

# Zanzibar Secondary Schools Upgrade and Procurement Project

Construction of Laboratories & Wash Facilities in Jongowe  
Secondary School, Zanzibar, Tanzania

- (1) UNITED NATIONS OFFICE FOR PROJECT SERVICES (“UNOPS”)  
- and -  
(2) [insert the Contractor's name]

## Minor Works Contract

Contract No.:	XXX-KEMC-2021-MWC
Date:	June 2021

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**INSTRUMENT OF AGREEMENT**

**THIS CONTRACT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

**BETWEEN**

- (1) **United Nations Office for Project Services (“UNOPS”)**, an organ of the United Nations, having its postal address at **P.O. BOX 783, Village Market 00621, Nairobi, Kenya** ("**Employer**"); and
- (2) [**insert name**], a [**insert type of company i.e. limited liability**] company incorporated under the laws of [**insert**] and having its registered address at [**insert address**], [**insert name of city and country**] ("**Contractor**").

**BACKGROUND**

- A The Employer intends to undertake the Works.
- B The Contractor has represented to the Employer that it has the appropriate experience, expertise, licences and resources to undertake the Works and has agreed to undertake the Works in accordance with the Contract.
- C In reliance on the Contractor's representations the Employer has entered into the Contract.
- D The Contract sets out the terms and conditions upon which the Contractor will undertake the Works.

**THIS CONTRACT:**

1. The Employer agrees to pay the Contractor the Contract Price, at the times and in the manner prescribed by the Contract, in consideration for the Contractor executing and completing the Works and remedying all defects in accordance with the Contract and otherwise performing all of its obligations in accordance with the Contract.
2. In the Contract words and expressions will have the same meanings as are respectively assigned to them in the General Conditions.
3. The following documents, listed in the order of priority, are deemed to form and be read and construed as part of the Contract:
  - 3.1 this Instrument of Agreement;
  - 3.2 the Schedule of Details;
  - 3.3 the Particular Conditions (if any);
  - 3.4 the General Conditions;
  - 3.5 the Specification;
  - 3.6 the Drawings; and
  - 3.7 the remaining Schedules.

**SIGNING PAGE**

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed by their respective duly authorised representatives as of the date first written above:

SIGNED BY \_\_\_\_\_

***[insert name of authorised signatory of UNOPS]***

Duly authorised to sign this Contract for and on behalf of the Employer, UNOPS:

In the presence of:

Signature \_\_\_\_\_ (witness)

Address \_\_\_\_\_

Occupation \_\_\_\_\_

SIGNED BY \_\_\_\_\_

***[insert name of authorised signatory of the Contractor]***

Duly authorised to sign this Contract for and on behalf of the Contractor, ***[insert]***:

In the presence of:

Signature \_\_\_\_\_ (witness)

Address \_\_\_\_\_

Occupation \_\_\_\_\_

## GENERAL CONDITIONS

### 1. GENERAL PROVISIONS

#### 1.1 Definitions

In the Contract as defined below, the words and expressions defined have the following meanings assigned to them, except where the context requires otherwise:

**"Commencement Date"** means the date stated in the Schedule of Details.

**"Contract"** means the Instrument of Agreement, these General and Particular Conditions, the Schedules and the further documents (if any) which are listed in the Instrument of Agreement.

**"Contract Price"** means the price specified in the Schedule of Details subject to any increases or decrease as may be made in accordance with this Contract.

**"Contractor"** means the entity named as the "Contractor" in the Instrument of Agreement and the legal successors in title and assigns to this entity.

**"Contractor's Representative"** means the person named as such in the Schedule of Details or appointed from time to time by the Contractor under Sub-Clause 3.2, who acts on behalf of the Contractor.

**"Country"** means the country in which the Site is located.

**"Date of Substantial Completion"** means the date when the Works have reached Substantial Completion as stated in the Taking-Over Certificate.

**"Date of Final Completion"** means the date when the Works have reached Final Completion as stated in the Final Completion Certificate.

**"Day"** means a calendar day, unless provided otherwise.

**"Defects Notification Period"** means the period for notifying defects in the Works as stated in the Schedule of Details calculated from the Date of Substantial Completion.

**"Drawings"** means the drawings of the Works as listed in the Schedule of Works, and any additional or modified drawings issued by (or on behalf of) the Employer.

**"Employer"** means the entity named as the "Employer" in the Instrument of Agreement, and the legal successors in title and assigns and novatees to this entity.

**"Employer's Representative"** means the person named as such in the Schedule of Details or as otherwise notified by the Employer to the Contractor.

**"Final Completion"** means the stage when the Defect notification period has expired and all defects have been corrected by the Contractor.

**"Final Completion Certificate"** means the Certificate issued by the Employer's Representative upon Final Completion, and indicating the Date of Final Completion.

**"Force Majeure"** means an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) war, (whether war be declared or not), invasion, act of foreign enemies within the Country;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country;
- (c) munitions of war, ionising radiation or contamination by radio-activity within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
- (d) earthquake, hurricane, typhoon, tsunami or fire emanating from outside the Site within the Country that are outside the normal range for that place at that time of year, but excluding any other weather conditions regardless of the severity.

**"General Conditions"** means these general conditions of Contract.

**"Instrument of Agreement"** means the document signed by the Parties and forming part of the Contract.

**"Particular Conditions"** means the particular conditions (if any) set out immediately before the Schedules to the Contract.

