

REPUBLIC OF KENYA

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

STATE DEPARTMENT FOR HOUSING AND URBAN DEVELOPMENT

Tender Document
For

PROPOSED MANUFACTURE, SUPPLY AND DELIVERY OF SANITARY WARE FOR THE AFFORDABLE HOUSING PROGRAM UNDER FRAMEWORK AGREEMENTS BASED ON SPECIALLY PERMITTED PROCUREMENT METHOD

TENDER NO.
SDHUD/784/ SPPM/008/2025-26

Ministry of Lands, Public Works, Housing and Urban Development,
State Department for Housing and Urban Development,
P.O Box 30119-00100
Nairobi, Kenya

Closing Date: 17th November, 2026 at 9:00 am.

Table of Contents

PREFACE **1**
INVITATION TO TENDER (ITT) **4**
PART 1 – TENDERING PROCEDURES **6**
SECTION I – INSTRUCTION TO TENDERERS 7
A. General *7*
1. Scope of Tender 7
2. Definitions 7
3. Fraud and Corruption 7
4. Eligible Tenderers 8
5. Eligible Goods and Related Services 10
B. Contents of Tendering Document *10*
6. Sections of Tendering Document 10
7. Site Visit 11
8. Pre-Tender Meeting and a Pre-Arranged Pretender Visit of the Site of the Works 11
9. Clarification of Tender Documents 11
10. Amendment of Tendering Document 11
C. Preparation of Tenders *12*
11. Cost of Tendering 12
12. Language of Tender 12
13. Documents Comprising the Tender 12
14. Form of Tender and Price Schedules 13
15. Alternative Tenders 13
16. Documents Establishing the Eligibility of the Goods and Related Services 13
17. Documents Establishing the Eligibility and Qualifications of the Tenderer 13
18. Documents Establishing the Conformity of the Goods and Related Services 14
19. Tender Prices and Discounts 14
20. Currencies of Tender and Payment 16
21. Period of Validity of Tenders 16
22. Tender Security 16
23. Format and Signing of Tender 17
D. Submission and Opening of Tenders *18*
24. Submission, Sealing and Marking of Tenders 18
25. Deadline for Submission of Tenders 18
26. Late Tenders 19
27. Withdrawal, Substitution, and Modification of Tenders 19
28. Tender Opening 19
E. Evaluation and Comparison of Tenders *20*
29. Confidentiality 20
30. Clarification of Tenders 20
31. Deviations, Reservations, and Omissions 21
32. Determination of Responsiveness 21
33. Nonmaterial Non-conformities 21
34. Correction of Arithmetical Errors 22
35. Conversion to Single Currency 22
36. Margin of Preference 22
37. Evaluation of Tenders 23
38. Comparison of Tenders 24
39. Abnormally Low Tenders and Abnormally High Tenders 24
40. Unbalanced or Front-Loaded Tenders 25
41. Eligibility and Qualification of the Tenderer 25
42. Procuring Entity's right to Accept Any Tender and to Reject Any or All Tenders 26

F. Award of Framework Agreement *26*
43. Award Criteria 26
44. Notice of Intention to Enter into a Framework Agreement/ Notification of Award 26
45. Standstill Period 27
46. Debriefing by the Procuring Entity 27
47. Letter of Award 27
48. Signing of Framework Agreement 27
49. Performance Security 27
50. Publication of Procurement Framework Agreement 28
51. Appointment of Adjudicator 28
52. Procurement Related Complaint and Administrative Review 28
SECTION II – TENDER DATA SHEET (TDS) 29
SECTION III – EVALUATION AND QUALIFICATION CRITERIA 35
1. General Provision *35*
2. Evaluation and Framework Agreement award Criteria *35*
3. Preliminary examination for Determination of Responsiveness *35*
4. Evaluation *37*
4.1. Technical Evaluation 37
4.2. Economic Evaluation 41
4.3. Evaluation of Commercial Terms and Conditions of the Tender (ITT 37.1): 45
4.4. Evaluation Criteria (Other Factors) (ITT 37.5(e)) 45
5. Multiple Contracts (ITT 37.7) *45*
6. Margin of Preference *45*
7. Alternative Tenders (ITT 15.1) *46*
8. Post Qualification and Contract Award (ITT 41), more specifically: *47*
9. Qualification *48*
10. Personnel – N/A *53*
11. Equipment – N/A *53*
12. Sub Framework Agreements – N/A *53*
SECTION IV – TENDERING FORMS 54
FORM OF TENDER *54*
TENDERER'S ELIGIBILITY – CONFIDENTIAL BUSINESS QUESTIONNAIRE *57*
CERTIFICATE OF INDEPENDENT TENDER DETERMINATION *60*
SELF DECLARATION FORMS *62*
FORM SD1 62
FORM SD2 63
DECLARATION AND COMMITMENT TO THE CODE OF ETHICS *64*
SCHEDULE OF PACKAGES AND PRICES *65*
i. Packages involved in the Framework Agreement 65
ii. Bills of Quantities 65
iii. Grand Summary 65
COUNTRY OF ORIGIN DECLARATION FORM *66*
PRICE ADJUSTMENT *67*
Sample Price Adjustment Formula 67
Conditions Applicable to Price Adjustment 67
TECHNICAL PROPOSAL *69*
Site Organization 70
Method Statement 71
Mobilization Schedule 72
Construction Schedule 73
Contractor's Equipment 74
Personnel 76
Tenderers Qualification without prequalification 78

Form ELI 1.1 – Tenderer Information Sheet 79
Form ELI 1.2 – Party to JV Information Sheet 80
Form CON 2 – Historical Contract Non-Performance 81
Form CCC – Current Contract Commitments / Works in Progress 83
Form FIN 3.1 – Financial Situation – Historical Financial Performance 84
Form FIN 3.2 – Average Annual Turnover 85
Form FIN 3.3 – Financial Resources 85
Form EXP 4.1 – General Experience 86
Form EXP 4.2(a) – Specific Experience 87
Form EXP 4.2(b) – Specific Experience in Key Activities 88
FORM OF TENDER SECURITY – [Option 1–Demand Bank Guarantee] 89
FORMAT OF TENDER SECURITY – [Option 2–Insurance Guarantee] 90
TENDER-SECURING DECLARATION FORM {r 46 and 155(2)} 91
MANUFACTURER'S AUTHORIZATION FORM 92
FORM INV 6.1 – INVESTMENT PLAN TEMPLATE 93
PART 2 – PROCUREMENT ENTITY'S REQUIREMENTS 101
SECTION V – SCHEDULE OF REQUIREMENTS 102
SCOPE OF MANUFACTURE, SUPPLY & DELIVERY OF SANITARY WARE 103
SPECIFICATION: GENERAL AND PARTICULAR SPECIFICATIONS FOR SANITARY WARE 104
1. GENERAL SPECIFICATIONS FOR Sanitary Ware SetsMANUFACTURER SUPPLY & DELIVERY SCOPE 105
1.1 REGULATIONS 105
1.2 BUILDER'S WORK ..... **Error! Bookmark not defined.**
1.2.1 WATER TANKSROOM ..... **Error! Bookmark not defined.**
1.2.2 WATER TANKSSUMPS ..... **Error! Bookmark not defined.**
1.2.3 BUILDER'S WORK ..... **Error! Bookmark not defined.**
1.3 TEST ..... **Error! Bookmark not defined.**
1.4 TRAINING ..... **Error! Bookmark not defined.**
1.5 PROTECTION AGAINST POWER/VOLTAGE FLUCTUATIONS, SURGE AND TRANSIENT CURRENTS **Error! Bookmark not defined.**
1.6 INITIAL STATUTORY INSPECTION ..... **Error! Bookmark not defined.**
1.7 INITIAL MAINTENANCE ..... **Error! Bookmark not defined.**
1.8 10 YEAR COMPREHENSIVE MAINTENANCE ..... **Error! Bookmark not defined.**
1.9 FACTORY INSPECTION ..... **Error! Bookmark not defined.**
1.10 DUE DILIGENCE FACTORY INSPECTION ..... **Error! Bookmark not defined.**
1.11 WATER TANKSLOCAL ASSEMBLY ..... **Error! Bookmark not defined.**
2 PARTICULAR SPECIFICATIONS ..... **Error! Bookmark not defined.**
2.1. LOCATION OF SITE ..... **Error! Bookmark not defined.**
2.2. DESCRIPTION OF THE WORKS ..... **Error! Bookmark not defined.**
2.3. CLIMATE CONDITIONS ..... **Error! Bookmark not defined.**
2.4. GENERAL REQUIREMENTS ..... **Error! Bookmark not defined.**
2.5. PARTICULAR REQUIREMENTS ..... **Error! Bookmark not defined.**
Technical Standards ..... **Error! Bookmark not defined.**
1. Water Pumps ..... **Error! Bookmark not defined.**
2. Pump Set Installation ..... **Error! Bookmark not defined.**
1. Labels and Notices ..... **Error! Bookmark not defined.**
2. Danger Notices ..... **Error! Bookmark not defined.**
3. Painting, Finishing, Protection and Identification ..... **Error! Bookmark not defined.**
1. Adjustments, Commissioning, Functional and Performance Tests ..... **Error! Bookmark not defined.**
2. Factory Tests and Off-site Tests ..... **Error! Bookmark not defined.**
3. Visual Inspection and Checking ..... **Error! Bookmark not defined.**
4. Setting to Work, Safety and Quality Tests ..... **Error! Bookmark not defined.**
Commissioning, Regulations, Tuning and Adjustment ..... **Error! Bookmark not defined.**

5. Functional Tests ..... **Error! Bookmark not defined.**
6. Performance Tests ..... **Error! Bookmark not defined.**
2. INFORMATION TO BE SUPPLIED BY THE TENDERER 111
3. DATA SCHEDULES 112
4. FORMS AND PROCEDURES 114
5. DRAWINGS 126
6. SUPPLEMENTARY INFORMATION 127
PART 3 – CONDITIONS OF FRAMEWORK AGREEMENT AND FRAMEWORK AGREEMENT FORMS 130
SECTION VI – GENERAL CONDITIONS OF FRAMEWORK AGREEMENT 131
A. Framework Agreement and Interpretation 131
1. Definitions 131
2. Framework Agreement Documents 137
3. Interpretation 137
4. Communications 138
5. Law and Language 138
6. Fraud and Corruption 138
B. Subject Matter of Framework Agreement 139
7. Scope of Facilities 139
8. Time for Commencement and Completion 139
9. Contractor's Responsibilities 139
10. Procuring Entity's Responsibilities 141
C. Payment 141
11. Framework Agreement Price 142
12. Terms of Payment 142
13. Securities 142
14. Taxes and Duties 143
D. Intellectual Property 144
15. License/Use of Technical Information 144
16. Confidential Information 144
E. Execution of the Facilities 145
17. Representatives 145
18. Work Program 146
19. Sub-Contracting 147
20. Design and Engineering 148
21. Procurement 149
22. Installation 150
23. Test and Inspection 155
24. Completion of the Facilities 157
25. Commissioning and Operational Acceptance 158
F. Guarantees and Liabilities 160
26. Completion Time Guarantee 160
27. Defect Liability 161
28. Functional Guarantees 163
29. Patent Indemnity 163
30. Limitation of Liability 164
G. Risk Distribution 164
31. Transfer of Ownership 164
32. Care of Facilities 165
33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification 166
34. Insurance 167
35. Unforeseen Conditions 168
36. 36. Change in Laws and Regulations 169
37. Force Majeure 169
38. War Risks 170

H. Change in Framework Agreement Elements *172*
39. Change in the Facilities 172
40. Extension of Time for Completion 174
41. Suspension 175
42. Termination 176
43. Assignment 180
44. Export Restrictions 180
I. Claims, Disputes and Arbitration *180*
45. Contractor's Claims 181
46. Claims, Disputes and Arbitration 182
SECTION VII – SPECIAL CONDITIONS OF FRAMEWORK AGREEMENT 185
SECTION VIII – FRAMEWORK AGREEMENT FORMS 191
NOTIFICATION OF INTENTION TO AWARD *192*
1. Notification of Intention to Award 192
2. The Successful Tenderer 192
3. Other Tenderers 192
4. Reason/s Why Your Tender Was Unsuccessful 193
5. How To Request A Debriefing 193
6. How To Make A Complaint 194
7. Standstill Period 194
REQUEST FOR REVIEW *195*
LETTER OF AWARD *196*
FRAMEWORK AGREEMENT *197*
Article 1. Framework Agreement Documents 197
Article 2. Framework Agreement Price and Terms of Payment 197
Article 3. Effective Date 198
Article 4. Communications 199
Article 5. Appendices 199
APPENDICES *200*
APPENDIX 1: TERMS AND PROCEDURES OF PAYMENT 201
APPENDIX 2. PRICE ADJUSTMENT 204
APPENDIX 3. INSURANCE REQUIREMENTS 206
APPENDIX 4. TIME SCHEDULE 208
APPENDIX 5. LIST OF MAJOR ITEMS OF SUPPLY AND DELIVERY SERVICES AND LIST OF APPROVED SUBCONTRACTORS 209
APPENDIX 6. SCOPE OF WORKS AND SUPPLY BY THE PROCURING ENTITY 210
APPENDIX 7. LIST OF DOCUMENTS FOR APPROVAL OR REVIEW 211
APPENDIX 8. FUNCTIONAL GUARANTEES 212
PERFORMANCE SECURITY FORM 214
MAINTENANCE SECURITY FORM OPTION 1 – Demand Bank Guarantee ..... **Error! Bookmark not defined.**
MAINTENANCE SECURITY FORM OPTION 2 – Maintenance Bond ..... **Error! Bookmark not defined.**
BENEFICIAL OWNERSHIP DISCLOSURE FORM 220

PREFACE

PROPOSED MANUFACTURE, SUPPLY & DELIVERY OF SANITARY WARE FOR THE AFFORDABLE HOUSING PROGRAMME UNDER A FRAMEWORK AGREEMENT ESTABLISHED PURSUANT TO THE SPECIALLY PERMITTED PROCUREMENT METHOD (SPPM)

1. PROJECT BRIEF

The Government of Kenya, through the State Department for Housing and Urban Development, is implementing the Affordable Housing Programme (AHP) with an ambitious target of 200,000 housing units annually and a cumulative total of 1,000,000 units over the next five years. This transformative national priority not only seeks to provide dignified, affordable homes to Kenyan citizens but also to drive industrialization, create high-quality jobs, and achieve manufacturing independence in critical building components.

To support the scale and geographic spread of the Programme, the State Department is procuring Sanitary Ware Items and other Mechanical, Electrical and Plumbing (MEP) equipment. This procurement is conducted under the Specially Permitted Procurement Method (SPPM) pursuant to Section 114A of the PPADA. The SPPM will identify and award multiple suppliers through a single-category, national-level Framework Agreement established under the Specially Permitted Procurement Method (SPPM). The Framework Agreement shall have a duration of ten (10) years, subject to performance and budgetary appropriation.

The Framework Agreement will establish a ranked panel of pre-qualified suppliers (minimum three (3) and maximum five (5) responsive tenderers) for the manufacture, supply and delivery of Sanitary Ware Sets across multiple Affordable Housing Programme project sites nationwide.

No fixed regional packages, pre-determined geographical allocations, or guaranteed minimum quantities will be established at the tender stage. Instead, the Framework Agreement creates a flexible national panel from which the Procuring Entity shall issue multiple call-off contracts strictly as and when sites become ready and funding is approved. The quantity comprised in each call-off shall be allocated equally among eligible Tier 1 panel members in accordance with Clause 1.6.9 of the General Conditions of Framework Agreement, at each member's accepted unit rates and without reopening competition.Residual quantities arising from Tier 2 exclusion, capacity limits, declines or forfeiture shall be redistributed among the remaining eligible members in rank order. Each call-off order shall be accompanied by a master delivery schedule against which each member shall submit a corresponding site-by-site delivery schedule.

In all cases, pricing for every call-off shall be determined exclusively by applying the original tendered unit rates and prices contained in the Framework Agreement, thereby ensuring full transparency, value for money, equal treatment of panel members, and strict compliance with the Public Procurement and Asset Disposal Act, 2015.

Based on the current Affordable Housing Programme pipeline, Sanitary Ware demand is projected to remain substantial and sustained over multiple years. The inclusion of a ten (10)-year framework term and structured industrial participation requirements is intended to encourage credible long-term investment in local assembly and manufacturing capacity within Kenya, consistent with national industrialization objectives.

This procurement structure is therefore designed not only to ensure timely delivery of Sanitary Ware across AHP sites, but also to support the development of durable domestic supply chains and long-term technical capacity in critical MEP systems.

2. PROJECT DATA SHEET

PROPOSED MANUFACTURE, SUPPLY AND DELIVERY OF SANITARY WARE SETS FOR THE AFFORDABLE HOUSING PROGRAMME UNDER A FRAMEWORK AGREEMENT ESTABLISHED PURSUANT TO THE SPECIALLY PERMITTED PROCUREMENT METHOD (SPPM)		
Item	**Framework Detail**	**Project Particulars**
1.00	Tender No.	SDHUD/784/ SPPM/008/2025-26
2.00	Scope	Manufacture, Supply and Delivery of Sanitary Ware, an estimated total of 4,000,000 Sanitary Ware Sets for the next 10 years will be procured *(indicative maximum; actual quantities and sites allocated nationwide via call-offs)*

3. TENDER PROCUREMENT PARTICULARS

3.1. Name and Contact Addresses of Procuring Entity

Name: State Department for Housing and Urban Development
Address: P.O Box 30119-00100, Nairobi, Kenya
Email address: procurement@housingandurban.go.ke

3.2. Invitation to Tender (ITT) No.: SDHUD/784/ SPPM/008/2025-26

3.3. Tender Name:

Proposed Manufacture, Supply and Delivery of Sanitary Ware for the Affordable Housing Programme under a Framework Agreement Established Pursuant to the Specially Permitted Procurement Method (SPPM)

3.4. Framework Agreement Duration:

Ten (10) years

3.5. Description:

Framework Agreement for the manufacture, supply and delivery of Sanitary Ware for Affordable Housing Programme project sites nationwide.

The Affordable Housing Programme currently has project sites distributed across all forty-seven (47) counties of the Republic of Kenya. Accordingly, tenderers shall be required to demonstrate the technical, logistical, and operational capacity to provide nationwide coverage, either directly or through structured regional deployment strategies, partnerships, or service networks sufficient to support Supply and Delivery obligations across multiple geographic regions.

Current pipeline quantities are set out in the Bills of Quantities. They are indicative only and remain subject to site readiness, funding approval and programme requirements.

Call-off contracts shall be issued strictly as and when project sites are ready and funding has been approved.

3.6. Pricing:
Call-off prices shall be determined exclusively by applying the original tendered unit rates and prices contained in the Framework Agreement.

3.7. Volume:
Quantities are indicative only and do not constitute a procurement guarantee. No minimum or guaranteed quantities shall arise at the framework award stage.

3.8. Number of Framework Suppliers / Vendors
A minimum of three (3) and a maximum of five (5) responsive and qualified tenderers may be shortlisted and awarded framework agreements for this category.

INVITATION TO TENDER (ITT)

PROCURING ENTITY:
Ministry of Lands, Public Works, Housing, and Urban Development
State Department for Housing and Urban Development
P.O. Box 30119-00100
Nairobi, Kenya

FRAMEWORK AGREEMENT NAME AND DESCRIPTION:
Proposed Manufacture, Supply & Delivery of Sanitary Ware for the Affordable Housing Programme under a Framework Agreement Established Pursuant to the Specially Permitted Procurement Method (SPPM)

1. The State Department for Housing and Urban Development invites sealed tenders for the Proposed Manufacture, Supply & Delivery of Sanitary Ware for the Affordable Housing Programme resulting in award of multiple suppliers under a Framework Agreement

2. Tendering shall be conducted pursuant to the Specially Permitted Procurement Method (SPPM) in accordance with Section 114A of the Public Procurement and Asset Disposal Act, 2015, and the approved SPPM framework applicable to the Affordable Housing Programme. Tendering is open to qualified and eligible manufacturers and/or authorized assemblers with demonstrated technical, financial, and operational capacity to deliver nationally.

3. Tender documents may be viewed and downloaded for free from the website ***www.housingandurban.go.ke.*** Tenderers who download the tender document must forward their particulars immediately to ***procurement@housingandurban.go.ke*** to facilitate any further clarification or addendum.

4. All Tenders must be accompanied by a Tender Security as specified in the Tender Data Sheet Clause ITT 22.1. The Framework Agreements shall be for a duration of ten (10) years, subject to performance and budgetary appropriation. Call-off orders shall be issued for supply & delivery in accordance with the Framework Agreement allocation mechanism.

5. Completed tenders must be delivered to the address below on or before **17th November, 2026 at 9:00 am.**at 10.00 a.m. (East African Time). Electronic Tenders shall not be permitted.

6. Tenders will be opened immediately after the deadline date and time specified above or any later deadline date and time specified. Tenders will be publicly opened in the presence of the Tenderers' designated representatives and anyone who chooses to attend at the address below.

7. The tender currency shall be Kenya Shillings and shall be inclusive of all applicable taxes.

8. Tenders shall remain valid for 287 days from the date of opening of tenders.

9. The Tenderer shall chronologically serialize all pages of the tender documents submitted in the numerical format i.e., 1, 2, 3, 4… including the cover page. The Tender Document must be tape bound and not spiral bound. Spiral bound documents shall be automatically disqualified. In addition, bidders MUST submit a soft copy in PDF format during bid opening which is a replica of the original bid document. This instruction is issued pursuant to Section 74(1)(j) of the Public Procurement and Asset Disposal Act, 2015.

10. Tender language shall be English ONLY.

11. Late tenders shall be rejected in accordance with ITT 26.1.

12. The addresses referred to above are:

12.1. Address for obtaining further information

State Department for Housing and Urban Development
6th Floor, Ardhi House, 1st Ngong Avenue
P.O. Box 30119-00100
NAIROBI.

12.2. Address for Submission of Tenders

State Department for Housing and Urban Development
Tender Box, 6th Floor, Ardhi House, 1st Ngong Avenue
P.O. Box 30119-00100
NAIROBI.

12.3. Address for Opening of Tenders

State Department for Housing and Urban Development
Boardroom, 6th Floor, Ardhi House, 1st Ngong Avenue
P.O. Box 30119-00100
NAIROBI.

Head, Supply Chain Management Services
For: PRINCIPAL SECRETARY

PART 1 – TENDERING PROCEDURES

SECTION I – INSTRUCTION TO TENDERERS

A. General

1. Scope of Tender

1.1. In connection with the Invitation to Tender (ITT) specified in the Tender Data Sheet (TDS), the Procuring Entity issues this Tendering document for the Manufacture, Supply and Delivery of Sanitary Ware Sets as specified in Part 2 – Procuring Entity's Requirements. This procurement is undertaken under a multi-supplier Framework Agreement for recurring call-offs to multiple Affordable Housing Programme sites nationwide, in accordance with the allocation mechanism set out in the Framework Agreement.

2. Definitions

2.1. Throughout this Tender document:

a) The term "in writing" means communicated in written form (e.g.by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
b) if the context so requires, "singular" means "plural" and vice versa; and
c) "Day" means calendar day, unless otherwise specified as "Business Day." A Business Day is any day that is an official working day in Kenya. It excludes the Kenya's official public holidays.

3. Fraud and Corruption

3.1. The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 "Declaration not to engage in corruption". The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.

3.2. The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender.

3.3. Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

3.4. Tenderers shall permit and shall cause their agents (where declared or not), sub -contractors, sub consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, tender submission, proposal submission, and Framework Agreement performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

4. Eligible Tenderers

4.1. A Tenderer may be a firm that is a private entity, an individual, a state-owned enterprise or institution subject to ITT 4.9, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. Public employees and their close relatives (spouses, children, brothers, sisters and uncles and aunts) are not eligible to participate in the tender.

4.2. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS**.

4.3. Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

4.4. A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:

a) directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
b) receives or has received any direct or indirect subsidy from another Tenderer; or
c) has the same - representative or ownership as another Tenderer; or
d) has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Tender; or
f) or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the **TDS** ITT 1.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or has a close business or family relationship with a professional staff of the Procuring Entity (or of the project implementing agency, who: (i) are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.

4.5. A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified.

4.6. A firm that is a Tenderer (either individually or as a JV member) shall not submit more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender. Members of a joint venture may not also make an individual tender, be a subcontractor in

a separate tender or be part of another joint venture for the purposes of the same Tender. A manufacturer shall not support more than one Tender, whether as Tenderer, as a member of a Joint Venture or by issuing a Manufacturer's Authorization; where it does so, all Tenders supported by that manufacturer shall be disqualified.

4.7. A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.10. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub consultants for any part of the Contract including related Services.

4.8. A Tenderer that has been debarred by the PPRA from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the PPRA's website www.ppra.go.ke

4.9. Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis. Public employees and their close relatives are not eligible to participate in the tender.

4.10. Tenderers may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting for supply of goods or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

4.11. Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.

4.12. Where the law requires tenderers to be registered with certain authorities in Kenya, such registration requirements shall be defined in the **TDS**.

4.13. The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke.

4.14. A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

5. Eligible Goods and Related Services

5.1. All the Goods and Related Services to be supplied under the Framework Agreement shall have their origin in any country that is eligible in accordance with ITT 4.10.

5.2. For purposes of this ITT, the term "goods" includes commodities, raw material, machinery, equipment, and industrial plants; and "related services" include services such as insurance, transportation, delivery to site, off-loading and safe storage.

5.3. The term "origin" means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

5.4. A procuring entity shall ensure that the items listed below shall be sourced from Kenya and there shall be no substitutions from foreign sources. The affected items are:

a) motor vehicles, plant and equipment which are assembled in Kenya;

b) furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather, agro-processed products, sanitary ware products, and other goods made in Kenya; or

c) goods manufactured, mined, extracted or grown in Kenya.

B. Contents of Tendering Document

6. Sections of Tendering Document

6.1. The Tendering document consists of Parts 1, 2, and 3, which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT 10.

PART 1 – Tendering Procedures

i. Section I – Instructions to Tenderers (ITT)
ii. Section II – Tender Data Sheet (TDS)
iii. Section III – Evaluation and Qualification Criteria
iv. Section IV – Tendering Forms

PART 2 – Procuring Entity's Requirements

v. Section V – Schedule of Requirements

PART 3 – Conditions of Framework Agreement and Framework Agreement Forms

vi. Section VI – General Conditions of Framework Agreement (GCC)
vii. Section VII – Special Conditions of Framework Agreement (SCC)
viii. Section VIII – Framework Agreement Forms

6.2. The Invitation to Tender Notice issued by the Procuring Entity is not part of the Tendering document.

6.3. Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-

Tender meeting (if any), or Addenda to the Tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

6.4. The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tendering document and to furnish with its Tender all information or documentation as is required by the Tendering document.

7. Site Visit

7.1. The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be at the Tenderer's own expense.

8. Pre-Tender Meeting and a Pre-Arranged Pretender Visit of the Site of the Works

8.1. The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender visit of the site of the works will be held and when. The Tenderer's designated representative is invited to attend a pre- arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

8.2. The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.

8.3. Minutes of the pre-Tender meeting and the pre-arranged pre-tender visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 8.2. Minutes shall not identify the source of the questions asked.

8.4. The Procuring Entity shall also promptly publish anonymized (no names) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the webpage identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre- Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre- Tender meeting will not be a cause for disqualification of a Tenderer.

9. Clarification of Tender Documents

9.1. A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-arranged pretender visit of the site of the works if provided for in accordance with ITT 8.3. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the webpage identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 10.

10. Amendment of Tendering Document

10.1. At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.

10.2. Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 8.2. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 10.1.

10.3. To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 25.2 below.

C. Preparation of Tenders

11. Cost of Tendering

11.1. The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

12. Language of Tender

12.1. The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity, shall be written in the English language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages in the English Language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

13. Documents Comprising the Tender

13.1. The Tender shall comprise the following:

a) **Form of Tender;**
b) **Price Schedules** completed in accordance with ITT 14 and ITT 19;
c) **Tender Security or Tender Securing Declaration**, in accordance with ITT 22;
d) **Alternative Tender,** if permissible, in accordance with ITT 15;
e) **Authorization**: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 23.3;
f) **Eligibility of Plant and Installation Services**: documentary evidence established in accordance with ITT 16.1 that the Plant and Installation Services offered by the Tenderer in its Tender or in any alternative Tender, if permitted, are eligible;
g) **Tenderer's Eligibility and Qualifications**: documentary evidence in accordance with ITT 17.1 establishing the Tenderer's eligibility and qualifications to perform the Framework Agreement if its Tender is accepted;
h) **Conformity**: documentary evidence in accordance with ITT 18 that the Goods and Related Services offered by the Tenderer conform to the Tendering document;
i) **Subcontractors**: list of Subcontractors in accordance with ITT 41.2 and 41.4; and
j) Investment Plan: completed Investment Plan (Form INV 6.1), including the National Deployment and Service Coverage Plan (Section 9.0) and the Industrial Participation Plan (Section 10.0), with supporting documents, prepared in accordance with the relevant forms furnished in Section IV – Tendering Forms; and
k) Any other document required **in the TDS**.

13.2. In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered in to by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The Tenderer shall serialize pages of all tender documents submitted.

13.3. The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender

14. Form of Tender and Price Schedules

14.1. The Form of Tender and Price Schedules shall be prepared, using the relevant forms furnished in Section IV – Tendering Forms. The forms must be completed as instructed in each form without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested.

15. Alternative Tenders

15.1. Unless otherwise specified in the **TDS**, alternative Tenders shall not be considered.

15.2. When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included in the **TDS**, and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.

15.3. Except as provided under ITT 15.4 below, Tenderers wishing to offer technical alternatives to the Procuring Entity's requirements as described in the Tendering document must also provide: (i) a price at which they are prepared to offer a Plant meeting the Procuring Entity's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

15.4. When Tenderers are invited in the **TDS** to submit alternative technical solutions for specified parts of the facilities, such parts will be identified in the **TDS**, as will the method for their evaluation, and described in Part 2 – Procuring Entity's Requirements.

16. Documents Establishing the Eligibility of the Goods and Related Services

16.1. To establish the eligibility of the Good and Related Services in accordance with ITT 5, Tenderers shall complete the country-of-origin declarations in the Price Schedule Forms, included in Section IV – Tendering Forms.

17. Documents Establishing the Eligibility and Qualifications of the Tenderer

17.1. To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section IV – Tendering Forms.

17.2. The documentary evidence of the Tenderer qualifications to perform the Framework Agreement if its Tender is accepted shall establish to the Procuring Entity's satisfaction:

a) that, if required in the **TDS**, a Tenderer that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV – Tendering Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in Kenya;

b) that, if required in the TDS, in case of a Tenderer not doing business within the Kenya, the Tenderer is or will be (if awarded the Framework Agreement) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Framework Agreement and/or Technical Specifications; and

c) that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

18. Documents Establishing the Conformity of the Goods and Related Services

18.1. To establish the eligibility of the Goods and Related Services in accordance with ITT 15, Tenderers shall complete the country-of-origin declarations in the Price Schedule Forms, included in Section IV – Tendering Forms.

18.2. To establish the conformity of the Goods and Related Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that the Goods conform to the technical specifications and standards specified in Section V – Schedule of Requirements.

18.3. The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section V – Schedule of Requirements.

18.4. The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period specified in the **TDS** following commencement of the use of the goods by the Procuring Entity.

18.5. Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section V – Schedule of Requirements.

19. Tender Prices and Discounts

19.1. The prices quoted by the Tenderer in the Form of Tender and in the Price, Schedules shall conform to the requirements specified below.

19.2. All lots (Framework Agreements) and items must be listed and priced separately in the Price Schedules.

19.3. The price to be quoted in the Form of Tender in accordance with ITT 13.1 shall be the total price of the Tender, including any discounts offered.

19.4. The Tenderer shall quote any discounts and indicate the methodology for their application in the form of tender. Conditional discounts will be rejected.

19.5. Prices quoted by the Tenderer shall be fixed during the performance of the Framework Agreement and not subject to variation on any account, unless otherwise specified in the **TDS**. A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITT 32. However, if in accordance with the **TDS**, prices quoted by the Tenderer shall be subject to adjustment during the performance of the Framework Agreement, a Tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

19.6. If specified in ITT 1.1, Tenders are being invited for individual lots (Framework Agreements) or for any combination of lots (packages). Unless otherwise specified in the **TDS**, prices quoted shall

correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer discounts for the award of more than one Framework Agreement shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Framework Agreements within the package. Discounts shall be submitted in accordance with ITT 19.4 provided the Tenders for all lots (Framework Agreements) are opened at the same time.

19.7. The terms EXW, CIP, CIF, DDP and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce.

19.8. Prices shall be quoted as specified in each Price Schedule included in Section IV – Tendering Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by the Procuring Entity. This shall not in any way limit the Procuring Entity's right to Framework Agreement on any of the terms offered. In quoting prices, the Tenderer shall be free to use transportation through carriers registered in any eligible country. Similarly, the Tenderer may obtain insurance services from any eligible country in accordance with ITT 4.7, Eligible Tenderers. Prices shall be entered in the following manner:

a) For Goods manufactured in Kenya:

i. the price of the Goods quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the- shelf, as applicable) final destination point indicated in the **TDS**, including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;

ii. any sales tax and other taxes which will be payable in Kenya on the Goods if the Framework Agreement is awarded to the Tenderer; and

iii. the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination specified in the **TDS**.

b) For Goods manufactured outside Kenya, to be imported:

i. the price of the Goods, quoted CIP named place of destination, in Kenya, as specified in the **TDS**; and

ii. the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination specified in the **TDS**.

c) For Goods manufactured outside Kenya, already imported:

i. the price of the Goods, including the original import value of the Goods; plus, any mark-up (or rebate); plus, any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported;

ii. the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported;

iii. any sales and other taxes levied in Kenya which will be payable on the Goods if the Framework Agreement is awarded to the Tenderer; and

iv. the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) specified in the **TDS**.

d) for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements, the price of each item comprising the Related Services (inclusive of any applicable taxes).

20. Currencies of Tender and Payment

20.1. The currency(ies) of the Tender and the currency(ies) of payments shall be the same. The Tenderer shall quote in the currency of Kenya the portion of the Tender price that corresponds to expenditures incurred in the currency of Kenya, unless otherwise specified in the **TDS**.

20.2. The Tenderer may express the Tender price in any currency. If the Tenderer wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three foreign currencies in addition to the currency of Kenya.

21. Period of Validity of Tenders

21.1. Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 23.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

21.2. In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 22, the Tenderer granting the request shall also extend the Tender Security for twenty-eight (28) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 21.3.

21.3. If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Tender validity period, the Framework Agreement price shall be determined as follows:

a) In the case of fixed price Framework Agreements, the Framework Agreement price shall be the Tender price adjusted by the factor or factors specified in the **TDS**;

b) In the case of adjustable price Framework Agreements, no adjustment shall be made; or

c) in any case, Tender evaluation shall be based on the Tender price without taking into consideration the applicable correction from those indicated above.

