

Form of Contract

This AGREEMENT (hereinafter called the "Contract") is made on this 15 day of December, 2021

BETWEEN

The Ministry of Health, Social Welfare, Elderly, Gender and Children, having its principal office at Vuga of P.O.BOX 236, Zanzibar (hereinafter called "the Employer") of one part,

AND

BENCHMARK ENGINEERING COMPANY LIMITED a Company incorporated in Zanzibar under Registration No. F22852011 having principal place of business at MAGOMENI ZANZIBAR, whose address is P.O.BOX 908, Zanzibar, Tanzania (hereinafter called "the Contractor") of the other part.

WHEREAS, the Employer is desirous to engage the Contractor to execute the Construction of the District Hospital at MICHEWENI in MCHEIWENI District, Pemba [(hereinafter called "the Works")]

AND WHEREAS, the Contractor has accepted the Work agreed with Employer for the execution and the remedying of any defects therein in the **Sum Of Tanzania Shillings Four Billion Eight Hundred Millions Two Hundred And Twelve Thousands One Hundred And Six One And Eight Cents (4,800,212,161.80 =) VAT INCLUSIVE** (hereinafter called "Contract Price").

NOW THEREFORE, The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to which form integral part of this Contract.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - (a) This Form of Contract;
 - (b) The Letter of Notification of Award;
 - (c) The Letter of Acceptance;
 - (d) The Contractor Bid;
 - (e) The Letter for corrected Bid price and Confirmation letter;
 - (f) Minutes of Negotiation;
 - (g) The General Conditions of Contract, including Appendices;
 - (h) The Special Conditions of Contract;
 - (i) The Specifications;
 - (j) The Drawings;
 - (k) Bill of Quantity (BOQ);
 - (l) The Anti-Bribery Policy.
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy defects therein in conformity in all respects with the provisions of the Contract.

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4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein the sum of Tanzania Shillings sum of Tanzania Shillings *Four Billion Eight Hundred Millions Two Hundred And Twelve Thousands One Hundred And Six One And Eight Cents (4,800,212,161.80/-) VAT INCLUSIVE* as the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

These payments shall be done through Bank Account as follows:

Name of the Bank: PBB ISLAMIC
Account number: 0711085000
Account name: BENCHMARK ENGINEERING CO. LTD
Branch name: LUMUMISA
Swift code: PBZATZTZ

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

For and on behalf of the EMPLOYER

Witness prepared by the EMPLOYER

Signature Amisho

Signature [Signature]

Name DR FATMA H. MRISHO

Name SHUPA NASSOR ALI

Title PS HEALTH ZANZIBAR

Title STATE ATTORNEY



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For and on behalf of the CONTRACTOR Witness prepared by the CONTRACTOR

Signature *[Handwritten Signature]*

Signature *[Handwritten Signature]*

Name *SHIKHAN SULEMAN MURAD*

Name *RASHID ALI MURAD*

Title *TECH. DIRECTOR*

Title *Asst. Director*

OFFICIAL STAMP

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SECTION VI: GENERAL CONDITIONS OF CONTRACT

A. General

These General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, constitute a complete document expressing the rights and obligations of the parties.

These GCC can be used for both smaller measurement contracts and lump sum contracts.

1. Definitions

1.1 The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance.

The **Arbitrator** is the person appointed to resolve contractual disputes, and as provided for in **GCC 27** and **28** hereunder.

Bill of Quantities -means the priced and completed Bill of Quantities forming part of the Bid.

Compensation Events are those defined in Clause 47 hereunder.

The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with sub-Clause 58.1.

The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The **Contractor** is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer.

The **Contractor's Bid** is the completed Bid document submitted by the Contractor to the Employer.

The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Days are calendar days; months are calendar months.

Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

A **Defect** is any part of the Works not completed in accordance with the Contract.

The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the

Contractor.

The **Defects Liability Period** is the period named in the **Special Conditions of Contract** and calculated from the Completion Date.

Drawings means the drawings of the works, as included in the contract and any additional or modified drawings issued by (or on behalf of) the Employer in accordance with the contract.