**"Party"** means either the Employer or the Contractor.

**"Schedule of Contract Price & Payment"** is Schedule 4.

**"Schedule of Details"** is Schedule 1.

**"Schedule of Site"** is Schedule 3.

**"Schedule of Works"** is Schedule 2.

**"Schedules"** means Schedules 1 to 4 to this Contract, including any further documents which are annexed or attached to, or incorporated by reference into Schedules 1 to 4.

**"Site"** means the places provided by the Employer where the Works are to be executed and to which plant and materials are to be delivered as shown in the Schedule of Site.

**"Specification"** means the requirements or documents as listed in the Schedule of Works, including Employer's requirements in respect of design to be carried out by the Contractor, if any, and any Variation to such document.

**"Substantial Completion"** means that stage in the execution of the Works when the following has occurred:

- (a) the Works are performed and completed in accordance with this Contract except for minor defects which would not affect the performance or operation of the Works;

- (b) all tests required by this Contract have been undertaken and successfully passed;
- (c) all documents, technical and other information, including plans, designs, drawings, as-built drawings, engineering information, data, specifications, reports and any other information required under this Contract have been supplied to the Employer's Representative in accordance with this Contract or as directed by the Employer's Representative from time to time;
- (d) all third party warranties and certificates and local authority approvals have been issued and provided to the Employer's Representative; and
- (d) any other preconditions to Substantial Completion set out in the Schedule of Details have been met.

**"Taking-Over Certificate"** means a certificate issued under Clause 7 certifying the Works have reached Substantial Completion and stating the Date of Substantial Completion.

**"Time for Completion"** means the time for completing the Works as stated in the Schedule of Details (or as adjusted in accordance with the Contract), calculated from the Commencement Date.

**"Variation"** means a change, alterations, addition or omission to the Works which is instructed by the Employer's Representative under Clause 5.

**"Works"** means all the work to be performed by the Contractor in accordance with this Contract as specified in the Schedule of Works, including temporary work and any Variation.

## **1.2 Interpretation**

Words importing persons or parties include firms and organisations. Words importing singular or one gender include plural or the other gender where the context requires.

## **1.3 Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Employer's Representative will issue any necessary instructions to the Contractor, and the priority of the documents is in accordance with the order as listed in the Instrument of Agreement.

## **1.4 Language**

The language for communications is English.

## **1.5 Communications**

Any notice, approval, consent or other communication in relation to this Contract must be in writing, signed, dated and marked to the relevant representative of the Parties and delivered to the address for service of notices and communications set out in the Schedule of Details.

## **1.6 Statutory Obligations**

The Contractor must comply with the laws of the countries where activities are performed. The Contractor must give all notices and pay all fees and other charges in respect of the Works.



### **1.7 Assignment of Contract**

The Contractor must not assign, transfer, pledge or make other disposition of this Contract or any part thereof or of any of the Contractor's rights, claims or obligations under this Contract.

## **2. EMPLOYER & EMPLOYER'S REPRESENTATIVES**

### **2.1 Employer's Obligations**

The Employer agrees to pay the Contractor the Contract Price for the Works in accordance with Clause 4.

The Employer must provide the Contractor with possession of and access to the Site in accordance with the Schedule of Site. The Contractor acknowledges that it may not be given exclusive possession of, or exclusive access to, the Site.

### **2.2 Employer's Representative**

The Employer's Representative is authorised to carry out the duties assigned to it in the Contract. The Employer's Representative has no authority to amend the terms of the Contract unless an amendment is authorised and approved in writing by the Employer. The Employer's Representative may instruct Variations in accordance with Clause 5.

The Employer's Representative may from time to time assign duties and delegate authority to an individual to carry out certain duties. The appointee may be notified by the Employer's Representative to the Contractor from time to time. The Employer's Representative must notify the Contractor of the delegated duties and authority of this Employer's Representative's assistant.

## **3. THE CONTRACTOR & PERFORMANCE OF THE WORKS**

### **3.1 Contractor's General Obligations**

The Contractor must commence the Works on the Commencement Date and must complete the Works by the Time for Completion. Despite any other provision in this Contract, the Employer's Representative may, in its absolute discretion and at any time, make an extension to the Time for Completion.

The Contractor must perform the Works in accordance with the Contract in an efficient, professional and cost effective manner in accordance with all applicable statutes, ordinances, laws, regulations and standards and all guidelines, procedures and directions made by the Employer and its personnel under this Contract.

The Contractor must provide, at its own cost, all equipment and materials necessary to undertake and complete the Works, unless otherwise specified in the Schedule of Works.

When requested in writing by the Employer's Representative, the Contractor must submit samples and/or catalogues of materials to the Employer's Representative for its consent within the time notified by the Employer's Representative.

The Contractor must ensure that it obtains all relevant authorisations, permits and licences to perform the Works, pay all fees and comply with any applicable

occupational health and safety requirements including any set out in the Schedule of Works.

The Contractor must, in accordance with the requirements and timing set out in the Schedule of Works, or as instructed by the Employer's Representative, provide regular reports in relation to the Works and any occupational health and safety issues and any other documents requested.

Within three days after the Commencement Date, the Contractor must submit a programme for the Works to the Employer's Representative for approval which must comply with any requirements set out in the Schedule of Works. The programme will be used to monitor the progress of the Works under the Contract. The Employer's Representative may request the Contractor so submit an amended programme at any time for approval.