22. Tender Security

22.1. The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified in the **TDS**.

22.2. A Tender-Securing Declaration shall use the form included in Section IV Tendering Forms.

22.3. If a Tender Security is specified pursuant to ITT 22.1, the Tender security shall be a demand guarantee in any of the following forms at the Tenderer's option:

a) cash;

b) a bank guarantee;

c) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or

d) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,

22.4. If a Tender Security or a Tender-Securing Declaration is specified pursuant to ITT 22.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.

22.5. If a Tender Security is specified pursuant to ITT 22.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's furnishing of the Performance Security pursuant to ITT 49.

22.6. The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Framework Agreement and furnished the required Performance Security.

22.7. The Tender Security may be forfeited or the Tender-Securing Declaration executed:

a) If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender; or

b) If the successful Tenderer fails to:

i. Sign the Framework Agreement in accordance with ITT 48; or

ii. Furnish a performance security in accordance with ITT 49.

22.8. Where the Tender-Securing Declaration is executed the Procuring Entity will recommend to the PPRA to debars the Tenderer from participating in public procurement as provided in the law.

22.9. The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender Security or the Tender Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1and ITT 13.2.

23. Format and Signing of Tender

23.1. The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13 and clearly mark it “Original.” Alternative Tenders, if permitted in accordance with ITT 15, shall be clearly marked “Alternative”. In addition, the Tenderer shall submit copies of the Tender, in the number specified in the TDS and clearly mark them “Copy.” In the event of any discrepancy between the original and the copies, the original shall prevail.

23.2. Tenderers shall mark as “CONFIDENTIAL” information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information.

23.3. The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

23.4. In the case that the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.

23.5. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. Submission and Opening of Tenders

24. Submission, Sealing and Marking of Tenders

24.1. The Tenderer shall deliver the Tender in a single, sealed envelope (one (1) envelope process). The Tenderer shall place the following separate, sealed envelopes:

Inner Envelop(s):

a. In an envelope marked “ORIGINAL”, all documents comprising the Tender, as described in ITT 13; and

b. In an envelope marked “COPIES”, all required copies of the Tender; and

c. If alternative Tenders are permitted in accordance with ITT 15, and if relevant:
   i. In an envelope marked “ORIGINAL–ALTERNATIVE TENDER” the alternative Tender; and
   ii. in the envelope marked “COPIES – ALTERNATIVE TENDER” all required copies of the alternative Tender.

The inner envelopes shall:

a) Bear the name and address of the Tenderer;
b) Be addressed to the Procuring Entity in accordance with ITT 25.1;
c) Bear the specific identification of this Tendering process indicated in accordance with ITT 1.1; and
d) Bear a warning not to open before the time and date for Tender opening.

The outer envelope (s) in which the inner envelops are enclosed shall:

a) Be addressed to the Procuring Entity in accordance with ITT 25.1;
b) Bear the specific identification of this Tendering process indicated in accordance with ITT 1.1; and
c) Bear a warning not to open before the time and date for Tender opening.

24.2. If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

25. Deadline for Submission of Tenders

25.1. Tenders must be received by the Procuring Entity at the address and no later than the date and time indicated in the **TDS**. When so specified in the **TDS**, Tenderers shall have the option of

submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the **TDS**.

25.2. The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tendering document in accordance with ITT 10, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

26. Late Tenders

26.1. The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 25. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

27. Withdrawal, Substitution, and Modification of Tenders

27.1. A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 23.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

a) prepared and submitted in accordance with ITT 24 and ITT 25 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification”; and

b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 26.

27.2. Tenders requested to be withdrawn in accordance with ITT 27.1 shall be returned unopened to the Tenderers.

27.3. No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

28. Tender Opening

28.1. Except as in the cases specified in ITT 26 and ITT 27.2, the Procuring Entity shall publicly open and read out in accordance with ITT 28.5 all Tenders received by the deadline at the date, time and place specified in the **TDS** in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required, if electronic Tendering is permitted in accordance with ITT 25.1, shall be as specified in the **TDS**.

28.2. First, the written notice of withdrawal in the envelopes marked “Withdrawal” shall be opened and read out and the envelope with the corresponding Tender shall not be opened but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

28.3. Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

28.4. Next, envelopes marked “Modification” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

28.5. Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and the Tender Price(s), including any discounts and alternative Tenders, and indicating whether there is a modification; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

28.6. Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the Price Schedules are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified in the **TDS**.

28.7. The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 26.1).

28.8. The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:

a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
b) The Tender Price, per lot if applicable, including any discounts;
c) Any alternative Tenders;
d) The presence or absence of a Tender Security or a Tender-Securing Declaration; and
e) Number of pages for each tender

28.9. The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Tenderers.

E. Evaluation and Comparison of Tenders

29. Confidentiality

29.1. Information relating to the evaluation of Tenders and recommendation of Framework Agreement award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on Intention to Award the Framework Agreement is transmitted to all Tenderers in accordance with ITT 44.

29.2. Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Framework Agreement award decisions may result in the rejection of its Tender.

29.3. Notwithstanding ITT 29.2, from the time of Tender opening to the time of Framework Agreement Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

30. Clarification of Tenders

30.1. To assist in the examination, evaluation, and comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT 34.

30.2. If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

31. Deviations, Reservations, and Omissions

31.1. During the evaluation of Tenders, the following definitions apply:

a) “Deviation” is a departure from the requirements specified in the Tendering document;

b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tendering document; and

c) “Omission” is the failure to submit part or all of the information or documentation required in the Tendering document.

32. Determination of Responsiveness

32.1. The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11.

32.2. A substantially responsive Tender is one that meets the requirements of the Tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

a) If accepted, would:

i. Affect in any substantial way the scope, quality, or performance of the Plant and Installation Services specified in the Framework Agreement; or

ii. Limit in any substantial way, inconsistent with the Tendering document, the Procuring Entity's rights or the Tenderer's obligations under the proposed Framework Agreement; or

b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

32.3. The Procuring Entity shall examine the technical aspects of the Tender in particular, to confirm that all requirements of Part 2 – Procuring Entity's Requirements have been met without any material deviation, reservation, or omission.

32.4. If a Tender is not substantially responsive to the requirements of the Tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

33. Nonmaterial Non-conformities

33.1. Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformity in the Tender.

33.2. Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non- conformities in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

33.3. Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS**.

34. Correction of Arithmetical Errors

34.1. Provided that the tender is substantially responsive, the Procuring Entity shall correct arithmetical errors on the following basis:

a) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

34.2. Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive. The method of determining the error as a major deviation shall be specified in the **TDS**.

34.3. Corrected tender prices shall not be used in the evaluation of tenders, comparison of tender prices.

34.4. The Procuring Entity shall calculate the difference between the corrected price and tender price and work out the percentage difference, which will be plus or minus tender price as the case may be; [i.e. (corrected tender price– tender price)/ tender price X100]. This percentage difference between corrected tender price and tender price may be used to determine if the error so detected is considered a major deviation that affects the substance of the tender.

34.5. On award of Framework Agreement, all payment valuation certificates, variation orders on omissions and additions valued based on rates in the Bill of Quantities will be adjusted by such a percentage specified in ITT 34.4 to ensure Contractor is not paid less or more relative to the Framework Agreement price which would be the tender price.

35. Conversion to Single Currency

35.1. For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted into a single currency as specified in the **TDS**.

36. Margin of Preference

36.1. A margin of preference may be allowed on locally manufactured goods (plant and equipment) only when the Framework Agreement is open to international tendering, where the tender is likely to attract foreign goods and where the Framework Agreement exceeds the threshold specified in the Regulations.

36.2. A margin of preference shall not be allowed unless it is specified so in the **TDS**.

36.3. Framework Agreements procured on basis of international tendering and competition shall not be subject to reservations exclusive/ specific groups under women, youth and persons living with disability.

36.4. Where it is intended to reserve a Framework Agreement to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by a competent authority, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender. Tender shall be reserved to only one group. If not so stated in the Tender documents, the invitation to tender will be open to all interested tenderers.

37. Evaluation of Tenders

37.1. The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III – Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Best Evaluated Tender, rank responsive Tenderers accordingly, and establish a panel for the Framework Agreement award. The tenders shall be ranked provided the Tenderer(s) meet the qualification criteria and their respective tenders has been determined to be:

a) Most responsive to the Tendering document; and

b) Having pricing compliant with provided fixed amounts.

~~37.2.~~ The evaluation shall be conducted to support award of framework agreements to multiple responsive and qualified Tenderers, in accordance with the minimum and maximum number of suppliers specified in the **TDS**. Framework Agreement award shall not be based on regional packages. Call-off contracts shall be issued to framework suppliers strictly in accordance with the call-off allocation mechanism set out in the Framework Agreement and the **TDS**.

37.3. **Technical Evaluation.** The Procuring Entity will carry out a detailed technical evaluation of the Tenders not previously rejected to determine whether the technical aspects are in compliance with the Tendering document. The Tender that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) requirements for specified functional guarantees, will be rejected for non-responsiveness. In order to reach its determination, the Procuring Entity will examine and compare the technical aspects of the Tenders on the basis of the information supplied by the Tenderers, taking into account the following:

a) Overall completeness and compliance with the Procuring Entity's Requirements; conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated in the Specification and in Section III, Evaluation and Qualification Criteria; suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the Tender;

b) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and

c) other relevant factors, if any, listed in Section III – Evaluation and Qualification Criteria.

37.4. Where alternative technical solutions have been allowed in accordance with ITT 13, and offered by the Tenderer, the Procuring Entity will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

37.5. **Economic Evaluation.** To evaluate a Tender, the Procuring Entity shall consider the following:

a) the Tender price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules;

b) price adjustment due to discounts offered in accordance with ITT 19;

c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 33.3;

d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITT 35; and

e) the evaluation factors specified in the **TDS** and in Section III – Evaluation and Qualification Criteria.

37.6. If price adjustment is allowed in accordance with ITT 19, the estimated effect of the price adjustment provisions of the Conditions of Framework Agreement, applied over the period of execution of the Framework Agreement, shall not be taken into account in Tender evaluation.

37.7. In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (Framework Agreement) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III – Evaluation and Qualification Criteria.

38. Comparison of Tenders

38.1. The Procuring Entity shall compare the evaluated costs and technical responsiveness of all substantially responsive Tenders established in accordance with Section III and shall determine a ranked list of Tenderers for Framework Agreement award, in accordance with the methodology specified in the Tender Data Sheet and Section III.

39. Abnormally Low Tenders and Abnormally High Tenders

39.1. An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer to perform the Framework Agreement for the offered Tender Price or that genuine competition between Tenderers is compromised.

39.2. In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in correlation to the subject matter of the Framework Agreement, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tendering document.

39.3. After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to deliver the Framework Agreement for the offered tender price, the Procuring Entity shall reject the Tender.

39.4. An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying

too high a price for the Framework Agreement compared with market prices or that genuine competition between Tenderers is compromised.

39.5. In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the Framework Agreement is correct and review the Tender Documents to check if the specifications, scope of work and conditions of Framework Agreement are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

i. If the tender price is abnormally high based on wrong estimated cost of the Framework Agreement, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.

ii. If specifications, scope of work and/or conditions of Framework Agreement are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the Framework Agreement based on revised estimates, specifications, scope of work and conditions of Framework Agreement, as the case may be.

39.6. If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

40. Unbalanced or Front-Loaded Tenders

40.1. If the Tender that is evaluated as the lowest evaluated cost is, in the Procuring Entity's opinion, seriously unbalanced or front loaded the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tendering document.

40.2. After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may:

a) Accept the Tender; or

b) If appropriate, require that the total amount of the Performance Security be increased, at the expense of the Tenderer, to a level not exceeding ten percent (10%) of the Framework Agreement Price; or

c) Reject the Tender.

41. Eligibility and Qualification of the Tenderer

41.1. The Procuring Entity shall determine to its satisfaction whether each Tenderer that has been ranked for Framework Agreement award and has submitted a substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III – Evaluation and Qualification Criteria.

41.2. The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 17.1. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries,

parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the Tendering document) or any other firm (s) different from the Tenderer.

41.3. An affirmative determination shall be a prerequisite for award of the Framework Agreement to each Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the next-ranked Tenderer offering a substantially responsive Tender to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

41.4. The capabilities of the manufacturers and subcontractors proposed in its Tender to be used by each shortlisted Tenderer for identified major items of supply or services will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a Form of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Tender will not be rejected, but the Tenderer will be required to substitute an acceptable manufacturer or subcontractor without any change to the Tender price.

41.5. Prior to signing the Framework Agreement, the corresponding Appendix to the Framework Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.

42. Procuring Entity's right to Accept Any Tender and to Reject Any or All Tenders

42.1. The Procuring Entity reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to Framework Agreement Award, without there by incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities shall be promptly returned to the Tenderers.

F. Award of Framework Agreement

43. Award Criteria

43.1. Subject to ITT 42, the Procuring Entity shall award the Framework Agreement(s) to the successful Tenderer(s). Successful Tenderers are those whose Tenders have been determined to be substantially responsive to the Tendering Document, meet the qualification criteria, and have been evaluated and ranked in accordance with Section III and the Tender Data Sheet.

44. Notice of Intention to Enter into a Framework Agreement/ Notification of Award

44.1. When a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Award the Framework Agreement to the successful Tenderer. The Notification of Intention to Award shall contain, at a minimum, the following information:

a) The name and address of the Tenderer submitting the successful Tender;

b) The Framework Agreement price of the successful Tender;

c) A statement of the reason (s) the Tender (of the unsuccessful Tenderer to whom the Form is addressed) was unsuccessful, unless the price information in c) above already reveals the reason;

d) The expiry date of the Standstill Period; and

e) Instructions on how to request a debriefing and/ or submit a complaint during the standstill period.

45. Standstill Period

45.1. The Framework Agreement shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

45.2. Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Framework Agreement with the successful Tenderer(s).

46. Debriefing by the Procuring Entity

46.1. On receipt of the Procuring Entity's Notification of Intention to Enter into a Framework Agreement referred to in ITT 44, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

46.2. Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

47. Letter of Award

47.1. Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 45.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

48. Signing of Framework Agreement

48.1. Upon the expiry of the fourteen days of the Notification of Intention to enter into Framework Agreement and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Framework Agreement.

48.2. Within fourteen (14) days of receipt of the Framework Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

48.3. The written Framework Agreement shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

48.4. Notwithstanding ITT 48.2 above, in case signing of the Framework Agreement is prevented by any export restrictions attributable to the Procuring Entity, to the country of the Procuring Entity, or to the use of the Plant and Installation Services to be supplied, where such export restrictions arise from trade regulations from a country supplying those Plant and Installation Services, the Tenderer shall not be bound by its Tender, always provided, however, that the Tenderer can demonstrate to the satisfaction of the Procuring Entity that signing of the Framework Agreement has not been prevented by any lack of diligence on the part of the Tenderer in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Framework Agreement.

49. Performance Security

49.1. Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Tenderer shall furnish the Performance Security in accordance with the General Conditions GCC 13.3, subject to ITT 40.2, using for that purpose the Performance Security Form

included in Section VIII – Framework Agreement Forms, or another form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.

49.2. Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Framework Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Framework Agreement to the next-ranked Tenderer on the panel.

50. Publication of Procurement Framework Agreement

50.1. Within fourteen days after signing the Framework Agreement, the Procuring Entity shall publish the awarded Framework Agreement at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

a) Name and address of the Procuring Entity;
b) Name and reference number of the Framework Agreement being awarded, a summary of its scope and the selection method used;
c) The name of the successful Tenderer(s), the final total Framework Agreement price(s), and the Framework Agreement duration.
d) Dates of signature, commencement and completion of Framework Agreement; and
e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

51. Appointment of Adjudicator

51.1. The Procuring Entity proposes the person named in the **TDS** to be appointed as Adjudicator under the Framework Agreement, at the hourly fee specified in the **TDS**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in his Tender. If, in the Letter of Acceptance, the Procuring Entity does not agree on the appointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the Special Conditions of Framework Agreement (SCC) pursuant to Clause 23.1 of the General Conditions of Framework Agreement (GCC), to appoint the Adjudicator.

52. Procurement Related Complaint and Administrative Review

52.1. The procedures for making a Procurement-related Complaint are as specified in the **TDS**.

52.2. A request for administrative review shall be made in the form provided under Framework Agreement forms.

SECTION II – TENDER DATA SHEET (TDS)

The following specific data for the Facilities to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions here in shall prevail over those in ITT.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	The reference number of the Invitation to Tender (ITT) is: *TENDER NO. SDHUD/784/ SPPM/008/2025-26* The Procuring Entity is: **State Department of Housing and Urban Development** The name of the ITT is: **Proposed Manufacture, Supply and Delivery of Sanitary Ware Sets for the Affordable Housing Programme under a Framework Agreement Established Pursuant to the Specially Permitted Procurement Method (SPPM)** The number and identification of Batches (contracts) comprising this ITT is: **N/A** The procurement is under a Framework Agreement for 10 years. Call-off orders shall be issued as described in Section V – Schedule of Requirements and Clause 1.6.9 of the General Conditions of Framework Agreement.
ITT 2.1	The name of the Project is: **Proposed Manufacture, Supply and Delivery of Sanitary Ware Sets for the Affordable Housing Programme under a Framework Agreement Established Pursuant to the Specially Permitted Procurement Method (SPPM)**
	Electronic – Procurement System shall not be used The name “Manufacturer” shall mean a company or entity that engages in the production of goods using labor, machinery, tools, and or chemical and biological processing to produce finished products.
ITT 4.2	Maximum number of members in the Joint Venture (JV) shall be: Not limited (at the discretion of the Tenderer) Any member of the Joint Venture may be the lead member. Where the manufacturer is a member of the Joint Venture, it shall provide all the documentation and authorizations necessary for setting up a manufacturing facility in Kenya, and shall execute the Framework Agreement, or a deed of adherence to it, in accordance with SCC 9.9.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 4.14	A foreign tenderer shall demonstrate compliance with tax obligations by submitting a current and valid tax clearance certificate (or its equivalent) or a tax exemption certificate (or its equivalent) issued by the relevant national revenue authority. The bidder shall also explain how the authenticity of the submitted document can be verified. This document must be notarized by a notary public.
B. Tendering Document	
ITT 8.1	The pre-tender conference will be held on **N/A** The conference shall be online 12:00 Noon Kenyan Time. Tenderers shall register their contact details by email to procurement@housingandurban.go.ke to receive the link to the pre-tender conference. The pre-arranged pretender visit of the site of the works **will not be held, however, tenderers are encouraged to plan and familiarize themselves with the sites and or cluster regions.**
ITT 8.2	Any questions or clarifications should be submitted in writing and sent through email provided below: Procurement1@housingandurban.go.ke These shall reach the Procuring Entity not later than **N/A**
ITT 8.4	Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works will be published at the website: **https://www.housingandurban.go.ke/tenders/**
ITT 9.1	The Procuring Entity shall publish its response at the website: *https://www.housingandurban.go.ke/tenders/*
C. Preparation of Tenders	
ITT 13.1 (j)	The Tenderer shall submit the following additional documents in its Tender: 1. *Coloured technical brochures and product data sheets for each item in the Bills of Quantities* 2. *Evidence of Registration in Country of Origin* 3. *Where the Tenderer is not itself the manufacturer: the Joint Venture agreement (or Form of intent) with the manufacturer, or the Manufacturer's Authorization in the form provided in Section IV* 4. *List of clients in the last five (5) years and reference contact details* 5. *Board resolution committing to invest in a manufacturing plant in Kenya* 6. *Detailed Investment Plan to set up manufacturing in Kenya (Form INV 6.1), including the National Deployment and Service Coverage Plan and the Industrial Participation Plan* 7. *Detailed work plan for accelerated manufacture and delivery*

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	8. *Evidence of ongoing orders of similar nature, complexity or magnitude (LPO, delivery notes, letter of award or recommendation for each order)* 9. *Evidence of completed projects of similar nature, complexity or magnitude in the last five years* 10. *Proof / Evidence of Ownership for all the relevant equipment* 11. *Audited Financial Reports for the last three (3) years (2023, 2024 & 2025)* 12. *Evidence of Financial Resources (Cash in hand, lines of credit, overdraft etc.)*
ITT 15.1	Alternative Tenders ***shall not be*** considered.
ITT 15.2	Alternatives to the Time Schedule ***shall not be*** permitted.
ITT 15.4	Alternative technical solutions shall be permitted for the following parts of the Plant and Installation Services: ***Not Applicable***
ITT 19.1	Tenderers shall quote for the following components or services on a single responsibility basis: ***the complete scope of manufacture, supply and delivery of Sanitary Ware Sets specified in Section V***
ITT 19.5	Prices quoted by the Tenderer shall be subject to adjustment during the performance of the Framework Agreement in accordance with SCC 11.2 and Appendix 2 (Price Adjustment) to the Framework Agreement. Tenderers shall quote base unit rates, which shall not exceed the cap rates in Section III, and shall complete the table of index sources and base date indices in the Price Adjustment form in Section IV. The estimated effect of price adjustment shall not be taken into account in Tender evaluation (ITT 37.3).
ITT 19.7	The Incoterms edition is: ***Incoterms® 2020***
ITT 19.8 (a) and (d)	Place of destination: **Multiple Sites within the Republic of Kenya** Final destination (Project Site): **Multiple Sites within the Republic of Kenya**
ITT 20.1	The Tenderer **MUST** quote in **Kenya Shillings**
ITT 21.1	The Tender validity period shall be *287* days.
ITT 21.3 (a)	The Tender price shall be adjusted by the following factor(s): **Not Applicable**
ITT 22.1	A Tender Security ***shall*** *be* required. A Tender-Securing Declaration *shall not be* required. **Tender Security shall be Kenyan Shillings Ten Million (10,000,000.00) issued by a Reputable Financial Institution recognized by Central Bank of Kenya (Commercial Banks & Insurance) Valid for a period of 317 days from the tender opening date**. The format to match the provided Form; “FORM OF TENDER SECURITY – [Option 1–Demand Bank Guarantee Or Option 2–Insurance Guarantee]”
ITT 23.1	In addition to the original of the Tender, the number of copies is: ***One soft copy in PDF format which is a replica of the Original bid document.***
ITT 26.1	Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be *declared late, rejected and returned unopened to the Tenderer*

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 23.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: ***Notarized or Certified Power of Attorney and Board Resolution/s allowing the signatory to submit the bid, negotiate, and possibly execute the Framework Agreement on behalf of the Bidder's Company***
D. Submission and Opening of Tenders	
ITT 25.1	For Tender submission purposes only, the Procuring Entity's address is: **State Department of Housing and Urban Development** **P.O. Box 30119-00100** **Nairobi** **Attention: Principal Secretary** Physical Address: ***1st Ngong avenue, Ardhi House, 6th Floor, Tender box*** The deadline for Tender submission is: **Date:17th November, 2026** **Time*: 9:00 am (East African Time)*** Tenderers ***shall not*** have the option of submitting their Tenders electronically. The electronic Tendering submission procedures shall be: ***N/A***
ITT 28.1	The Tender opening shall take place at: **State Department of Housing and Urban Development** **P.O. Box 30119-00100** **Nairobi** Physical Address ***1st Ngong avenue, Ardhi House, 6th Floor, Main Boardroom*** **Date:17th November, 2026** **Time: 9:00 am (East African Time)** The electronic Tender opening procedures shall be: ***N/A***
ITT 28.6	The Form of Tender and Price Schedules shall be initialed by **ALL** representatives of the Procuring Entity conducting Tender opening.
E. Evaluation, and Comparison of Tenders	
ITT 33.3	The adjustment shall be based on the ***highest*** price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate.
ITT 34.2	The error shall be determined as a major deviation as per provisions of the Public Procurement and Asset Disposal Act, 2015 and Attendant Regulations.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 35.1	The currency that shall be used for Tender evaluation and comparison purposes to convert (at the selling exchange rate) all Tender prices expressed in various currencies into a single currency is: **Kenya Shillings (KES)** The source of exchange rate shall be: ***The Central Bank of the Republic of Kenya*** ***Tenderers MUST use Kenya Shillings as the Currency for the Tender Prices***
ITT 36.2	A margin of preference **shall not be** allowed.
ITT 37.5 (e)	No adjustments shall be applied under ITT 37.5(e): Deviation in Time for Completion: No. Life cycle costs: No. Functional Guarantees of the Facilities: No. *Work, services, facilities, etc., to be provided by the Procuring Entity: No.*
ITT 37.7	This is a single-category national procurement. There are no regional batches or lots. Tenderers shall submit pricing for the full national scope. The methodology to determine the ranked panel is specified in Section III – Evaluation and Qualification Criteria. Multiple Contracts: Award establishes panel; call-off quantities are allocated among eligible panel members in accordance with Clause 1.6.9 of the General Conditions of Framework Agreement. No fixed packages; flexible national allocation. A minimum of three (3) and a maximum of eight (8) responsive and qualified Tenderers may be admitted to the panel under this Tender.
ITT 40.2 (b)	"If appropriate, require that the total amount of the Performance Security be increased, at the expense of the Tenderer, to a level not exceeding **Ten percent (10%)** of the Framework Agreement Price"
ITT 45 Standstill Period	The Standstill Period is **14 Days** after the date the Procuring Entity has transmitted to all Tenderers that submitted a Tender, the Notification of its Intention to Award the Framework Agreement to the successful Tenderer.
ITT 47.1	The Letter of Award shall not require a Performance Security at Framework Agreement level. A Performance Security of ten per cent (10%) of the Call-Off Contract Price shall be furnished within twenty-eight (28) days of each call-off notification, in accordance with SCC 13.3.
ITT 49.1	The Performance Security shall be furnished for each call-off in accordance with TDS ITT 47.1 and SCC 13.3.
ITT 49.2	Failure of the successful Tenderer to submit the above-mentioned **Performance Security** or sign the Framework Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security.
ITT 51	Not applicable. Disputes shall be resolved in accordance with GCC Clause 46 as amended by SCC 46.4 (arbitration under the Arbitration Rules of the Nairobi Centre for International Arbitration).

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 52.1	The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA website info@ppra.go.ke or complaints@ppra.go.ke. For the attention: Director General Title/position: Director General Procuring Entity: State Department of Housing and Urban Development Email address*:* ***procurement@housingandurban.go.ke*** In summary, a Procurement-related Complaint may challenge any of the following: 1. the terms of the Tendering Documents; and 2. the Procuring Entity's decision to award the Framework Agreement.

SECTION III – EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

1.1. Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

a) For turnover or financial data required for each year -Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.

b) Value of single Framework Agreement -Exchange rate prevailing on the date of the Framework Agreement signature.

c) Exchange rates shall be taken from the publicly available source identified in the ITT 35.1. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

1.2. This section contains the criteria that the Procuring Entity shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV – Tendering Forms. The Procuring Entity should use the Standard Tender Evaluation Report for Goods and Works for evaluating Tenders.

2. Evaluation and Framework Agreement award Criteria

2.1. The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders, rank responsive Tenderers, and establish a panel for Framework Agreement award. Tenderers that (i) meet the qualification criteria, (ii) have been determined to be substantially responsive to the Tender Documents, and (iii) have submitted financial proposals within the capped rates shall be ranked and shortlisted for award of Framework Agreements, in accordance with the minimum and maximum number of suppliers specified in the **TDS**.

2.2. Ranking. Tenders that satisfy (i) to (iii) above shall be ranked in ascending order of their Evaluated Tender Price, being the total of the priced Bills of Quantities after correction of arithmetical errors under ITT 34 and any adjustment under Clause 4.2 of this Section. Where two or more Tenders have the same Evaluated Tender Price, the Tender with the higher technical score under Clause 4.1 shall be ranked higher. The highest-ranked Tenderers, up to the maximum number stated in TDS ITT 37.7, shall be recommended for award.

3. Preliminary examination for Determination of Responsiveness

3.1. The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria (including requirements in the qualification forms, tenderer's eligibility-confidential business questionnaire) and other requirements in the ITT and that the tender is complete in all aspects in meeting the requirements of “Part 2 - Procuring Entity's Requirements”, including checking for tenders with unacceptable errors, abnormally low tenders, and abnormally high tenders. The Standard Tender Evaluation Report for Goods and Works provides clear guidelines on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will not be considered further. The following mandatory requirements shall be used for determination of Responsiveness at the preliminary evaluation:

ITEM	MANDATORY REQUIREMENTS (MR)	SUBMITTED (YES/NO)
MR 1	Valid Copy of company certificate of incorporation/ Registration issued by the Registrar of companies / Country of Origin. (For all Foreign or non-English-speaking countries, documents should be Translated to English and notarized)	
MR 2	Dully filled, signed and stamped Confidential Business Questionnaire. In case of a joint venture all parties must submit a valid confidential business questionnaire as per attached format;	
MR 3	Manufacturers will be required to provide a notarized certificate of registration or an Original Equipment Manufacturer (OEM) declaration letter on the manufacturer's letterhead, signed by an authorized officer.	
MR 4	Where the manufacturer does not produce all components of the offered product but is responsible for the fabrication or assembly of key components, the manufacturer shall still be considered eligible provided it meets the following conditions:	
	Declaration of Scope: The bidder must clearly declare which components are manufactured in-house and which are sourced externally.	
	Third-Party Component Certification: For externally sourced components, the bidder must submit valid manufacturer certifications, compliance certificates (e.g. KEBS, EN, CE, ISO), and technical datasheets from the original equipment manufacturers (OEMs).	
	Assembly and Quality Assurance Documentation: Evidence of in-house integration or assembly processes (for example, quality-control certificates, factory procedures, factory acceptance tests, relevant production workflows, or any other equivalent evidence) to demonstrate quality assurance in manufacturing or assembly.	
MR 5	Form of Tender in the company Letter head duly Completed, Signed and Stamped by the Tenderer in the format provided, prepared in accordance with ITT 14 and valid for a period of 287 days from the tender opening date.	
MR 6	Tender Security shall be Kenyan Shillings Ten Million (10,000,000.00) issued by a Reputable Financial Institution recognized by Central Bank of Kenya (Commercial Banks & Insurance) Valid for a period of 317 days from the tender opening date. The format to match the provided Form; "FORM OF TENDER SECURITY- [Option 1–Demand Bank Guarantee Or Option 2–Insurance Guarantee]"	
MR 7	Copy of Valid Tax Compliance Certificate. For Kenyan bidders issued by Kenya Revenue Authority (KRA) or an equivalent for International Bidders.	
MR 8	Power of Attorney or Authorization Letter duly executed, authorizing a named individual to submit and execute the bid as a binding	

ITEM	MANDATORY REQUIREMENTS (MR)	SUBMITTED (YES/NO)
	document on behalf of the bidder, and this person shall sign all documents related to this tender. The document shall be signed by directors appearing in the CR12/CR13 (for Kenyan-registered entities) or by directors/authorized officers appearing in the official company registry extract from the country of incorporation (for foreign entities), or by a duly appointed signatory supported by a valid Board Resolution or notarized authorization. Kenyan bidders shall attach a valid CR12/CR13, while foreign bidders shall attach an equivalent official company registration extract; all foreign-issued documents shall be duly notarized and, where applicable, apostilled. Failure to comply shall render the bid non-responsive at the Preliminary Examination stage.	
MR 9	Original Tender document must be TAPE-BOUND and submitted alongside a Soft Copy as per TDS 23.1. Tender documents submitted as spiral bound or in a box file SHALL AUTOMATICALLY BE DISQUALIFIED. In addition, the documents must be chronologically serialized on all pages and attachments.	

4. Evaluation

4.1. Technical Evaluation

In addition to the criteria listed in ITT 32 the following factors shall apply: Technical Evaluation will be conducted in two parts; Compliance with Technical Specifications and Assessment on Technical and Financial Capacity.

A. Compliance with Technical Specifications

i. Tenderers shall be evaluated on the technical specifications as provided for in PART 2 – PROCURING ENTITY'S REQUIREMENTS (specifications) of the tender document.

ii. Full compliance by the tenderers shall be required to proceed to the next stage of evaluation. Failure to provide any of the listed requirements shall lead to disqualification.

B. Assessment on Technical and Financial Capacity

Item	Description	Points Scored	Max. Points
1	**Production Capacity (15 Marks): Ability to deliver more than 35,000 No. Sanitary Ware Sets annually.** **NB: Attach Notarized Evidence of Capacity i.e. Equipment Schedule** ▪ Capacity exceeds requirement – 15 Marks ▪ Capacity between 20,000 – 35,000 Units – 10 Marks ▪ Capacity between 10,000 – 20,000 Units – 5 Marks ▪ Capacity Below 10,000 Units – 0 Marks		**15**
2	**Certifications & Standards (5 Marks): Adherence to international standards (ISO 9001:2015, ISO 14001:2015, third-party product certification to the applicable KS or EN product standards & ISO 45001:2018).** ▪ Certified in all required standards – 5 Marks ▪ Each Certification – 1 Mark ▪ No certifications – 0 Marks		**5**
3	**Experience (5 Marks): Proven track record in manufacturing and supplying Sanitary Ware Sets globally**. **NB: Attach evidence of Completed Orders, Deliveries, Recommendation Letters & Company Portfolio.** ▪ More than 10 years – 5 Marks ▪ 5–10 years – 3 Marks ▪ Less than 5 years – 1 Marks ▪ No Experience – 0 Marks		**5**
4.	**Commitment to Invest & Manufacture Locally (8 Marks)** ▪ Already Manufacturing components Locally with Attached Evidence – (8 Marks) ▪ Attached Board Resolution on commitment to invest and set up a manufacturing facility in Kenya within 24 Months – 2 Marks ▪ Attached detailed Investment Plan (Form INV 6.1) with milestones aligned to Milestones M-1 to M-5 in the Schedule to the Special Conditions of Framework Agreement – 4 Marks (the Board Resolution and Investment Plan route attracts a maximum of 6 Marks) ▪ NO evidence /documents submitted – 0 Marks		**15**

Item	Description	Points Scored	Max. Points
	Skills Transfer and Local Capacity Building Plan (7 Marks) The bidder shall submit a comprehensive Skills Transfer and Local Capacity Building Plan, in compliance with Section 155 of the Public Procurement and Asset Disposal Act, 2015. The plan must demonstrate how the bidder will ensure effective knowledge transfer, local participation, and integration of AGPO-registered groups (Youth, Women, and PWDs) during contract execution. The document must include: □ A skills transfer and training strategy for Kenyan personnel (1Mark) □ A local staffing and subcontracting plan (1Mark) □ A structured internship or graduate training program (1 Mark) □ A technology and knowledge transfer mechanism (1Mark) □ A monitoring and reporting framework (1Mark) □ An AGPO inclusion plan with valid AGPO certificates (1 Mark) □ A signed declaration of compliance with the Act and Regulations (1 Mark)		
5.	**Specific Experience** **Completed Orders (No. of Sanitary Ware Sets Supplied in the last 3 years)** **NB: Attach either LPO, Delivery Notes, Letter of Award, Orders, Contract, Certificates of Completion and / or Recommendation from the Client for EACH project / order. A bidder who fails to provide this requirement shall NOT be scored.** ▪ Exceeding 105,000 Units – 10 Marks ▪ Between 75,000 – 105,000 Units – 7 Marks ▪ Between 30,000 – 74,999 Units – 4 Marks ▪ Under 30,000 units – 1 Mark		**10**
6.	**Ongoing Orders (No. of Sanitary Ware Sets under ongoing orders)** **NB: Attach either LPO, Delivery Notes, Letter of Award, Orders, Contract and / or Recommendation from the Client**		**15**

Item	Description	Points Scored	Max. Points
	for EACH project / order. A bidder who fails to provide this requirement shall NOT be scored. ▪ Exceeding 105,000 Units – 15 Marks ▪ Between 75,000 – 105,000 Units – 10 Marks ▪ Between 30,000 – 74,999 Units – 5 Marks ▪ Under 30,000 units – 1 Mark		
7.	**Financial Report:** **Audited financial report for the last Three [3] years (2023, 2024 and 2025)** ▪ Turn over greater or equal to Kshs.400,000,000 – 10 Marks ▪ Turn over of KShs.200,000,000.00 and above but below KShs.400,000,000.00 – 5 Marks ▪ Turn over Below KShs.200,000,000.00 – 1 Marks ▪ Has not demonstrated/given evidence for turnover – 0 Marks		**10**
8.	**Evidence of Financial Resources:** **Cash in hand, Lines of Credit, overdraft facility, etc. (attach evidence).** ▪ Has financial resources equal or above KShs.200,000,000.00 – 10 Marks ▪ Has financial resources of KShs.100,000,000.00 and above but below KShs.200,000,000.00 – 5 Mark ▪ Has financial resources Below KShs.100,000,000.00 – 1 Mark ▪ Has not demonstrated/given evidence for the financial resources – 0 Marks		**10**
9	**Detailed works programme for accelerated manufacture, factory inspection, shipping and clearance (where applicable) and delivery to site, including the Defects Liability Period.** **Adequacy of the proposed Works program from manufacturing to delivery of the Sanitary Ware Sets on site:** • Has attached a clear and legible Works Program – 2 Marks • Program captures all elements specific to the proposed works – 2 Marks • Program covers the required timeline and all elements are reasonably scheduled – 1 Mark		**5**
	Adequacy of the proposed methodology from manufacturing to delivery of the Sanitary Ware Sets on site: ▪ Captures the Contractor's Organization structure – 1 Mark ▪ Captures all elements specific to the proposed works – 3 Marks		**10**

Item	Description	Points Scored	Max. Points
	▪ Captures the inclusion of all statutory requirements specific to the works (KEBS, customs clearance, NEMA, OSHA, stakeholder engagement, etc.) – 1 Mark ▪ Logistics, warehousing and delivery arrangements for dispersed sites, including protection against breakage – 5 Marks		
	TOTAL POINTS		**100**
	MINIMUM POINTS		**70**

NB Tenders attaining the minimum score of 70 points in the detailed technical evaluation shall be subjected to financial evaluation and ranked in accordance with Clause 2 of this Section.

