

## **Section VIII. Particular Conditions**

| <b>Particular Conditions</b> |  |
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| <b>GC 1.1.2.2</b>            | The Employer is: <b>Kenya Power and Lighting Company Limited</b>   |
| <b>GC 1.1.2.4</b>            | The Project Manager is:<br><b>Joseph Gathuru</b><br><b>P.O BOX 30099, 00100</b><br><b>2<sup>nd</sup> FLOOR, STIMA SACCO INVESTMENT PLAZA.</b><br><b>NAIROBI</b><br><b>KENYA</b><br><b>Tel: +254-20-3201980</b><br><b>Fax: +254-20-3514485/3751225</b><br><b>E-Mail: <a href="mailto:jgathuru@kplc.co.ke">jgathuru@kplc.co.ke</a></b>   |
| <b>GC 1.1.2.7</b>            | The DB shall be of three members<br><br>Name of DB member(s):<br><br><b>NAME: Peter Fraser Scott R .Eng. M.I.C.Arb. - MEMBER</b><br>PROFESSION: Civil Engineering<br><u>1 EDUCATION AND MEMBERSHIP:</u><br>Hendon College, Middlesex University, 1963 to 1965 – (Business Studies)<br>Enfield college, Middlesex University, 1965 to 1968 – (Civil Engineering)<br>Registered Engineer (Kenya)<br>Registered Consulting engineer (Kenya)<br>Chartered Engineer (U.K.)<br>Member of the Institution of Engineers of Kenya ,<br>Member of the Institution of Civil Engineers, U.K.<br>Member of the Institution of Highways and Transportation, U.K.<br>Member of the Chartered Institute of Arbitrators.<br>Member of the Kenya Association of Consulting Engineers<br><br>(2) <b>NAME: Joseph Theophil Thuo - FELLOW</b><br><br>PROFESSION: BSc. Eng, M.I.E.K; M.A.A.K; FCIArb<br>Consulting Engineer and Arbitrator<br><br><u>EDUCATION AND MEMBERSHIP:</u><br><br>M.I.E.K. Registered Engineer, M.A.A.K, FCIArb<br>NB:- The hourly fee for the Adjudicators<br>Fellow – Ksh.10,000 Member – Ksh. 7,500 |
| <b>GC 1.1.2.8</b>            | The Bank is: <b>African Development Fund</b>   |
| <b>GC 1.1.2.9</b>            | The Borrower is: <b>THE GOVERNMENT OF KENYA</b>  |
| <b>GC 1.1.6.6</b>            | The Site is: <b>Various sites according to the lots</b>  |

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| <b>GC 1.3.1.(a)</b>  | The means of communication shall be:<br><br><b>In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using Electronic Mail</b>  |
| <b>GC 1.3.1.(b)</b>  | The Employer's address for the purpose of communications is:<br>Attention: <b>Project Manager, Last Mile Connectivity Project</b><br>Street Address: <b>PO BOX 30099,</b><br>Floor/Room number: <b>2<sup>nd</sup> FLOOR, STIMA SACCO INVESTMENT PLAZA.</b><br>City: <b>NAIROBI</b><br>Code: <b>00100</b><br>Country: <b>KENYA</b><br>Telephone: <b>+254-20-3201980</b><br>Facsimile number: <b>+254-20-3514485/3751225</b><br>Electronic mail address: <b>jgathuru@kplc.co.ke</b><br>Requests for clarifications should be received by the Purchaser no later than <b>28 days</b> , prior to the deadline for submission of Bids. |
| <b>GC 1.4.1</b>      | The governing law is that of: <b>Laws of Kenya.</b><br><br>The ruling language is: <b>English.</b>  |
| <b>GC 1.6.1</b>      | Deadline for entering into a Contract: <b>"no change"</b>   |
| <b>GC 1.11.2.(a)</b> | The permits, approvals and/or licenses, to be acquired and paid for by the Employer are: <b>The employer will acquire and pay for WAYLEAVES only. Others shall be met by the contractor.</b>  |
| <b>GC 1.11.2.(b)</b> | The other permits, approvals and/or licenses, to be acquired by the Contractor, that are not the responsibility of the Employer under GC Clause 1.11.2(a) are: <b>Fees for work permits, and all other approval by authorities other than that of wayleaves</b>   |
| <b>GC 1.12.1</b>     | The individuals or firms in a joint venture, consortium or association <b>"shall"</b> jointly and severally liable.   |
| <b>GC 2.1</b>        | <b>Scope of Facilities</b>  |
| <b>GC 2.1.3</b>      | The spare parts required for the operation and maintenance of the Facilities, the period, and the provisions shall be: <b>"not applicable"</b>  |
| <b>GC 2.2</b>        | <b>Time for Commencement and Completion is 18 months</b>  |

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| <b>GC 2.2.2</b> | The Time for Completion of the whole of the Facilities shall be <b>eighteen(18) months</b> from the Effective Date as described in the Contract Agreement  |
| <b>GC 2.3</b>   | <b>Contractor's Responsibilities</b>   |
| <b>GC 2.3.7</b> | The individuals or firms in a joint venture, consortium, or association (JVCA) <b>shall be</b> jointly and severally liable.   |
| <b>GC 3.1</b>   | <b>Contract Price</b>  |
| <b>GC 3.1.2</b> | N/A  |
| <b>GC 3.3</b>   | <b>Securities</b>  |
| <b>GC 3.3.3</b> | The amount of performance security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: <b>ten percent (10%)</b> ]  |
| <b>GC 3.3.4</b> | <b>Sample Clause</b><br>The performance security shall be in the form of "Bank Guarantee" furnished in Section IX, Contract Forms.   |
| <b>GC 3.3.5</b> | <b>GC 3.3.5</b> The performance security shall be reduced to ten percent (10%) of the value of the component covered by the extended defect liability to cover the Contractor's extended defect liability in accordance with the provision in the <b>PC</b> , pursuant to <b>GC</b> Clause 5.2.10. |