The Contractor must undertake all tests in accordance with the requirements set out in the Schedule of Works and must provide the Employer's Representative with 48 hours prior written notice of the time and place for the specified testing of parts of the Works.

### **3.2 Contractor's Representative and Contractor's Personnel**

The Contractor's Representative is named in the Schedule of Details. The Contractor must not replace the Contractor's Representative without the prior written consent of the Employer's Representative and must submit to the Employer's Representative for approval the name and particulars of the person the Contractor proposes to replace the Contractor's Representative. The Contractor is responsible for all acts and omissions of the Contractor's Representative.

The Contractor gives the Contractor's Representative all authority necessary to act on the Contractor's behalf under the Contract.

The Contractor's staff and labour must be appropriately qualified, skilled and experienced to perform their duties required in the performance of the Works. The Contractor assumes all liabilities or obligations imposed by any law or regulation with respect to such staff and labour.

The Employer's Representative may require the Contractor to remove any person employed to perform the Works who in the opinion of the Employer's Representative persists in any misconduct or lack of care, carries out duties incompetently or negligently, fails to conform with any provisions of this Contract or persists in any conduct which is prejudicial to safety, health, or the protection of the environment. The Contractor must immediately appoint a suitable replacement person for each person so removed.

### **3.3 Contractor's Status**

In all matters relating to this Contract, the Contractor is acting as an independent contractor and is not an employee or agent of the Employer and must not represent itself as such.

### **3.4 Sub-contracting**

In the event the Contractor requires the services of subcontractors, the Contractor must obtain the prior written approval of the Employer's Representative for all such subcontractors. The approval of the Employer's Representative does not relieve the Contractor of any of its obligations under this Contract, and the terms of any sub-contract must be subject to and in conformity with the provisions of this Contract.

### **3.5 Inspection of Site**

The Contractor is deemed to have inspected and examined the Site, its surroundings, and access to the Site and to have satisfied itself that the Site and access to the Site, including security, is suitable for the Works and is deemed to have obtained all necessary information as to risks which may affect execution of the Works including climatic, hydrological and natural conditions and is not entitled to an increase to the Contract Price or to an extension to the Time for Completion based upon such conditions encountered during the execution of the Works that could have been reasonably foreseen by an experienced contractor acting in accordance with industry best practice.

### **3.6 Care of Works & Security**

The Contractor must provide and maintain at its own cost all lights, guards and security necessary for the protection of the Works, the Contractor's personnel and the Employer's personnel, including materials and equipment, as well as for the safety of the public. The Contractor must comply with any additional security requirements set out in the Schedule of Site. In the event that any damage or loss should happen to the Works before hand-over, the Contractor must at its own cost repair the Works.

Unless otherwise stated in the Schedule of Works or instructed or permitted by the Employer in writing, the Contractor shall not bring onto or store on the Site, give, barter or otherwise dispose of to any person or persons, any arms, ammunition or explosives of any kind or permit or suffer the same.

### **3.7 Unexploded Ordnances**

If at any time during the carrying out of the Works the Contractor discovers an unexploded ordnance or land mine, the Contractor must immediately stop work, notify the Employer's Representative, take all necessary steps to ensure the safety of all persons and property and secure the Site. The Contractor must immediately resume the Works when instructed by the Employer's Representative that it is safe to do so.

## **4. CONTRACT PRICE, PAYMENT & SECURITY**

### **4.1 Contract Price & Valuation of the Works**

The Employer must pay the Contractor the Contract Price in accordance with this Clause 4 and the Schedule of Contract Price & Payment. The Contractor is deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price and all fixed unit rates and prices in the Contract.

### **4.2 Invoicing**

The Contractor must submit an invoice to the Employer's Representative in accordance with the timings and requirements set out in the Schedule of Contract Price & Payment in a form approved by the Employer's Representative. The invoice must include details of the value of the work performed by the Contractor.

If requested by the Employer's Representative, when submitting an invoice, the Contractor must provide documentary evidence of all payments made to all its staff, labour and any subcontractors. The parties agree that if the Employer's Representative becomes aware that the Contractor has failed to pay its staff, labour or any subcontractors in accordance with this Contract, and the Employer's Representative gives the Contractor written notice 48 hours

before the Employer intends to pay, the Employer may, in its absolute discretion, pay those staff, labour or subcontractors the amount the Employer's Representative determines is, or may be owing and the Employer may recover any such amount paid as a debt due from the Contractor to the Employer.

#### **4.3 Payment**

The Employer may make an advance payment, if any, as a loan for mobilisation which must be repaid by the Contractor through percentage deductions, determined by the Employer's Representative, in the payments made under this Clause until the advance payment has been repaid. An advance payment will only be made if an amount is stated in the Schedule of Details for that amount. If requested, the Contractor must provide an advance payment guarantee from a bank approved by the Employer and in a form provided by or otherwise approved by the Employer.

Subject to the Contractor's compliance with clause 4.2, the Employer will pay the Contractor the amount set out in the invoice submitted under Sub-Clause 4.2 within 30 days of receipt of the invoice, less any amount to be deducted for advance payment and/or retention or where the Employer exercises its right to withhold, retain or set off part of the Contract Price under Sub-Clause 4.5.

Payment must be in the currency stated in the Schedule of Details.

No interest will be payable by the Employer in respect of any invoice rendered to the Employer by the Contractor under Sub-Clause 4.2 which remains due and unpaid (including any amounts withheld as a result of a dispute).