4.2. Economic Evaluation

Price evaluation: in addition to the criteria listed in ITT 37.4 (a) – (e) the following criteria shall apply:

i. **Alternative Completion Times**, if permitted under ITT 15.2, will be evaluated as follows: **N/A**

ii. **Alternative technical solutions for specified parts**

The acceptability of alternative technical solutions for parts of the facilities, if permitted under ITT 15.4, will be determined as follows: **N/A**

iii. **Conformance with the estimated cost**: The estimate for the specified items in the Bills of Quantities shall be up to the rates summarized below. The cap rates are inclusive of all applicable taxes. A Tender in which any unit rate exceeds the corresponding cap rate shall be determined non-responsive and shall not be ranked.

	SANITARY FITTINGS AND ACCESSORIES SUPPLY ONLY				
2.200	**Category 2: Hospital / Dispensary**				
	Water Closet (WC) Pan				
2.201	Close Coupled dual flush Floor Standing WC Bowl complete with seat cover and cistern, Angle Valve, WC connector relevant fittings & accessories	No.	1	3900	3,900.00
	Asian WC				
2.202	Squat pan for recessed or inset mounting, stainless steel, surface satin finished, material thickness 1.2 mm, DN 100 waste, drainage into ground, slip resistant patterned foot areas, suitable for recessed flushing systems like direct flushing, infrared/piezo flushing or cisterns. Squat pan edges bent up. Spreader: 50mm Diameter Button Spreader to fit a High Level Cistern with DN40 connection.	No.	1	3450	3,450.00
	Wash Basin - Full Pedestal				
2.203	WHB basin Full pedestal Wash Basin 450x485x230m White Complete with Cold & Hot Water Supply Mixer, Faucet, bottle trap, flexible connection hoses, Angle Valve and other relevant accessories	No.	1	3,900.00	3,900.00
	Wash Basin - Counter Sunk				
2.204	Counter Sunk Wash Basin 450x485x230m White Complete with Cold & Hot Water Supply Mixer, Faucet, bottle trap, flexible connection hoses, Angle Valve and other relevant accessories	Set	1	5,650.00	5,650.00
	Shattaf Set				
2.205	Handheld Bidet Health Spray for with Anti-leaking Hose and fixing accessories - 304 Stainless Steel Material	No.	1	2000	2,000.00
	Urinal				
2.206	Urinal bowl in white colour of size 450 x 685mm with built in spreader and concealed waste trap complete with stainless steel fixing bolts and caps. Complete with exposed Flash Valve	No.	1	6,500.00	6,500.00
	Toilet paper dispenser				
2.207	Stainless Steel Toilet Paper Dispenser satin finish or equal and approved.	No.	1	4,400.00	4,400.00
	Toilet Brush and Holder				
2.208	Stainless Steel Toilet brush and holders	No.	1	5,700.00	5,700.00
	Paper Towel Dispenser				
2.209	Stainless Steel Paper Towel Dispenser satin finish or equal and approved.	No.	1	4,350.00	4,350.00
	Soap dispenser				
2.210	Metallic Bottle Liquid Soap dispenser or equal and approved.	No.	1	3,900.00	3,900.00

ITEM	DESCRIPTION	UNIT	QTY	RATE (KES)	AMOUNT (KES)
	SANITARY FITTINGS AND ACCESSORIES SUPPLY ONLY				
	Category 2				
	Balance Brought Forward				**43,750.00**
	Coat Hook				
2.211	Stainless Steel Coat Hook	No.	1	880.00	880.00
	Cleaner's Sink				
2.212	General purpose sink for wall mounting, stainless steel, surface satin finished, material thickness 1.2 mm, seamless welded bowl with dimensions 420x400x170 mm, rounded edges, 1 1/2" plug waste, drainage back right, 40 mm rear upstand, incl. stainless	No.	1	13,150.00	13,150.00
	Lab Sink				
2.213	Single bowl single drainer sit on sinks with radiused front edge, manufactured from 1.2mm thick, grade 1.4301 (304) stainless steel, satin polish finish. Sink profile incorporates a radiused front edge together with a radiused internal corner at the base of the upstand. Sink bowls are prepared for a 38mm waste outlet which can be supplied as an extra. L or R after the code numbers refers to the handing of the drainer ie. left or right when facing the unit. Sink units are suitable for mounting onto cabinets,	No.	1	30,800.00	30,800.00
	Lab Sink Tap				
2.214	Lab sink tap to be an elbow type action basin mixer 1/2" Flexible Tubes	Set	1	3,000.00	3,000.00
	Disabled Water Closet (WC) Pan				
2.215	Physically challenged set as Doc M Cont close coupled right hand corner pack, WC pan, Wash basin, water saving delay fill cistern with spatula lever, grab rails, hinged support rail with toilet roll holder, seat no cover with retaining buffers, copper tails on a mixer tap.	No.	1	21,700.00	21,700.00
	Shower Fittings				
2.216	Shower fitting c/w 15mm diameter chrome plated stop cork, Instant shower fitting and 1/2" Cobra 211- 15 Star Pillar tap	No.	1	5,600.00	5,600.00
	Mirror				
2.217	600x800mm bevelled wall mirror on foam and 6mm plywood timber backing fixed above wash hand basins or equal and approved.	No.	1	1500	1,500.00

ITEM	DESCRIPTION	UNIT	QTY	RATE (KES)	AMOUNT (KES)
	SANITARY FITTINGS AND ACCESSORIES SUPPLY ONLY				
	Category 2				
	Balance Brought Forward				**120,380.00**
	Dirty Utility /Sluice Sink				
2.218	Sluice Sink wall hung disposal unit manufactured from 1.2mm thick, grade 1.4301 (304) stainless steel with satin polish finish. Incorporating a sluice hopper with a back inlet suitable for duct mounted services. The hopper has a 110mm dia. outlet which can accept a P trap, to be included. Plastic cistern with plastic downpipe should be included. Plastic cistern have a 9 litre capacity and are fitted with 13mm HP brass valve, plastic float and CP metal flushing lever handles. The unit should only be fed from a cistern or tank water supply. The unit is fixed to the wall using two cantilevered brackets, which should be included. Complete with wall fixings. Manufactured in accordance with the old HTM64 standard and the Health Building Notes 00-10, part C or equal and approved.	No.	1	28,000.00	28,000.00
	Angle Valve				
2.219	Angle Valve with extension 1/2" x 3/8" with Wall Flange or equal and approved.	No.	1	450	450.00

iv. Life Cycle Costs
Not applicable. Life cycle costs shall not be evaluated under this Tender.

v. Functional Guarantees of the Facilities
Not applicable. Conformity of the offered Sanitary Ware Sets is established under Clause 4.1 (Compliance with Technical Specifications) of this Section.

vi. Work, services, facilities, etc., to be provided by the Procuring Entity.
Not applicable.

Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Tender Price." Tender prices quoted by Tenderers shall remain unaltered.

4.3. Evaluation of Commercial Terms and Conditions of the Tender (ITT 37.1):
The Procuring Entity shall determine whether the Tenders are substantially responsive to the Commercial and Framework Contractual Terms and Conditions (e.g. Performance securities, Payment and delivery schedules).

4.4. Evaluation Criteria (Other Factors) (ITT 37.5(e))
Not applicable. No factors other than the Tender Price, adjusted in accordance with ITT 37.4, shall be taken into account in the evaluation.

5. Multiple Contracts (ITT 37.7)
5.1. This procurement is conducted as a single national category without regional lots. Tenderers are evaluated and ranked to establish a multi-supplier panel.

6. Margin of Preference
6.1. If the **TDS** so specifies, the Procuring Entity will grant a margin of preference of 15% (fifteen percent) to Tenderers offering goods manufactured, mined, extracted, grown, assembled or semi-processed in Kenya. Goods assembled or semi-processed in Kenya shall have a local content of not less than 40%.

6.2. The margin of preference will be applied in accordance with, and subject to, the following provisions:

a) Tenderers applying for such preference on goods offered shall be asked to provide, as part of the data for qualification, such information, including details of the goods produced in Kenya, so as to determine whether, according to the classification established by the Procuring Entity, a particular category of goods or group of goods qualifies for a margin of preference.

b) After Tenders have been received and reviewed by the Procuring Entity, goods offered in the responsive Tenders shall be assessed to ascertain they are manufactured, mined, extracted, grown, assembled or semi-processed in Kenya. Responsive tenders shall be classified into the following groups:

i. **Group A:** Tenders offering goods manufactured in Kenya, for which (a) labor, raw materials, and components from within Kenya account for more than forty (40) percent of the Ex-Works price; and the production facility in which they will be manufactured or assembled has been engaged in manufacturing or assembling such goods at least since the date of Tender submission date;

ii. **Group B**: All other Tenders offering Goods manufactured in Kenya;

iii. **Group C:** Tenders offering Goods manufactured outside Kenya that have been already imported or that will be imported.

6.3. To facilitate this classification by the Procuring Entity, the tenderer shall complete whichever version of the Price Schedule furnished in the Tendering document is appropriate, provided however, that the completion of an in correct version of the Price Schedule by the Tenderer shall not result in rejection of its Tender, but merely in the Procuring Entity's reclassification of the Tender into its appropriate Tender group.

6.4. The Tenders in each group will then be compared to determine the Tender with the lowest evaluated cost in that group. The lowest evaluated cost Tender from each group shall then be compared with each other and if as a result of this comparison a Tender from Group A or Group B is the lowest, it shall be selected for the award.

6.5. If as a result of the preceding comparison, a Tender from Group C is the lowest evaluated cost, an amount equal to or 15% of the respective tender price, including unconditional discounts and excluding provisional sums, if any, shall be added to the evaluated price offered in each tender from Group C. If the tender from Group C is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group A or B based on the first evaluation price shall be selected.

7. Alternative Tenders (ITT 15.1)

An alternative if permitted under ITT 15.1, will be evaluated as follows:

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2 – Procuring Entity's requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

8. Post Qualification and Contract Award (ITT 41), more specifically:

a) In case the tender was subject to post-qualification, Framework Agreements shall be awarded to shortlisted Tenderers in accordance with the panel ranking, subject to confirmation of prequalification data, if so required.

b) In case the tender was not subject to post-qualification, each Tenderer that has been ranked for Framework Agreement award shall be considered for award, subject to meeting each of the following conditions.

i. The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet a cash flow requirement of Kenya Shillings One Hundred Million (KShs.100,000,000.00);

ii. Minimum average annual turnover of KShs.200,000,000.00, equivalent calculated as total certified payments received for contracts in progress and/ or completed within the last **3 (Three)** years.

iii. At least **5 No.** of contract (s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings **KShs.30,000,000.00** equivalent.

iv. Contractor's Representative and Key Personnel: Not applicable.

v. Contractor's key equipment: as evidenced under Clause 4.1, item 1 (Production Capacity) of this Section.

vi. Other conditions depending on their seriousness:

a. History of non-performing contracts:
Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last three (3) years (2023, 2024 and 2025). The required information shall be furnished in the appropriate form.

b. Pending Litigation
Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c. Litigation History
There shall be no consistent history of court/ arbitral award decisions against the Tenderer, in the last three (3) years (2023, 2024 and 2025). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

9. Qualification

Factor	1. Eligibility					
Sub-Factor	**Criteria**					**Documentation Required**
	Requirement	**Tenderer**				
		Single Entity	**Joint Venture** (existing or intended)			
			All members combined	**Each Partner**	**At least one Partner**	
1.1. Nationality	Nationality in accordance with ITT 4.6.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
1.2. Conflict of Interest	No- conflicts of interests as described in ITT 4.3	Must meet requirement	must meet requirement	Must meet requirement	N / A	Form of Tender
1.3. International Regulatory Body Ineligibility (if debarred/Sanctioned)	Not having been declared ineligible by the PPRA as described in 4.5.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Form of Tender
1.4. State Owned Enterprise or Institution	Compliance with conditions of ITT 4.8	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
1.5. Ineligibility based on a United Nations resolution or Kenya laws	Not having been excluded as a result of the Kenya laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITT 4.9 and Section V.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Form of Tender
1.6. Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 4.13.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Attach certificate

Factor	2. Historical Framework Agreement Non-Performance					
Sub-Factor	**Criteria**					**Documentation Required**
	Requirement	**Tenderer**				
		Single Entity	**Joint Venture** (existing or intended)			
			All members combined	**Each member**	**At least one member**	
2.1. History of non-performing Framework Agreements	Non-performance[1] of a Framework Agreement did not occur within the last three (3) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective Framework Agreement, and where all appeal instances available to the Tenderer have been exhausted.	Must meet requirement by itself or as member to past or existing JV	N / A	Must meet requirement [2]	N / A	Form CON – 2
2.2. Suspension	Not under suspension based on execution of a Tender Securing Declaration or Proposal Securing Declaration pursuant to ITT 4.7 and ITT 20.9	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Form of Tender
2.3. Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Tenderer	Must meet requirement	N / A	Must meet requirement	N / A	Form CON – 2
2.4. Litigation History	No consistent history of court/arbitral award decisions against the Tenderer[3] since 1st January 2021	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON – 2

[1] Nonperformance, as decided by the Procuring Entity, shall include all Framework Agreements where (a) nonperformance was not challenged by the Contractor, including through referral to the dispute resolution mechanism under the respective Framework Agreement, and (b) Framework Agreements that were so challenged but fully settled against the Contractor. Nonperformance shall not include Framework Agreements where Procuring Entity's decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective Framework Agreement and where all appeal instances available to the Tenderer have been exhausted.

[2] This requirement also applies to Framework Agreements executed by the Tenderer as JV member.

[3] The Tenderer shall provide accurate information on the related Tender Form about any litigation or arbitration resulting from Framework Agreements completed or ongoing under its execution over the last five years. A consistent history of awards against the Tenderer or any member of a joint venture may result in failure of the Tender.

Factor	3. Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture (existing or intended)			
			All members combined	Each member	At least one member	
3.1. Financial Capabilities	Submission of audited balance sheets or if not required by the law of the Tenderer's Country, other financial statements acceptable to the Procuring Entity, for the last three (3) years to demonstrate the current soundness of the Tenderers financial position and its prospective long-term profitability.	Must meet requirement	N/A	N/A	Must meet requirement (Manufacturer)	Form FIN – 3.1 with attachments
3.2. Average Annual Turnover	Minimum average annual turnover of **KSh.200,000,000.00,** calculated as total certified payments received for contracts in progress or completed, within the last three (3) years	Must meet requirement	N/A	N/A	25 % of the total value of the requirement (Manufacturer)	Form FIN –3.2
3.3. Financial Resources	The Tenderer must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (i) the following cash-flow requirement: **KSh.100,000,000.00** and (ii) the overall cash flow requirements for this contract and its current commitments.	Must meet requirement	N/A	N/A	12.5 % of the total value of the requirement (Manufacturer)	Form FIN –3.3

Factor	4. Experience					
Sub-Factor	**Criteria**					**Documentation Required**
	Requirement	**Tenderer**				
		Single Entity	**Joint Venture** (existing or intended)			
			All members combined	**Each member**	**At least one member**	
4.1. General Experience	Experience in the manufacture and/or supply of sanitary ware under contracts in the role of manufacturer, supplier, contractor or subcontractor for at least the last ten (10) years starting 1st January 2016.	Must meet requirement	N / A	Must meet requirement	N / A	Form EXP-4.1
4.2. (a) Specific Experience	(a) Participation as contractor, joint venture member[4], management contractor, or subcontractor, in at least 5 No. contracts within the last (10) years, each with a value of at least **Kshs.30,000,000.00** that have been successfully and substantially[5]completed and that are similar to the scope of this Tender. The similarity of the contracts shall be based on the following: manufacture and/or supply and delivery of sanitary ware (WC suites, washbasins, sinks and associated fittings) to residential, institutional or commercial building projects.	Must meet requirement	Must meet requirements[6]	N / A	N / A	Form EXP 4.2(a)

[4] For contracts under which the Tenderer participated as a joint venture member or sub-contractor, only the Tenderer's share, by value, shall be considered to meet this requirement

[5] Substantial completion shall be based on 80% or more plant and installation completed under the contract.

[6] In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

Factor	4. Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture (existing or intended)			
			All members combined	Each member	At least one member	
4.2 (b) Specific Experience	(b) For the above or other contracts executed during the period stipulated in 4.2(a) above, a minimum experience in the following key activities: **manufacture and/or supply and delivery of Sanitary Ware Sets**	Must meet requirements	Must meet requirements[7]	N / A	N / A	Form EXP-4.2(b)

[7] In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

10. Personnel – N/A

Not applicable. Key personnel shall not be evaluated under this Tender.

11. Equipment – N/A

Not applicable. Production equipment is evaluated under Clause 4.1, item 1 (Production Capacity).

12. Sub Framework Agreements – N/A

Not applicable.

In the case of a Tenderer who offers to supply major items of supply under the Framework Agreement that the Tenderer did not manufacture or otherwise produce, the Tenderer shall provide the manufacturer's authorization, using the form provided in Section IV, showing that the Tenderer has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply that item in Kenya. The Tenderer is responsible for ensuring that the manufacturer or producer complies with the requirements of ITT 4 and 5 and meets the minimum criteria listed above for that item.

SECTION IV – TENDERING FORMS

FORM OF TENDER

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS

i. All italicized text is to help the Tenderer in preparing this form.

ii. The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a mandatory requirement.

iii. Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION FORMS OF THE TENDERER as listed under (s) below.

Date of this Tender submission: ..... [*insert date (as day, month and year) of Tender submission*]

Tender Name and Identification: ..... [*insert identification*]

Alternative No: ..... [*insert identification No if this is a Tender for an alternative*]

To: ..... [*Insert complete name of Procuring Entity*]

a) **No reservations**: We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with ITT 10;

b) **Eligibility**: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;

c) **Tender-Securing Declaration**: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT 4.7;

d) **Conformity: We offer to manufacture, supply and deliver, in conformity with the Tendering document, Sanitary Ware Sets as described in Section V – Schedule of Requirements and the Bills of Quantities;**

e) **Tender Price**: The total evaluated price of our Tender is Kenya Shillings [*insert amount in words*] (KES [*insert amount in figures*]), arrived at by applying the unit rates and prices contained in our priced Bills of Quantities to the indicative quantities stated in the Bills of Quantities, solely for the purpose of tender evaluation, comparison and ranking.

f) We understand and accept that this amount is indicative only and does not represent a guaranteed or minimum quantity. The actual quantities to be ordered under the Framework Agreement shall be determined exclusively through individual call-off contracts issued from time to time. The price payable for each call-off contract shall be calculated by multiplying the actual quantities ordered in that call-off (which may be for any number of Sanitary Ware Sets and in any region or project site across the Republic of Kenya) by the corresponding unit rates and prices in our priced Bills of Quantities, subject only to price adjustment under SCC 11.2, without any re-negotiation of rates.

g) **Discounts**: The discounts offered and the methodology for their application are:

i. The discounts offered are: [*Specify in detail each discount offered.*]
ii. The exact method of calculations to determine the net price after application of discounts is shown below:
[*Specify in detail the method that shall be used to apply the discounts*];

h) **Tender Validity Period**: Our Tender shall be valid for the period specified in TDS ITT 21.1 (as amended if applicable) from the date fixed for the Tender submission deadline specified in TDS ITT 25.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

i) **Performance Security**: If our Tender is accepted; we commit to obtain a Performance Security in accordance with the Tendering document;

j) **One Tender Per Tenderer**: We are not submitting any other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member, and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 15;

k) **Suspension and Debarment**: We, along with any of our sub-contractors, suppliers, consultants, manufacturers, or service providers for any part of the Framework Agreement, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;

l) **State-owned enterprise or institution**: [*select the appropriate option and delete the other*] [We are not a state- owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 4.6];

m) **Commissions, gratuities and fees**: We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Framework Agreement: [*insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity*]

Name of Recipient	Address	Reason	Amount

(*If none has been paid or is to be paid, indicate "none."*)

n) **Binding Framework Agreement**: We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding Framework Agreement between us, until a formal Framework Agreement is prepared and executed;

o) **Not Bound to Accept**: We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and

p) **Fraud and Corruption**: We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

q) **Collusive practices**: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the Framework Agreement if awarded. To this effect we have signed the "Certificate of Independent tender Determination" attached below.

r) **Code of Ethical Conduct**: We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from www.ppra.go.ke during the procurement process and the execution of any resulting Framework Agreement.

s) **Beneficial Ownership Information**: We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a Framework Agreement in the event we are the successful tenderer in this subject procurement proceeding.

t) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:

i. ***Tenderer's Eligibility – Confidential Business Questionnaire*** – to establish we are not in any conflict to interest.

ii. ***Certificate of Independent Tender Determination*** – to declare that we completed the tender without colluding with other tenderers.

iii. ***Self-Declaration of the Tenderer*** – to declare that we will, if awarded a Framework Agreement, not engage in any form of fraud and corruption.

iv. ***Declaration and commitment to the code of ethics*** for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya,

u) Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in "**Appendix 1 – Fraud and Corruption**" attached to the Form of Tender.

Name of the Tenderer: *[insert complete name of Tenderer]

Name of the person duly authorized to sign the Tender on behalf of the Tenderer: **[*insert complete name of person duly authorized to sign the Tender*]

Title of the person signing the Tender: [*insert complete title of the person signing the Tender*]

Signature of the person named above: [*insert signature of person whose name and capacity are shown above*]

Date signed: [*insert date of signing*] day of [*insert month*], [*insert year*].

TENDERER'S ELIGIBILITY – CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, one form for each entity if Tender is a JV. Tenderer is further reminded that it is an offence to give false information on this Form.

a) Tenderer's Details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	i. Country ii. City iii. Location iv. Building v. Floor vi. Postal Address vii. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (postal and physical addresses, email, and telephone number) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address (postal and physical addresses, email, and telephone number) of state which stock exchange	

General and Specific Details

b) Sole Proprietor, provide the following details.

Name in full		**Age**	
Nationality		Country of Origin	
Citizenship			

c) Partnership, provide the following details

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

d) Registered Company, provide the following details

i. Private or public Company _____

ii. State the nominal and issued capital of the Company:

Nominal Kenya Shillings (Equivalent) _____

Issued Kenya Shillings (Equivalent) _____

iii. Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

e) DISCLOSURE OF INTEREST – Interest of the Firm in the Procuring Entity

i. Are there any person/ persons in.....(Name of Procuring Entity) who has/ have an interest or relationship in this firm?

Yes/No..... If yes, provide details as follows

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

ii. Conflict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the Framework Agreement specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Framework Agreement, and/or the Tender evaluation process of such Framework Agreement.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Framework Agreement.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Framework Agreement.		

f) Certification

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name

Title or Designation

(Signature) (*Date)*

CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the under signed, in submitting the accompanying Letter of Tender to the _____ [*Name of Procuring Entity*] for: _____ [*Name and number of tender*] in response to the request for tenders made by: _____ [*Name of Tenderer*] do here by make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of _____ [*Name of Tenderer*] that:

1. I have read and I understand the contents of this Certificate;

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;

3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:

    a) Has been requested to submit a Tender in response to this request for tenders;

    b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;

5. The Tenderer discloses that [*check one of the following, as applicable*]:

    a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;

    b) The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;

6. In particular, without limiting the generality of paragraphs (5) (a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

    a) prices;

    b) methods, factors or formulas used to calculate prices;

    c) the intention or decision to submit, or not to submit, a tender; or

    d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5) (b) above;

8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Framework Agreement, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name	
Title	
Date	

[Name, title and signature of authorized agent of Tenderer and Date]

SELF DECLARATION FORMS

FORM SD1

SELF DECLARATION THAT THE PERSON /TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I, ……., of Post Office Box ……. being a resident of …….. in the Republic of ……. do hereby make a statement as follows:

1. THAT I am the Company Secretary/ Chief Executive/ Managing Director/ Principal Officer/ Director of ……..…….. (*insert name of the Company*) who is a Bidder in respect of Tender No. …… for ……. (*insert tender title/description*) for ……. (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.

2. THAT the afore said Bidder, its Directors, and sub-contractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

(Title)	(Signature)	(Date)

Bidder's Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I, ...of P. O. Box.....being a resident of ..... in the Republic of ..... do hereby make a statement as follows:

1. THAT I am the Chief Executive/ Managing Director/ Principal Officer/ Director of……..……..…… (*insert name of the Company*) who is a Bidder in respect of Tender No. …….. for ……. (*insert tender title/description*) for ……. (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.

2. THAT the afore said Bidder, its servants and/ or agents/ sub-contractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ……. (*insert name of the Procuring entity*) which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/ or agents/ sub-contractors have not offered any inducement to any member of the Board, Management, Staff and/ or employees and/ or agents of ……. (*name of the procuring entity*).

4. THAT the aforesaid Bidder will not engage/ has not engaged in any corrosive practice with other bidders participating in the subject tender.

5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

(Title)	(Signature)	(Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I, ...(*person*) on behalf of (*Name of the Business/ Company/ Firm*) …….. declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory			
Sign			
Position			
Office address		**Telephone**	
E-mail			
Name of the Firm/Company			
Date			

(Company Seal/ Rubber Stamp where applicable)

Witness

Name	
Sign	
Date	

SCHEDULE OF PACKAGES AND PRICES

i. Packages involved in the Framework Agreement

The Framework Agreement comprises a single national category with no fixed packages. Call-off orders shall be issued for Affordable Housing Programme project sites in any county of the Republic of Kenya in accordance with Clause 1.6.9 of the General Conditions of Framework Agreement.

ii. Bills of Quantities

The Tenderer shall price the Bills of Quantities issued with this Tendering document (Preliminaries, Sanitary Ware and Main Summary). Unit rates shall not exceed the cap rates in Section III, Clause 4.2.

iii. Grand Summary

Grand Summary

SUMMARY ITEMS	From Page	Amount
Bill No. 1: Preliminaries		
Bill No. 2: Sanitary Ware Supply		
Allow for any Discounts I		
TOTAL TENDER PRICE Carried forward to Form of Tender		

COUNTRY OF ORIGIN DECLARATION FORM

Item	Description	Code	Country

Name of Tenderer

Signature

Date

PRICE ADJUSTMENT

Prices payable to the Contractor shall be subject to adjustment in accordance with SCC 11.2 and Appendix 2 (Price Adjustment) to the Framework Agreement, using the formula below. The weightings are fixed element a = 15%, labour b = 20% and material and equipment c = 65%.

Price Adjustment Formula

If in accordance with GCC 11.2, prices shall be adjustable, the following method shall be used to calculate the price adjustment.

Prices payable to the Contractor, in accordance with the Framework Agreement, shall be subject to adjustment during performance of the Framework Agreement to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P_1 = P_0 \times (a + b\frac{L_1}{L_0} + c\frac{M_1}{M_0}) - P_0$$

P_1 = adjustment amount payable to the Contractor

P_0 = Framework Agreement price (base price)

a = percentage of fixed element in Framework Agreement price (a = 15%)

b = percentage of labor component in Framework Agreement price (b = 20%)

c = percentage of material and equipment component in Framework Agreement price (c = 65%)

L_0, L_1 = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

M_0, M_1 = material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

NB: a + b + c = 100%

Conditions Applicable to Price Adjustment

The Tenderer shall indicate the source of labor, source of exchange rate and materials indices and the base date indices in its Tender.

Item	Source of Indices Used	Base Date Indices

The base date shall be the date thirty (30) days before the Effective Date of each call-off, in accordance with SCC 11.2.

The date of adjustment shall be the mid-point of the period of manufacture or delivery of component or Plant. The following conditions shall apply:

a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Procuring Entity under the terms of the Framework

Agreement. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Procuring Entity will, however, be entitled to any price decrease occurring during such periods of delay.

b) If the currency in which the Framework Agreement price, P0, is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Framework Agreement price. The correction factor shall be:

$\frac{Z_0}{Z_1}$, where,

Z_0 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Framework Agreement Price P_0 on the Base date, and

Z_1 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Framework Agreement Price P_0 on the Date of Adjustment.

c) No price adjustment shall be payable on the portion of the Framework Agreement price paid to the Contractor as an advance payment.

TECHNICAL PROPOSAL

The following comprise the technical proposal and must be included as specified:

- Organization and Delivery Logistics
- Method Statement
- Mobilization Schedule
- Manufacturing and Delivery Schedule
- Production Facilities
- Contractor's Equipment
- Personnel
- Proposed Subcontractors for Major Items of Plant and Installation Services
- Others

Method Statement

Mobilization Schedule

Manufacturing and Delivery Schedule

Contractor's Equipment

Form EQU

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key Contractor's equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer. Equipment must support recurring call-offs nationwide; confirm capacity for flexible allocation to any region, no single firm assumption.

Item of equipment

Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment ☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured	

Omit the following information for equipment owned by the Tenderer

Owner	**Name of owner**	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

Functional Guarantees

The Tenderer shall copy in the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the Procuring Entity in para.1.2 (c) of Section III, Evaluation and Qualification Criteria, and in the right column, provide the corresponding value for each functional guarantee of the proposed plant and equipment.

Required Functional Guarantee	Value of Functional Guarantee of the Proposed Manufacture, Supply & Delivery of Sanitary Ware Sets
1.	
2.	
3.	
…	

Personnel

Form PER -1- Proposed Personnel

Tenderers should provide the names of suitably qualified personnel to meet the specified requirements stated in Section
III. The data on their experience should be supplied using the Form below for each candidate.

1. Title of position*

	Name	
2.	**Title of position***	
	Name	
3.	**Title of position***	
	Name	
4.	**Title of position***	
	Name	

*As listed in Section III.

Form PER-2 – Resume of Proposed Personnel

Name of Tenderer_____

Position

Personnel information	Name	Date of birth
	Professional qualifications	
Present employment	Name of Procuring Entity	
	Address of Procuring Entity	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present Procuring Entity

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	**To**	**Company / Project / Position / Relevant technical and management experience**

Proposed Subcontractors for Major Items of Plant and Installation Services

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are proposed for carrying out the item of the facilities indicated. Tenderers are free to propose more than one for each item

Major Items of Plant and Installation Services	Proposed Subcontractors/Manufacturers	Nationality

Others - Time Schedule

(to be used by Tenderer when alternative Time for Completion is invited in ITT 15.2)

Tenderers Qualification without prequalification

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included here under.

Form ELI 1.1 – Tenderer Information Sheet

Date:

ITT No.:	

1. Tenderer's Legal Name
2. In case of JV, legal name of each party:
3. Tenderer's actual or intended Country of Registration:
4. Tenderer's Year of Registration:
5. Tenderer's Legal Address in Country of Registration:
6. Tenderer's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: ▪ Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITT 4.1 and ITT 4.4. ▪ In case of JV, Form of intent to form JV including a draft agreement, or JV agreement, in accordance with ITT 4.1 and ITT 13.2. ▪ In case of state-owned enterprise or institution from Kenya, documents establishing legal and financial autonomy and compliance with the principles of commercial law and is not under the supervision of the Procuring Entity in accordance with ITT 4.6.

Please note that a written authorization needs to be attached to this sheet as required by ITT 23.3

Form ELI 1.2 – Party to JV Information Sheet

Date:

ITT No.:	

1. Tenderer's Legal Name
2. JV's Party Legal Name:
3. JV's Party Country of Registration:
4. JV's Party Year of Registration:
5. JV's Party Legal Address in Country of Registration:
6. JV's Party Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: ▪ Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITT 4.1 and ITT 4.4. ▪ In case of state-owned enterprise or institution from Kenya, documents establishing legal and financial autonomy and compliance with the principles of commercial law and is not under the supervision of the Procuring Entity in accordance with ITT 4.6.

Form CON 2 – Historical Contract Non-Performance

Tenderer's Legal Name

Date:	
JV Member Legal Name	
ITT No.:	

Non-Performed Contracts in accordance with Section III – Evaluation and Qualification Criteria

☐ Contract non-performance did not occur since 1st January *[insert year]* specified in Section III – Evaluation and Qualification Criteria, Sub-Factor 2.1.

☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III – Evaluation and Qualification Criteria, requirement 2.1

Year	**Non-performed portion of contract**	**Contract Identification**	**Total Contract Amount (current value, currency, exchange rate and KES equivalent)**
[insert year]	*[insert amount and percentage]*	Contract Identification*: [indicate complete contract name/ number, and any other identification]* Name of Procuring Entity: *[insert full name]* Address of Procuring Entity*: [insert City / street / building / floor number / room number / country]* Reason(s) for nonperformance: *[indicate main reason(s)]*	*[insert amount]*

Pending Litigation, in accordance with Section III – Evaluation and Qualification Criteria

☐ No pending litigation in accordance with Section III – Evaluation and Qualification Criteria, Sub-Factor 2.3.