The **Employer** is the party who employs the Contractor to carry out the Works.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the **Special Conditions of Contract**. Only the Project Manager, upon consultation with Employer, may revise the Intended Completion Date by issuing an extension of time or an acceleration order.

The **Intended Commencement Date** is the date on which it is intended that the Contractor shall start the Works. The Intended Commencement date is specified in the **Special Conditions of Contract**. Only the Project Manager, in consultation with the Employer, may revise the intended commencement date by issuing an extension of time.

Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.

Plant is any integral part of the Works that shall have a mechanical electrical, chemical, or biological function.

The **Project Manager** is the person named in the **Special Conditions of Contract** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

The **Site** is the area defined as such in the **Special Conditions of Contract**.

Site Investigation Reports are those that were included in the Bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the

Site.

Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

The **Start Date** is given in the **Special Conditions of Contract**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

A **Variation** is an instruction given by the Project Manager that varies the Works.

“**Force Majeure**” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the **Special Conditions of Contract**.

2. Interpretation

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the **Special Conditions of Contract**, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
 - (1) Agreement,
 - (2) Letter of Acceptance,

- (3) Contractor's Bid,
 - (4) Special Conditions of Contract,
 - (5) General Conditions of Contract,
 - (6) Specifications,
 - (7) Drawings,
 - (8) Bill of Quantities, and
 - (9) Any other document listed in the **Special Conditions of Contract** as forming part of the Contract.
3. **Language and Law** 3.1 The language of the Contract and the law governing the Contract are stated in the **Special Conditions of Contract**.
4. **Confidentiality** 4.1 The Contractor, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.
5. **Project Manager's Decisions** 5.1 Except where otherwise specifically stated, the Project Manager after consulting the Employer will decide contractual matters between the Employer and the Contractor in the role representing the Employer.
6. **Delegation** 6.1 The Project Manager, upon prior written consent to the Employer, may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
7. **Communications** 7.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
8. **Subcontracting** 8.1 Subject to the Consultation with the Employer, the Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
9. **Other Contractors** 9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the **Special Conditions of Contract**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
10. **Personnel** 10.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the **Special Conditions of Contract**, to carry out the functions stated in the Schedule or other personnel approved by the Project

Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

10. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within the period given by Project Manager and has no further connection with the work in the Contract.
- 11. Employers and Contractor's Risks**
11. The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks
- 12. Employers Risks**
12. From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
 - (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:
 - (i) Negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
 - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war, radioactive contamination or any other disaster that directly affecting the country where the Works are to be executed.
 12. From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to:
 - (a) a defect which existed on the Completion Date,
 - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
 - (c) the activities of the Contractor on the Site after the Completion Date.
- 13. Contractor's Risks**
13. From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment), which are not Employer's risks, are

Contractor's risks.

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The use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works.

14. Insurance

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

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

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

14. If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

14. Alterations to the terms of insurance shall not be made without the approval of the Project Manager.

14. Both parties shall comply with any conditions of the insurance policies.

15. Site Investigation Reports

15. The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the **Special Conditions of Contract**, supplemented by any information available to the Bidder.

16. Queries about the Special Conditions of

16. The Project Manager will clarify queries on the **Special Conditions of Contract**.

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| 17. Contractor to Construct the Works | 17. 1 | The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. |
| 18. Commencement and Completion of Works | 18. 1 | The Contractor is expected to commence execution of the Works by the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date. |
| 19. Approval by the Project Manager | 19. 1 | The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings. |
| | 19. 2 | The Contractor shall be responsible for design of Temporary Works. |
| | 19. 3 | The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works. |
| | 19. 4 | The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required. |
| | 19. 5 | All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use. |
| 20. Protection of the environment | 20. 1 | The Contractor shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. |
| | 20. 2 | The Contractor shall ensure that emissions, surface discharges and effluent from his activities shall not exceed values prescribed in relevant environmental laws. |
| 21. Labour Laws | 21. 1 | The Contractor shall comply with all the relevant labour laws applicable in Zanzibar, including laws relating to workers employment, working hours, health, safety, welfare, immigration and shall allow them all their legal rights. |
| | 21. 2 | The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work. |
| 22. Health and Safety | 22. 1 | The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel. |
| | 22. 2 | The Contractor shall provide the first aid facilities that are available at all times at the site and that suitable |