#### **4.4 Bank Guarantee for Performance**

If stated in the Schedule of Details, the Contractor must provide an irrevocable and unconditional, on-demand bank guarantee for performance for such amount and in a form provided by or otherwise acceptable to the Employer. The bank guarantee for performance must be valid until the Taking-Over Certificate is issued under Clause 7 at which time it will reduce by half and must remain valid until the end of the Defects Notification Period. If a bank guarantee for performance is required to be submitted under this Clause, the Employer may withhold payments under the Contract until it receives such bank guarantee for performance.

#### **4.5 Retention & Set-Off**

The Employer may withhold, retain or set off from any payment due to the Contractor under this Contract amounts to protect it against any costs, charges, expenses and damages for which the Contractor is liable to the Employer under or in connection with this Contract. Notwithstanding this, if an amount for retention is stated in the Schedule of Details, this amount will be deducted from each payment made under Sub-Clause 4.3 and must be reimbursed to the Contractor in accordance with the times stated in the Schedule of Details. This right to withhold, retain or set off does not limit the Employer's right to recover those amounts in any other way.

## **5. VARIATIONS**

The Employer's Representative may, by written notice, instruct the Contractor at any time to carry out a Variation and the Contractor must carry out and be bound by any such Variation. Unless otherwise instructed by the Employer's Representative in this notice, the Contractor must provide a detailed breakdown of the increase or decrease in the Contract Price and any effect on the Time for Completion within 7 days of receipt of this notice, and before the Contractor carries out the Variation. Where the Variation results in an increase to the Contract Price or extension to the Time for Completion, as determined by the Employer's Representative, the Contractor will be entitled to such amount and/or extension. The rate or price for any Variation must be determined by agreement, or in the absence of agreement, a valuation will be made by the Employer's Representative based on the rates in the bill of quantities contained in the Schedule of Contract Price & Payment. If no applicable rates or prices are stated in the bill of quantities, the rates and prices in the schedule of rates for Variations contained in the Schedule of Contract Price & Payment will be applied. If no applicable rates or prices are stated in the Schedule of Contract Price & Payment, a fair and reasonable valuation will be made by the Employer's Representative. For the avoidance of doubt the Contractor's entitlement to payment for a Variation excludes non-project specific overheads and costs. The Contractor must not carry out a Variation unless authorised by the Employer's Representative in writing.

## **6. INCREASE AND DECREASE OF COSTS**

No adjustment of the Contract Price will be made in respect of fluctuations of market, prices of labour, materials, plant or equipment, neither due to fluctuation in interest rates nor devaluation or any other matters affecting the Works.

## **7. SUBSTANTIAL COMPLETION AND TAKING OVER**

As soon as the Works have, in the Contractor's opinion, reached Substantial Completion, the Contractor must give a notice to the Employer's Representative. Within 10 days the Employer's Representative must issue a Taking-Over Certificate to the Contractor stating the Date of Substantial Completion or notify the Contractor that there are defects or deficiencies in the Works and the Contractor must correct these. This procedure will be repeated until the Employer's Representative issues a Taking-Over Certificate.

Subject to the remainder of this Clause, the Contractor is entitled to an extension to the Time for Completion if it is delayed by;

- a) a Force Majeure Event; or
- b) any delay or disruption caused by any Variation, except where that Variation is caused by the Contractor's failure, act, omission or breach; or
- c) an act, omission or breach by the Employer or its agents.

The Contractor must notify the Employer's Representative as soon as practicable and in any case in writing no later than 7 days after it becomes aware of any event or circumstance which may delay or disrupt the Works. This notice must include details of the event or circumstance.

As soon as practicable after the Contractor submits this notice, the Employer's Representative will notify the Contractor of the period, if any, by which the Time for Completion will be extended, or respond with comments and request further particulars.

## **8. DELAY DAMAGES**

If the Contractor fails to achieve Substantial Completion within the Time for Completion the Contractor must pay the Employer delay damages in the amount stated in the Schedule of Details for each calendar day of delay between the Time for Completion and the Date of Substantial Completion. The Employer is entitled to deduct any delay damages from the Contractor's outstanding invoices.

If the cumulative amount of delay damages reaches the amount stated in the Schedule of Details, the Employer may, at any time, terminate the Contract in accordance with Clause 26.

## **9. DEFECTS NOTIFICATION PERIOD AND FINAL COMPLETION**

Upon Substantial completion, the Defect notification period as defined in Schedule 1 (Schedule of Details) will start running. During this period, the Contractor must, at its own cost, repair, replace or otherwise make good any defects in the Works notified by the Employer's Representative during the Defects Notification Period. Any such defects must be remedied by the Contractor without delay and additional costs due to the Contractor and in the time notified by the Employer's Representative. If the Contractor fails to rectify the defect within this time, the Employer may engage another party to do so at the Contractor's risk and cost. Once the Defect notification period has expired and all the defects reported to the Contractor by the Employer's Representative have been corrected by the Contractor, the Works reach the stage of Final completion and the Employer's Representative issues the Final completion certificate.

## **10. OWNERSHIP OF PAID MATERIAL AND WORK**

All material and work covered by payments made by the Employer to the Contractor become the sole property of the Employer, but this provision does not relieve the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work or as waiving the right of the Employer to require the fulfilment of all of the terms of the Contract.