☐ Pending litigation in accordance with Section III – Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.

Year of dispute	Amount in dispute (currency)	Contract Agreement Identification	Total Contract Agreement Amount (currency), KES Equivalent (exchange rate)
		Contract Agreement Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: ____ Status of dispute: _____	
		Contract Agreement Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute: Party who initiated the dispute: Status of dispute:	
Litigation History in accordance with Section III – Evaluation and Qualification Criteria			
☐ No Litigation History in accordance with Section III – Evaluation and Qualification Criteria, Sub-Factor 2.4. ☐ Litigation History in accordance with Section III – Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
[insert year]	*[insert percentage]*	Contract Agreement Identification: *[indicate complete Contract Agreement name, number, and any other identification]* Name of Procuring Entity: *[insert full name]* Address of Procuring Entity: *[insert City/ street/building/floor number/room number/country]* Matter in dispute: *[indicate main issues in dispute]* Party who initiated the dispute: *[indicate "Procuring Entity" or "Contractor"]* Reason(s) for Litigation and award decision *[indicate main reason(s)]*	*[insert amount]*

Form CCC – Current Contract Commitments / Works in Progress

Tenderers and each member to a JV should provide information on their current commitments on all Contract that have been awarded, or for which a Form of intent or acceptance has been received, or for Contract approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Name of Contract	Procuring Entity, contact address / tel.	Value of outstanding work (current KES equivalent)	Estimated completion date	Average monthly invoicing over last six months (KES/month)
1.				
2.				
3.				
4.				
5.				
etc.				

Form FIN 3.1 – Financial Situation – Historical Financial Performance

Tenderer's Legal Name

Date:	
JV Member Legal Name	
ITT No.:	

To be completed by the Tenderer and, if JV, by each member

Financial information in KES equivalent	**Historic information for previous _____ (__) years (KES equivalent in 000s)**						
	Year 1	Year 2	Year 3	Year …	Year n	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

a) Must reflect the financial situation of the Tenderer or member to a JV, and not sister or parent companies.

b) Historic financial statements must be audited by a certified accountant.

c) Historic financial statements must be complete, including all notes to the financial statements.

d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Form FIN 3.2 – Average Annual Turnover

Tenderer's Legal Name

Date:	
JV Member Legal Name	
ITT No.:	

Annual turnover data

Year	Amount and Currency	KES equivalent
***Average Annual Turnover**		

*Average annual turnover calculated as total certified payments received for work in progress or completed, divided by the number of years specified in Section III, Evaluation Criteria, Sub-Factor 2.3.2.

Form FIN 3.3 – Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject Framework Agreement as indicated in Section III, Evaluation and Qualification Criteria.

Source of financing	**Amount (Kenya Shilling equivalent)**
1.	
2.	
3.	
4.	

Form EXP 4.1 – General Experience

Tenderer's Legal Name

Date:	
JV Member Legal Name	
ITT No.:	

Starting Month / Year	Ending Month / Year	Years*	Framework Agreement Identification	Role of Tenderer
_____	_____		Contract name: Brief Description of the Works performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Tenderer: Name of Procuring Entity: Address:	_____

*List calendar year for years with Contract with at least nine (9) months activity per year starting with the earliest year

Form EXP 4.2(a) – Specific Experience

Tenderer's Legal Name

JV Member Legal Name	

Similar Contract No. __ *[insert specific number]* of [*total number of Framework Agreements*] ___ required	**Information**
Description of the similarity in accordance with Sub-Factor 4.2a) of Section III:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Physical Production Rate	_____

Form EXP 4.2(b) – Specific Experience in Key Activities

Tenderer's Legal Name

Date:	
JV Member Legal Name	
ITT No.:	

Information

Framework Agreement Identification			
Award date			
Completion date			
Role in Contract	☐ Contract	☐ Management Contract	☐ Sub-contract
Total Contract amount	_____		KES _____
If member in a JV or subcontract A, specify participation of total contract amount	_____%	_____	KES _____
Procuring Entity's Name:	_____		
Address:			
Telephone/fax number:			
E-mail:			

FORM OF TENDER SECURITY – [Option 1–Demand Bank Guarantee]

Beneficiary

Request for Tenders No.:	
Date:	
Tender Guarantee No.:	
Guarantor:	

1. We have been informed that _____ (herein after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (herein after called" the Tender") for the execution of _____ under Request for Tenders No. ("the ITT").

2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

3. 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 _____ (_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

   a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or

   b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the Framework Agreement, or (ii) has failed to furnish the Performance.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the Framework Agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

Signature(s) _____

FORMAT OF TENDER SECURITY – [Option 2–Insurance Guarantee]

Tender Guarantee No.:

1. Whereas …… [Name of the tenderer] (hereinafter called "the tenderer") has submitted its tender dated …… [Date of submission of tender] for the …… [Name and/or description of the tender] (hereinafter called "the Tender") for the execution of under Request for Tenders No. _____ ("the ITT").

2. KNOW ALL PEOPLE by these presents that WE …… of …… [Name of Insurance Company] having our registered office at …… (hereinafter called "the Guarantor"), are bound unto …….. [Name of Procuring Entity] (hereinafter called "the Procuring Entity") in the sum of …… (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

   Sealed with the Common Seal of the said Guarantor this ___day of _____ 20 __.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or

   b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal: (i) failed to execute the Framework Agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

   then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the Framework Agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii)twenty-eight days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

Date	**Signature of the Guarantor**
Witness	**Seal**

Note: All italicized text is for use in preparing this form and shall be deleted from the final product

TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}

[The Bidder shall complete this Form in accordance with the instructions indicated]

Date:	*[insert date (as day, month and year) of Tender Submission]*

Tender No.:	*[insert number of tendering process]*
To:	*[insert complete name of Purchaser]*

I / We, the undersigned, declare that:

1. I / We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

2. I / We accept that I / we will automatically be suspended from being eligible for tendering in any Contract with the Purchaser for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation (s) under the bid conditions, because we–(a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Framework Agreement, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.

3. I / We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer (s), upon the earlier of:

   a) Our receipt of a copy of your notification of the name of the successful Tenderer; or

   b) Thirty days after the expiration of our Tender.

4. I / We understand that if I am / we are / in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:

Capacity / Title:		*(director or partner or sole proprietor, etc.)*	
Name:			
Duly authorized to sign the bid for and on behalf of:		*(insert complete name of Tenderer)*	
Dated on:		**Day of**	*(insert date of signing)*

Seal or Stamp

MANUFACTURER'S AUTHORIZATION FORM

Date:

ITT No.:	
To:	

WHEREAS

We _____, who are official manufacturers of _____ , having factories at _____, do hereby authorize to submit a Tender the purpose of which is to provide the following goods, manufactured by us _____ , and to subsequently negotiate and sign the Framework Agreement.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions, with respect to the goods offered by the above firm.

Signed:

Name:	
Capacity / Title:	
Duly authorized to sign the bid for and on behalf of:	
Dated on: _____	**Day of** _____

FORM INV 6.1 – INVESTMENT PLAN TEMPLATE

Demonstration of Intent to Invest Within Twenty Four (24) Months of Contract Award

Tender Reference: _____
Project Title: _____
Submitted By: _____
Submission Date: _____

1.0 EXECUTIVE SUMMARY

This Investment Plan outlines the Bidder's strategy to establish sustainable operational, service, and industrial capacity within the Republic of Kenya within twenty-four (24) months of the Effective Date of the Framework Agreement. The plan demonstrates the Bidder's financial capability, national deployment capacity, industrial participation commitments, and localization strategy in alignment with Government of Kenya industrialization and local content objectives.

The plan provides a phased implementation framework including establishment of service infrastructure, investment in local assembly and manufacturing capacity, workforce development, and supply chain localization.

Summary of Key Commitments

Item	Description
Total Proposed Investment	_____ KES
Primary Funding Source	_____
Implementation Period	24 Months from the Effective Date of the Framework Agreement (Milestones M-1 to M-5 in the Schedule to the SCC)
Target Local Content	_____ %
Total Direct Employment	_____

2.0 CURRENT ASSET BASE & CAPACITY

2.1 Existing Facilities

Item	Details
Location	
Facility Size (sqm)	
Ownership / Lease Status	
Current Operations	

2.2 Current Production or Service Capacity

Item	Description
Annual Production Output	
Existing Machinery	
Workforce Size	
Certifications (KEBS / ISO etc.)	

2.3 Financial Capacity

Item	Details
Audited Turnover (Last 3 Years)	
Available Credit Facilities	
Internal Capital Allocation	

3.0 PHASED INVESTMENT & IMPLEMENTATION STRATEGY

PHASE 1 – Establishment & Mobilization (Months 0–6)

Objective:
Establish operational presence and initiate local integration.

Activities

1. Facility acquisition or lease agreement
2. Factory fit-out and infrastructure preparation
3. Procurement and installation of initial machinery
4. Recruitment of technical workforce
5. Initial training and technology transfer
6. Commencement of local assembly operations

Investment Estimate: _____ KES

PHASE 2 – Capacity Expansion & Localization (Months 7–15)

Objective:
Increase local value addition and reduce import dependency.

Activities

1. Installation of additional manufacturing equipment
2. Development of local subcontractors and suppliers
3. Certification processes including KEBS compliance
4. Expansion of production lines

Investment Estimate: _____ KES

PHASE 3 – Full Operational Integration (Months 15–24)

Objective:
Achieve stable local manufacturing and operational capacity.

Activities

1. Commissioning of full production lines
2. Workforce expansion and advanced training
3. Quality assurance and operational optimization

Investment Estimate: _____ KES

4.0 TOTAL INVESTMENT SUMMARY

Category	Amount (KES)
Land & Buildings	
Plant & Machinery	
Technology Transfer	
Training & HR Development	
Working Capital	
Certification & Compliance	
Contingency	

5.0 FUNDING STRUCTURE

Funding Source	Amount (KES)	Evidence Attached
Internal Capital		
Bank Facility		
Equity Partner		

Funding Source	Amount (KES)	Evidence Attached
Other		

6.0 LOCAL CONTENT & EMPLOYMENT IMPACT

6.1 Local Content Targets

Timeline	Local Content (%)
Month 18 (M-3)	
Month 24 (M-4)	
Month 36 (M-5)	

6.2 Employment Creation

Category	Number of Jobs
Engineers	
Technicians	
Skilled Labour	
Administrative	
Indirect Jobs	

7.0 RISK MANAGEMENT & MITIGATION

Risk	Impact Mitigation
Machinery Import Delays	
Skills Shortage	
Financing Delays	
Regulatory Approvals	

8.0 MONITORING & REPORTING COMMITMENT

The Bidder commits to providing quarterly progress reports and facilitating site inspections by the Procuring Entity during the investment implementation period.

9.0 NATIONAL DEPLOYMENT AND SERVICE COVERAGE PLAN

The Bidder shall provide a comprehensive national deployment strategy demonstrating the capability to support Manufacture Supply and Delivery across the Republic of Kenya.

9.1 National Service Network

Region	Proposed Service Hub	Delivery Team Size	Coverage Counties
Nairobi / Central			
Coast			
Western			
Rift Valley			
Northern			

9.2 Delivery Deployment Capacity

Category	Capacity
Maximum Concurrent Site Deliveries	
Number of Delivery Teams / Vehicles	
Personnel per Team	
Average Delivery Lead Time (days)	

9.3 Delivery Response Times

Service Category	Response Time	Resolution Target
Critical Supply Requirement		
Major Replacements needed		
Minor Replacements needed		

9.4 Spare Parts Stocking Strategy (Where Applicable)

Spare Part Category	Storage Location	Minimum Stock	Replenishment Time
Critical Components			
Major Components			
Standard Components			

9.5 National Service Coverage

Bidders shall describe their national service network including service hubs, regional support teams, and logistics coverage supporting deliveries across Kenya.

10.0 INDUSTRIAL PARTICIPATION PLAN

The Bidder shall provide a comprehensive Industrial Participation Plan demonstrating commitment to local assembly, manufacturing, skills transfer, and supply chain development in Kenya.

10.1 Local Assembly / Manufacturing Facilities

Facility Type	Location	Size (sqm)	Ownership / Lease	Operational Start
Assembly Facility				
Manufacturing Facility				
Component Fabrication				

10.2 Investment Timeline

Investment Milestone	Timeline	Estimated Investment (KES)
Facility Acquisition		
Machinery Procurement		
Installation & Commissioning		
Workforce Recruitment		
Production Start		

10.3 Workforce Development & Skills Transfer

Workforce Category	Initial Staff	Staff After 24 Months
Engineers		
Technicians		
Skilled Operators		
Administrative		

Training programs may include:

- Manufacturer technical training
- Apprenticeship programs
- Engineering certification
- Technology transfer initiatives

10.4 Local Supply Chain Strategy

Component	Local Supplier Role
Ceramic bodies and glazes	
Brassware, taps and flushing mechanisms	
Plastic components, seats and fittings	
Packaging and logistics	

10.5 Local Content Targets

Year	Target Local Content (%)
Year 1	
Year 2	
Year 3	

10.6 Technology Transfer

The Bidder shall describe mechanisms for transferring international technical expertise to Kenyan personnel including training programs, engineering exchange, and licensing agreements.

11.0 DECLARATION OF COMMITMENT

We hereby confirm our commitment to implement this Investment Plan within the periods stated in the Schedule to the Special Conditions of Framework Agreement (Milestones M-1 to M-5).

Authorized Signatory: _____

Designation: _____

Signature: _____

Date: _____

REQUIRED ATTACHMENTS

1. Company Registration Certificate
2. Board Resolution approving investment
3. Financing confirmation / Bank letter
4. Manufacturer authorization (if applicable)
5. Facility ownership or lease documentation
6. Organizational structure
7. Implementation schedule

PART 2 – PROCUREMENT ENTITY'S REQUIREMENTS

SECTION V – SCHEDULE OF REQUIREMENTS

SCOPE OF MANUFACTURE, SUPPLY AND DELIVERY OF SANITARY WARE SETS

The scope of supply and services under this tender comprises the complete end-to-end process for Sanitary Ware Sets required for the Affordable Housing Programme, namely: design (or design review), manufacture, factory testing, secure packaging, shipping to Kenya, customs clearance and payment of all applicable duties and taxes, inland transportation, delivery to designated project sites or central warehouses, off-loading, safe storage. The Sanitary Ware Sets shall fully comply with the technical specifications contained in this tender document and with the latest editions of the relevant international and Kenyan standards, including but not limited to the BS and KS (where applicable).

Successful tenderers are further required to establish or expand local manufacturing/assembly capacity in Kenya within twenty-four (24) months of admission to the Framework Agreement, in order to support long-term sustainability, job creation, technology transfer and rapid response to future demand.

Nature of the Procurement – Framework Agreement

This procurement is conducted as a single-category, national-level Framework Agreement with a maximum duration of ten (10) years (extendable only with mutual written consent and satisfactory performance).

i. The successful tenderers (minimum 3, maximum 5) will form a ranked panel of pre-qualified suppliers.
ii. No fixed regional lots, no pre-allocated geographical zones, and no guaranteed minimum quantities are established at the tender stage.
iii. The indicative quantities used for tender evaluation and comparison are those stated in the Bills of Quantities. Over the ten-year term the indicative maximum is 4,000,000 Sanitary Ware Sets. Actual quantities may be lower or higher and will be procured progressively through individual call-off contracts.
iv. Call-off contracts may be issued for any number of Sanitary Ware Sets for any Affordable Housing Programme project site in any county or region of the Republic of Kenya. Once admitted to the panel, every supplier is eligible to receive call-offs nationwide without geographical restriction.
v. Each call-off contract shall include the full scope described above.
vi. The price of every call-off shall be calculated exclusively by multiplying the actual quantities ordered in that call-off by the unit rates and prices submitted by the supplier in its tender and accepted under the Framework Agreement (subject only to any price adjustment formula expressly provided for in the Agreement).

This flexible, national call-off mechanism enables the Procuring Entity to respond rapidly to evolving project needs, secure best value for money, ensure equitable opportunities for all panel members, and remain fully compliant with the Public Procurement and Asset Disposal Act, 2015.

SPECIFICATION: GENERAL AND PARTICULAR SPECIFICATIONS FOR SANITARY WARE SETS

1. GENERAL SPECIFICATIONS FOR SANITARY WARE SETS – MANUFACTURE, SUPPLY AND DELIVERY SCOPE

1.1 REGULATIONS

All Apparatus and materials supplied, and work carried out shall comply with the provisions of the following documents: -

(a) Kenya Standards published by the Kenya Bureau of Standards, including KS 1281 (WC flushing cisterns) and KS 1106 (plastic WC seats and covers), and the Standards Act (Cap. 496).
(b) BS 6465 (Sanitary installations) and the applicable product standards, including BS EN 997 (WC pans and WC suites with integral trap), BS EN 14055 (WC and urinal flushing cisterns), BS EN 14688 (washbasins), BS EN 13310 (kitchen sinks), BS EN 13407 (wall-hung urinals), BS EN 200 (single taps and combination taps) and BS EN 817 (mechanical mixing valves), or equivalent ISO standards.
(c) Any other regulations governing the manufacture and supply of sanitary ware in Kenya
(d) Kenya Bureau of Standards (KEBS) requirements, including Pre-export Verification of Conformity (PVoC) for imported consignments.

1.2 TEST

The Contractor shall carry out at the place of manufacture all routine and type tests required by the product standards listed above, and shall submit with each consignment a certificate of conformity and the factory test certificates for that consignment. The cost of all such tests shall be borne by the Contractor.

Any Sanitary Ware Sets damaged in testing, transit or handling before acceptance at site shall be replaced by the Contractor at its own cost.

One (1) copy of the factory test certificates and the certificate of conformity shall be submitted to the Project Manager with the delivery documents for each consignment.

1.3 TRAINING

Not applicable. The Contractor shall supply with each consignment installation and care instructions for each type of appliance, in English and Kiswahili.

1.4 JOINT INSPECTION ON DELIVERY

Each delivery shall be inspected jointly by the Project Manager (or the Procuring Entity's site representative), the housing contractor and the Contractor's delivery coordinator for quantity, type, conformity with the approved samples and catalogue, and transit damage. Accepted deliveries shall be recorded on a signed delivery note. Sanitary Ware Sets found defective or damaged shall be replaced by the Contractor within fourteen (14) days at no cost to the Procuring Entity.

1.5 FACTORY INSPECTION

1.19.1 – The employer shall be entitled to have the quantity and quality of the Sanitary Ware Sets, whether imported or manufactured in Kenya, inspected by three number (3No.) engineers appointed by the Project Manager, and two (2No.) representatives of the employer.

1.19.2 – The said inspection shall be carried out at the factory of manufacture of the Sanitary Ware Sets materials during normal working hours and the successful tenderer shall give written notice to the Project Manager at the latest thirty (30) calendar days in advance of the date that the Sanitary Ware Sets materials are ready for inspection.

1.19.2A – Factory inspection shall be carried out once for each product range and manufacturing source, and thereafter for any call-off at the Procuring Entity's discretion.

1.19.3 – Travel (including ground, air travel and airport passage taxes) and full board accommodation expenses in at least a four (4) star hotel incurred by the engineers appointed by the Project Manager, and the employer's representative shall (see clause 1.19.1) be borne by the contractor. The contractor shall also meet out of pocket expenses for the officers at Government of Kenya rates for the duration of the factory inspection. The Tenderer shall include these costs in Preliminaries Item 1.04 of the Bills of Quantities.

1.19.4 – The inspection period shall be three (3) working days excluding travelling time.

1.19.5 – If as a result of the inspection any of the Sanitary Ware Sets materials are found to be defective, the successful tenderer shall replace the defective materials and determine a new date as when a new inspection shall be performed at the expense of the contractor.

1.19.6 – The successful tenderer shall only ship or dispatch the Sanitary Ware Sets materials after the said factory inspection.

1.6 DUE DILIGENCE FACTORY INSPECTION

1.20.1 The employer shall be entitled to inspect the quantity and quality of the Sanitary Ware Sets and manufacturing facilities before award. This inspection will be conducted by three (3No.) engineers appointed by the Project Manager and two (2) representatives from the employer.

1.20.2 The inspection shall be carried out at the manufacturing factory of the Sanitary Ware Sets materials during normal working hours. The successful tenderer must provide written notice to the Project Manager at least thirty (30) calendar days before the Sanitary Ware Sets materials are ready for inspection.

1.20.3 All travel expenses (including ground and air travel, as well as airport passage taxes) and full board accommodation costs (in a minimum of a four-star hotel) incurred by the engineers appointed by the Project Manager and the employer's representative (as per clause 1.20.1) shall be borne by the contractor. The contractor shall also cover any out-of-pocket expenses for the officers at Government of Kenya rates during the factory inspection. The Tenderer shall include these costs in Preliminaries Item 1.03 of the Bills of Quantities.

1.20.4 The inspection period shall last three (3) working days, excluding travel time.

1.7 SANITARY WARE SETS LOCAL MANUFACTURE

The Contractor shall establish local manufacturing capacity for Sanitary Ware Sets in Kenya in accordance with its accepted Investment Plan and the Investment and Local Manufacturing Milestones M-1 to M-5 in the Schedule to the Special Conditions of Framework Agreement. For sanitary ware, local manufacture includes the forming, glazing and firing of ceramic ware, the finishing, fitting-out and packaging of complete sets, and the local sourcing of fittings and accessories. Quality control and testing procedures shall ensure that every set meets the product standards listed under Regulations above before dispatch.

2 PARTICULAR SPECIFICATIONS

2.1 LOCATION OF SITE

The site of the proposed works is as per the regions indicated in the allotment of Sanitary Ware Sets. Bidder is to appraise themselves with the various sites as stipulated in the bidding document. All sites are within the Republic of Kenya.

2.2 DESCRIPTION OF THE WORKS

The project comprises the manufacture, supply and delivery of Sanitary Ware Sets to respective sites inclusive of the relevant fittings and accessories.

2.3 CLIMATE CONDITIONS

The bidder is to appraise themselves with the climatic conditions of the sites as per the allotment. The Sanitary Ware Sets and their packaging shall be suitable for these conditions.

Extremely heavy rainfall is experienced at certain periods of the year and the contractor shall be deemed to have taken account of this factor both in his prices and his planning of the execution of the contract works.

2.4 GENERAL REQUIREMENTS

The supplier shall supply and deliver all the sanitary fittings in accordance with all specifications contained in this document.

Supplier shall become liable for defects noted on the materials and be responsible for the initial breakages due to poor quality

2.5 PARTICULAR REQUIREMENTS

The tenderer shall provide factory compliance certificates to BS 6465 and to the applicable product standards listed under Regulations above to prove compliance. Failure to provide this shall render the tender non –responsive and hence the bid will not be considered. The tenderer must also provide relevant technical brochures for the Sanitary Items being offered and the Manufacturer's Authorization issued to the bidder.

i.STATUTORY AND REGULATORY REQUIREMENTS

1. Technical Standards

a) The Sanitary Ware Sets shall comply with BS, BS EN, ISO Standards, IEC Standards and Codes of Practice, etc. shall be deemed to include all amendments, revisions and standards superseding the standards listed herein, which are published before the date of the invitation to tender, unless otherwise specified.
b) Local Authority by-laws and regulations.
c) Affordable Housing *Juakali* Guidelines

All losses, costs or expenditures which may arise as a result of negligence to comply with any regulation applicable to this service as specified above, shall be for the account of the Contractor.

Should any requirement, bye-law or regulation which applied at the time of tender or which becomes applicable during the performance of the Framework Agreement, contradicts any requirement of this or the supplementary specification, such requirement, bye-law or regulation

shall overrule this or the supplementary specification and the Contractor shall inform the Project Manager immediately of such a contradiction.

ii.PRODUCT CATALOGUE

The descriptions in the Bills of Quantities are for tender purposes. The Contractor shall submit a complete catalogue of the proposed sanitary ware items, subject to the Project Manager's approval.

Approval of the catalogue by the Project Manager shall not relieve the Contractor of its responsibility for the conformity of the Sanitary Ware Sets supplied with the Framework Agreement.

iii.TESTS

Inspection and acceptance of Sanitary Ware Sets shall be carried out on delivery to site as set out under Joint Inspection on Delivery above. Installation of the Sanitary Ware Sets, and the testing of installed appliances, are undertaken by the respective housing contractors and do not form part of the Contractor's scope.

The following inspections shall be carried out:

a) Visual Inspection

Entails inspection of Sanitary Ware for defects or shipping damage on delivery to site.

Where the Project Manager so requires, samples shall be tested at an accredited laboratory for conformity with the product standards, at the Contractor's cost where non-conformity is found.

b) Defects Notified after Installation

Where a Sanitary Ware Set is found, on testing by the housing contractor after installation, to leak or to be defective by reason of its materials or manufacture, the Contractor shall replace the defective set or component in accordance with the Defects Liability provisions of the Framework Agreement.

iv.SANITARY WARE

1. Sanitary Ware

The Contractor shall provide samples of all sanitary appliances for the Project Manager's approval. The appliances are specified in the Bills of Quantities, but shall always embrace all brackets, screws, connectors, and other materials/consumables required for the proper installation and function of the fittings.

All appliances shall be suitable for installation in accordance with the relevant BS and KS specifications, and shall be securely packed and protected by the Contractor until delivered to and accepted at site.

v. MISCELLANEOUS

1. Marking and Packaging

Each appliance shall be permanently marked with the manufacturer's name or trade mark and the model reference. Each carton shall be labelled with the item description, Bills of Quantities item reference, quantity, call-off reference and destination site.

Installation and care instructions shall be supplied with each consignment, in English and Kiswahili.

vi.ACCEPTANCE ON DELIVERY

1. Acceptance

Each consignment shall be accepted on the basis of the joint inspection on delivery, the factory test certificates and certificate of conformity for the consignment, and, where applicable, the KEBS or PVoC certificate. Acceptance of a delivery constitutes Completion of that delivery for the purposes of the Framework Agreement, without prejudice to the Contractor's obligations during the Defects Liability Period.

Note:
*Bidders must provide a list of completed and/or awarded Framework Agreements of a similar nature that demonstrate competence in completing the project. All informative product brochures, specifications and catalogues must be submitted as part of bidding documents

1. **Drawings: This Tendering document includes no drawings. Sanitary schedules identifying the type and quantity of Sanitary Ware Sets for each site shall be issued with each call-off order.**

2. Inspections and Tests

The inspections and tests shall be as set out above under Test, Factory Inspection, Joint Inspection on Delivery and Acceptance on Delivery.

2. INFORMATION TO BE SUPPLIED BY THE TENDERER

The tenderer shall fill in the following information and attach their product specification catalogues pertaining to the Sanitary Ware Sets offered at the time of tendering

ITEM	TENDER REQUIREMENT	BIDDER RESPONSE
2.10	**SANITARY WARE**	
2.11	As per Tender Boq Specifications	

3. DATA SCHEDULES

3.1. PART I – GENERAL NOTES

3.1.1. The Tenderer shall complete all Schedules. Schedules shall be read in conjunction with the Specification as defined herein.

3.1.2. Completion of the technical schedules shall not relieve the contractor from complying with the requirements of the Specification except as may be approved by the Project Manager

3.1.3. The total prices in the Main Summary of Price Schedule shall be deemed to include for the whole of the scope of supply and delivery in accordance with the Specification.

3.2. PART II – TECHNICAL DATA FOR TENDERED EQUIPMENT

(*To be completed by the Tenderer*)

3.2.1. Sanitary Ware

ITEM	TENDER REQUIREMENT	BIDDER RESPONSE
2.10	**SANITARY WARE**	
2.11	As per Tender Boq Specifications	

3.2.2. Deviation from the Specification

3.2.2.1. The Tenderer shall give below details of any Specification, or any other deviations, omissions, additions or alternatives in respect of sets which he is offering.

3.2.2.2. If any detail is not available, write “None” against the item.

3.3. PART III

3.3.1. DATA SCHEDULE A – SPECIAL TOOLS

The Tenderer shall list hereunder and price any special tools which it considers necessary. If none, state “None”.

Item	Description	Price (KES)
TOTAL FOR SPECIAL TOOLS (for information; not carried to the Main Summary) (KES)		

3.3.2. DATA SCHEDULE B – SPARE PARTS

The Tenderer shall list hereunder and price the recommended replacement components (cistern fittings, seats and covers, wastes and traps) for the Defects Liability Period.

Item	Description	Price (KES)
TOTAL FOR SPARE PARTS (for information; not carried to the Main Summary) (KES)		

3.3.3. DATA SCHEDULE C – LAND ON SITE REQUIRED: Not applicable.

4. FORMS AND PROCEDURES

4.1. FORM OF COMPLETION CERTIFICATE

Date:

ITT No:	
To:	

Dear Ladies and/or Gentlemen,

Pursuant to GCC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Procuring Entity dated _____ , relating to the _____, we hereby notify you that the following part (s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the Procuring Entity hereby takes over the said part (s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the Facilities or part there of: _____
2. Date of Completion: _____

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This Form does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

Title (Project Manager)

4.2. FORM OF OPERATIONAL ACCEPTANCE CERTIFICATE

Date:

ITT No:	
To:	

Dear Ladies and/or Gentlemen,

Pursuant to GCC Sub-Clause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Procuring Entity dated _____, relating to the _____ , we hereby notify you that the Functional Guarantees of the following part (s) of the Facilities were satisfactorily attained on the date specified below.

1. Description of the Facilities or part there of: _____
2. Date of Operational Acceptance: _____

This Form does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

Title (Project Manager)

4.3. CHANGE ORDER PROCEDURE AND FORMS

Date:

ITT No:	

CONTENTS

1. General
2. Change Order Log
3. References for Changes

ANNEXES

Annex 1: Request for Change Proposal
Annex 2: Estimate for Change Proposal
Annex 3: Acceptance of Estimate
Annex 4: Change Proposal
Annex 5: Change Order
Annex 6: Pending Agreement Change Order
Annex 7: Application for Change Proposal

CHANGE ORDER PROCEDURE

1. General

This section provides samples of procedures and forms for implementing changes in the Facilities during the performance of the Contract in accordance with GCC Clause 39 (Change in the Facilities) of the General Conditions.

2. Change Order Log

The Contractor shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Changes authorized or pending, as Annex 8. Entries of the Changes in the Change Order Log shall be made to ensure that the log is up-to-date. The Contractor shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Procuring Entity.

3. References for Changes

i. Request for Change as referred to in GCC Clause 39 shall be serially numbered CR-X-nnn.
ii. Estimate for Change Proposal as referred to in GCC Clause 39 shall be serially numbered CN-X-nnn.
iii. Acceptance of Estimate as referred to in GCC Clause 39 shall be serially numbered CA-X-nnn.
iv. Change Proposal as referred to in GCC Clause 39 shall be serially numbered CP-X-nnn.
v. Change Order as referred to in GCC Clause 39 shall be serially numbered CO-X-nnn.

Note:

a) Requests for Change issued from the Procuring Entity's Home Office and the Site representatives of the Procuring Entity shall have the following respective references:
Home Office CR-H-nnn
Site CR-S-nnn

b) The above number “nnn” is the same for Request for Change, Estimate for Change Proposal, Acceptance of Estimate, Change Proposal and Change Order

4.4. ANNEX 1. REQUEST FOR CHANGE PROPOSAL

(*Procuring Entity's Form Head)*

To:	**Date:**
Attention:	
Contract Name:	
Contract Number:	

Dear Ladies and/or Gentlemen:

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within _____ days of the date of this Form _____.

1. Title of Change: _____
2. Change Request No.: _____
3. Originator of Change: _____
4. Procuring Entity: _____
5. Contractor (by Application for Change Proposal No.: _____
6. Brief Description of Change: _____
7. Facilities and/or Item No. of equipment related to the requested Change: _____
8. Reference drawings and/ or technical documents for the request of Change: Drawing No./ Document No. / Description: _____
9. Detailed conditions or special requirements on the requested Change: _____
10. General Terms and Conditions:
    a) Please submit your estimate to us showing what effect the requested Change will have on the Contract Price.

    b) Your estimate shall include your claim for the additional time, if any, for completion of the requested Change.

    c) If you have any opinion negative to the adoption of the requested Change in connection with the conformability to the other provisions of the Contractor the safety of the Plant or Facilities, please inform us of your opinion in your proposal of revised provisions.

    d) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.

e) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

(Procuring Entity's Name)

(Signature)	
(Name of signatory)	
(Title of signatory)	

4.5. ANNEX 2. ESTIMATE FOR CHANGE PROPOSAL

(Contractor's Form Head)

To: **Date:**

Attention:	
Contract Name:	
Contract Number:	

Dear Ladies and/or Gentlemen:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change Proposal in accordance with GCC Sub-Clause 39.2.1 of the General Conditions. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Sub-Clause 39.2.2, is required before estimating the cost for change work.

1. Title of Change: _____

2. Change Request No./Rev.: _____

3. Brief Description of Change: _____

4. Scheduled Impact of Change: _____

5. Cost for Preparation of Change Proposal: _____[1]

   a) Engineering (Amount)

      i. Engineer _____ hrs x _____ rate / hr = Sub-total _____ hrs
      ii. Draftsperson _____ hrs x _____ rate / hr = Sub-total _____ hrs
      iii. Total Engineering Cost _____

   b) Other Cost

      Total Cost (a) + (b)

(Contractor's Name)

(Signature)	
(Name of signatory)	
(Title of signatory)	

[1]*Costs shall be in the currencies of the Contract*

4.6. ANNEX 3. ACCEPTANCE OF ESTIMATE

(Procuring Entity's Form Head)

To: **Date:**

Attention:	
Contract Name:	
Contract Number:	

Dear Ladies and/or Gentlemen:

We hereby accept your Estimate for Change Proposal and agree that you should proceed with the preparation of the Change Proposal.

1. Title of Change: _____

2. Change Request No./ Rev.: _____

3. Estimate for Change Proposal No./ Rev.: _____

4. Acceptance of Estimate No./ Rev.: _____

5. Brief Description of Change: _____

6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of Change Proposal described in your Estimate for Change Proposal mentioned in para. 3 above in accordance with GCC Clause 39 of the General Conditions.