- 2 arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics
22. The Contractor shall notify the Employer details of any
3 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 the property, as the Employer may reasonably require.
22. The Contractor shall conduct an HIV-AIDS awareness
4 programme, and shall take other such measures to reduce the risk of transfer of HIV/AIDS or any other STDs between and among Contractor's personnel, the Employers Staff and the surrounding community.
- 23. Discoveries** 23. Anything of historical or other interest or of significant
1 value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- 24 Possession of the Site** 24. The Employer shall give possession of all parts of the Site
1 to the Contractor. If possession of a part is not given by the date stated in the **Special Conditions of Contract**, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
- 25 Access to the Site** 25. The Contractor shall allow the Project Manager and any
1 person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 26. Instructions, inspections and audits** 26. The Contractor shall carry out all instructions of the Project
1 Manager, which comply with the applicable laws where the Site is located.
26. The Contractor shall permit the Government of Zanzibar to
2 inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Government of Zanzibar if so required by the Government of Zanzibar.
- 27. Disputes** 27. If the Contractor believes that a decision taken by the
1 Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Arbitrator within 14 days of the notification of the Project Manager's decision.
- 28. Procedure for Disputes** 28. The Arbitrator shall give a decision in writing within 28
1 days of receipt of a notification of a dispute.

28. The Arbitrator shall be paid by the hour at the rate specified in the **Bid Data Sheet** and **Special Conditions of Contract**, together with reimbursable expenses of the types specified in the **Special Conditions of Contract**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Arbitrator. Either party may refer a decision of the Arbitrator within 28 days to the Arbitrator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Arbitrator's decision will be final and binding.
28. The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the **Special Conditions of Contract**.
- 29 Replacement of Arbitrator**
29. Should the Arbitrator resign or die, or should the Employer and the Contractor agree that the Arbitrator is not functioning in accordance with the provisions of the Contract, a new Arbitrator will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the **Arbitrator** shall be designated by the Appointing Authority stated in the **Special Conditions of Contract** at the request of either party, within 14 days of receipt of such request.

B. Time Control

- 30 Program**
- 30.1 Within the time stated in the **Special Conditions of Contract**, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 30.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 30.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the **Special Conditions of Contract**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the **Special Conditions of Contract** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.
- 30.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor

may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

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| 31. Extension of the Intended Completion Date | 31.1 | The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost. |
| | 31.2 | The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date. |
| 32. Acceleration | 32.1 | When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor. |
| | 32.2 | If the Employer accepts the Contractor's priced proposals for acceleration, they shall be incorporated in the Contract Price and treated as a Variation. |
| 33. Delays Ordered by the Project Manager | 33.1 | The Project Manager may instruct the Contractor after communicate with the Employer, to delay the start or progress of any activity within the Works. |
| 34. Management Meetings | 34.1 | Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure. |
| | 34.2 | The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting. |
| 35. Early Warning | 35.1 | The Contractor shall warn the Project Manager at the |

earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall provide by the Contractor as soon as reasonably possible.

35.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

- 36. Identifying Defects** 36.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 37. Tests** 37.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 38. Correction of Defects** 38.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the **Special Conditions of Contract**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 38.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 39. Uncorrected Defects** 39.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

D. Cost Control

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| 40. Bill of Quantities | 40.1 | The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor. |
| | 40.2 | The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item. |
| 41. Changes in the Quantities | 41.1 | If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change not exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. |
| | 41.2 | The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer. |
| | 41.3 | If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities. |
| 42. Variations | 42.1 | All Variations shall be included in updated Programs produced by the Contractor. |
| 43. Payments for Variations | 43.1 | The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered. |
| | 43.2 | If the work in the Variation corresponds with an item description in the Bill of Quantities and if in the opinion of the Project Manager, the quantity of work above the limit stated in GCC 41 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work. |
| | 43.3 | If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation |

on the Contractor's costs.