## **11. COPYRIGHT, PATENT AND OTHER PROPRIETARY RIGHTS**

The Contractor must defend, indemnify and hold harmless the Employer from and against all claims and proceedings for infringement of any copyright, patent rights, design trademark or name or other protected rights resulting from Contractor's performance. The Contractor is responsible for all legal costs associated with the defence of the Employer. In defending the Employer, the Contractor shall not enter into a settlement agreement without the prior written approval of the Employer.

## **12. CONFIDENTIAL NATURE OF DOCUMENTS**

All maps, drawings, plans, reports, documents and all other data created by or received by the Contractor under the Contract are the property of the Employer, and must be treated as confidential and must be delivered to the Employer's Representative on completion of the Works.

**13. DAMAGE TO PERSONS AND PROPERTY**

The Contractor must defend, indemnify and hold harmless the Employer, its officers, agents, employees and servants from and against all suits, claims, demands, proceedings, and liability of any nature or kind, including costs and expenses, for injuries or damages to any person or any property whatsoever which may arise out of or in consequence of acts or omissions of the Contractor or its agents, employees, servants or subcontractors in the execution of this Contract. The Contractor is responsible for all legal costs associated with the defence of the Employer. In defending the Employer, the Contractor shall not enter into a settlement agreement without the prior written approval of the Employer.

**14. INSURANCE**

The Contractor must, on or prior to the Commencement Date, effect and thereafter maintain at all times, in the joint names of the Parties, those insurances, if any, as set out in the Schedule of Works.

All insurances must conform with any requirements detailed in the Schedule of Works. The policies must be issued by insurers and in terms approved by the Employer. The Contractor must provide the Employer with evidence that any required policy in connection with the Contract is in force and that the premiums have been paid.

All payments received from insurers relating to loss or damage to the Works must be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.

If the Contractor is required to effect insurance under this Clause and fails to do so or keep in force any of the insurances referred to, or fails to provide satisfactory evidence, policies or receipts, the Employer may, without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor.

**15. SOURCE OF INSTRUCTIONS**

The Contractor must not seek nor accept instructions from any authority external to the Employer or its authorised representatives under Sub-Clause 2.2, without the approval of the Employer's representative, in connection with the carrying out of the Works under this Contract.

**16. OFFICIALS NOT TO BENEFIT**

The Contractor warrants that no direct or indirect benefit has been given or will be given to any United Nations official in connection with this or any other Contract or the award thereof. The breach of this provision entitles the Employer to terminate the Contract immediately by written notice.

**17. PREVENTION OF CORRUPTION**

The Employer is entitled to terminate the Contract immediately by written notice and to recover from the Contractor the amount of any loss resulting from such termination if the Contractor, its personnel or anyone acting on its behalf, has offered or given any person any gift or consideration of any kind as an inducement or reward for doing or intending to do any



action in relation to the award or execution of the Contract or any other contract with the Employer or for showing or intending to show favour or disfavour to any person in relation to the Contract or any other contract with the Employer, whether with or without the Contractor's knowledge.

#### **18. NAME, EMBLEM OR OFFICIAL SEAL OF UNOPS OR THE UNITED NATIONS**

The Contractor must not advertise or otherwise make public the fact that it is carrying out, or has carried out the Works for the Employer or use the name, emblem or official seal of the Employer or the United Nations or any abbreviation of the Employer's name or the United Nations for advertising purposes or any other purposes.

#### **19. FORCE MAJEURE**

If the Contractor is rendered unable, wholly or in part, to perform its obligations under this Contract due to a Force Majeure event, it must give notice and full particulars in writing to the Employer's Representative as soon as possible but no later than seven (7) days after the Contractor first became aware of the event. Subject to acceptance by the Employer of the existence of such Force Majeure event, the carrying out of the Works, or part of the Works, may be suspended by the Employer's Representative or, where Force Majeure circumstances otherwise frustrate the purpose of this Contract, either in time or purpose, the Employer may terminate this Contract by giving 14 days written notice to the Contractor.

The Contractor acknowledges and agrees that, with respect to any of its obligations under the Contract, the Contractor will be performing such obligations in areas in which the United Nations, including the Employer, is engaged in, preparing to engage in, or disengaging from peacekeeping, humanitarian or similar operations and any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, shall not, in and to itself, constitute a Force Majeure event.

#### **20. RECORDS, ACCOUNTS, INFORMATION AND AUDIT**

The Contractor must maintain accurate and systematic records and accounts in respect of the Works and must furnish to the Employer any records or information, oral or written, which may be reasonably request in respect of the Works or the Contractor's performance. The Contractor must allow the Employer or its authorised agents to inspect and audit such records or information upon reasonable notice. The Contractor must keep the records and accounts for a minimum of 5 years after the completion, expiry or termination of the Contract.

#### **21. TAXATION**

The Contractor is responsible for the payment of all charges and taxes in respect of income including value added tax, all in accordance with and subject to the provisions of the income tax laws and regulations in force and all amendments. It is the Contractor's responsibility to make all the necessary inquiries in this respect and is deemed to have satisfied itself regarding the application of all relevant tax laws.



**22. RIGHTS AND REMEDIES OF THE EMPLOYER**

Nothing in or relating to this Contract constitutes a waiver of any other rights or remedies of the Employer. The Employer is not liable for any consequences of, or claim based upon, any act or omission on the part of the Government of the Country.