(Procuring Entity's Name)

(Signature)	
(Name of signatory)	
(Title of signatory)	

4.7. ANNEX 4. CHANGE PROPOSAL

(Contractor's Form Head)

To: **Date:**

Attention:	
Contract Name:	
Contract Number:	

Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. _____, we hereby submit our proposal as follows:

1. Title of Change: _____

2. Change Proposal No./Rev.: _____

3. Originator of Change:

   a) Procuring Entity: _____

   b) Contractor: _____

4. Brief Description of Change: _____

5. Reasons for Change: _____

6. Facilities and/or Item No. of Equipment related to the requested Change: _____

7. Reference drawings and/ or technical documents for the requested Change: Drawing/ Document No. / Description: _____

8. Estimate of increase/ decrease to the Contract Price resulting from Change Proposal: (Amount)
   a) Direct material

   b) Major construction equipment

   c) Direct field labor (Total _____ hrs)

   d) Subcontracts

   e) Indirect material and labor

   f) Site supervision

   g) Head office technical staff salaries
   Process engineer _____ hrs @ _____ rate / hr
   Project engineer _____ hrs @ _____ rate / hr

Equipment engineer _____ hrs @ _____ rate / hr
Procurement _____ hrs @ _____ rate / hr
Drafts person _____ hrs @ _____ rate / hr
Total _____ hrs

h) Extraordinary costs (computer, travel, etc.)

i) Fee for general administration, _ ___% of Items

j) Taxes and customs duties

Total lump sum cost of Change Proposal
(Sum of items (a) to (j))
Cost to prepare Estimate for Change Proposal
(Amount payable if Change is not accepted)

9. Additional time for Completion required due to Change Proposal

10. Effect on the Functional Guarantees

11. Effect on the other terms and conditions of the Contract

12. Validity of this Proposal: within [Number] days after receipt of this Proposal by the Procuring Entity

13. Other terms and conditions of this Change Proposal:

a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within ____ days from your receipt of this Proposal.

b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.

c) Contractor's cost for preparation of this Change Proposal:[2]

(Contractor's Name)

(Signature)	
(Name of signatory)	
(Title of signatory)	

[2]*Specify where necessary.*

4.8. ANNEX 5. CHANGE ORDER

(Procuring Entity's Form Head)

To: **Date:**

Attention:	
Contract Name:	
Contract Number:	

Dear Ladies and/or Gentlemen:

We approve the Change Order for the work specified in the Change Proposal (No. _____), and agree to adjust the Contract Price, Time for Completion and/or other conditions of the Contract in accordance with GCC Clause 39 of the General Conditions.

1. Title of Change: _____

2. Change Request No./Rev.: _____

3. Change Order No./ Rev.: _____

4. Originator of Change: _____ Procuring Entity: _____

   Contractor: _____

5. Authorized Price: _____

6. Ref. No.: _____ Date: _____

7. Foreign currency portion _____ plus Local currency portion _____

8. Adjustment of Time for Completion

   None _____ Increase _____ Days Decrease _____ days

9. Other effects, if any

Authorized by: **Date:**

(Procuring Entity)

Accepted by:		Date:	

(Contractor)

4.9. ANNEX 6. PENDING AGREEMENT CHANGE ORDER

(Procuring Entity's Form Head)

To: **Date:**

Attention:	
Contract Name:	
Contract Number:	

Dear Ladies and/or Gentlemen:

We instruct you to carry out the work in the Change Order detailed below in accordance with GCC Clause 39 of the General Conditions.

1. Title of Change: _____
2. Procuring Entity's Request for Change Proposal No./Rev.: _____ dated: _____
3. Contractor's Change Proposal No./Rev.: _____ dated: _____
4. Brief Description of Change: _____
5. Facilities and/or Item No. of equipment related to the requested Change: _____
6. Reference Drawings and/or technical documents for the requested Change:

   Drawing/Document No. Description
7. Adjustment of Time for Completion:
8. Other change in the Contract terms:
9. Other terms and conditions:

(Procuring Entity's Name)

(Signature)	
(Name of signatory)	
(Title of signatory)	

4.10. ANNEX 7. APPLICATION FOR CHANGE PROPOSAL

(Contractor's Form Head)

To: **Date:**

Attention:	
Contract Name:	
Contract Number:	

Dear Ladies and/or Gentlemen:

We hereby propose that the below-mentioned work be treated as a Change in the Facilities.

1. Title of Change: _____
2. Application for Change Proposal No./Rev.: _____ dated: _____
3. Brief Description of Change: _____
4. Reasons for Change: _____
5. Order of Magnitude Estimation (in the currencies of the Contract):
6. Scheduled Impact of Change:
7. Effect on Functional Guarantees, if any:
8. Appendix:

(Contractor's Name)

(Signature)	
(Name of signatory)	
(Title of signatory)	

5. DRAWINGS

1) Sanitary schedules for each site, issued with each call-off order.

6. SUPPLEMENTARY INFORMATION

6.1. BILLS OF QUANTITIES – PREAMBLES

1. The method of measurement shall be by number of complete items or sets as described in the Bills of Quantities, measured as delivered to and accepted at site.

2. The Sites are situated within the Republic of Kenya. The Contractor shall acquaint itself with the access to, and the delivery constraints of, each site. No claim for extras shall be considered on account of lack of knowledge in this respect.

3. The Contractor shall allow for the payment of all bank charges in connection with the procurement of Bank Guarantees and stamp charges in connection with this contract Agreement.

4. The Contractor shall deliver the Sanitary Ware Sets under each call-off within the Time for Completion stated in the call-off order and the master delivery schedule annexed to it.

5. The Contractor shall, upon receipt of each call-off order, submit a site-by-site delivery schedule for approval by the Project Manager, and shall update it as required.

6. The Contractor shall submit to the Project Manager a monthly progress report on manufacture, factory inspection, shipping (where applicable) and deliveries under each call-off.

7. The Contractor shall include in its rates for the transport of the Sanitary Ware Sets to each site, off-loading and safe storage until acceptance, at such hours and by such routes as are permitted by the Authorities.

8. The Contractor shall make good, at its own expense, any damage it may cause to roads, pavements and site works in the course of deliveries.

9. The Contractor is to allow for complying with all instructions and regulations of the Police Authorities.

10. The Contractor shall designate a delivery coordinator, literate in English, to receive instructions from the Project Manager and to attend joint inspections on delivery.

11. The Contractor shall comply with the safety rules of each site during deliveries.

12. The Contractor must take steps necessary to safeguard and shall be held fully responsible for any damage caused to existing and adjacent property, including buildings that are not a subject of demolition. He shall make good at his own cost damage to persons and property caused there on, and he shall indemnify the Procuring Entity against any loss or claim that may arise.

13. The Contractor's attention is drawn to the Standards Levy Order (Legal Notice No. 154 of 1998), which applies to manufacturers in Kenya. The Tenderer shall allow for any levy applicable to it in the build-up of its rates.

14. The Contractor shall provide at its own risk and cost all watching necessary to safeguard the Sanitary Ware Sets against damage and theft until accepted at site.

15. Cover up and protect from damage, including damage from inclement weather, all Sanitary Ware Sets until accepted at site.

16. The Contractor shall remove from each site all packaging and waste arising from its deliveries, or dispose of it as directed by the Project Manager.

17. The Contractor shall furnish at its own cost, before the first delivery, samples of each item in the Bills of Quantities for the approval of the Project Manager. Approved samples shall be the minimum standard for all deliveries.

18. All payments shall be subject to the statutory deductions applicable to the supply of goods, including withholding tax where applicable. The Tenderer shall allow for these in the build-up of its rates.

19. The Tenderer's rates shall be inclusive of Value Added Tax in accordance with the Value Added Tax Act, 2013.

20. The contractor shall allow and pay for all insurance to cover risks and indemnities required GCC Clause 34 and Appendix 3 (Insurance Requirements) to the Framework Agreement.

6.2. BILLS OF QUANTITIES

(Provided as an Attachment)

PART 3 – CONDITIONS OF FRAMEWORK AGREEMENT AND FRAMEWORK AGREEMENT FORMS

SECTION VI – GENERAL CONDITIONS OF FRAMEWORK AGREEMENT

A. Framework Agreement and Interpretation

1. Definitions

1.1. The following words and expressions shall have the meanings here by assigned to them:

"Framework Agreement" means the Framework Agreement entered into between the Procuring Entity and the Contractor, together with the Framework Agreement Documents referred to there in; they shall constitute the Framework Agreement, and the term "the Framework Agreement" shall in all such documents be construed accordingly.

"Framework Agreement Documents" means the documents listed in Article 1.1 (Framework Agreement Documents) of the Framework Agreement (including any amendments thereto).

"GCC" means the General Conditions of Framework Agreement hereof. "SCC" means the Special Conditions of Framework Agreement.

"day" means calendar day. "year" means 365 days. "month" means calendar month.

"Party" means the Procuring Entity or the Contractor, as the context requires, and "Parties" means both of them.

"Procuring Entity" means the public entity named as such in the SCC and includes the legal successors or permitted assigns of the Procuring Entity.

"Project Manager" means the person appointed by the Procuring Entity in the manner provided in GCC Sub- Clause 17.1 (Project Manager) hereof and named as such in the SCC to perform the duties delegated by the Procuring Entity.

"Contractor" means the person(s) whose Tender to perform the Framework Agreement has been accepted by the Procuring Entity and is named as Contractor in the Framework Agreement and includes the legal successors or permitted assigns of the Contractor.

"Contractor's Representative" means any person nominated by the Contractor and approved by the Procuring Entity in the manner provided in GCC Sub-Clause 17.2 (Contractor's Representative and Construction Manager) here of to perform the duties delegated by the Contractor.

"Construction Manager" means the person appointed by the Contractor's Representative in the manner provided in GCC Sub-Clause 17.2.4.

"Sub-Contractor," including manufacturers, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant, is sub-contractor directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

"Dispute Board" (DB) means the person or persons named as such in the SCC appointed by agreement between the Procuring Entity and the Contractor to make a decision with respect to any dispute or difference between the Procuring Entity and the Contractor referred to him or her by the Parties pursuant to GCC Sub-Clause 46.1 (Dispute Board) hereof.

“Framework Agreement Price” means the sum specified in Article 2.1 (Framework Agreement Price) of the Framework Agreement, subject to such additions and adjustments there to or deductions there from, as may be made pursuant to the Framework Agreement.

“Facilities” means the Plant to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Framework Agreement.

“Plant” means permanent plant, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Framework Agreement (including the spare parts to be supplied by the Contractor under GCC Sub-Clause7.3 here of) but does not include Contractor's Equipment.

“Installation Services” means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Framework Agreement, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor's Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc…as the case may require.

“Contractor's Equipment” means all facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.

“Country of Origin” means the countries and territories eligible as elaborated in the SCC.

“Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Framework Agreement as forming part of the Site.

“Effective Date” means the date of fulfillment of all conditions stated in Article 3 (Effective Date) of the Framework Agreement, from which the Time for Completion shall be counted.

“Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GCC Clause8 and in accordance with the relevant provisions of the Framework Agreement.

“Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the Framework Agreement) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Pre-commissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.

“Pre-commissioning” means the testing, checking and other requirements specified in the Procuring Entity's Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause24 (Completion) hereof.

“Commissioning” means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GCC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).

"Guarantee Test(s)" means the test(s) specified in the Procuring Entity's Requirements to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix to the Framework Agreement titled Functional Guarantees, in accordance with the provisions of GCC Sub-Clause25.2 (Guarantee Test) hereof.

"Operational Acceptance" means the acceptance by the Procuring Entity of the Facilities (or any part of the Facilities where the Framework Agreement provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfillment of the Framework Agreement in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.

"Defect Liability Period" means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27(Defect Liability) hereof.

"Notice of Dissatisfaction" means the notice given by either Party to the other under Sub-Clause 46.4 indicating its dissatisfaction and intention to commence arbitration.

1.2. **Interpretation**

In the Framework Agreement, except where the context requires otherwise:

a) Words indicating one gender include all genders;
b) words indicating the singular also include the plural and words indicating the plural also include the singular;
c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.3. **Communications**

1.3.1. Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

a) In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Special Conditions of Framework Agreement; and

b) delivered, sent or transmitted to the address or the recipient's communications as stated in the Special Conditions of Framework Agreement. However:

i. if the recipient gives notice of another address, communications shall thereafter be delivered accordingly, and
ii. if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

1.3.2. Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the other Party.

1.4. **Law and Language**

1.4.1. The Framework Agreement shall be governed by the laws of Kenya.

1.4.2. The ruling language of the Framework Agreement shall be English.

1.5. **Priority of Documents**

The documents forming the Framework Agreement are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with Article 1.2 (Order of Precedence) of the Framework Agreement.

If an ambiguity or discrepancy is found in the documents, the Project Manager shall issue any necessary clarification or instruction.

1.6. **Framework Agreement**

1.6.1. The Parties shall enter into a Framework Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Framework Agreement shall be based upon FORM No. 3 – FRAMEWORK AGREEMENT annexed to the Particular Conditions of Framework Agreement. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Framework Agreement shall be borne by the Procuring Entity.

1.6.2. The Framework Agreement establishes the terms and conditions that will govern the Framework Agreement awarded during the term of the Framework Agreement. The Framework Agreement establishes for the procurement works by package as and when required, over the specified period of time. The Framework Agreement does not commit a Procuring Entity to procure, nor a firm to supply. The Framework Agreement allows the Procuring Entity to call the Contractor to commence the works on a particular package in a specified location within the duration of the agreement.

1.6.3. This Framework Agreement does not guarantee the Contractor of being called for a Call-Off Contract to start and no commitment is made with regard to possible number of packages to be carried out.

1.6.4. This Framework Agreement does not exclude the Procuring Entity from the right to procure the same Works from other firms.

1.6.5. This Framework Agreement does not stop the Procuring Entity from removing the Contractor from the same Agreement.

1.6.6. This Framework Agreement is established for a period of ten (10) years pursuant to the Specially Permitted Procurement Method approved under Section 114A of the Public Procurement and Asset Disposal Act, 2015 and Regulation 107 of the Public Procurement and Asset Disposal Regulations, 2020, subject to satisfactory performance and to budgetary appropriation. The Procuring Entity may with the consent of the Contractor extend this Agreement if the agreement period is less than ten (10) years, if the initial engagement has been satisfactory.

1.6.7. Call-off Contract. For work on a package to start, the Procuring Entity shall issue a notice of acceptance of a particular package (a call-off order) requesting the Contractor to furnish a Performance Security and to start the works thereafter, and providing the Contractor with details of the location where the works are to be carried out. The call-off order shall specify the objectives, tasks, deliverables, timeframes and price or price mechanism, and whether a documentary credit is to be opened under Article 2.2 of the Framework Agreement and, if so, its amount, the payment stages it covers and its validity, and the price for individual call-off contracts shall be based on the prices detailed in this Framework Agreement. Every call-off order shall be approved and signed by the Accounting Officer, or by an officer authorised in writing by the Accounting Officer, in accordance with sections 44(2)(f) and 135(1) of the Act. The Project Manager has no authority to issue a call-off order and shall perform only the duties delegated by the Procuring Entity under GCC Sub-Clause 17.1, namely confirming site readiness, preparing the requisition and the master delivery schedule, approving the Contractor's site-by-site delivery schedule, issuing the factory inspection notice, and certifying completion, performance and payment.

1.6.8. Ranked panel. The successful tenderers, being a minimum of three (3) and a maximum of eight (8) responsive and qualified tenderers, form a ranked panel of pre-qualified suppliers for the category. The ranking of panel members on admission is the order established by the evaluation under Section III of the Tender Document. Every panel member is eligible to receive call-off orders at any Affordable Housing Program site in any county of the Republic of Kenya, without geographical restriction; the ranking governs the order in which members are approached, and not the geography, the scope or the rates.

1.6.9. Allocation of call-off quantities. Every call-off order under this Framework Agreement, including the first, shall be allocated among panel members in accordance with this Clause. The allocation rule is the same for every call-off; ranking does not determine who receives work but determines the order of priority in which residual quantities are distributed. Every call-off order is issued by the Procuring Entity and is approved and signed by the Accounting Officer in accordance with Clause 1.6.7.

The allocation shall be determined as follows —

(a) Eligibility. Only Tier 1 members, as defined in SCC 9.11, participate in an allocation. A Tier 2 member receives no share of a call-off until restored to Tier 1, and the share it would otherwise have received is distributed under sub-paragraph (e). For the first call-off, and until the first re-determination of ranking under SCC 9.11, every panel member admitted under the Tender Data Sheet is treated as a Tier 1 member.

(b) Equal division. The quantity comprised in the call-off is divided equally among the eligible members. Allocation is in whole units. Where the quantity does not divide exactly, the remainder is allocated one unit at a time to the highest-ranked members in rank order until the remainder is exhausted.

(c) Capacity ceiling. No member's share shall take its committed workload under this Framework Agreement above the annual production capacity it declared and evidenced under Section III of the Tender Document, as recorded for that member at admission and maintained by the Project Manager. Any quantity which would exceed that ceiling is not allocated to that member and is distributed under sub-paragraph (e).

(d) Delivery schedule test. The Procuring Entity shall issue to every eligible member the master delivery schedule for the call-off and shall require each member to submit, within the period stated in the request, a site-by-site delivery schedule for its share complying with that master delivery schedule. A member which fails to submit a schedule within that period, whose schedule does not achieve the required delivery date, or which declines its share in writing, forfeits its share in whole or in part accordingly, and the forfeited quantity is distributed under sub-paragraph (e). A member may, with its delivery schedule, request a documentary credit under Article 2.2 of the Framework Agreement.

(e) Re-allocation of residual quantities. Quantities arising under sub-paragraphs (a), (c) and (d) are offered in rank order to the remaining eligible members which have headroom below the

ceiling at sub-paragraph (c), beginning with the highest-ranked such member. A member so offered a further quantity shall submit a revised delivery schedule covering it. This sub-paragraph operates repeatedly until the residual quantity is exhausted or no member retains headroom.

(f) Residual where headroom is exhausted. Where quantity remains unallocated after sub-paragraph (e) because no eligible member retains headroom, that quantity is offered in rank order to eligible members willing to accept a quantity above their declared annual production capacity. Such an offer may be accepted only where the member submits a delivery schedule which demonstrates that the additional quantity will be delivered within the dates in the master delivery schedule, and the Project Manager approves that schedule in writing. Acceptance under this sub-paragraph does not vary the member's declared annual production capacity for the purposes of any other call-off.

(g) Deferral. Any quantity which remains unallocated after sub-paragraph (f) shall be deferred to a subsequent call-off order. Nothing in this Clause limits Clause 1.6.5.

(h) Record. The Procuring Entity shall record in writing, before the call-off order is issued, the initial equal allocation, every adjustment made under sub-paragraphs (a) to (g), the reason for each adjustment, and the final quantity allocated to each member. The record forms part of the allocation register maintained under Clause 1.6.10 and is available for audit.

1.6.10. Allocation register; pricing; no reopening of competition. The Procuring Entity shall maintain an allocation register, available for audit, showing every call-off order issued under this Framework Agreement, the quantity allocated to each panel member, that member's rank at the date of allocation, and the reason for every adjustment made under Clause 1.6.9. Every call-off is priced exclusively by applying the accepted unit rates in this Framework Agreement to the quantities allocated, without reopening competition and without negotiation, in accordance with Regulations 103(1) and 103(2)(a) of the Regulations. No substantial amendment shall be made to the terms specified in this Framework Agreement when entering into a call-off contract under it. A member's decision to decline a share, and any forfeiture under Clause 1.6.9(d), shall be recorded and taken into account in the performance assessment under SCC 9.10.

1.6.11. Budgetary appropriation. No call-off order shall be issued unless the Accounting Officer is satisfied that sufficient funds to meet the obligations of the resulting call-off contract, are reflected in the approved budget estimates, in accordance with sections 53(8) and 44(2)(a) of the Act. The confirmation shall be recorded on the call-off file before the order is issued.

1.6.12. Pricing of call-offs. Pricing for every call-off shall be determined exclusively by applying the original tendered unit rates and prices contained in this Framework Agreement, without reopening competition and without negotiation, thereby ensuring full transparency, value for money and equal treatment of panel members. No substantial amendment shall be made to the terms specified in this Framework Agreement when entering into a call-off contract under it, in accordance with Regulation 103(1) of the Regulations.

1.6.13. Next-ranked Tenderer. Where the qualification of a panel member is negatived, or an award to a panel member is annulled, the Procuring Entity may award the Framework Agreement to the next-ranked Tenderer on the panel in the order established by the evaluation under Section III, provided that the panel minimum of three (3) is maintained.

1.6.14. Annual review. A value-for-money assessment shall be undertaken annually by the Procuring Entity to determine whether the rates and terms designated in this Framework Agreement remain competitive against prevailing market rates. The Procurement Management Unit shall submit to the Accounting Officer, copied to the Internal Auditor, quarterly reports analysing the items procured under this Framework Agreement, the pattern of usage, procurement costs in relation to prevailing market rates, and any recommendations, in accordance with section 114(6) of the Act.

2. Framework Agreement Documents

2.1 Subject to Article 1.2 (Order of Precedence) of the Framework Agreement, all documents forming part of the Framework Agreement (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Framework Agreement shall be read as a whole.

3. Interpretation

3.1. In the Framework Agreement, except where the context requires otherwise:

a) Words indicating one gender include all genders;
b) words indicating the singular also include the plural and words indicating the plural also include the singular;
c) provisions including the word “agree,” “agreed,” or “agreement” require the agreement to be recorded in writing;
d) the word “tender” is synonymous with “Tender,” “tenderer,” with “Tenderer,” and “tender documents” with “Tendering Document,” and
e) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken in to consideration in the interpretation of these Conditions.

3.2. **Incoterms**

3.2.1. Unless inconsistent with any provision of the Framework Agreement, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by Incoterms.

3.2.2. Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 C ours Albert 1er, 75008 Paris, France.

3.3. **Entire Agreement**

3.3.1. Subject to GCC Sub-Clause 16.4 hereof, the Framework Agreement constitutes the entire agreement between the Procuring Entity and Contractor with respect to the subject matter of Framework Agreement and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect there to made prior to the date of Framework Agreement.

3.4. **Amendment**

No amendment or other variation of the Framework Agreement shall be effective unless it is in writing, is dated, expressly refers to the Framework Agreement, and is signed by a duly authorized representative of each Party hereto.

3.5. **Independent Contractor**

The Contractor shall be an independent contractor performing the Framework Agreement. The Framework Agreement does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto. Subject to the provisions of the Framework Agreement, the Contractor shall be solely responsible for the manner in which the Framework Agreement is performed. All employees, representatives or Sub Contractors engaged by the Contractor in connection with the performance of the Framework Agreement shall be under the complete control of the Contractor and shall not be deemed to be employees of the Procuring Entity, and nothing contained in the Contractor in any sub contracts awarded by the Contractor shall be construed to create any contract relationship between any such employees, representatives or Sub Contractors and the Procuring Entity.

3.6. **Non-Waiver**

3.6.1. Subject to GCC Sub-Clause 3.6.2 below, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Framework Agreement or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Framework Agreement, nor shall any waiver by either Party of any breach of Framework Agreement operate as waiver of any subsequent or continuing breach of Framework Agreement.

3.6.2. Any waiver of a Party's rights, powers or remedies under the Framework Agreement must be in writing, must be dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

3.7. **Severability**
If any provision or condition of the Framework Agreement is prohibited or rendered invalid or unenforceable, such prohibition, in validity or unenforced ability shall not affect the validity or enforce ability of any other provisions and conditions of the Framework Agreement.

3.8. **Country of Origin**
"Origin" means the place where the plant and component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

4. Communications

4.1. Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

a) In writing and delivered against receipt; and

b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Framework Agreement.

4.2. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.

5. Law and Language

5.1. The Framework Agreement shall be governed by in accordance with laws of Kenya.

5.2. The ruling language of the Framework Agreement shall be English Language.

5.3. The language for communications shall be the English language.

6. Fraud and Corruption

6.1. The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 as set forth in Section ….." Declaration not to engage in corruption". The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-Contractors are not debarred from participating in public procurement proceedings.

6.2. Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the PPRA to inspect all accounts, records and other documents relating to any initial selection process,

prequalification process, tender submission, proposal submission, and Framework Agreement performance (in the case of award), and to have them audited by auditors appointed by the PPRA.

B. Subject Matter of Framework Agreement

7. Scope of Facilities

7.1. Unless otherwise expressly limited in the Procuring Entity's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, and the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Pre- commissioning and delivery) of the Plant, and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Section, Procuring Entity's Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GCC Sub-Clause 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Procuring Entity, asset for thin the Appendix to the Framework Agreement titled Scope of Works and Supply by the Procuring Entity.

7.2. The Contractor shall, unless specifically excluded in the Framework Agreement, perform all such work and/or supply all such items and materials not specifically mentioned in the Framework Agreement but that can be reasonably inferred from the Framework Agreement as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Framework Agreement.

7.3. In addition to the supply of Mandatory Spare Parts included in the Framework Agreement, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period specified in the SCC and the provisions, if any, specified in the SCC. However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply there of are to be agreed between the Procuring Entity and the Contractor, and the price of such spare parts shall be that given in Price Schedule No.6, which shall be added to the Framework Agreement Price. The price of such spare parts shall include the purchase price there for and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts.

8. Time for Commencement and Completion

8.1. The Contractor shall commence work on the Facilities within the period specified in the SCC and without prejudice to GCC Sub-Clause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix to the Framework Agreement titled Time Schedule.

8.2. The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Framework Agreement, within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

9. Contractor's Responsibilities

9.1. The Contractor shall design, manufacture including associated purchases and/or sub-contract, install and complete the Facilities in accordance with the Framework Agreement. When

completed, the Facilities should be fit for the purposes for which they are intended as defined in the Framework Agreement.

9.2. The Contractor confirms that it has entered in to this Framework Agreement on the basis of a proper examination of the data relating to the Facilities including any data as to boring tests provided by the Procuring Entity, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access there to was available and of other data readily available to it relating to the Facilities as of the date twenty-eight (28) days prior to Tender submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

9.3. The Contractor shall acquire and pay for all permits, approvals and /or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Framework Agreement, including, without limitation, visas for the Contractor's and Sub Contractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Procuring Entity under GCC Sub-Clause10.3 hereof and that are necessary for the performance of the Framework Agreement.

9.4. The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws will include all local, state, national or other laws that affect the performance of the Framework Agreement and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Procuring Entity from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 10.1 hereof.

9.5. Any Plant and Installation Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any sub-Contractors retained by the Contractor shall be from a country as specified in GCC Clause1 Country of Origin).

9.6. If the Contractor is a joint venture, or association (JV) of two or more persons, all such persons shall be jointly and severally bound to the Procuring Entity for the fulfillment of the provisions of the Framework Agreement and shall designate one of such persons to act as a leader with authority to bind the JV. The composition or the constitution of the JV shall not be altered without the prior consent of the Procuring Entity.

9.7. Pursuant to paragraph 2.2 e. of Appendix B to the General Conditions the Contractor shall permit and shall cause its sub-Contractors and sub-consultants to permit, PPRA and/or persons appointed by PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or Framework Agreement execution, and to have such accounts and records audited by auditors appointed by PPRA. The Contractor's and its Sub - Contractors' and sub-consultants' attention is drawn to Sub-Clause 6.1 which provides, *interalia*, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights constitute a prohibited practice subject to Framework Agreement termination.

9.8. 9.8 The Contractor shall conform to the sustainable procurement contractual provisions, if and as specified in the SCC.

10. Procuring Entity's Responsibilities

10.1. All information and/or data to be supplied by the Procuring Entity as described in the Appendix to the Framework Agreement titled Scope of Works and Supply by the Procuring Entity, shall be deemed to be accurate, except when the Procuring Entity expressly states otherwise.

10.2. The Procuring Entity shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Framework Agreement, including all requisite rights of way, as specified in the Appendix to the Framework Agreement titled Scope of Works and Supply by the Procuring Entity. The Procuring Entity shall give full possession of an accord all rights of access there to on or before the date (s) specified in that Appendix.

10.3. The Procuring Entity shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service under takings in the country where the Site is located which such authorities or under takings require the Procuring Entity to obtain in the Procuring Entity's name, (b) are necessary for the execution of the Framework Agreement, including those required for the performance by both the Contractor and the Procuring Entity of their respective obligations under the Framework Agreement, and (c) are specified in the Appendix (Scope of Works and Supply by the Procuring Entity).

10.4. If requested by the Contractor, the Procuring Entity shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Framework Agreement from all local, state or national government authorities or public service under takings that such authorities or undertakings require the Contractor or Sub- Contractors or the personnel of the Contractor or Sub-Contractors, as the case may be, to obtain.

10.5. Unless otherwise specified in the Framework Agreement or agreed upon by the Procuring Entity and the Contractor, the Procuring Entity shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the Appendix to the Framework Agreement titled Scope of Works and Supply by the Procuring Entity, at or before the time specified in the program furnished by the Contractor under GCC Sub-Clause18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Procuring Entity and the Contractor.

10.6. The Procuring Entity shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test (s) for the Facilities, in accordance with GCC Sub-Clause 25.2.

10.7. All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Procuring Entity, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 25.2.

10.8. In the event that the Procuring Entity shall be in breach of any of his obligations under this Clause, the additional cost incurred by the Contractor in consequence there of shall be determined by the Project Manager and added to the Framework Agreement Price.

C. Payment

11. Framework Agreement Price

11.1. Framework Agreement as specified in Article 2 (Framework Agreement Price and Terms of Payment) of the Framework Agreement.

11.2. Unless an adjustment clause is provided for in the SCC, the Framework Agreement Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Framework Agreement.

11.3. Subject to GCC Sub-Clauses 9.2,10.1 and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Framework Agreement Price, which shall, except as otherwise provided for in the Framework Agreement, cover all its obligations under the Framework Agreement.

12. Terms of Payment

12.1. The Framework Agreement Price shall be paid as specified in Article 2 (Framework Agreement Price and Terms of Payment) of the Framework Agreement and in the Appendix to the Framework Agreement titled Terms and Procedures of Payment, which also outlines the procedures to be followed in making application for and processing payments.

12.2. No payment made by the Procuring Entity herein shall be deemed to constitute acceptance by the Procuring Entity of the Facilities or any part (s) thereof.

12.3. In the event that the Procuring Entity fails to make any payment by its respective due date or within the period set for thin the Framework Agreement, the Procuring Entity shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the Appendix to the Framework Agreement titled Terms and Procedures of Payment, for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

12.4. The currency or currencies in which payments are made to the Contractor under this Framework Agreement shall be specified in the Appendix to the Framework Agreement titled Terms and Procedures of Payment, subject to the general principle that payments will be made in the currency or currencies in which the Framework Agreement Price has been stated in the Contractor's Tender.

13. Securities

13.1. **Issuance of Securities**

The Contractor shall provide the securities specified below in favor of the Procuring Entity at the times, and in the amount, manner and form specified below.

13.2. **Advance Payment Security**

13.2.1. The Contractor shall, within twenty-eight (28) days of the notification of Framework Agreement award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix to the Framework Agreement titled Terms and Procedures of Payment, and in the same currency or currencies.

13.2.2. The security shall be in the form provided in the Tendering documents or in another form acceptable to the Procuring Entity. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Procuring Entity. The security shall be returned to the Contractor immediately after its expiration.

13.3. **Performance Security**

13.3.1. The Contractor shall, within twenty-eight (28) days of the notification of Framework Agreement award, provide a security for the due performance of the Framework Agreement in the amount specified in the SCC.

13.3.2. The Performance Security shall be denominated in the currency or currencies of the Framework Agreement, or in a freely convertible currency acceptable to the Procuring Entity, and shall be in the form provided in Section X, Framework Agreement Forms, corresponding to the type of bank guarantee stipulated by the Procuring Entity in the SCC, or in another form acceptable to the Procuring Entity.

13.3.3. Unless otherwise specified in the SCC, the security shall be reduced by half on the date of the Operational Acceptance. The Security shall become null and void, or shall be reduced *prorata* to the Framework Agreement Price of a part of the Facilities for which a separate Time for Completion is provided, five hundred and forty (540) days after Completion of the Facilities or three hundred and sixty five (365) days after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Framework Agreement Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Sub- Clause 27.10, is liable for an extended defect liability obligation, the Performance Security shall be extended for the period specified in the SCC pursuant to GCC Sub-Clause 27.10 and up to the amount specified in the SCC.

13.3.4. The Procuring Entity shall not make a claim under the Performance Security, except for amounts to which the Procuring Entity is entitled under the Framework Agreement. The Procuring Entity shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Procuring Entity was not entitled to make the claim.

14. Taxes and Duties

14.1. Except as otherwise specifically provided in the Framework Agreement, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Sub-Contractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.

14.2. If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in Kenya, the Procuring Entity shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

14.3. For the purpose of the Framework Agreement, it is agreed that the Framework Agreement Price specified in Article 2 (Framework Agreement Price and Terms of Payment) of the Framework Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of Tender submission in Kenya (hereinafter called “Tax” in this GCC Sub-Clause14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Framework Agreement, which was or will be assessed on the Contractor, Sub-Contractors or their employees in connection with performance of the Framework Agreement, an equitable adjustment of the Framework Agreement Price shall be made to fully take in to account any such change by addition to the Framework Agreement Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof.

D. Intellectual Property

15. License/Use of Technical Information

15.1. For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and non- transferable license (without the right to sub-license) to the Procuring Entity under the patents, utility models or other industrial property rights owned by the Contractor or by a third Party from whom the Contractor has received the right to grant licenses there under, and shall also grant to the Procuring Entity a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the Procuring Entity under the Framework Agreement. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual property right from the Contractor or any third Party to the Procuring Entity.

15.2. The copy right in all drawings, documents and other materials containing data and information furnished to the Procuring Entity by the Contractor here in shall remain vested in the Contractor or, if they are furnished to the Procuring Entity directly or through the Contractor by any third Party, including suppliers of materials, the copy right in such materials shall remain vested in such third Party.

16. Confidential Information

16.1. The Procuring Entity and the Contractor shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Framework Agreement, whether such information has been furnished prior to, during or following termination of the Framework Agreement. Notwithstanding the above, the Contractor may furnish to its Sub-Contractor (s) such documents, data and other information it receives from the Procuring Entity to the extent required for the Sub-Contractor (s) to perform its work under the Framework Agreement, in which event the Contractor shall obtain from such Sub-Contractor (s) an under taking of confidentiality similar to that imposed on the Contractor under this GCC Clause16.

16.2. The Procuring Entity shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Procuring Entity for any purpose other than the design, procurement of Plant, construction or such other work and services as are required for the performance of the Framework Agreement.

16.3. The obligation of a Party under GCC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which

a) Now or here after enters the public domain through no fault of that Party

b) can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party hereto

c) otherwise lawfully becomes available to that Party from a third Party that has no obligation of confidentiality.

16.4. The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the Parties hereto prior to the date of the Framework Agreement in respect of the Facilities or any part thereof.

16.5. The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Framework Agreement.

E. Execution of the Facilities

17. Representatives

17.1. **Project Manager**

17.1.1. If the Project Manager is not named in the Framework Agreement, then within fourteen (14) days of the Effective Date, the Procuring Entity shall appoint and notify the Contractor in writing of the name of the Project Manager. The Procuring Entity may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Procuring Entity at all times during the performance of the Framework Agreement. All notices, instructions, orders, certificates, approvals and all other communications under the Framework Agreement shall be given by the Project Manager, except as here in otherwise provided.

17.1.2. All notices, instructions, information and other communications given by the Contractor to the Procuring Entity under the Framework Agreement shall be given to the Project Manager, except as herein otherwise provided.

17.2. **Contractor's Representative & Construction Manager**

17.2.1. If the Contractor's Representative is not named in the Framework Agreement, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Procuring Entity in writing to approve the person so appointed. If the Procuring Entity makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Procuring Entity objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause17.2.1 shall apply thereto.

17.2.2. The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Framework Agreement and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Framework Agreement.

17.2.3. All notices, instructions, information and all other communications given by the Procuring Entity or the Project Manager to the Contractor under the Framework Agreement shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

17.2.4. The Contractor shall not revoke the appointment of the Contractor's Representative without the Procuring Entity's prior written consent, which shall not be unreasonably withheld. If the Procuring Entity consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Sub-Clause 17.2.1.