- 43.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 43.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 44. Cash Flow Forecasts**
- 44.1 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.
- 45. Payment Certificates**
- 45.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 45.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor within twenty eight (28) days from the receipt of certificate.
- 45.3 The Project Manager shall determine the value of work executed.
- 45.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.
- 45.5 The value of work executed shall include the valuation of Variations, Compensation Events and Variation of Price if applicable.
- 45.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 45.7 The Project Manager shall not bound to certify any payment, if the net amount, after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the **Special Condition of Contract**.
- 46. Payments**
- 46.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment the Contractor shall be paid interest on the late payment. Interest shall be calculated from the date by which the payment should

have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

46.2 If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

46.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.

46.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

47. Compensation Events

47.1 The following shall be Compensation Events:

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

- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
- (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.
- (m) after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the SCC. The Project Manager shall not be bound to certify any payment.

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

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

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

48. Taxes

48.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are

not already reflected in the Contract Price.

50. Price Adjustment

- 50.1 If applicable, the amounts payable to the Contractor, in various currencies pursuant to sub-Clause 45, shall be adjusted in respect of the rise or fall in the cost of labour, Contractor's Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause.
- 50.2 To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.
- 50.3 The adjustment to be applied to amount payable to the Contractor as certified in Payment Certificates shall be determined formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be as follows;

$$P_n = a + b \frac{L_n - L_o}{L_o} + c \frac{M_n - M_o}{M_o} + d \frac{E_n - E_o}{E_o} + etc.$$

where;

P_n is a price adjustment factor to be applied to the amount in each specific currency for the payment of the work carried out in the subject month, where such variations and daywork are not otherwise subject to adjustment;

a is a constant, specified in the **Appendix to Bid**, representing the nonadjustable portion in contractual payments;

b, c, d, etc., are weightings or coefficients representing the estimated proportion of each cost element (labor, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the **Appendix to Bid**; the sum of a, b, c, d, etc., shall be one;

L_n, M_n, E_n, etc., are the current cost indices or reference prices of the cost elements in the specific currency of origin for month "**n**," determined pursuant to Sub-Clause 49.5, applicable to each cost element; and

L_o, M_o, E_o, etc., are the base cost indices or reference

prices corresponding to the above cost elements at the date specified in Sub-Clause 49.5

The value of net work done, certified by the Project Manager, in any monthly Interim or Final Certificate as payable by the Employer to the Contractor before deduction of any retention money shall be increased or decreased by an amount of 'F'.

$$F = PnXPc$$

where;

The effective value **Pc** of work done which is to be subjected to increase or decrease shall be the difference between:

- (i) the amount which, in the opinion of the Project Manager, is due to the Contractor under Clause 45 (before deduction of retention money and before deducting sums previously paid on account) less:
 - any amount for payment or repayment of any advance payment;
 - any amount for materials on site (if any);
 - any amounts for nominated sub-contractors (if any)
 - any amounts for any other items based on actual cost or current prices; or
 - any sums for increase or decreases in the Contract Price paid under this Sub-Clause

and

- (ii) the amount calculated in accordance with (i) above of this Sub-clause and included in the last preceding statement.

50.4 The sources of indices shall be those listed in the **Appendix to Bid**, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor's proposed source of supply of inputs on the basis of which his Contract Price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his bid the tabulation of Weightings and Source of Indices in the **Appendix to Bid**, which shall be subject to approval by the Engineer.

50.5 The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of bids. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the

Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available

50.6 If the Contractor fails to complete the Works within the time for completion prescribed under Clause 57 adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favorable to the Employer, provided that if an extension of time is granted pursuant to Clause 28, the above provision shall apply only to adjustments made after the expiry of such extension of time.

50.7 The weightings for each of the factors of cost given in the **Appendix to Bid** shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced, or inapplicable as a result of varied or additional work already executed or instructed under Clause 42 or for any other reason.

51. Retention

51.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the **Special Conditions of Contract** until Completion of the whole of the Works.

51.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the other half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

51.3 On completion of the whole Works, the Contractor may substitute retention money with an 'on demand" Bank guarantee.

52. Liquidated Damages

52.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the **Special Conditions of Contract** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Special Conditions of Contract. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

52.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the

date of repayment, at the rates specified in Sub- Clause 46.