**23. PRIVILEGES AND IMMUNITIES**

Nothing in or relating to this Contract is deemed a waiver of any of the privileges and immunities of the United Nations of which the Employer is an integral part.

**24. FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK, CHILD LABOUR AND SEXUAL EXPLOITATION:**

The Contractor warrants that it will comply with, and ensure the Contractor's Personnel will comply with, the 1998 International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work.

The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child must be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

The Contractor must take all appropriate measures to prevent sexual exploitation or abuse of anyone by the Contractor's personnel. For these purposes, sexual exploitation and abuse includes sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, unless such sexual activity is consensual between two persons who are married and such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel.

In addition, the Contractor must refrain from, and must take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favours or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

**25. SETTLEMENT OF DISPUTES****25.1 Dispute Resolution Procedure**

Any dispute arising out of or in connection with the Contract, including any valuation or other decision of the Employer ("Dispute"), unless settled amicably by the Parties' Representatives, must be referred, at the request of either Party, to the Senior Representatives of the Parties set out in the Schedule of Details, or any replacement notified by a Party to the other Party in writing.

If the Senior Representatives of the Parties are unable to resolve a Dispute referred to them within 28 days, the Dispute shall be referred, if requested by either Party, directly to arbitration in accordance with the provisions of Sub-Clause 25.2.

## 25.2 Arbitration

If a Party are unable to resolve the Dispute in accordance with Sub-Clause 25.1 or 25.2, the Dispute must be referred, if requested by either Party, to and finally resolved by arbitration in accordance with the UNCITRAL Arbitration Rules ("**Arbitration Rules**") then in effect, provided that:

- (a) there is no seat or place of arbitration. The place of hearing must be the place stated in the Schedule of Details;
- (b) the language of the arbitration must be English;
- (c) the decisions of the arbitral tribunal must be based on general principles of international commercial law. The arbitral tribunal must not award punitive damages. In addition, the arbitral tribunal must not award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest must be simple interest only.

The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

The arbitral proceedings and any information and documents relating to these proceedings must be regarded as confidential.

## 25.3 Dispute resolution not to delay execution of the Works

Despite any activation of the dispute resolution procedures under this Clause 25, the Contractor must continue to execute the Works and its other obligations under or in connection with the Contract.

## 26. TERMINATION

The Employer may terminate this Contract by written notice for a breach by the Contractor of any of its obligations under this Contract if, within 14 days written notice by the Employer's Representative identifying the breach, the Contractor has not rectified such breach. If the Contract is terminated by the Employer due to a breach by the Contractor then the Employer is not obliged to pay any outstanding amounts until such time that the Employer has completed the Works and recovered its costs from the Contractor in doing so. After recovering any such costs, the Employer must pay any balance to the Contractor.

The Employer may terminate this Contract for convenience in the interest of the Employer by giving fourteen (14) days written notice to the Contractor. If the Employer terminates the Contract for its convenience or due to a Force Majeure event in accordance with Clause 19, the Contractor is entitled to be paid for the part of the Works satisfactorily completed, the materials and equipment properly delivered to and stored on the Site as of the date of termination for incorporation into the Works and any reasonable substantiated direct costs incurred by the Contractor as a result of the termination, but is not entitled to receive any other or further payment or damages. The Employer's Representative will make such determinations.

After a notice of termination under this Clause has taken effect, the Contractor must promptly cease all further work (except to the extent specified in the notice from the Employer) and take such action as necessary or as directed by the Employer, for the transfer,

protection and preservation of the Employer's property, protection of life or for the safety of the Works. The Contractor must 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.

**PARTICULAR CONDITIONS****Additional Clauses**

The General Conditions are amended by the inclusion of the following additional conditions:

If nothing is stated, then no additional conditions apply.

Clause	Additional General Condition

**SCHEDULES**
**SCHEDULE 1 - SCHEDULE OF DETAILS**

Commencement Date (Sub-Clause 1.1)	<i>The actual commencement date is 7 days after the date of contract signing.</i>
Contract Price (Sub-Clause 1.1)	<p><b><i>“The total estimated Contract Price amounts to [insert the amount]. The final Contract Price will be determined in accordance with the Schedule of Contract Price &amp; Payment ” ]</i></b></p> <p>See the Schedule of Contract Price &amp; Payment for a breakdown of the Contract Price</p>
Contractor's Representative (Sub-Clause 1.1)	<b><i>[name, position title and contact details to be inserted ]</i></b>
Defects Notification Period (Sub-Clause 1.1 & Clause 9)	<b><i>12 months.</i></b>
Employer's Representative (Sub-Clause 1.1)	<p><b>John Bundu Fofanah</b>  <b>Project Manager, EQSSE_Z - KOICA Funded Schools Project Kenya</b>  <b>Multi-Country Office (KEMC)</b>  <b>Zanzibar, Tanzania</b>  <b>Tel: +255 777 047 349</b>  <b>Email: <a href="mailto:johnf@unops.org">johnf@unops.org</a></b></p>
Substantial Completion (Sub-Clause 1.1)	<p>No additional conditions.</p> <p>If none stated, then no additional grounds.</p>
Time for Completion (Sub-Clause 1.1)	<p><b>Whole of the Works</b></p> <p><b>Six (6) months</b> from the Commencement Date.</p>
Address for Service of Notices and Communications (Sub-Clause 1.5)	<p><b>Employer</b>  <b>Attention: John Bundu Fofanah</b>  <b>Position title: Project Manager, EQSSE_Z - KOICA Funded Schools</b>  <b>Project Kenya</b>  <b>Multi-Country Office (KEMC)</b>  <b>Zanzibar, Tanzania</b>  <b>Tel: +255 777 047 349</b>  <b>Email Address: <a href="mailto:johnf@unops.org">johnf@unops.org</a></b></p>