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| GC 3.4.2      | <p>All plant and equipment (including Mandatory Spare Parts) supplied from outside the Republic of Kenya and to be used for this project will be exempted from import duties and VAT.</p> <p>Import duties and taxes for Contractors equipment and machinery<br/> For contractor's equipment and machinery imported on temporary basis for the execution of the contract, the contractor is liable for payment of duties/taxes on importation, however the contractor in collaboration with the Employer will request temporary importation approval from Kenya Revenue Authority whereby the duties/taxes will not be paid if the imported materials are re-exported within the granted allowed period.<br/> Accordingly, the contractor will be liable for payment of taxes for consumable items and spare parts of its own machineries.</p> <p>On completion of the project, if the contractor decides to dispose materials imported under temporary regime, the buyer will be required to settle the tax dues for the disposed materials.</p> <p>The project will be exempted from value added tax (VAT) duties for all Plant, machinery (including Mandatory Spare Parts) and materials supplied from within the Republic of Kenya.</p> <p>The contractor shall prepare a master list for application of the exemptions by the Employer.</p> <p>Withholding Tax</p> <p>The Contractor/subcontractors shall be liable for withholding tax as applicable in Kenya.</p> <p>Railway Development Levy</p> <p>A Railway Development Levy shall be applicable at 1.5% of the value of the imported goods. This shall be included in the quoted price. (indicate in the bid as separate price)</p> <p>Contractor/subcontractor shall indemnify and hold Employer free from any liability on account of all taxes such as payroll taxes and corporate tax in connection with the provision of the Services during execution of the project</p> |
| <b>GC 4.6</b> | <b>Installation</b>  |

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| <b>GC 4.6.7</b>  | Working Hours<br>Normal working hours are:8:00AM to 5:00PM from Monday To Friday and 8:00AM to 1:00PM on Saturdays. Sundays and Public Holidays are NOT working days.   |
| <b>GC 4.6.10</b> | Funeral Arrangements<br>“No Change”   |
| <b>GC 4.9</b>    | <b>Commissioning and Operational Acceptance</b>   |
| <b>GC 4.9.5</b>  | The Guarantee Test of the Facilities shall be successfully completed within <b>twenty eight (28)</b> days from the date of Completion.  |
| <b>GC 5.1</b>    | <b>Completion Time Guarantee</b>  |
| <b>GC 5.1.2</b>  | Applicable rate for liquidated damages: <i>0.5 % per week of delay</i><br>The above rate applies to the price of the part of the Facilities, as quoted in the Price Schedule, for that part for which the Contractor fails to achieve Completion within the particular Time for Completion.<br>Maximum deduction for liquidated damages: <i>10% of the contract price</i> |
| <b>GC 5.1.3</b>  | <b>GC 5.1.3</b> No bonus will be given for earlier Completion of the Facilities or part thereof.  |
| <b>GC 5.2</b>    | <b>Defect Liability</b>   |
| <b>GC 5.2.2</b>  | <b>GC 5.2.2</b> The critical components covered under the extended defect liability are and the period shall be [ <b>one (1)</b> ] years.   |
| <b>GC 5.2.10</b> | Not Applicable-NONE   |
| <b>GC 5.5</b>    | <b>Limitation of Liability</b>  |
| <b>GC 5.5.1</b>  | <b>GC 5.5.1 (b)</b> The multiplier of the Contract Price is: (one)1   |
| <b>GC 8.2</b>    | <b>Disputes and Arbitration</b>   |

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| <p><b>GC 8.2.1</b></p> | <p><b>GC 8.2.1</b> The DB shall be appointed within 28 days after the Effective Date.</p> <p><b>GC 8.2.1</b> The DB shall be of three members</p> <p><b>GC 8.2.1</b> List of potential DB members is:<br/> <b>NAME: Peter Fraser Scott R.Eng. M.I.C.Arb. - MEMBER</b></p> <p>PROFESSION: Civil Engineering<br/> <u>1 EDUCATION AND MEMBERSHIP:</u><br/> Hendon College, Middlesex University, 1963 to 1965 – (Business Studies)<br/> Enfield college, Middlesex University, 1965 to 1968 – (Civil Engineering)<br/> Registered Engineer (Kenya)<br/> Registered Consulting engineer (Kenya)<br/> Chartered Engineer (U.K.)<br/> Member of the Institution of Engineers of Kenya ,<br/> Member of the Institution of Civil Engineers, U.K.<br/> Member of the Institution of Highways and Transportation, U.K.<br/> Member of the Chartered Institute of Arbitrators.<br/> Member of the Kenya Association of Consulting Engineers</p> <p>(3) <b>NAME: Joseph Theophil Thuo - FELLOW</b></p> <p>PROFESSION: BSc. Eng, M.I.E.K; M.A.A.K; FCIArb<br/> Consulting Engineer and Arbitrator</p> <p><u>EDUCATION AND MEMBERSHIP:</u></p> <p>M.I.E.K. Registered Engineer, M.A.A.K, FCIArb<br/> NB:- The hourly fee for the Adjudicators<br/> Fellow – Ksh.10,000 Member – Ksh. 7,500</p> |
| <p><b>GC 8.2.2</b></p> | <p>Appointment (if not agreed) to be made by: FIDIC – Federation International Ingenievis – Conseils</p>  |
| <p><b>GC 8.2.5</b></p> | <p>Procedure to settle disputes in respect of DB’s decisions:</p> <p>(a) Appointed arbitration institution: [</p>   |