17.2.5. The Contractor's Representative may, subject to the approval of the Procuring Entity which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities there by delegated or

revoked. No such delegation or revocation shall take effect unless and until a copy there of has been delivered to the Procuring Entity and the Project Manager.

17.2.6. Any actor exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 17.2.3 shall be deemed to be an actor exercise by the Contractor's Representative.

17.2.7. From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Framework Agreement. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as the Construction Manager's deputy.

17.2.8. The Procuring Entity may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Framework Agreement who, in the reasonable opinion of the Procuring Entity, may be have inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 22.4. The Procuring Entity shall provide evidence of the same, where upon the Contractor shall remove such person from the Facilities.

17.2.9. If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 17.2.5, the Contractor shall, where required, promptly appoint a replacement.

18. Work Program

18.1. **Contractor's Organization**

The Contractor shall supply to the Procuring Entity and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within twenty-one (21) days of the Effective Date. The chart shall include the identities of the key personnel and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Procuring Entity and the Project Manager in writing of any revision or alteration of such an organization chart.

18.2. **Program of Performance**

Within twenty-eight (28) days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Framework Agreement, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and pre- commission the Facilities, as well as the date by which the Contractor reasonably requires that the Procuring Entity shall have fulfilled its obligations under the Framework Agreement so as to enable the Contractor to execute the Framework Agreement in accordance with the program and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Framework Agreement. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix to the Framework Agreement titled Time Schedule, and any other dates and periods specified in the Framework Agreement. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion specified in the SCC pursuant to Sub-Clause 8.2 and any extension granted in accordance with GCC Clause 40 and shall submit all such revisions to the Project Manager.

18.3. **Progress Report**

18.3.1. The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub- Clause 18.2 above and supply a progress report to the Project Manager every month.

18.3.2. The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

18.4. **Progress of Performance**

If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 18.2, or it becomes apparent that it wills of all behind, the Contractor shall, at the request of the Procuring Entity or the project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 8.2, any extension thereof entitled under GCC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the Procuring Entity and the Contractor.

18.5. **Procedures**

18.5.1. The Framework Agreement shall be executed in accordance with the Framework Agreement Documents including the procedures given in the Forms and Procedures of the Procuring Entity's Requirements.

18.5.2. The Contractor may execute the Framework Agreement in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Framework Agreement.

19. Sub-Contracting

19.1. The Appendix to the Framework Agreement titled List of Major Items of Manufacture, Supply & Delivery of Sanitary Ware Sets and List of Approved Subcontractors, specifies major items of supply or services and a list of approved Subcontractors against each item, including manufacturers. In so far as no Sub-Contractors are listed against any such item, the Contractor shall prepare a list of Sub-Contractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Procuring Entity for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Procuring Entity for any of the Sub-Contractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Framework Agreement.

19.2. The Contractor shall select and employ its Sub-Contractors for such major items from those listed in the lists referred to in GCC Sub-Clause 19.1.

19.3. For items or parts of the Facilities not specified in the Appendix to the Framework Agreement titled List of Major Items of Plant and Installation Services and List of Approved Sub-Contractors, the Contractor may employ such Sub-Contractors as it may select, at its discretion.

19.4. Each subcontract shall include provisions which would entitle the Procuring Entity to require the subcontract to be assigned to the Procuring Entity under GCC19.5 (if and when applicable), or in event of termination by the Procuring Entity under GCC 42.2.

19.5. If a sub-Contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Procuring Entity, then the Contractor shall do so.

20. Design and Engineering

20.1. **Specifications and Drawings**

20.1.1. The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Framework Agreement, or where not so specified, in accordance with good engineering practice.

20.1.2. The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Procuring Entity.

20.1.3. The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Project Manager.

20.2. **Codes and Standards**

Wherever references are made in the Framework Agreement to codes and standards in accordance with which the Framework Agreement shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of Tender submission shall apply unless otherwise specified. During Framework Agreement execution, any changes in such codes and standards shall be applied subject to approval by the Procuring Entity and shall be treated in accordance with GCC Clause 39.

20.3. **Approval/ Review of Technical Documents by Project Manager.**

20.3.1. The Contractor shall prepare or cause its Sub-Contractors to prepare, and furnish to the Project Manager the documents listed in the Appendix to the Framework Agreement titled List of Documents for Approval or Review, for its approval or review as specified and in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance).

20.3.2. Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof. GCC Sub-Clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.3. Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed there on or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.

20.3.4. The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contractor that it is contrary to good engineering practice.

20.3.5. If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make

the required modification (s), where upon the document shall be deemed to have been approved.

20.3.6. If any dispute or difference occurs between the Procuring Entity and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification (s) there to that cannot be settled between the Parties within a reasonable period, then such dispute or difference may be referred to a Dispute Board for determination in accordance with GCC Sub-Clause 46.1 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and if so, how, performance of the Framework Agreement is to proceed. The Contractor shall proceed with the Framework Agreement in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Procuring Entity has not given notice under GCC Sub-Clause 46.3 hereof, then the Contractor shall be reimbursed by the Procuring Entity for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

20.3.7. The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Framework Agreement except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.8. The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 20.3. If the Project Manager requests any change in any already approved document and/or in any document based there on, the provisions of GCC Clause 39 shall apply to such request.

21. Procurement

21.1. **Plant**

Subject to GCC Sub-Clause 14.2, the Contractor shall procure and transport all Plant in an expeditious and orderly manner to the Site.

21.2. **Procuring Entity-Supplied Plant**

If the Appendix to the Framework Agreement titled Scope of Works and Supply by the Procuring Entity, provides that the Procuring Entity shall furnish any specific items to the Contractor, the following provisions shall apply:

21.2.1. The Procuring Entity shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the Parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Sub-Clause18.2, unless otherwise mutually agreed.

21.2.2. Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Procuring Entity shall immediately remedy any shortage, defector default, or the Contractor shall, if practicable and possible, at the request of the Procuring Entity, remedy such shortage, defect or default at the Procuring Entity's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GCC Sub-Clause21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item or shall apply to defective items that have been repaired.

21.2.3. The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Procuring Entity of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of Framework Agreement.

21.3. **Transportation**

21.3.1. The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.

21.3.2. Unless otherwise provided in the Framework Agreement, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.

21.3.3. Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Procuring Entity by telex, cable, facsimile or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the Kenya, if applicable, and at the Site. The Contractor shall furnish the Procuring Entity with relevant shipping documents to be agreed upon between the Parties.

21.3.4. The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Procuring Entity shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Procuring Entity from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.

21.4. **Customs Clearance**

21.4.1. The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Procuring Entity's obligations under GCC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Procuring Entity, the Procuring Entity shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.

22. Installation

22.1. **Setting Out/ Supervision**

22.1.1. ***Benchmark*:** The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to benchmarks, reference marks and lines provided to it in writing by or on behalf of the Procuring Entity.

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forth with notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Procuring Entity, the expense of rectifying the same shall be borne by the Procuring Entity.

22.1.2. ***Contractor's Supervision***: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time super intendance of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

22.2. **Labor:**

22.2.1. Engagement of Staff and Labor

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.

The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi- skilled and unskilled labor as is necessary for the proper and timely execution of the Framework Agreement. The Contractor is encouraged to use local labor that has the necessary skills.

The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into Kenya. The Procuring Entity will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.

The Contractor shall at its own expense provide the means of repatriation to all of its and its Sub-Contractor's personnel employed on the Framework Agreement at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Framework Agreement to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Procuring Entity may provide the same to such personnel and recover the cost of doing so from the Contractor.

22.2.2. Persons in the Service of Procuring Entity

The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst the Procuring Entity's Personnel.

22.2.3. Labor Laws

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

The Contractor shall at all times during the progress of the Framework Agreement use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Framework Agreement, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.

22.2.4. Rates of Wages and Conditions of Labor

The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established

rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Procuring Entities whose trade or industry is similar to that of the Contractor.

The Contractor shall in form the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws 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.

22.2.5. Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the SCC, unless:

a) Otherwise stated in the Framework Agreement,

b) The Project Manager gives consent, or

c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.

If and when the Contractor considers it necessary to carryout work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.

This Sub-Clause shall not apply to any work which is customarily carried out by rotary or double shifts.

22.2.6. Facilities for Staff and Labor

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Procuring Entity's Personnel as stated in the Specification. The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

22.2.7. Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Procuring Entity's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Framework Agreement, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Project Manager may reasonably require.

The Contractor shall throughout the Framework Agreement (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Sub-Contractors and Procuring Entity's and Project Manager's' 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 behavior 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 labor as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program,(unless otherwise agreed) of all Site staff and labor.

The Contractor shall include in the program to be submitted for the execution of the Facilities under Sub- Clause18.2 an alleviation program for Site staff and labor 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 program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.

22.2.8. Funeral Arrangements

In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise specified in the SCC.

22.2.9. Records of Contractor's Personnel

The Contractor shall keep accurate records of the Contractor's personnel, including the number of each class of Contractor's Personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

22.2.10. Supply of Food stuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Framework Agreement.

22.2.11. Supply of Water

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.

22.2.12. Measures against Insect and Pest Nuisance

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 their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

22.2.13. Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of Kenya, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by Contractor's Personnel.

22.2.14. Arms and Ammunition

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.

22.2.15. Prohibition of All Forms of Forced or Compulsory Labor

The Contractor shall not employ "forced or compulsory labor" in any form. "Forced or compulsory labor" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

22.2.16. Prohibition of Harmful Child Labor

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, 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.

22.3. **Contractor's Equipment**

22.3.1. All Contractor's Equipment brought by the Contractor on to the Site shall be deemed to be intended to be used exclusively for the execution of the Framework Agreement. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Framework Agreement.

22.3.2. Unless otherwise specified in the Framework Agreement, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor on to the Site and any surplus materials remaining there on.

22.3.3. The Procuring Entity will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Framework Agreement that is no longer required for the execution of the Framework Agreement.

22.4. **Site Regulations and Safety**

The Procuring Entity and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Framework Agreement at the Site and shall comply there with. The Contractor shall prepare and submit to the Procuring Entity, with a copy to the Project Manager, proposed Site regulations for the Procuring Entity's approval, which approval shall not be unreasonably withheld. Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

22.5. **Opportunities for Other Contractors**

22.5.1. The Contractor shall, upon written request from the Procuring Entity or the Project Manager, give all reasonable opportunities for carrying out the work to any other Contractors employed by the Procuring Entity on or near the Site.

22.5.2. If the Contractor, upon written request from the Procuring Entity or the Project Manager, makes available to other Contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other Contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other Contractors, the Procuring Entity shall fully compensate the Contractor for any loss or damage caused or occasioned by such

other Contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

22.5.3. The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other Contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other Contractors and the workers of the Procuring Entity in regard to their work.

22.5.4. The Contractor shall notify the Project Manager promptly of any defects in the other Contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

22.6. **Emergency Work**

If, by reason of an emergency arising in connection with and during the execution of the Framework Agreement, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Procuring Entity may door cause such work to be done as the Procuring Entity may determine is necessary in order to prevent damage to the Facilities. In such event the Procuring Entity shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons there for. If the work done or caused to be done by the Procuring Entity is work that the Contractor was liable to do at its own expense under the Framework Agreement, the reasonable costs incurred by the Procuring Entity in connection there with shall be paid by the Contractor to the Procuring Entity. Otherwise, the cost of such remedial work shall be borne by the Procuring Entity.

22.7. **Site Clearance**

22.7.1. ***Site Clearance in Course of Performance***: In the course of carrying out the Framework Agreement, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Framework Agreement.

22.7.2. ***Clearance of Site after Completion***: After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.

22.8. **Watching and Lighting**

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

23. Test and Inspection

23.1. The Contractor shall at its own expense carryout at the place of manufacture and/or on the Site all such tests and/ or inspections of the Plant and any part of the Facilities as are specified in the Framework Agreement.

23.2. The Procuring Entity and the Project Manager or their designated representatives shall be entitled to attend the afore said test and/ or inspection, provided that the Procuring Entity shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.3. Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Procuring Entity and the Project Manager or their designated representatives to attend the test and/ or inspection.

23.4. The Contractor shall provide the Project Manager with a certified report of the results of any such test and/ or inspection. If the Procuring Entity or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/ or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.5. The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Framework Agreement, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Framework Agreement Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Framework Agreement, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

23.6. If any Plant or any part of the Facilities fails to pass any test and/ or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.

23.7. If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the Parties within a reasonable period of time, it may be referred to a Dispute Board for determination in accordance with GCC Sub-Clause 46.3.

23.8. The Contractor shall afford the Procuring Entity and the Project Manager, at the Procuring Entity's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.

23.9. The Contractor agrees that neither the execution of a test and/ or inspection of Plant or any part of the Facilities, nor the attendance by the Procuring Entity or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Framework Agreement.

23.10. No part of the Facilities or foundations shall be covered upon the Site without the Contractor carrying out any test and/or inspection required under the Framework Agreement. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice there of shall be subject to the requirements of the Framework Agreement.

23.11. The Contractor shall uncover any part of the Facilities or foundations or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

23.12. If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 23.10 and are found to be executed in accordance with the Framework Agreement, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Procuring Entity, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Framework Agreement.

24. Completion of the Facilities

24.1. As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Procuring Entity's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Procuring Entity in writing.

24.2. Within seven (7) days after receipt of the notice from the Contractor under GCC Sub-Clause 24.1, the Procuring Entity shall supply the operating and maintenance personnel specified in the Appendix to the Framework Agreement titled Scope of Works and Supply by the Procuring Entity for Pre-commissioning of the Facilities or any part thereof.

24.3. Pursuant to the Appendix to the Framework Agreement titled Scope of Works and Supply by the Procuring Entity, the Procuring Entity shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Pre-commissioning of the Facilities or any part thereof.

24.4. As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Procuring Entity and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Procuring Entity in accordance with GCC Sub-Clause24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Sub-Clause 25.5.

24.5. As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.

24.6. The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub- Clause24.4, either issue a Completion Certificate in the form specified in the Procuring Entity's Requirements (Forms and Procedures), stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under GCC Sub-Clause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies and shall repeat the procedure described in GCC Sub-Clause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

24.7. If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor's repeated notice under GCC Sub-Clause 24.5, or if the Procuring Entity makes use of the Facilities or part thereof, then the Facilities or that part there of shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Procuring Entity's use of the Facilities, as the case may be.

24.8. As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Framework Agreement, failing which the Procuring Entity will undertake such completion and deduct the costs there of from any monies owing to the Contractor.

24.9. Upon Completion, the Procuring Entity shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

25. Commissioning and Operational Acceptance

25.1. **Commissioning**

25.1.1. Commissioning of the Facilities or any part there of shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Sub-Clause24.5, or immediately after the date of the deemed Completion, under GCC Sub-Clause 24.6.

25.1.2. The Procuring Entity shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.

25.1.3. In accordance with the requirements of the Framework Agreement, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Procuring Entity.

25.2. **Guarantee Test**

25.2.1. Subject to GCC Sub-Clause 25.5, the Guarantee Test and repeats there of shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix to the Framework Agreement titled Functional Guarantees. The Procuring Entity shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

25.2.2. If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Procuring Entity and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Sub-Clauses 28.2 and 28.3 shall not apply.

25.3. **Operational Acceptance**

25.3.1. Subject to GCC Sub-Clause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when

a) The Guarantee Test has been successfully completed and the Functional Guarantees are met; or

b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the SCC pursuant to GCC Sub-Clause 25.2.2 above or any other period agreed upon by the Procuring Entity and the Contractor; or

c) the Contractor has paid the liquidated damages specified in GCC Sub-Clause 28.3hereof; and

d) any minor items mentioned in GCC Sub-Clause 24.7 here of relevant to the Facilities or that part thereof have been completed.

25.3.2. At any time after any of the events set out in GCC Sub-Clause 25.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Procuring Entity's Requirements (Forms and Procedures) in respect of the Facilities or the part there of specified in such notice as of the date of such notice.

25.3.3. The Project Manager shall, after consultation with the Procuring Entity, and within seven (7) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4. If within seven (7) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part there of shall be deemed to have been accepted as of the date of the Contractor's said notice.

25.4. **Partial Acceptance**

25.4.1. If the Framework Agreement specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.4.2. If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall there after complete any outstanding minor items that are listed in the Operational Acceptance Certificate.

25.5. **Delayed Pre-commissioning and/or Guarantee Test**

25.5.1. In the event that the Contractor is unable to proceed with the Pre-commissioning of the Facilities pursuant to Sub-Clause 24.3, or with the Guarantee Test pursuant to Sub-Clause 25.2, for reasons attributable to the Procuring Entity either on account of non-availability of other facilities under the responsibilities of other Contractor(s), or for reasons beyond the Contractor's control, the provisions leading to “deemed” completion of activities such as Completion, pursuant to GCC Sub-Clause 24.6, and Operational Acceptance, pursuant to GCC Sub-Clause 25.3.4, and Contractor's obligations regarding Defect Liability Period, pursuant to GCC Sub- Clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32 ,and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.

25.5.2. When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Sub-Clause 25.5.1, the Contractor shall be entitled to the following:

a) The Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 26.2;

b) payments due to the Contractor in accordance with the provision specified in the Appendix to the Framework Agreement titled Terms and Procedures of Payment, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Procuring Entity, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 25.5.3 below;

c) the expenses towards the above security and extension of other securities under the Framework Agreement, of which validity needs to be extended, shall be reimbursed to the Contractor by the Procuring Entity;

d) the additional charges towards the care of the Facilities pursuant to GCC Sub-Clause 32.1 shall be reimbursed to the Contractor by the Procuring Entity for the period between the notification mentioned above and the notification mentioned in Sub-Clause 25.5.4 below. The provision of GCC Sub-Clause 33.2 shall apply to the Facilities during the same period.

e) Where the Framework Agreement price is different from the corrected tender price, in order to ensure the Contractor is not paid less or more relative to the Framework Agreement price (which would be the tender price), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: (corrected tender price –tender price)/ tender price X100.

25.5.3. In the event that the period of suspension under above Sub-Clause 25.5.1 actually exceeds one hundred eighty (180) days, the Procuring Entity and Contractor shall mutually agree to any additional compensation payable to the Contractor.

25.5.4. When the Contractor is notified by the Project Manager that the plant is ready for Pre-commissioning, the Contractor shall proceed without delay in performing Pre-commissioning in accordance with Clause 24.

F. Guarantees and Liabilities

26. Completion Time Guarantee

26.1. The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion specified in the SCC pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

26.2. If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 40, the Contractor shall pay to the Procuring Entity liquidated damages in the amount specified in the SCC as a percentage rate of the Framework Agreement Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as “Maximum” in the SCC as

a percentage rate of the Framework Agreement Price. Once the “Maximum” is reached, the Procuring Entity may consider termination of the Framework Agreement, pursuant to GCC Sub-Clause 42.2.2.

26.3. Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40. The Contractor shall have no further liability whatsoever to the Procuring Entity in respect thereof.

26.4. However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Framework Agreement.

26.5. Save for liquidated damages payable under this GCC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix to the Framework Agreement titled Time Schedule, and/or other program of work prepared pursuant to GCC Sub-Clause 18.2 shall not render the Contractor liable for any loss or damage there by suffered by the Procuring Entity.

26.6. If the Contractor attains Completion of the Facilities or any part there of before the Time for Completion or any extension thereof under GCC Clause 40, the Procuring Entity shall pay to the Contractor a bonus in the amount specified in the SCC. The aggregate amount of such bonus shall in no event exceed the amount specified as “Maximum” in the SCC.

27. Defect Liability

27.1. The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant supplied and of the work executed.

27.2. The Defect Liability Period shall be five hundred and forty (540) days from the date of Completion of the Facilities (or any part thereof) or one year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC pursuant to GCC Sub-Clause 27.10.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Procuring Entity regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defector of any damage to the Facilities arising out of or resulting from any of the following causes:

a) Improper operation or maintenance of the Facilities by the Procuring Entity;
b) Operation of the Facilities outside specifications provided in the Framework Agreement; or
c) Normal wear and tear.

27.3. The Contractor's obligations under this GCC Clause 27 shall not apply to:
a) any materials that are supplied by the Procuring Entity under GCC Sub-Clause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;

b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Procuring Entity or any matters for which the Contractor has disclaimed responsibility herein; or
c) any other materials supplied or any other work executed by or on behalf of the Procuring Entity, except for the work executed by the Procuring Entity under GCC Sub-Clause 27.7.

27.4. The Procuring Entity shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5. The Procuring Entity shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.

The Contractor may, with the consent of the Procuring Entity, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

27.6. If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Procuring Entity may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, where upon the Contractor shall carryout such tests.

27.7. If such part fails the tests, the Contractor shall carryout further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Procuring Entity and the Contractor.

27.8. If the Contractor fails to commence the work necessary to remedy such defector any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Procuring Entity may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Procuring Entity in connection there with shall be paid to the Procuring Entity by the Contractor or may be deducted by the Procuring Entity from any monies due the Contractor or claimed under the Performance Security.

27.9. If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Procuring Entity because of any of the aforesaid reasons.

27.10. Except as provided in GCC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and how so ever arising, and whether under the Contractor at law, in respect of defects in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, or criminal or willful action of the Contractor.

27.11. In addition, any such component of the Facilities, and during the period of time as may be specified in the SCC, shall be subject to an extended defect liability period. Such obligation of the Contractor shall be in addition to the defect liability period specified under GCC Sub-Clause 27.2.

28. Functional Guarantees

28.1. The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix to the Framework Agreement titled Functional Guarantees, subject to and upon the conditions therein specified.

28.2. If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix to the Framework Agreement titled Functional Guarantees, are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/ or additions to the Plant or any part there of as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Procuring Entity upon completion of the necessary changes, modifications and/or additions, and shall request the Procuring Entity to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Procuring Entity may consider termination of the Framework Agreement, pursuant to GCC Sub-Clause 42.2.2.

28.3. If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix to the Framework Agreement titled Functional Guarantees, are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Framework Agreement is met, the Contractor shall, at the Contractor's option, either:

a) Make such changes, modifications and/or additions to the Facilities or any part there of that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Procuring Entity to repeat the Guarantee Test or

b) Pay liquidated damages to the Procuring Entity in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix to the Framework Agreement titled Functional Guarantees.

c) The payment of liquidated damages under GCC Sub-Clause 28.3, up to the limitation of liability specified in the Appendix to the Framework Agreement titled Functional Guarantees, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 28.3, and the Contractor shall have no further liability whatsoever to the Procuring Entity in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

29. Patent Indemnity

29.1. The Contractor shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copy right or other intellectual property right registered or otherwise existing at the date of the Framework Agreement by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in Kenya; and (b) the sale of the products produced by the Facilities in any country.

29.2. Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Framework Agreement, any

infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Framework Agreement.

29.3. If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 29.1, the Procuring Entity shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

29.4. If the Contractor fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Procuring Entity within the twenty- eight (28) day period, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

29.5. The Procuring Entity shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

29.6. The Procuring Entity shall indemnify and hold harmless the Contractor and its employees, officers and Sub-Contractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Framework Agreement arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity.

30. Limitation of Liability

30.1. Except in cases of criminal negligence or willful misconduct,

a) Neither Party shall be liable to the other Party, whether in Framework Agreement, tort, or otherwise, for any in director consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Framework Agreement, other than specifically provided as any obligation of the Party in the Framework Agreement, and

b) the aggregate liability of the Contractor to the Procuring Entity, whether under the Framework Agreement, in tort or otherwise, shall not exceed the amount resulting from the application of the multiplier specified in the SCC, to the Framework Agreement Price or, if a multiplier is not so specified, the total Framework Agreement Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Procuring Entity with respect to patent infringement.

G. Risk Distribution

31. Transfer of Ownership

31.1. Ownership of the Plant (including spare parts) to be imported in to Kenya shall be transferred to the Procuring Entity upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.

31.2. Ownership of the Plant (including spare parts) procured in Kenya shall be transferred to the Procuring Entity when the Plant are brought on to the Site.

31.3. Ownership of the Contractor's Equipment used by the Contractor and its Sub-Contractors in connection with the Framework Agreement shall remain with the Contractor or its Sub-Contractors.

31.4. Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Procuring Entity and the Contractor agree that the Plant in question are no longer required for the Facilities.

31.5. Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage there to shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated.

32. Care of Facilities

32.1. The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the Framework Agreement provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Sub-Contractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 32.2 and 38.1.

32.2. If any loss or damage occurs to the Facilities or any part, thereof or to the Contractor's temporary facilities by reason of

a) insofar as they relate to Kenya, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced Contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, in so far as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or

b) any use or occupation by the Procuring Entity or any third Party other than a Subcontractor, authorized by the Procuring Entity of any part of the Facilities; or

c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Procuring Entity, or any such matter for which the Contractor has disclaimed responsibility herein, the Procuring Entity shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Procuring Entity requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Procuring Entity in accordance with GCC Clause 39. If the Procuring Entity does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Procuring Entity shall

either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities there by lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Procuring Entity shall terminate the Framework Agreement pursuant to GCC Sub-Clause 42.1 hereof.

32.3. The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except: (i) as mentioned in GCC Sub-Clause 32.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 32.2 (b) and (c) and 38.1.

32.4. With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Sub-Clause 38.1, the provisions of GCC Sub-Clause 38.3 shall apply.

33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

33.1. Subject to GCC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Sub-Contractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Procuring Entity, its Contractors, employees, officers or agents.

33.2. If any proceedings are brought or any claim is made against the Procuring Entity that might subject the Contractor to liability under GCC Sub-Clause33.1, the Procuring Entity shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

33.3. If the Contractor fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Procuring Entity within the twenty- eight (28) day period, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

33.4. The Procuring Entity shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

33.5. The Procuring Entity shall indemnify and hold harmless the Contractor and its employees, officers and Sub-Contractors from any liability for loss of or damage to property of the Procuring Entity, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion or other perils were not caused by any actor failure of the Contractor.

33.6. The Party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

34. Insurance

34.1. To the extent specified in the Appendix to the Framework Agreement titled Insurance Requirements, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Framework Agreement, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Procuring Entity, who should not unreasonably withhold such approval:

a) Cargo Insurance During Transport
Covering loss or damage occurring while in transit from the Contractor's or Sub-Contractor's works or stores until arrival at the Site, to the Plant (including spare parts therefor) and to the Contractor's Equipment.

b) Installation All Risks Insurance
Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

c) Third Party Liability Insurance
Covering bodily injury or death suffered by third Parties including the Procuring Entity's personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

d) ***Automobile Liability Insurance***
Covering use of all vehicles used by the Contractor or its Sub-Contractors, whether or not owned by them, in connection with the execution of the Framework Agreement.

e) Workers' Compensation
In accordance with the statutory requirements applicable in any country where the Framework Agreement or any part thereof is executed.

f) Procuring Entity's Liability
In accordance with the statutory requirements applicable in any country where the Framework Agreement or any part thereof is executed.

g) Other Insurances
Such other insurances as may be specifically agreed upon by the Parties here to as listed in the Appendix to the Framework Agreement titled Insurance Requirements.

34.2. The Procuring Entity shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Procuring Entity's Liability Insurances, and the Contractor's Sub-Contractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation and Procuring Entity's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Framework Agreement shall be waived under such policies.

34.3. The Contractor shall, in accordance with the provisions of the Appendix to the Framework Agreement titled Insurance Requirements, deliver to the Procuring Entity certificates of insurance or copies of the insurance policies as evidence that the required policies are in full

force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Procuring Entity by insurers prior to cancellation or material modification of a policy.

34.4. The Contractor shall ensure that, where applicable, its Sub-Contractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Framework Agreement, unless such Sub-Contractors are covered by the policies taken out by the Contractor.

34.5. The Procuring Entity shall at its expense take out and maintain in effect during the performance of the Framework Agreement those insurances specified in the Appendix to the Framework Agreement titled Insurance Requirements, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Sub-Contractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Framework Agreement shall be waived under such policies. The Procuring Entity shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Procuring Entity shall provide copies of the policies taken out by the Procuring Entity under this GCC Sub-Clause 34.5.

34.6. If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 34.1, the Procuring Entity may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Framework Agreement any premium that the Procuring Entity shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Procuring Entity fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Procuring Entity under the Framework Agreement any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Procuring Entity. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Procuring Entity, and the Contractor shall have full recourse against the Procuring Entity for any and all liabilities of the Procuring Entity herein.

34.7. Unless otherwise provided in the Framework Agreement, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Procuring Entity shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Procuring Entity's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Procuring Entity. With respect to insurance claims in which the Contractor's interest is involved, the Procuring Entity shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

35. Unforeseen Conditions

35.1. If, during the execution of the Framework Agreement, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Framework Agreement by an experienced Contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Procuring Entity, and on the basis of information that it could have obtained from a visual inspection of the Site if access

thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Framework Agreement that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of:

a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
c) the extent of the anticipated delay; and
d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Sub-Clause 35.1, the Project Manager shall promptly consult with the Procuring Entity and Contractor and decide upon the actions to be taken to overcome the physical

35.2. If the Contractor is delayed or impeded in the performance of the Framework Agreement because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40.

36. 36. Change in Laws and Regulations

36.1. If, after the date twenty-eight (28) days prior to the date of Tender submission, in Kenya, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Framework Agreement Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Framework Agreement. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the SCC pursuant to GCC Sub-Clause 11.2.

37. Force Majeure

37.1. “Force Majeure” shall mean any event beyond the reasonable control of the Procuring Entity or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:

a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war
b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts
c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority
d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague

e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster
f) shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.

37.2. If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Framework Agreement by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

37.3. The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Framework Agreement for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40.

37.4. The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Framework Agreement and to fulfill its or their obligations under the Framework Agreement, but without prejudice to either Party's right to terminate the Framework Agreement under GCC Sub-Clauses 37.6 and 38.5.

37.5. No delay or nonperformance by either Party hereto caused by the occurrence of any event of Force Majeure shall
a) constitute a default or breach of the Framework Agreement, or
b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC Sub-Clauses 32.2, 38.3 and 38.4

if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

37.6. If the performance of the Framework Agreement is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Framework Agreement, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Framework Agreement by giving a notice to the other, but without prejudice to either Party's right to terminate the Framework Agreement under GCC Sub-Clause 38.5.

37.7. In the event of termination pursuant to GCC Sub-Clause 37.6, the rights and obligations of the Procuring Entity and the Contractor shall be as specified in GCC Sub-Clauses 42.1.2 and 42.1.3.

37.8. Notwithstanding GCC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Procuring Entity to make payments to the Contractor herein.

38. War Risks

38.1. “War Risks” shall mean any event specified in paragraphs (a) and (b) of GCC Sub-Clause 37.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

38.2. Notwithstanding anything contained in the Framework Agreement, the Contractor shall have no liability whatsoever for or with respect to:

a) destruction of or damage to Facilities, Plant, or any part thereof;
b) destruction of or damage to property of the Procuring Entity or any third Party; or
c) injury or loss of life

if such destruction, damage, injury or loss of life is caused by any War Risks, and the Procuring Entity shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

38.3. If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Procuring Entity shall pay the Contractor for:

a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Procuring Entity and so far as may be required by the Procuring Entity, and as may be necessary for completion of the Facilities
b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged
c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof.

If the Procuring Entity does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Procuring Entity shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Framework Agreement, pursuant to GCC Sub-Clause 42.1. If the Procuring Entity requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GCC 40.

38.4. Notwithstanding anything contained in the Framework Agreement, the Procuring Entity shall pay the Contractor for any increased costs or incidentals to the execution of the Framework Agreement that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Procuring Entity in writing of any such increased cost.

38.5. If during the performance of the Framework Agreement any War Risks shall occur that financially or otherwise materially affect the execution of the Framework Agreement by the Contractor, the Contractor shall use its reasonable efforts to execute the Framework Agreement with due and proper consideration given to the safety of its and its Sub-Contractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Framework Agreement by giving a notice to the other.

38.6. In the event of termination pursuant to GCC Sub-Clauses 38.3 or 38.5, the rights and obligations of the Procuring Entity and the Contractor shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3.

H. Change in Framework Agreement Elements

39. Change in the Facilities

39.1. **Introducing a Change**

39.1.1. Subject to GCC Sub-Clauses 39.2.5 and 39.2.7, the Procuring Entity shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Framework Agreement to make any change, modification, addition or deletion to, in or from the Facilities here in after called "Change", provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Framework Agreement.

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

a) The proposed change (s), and a description of the difference to the existing Framework Agreement requirements;
b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
c) a description of any effect (s) of the change on performance/ functionality.
d) The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:
e) accelerates the delivery period; or
f) reduces the Framework Agreement Price or the life cycle costs to the Procuring Entity; or
g) improves the quality, efficiency, safety or sustain ability of the Facilities; or
h) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.
i) If the value engineering proposal is approved by the Procuring Entity and results in:
j) a reduction of the Framework Agreement Price; the amount to be paid to the Contractor shall be the percentage specified in the SCC of the reduction in the Framework Agreement Price; or
k) an increase in the Framework Agreement Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Framework Agreement Price.

39.1.3. Notwithstanding GCC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Framework Agreement shall be deemed to be a Change, and such change shall not result in any adjustment of the Framework Agreement Price or the Time for Completion.

39.1.4. The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 39.2 and 39.3, and further details and forms are provided in the Procuring Entity's Requirements (Forms and Procedures).

39.2. **Changes Originating from Procuring Entity**

39.2.1. If the Procuring Entity proposes a Change pursuant to GCC Sub-Clause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

a) Brief description of the Change
b) Effect on the Time for Completion
c) Estimated cost of the Change
d) Effect on Functional Guarantees (if any)
e) Effect on the Facilities
f) Effect on any other provisions of the Framework Agreement.

39.2.2. Prior to preparing and submitting the “Change Proposal,” the Contractor shall submit to the Project Manager an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Procuring Entity shall do one of the following:

a) Accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal, or

b) Advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate, or

c) Advise the Contractor that the Procuring Entity does not intend to proceed with the Change.

39.2.3. Upon receipt of the Procuring Entity's instruction to proceed under GCC Sub-Clause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 39.2.1.

39.2.4. The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Framework Agreement. If such rates and prices are inequitable, the Parties there to shall agree on specific rates for the valuation of the Change.

39.2.5. If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance there with and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Framework Agreement Price as originally set for thin Article 2 (Framework Agreement Price) of the Framework Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection there to prior to furnishing the Change Proposal as aforesaid. If the Procuring Entity accepts the Contractor's objection, the Procuring Entity shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders here in, nor affect its right to take in to account, when making such subsequent objection, the percentage increase or decrease in the Framework Agreement Price that any Change not objected to by the Contractor represents.

39.2.6. Upon receipt of the Change Proposal, the Procuring Entity and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Procuring Entity shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Procuring Entity is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Procuring Entity decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Sub-Clause 39.2.2.

39.2.7. If the Procuring Entity and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Procuring Entity may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The Parties shall there after attempt to reach agreement on the outstanding issues under the Change Proposal.

If the Parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GCC Sub-Clause 46.1.