	<b>Contractor</b> Attention: <b>[to be inserted]</b> Position title: <b>[to be inserted]</b> Address: <b>[to be inserted]</b> Facsimile Number: <b>[to be inserted]</b> Email Address: <b>[to be inserted]</b>
Advance Payment (Sub-Clause 4.3)	If no amount is stated, no advance payment will be made.
Currencies of payment (Sub-Clause 4.3)	Payments will be made in <b>local currency (Tanzanian Shilling)</b> .
Bank Guarantee for Performance (Sub-Clause 4.4)	<p><b><i>“The Contractor is required to submit a bank guarantee for performance”.</i></b></p> <p>The amount of the Bank Guarantee to be provided under Sub-Clause 4.3 is the amount equal to <b>5 %</b> of the Contract Price.</p>
Retention (Sub-Clause 4.5)	<p><b>Amount of Retention</b></p> <p>The amount of <b>5%</b> of the estimated value of Works executed in the relevant payment period as set out in the invoice for that period will be retained from each and every payment, except for any advance payment made, up to a maximum of <b>5%</b> of the Contract Price.</p> <p><b>Release of Retention Money</b></p> <p>The Employer will release half of the retention money after issuance of the Taking-Over Certificate and the remainder at the end of the Defects Notification Period</p>
Delay Damages (Sub-Clause 8)	<b>Whole of the Works</b> <b>TZS 460,000.00 per day.</b>
Cumulative Amount of Delay Damages (Clause 8)	<b>10% of Contract Price</b>
Senior Representatives (Sub-Clause 25.1)	<p><b>Employer</b></p> <p><b>Rainer Frauenfeld</b>  Director  Kenya Multi Country Office  UNOPS KEMC  Email: <a href="mailto:rainerf@unops.org">rainerf@unops.org</a></p> <p><b>Contractor</b></p> <p><b>[insert name, position title and contact details]</b></p>

Arbitration (Sub-Clause 25.2)	The place of the hearing, if any, shall be determined at the time the dispute arises.
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## SCHEDULE 2 - SCHEDULE OF WORKS

### **A. General Information**

In addition to the laboratory construction, the construction of WASH facilities is part of the educational development initiative.

The following is a summary of the scope of the works, and the detailed scope is in the BoQ.

1. Site clearing: The site needs clearing of grass and small trees. There were agricultural activities close to the main building block, but the school will harvest the crops before mobilizing the contractor.
2. Laboratory: One multi-purpose laboratory block will be constructed. The facility will include cubicles to store reagents & equipment, one for each of the three courses, physics, chemistry, and biology. A preparatory teacher room will be part of the structure. Details are provided in the drawings.
3. Toilets: WASH facilities will include the construction of four cubicles of toilets for boys, one of which gears towards accommodating the needs of the physically challenged. There will be a similar type of block for girls.
4. Water tank: A water storage tank and platform will be constructed to accommodate the water tank that will be provided.

The figure below shows the aerial view of the school location.



### **B. Drawings:**

Detailed sets of drawings are provided in the Documents Section of the tender.

### **C. Bill of Quantities**

The bill of quantities is provided in the Documents Section of the Tender.

### **D. Reporting**



1. The contractor shall provide weekly updates and relevant data to the UNOPS Associate Project Management Engineer for preparation of weekly reports.
2. Monthly evaluation of the work accomplished shall be jointly conducted between the contractor and UNOPS Associate construction Engineer for estimation of monthly interim payment for work accomplished. Contractor shall request payment for work achieved on a monthly basis.
3. Site specific safety briefing shall be provided to site site personnel on a regular basis.

In addition to the laboratory construction, the construction of WASH facilities is part of the educational development initiative.

**SCHEDULE 3 - SCHEDULE OF SITE****1. Description of the Site**

**Site Location:** The Jongowe secondary school, located on another island, about 25 minutes by boat from Unguja, is a beneficiary of the funding. Site location: The site is within the schoolyard and situated at the West Wing of the compound, behind the main school building block. The GPS coordinates are “-5.857025, 39.217314.”

**2. Access to the site**

The site can be accessed only by boat or other means of water transportation. The site is located just about 60 meters from the wharf. The road from the Wharf to the site is not motorable, no vehicle in the whole island, hence on vehicular roads. The distance is short from the wharf to the site.

**3. Site Security**

The site is located within the environs of a school yard. Also, Zanzibar has guidelines on security & working in the island, and the contractor is expected to adopt and comply with those requirements.

In addition, the contractor is responsible for the security of his /her staff, including any other of the company's resources.

**SCHEDULE 4 - SCHEDULE OF CONTRACT PRICE & PAYMENT*****Contract Price******1. Contract Price***

***“The total estimated Contract Price amounts to [insert the amount].***

***“The Works shall be measured and valued for payment and the final Contract Price will be determined on the basis of the actual quantities of work and materials utilised in the complete and satisfactory performance of the Works as certified by the Employer’s Representative at the appropriate rate or price specified in the Bill of Quantities.***

***1. Bill of Quantities***

The bill of quantities is attached in the document section of the tender document.