- 53. Bonus** 53.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **Special Conditions of Contract** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.
- 54. Advance Payment** 54.1 The Employer shall make advance payment to the Contractor of the amounts stated in the **Special Conditions of Contract** by the date stated in the Special Conditions of Contract, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.
- 54.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, mobilization and other expenses required specifically for execution of the Contract. If required by the Employer, the Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 54.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.
- 55. Performance Securities** 55.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Employer. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.
- 56. Dayworks** 56.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions

in advance for additional work to be paid for in that way.

- 56.2 All work to be paid for, as the Contractor on forms approved by the Project Manager shall record Dayworks. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 56.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
- 57. Cost of Repairs** 57.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

- 58. Completion Certificate** 58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.
- 59. Taking Over** 59.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 60. Final Account** 60.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 61. Operating and Maintenance Manuals** 61.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Special Conditions of Contract**.
- 61.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **Special Conditions of Contract**, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount

stated in the **Special Conditions of Contract** from payments due to the Contractor.

62. Termination

62.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

62.2 Fundamental breaches of Contract shall include, but not be limited to, the following:

- a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or incorporation;
- d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
- e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- f) the Contractor does not maintain a Security, which is required; and
- g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **Special Conditions of Contract**.
- h) If the Contractor, in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

62.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under sub-Clause 61.2 above, the Project Manager shall decide whether the breach is fundamental or not.

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

- 62.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
- 63. Payment upon Termination of Contract**
- 63.1 If the Contract is terminated because of a fundamental breach by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the **Special Conditions of Contract**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 63.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- 64. Property**
- 64.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's defaulted.
- 65. Force Majeure**
- 65.1 For the purposes of this Contract, "*Force Majeure*" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances and includes, but is not limited to, *war, riots, civil disorder, earthquake, fire, explosion, storm, flood, epidemics, or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation.*
- 65.2 Neither Party shall have any liability or be deemed to be in breach of the Contract for any delay or other failure in performance of its obligations under the Contract, if such delay or failure is a result of an event of Force Majeure.
- 65.3 If a Party (hereinafter referred to as "the Affected Party") is or will be prevented from performing its substantial

obligation under the Contract by Force Majeure, it shall give a Notice to the other Party giving full particulars of the event and circumstance of Force Majeure and the reasons for the event of Force Majeure preventing the Affected Party from, or delay the Affected Party from performing its obligations under the Contract. The Notice shall be given within fourteen days after the Affected Party becomes aware, or should have become aware, of the relevant event or circumstances constituting Force Majeure.

65.4 The Affected Party shall give Notice to the other Party when it ceases when it ceases to be affected by the Force Majeure.

65.5 Upon completion of the event of Force Majeure and Notice pursuant to **GCC 65.1**, the Affected Party must, as soon as reasonably practicable recommends the performance of its obligations under the Contract. Where the Affected Party is the Contractor, the Contractor must provide a revised Work Program rescheduling the Works to minimise the effect of the prevention or delay caused by the event of Force Majeure.

65.6 Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

66. Release from Performance

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

67. Suspension of Financing

67.1 In the event that the source of financing is suspended to the Employer, from which part of the payments to the Contractor are being made:

(a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency's suspension notice.

(b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 45.1, the Contractor may immediately issue a 14-days termination notice.

SECTION VII: SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract

Instructions for completing the Special Conditions of Contract

SCC Clause	GCC Clause	Description
A: GENERAL		
1.	1.1	<p>The Employer is: Ministry of Health, Social Welfare, Elderly, Gender and Children, P. O. Box 236, Mnazi Mmoja - Zanzibar.</p> <p>Attn: Fatma H. Mrisho, Principal Secretary, Ministry of Health, Social Welfare, Elderly, Gender and Children, P.O.Box 236, Zanzibar.</p> <p>The Project Manager is Engineer: Eng. Ali Said Bakar</p> <p>The name and identification number of the Contract is Proposed Construction of New District Hospital at</p> <p>MICHEWENI SMZ/IMF/H03/W/EP-RNCT/2021/2022/01</p> <p>The Works consist of Construction of: Four Blocks of one story, One Block of two stories, all to be built from reinforced frame structures filled with concrete blocks. The structures will have pitch roof. There will be also construction of supporting facilities such as kitchen, laundry, maintenance unit and mortuary.</p> <p>The Commencement Date shall be: Within Seven days after signing of the contract.</p> <p>The Completion Date for the whole of the Works shall be Six months from the start date.</p> <p>The Site is located at MICHEWENI</p>
2.	3.1	The language of the Contract documents is English. The laws that applies to the Contract are the law of Zanzibar.
3.	9.1	Include the Schedule of Other Contractors, if any:
		1.

