> (a) For loss or damage to the Works, Plant and Materials: <i>Contract Price plus 15%.</i> (b) For loss or damage to Equipment: <i>Full replacement cost.</i> (c) For loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract: <i>Full replacement cost.</i> (d) for personal injury or death: - <ul style="list-style-type: none"> (i) Of the Contractor's employees: <i>as per Workmen Compensation Ordinance.</i> (ii) of other people: <i>USD 100,000</i> per occurrence with number of occurrences unlimited.
GCC 14.1	Site Data are: <i>refer to the drawings of the site provided</i>
GCC 20.1	The Site Possession Date(s) shall be: <i>within one month after contract signing</i>
GCC 23.1 & GCC 23.2	Appointing Authority for the Adjudicator: <i>Kenya Ports Authority</i>
GCC 24.3	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <i>to be negotiated.</i>
GCC 24.4	<p><i>"United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules:</i> Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force."</p> <p>Institution whose arbitration procedures shall be used: Institution Of Chartered Arbitrators of Kenya</p> <p>The place of arbitration shall be: <i>Nairobi, Kenya</i></p>
B. Time Control	
GCC 25.1	The Contractor shall submit for approval a Program for the Works within <i>14 working days</i> from the date of the Letter of Acceptance.
GCC 25.3	<p>The period between Program updates is <i>21 working days.</i></p> <p>The amount to be withheld for late submission of an updated Program is <i>10% of the payment certificate value.</i></p>

C. Quality Control	
GCC 33.1	The Defects Liability Period is: 365 days or 1 calendar year whichever is longer.
D. Cost Control	
GCC 43.1	The currency of the Employer's country is: United States Dollars (USD \$)
GCC 44.1	<p>The Contract <i>"is not"</i> subject to price adjustment in accordance with GCC Clause 44, and the following information regarding coefficients <i>"does not"</i> apply.</p> <p>The coefficients for adjustment of prices are: Not Applicable</p> <p>(a) For currency <i>[insert name of currency]</i>:</p> <p>(i) <i>[Insert percentage]</i> percent non-adjustable element (coefficient A).</p> <p>(ii) <i>[Insert percentage]</i> percent adjustable element (coefficient B).</p> <p>(b) For currency <i>[insert name of currency]</i>:</p> <p>(i) <i>[Insert percentage]</i> percent non-adjustable element (coefficient A).</p> <p>(ii) <i>[Insert percentage]</i> percent adjustable element (coefficient B).</p> <p>The Index I for local currency shall be <i>[insert index]</i>. Not Applicable</p> <p>The Index I for the specified international currency shall be <i>[insert index]</i>.</p> <p><i>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the Employer]</i></p> <p>The Index I for currencies other than the local currency and the specified international currency shall be <i>[insert index]</i>.</p> <p><i>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the Employer.]</i></p>
GCC 45.1	The proportion of payments retained is: 10%
GCC 46.1	The liquidated damages for the whole of the Works are one (1 %) percentage of the final Contract Price per week. The maximum amount of liquidated damages for the whole of the Works is ten (10%) percentage of the final Contract Price.
GCC 47.1	The Bonus for the whole of the Works is zero (0%) percentage of final Contract Price per day. The maximum amount of Bonus for the whole of the Works is zero (0%) percentage of the final Contract Price.
GCC 48.1	The Advance Payments shall be: twenty (20%) and shall be paid to the Contractor no later than 60 days from submission date .
GCC 49.1	<p>The Performance Security amount is 10% of contract value in these forms</p> <p>(a) First Demand Bank Guarantee</p>

E. Finishing the Contract	
GCC 55.1	The date by which operating and maintenance manuals are required <i>shall be on completion of works</i> The date by which “as built” drawings are required shall be on handover .
GCC 55.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is <i>five percent (5%) of contract price</i> .
GCC 56.2 (g)	The maximum number of days is: 5 weeks
GCC 58.1	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is <i>ten (10%) percentage</i> .

Section IX - Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

Table of Forms

Letter of Award.....	30
Contract Agreement.....	31
Performance Security.....	33
Advance Payment Security	35

Letter of Award

[On letterhead paper of the Procuring Entity]

..... *[Date]*

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

Subject: *[Notification of Award Contract No.]*

This is to notify you that your Bid dated *[Insert date]* For execution of the:
Civil Works for Implementation of Proposed Gate and Traffic Management Plan for Mombasa Port - Rearrangement and Marking of Container Terminal 1 East (Incl. Slip Road), Lot 03
[Insert identification number, as given in the Appendix to Bid] for the Accepted Contract Amount of the equivalent of *[Insert amount in numbers and words and name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

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

[Choose one of the following statements:]

We accept that _____ *[insert the name of Adjudicator proposed by the Bidder]* be appointed as the Adjudicator.