39.3. **Changes Originating from Contractor**

39.3.1. If the Contractor proposes a Change pursuant to GCC Sub-Clause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 39.1.2.

39.3.2. Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GCC Sub-Clauses 39.2.6 and 39.2.7. However, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

40. Extension of Time for Completion

40.1. The Time(s) for Completion specified in the SCC pursuant to GCC Sub-Clause 8.2 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Framework Agreement by reason of any of the following:

a) any Change in the Facilities as provided in GCC Clause 39
b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 32.2
c) Any suspension order given by the Procuring Entity under GCC Clause 41 here of or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or
d) Any changes in laws and regulations as provided in GCC Clause 36 or
e) Any default or breach of the Framework Agreement by the Procuring Entity, Appendix to the Framework Agreement titled, or any activity, actor omission of the Procuring Entity, or the Project Manager, or any other Contractors employed by the Procuring Entity, or
f) Any delay on the part of a Sub-Contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause, or
g) Delays attributable to the Procuring Entity or caused by customs, or
h) any other matter specifically mentioned in the Framework Agreement by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2. Except where otherwise specifically provided in the Framework Agreement, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Procuring Entity and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Procuring Entity's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GCC Sub-Clause 46.1.

40.3. The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Framework Agreement.

40.4. In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be added to the Framework Agreement Price.

41. Suspension

41.1. Procuring Entity may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Framework Agreement. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Framework Agreement, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time there after and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Procuring Entity shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the Framework Agreement.

41.2. If the Procuring Entity fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects apart only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Framework Agreement under GCC Sub-Clause.

41.3. If:

a) Procuring Entity has failed to pay the Contractor any sum due under the Framework Agreement within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Framework Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Framework Agreement, the Contractor may give a notice to the Procuring Entity that requires payment of such sum, with interest there on as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Procuring Entity to remedy the same, as the case may be. If the Procuring Entity fails to pay such sum

together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or

b) The Contractor is unable to carry out any of its obligations under the Framework Agreement for any reason attributable to the Procuring Entity, including but not limited to the Procuring Entity's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, then the Contractor may by fourteen (14) days' notice to the Procuring Entity suspend performance of all or any of its obligations under the Framework Agreement, or reduce the rate of progress.

41.4. If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Procuring Entity to the Contractor in addition to the Framework Agreement Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Framework Agreement.

41.5. During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Procuring Entity.

42. Termination

42.1. **Termination for Procuring Entity's Convenience**

42.1.1. The Procuring Entity may at any time terminate the Framework Agreement for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 42.1.

42.1.2. Upon receipt of the notice of termination under GCC Sub-Clause 42.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination

a) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition,
b) terminate all sub-Framework Agreements, except those to be assigned to the Procuring Entity pursuant to paragraph (d) (ii) below,
c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Sub-Contractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition, and
d) subject to the payment specified in GCC Sub-Clause 42.1.3,
    i. deliver to the Procuring Entity the parts of the Facilities executed by the Contractor up to the date of termination
    ii. to the extent legally possible, assign to the Procuring Entity all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Procuring Entity, in any sub-contract concluded between the Contractor and its Sub-Contractors; and
    iii. deliver to the Procuring Entity all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Sub-Contractors as at the date of termination in connection with the Facilities.

42.1.3. In the event of termination of the Framework Agreement under GCC Sub-Clause 42.1.1, the Procuring Entity shall pay to the Contractor the following amounts:

a) The Framework Agreement Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination,
b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Sub-Contractors' personnel,
c) any amounts to be paid by the Contractor to its Sub-Contractors in connection with the termination of any sub-contract, including any cancellation charges,
d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.1.2
e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have under taken with third Parties in connection with the Framework Agreement and that are not covered by paragraphs (a) through (d) above.

42.2. **Termination by the Procurement Entity**

42.2.1. The Procuring Entity, without prejudice to any other rights or remedies it may possess, may terminate the Framework Agreement forth within the following circumstances by giving a notice of termination and its reasons there for to the Contractor, referring to this GCC Sub-Clause 42.2:

a) If the Contractor becomes bankrupt or in solvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, are solution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt
b) if the Contractor assigns or transfers the Framework Agreement or any right or interest therein in violation of the provision of GCC Clause 43.
c) If the Contractor, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a. of Appendix B to the GCC, in competing for or in executing the Framework Agreement.

42.2.2. If the Contractor:

a) Has abandoned or repudiated the Framework Agreement
b) Has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GCC Sub-Clause 41.2, the progress of Framework Agreement performance for more than twenty-eight (28) days after receiving a written instruction from the Procuring Entity to proceed
c) Persistently fails to execute the Framework Agreement in accordance with the Contractor persistently neglects to carry out its obligations under the Framework Agreement without just cause
d) Refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Procuring Entity that the Contractor can attain Completion of the Facilities by the Time for Completion as extended, then the Procuring Entity may, without prejudice to any other rights it may possess under the Framework Agreement, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Procuring Entity may terminate the Framework Agreement forth with by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 42.2.

42.2.3. Upon receipt of the notice of termination under GCC Sub-Clauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

a) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition.
b) Terminate all sub-contract, except those to be assigned to the Procuring Entity pursuant to paragraph (d) below,
c) deliver to the Procuring Entity the parts of the Facilities executed by the Contractor up to the date of termination,
d) to the extent legally possible, assign to the Procuring Entity all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Procuring Entity, in any sub-contract concluded between the Contractor and its Sub-Contractors,
e) deliver to the Procuring Entity all drawings, specifications and other documents prepared by the Contractor or its Sub-Contractors as of the date of termination in connection with the Facilities.

42.2.4. The Procuring Entity may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third Party. The Procuring Entity may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Procuring Entity and with an indemnification by the Procuring Entity for all liability including damage or injury to persons arising out of the Procuring Entity's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Procuring Entity considers expedient for the supply and installation of the Facilities.

42.2.5. Upon completion of the Facilities or at such earlier date as the Procuring Entity thinks appropriate, the Procuring Entity shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.6. Subject to GCC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Framework Agreement Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.2.3. Any sums due the Procuring Entity from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Framework Agreement.

42.2.7. If the Procuring Entity completes the Facilities, the cost of completing the Facilities by the Procuring Entity shall be determined.

42.2.8. If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Procuring Entity in completing the Facilities, exceeds the Framework Agreement Price, the Contractor shall be liable for such excess.

42.2.9. If such excess is greater than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Procuring Entity, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Procuring Entity shall pay the balance to the Contractor. The Procuring Entity and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3. **Termination by the Contractor**

42.3.1. If:

a) The Procuring Entity has failed to pay the Contractor any sum due under the Framework Agreement within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Framework Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Framework Agreement, the Contractor may give a notice to the Procuring Entity that requires payment of such sum, with interest there on as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Procuring Entity to remedy the same, as the case may be. If the Procuring Entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or

b) The Contractor is unable to carry out any of its obligations under the Framework Agreement for any reason attributable to the Procuring Entity, including but not limited to the Procuring Entity's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, then the Contractor may give a notice to the Procuring Entity thereof, and if the Procuring Entity has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Framework Agreement for any reason attributable to the Procuring Entity within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Procuring Entity referring to this GCC Sub-Clause 42.3.1, forth with terminate the Framework Agreement.

42.3.2. The Contractor may terminate the Framework Agreement forth with by giving a notice to the Procuring Entity to that effect, referring to this GCC Sub-Clause 42.3.2, if the Procuring Entity becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if are solution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Procuring Entity takes or suffers any other analogous action in consequence of debt.

42.3.3. If the Framework Agreement is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, then the Contractor shall immediately:

a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition

b) terminate all sub-contract, except those to be assigned to the Procuring Entity pursuant to paragraph (d) (ii)

c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Sub-Contractors' personnel from the Site, and

d) subject to the payment specified in GCC Sub-Clause 42.3.4:

i. deliver to the Procuring Entity the parts of the Facilities executed by the Contractor up to the date of termination

ii. to the extent legally possible, assign to the Procuring Entity all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Procuring Entity, in any sub-contract Agreements concluded between the Contractor and its Sub-Contractors, and

iii. deliver to the Procuring Entity all drawings, specifications and other documents prepared by the Contractor or its Sub-Contractors as of the date of termination in connection with the Facilities.

42.3.4. If the Framework Agreement is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, the Procuring Entity shall pay to the Contractor all payments specified in GCC Sub-Clause 42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

42.3.5. Termination by the Contractor pursuant to this GCC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 42.3.

42.3.6. In this GCC Clause 42, the expression “Facilities executed” shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.3.7. In this GCC Clause 42, in calculating any monies due from the Procuring Entity to the Contractor, account shall be taken of any sum previously paid by the Procuring Entity to the Contractor under the Framework Agreement, including any advance payment paid pursuant to the Appendix to the Framework Agreement titled Terms and Procedures of Payment.

43. Assignment

43.1. Neither the Procuring Entity nor the Contractor shall, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, assign to any third Party the Framework Agreement or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Framework Agreement.

44. Export Restrictions

44.1. Notwithstanding any obligation under the Framework Agreement to complete all export formalities, any export restrictions attributable to the Procuring Entity, to Kenya or to the use of the Plant and Installation Services to be supplied which arise from trade regulations from a country supplying those Plant and Installation Services, and which substantially impede the Contractor from meeting its obligations under the Framework Agreement, shall release the Contractor from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Procuring Entity and of the Bank that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Framework Agreement. Termination of the Framework Agreement on this basis shall be for the Procuring Entity's convenience pursuant to Sub-Clause 42.1.

I. Claims, Disputes and Arbitration

45. Contractor's Claims

45.1. If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Framework Agreement, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

45.2. If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

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

b) The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records and shall (if instructed) submit copies to the Project Manager.

45.3. Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

a) this fully detailed claim shall be considered as interim;
b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

45.4. Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars but shall nevertheless give his response on the principles of the claim within such time.

45.5. Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Framework Agreement. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

45.6. The Project Manager shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 40, and/or (ii)

the additional payment (if any) to which the Contractor is entitled under the Framework Agreement.

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

45.8. In the event that the Contractor and the Procuring Entity cannot agree on any matter relating to a claim, either Party may refer the matter to the Dispute Board pursuant to GCC 46 hereof.

46. Claims, Disputes and Arbitration

46.1. **Contractor's Claims**

46.1.1. If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Framework Agreement, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

46.1.2. If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply. The Contractor shall also submit any other notices which are required by the Framework Agreement, and supporting particulars for the claim, all as relevant to such event or circumstance.

46.1.3. The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records and shall (if instructed) submit copies to the Project Manager.

46.1.4. Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

a) this fully detailed claim shall be considered as interim;
b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

46.1.5. Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed

comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

46.1.6. Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Framework Agreement.

46.1.7. Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Framework Agreement. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

46.1.8. If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer the matter to Arbitration in accordance with Sub-Clause 46.4.

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

46.2. **Issuing a Notice of Dissatisfaction**

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Framework Agreement or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the Project Manager by issuing a Notice of Dissatisfaction and requesting the matter be referred to Arbitration.

46.3. **Amicable Settlement**

Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

46.4. **Arbitration**

46.4.1. Any dispute between the Parties arising out of or in connection with the Framework Agreement not settled amicably in accordance with Sub-Clause 46.3 above shall be finally settled by arbitration. Arbitration shall be conducted as follows:

a) if the Framework Agreement is with foreign Contractors, the dispute shall be referred to international arbitration either:

i. with proceedings administered by the arbitration institution designated in the Special Conditions of Framework Agreement, and conducted under the rules of arbitration of such institution; or, if so specified in the Special Conditions of Framework Agreement, or

ii. international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), unless specified otherwise in the SCC;

b) if the Framework Agreement is with domestic Contractors, arbitration with proceedings conducted in accordance with the Arbitration Laws of Kenya.

46.4.2. The place of arbitration shall be the neutral location specified in the Special Conditions of Framework Agreement; and the arbitration shall be conducted in the English Language for all communications.

46.4.3. The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

46.4.4. Neither Party shall be limited in the proceedings before the arbitrators to the evidence to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

46.4.5. Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the Works.

46.4.6. The Decision of the Arbitration proceedings will be final and binding on both parties.

SECTION VII – SPECIAL CONDITIONS OF FRAMEWORK AGREEMENT

The following Special Conditions of Framework Agreement shall supplement the General Conditions of Framework Agreement in Section VI. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

Special Conditions of Framework Agreement (SCC)

The following Special Conditions (SCC) shall supplement the General Conditions (GCC). Whenever there is a conflict, the provisions here in shall prevail over those in the GCC. The clause number of the SCC is the corresponding clause number of the GCC.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
SCC 1. Definitions	The Procuring Entity is: State Department for Housing and Urban Development The Project Manager is: the Director of Housing, State Department for Housing and Urban Development, or such other officer as the Procuring Entity shall notify to the Contractor in writing. Country of Origin: all countries and territories as indicated in Section V of the Tendering document, Eligible Countries. Scope of the Facilities: the Facilities comprise the manufacture, supply and delivery of Sanitary Ware Sets, with their fittings and accessories, to the designated sites, including off-loading and safe storage until acceptance. Installation of the Sanitary Ware Sets, and the testing of installed appliances, are undertaken by the housing contractors. Provisions of the GCC relating to installation, Pre-commissioning, Commissioning, Guarantee Tests and Operational Acceptance shall be read as referring to delivery, joint inspection and acceptance on delivery in accordance with the Specification, and otherwise do not apply.
SCC 5. Law and Language	SCC 5.1 The Contract shall be interpreted in accordance with the laws of: ***Republic of Kenya*** SCC 5.2 The ruling language is: ***English*** SCC 5.3 The language for communications is: ***English***
SCC 7. Scope of Facilities [Spare Parts] (GCC Clause 7)	SCC 7.3 The Contractor agrees to supply replacement components (cistern fittings, seats and covers, wastes and traps) at the accepted rates throughout the term of the Framework Agreement, and replacement parts for damaged or defective components within the Defects Liability Period at no cost to the Procuring Entity. Addition to SCC 7.3 The Contractor shall carry sufficient inventories to ensure an ex-stock supply of Sanitary Ware Items. Other replacement components shall be supplied as promptly as possible, but at the most within six (6) months of placing the order. In the event of termination of the production of any component, advance notification shall be made to the Procuring Entity with sufficient time to permit the Procuring Entity to procure the needed requirement.
SCC 8. Time for Commencement and Completion	SCC 8.1 The Contractor shall commence performance under each call-off within thirty (30) calendar days from the Effective Date of that call-off order, or such shorter period as is stated in a call-off order designated an accelerated call-off. Commencement shall mean:

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	submission of the site-by-site delivery schedule under GCC Clause 1.6.9(d); issue of the factory inspection notice under Clause 1.19.2 of the Specification; and designation of the Contractor's delivery coordinator for the call-off. SCC 8.2 The Time for Completion (being delivery to, and acceptance at, the designated sites) shall be as stated in each call-off order and the master delivery schedule annexed to it, and shall not exceed twelve (12) months from the Effective Date of that call-off order.
SCC 9. Contractor's Responsibilities	SCC 9.4 The following sustainable procurement contractual provisions apply: the Contractor shall comply with the Environmental Management and Co-ordination Act, 1999; the Occupational Safety and Health Act, 2007; and the Employment Act, 2007, and shall implement the accepted Investment Plan and the Investment and Local Manufacturing Milestones M-1 to M-5 set out in the Schedule to these Special Conditions. SCC 9.9 Investment Plan. The Investment Plan submitted by the Contractor on Form INV 6.1 and accepted by the Procuring Entity forms part of the Framework Agreement and is a binding contractual obligation. The Contractor shall implement it, together with the national deployment and service coverage plan within it and the Investment and Local Manufacturing Milestones M-1 to M-5 set out in the Schedule to these Special Conditions. Evidence for each milestone shall be submitted to the Project Manager within fourteen (14) days of the target month, and the Contractor shall provide quarterly progress reports and facilitate site inspections throughout the investment implementation period. The milestone months are counted from the Effective Date of the Framework Agreement. Where the manufacturer is a member of a Joint Venture, the manufacturer shall execute the Framework Agreement, or a deed of adherence to it in a form approved by the Head of Legal Services, so that the obligations in this Clause and in that Schedule are enforceable against the manufacturer jointly and severally with the Contractor. SCC 9.10 Performance review. The Contractor's performance shall be evaluated quarterly by the Project Manager against delivery to programme; quality and conformity of deliveries; replacement of defective sets within the Defects Liability Period; statutory and licensing compliance; and progress against Milestones M-1 to M-5. The Project Manager shall issue the assessment in writing with reasons within twenty-one (21) days of the end of each quarter, and the Contractor may make written representations within fourteen (14) days, which the Accounting Officer shall consider before the assessment is confirmed. SCC 9.11 Ranking and tiers for subsequent call-offs. For the purposes of GCC Clause 1.6.9, the ranking of panel members shall be re-determined annually with effect from the first anniversary of the Effective Date on a composite score comprising the performance assessment under SCC 9.10, weighted sixty per cent (60%), and compliance with the Investment Plan and Milestones M-1 to M-5, weighted forty per cent (40%). "Tier 1" means a panel member whose composite score is not less than seventy per cent (70%), being the minimum score applied at evaluation under Section III of the Tender Document, and which has no uncured milestone failure. "Tier 2" means a panel member whose composite score is below that threshold or which has an uncured milestone failure. Call-off quantities are allocated among Tier 1 members only, in accordance with GCC Clause 1.6.9. A Tier 2 member shall receive no share of a new call-off until restored to Tier 1, but its existing call-off contracts and its Defects Liability obligations continue unaffected.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	SCC 9.12 Continuation. Continuation of the Framework Agreement beyond each anniversary of the Effective Date is subject to confirmation in writing by the Accounting Officer that the Contractor's performance is satisfactory and that the annual value-for-money assessment under GCC Clause 1.6.14 has been completed. SCC 9.13 Due process. No change of rank or tier, and no consequence under the Schedule to these Special Conditions, shall be applied except upon written notice to the Contractor specifying the failure relied on, the evidence for it and the cure period allowed, and after the Contractor has had a reasonable opportunity to make written representations. The decision shall be made by the Accounting Officer, given in writing with reasons, and is subject to GCC Clause 46. A change of rank or tier does not affect any call-off contract already issued.
SCC 11. Contract Price	SCC 11.2.1 The prices payable shall be adjusted in accordance with Appendix 2 (Price Adjustment) to the Framework Agreement. Price adjustment applies to the supply and delivery component of each call-off only. The Base Date for each call-off shall be the date thirty (30) days before the Effective Date of that call-off, and not the Framework Agreement signing date. SCC 11.2.2 The accepted unit rates are comprehensive and inclusive of the Defects Liability Period obligations. The indices shall be confined to those permitted by Regulation 105 of the Public Procurement and Asset Disposal Regulations, 2020, namely the prevailing Central Bank of Kenya monthly rate of inflation or the consumer price index of the Kenya National Bureau of Statistics. The weightings are fixed element a = 0.15, labour b = 0.20 and material and equipment c = 0.65.
SCC 13. Securities	SCC 13.1 No security is required at Framework Agreement level. The Advance Payment Security and the Performance Security are furnished for each call-off. SCC 13.2 Advance Payment Security. The advance payment is the first payment of the price. It is therefore not recovered by deduction from later payments, and the words in GCC Sub-Clause 13.2.2 "and shall automatically become null and void when the full amount of the advance payment has been recovered by the Procuring Entity" do not apply. The Advance Payment Security is furnished for each call-off, within twenty-eight (28) days of the call-off notification, in an amount equal to the advance payment for that call-off. It reduces as Sanitary Ware Sets are delivered to site and accepted, as shown by shipping and delivery documents, and is retired and returned to the Contractor once Sanitary Ware Sets worth at least the advance payment have been delivered and accepted. SCC 13.3.1 The amount of Performance Security shall be ten per cent (10%) of the Call-Off Contract Price, furnished within twenty-eight (28) days of the call-off notification. SCC 13.3.2 The Performance Security shall be in the form of the Bank Guarantee in Section VIII, Framework Agreement Forms. SCC 13.3.3 The Performance Security shall not be reduced on acceptance of delivery. SCC 13.3.4 On expiry of the Defects Liability Period, the Performance Security shall be reduced to ten per cent (10%) of the value of the components covered by the extended defect liability, pursuant to GCC Sub-Clause 27.10. SCC 13.3.5 Where a deduction falls to be made against the Performance Security under the Schedule to these Special Conditions, it shall

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	be applied against the Performance Security or Securities in force at the date on which the failure is certified, or, where none is then in force, against the next Performance Security furnished by the Contractor.
SCC 13. Securities	SCC 13.4 Maintenance Security: Not applicable.
SCC 22 Installation	SCC 22.2.5 Normal delivery hours are 0800hrs – 1700hrs, Monday to Saturday, unless otherwise agreed with the Project Manager. SCC 22.2.8 Not used.
SCC 25. Commissioning and Operational Acceptance	SCC 25.2.2 Not applicable. Completion of each delivery is established by joint inspection and acceptance on delivery in accordance with the Specification; no Guarantee Test shall be carried out.
SCC 26. Completion Time Guarantee	SCC 26.2 Applicable rate for liquidated damages: one half of one per cent (0.5%) of the price of the delayed part of the call-off per week or part week of delay attributable to the Contractor. The above rate applies to the price of the part of the call-off, as quoted in the Price Schedule, for which the Contractor fails to achieve Completion (delivery and acceptance) within the Time for Completion. Maximum deduction for liquidated damages: ten per cent (10%) of the Call-Off Contract Price. SCC 26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.
SCC 27. Defect Liability	SCC 27.10 The critical components covered under the extended defect liability are the vitreous china and ceramic bodies, flushing mechanisms, taps and valves of the Sanitary Ware Sets, and the period of extended defect liability shall be twenty-four (24) months.
SCC 30. Limitation of Liability	SCC 30.1(b) The multiplier is: one (1.0) times the Call-Off Contract Price. The limitation of liability at SCC 30.1(b) does not apply to: (a) liquidated damages under SCC 26.2; (b) deductions under the Schedule to these Special Conditions; (c) liability for death or personal injury, fraud, or corrupt, fraudulent, collusive, coercive or obstructive practice; and (d) the Contractor's indemnities under GCC Clauses 29 and 33.
SCC 39. Value Engineering	SCC 39.1.2 If the value engineering proposal is approved by the Procuring Entity, the amount to be paid to the Contractor shall be fifty per cent (50%) of the reduction in the Call-Off Contract Price.
SCC 46.4(a)(ii) Arbitration	Any dispute not resolved under GCC Sub-Clauses 46.1 to 46.3 shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Nairobi Centre for International Arbitration in force at the date of the notice of arbitration. The number of arbitrators shall be one. The arbitrator shall be appointed by agreement of the Parties within twenty-one (21) days of the notice of arbitration and, failing agreement, by the Nairobi Centre for International Arbitration on the application of either Party. The seat and place of arbitration shall be Nairobi, Kenya. The language of the arbitration shall be English. The arbitration shall be governed by the Arbitration Act, 1995.

SCHEDULE TO THE SPECIAL CONDITIONS — INVESTMENT AND LOCAL MANUFACTURING MILESTONES

The following milestones are binding contractual obligations. Evidence for each milestone shall be submitted to the Project Manager within fourteen (14) days of the target month.
Datum. The milestone months are counted from the Effective Date of the Framework Agreement as defined in Article 3.1 of the Framework Agreement, and not from the effective date of any call-off order, from the date of the Letter of Award or from any other date.
Milestone M-1 (Month 3): submit signed lease or ownership documents for the Kenya facility site (minimum 2,000 m²) and local business registration certificates (KRA PIN, investment permit). Consequence of failure: written notice specifying the failure, with a cure period of thirty (30) days; if not cured within that period, reclassification to Tier 2 as defined in SCC 9.11, so that no new call-off order is offered until the failure is cured and Tier 1 is restored.
Milestone M-2 (Month 9): submit approved factory layout drawings and building permit, together with evidence of capital expenditure on facility fit-out. Consequence of failure: written notice specifying the failure, with a cure period of thirty (30) days; if not cured within that period, demotion to Tier 2 as defined in SCC 9.11.
Milestone M-3 (Month 18): first local manufacture of Sanitary Ware Sets in Kenya; submit video evidence and an independent quality assurance inspection report to the Project Manager; KEBS certification application filed. Consequence of failure: written notice specifying the failure, with a cure period of thirty (30) days; if not cured within that period, a performance deduction of five per cent (5%) of the Performance Security value, applied in accordance with SCC 13.3.5, and demotion to Tier 2 as defined in SCC 9.11 until cured.
Milestone M-4 (Month 24): local manufacturing facility fully operational; a minimum of ten (10) Kenyan technical staff employed in manufacture; KEBS certificate of compliance submitted. Consequence of failure: suspension of new call-off awards, and risk of termination of the Framework Agreement after a thirty (30) day cure period.
Milestone M-5 (Month 36): first call-off fulfilled using Sanitary Ware Sets manufactured in Kenya; local content of not less than forty per cent (40%) by value certified by an independent quality assurance body approved in writing by the Project Manager, at the Contractor's cost; KEBS periodic audit report submitted. Consequence of failure: written notice specifying the failure, with a cure period of sixty (60) days; if not cured within that period, reclassification to Tier 2 as defined in SCC 9.11 until complied with, together with a performance deduction of ten per cent (10%) of the Performance Security value applied in accordance with SCC 13.3.5; and, if not cured within a further ninety (90) days, the Procuring Entity may terminate the Framework Agreement.
Consequences. Every consequence stated in this Schedule operates through the ranking and tier structure at SCC 9.11 and, where a financial deduction is stated, through SCC 13.3.5. No separate security is required in respect of this Schedule.
Measurement of local content. Local content shall be expressed as a percentage by value, in which the numerator is the aggregate ex-works value of the ceramic ware, fittings and accessories manufactured or finished at the Kenya facility together with direct Kenyan labour and locally sourced materials incorporated in the set, and the denominator is the ex-works value of the complete set before freight, insurance, duty, taxes and margin. It shall be certified for each call-off by an independent quality assurance body approved in writing by the Project Manager, at the Contractor's cost, and a certificate shall be submitted with the first delivery under each call-off. A dispute as to a certificate shall be determined in accordance with GCC Clause 46 as amended by SCC 46.4.
Due process. No consequence under this Schedule shall be applied except in accordance with SCC 9.13.
Enforcement against the manufacturer. The obligations in this Schedule are enforceable against the Contractor and, where the manufacturer is a member of a Joint Venture, against the manufacturer jointly and severally with the Contractor, in accordance with SCC 9.9.

SECTION VIII – FRAMEWORK AGREEMENT FORMS

- Notification of Award - Form of Acceptance
- Request for Review
- Letter of Award
- Framework Agreement
- Appendix 1. Terms and Procedures of Payment
- Appendix 2. Price Adjustment
- Appendix 3. Insurance Requirements
- Appendix 4. Time Schedule
- Appendix 5. List of Major Items of Manufacture, Supply & Delivery of Sanitary Ware Sets and List of Approved Sub-Contractors/suppliers
- Appendix 6. Scope of Works and Supply by the Procuring Entity
- Appendix 7. List of Documents for Approval or Review
- Appendix 8. Functional Guarantees
- Performance Security Form
- OPTION 1 – Demand Bank Guarantee Performance Security Form
- OPTION 2 – Performance Bond Advance Payment Security- Demand Bank Guarantee
- Beneficial Ownership Disclosure

NOTIFICATION OF INTENTION TO AWARD

[*This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.]*

[*Send this Notification to the Tenderer's Authorized Representative named in the Tenderer Information Form*]

For the attention of Tenderer's Authorized Representative Name: .....[*insert Authorized Representative's name*]

Address: ..... [*insert Authorized Representative's Address*]

Telephone/Fax numbers: ..... [*insert Authorized Representative' s telephone /fax numbers*]

Email Address: ..... [*insert Authorized Representative's email address*]

[*IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.*]

DATE OF TRANSMISSION: This Notification is sent by: [*email/fax*] on [*date*] (*local time)*

1. Notification of Intention to Award

Procuring Entity: .....[insert the name of the Procuring Entity] Project: .....[insert name of project]
Framework Agreement title: .....[insert the name of the Framework Agreement]
ITT No: ..... [insert ITT reference number from Procurement Plan]
This Notification of Intention to Award (Notification) notifies you of our decision to award the above Framework Agreement. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:
a) Request a debriefing in relation to the evaluation of your Tender, and/or
b) Submit a Procurement-related Complaint in relation to the decision to award the Framework Agreement.

2. The Successful Tenderer

Package No.	Name of successful Tenderer	Address of the successful Tenderer	Framework Agreement price of the successful Tenderer
Package No.			
Package No.			
Package No.			
Package No.			
Package No.			
Package No.			

3. Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.

Package No.	Name of Tenderer	Address of the Tenderer	Tender price	Evaluated price
Package No.				
Package No.				
Package No.				
Package No.				
Package No.				
Package No.				

4. Reason/s Why Your Tender Was Unsuccessful

[***INSTRUCTIONS***: *State the reasons/why this Tenderer's Tender was unsuccessful. Do NOT include: (a) appoint by point comparison with another Tenderer's Tender, or (b) information that is marked "Confidential" by the Tenderer in its Tender.]*

5. How To Request A Debriefing

DEADLINE: *The deadline to request a debriefing expires at midnight on [insert date] (local time).*
You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing, your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the Framework Agreement name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

Attention: ..... [insert full name of person, if applicable]
Title/position: ..... [insert title/position]
Agency: .....[insert name of Procuring Entity]
Email address: ..... [insert email address]
Fax number: ..... [insert fax number] delete if not used

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Framework Agreement Award Notice.

6. How To Make A Complaint

***Period**: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [insert date] (local time).*

Provide the Framework Agreement name, reference number, name of the Tenderer, contact details; and address the Procurement- related Complaint as follows:

Attention: .....[insert full name of person, if applicable]
Title/position: ....[insert title/position]
Agency: .....[insert name of Procuring Entity]
Email address: .....[insert email address]
Fax number: .....[insert fax number] delete if not used

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the Framework Agreement. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

Further information:
Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website: info@ppra.go.ke or complaints@ppra.go.ke.

In summary, there are four essential requirements:
1. *You must bean' interested party'. In this case, that means a Tenderer who submitted a Tender in this Tendering process, and is the recipient of a Notification of Intention to Award.*
2. *The complaint can only challenge the decision to award the Framework Agreement.*
3. *You must submit the complaint within the period stated above.*
4. *You must include, in your complaint, all of the information required by the Procurement Regulations (as described in Annex III).*

7. Standstill Period

***DEADLINE**: The Standstill Period is due to end at midnight on [insert date] (local time).*

The Standstill Period lasts fourteen (14) days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Procuring Entity:

Signature:

Name:	
Title/position:	
Telephone:	

REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO……. OF ……..…. 20……...

BETWEEN

……...……. APPLICANT

AND

…….RESPONDENT (Procuring Entity)

Request for review of the decision of the…… (Name of the Procuring Entity of ……dated the … day of ……. 20……. in the matter of Tender No……..… of ……... 20…. for .....(Tender description).

REQUEST FOR REVIEW
I / We……, the above-named Applicant(s), of address: Physical address……
P.O. Box No…….. Tel. No……. Email ……, hereby request the Public Procurement Administrative Review Board to review the whole/part of the above-mentioned decision on the following grounds, namely:
1.
2.

By this memorandum, the Applicant requests the Board for an order / orders that:
1.
2.

SIGNED ……. (Applicant) Dated on……. day of ……/…20……

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on……day of ……....20…..……

SIGNED
Board Secretary

LETTER OF AWARD

To: _____

This is to notify you that your Tender dated _____ "for Framework Agreement Package No. ……. (amount……...), Packages No… …… (amount……...), Packages No… …… (amount……...). etc. are hereby accepted by …… (name of Procuring Entity).

You are requested to arrange to sign the Framework Agreement within fourteen (14) days of receipt in accordance with the Conditions of Framework Agreement. On being instructed to commence the Framework Agreement on any of the packages you have won, by a call-off notification, you will be requested to furnish for the particular package a Performance Security within 28 days in accordance with the Conditions of Framework Agreement, and for that purpose, using one of the Performance Security Forms included in Section VIII, Framework Agreement Forms, of the Tender Document".

Authorized Signature:	
Name and Title of Signatory:	
Name of Agency:	
Attachment – Framework Agreement:	

FRAMEWORK AGREEMENT

THIS AGREEMENT is made the _____ day of _____, _____, BETWEEN

1) …… a corporation incorporated under the laws of ……. and having its principal place of business at ……... (hereinafter called “the Procuring Entity”),

and

2) ……., a corporation incorporated under the laws of …… and having its principal place of business at …… (herein after called “the Contractor”)

WHEREAS the Procuring Entity desires to engage the Contractor to manufacture, supply and deliver Sanitary Ware Sets (“the Facilities”), and the Contractor has agreed to such engagement upon and subject to the terms and conditions herein after appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1. Framework Agreement Documents

1.1. Framework Agreement Documents (Reference GCC Clause 2)

1.2. The following documents shall constitute the Framework Agreement between the Procuring Entity and the Contractor, and each shall be read and construed as an integral part of the Framework Agreement:

a) This Framework Agreement and the Appendices hereto
b) Form of Tender and Price Schedules submitted by the Contractor
c) Special Conditions of Framework Agreement
d) General Conditions of Framework Agreement
e) Specification
f) Drawings
g) Other completed Tendering forms submitted with the Tender
h) Any other documents forming part of the Procuring Entity's Requirements
i) Any other documents shall be added here

1.3. Order of Precedence (Reference GCC Clause2)
In the event of any ambiguity or conflict between the Framework Agreement Documents listed above, the order of precedence shall be the order in which the Framework Agreement Documents are listed in Article1.1(Framework Agreement Documents) above.

1.4. Definitions (Reference GCC Clause1)
Capitalized words and phrases used here in shall have the same meanings as ascribed to them in the General Conditions.

Article 2. Framework Agreement Price and Terms of Payment

2.1. Framework Agreement Price (Reference GCC Clause11)

The Framework Agreement Price is the indicative aggregate amount of KES _____ computed by applying the accepted unit rates to the indicative quantities in the Bills of Quantities (Main Summary). No quantity is guaranteed; payment is due only for the quantities ordered under call-off orders, at the accepted unit rates, subject to SCC 11.2.

2.2. Terms of Payment (Reference GCC Clause 12)

The terms and procedures of payment according to which the Procuring Entity will reimburse the Contractor are given in the Appendix (Terms and Procedures of Payment) hereto.

The Procuring Entity may instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit shall be for the amount stated in the relevant call-off order, and shall be subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, ICC Publication No.600.
For the avoidance of doubt, no documentary credit shall be opened under this Article unless the call-off order expressly so provides, and the amount and validity of any such credit shall be stated in that call-off order. Where no documentary credit is opened, this Article 2.2 shall not operate as a condition of any Effective Date under Article 3.
Request by the Contractor. Where a call-off includes plant and equipment supplied from abroad under Schedule No. 1 of Appendix 1, and a documentary credit is needed for that supply to be financed, the Contractor may request one when it submits its delivery schedule under Clause 1.6.9(d). The request shall state the amount, the payment stages the credit is to cover, and the proposed advising bank. The Procuring Entity shall decide the request, and the call-off order shall state whether a documentary credit is to be opened and, if so, its amount, the payment stages it covers and its validity. The Procuring Entity may also provide for a documentary credit in a call-off order on its own initiative.
Relationship to Appendix 1 and SCC 13. Payment under a documentary credit shall be made against presentation of the documents required for the relevant payment stage under Schedule No. 1 of Appendix 1. A documentary credit is a means of payment only. It does not replace any security required under SCC 13, and the Advance Payment Security remains required where the credit covers the advance payment.