2.

3.

4.

4. 10.1 Include the Schedule of Key Personnel:

1. QS Khamis Rashid Khalfan
2. Eng Mahir Said Ali
3. Eng Sheikhan Suleiman Muhammed
4. Eng Muhammed Khatibu Mbarouk

7. 14.1 The minimum insurance covers shall be:

- i) loss of or damage to the Works, Plant, and Materials TZS. 15,000,000/=;
- ii) Loss of or damage to Equipment TZS. 10,000,000/=.
- iii) Loss of damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract TZS. 10,000,000/=; and
- iv) personal injury or death TZS. 15,000,000/=

8. 15.1 Site Investigation Reports available to the Bidder are: N/A

10. 24.1 The site Possession Date shall be shall be **within seven days after signing of the contract.**

11. 27.1 Where there is a dispute, the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible. With consultation between the Parties will try to amicably resolve the dispute. Once, an amicable settlement fails, Parties will resolve by Arbitration.

12. 28.2 Hourly rate of Fees payable to the Arbitrator is: *(To be determined)*
Types of reimbursable expenses to be paid to the Adjudicator included: *(To be determined)*

13. 28.3 Arbitration will take place at Zanzibar, in accordance with Arbitration Decree, Cap. 25 of the Laws of Zanzibar.

14. 29.1 Appointing Authority for the Arbitrator : *(To be determined)*

B. Time Control

15. 30.1 The Contractor shall Submit a Program for the Works within **Seven days** of delivery of the Letter of Acceptance.

16. 30.3 The period between Program updates is: **Monthly**.
17. 30.3 The amount to be withheld for late submission of an updated Program is **[TZS 1,000,000]**.

C. QUALITY CONTROL

18. 38.1 The Defects Liability Period is **365 days**.

D: COST CONTROL

19. 46 The interest rate shall be 0% above prevailing interest rate for commercial borrowing from the contractor's bank.
20. 47.1(a) The Site Possession Date shall be within seven days after signing of the contract.
47.1(m) Minimum amount of Interim Payment Certificate will be **[TZS 300,000,000]**
21. 50 The contract *[is not]* subject to price adjustment in accordance with Clause 50 the General Conditions of Contract.
22. 51.1 The amount of retention is **5%** of value of works of Interim Payment Certificate.

Limit of retention will be: **Five per cent (5%)** of the Accepted Contract Amount.
23. 52.1 The amount of liquidated damages is *0.1 percent of contract price per day*

The maximum amount of liquidated damages must be equivalent to the amount of the performance security: **10% of the contract sum**
24. 53.1 The bonus for early completion is: *N/A*
25. 54.1 The amount of advance payment shall be: **20% Percent** of the contract sum (less provisional sum) payable by the Employer **(upon submission of unconditional Bank guarantee)**

Monthly Recovery of Advance Payment: percent of amount of Interim Payment Certificate (In the formula agreed by the parties, but in any case, when Interim Payment Certificate reaches 80% the Advance recovery shall be 100%).
26. 55.1 The Performance Security shall be a minimum amount

equivalent to **10%** of the contract price.

E. FINISHING THE CONTRACT

27. 61.1 As built drawings shall be supplied by the contractor by **28 days after practical complication.**
- Operating manual shall be supplied by the contractor by:
28 days after practical complication.
28. 61.2 The amount to be withheld by the Project Manager in the case the contractor does not submit as built drawings is: **2% of the Contract Price**
- The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual is : **2% of the Contract Price**
- 29 62.2(g) Numbers of days for which the maximum amount of liquidated damages can be paid is: **100 days**
30. 63.1 The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works, is *[20 percent]*.