***2. Schedule of Rates for Variations***

***The rates for the purposes of valuing Variations are set out in the Bill of Quantities.***

***The rates set out are fixed for the duration of the Contract and are not subject to escalation or adjustment for rises or falls in the cost of labour, goods, material and other inputs to the Works. The rates set out in the Schedule of Rates also include provision for Contractor’s overheads and profit.***

***3. Invoicing & Payment (see Sub-Clause 4.1)******Monthly Progress Payments***

***On the 5th of each month (or as otherwise agreed by the Parties) the Contractor must submit an invoice to the Employer’s Representative.”***

**SCHEDULE 5 -SCHEDULE OF SECURITY**  
**BANK GUARANTEE FOR PERFORMANCE**

**[On the letterhead of the Bank]**

Date: **[insert]**

To: **[insert]**  
**[insert]**  
United Nations Office for Project Services (UNOPS)  
(Name and address of the Employer)

Dear **[insert]**

**[insert works title] Construction Contract - Bank Guarantee for Performance**

You entered into a contract dated **[insert date]** with **[insert]** ("Contractor") titled **[insert contract title]** Construction Contract for the **[insert name of the project]** for certain works and services ("**Works**") to be undertaken by the Contractor ("**Contract**").

We, **[insert Bank]**, irrevocably and unconditionally undertake with you that whenever you give written notice to us stating that in your sole and absolute judgment the Contractor has failed to observe or perform any of the terms, conditions or provisions of the Contract on its part to be observed or performed, we will, notwithstanding any objection which may be made by the Contractor and without any right of set-off or counterclaim, immediately pay to you or as you may direct such an amount as you may in such notice require not exceeding the sum equivalent to **5%** of the Accepted Contract Amount ("**Guaranteed Sum**").

This Bank Guarantee for Performance ("**Guarantee**") is valid and will continue to be valid from the date of this letter for the Guaranteed Sum and will reduce to **2.5%** of the Contract Price upon the issue of the Taking Over Certificate. This Guarantee will automatically become null and void on the issue of the Final Completion Certificate or, if a dispute arises under the Contract, after the final determination of that dispute, whichever occurs later.

Any payment by us in accordance with this Guarantee must be in immediately available and freely transferable **TZS (Tanzanian Shillings)** free and clear of and without any deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, set off, counterclaims, deductions or withholdings of any nature whatsoever and by whomever imposed.

Our obligations under this Guarantee constitute direct primary, irrevocable and unconditional obligations, do not require any previous notice to or claim against the Contractor and will not be discharged or otherwise prejudiced or adversely affected by any:

- time, lenience or tolerance which you may grant to the Contractor;

- amendment, modification or extension which may be made to the Contract or the Works executed under the Contract;
- intermediate payment or other fulfilment made by us;
- change in the constitution or organisation of the Contractor; or
- other matter or thing which in the absence of this provision would or might have that effect, except a discharge or amendment expressly made or agreed to by you in writing.

This Guarantee may not be assigned by you to any person, firm or company other than an Affiliate, without our prior written consent, which must not be unreasonably withheld. You must notify us in writing of any assignment, after which we must make any payment claimed under this Guarantee to the person, firm or company specified in the notice which will constitute a full and valid release by us in relation to that payment.

Any notice required by this Guarantee is deemed to be given when delivered (in the case of personal delivery) or forty-eight (48) hours after being despatched by prepaid registered post or recorded delivery (in the case of letter) or as otherwise advised by and between the parties.

We agree that part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our abilities under this Guarantee without notice to us and without the necessity of any additional endorsement, consent or guarantee by us, provided, however, that the Guaranteed Sum does not increase or decrease.

No action, event or condition which by any applicable law may operate to free us from liability under this Guarantee will have any effect. We waive any right we may have to apply such law so that in all respects our liability under this Guarantee will be irrevocable and, except as stated in this Guarantee, unconditional in all respects.

Capitalised words and phrases used within this Guarantee have the same meanings as are given to them in the Contract.

This Guarantee is governed by the Uniform Rules for Demand Guarantees, ICC Publication No. 758, provided that the supporting statement under Article 15 (a), and Articles 34 and 35 are excluded. Any disputes arising out or in connection with this Guarantee, or the breach, termination, or invalidity thereof will be referred to and finally resolved by arbitration in accordance with the UNCITRAL Arbitration Rules then in effect, the language of the proceedings being English.

Nothing in or relating to this Guarantee shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs, of which UNOPS is an integral part, which are hereby expressly reserved.

IN WITNESS of which the **[insert Bank]** has duly executed this Guarantee on the date stated above.

**SIGNED** by **[insert]** )  
as attorney for **[insert]** )  
under power of attorney dated )  
**[insert]** )  
in the presence of )  
 )  
..... )  
Signature of witness )  
 )  
..... )  
Name of witness (block letters) )  
..... )  
Address of witness )  
..... )  
Occupation of witness )

.....

.

By executing this agreement the attorney states that the attorney has received no notice of revocation of the power of attorney

**Address for notices**

**[insert address]**

**PO Box 2695  
2100 Copenhagen  
Denmark  
[www.unops.org](http://www.unops.org)**

**Tel: +45 3546 7500  
Fax: +45 3546 7501  
E-mail:  
[info@unops.org](mailto:info@unops.org)**