In the event that the amount payable under Schedule No.1 is adjusted in accordance with GCC 11.2 or with any of the other terms of the Framework Agreement, the Procuring Entity shall arrange for the documentary credit to be amended accordingly.

Article 3. Effective Date

3.1. Effective Date (Reference GCC Clause1)

The Effective Date of this Framework Agreement, from which its term under Clause 1.6.6 and the Investment and Local Manufacturing Milestones under the Schedule to the Special Conditions are counted, is the date on which both of the following conditions have been fulfilled:

a) This Framework Agreement has been duly executed for and on behalf of the Procuring Entity and the Contractor;
b) The named manufacturer has executed this Framework Agreement or a deed of adherence in a form approved by the Head of Legal Services.

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

3.2. If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Framework Agreement notification because of reasons not attributable to the Contractor, the Parties shall discuss and agree on an equitable adjustment to the Framework Agreement Price and the Time for Completion and/or other relevant conditions of the Framework Agreement.

3.3. Effective Date of each call-off contract. The Effective Date of each call-off contract, from which the Time for Completion of the Facilities under that call-off is counted, is the date on which all of the following have been fulfilled: (a) the call-off order has been issued under Clause 1.6.7; (b)

the Contractor has submitted the Performance Security for that package under SCC 13.3.1; (c) where an advance payment is to be made, the Contractor has submitted the advance payment security under SCC 13.2 and the Procuring Entity has paid the advance payment; and (d) where a documentary credit is to be opened under Article 2.2, the Contractor has been advised that it has been issued in its favour.

3.4. The Parties acknowledge that the advance payment is computed as a percentage of the total CIP amount of a call-off and cannot be computed at Framework Agreement level. Accordingly, payment of an advance payment and the opening of a documentary credit are conditions of a call-off Effective Date only, and are not conditions of the Effective Date of this Framework Agreement.

Article 4. Communications

4.1. The address of the Procuring Entity for notice purposes, pursuant to GCC 4.1is: _____.

4.2. The address of the Contractor for notice purposes, pursuant to GCC 4.1is: _____.

Article 5. Appendices

5.1. The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Framework Agreement.

5.2. Reference in the Framework Agreement to any Appendix shall mean the Appendices attached here to, and the Framework Agreement shall be read and construed accordingly.

IN WITNESS WHEREOF the Procuring Entity and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Procuring Entity
.....[Signature]
.....[Title]

in the presence of

.....[Signature]
.....[Title]

Signed by, for and on behalf of the Contractor
.....[Signature]
.....[Title]

in the presence of

.....[Signature]
.....[Title]

APPENDICES

APPENDIX 1: TERMS AND PROCEDURES OF PAYMENT

In accordance with the provisions of GCC Clause12 (Terms of Payment), the Procuring Entity shall pay the Contractor in the following manner and at the following times, on the basis of the Price Break down given in the section on Price Schedules. Payments will be made in the currencies quoted by the Tenderer unless otherwise agreed between the Parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

Definition. For the purposes of this Appendix, "the total CIP amount" means the Call-Off Contract Price, being the supply and delivery element of the relevant call-off computed at the accepted unit rates and exclusive of any design services amount payable under Schedule No. 3. The percentages in Schedule No. 1 or Schedule No. 2 (as applicable to the origin of the plant) and in Schedule No. 4 are percentages of that single amount and together total one hundred per cent (100%) of it. Schedule No. 3 is payable in parallel on its own separate base. The term "CIP" is used in this Appendix as a label for that base only, and the Incoterms rules referred to in the Tender Document do not govern the computation of payments under Schedule No. 2 or Schedule No. 4.

TERMS OF PAYMENT

Schedule No. 1. Plant and Equipment Supplied from Abroad

1.1. Payments shall be made per call-off, computed by applying the Framework Agreement rates. The accepted unit rates are comprehensive and inclusive of the Defects Liability Period obligations, including replacement components.

1.2. In respect of plant and equipment supplied from abroad, the following payments shall be made:

a) Twenty percent (20%) of the total CIP amount as an advance payment, against receipt of invoice and an Advance Payment Security for the equivalent amount made out in favor of the Procuring Entity. The advance payment is the first payment of the price and is therefore not recovered by deduction from any later payment. The Advance Payment Security reduces as plant and equipment is delivered to site and accepted, as shown by shipping and delivery documents, and is retired and returned to the Contractor once plant and equipment worth at least the advance payment has been delivered and accepted, in accordance with SCC 13.2.

b) Thirty percent (30%) of the total CIP amount as a payment against receipt of invoice and verified factory inspection reports.

Schedule No. 2. Plant and Equipment Supplied from within Kenya

2.1. In respect of plant and equipment supplied from Kenya, the following payments shall be made:

a) Twenty percent (20%) of the total CIP amount as an advance payment, against receipt of invoice and an Advance Payment Security for the equivalent amount made out in favor of the Procuring Entity. The advance payment is the first payment of the price and is therefore not recovered by deduction from any later payment. The Advance Payment Security reduces as plant and equipment is delivered to site and accepted, as shown by shipping and delivery documents, and is retired and returned to the Contractor once plant and equipment worth at least the advance payment has been delivered and accepted, in accordance with SCC 13.2.

b) Thirty percent (30%) of the total CIP amount as a payment against receipt of invoice and verified factory inspection reports.

Schedule No. 3. Design Services

3.1. In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

a) Ten percent (10%) of the total design services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Procuring Entity.

b) Ninety percent (90%) of the total or pro rata design services amount upon acceptance of design in accordance with GCC Clause 20 by the Project Manager within forty-five (45) days after receipt of invoice.

c) Schedule No. 3 shall be operated only where design services are separately identified and priced in the Bills of Quantities. Where design is priced within Bill No. 2 (Work Items), no payment shall be made under this Schedule and design shall be remunerated within the total CIP amount.

Schedule No. 4. Delivery Services

4.1. In respect of delivery services for both the foreign and local currency portions, the following payments shall be made:

a) Forty per cent (40%) of the total CIP amount against receipt of invoice and the interim payment certificate for delivery of the Sanitary Ware Sets to site, inspected and accepted by the Project Manager.

b) Ten per cent (10%) of the total CIP amount against receipt of invoice and the Project Manager's certificate of acceptance of the installed Sanitary Ware Sets, or sixty (60) days after acceptance on delivery, whichever is earlier.

4.2. No recovery of the advance payment. The advance payment made under Schedule No. 1, Schedule No. 2 or Schedule No. 3 is the first payment of the price and is therefore not recovered by deduction from any later payment, including any payment under Schedule No. 4. It is secured by the Advance Payment Security, which is retired in accordance with SCC 13.2.

4.3. In the event that the Procuring Entity fails to make any payment on its respective due date, the Procuring Entity shall pay to the Contractor interest on the amount of such delayed payment at the rate of the Central Bank of Kenya Central Bank Rate prevailing on the due date plus two per cent (2%) per annum, accruing daily and pro-rated monthly, for the period of delay until payment has been made in full.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:
(a) the Contractor shall submit to the Project Manager an application for payment stating the stage reached, the amount claimed, the computation of that amount by reference to the accepted unit rates, and the supporting documents required by the relevant Schedule;
(b) the Project Manager shall, within fourteen (14) days of receipt, certify the amount properly due or state in writing the reasons for withholding certification in whole or in part;
(c) the Contractor shall submit a tax invoice for the certified amount;
(d) the Procuring Entity shall pay the certified amount within thirty (30) days of receipt of the certificate and a valid tax invoice;
(e) every payment is subject to the statutory deductions applicable to the supply of goods, including withholding tax where applicable and Value Added Tax; the National Construction Authority construction levy does not apply to this Framework Agreement; and

(f) interest on late payment accrues as stated above.

APPENDIX 2. PRICE ADJUSTMENT

Pursuant to GCC Sub-Clause 11.2 and SCC 11.2, the prices payable to the Contractor shall be subject to adjustment to reflect changes in the cost of labour and of materials and equipment, computed in accordance with the formula set out below. The weightings are: fixed element a = 0.15; labour component b = 0.20; material and equipment component c = 0.65, where a + b + c = 1.00. The labour and the material and equipment indices shall be the Kenya National Bureau of Statistics Consumer Price Index (all items, Kenya), or the Central Bank of Kenya monthly rate of inflation, in accordance with Regulation 105 of the Public Procurement and Asset Disposal Regulations, 2020. The exchange rate source shall be the Central Bank of Kenya mean indicative rate. The Base Date for each call-off shall be the date thirty (30) days before the Effective Date of that call-off. No adjustment shall be made where the net computed adjustment is less than one per cent (1%) of the Call-Off Contract Price.

Price Adjustment Formula

If in accordance with GCC 11.2, prices shall be adjustable, the following method shall be used to calculate the price adjustment.

Prices payable to the Contractor, in accordance with the Framework Agreement, shall be subject to adjustment during performance of the Framework Agreement to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P_1 = P_0 \times (a + b\frac{L_1}{L_0} + c\frac{M_1}{M_0}) - P_0$$

P_1 = adjustment amount payable to the Contractor

P_0 = Framework Agreement price (base price)

a = percentage of fixed element in Framework Agreement price (a = 15%)

b = percentage of labor component in Framework Agreement price (b = 20%)

c = percentage of material and equipment component in Framework Agreement price (c = 65%)

L_0, L_1 = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

M_0, M_1 = material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

NB: a + b + c = 100%

Conditions Applicable to Price Adjustment

The Tenderer shall indicate the source of labor, source of exchange rate and materials indices and the base date indices in its Tender.

Item	Source of Indices Used	Base Date Indices

The base date shall be the date thirty (30) days before the Effective Date of each call-off, in accordance with SCC 11.2.

The date of adjustment shall be the mid-point of the period of manufacture or delivery of component or Plant. The following conditions shall apply:

d) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Procuring Entity under the terms of the Framework Agreement. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Procuring Entity will, however, be entitled to any price decrease occurring during such periods of delay.

e) If the currency in which the Framework Agreement price, P0, is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Framework Agreement price. The correction factor shall be:

$\frac{Z_0}{Z_1}$, where,

Z_0 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Framework Agreement Price P_0 on the Base date, and

Z_1 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Framework Agreement Price P_0 on the Date of Adjustment.

f) No price adjustment shall be payable on the portion of the Framework Agreement price paid to the Contractor as an advance payment.

APPENDIX 3. INSURANCE REQUIREMENTS

Insurances to be Taken Out by the Contractor

In accordance with the provisions of GCC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Framework Agreement, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Procuring Entity, such approval not to be unreasonably withheld.

a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefor) and to the construction equipment to be provided by the Contractor or its Sub-Contractors.
Amount Deductible Limits Parties insured from To

b) Installation All Risks Insurance

Not applicable. Installation of the Sanitary Ware Sets is undertaken by the housing contractors.

c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Procuring Entity's personnel) and loss of or damage to property (including the Procuring Entity's property and any parts of the Facilities that have been accepted by the Procuring Entity) occurring in connection with the supply and delivery of the Facilities.

Amount	Deductible Limits	Parties insured	From	To

d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Sub-Contractors (whether or not owned by them) in connection with the supply and delivery of the Facilities. Comprehensive insurance in accordance with statutory requirements.

e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

f) Procuring Entity's Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

Amount	Deductible Limits	Parties insured	From	To

Amount	Deductible Limits	Parties insured	From	To

The Procuring Entity shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third-Party Liability, Workers' Compensation and Procuring Entity's Liability Insurances, and the Contractor's Sub-Contractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Cargo, Workers' Compensation and Procuring Entity's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Framework Agreement shall be waived under such policies.

Insurances to Be Taken Out by The Procuring Entity

The Procuring Entity shall at its expense take out and maintain in effect during the performance of the Framework Agreement the following insurances.

Details:

Amount	Deductible Limits	Parties insured	From	To

APPENDIX 4. TIME SCHEDULE

The Time Schedule for each call-off shall be the master delivery schedule annexed to the call-off order, together with the Contractor's site-by-site delivery schedule approved under GCC Clause 1.6.9(d).

APPENDIX 5. LIST OF MAJOR ITEMS OF SUPPLY AND DELIVERY SERVICES AND LIST OF APPROVED SUBCONTRACTORS

A list of major items of supply and delivery is provided below.

The following Subcontractors and/or manufacturers are approved for carrying out the items of the Facilities indicated below. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Procuring Entity of its choice in good time prior to appointing any selected Subcontractor. In accordance with GCC Sub-Clause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Procuring Entity and their names have been added to this list of Approved Subcontractors.

Major Items of Supply and Delivery Services	Approved Sub-Contractors/Manufacturers	Nationality

APPENDIX 6. SCOPE OF WORKS AND SUPPLY BY THE PROCURING ENTITY

The following personnel, facilities, works and supplies will be provided/supplied by the Procuring Entity, and the provisions of GCC Clauses 10, 21 and 24 shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the Procuring Entity in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GCC Sub-Clause18.2.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the Contractor.
The Procuring Entity, through the housing contractors, shall provide: access to each site for delivery vehicles; off-loading assistance where agreed in the call-off order; secure storage for, and protection of, Sanitary Ware Sets after acceptance on delivery; and signature of delivery notes by the authorised site representative.

Personnel	Charge to Contractor (if any)
Facilities	Charge to Contractor (if any)
Works	Charge to Contractor (if any)
Supplies	Charge to Contractor (if any)

APPENDIX 7. LIST OF DOCUMENTS FOR APPROVAL OR REVIEW

Pursuant to GCC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Sub-Contractor to prepare, and present to the Project Manager in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance), the following documents for approval or review:

A.	Approval
1.	Samples of each item in the Bills of Quantities
2.	Product catalogue and data sheets
3.	Site-by-site delivery schedule for each call-off

B.	Review
1.	Factory test certificates and certificates of conformity
2.	KEBS certificates or PVoC certificates for imported consignments
3.	Packing lists, delivery notes and warranty certificates

APPENDIX 8. FUNCTIONAL GUARANTEES

1. General

This Appendix sets out:

a) The functional guarantees referred to in GCC Clause 28 (Functional Guarantees)
b) The pre-conditions to the validity of the functional guarantees, either in production and/or consumption, set forth below
c) The minimum level of the functional guarantees
d) The formula for calculation of liquidated damages for failure to attain the functional guarantees.

2. Extension of Functional Guarantees under the Framework Agreement

The Functional Guarantees submitted by the Contractor in this Appendix 8 shall apply in full to every Sanitary Ware Item supplied under any call-off contract issued during the Framework Agreement.

Accordingly, for each call-off contract:

a) the Sanitary Ware Sets shall conform to the product standards listed in the Specification and to the approved samples;
b) any defect in materials or manufacture notified within the Defects Liability Period, or within the period of extended defect liability under SCC 27.10, shall be remedied by repair or replacement at the Contractor's cost;
c) the Contractor shall maintain sufficient stock of replacement components in Kenya to remedy defects within fourteen (14) days of notification.

This extension of the Functional Guarantees forms an integral part of the Framework Agreement and of every call-off contract placed thereunder

3. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:
The Sanitary Ware Sets are installed by the housing contractors in accordance with the manufacturer's installation instructions and the relevant BS and KS codes of practice, and are used and maintained in accordance with the care instructions supplied.

4. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees that each Sanitary Ware Set shall meet the following functional requirements:

4.1. WC suites: complete and effective flushing at the rated flush volumes, with no leakage from cistern fittings;
4.2. Washbasins, sinks and taps: leak-free operation of taps, wastes and traps at normal supply pressures;
4.3. Showers and urinals: leak-free operation of valves and fittings.

5. Failure in Guarantees and Liquidated Damages

Failure to meet the functional guarantees shall be remedied by replacement of the defective set or component in accordance with GCC Clause 27 (Defect Liability). No separate liquidated damages apply under this Appendix.

PERFORMANCE SECURITY FORM

OPTION 1 – Demand Bank Guarantee
[*Guarantor Form head or SWIFT identifier code*]

Beneficiary:	*[insert name and Address of Procuring Entity]*
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 Form head]*

We have been informed that (herein after called "the Applicant") has entered into Framework Agreement No. _____ dated _____with the Beneficiary, for the execution of _____ (herein after called "the Framework Agreement").

Furthermore, we understand that, according to the conditions of the Framework Agreement, a performance guarantee 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 _____ (_____)[1],such sum being payable in the types and proportions of currencies in which the Framework Agreement 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 Framework Agreement, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified there in.

This guarantee shall be reduced by half upon our receipt of:

a) A copy of the Operational Acceptance Certificate; or

b) a registered Form from the Applicant (i) attaching a copy of its notice requesting issuance of the Operational Acceptance Certificate and (ii) stating that the Project Manager has failed to issue such Certificate within the time required or provide in writing justifiable reasons why such Certificate has not been issued, so that Operational Acceptance is deemed to have occurred.

This guarantee shall expire no later than the earlier of: [2]

a) twelve months after our receipt of either (a) or (b) above; or

b) eighteen months after our receipt of:
   i. a copy of the Completion Certificate; or

   ii. a registered Form from the Applicant, attaching a copy of the notice to the Project Manager that the Facilities are ready for commissioning, and stating that fourteen days have elapsed from receipt of such notice (or seven days have elapsed if the notice was a repeated notice) and the Project Manager has failed to issue a Completion Certificate or in form the Applicant in writing of any defects or deficiencies; or

   iii. a registered Form from the Applicant stating that no Completion Certificate has been issued but the Procuring Entity is making use of the Facilities; or

c) the _____ day of _____, 2_____ .[3]

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, except that the supporting statement under Article15 (a) is hereby excluded.

Signature(s) _____

[1]The Guarantor shall insert an amount representing the percentage of the Framework Agreement Price specified in the Framework Agreement and denominated either in the currency(ies) of the Framework Agreement or a freely convertible currency acceptable to the Procuring Entity.

[2]This text shall be revised as and where necessary to take into account (i) partial acceptance of the Facilities in accordance with Sub-Clause 25.4 of the GCC; and (ii) extension of the Performance Security when the Contractor is liable for an extended warranty obligation pursuant to Sub-Clause 27.10 of the GCC (although in this latter case the Procuring Entity might want to consider an extended warranty security in lieu of the extension of the Performance Security).

[3]Insert the date twenty-eight days after the expected expiration date of the Defect Liability Period. The Procuring Entity should note that in the event of an extension of the time for completion of the Framework Agreement, the Procuring Entity 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 Procuring Entity might consider adding the following text to the form, at the end of the pen ultimate 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 Procuring Entity's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

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

PERFORMANCE SECURITY OPTION 2 – (Performance Bond)

[*Note: Procuring Entities are advised to use Performance Security–Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action*]

[Guarantor Form head or SWIFT identifier code]

Beneficiary:	*[insert name and Address of Procuring Entity]*
Date:	*[Insert date of issue]*
Performance Bond No.:	
Guarantor:	*[Insert name and address of place of issue, unless indicated in the Form head]*

1. By this Bond _____ as Principal (herein after called "the Contractor") and _____ as Surety (herein after called "the Surety"), are held and firmly bound unto _____ as Obliged (herein after called "the Procuring Entity") in the amount of _____ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Contractor has entered in to a written Agreement with the Procuring Entity dated the _____ day of _____,20____, for _____ in accordance with the documents, plans, specifications, and amendments there to, which to the extent herein provided for, are by reference m a depart here of and are herein after referred to as the Contract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments there to), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default, or shall promptly:

   a) Complete the Contract in accordance with its terms and conditions; or

   b) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable here under, the amount set for thin the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or

   c) Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named here in or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____ day of _____,20____.

Signed by, for and on behalf of the Procuring Entity
.....[Signature]
.....[Title]

in the presence of

.....[Signature]
.....[Title]

Signed by, for and on behalf of the Contractor
.....[Signature]
.....[Title]

in the presence of

.....[Signature]
.....[Title]

ADVANCE PAYMENT SECURITY – Demand Bank Guarantee

[Guarantor Form head or SWIFT identifier code]

Beneficiary:	*[Name and Address of Procuring Entity]*
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 Form head]*

We have been informed that (herein after called "the Applicant") has entered into Framework Agreement No. _____ dated _____with the Beneficiary, for the execution of, _____ (herein after called "the Framework Agreement").

Furthermore, we understand that, according to the Conditions of the Framework Agreement, an advance payment in the sum(_____) 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 (_____)[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 either that the applicant:

a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Facilities; or

b) has failed to repay the advance payment in accordance with the Framework Agreement 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 _____.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant 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 documentation indicating full repayment by the Applicant of the amount of the advance 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 (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 amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Framework Agreement, or in a freely convertible currency acceptable to the Procuring Entity.*

[2]*Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Framework Agreement, the Procuring Entity 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 Procuring Entity 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."*

BENEFICIAL OWNERSHIP DISCLOSURE FORM

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer, pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.

Tender Reference No.:	*[insert identification no]*
Name of the Tender Title/Description:	*[insert name of the assignment]*
to:	*[insert complete name of Procuring Entity]*

In response to the requirement in your notification of award dated _____ [*insert date of notification of award*] to furnish additional information on beneficial ownership: _____ [*select one option as applicable and delete the options that are not applicable*]

I. We hereby provide the following beneficial ownership information.

Details of Beneficial Ownership

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights, a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
1.	**Full Name**		Directly---------- % of shares Indirectly---------- % of shares	Directly……. % of voting rights Indirectly----------% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No---- 2. Is this right held directly or indirectly?: Direct…… Indirect……..	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes -----No---- 2. Is this influence or control exercised directly or indirectly? Direct…….. Indirect……
	National identity card number or Passport number					
	Personal Identification Number (where applicable)					
	Nationality					
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential address					
	Telephone number					
	Email address					

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights, a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
	Occupation or profession					
2.	**Full Name**		Directly---------- % of shares Indirectly---------- % of shares	Directly……. % of voting rights Indirectly----------% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No---- 2. Is this right held directly or indirectly?: Direct…… Indirect……..	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes -----No---- 2. Is this influence or control exercised directly or indirectly? Direct…….. Indirect……
	National identity card number or Passport number					
	Personal Identification Number (where applicable)					
	Nationality(ies)					
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					
3. etc.						

II. Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to Framework Agreement awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.

III. In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

a) holds at least ten percent of the issued shares in the company either directly or indirectly;
b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
d) exercises significant influence or control, directly or indirectly, over the company.

IV. What is stated to herein above is true to the best of my knowledge, information and belief.

Name of the Tenderer: ***.....*[insert complete name of the Tenderer]***

Name of the person duly authorized to sign the Tender on behalf of the Tenderer:	..... ** *[insert complete name of person duly authorized to sign the Tender]*
Designation of the person signing the Tender:	..... *[insert complete title of the person signing the Tender]*
Signature of the person named above:	..... *[insert signature of person whose name and capacity are shown above]*

Date this ..... [*insert date of signing*] day of..... [*Insert month*], [*insert year*]

Bidder Official Stamp



ITEM	DESCRIPTION	UNIT	QTY	RATE (KES)	AMOUNT (KES)
	PRELIMINARIES				
1.00	**PRELIMINARIES & CONDITIONS OF CONTRACT**				
1.01	Allow for co-ordination of deliveries with the Project Manager and the housing contractors at each site	Item	1		
1.02	Allow for submission of samples, product catalogues and data sheets of all items for approval before the first delivery Note: Bidder should confirm the delivery conditions for each site before submission.	Item	1		
1.03	Allow for on-site visits to the bidder's company premises / factory for thorough due diligence for 5 No. of persons to visit the manufacturing factory [for three (3) working days excluding Travelling days] to verify the Sanitary Ware specifications manufacturing factory capacity and quality of products before award of the contract is given: The cost of the visit to include: i) Visa processing fees ii) Return air-tickets to and from the factory iii) Any transfer fees iv)Local transport both in the city of departure and destination v) Accommodation for at a hotel/resort not less than 4 stars in rating vi) An allowance (In line with GOK Guidelines) to each member of the team	Item	1		
1.04	To ensure the equipment are provided to specifications, allow for factory visit for 5 No. of persons to visit the manufacturing factory [for three (3) working days excluding Travelling days] to verify the Sanitary Ware specifications and witness all the relevant factory tests before approval of shipping is given: The cost of the visit to include: i) Visa processing fees ii) Return air-tickets to and from the factory iii) Any transfer fees iv)Local transport both in the city of departure and destination v) Accommodation for at a hotel/resort not less than 4 stars in rating vi) An allowance (In line with GOK Guidelines) to each member of the team	Item	1		
1.05	Allow for factory test certificates, certificates of conformity and KEBS / PVoC certification for each consignment	Item	1		
1.06	Allow for installation and care instructions (English and Kiswahili) supplied with each consignment	Item	1		
1.07	Allow for transport, insurance, off-loading and safe storage of the	Item	1		
1.08	Allow for all the preliminaries relating to this contract as specified	Item	1		
1.10	**Preliminaries: Sub Total (VAT Inclusive)**				
	Preliminaries (Item 1.10): To Main Summary Page				

ITEM	DESCRIPTION	UNIT	QTY	RATE (KES)	AMOUNT (KES)
	SANITARY FITTINGS AND ACCESSORIES SUPPLY ONLY				
2.000	**SITES: All AHP project sites, as allocated by call-off**				
2.100	**Category 1: Residential & Social Amenities**				
	Water Closet (WC) Pan				
2.101	Close Coupled dual flush Floor Standing WC Bowl complete with seat cover and cistern, Angle Valve, WC connector relevant fittings & accessories	No.	180000		
	Asian WC				
2.102	Squat pan for recessed or inset mounting, stainless steel, surface satin finished, material thickness 1.2 mm, DN 100 waste, drainage into ground, slip resistant patterned foot areas, suitable for recessed flushing systems like direct flushing, infrared/piezo flushing or cisterns. Squat pan edges bent up. Spreader: 50mm Diameter Button Spreader to fit a High Level	No.	511		
	Wash Basin				
2.103	Full pedestal Wash Basin 450x485x230mm White Complete with Cold Water Supply Only Faucet, bottle trap, flexible connection hoses, Angle Valve and other relevant accessories	No.	177233		
	Wash Basin - Counter Sunk				
2.104	Counter Sunk Wash Basin 450x485x230mm White Complete with Cold Water Supply Only Faucet, bottle trap, flexible connection hoses, Angle Valve and other relevant accessories	Set	705		
	Shower Fittings				
2.105	Shower fitting c/w 15mm diameter chrome plated stop cock, Instant shower fitting and 1/2" Cobra 211- 15 Star Pillar tap	No.	177500		
	Bathroom Accessories				
2.106	Medium Washroom bathroom set Consisting of Toilet roll holder, soap dish holder, brush holder and Coat Hook	Set	177500		
	Kitchen Sink				
2.107	Stainless Steel Kitchen sink single bowl, single drain, complete with Long Neck Wall type Bib Tap overflow and 40mm diameter plastic tubular p-trap PVC Bottle Trap and waste 1.5in	No.	140719		
	Kitchen Sink - Double Bowl				
2.108	Stainless steel kitchen sink double bowl, double drain, complete with Long Neck Wall type Bib Tap overflow and 40mm diameter plastic tubular p-trap PVC Bottle Trap and waste 1.5in	No.	105		
	Fire Blanket				
2.109	Supply of a fire blanket dim (1.2 x 1.2m)	No.	140824		
	TO NEXT PAGE				

ITEM	DESCRIPTION	UNIT	QTY	RATE (KES)	AMOUNT (KES)
	Balance Brought Forward				
	Disabled Water Closet (WC) Pan				

2.110	Physically challenged set as Doc M Cont close coupled right hand corner pack, WC pan, Wash basin, water saving delay fill cistern with spatula lever, grab rails, hinged support rail with toilet roll holder, seat no cover with retaining buffers, copper tails on a mixer tap	No.	2423		
	Urinal				
2.111	Urinal bowl in white colour of size 450 x 685mm with built in spreader and concealed waste trap complete with stainless steel fixing bolts and caps. Complete with exposed Flush Valve	No.	1042		
	Mirror				
2.112	600x800mm bevelled wall mirror on foam and 6mm plywood timber backing fixed above wash hand basins or equal and approved	No.	177938		
	Bib Tap Splash Area				
2.113	Long Neck Wall type Bib Tap complete with relevant fittings & Accessories	No.	50000		
	Dhobi Sink				
2.114	Concrete Dhobi Sink, PVC Bottle Trap and waste 1.5in x 40, Long Neck Wall type Bib Tap	No.	712		
	TO MAIN SUMMARY PAGE				

ITEM	DESCRIPTION	UNIT	QTY	RATE (KES)	AMOUNT (KES)
	SANITARY FITTINGS AND ACCESSORIES SUPPLY ONLY				
	SITES: All AHP project sites, as allocated by call-off				
2.200	**Category 2: Hospital / Dispensary**				
	Water Closet (WC) Pan				
2.201	Close Coupled dual flush Floor Standing WC Bowl complete with seat cover and cistern, Angle Valve, WC connector relevant fittings & accessories	No.	100		
	Asian WC				
2.202	Squat pan for recessed or inset mounting, stainless steel, surface satin finished, material thickness 1.2 mm, DN 100 waste, drainage into ground, slip resistant patterned foot areas, suitable for recessed flushing systems like direct flushing, infrared/piezo flushing or cisterns. Squat pan edges bent up. Spreader: 50mm Diameter Button Spreader to fit a High Level	No.	143		
	Wash Basin - Full Pedestal				
2.203	WHB basin Full pedestal Wash Basin 450x485x230mm White Complete with Cold & Hot Water Supply Mixer, Faucet, bottle trap, flexible connection hoses, Angle Valve and other relevant accessories	No.	97		
	Wash Basin - Counter Sunk				
2.204	Counter Sunk Wash Basin 450x485x230mm White Complete with Cold & Hot Water Supply Mixer, Faucet, bottle trap, flexible connection hoses, Angle Valve and other relevant accessories	Set	146		
	Shattaf Set				
2.205	Handheld Bidet Health Spray with Anti-leaking Hose and fixing accessories - 304 Stainless Steel Material	No.	243		
	Urinal				
2.206	Urinal bowl in white colour of size 450 x 685mm with built in spreader and concealed waste trap complete with stainless steel fixing bolts and caps. Complete with exposed Flush Valve	No.	84		
	Toilet paper dispenser				
2.207	Stainless Steel Toilet Paper Dispenser satin finish or equal and approved.	No.	243		
	Toilet Brush and Holder				
2.208	Stainless Steel Toilet brush and holders	No.	243		
	Paper Towel Dispenser				
2.209	Stainless Steel Paper Towel Dispenser satin finish or equal and approved.	No.	194		
	Soap dispenser				
2.210	Metallic Bottle Liquid Soap dispenser or equal and approved.	No.	415		
	TO MAIN SUMMARY PAGE				

ITEM	DESCRIPTION	UNIT	QTY	RATE (KES)	AMOUNT (KES)
	SANITARY FITTINGS AND ACCESSORIES SUPPLY ONLY				
	Category 2				
	Balance Brought Forward				
	Coat Hook				
2.211	Stainless Steel Coat Hook	No.	243		
	Cleaner's Sink				
2.212	General purpose sink for wall mounting, stainless steel, surface satin finished, material thickness 1.2 mm, seamless welded bowl with dimensions 420x400x170 mm, rounded edges, 1 1/2" plug waste, drainage back right, 40 mm rear upstand, incl	No.	37		
	Lab Sink				
2.213	Single bowl single drainer sit on sinks with radiused front edge, manufactured from 1.2mm thick, grade 1.4301 (304) stainless steel, satin polish finish. Sink profile incorporates a radiused front edge together with a radiused internal corner at the base of the upstand. Sink bowls are prepared for a 38mm waste outlet which can be supplied as an extra. L or R after the code numbers refers to the handing of the drainer ie. left or right	No.	36		
	Lab Sink Tap				
2.214	Lab sink tap to be an elbow type action basin mixer 1/2" Flexible Tubes	Set	36		
	Disabled Water Closet (WC) Pan				
2.215	Physically challenged set as Doc M Cont close coupled right hand corner pack, WC pan, Wash basin, water saving delay fill cistern with spatula lever, grab rails, hinged support rail with toilet roll holder, seat no cover with retaining buffers, copper tails on a mixer tap	No.	50		
	Shower Fittings				
2.216	Shower fitting c/w 15mm diameter chrome plated stop cock, Instant shower fitting and 1/2" Cobra 211- 15 Star Pillar tap	No.	100		
	Mirror				
2.217	600x800mm bevelled wall mirror on foam and 6mm plywood timber backing fixed above wash hand basins or equal and approved	No.	243		
	TO MAIN SUMMARY PAGE				

ITEM	DESCRIPTION	UNIT	QTY	RATE (KES)	AMOUNT (KES)
	SANITARY FITTINGS AND ACCESSORIES SUPPLY ONLY **Category 2** *Balance Brought Forward*				
2.218	**Dirty Utility /Sluice Sink** Sluice Sink wall hung disposal unit manufactured from 1.2mm thick, grade 1.4301 (304) stainless steel with satin polish finish. Incorporating a sluice hopper with a back inlet suitable for duct mounted services. The hopper has a 110mm dia. outlet which can accept a P trap, to be included. Plastic cistern with plastic downpipe should be included. Plastic cistern have a 9 litre capacity and are fitted with 13mm HP brass valve, plastic float and CP metal flushing lever handles. The unit should only be fed from a cistern or tank water supply. The unit is fixed to the wall using two cantilevered brackets, which should be included. Complete with wall fixings. Manufactured in accordance with the old HTM64 standard and the Health Building Notes 00-10, part C or equal and approved.	No.	45		
2.219	**Angle Valve** Angle Valve with extension 1/2" x 3/8" with Wall Flange or equal and approved.	No.	176		
	TO MAIN SUMMARY PAGE				

ITEM	DESCRIPTION	UNIT	QTY	RATE (KES)	AMOUNT (KES)
	SUMMARY PAGE				
2.100	Category 1: Sanitary Ware Supply	Item	1		
2.200	Category 2: Sanitary Ware Supply	Item	1		
	Sub-Total (V.A.T Incl)				
2.300	**Sanitary Ware: Sub Totals For Sanitary Ware Supply**				
	Sanitary Ware: (Item 2.3) To Main Summary Page				

ITEM	DESCRIPTION	Type	AMOUNT (KES)
	MAIN SUMMARY PAGE		
1.00	**Preliminaries (Item 1.10) Carried Forward from Bill No. 1**	**Preliminaries Set**	
2.00	**Sanitary Ware Supply (Item 2.3) Carried Forward from Bill No. 2**	**Sanitary Ware**	
	Total Tender Sum V.A.T. Inclusive		

Amount in Words: Kenya Shillings.....
.....
.....
.....
Official Stamp & Address:.....
.....
.....
.....
Tenderer's Signature:.....Date:.....

Witness' Name:.....Witness' Signature:.....