[Or]

We do not accept that _____ *[insert the name of the Adjudicator proposed by the Bidder]* be appointed as the Adjudicator, and by sending a copy of this Letter of Acceptance to _____ *[insert name of the Appointing Authority]*, the Appointing Authority, we are hereby requesting such Authority to appoint the Adjudicator in accordance with ITB 42.1 and GCC 23.1.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the day of,, between **[name of the Employer]**. (Hereinafter “the Employer”), of the one part, and **[name of the Contractor]**. (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as **Civil Works for Implementation of Proposed Gate and Traffic Management Plan for Mombasa Port and Nairobi ICD: LOT 2A** should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

‘Whereas the Employer and the Contractor agree that in case of the General Conditions of Contract are not clear or specific on the role of the duties, responsibilities and decision powers of the Project Manager, that of the Engineer as defined in the Conditions of Contract for Construction for Building and Engineering works, edition 1999 by the International Federation of Consulting Engineers (FIDIC) shall govern.

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 Contract documents.
 - (a) the Letter of Acceptance
 - (b) the Bid
 - (c) The Addenda Nos **[insert addenda numbers if any]**.
 - (d) the Particular Conditions
 - (e) the General Conditions;
 - (f) the Specification
 - (g) the Drawings; and
 - (h) the completed Schedules,
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion 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.

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

Signed by: _____
for and on behalf of the Employer

in the
presence of: _____
Witness, Name, Signature, Address, Date

Signed by: _____
for and on behalf the Contractor

in the
presence of: _____
Witness, Name, Signature, Address, Date

Performance Security***[Bank's Name, and Address of Issuing Branch or Office]*****Beneficiary:**

**TradeMark East Africa,
Equatorial Fidelity Centre,
2nd Floor, Waiyaki Way,
Westlands,
Nairobi,
KENYA.**

Date:**Performance Guarantee No.:**

We have been informed that ***[name of the Contractor]***. (Hereinafter called "the Contractor") has entered into Contract No. ***[Reference number of the Contract]*** dated with you, for the execution of **Civil Works for Implementation of Proposed Gate and Traffic Management Plan for Mombasa Port - Rearrangement and Marking of Container Terminal 1 East (Incl. Slip Road), Lot 03** (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we ***[name of the Bank]***. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ***[name of the currency and amount in figures]***¹. (***[amount in words]***.) such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your 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, and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

.....
[Seal of Bank and Signature(s)]

Note –

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

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

² *Insert the date twenty-eight days after the expected completion date. 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 Employer’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

Advance Payment Security

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary:

**TradeMark East Africa,
Equatorial Fidelity Centre,
2nd Floor, Waiyaki Way,
Westlands,
Nairobi,
KENYA.**

Date:

Advance Payment Guarantee No.:

We have been informed that *[name of the Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the Contract]* dated with you, for the execution of **Civil Works for Implementation of Proposed Gate and Traffic Management Plan for Mombasa Port - Rearrangement and Marking of Container Terminal 1 East (Incl. Slip Road), Lot 03** (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum *[name of the currency and amount in figures]* ¹ (*[amount in words]*) is to be made against an advance payment guarantee.

At the request of the Contractor, we *[name of the Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[name of the currency and amount in figures]** (*[amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number *[Contractor's account number]* at *[name and address of the Bank]*

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated 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 eighty (80) percent of the Contract Price has been certified for payment, or on the ... day of, ² , 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, ICC Publication No. 458.

..... *[Seal of Bank and Signature(s)]*

Note –

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

1 The Guarantor shall insert an amount representing the amount of the advance payment 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 Employer’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

CONFIDENTIALITY AGREEMENT

Note: This form shall be completed and submitted alongside the Qualification/Technical Bid

TMEA Background

TradeMark East Africa (TMEA) is a not-for-profit organization funded by a range of development agencies to promote regional trade and prosperity in East Africa. Our vision is 'a united East Africa with flourishing trade, strong investment and less poverty', and our mission is 'to promote rapid advances in East Africa's integration, trade and global competitiveness for all East Africans.'

TMEA was founded in 2010, but became fully operational in 2011. TMEA has scaled up significantly in terms of expenditure and personnel during this time. TMEA works closely with business and civil society organizations, the East African Community (EAC), national governments. TMEA has its headquarters in Nairobi with branches in Arusha, Bujumbura, Dar es Salaam, Juba, Kampala and Kigali. TMEA seeks to support growth in East African trade through three strategic objectives:

Increased market access;

Enhanced trade environment; and

Improved business competitiveness.

Further information is available on the TMEA website www.trademarka.com.

Confidentiality Agreement

It is understood and agreed to that the below identified discloser of confidential information may provide certain information that is and must be kept confidential. To ensure the protection of such information, and to preserve any confidentiality necessary under patent and/or trade secret laws, it is agreed that

1. The Confidential Information to be disclosed can be described as and includes:

Invention description(s), technical and business information relating to proprietary ideas and inventions, ideas, patentable ideas, trade secrets, drawings and/or illustrations, patent searches, existing and/or contemplated products and services, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure.

2. The Recipient agrees not to disclose the confidential information obtained from the discloser to anyone unless required to do so by law.

3. This Agreement states the entire agreement between the parties concerning the disclosure of Confidential Information. Any addition or modification to this Agreement must be made in writing and signed by the parties.

4. If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

WHEREFORE, the parties acknowledge that they have read and understand this Agreement and voluntarily accept the duties and obligations set forth herein.

On behalf of Trademark East Africa:

Name

Signature:

Date:

On Behalf of the Service provider:

Name:

Signature:

Date: