



# Kenya Airports Authority

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Clerk of the National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Buildings  
P.O. Box 41842, 00100 GPO  
**NAIROBI**



Dear Sir,

## **RE: ADDITIONAL INFORMATION**

As directed by the Public Investment Committee (PIC) in a meeting held on 2<sup>nd</sup> July 2014, please find herein attached the following;

1. JKIA fire investigation report- annex 1
2. Intruder Detection System at JKIA - annex 2
3. Greenfield Terminal project report- annex 3
4. Proposed Airport Hotel, Expo cum Convention & Trade Centre at JKIA – annex 4
5. Embakasi Fencing status report- annex 5

Kindly sign and stamp a copy of this letter to acknowledge the receipt of the documents as stated above.

Yours faithfully,

**LUCY MBUGUA**  
**MANAGING DIRECTOR**

Cc: Kenya National Audit Office  
Anniversary Towers,  
P.O. Box 30084-0100  
Loita St.  
**NAIROBI**

# ANNEX 1

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## **1.0 BACKGROUND**

This is a report on investigation into fire incident that occurred at Jomo Kenyatta International Airport on Wednesday 7<sup>th</sup> August 2013 at about 0440 hours that was reported to the Kenya Airport Police Unit Control Room by the Police Duty Officer, Inspector Christopher Mbogho of JKIA police station who had received information from the Immigration Officers working at Immigration Arrival 2 that there was fumes of smoke emanating from the ceiling of their work station within the International arrival Terminal building. Later on the smoke developed into visible fire. The Kenya Airport Authority fire fighters responded promptly and were later on joined by fire engines from Nairobi County amongst them, Nairobi county fire department, NYS, Kenya Pipeline, and Kenya Army. The fire huge and fierce which took the fire fighters 6hrs to contained it. By that time it had gutted down the entire roof of the International Arrivals building that houses numerous business premises and government offices, destroying properties whose exact value is yet to be determined by the various insurance companies and owners. The collateral damage extended to gate 9 up to 14 where most of electrical appliances, ceilings, elevators, windows, doors, money dispensing machines (ATM), office equipment, Forex Bureaus among other items were extensively damaged. The damage extended up to the airside and the parking zone as a result of a blast that shuttered the glass windows due to the pressure that had built up along the walk ways linking immigration 1 & 2. The ceilings and rooftops at the Immigration's Arrival 1 and 2 caved in due to intense heat and eventually collapsed.

The inferred blast was caused by convectional current which rose above the

burning fire, carrying with it hot sparks, heating all the surroundings in which it passed through. The Aluminum metal bars and ceiling materials caused the fire to spread due to conduction. The blast was NOT consistent with that caused by an explosive, explosive device or ordinances.

## **2.0 INVESTIGATION**

### **2.1 INVESTIGATION PROCESS**

Following the fire outbreak, an Investigation Team was immediately constituted to investigate and establish the cause of fire. The team encompassed officers from various government agencies and incorporated foreign fire investigators from USA, Canada and Britain.

### **2.2 INVESTIGATION TEAM**

The respective key members were from the following entities:-

1. Directorate of Criminal Investigations
2. Kenya Airports Police Unit
3. Anti-Terrorism Police Unit
4. Bomb Disposal Unit
5. National Counter Terrorism Centre
6. National Intelligence Service
7. Public Works – Fire Investigation Section
8. Kenya Power and Lighting Company
9. Government Chemist Analyst
10. USA Federal Bureau of Investigations

11. Royal Canadian Government Representative
12. British High Commission Representative

### 2.3 THE SCOPE OF INVESTIGATIONS

The team, after initial analysis, agreed to investigate the cause of fire in the following perspective:

1. Terrorism act
2. Arson
3. Electric fault

### 2.4 EVIDENCE COLLECTION METHODS

Given the unique nature of the incident, the investigating team employed varied methods of evidence collection. This included:-

1. Interviews
2. Statements recording
3. Collection of exhibits and samples
4. Photography
5. Video recordings
6. Analysis of Closed Circuit Television (CCTV)
7. Observation
8. Expert reports

### 3.0 HISTORY OF JOMO KENYATTA INTERNATIONAL AIRPORT

Jomo Kenyatta International Airport (JKIA) is an international airport located in Embakasi, Nairobi County, and fifteen (15) kilometers southeast of Nairobi Central Business District (CBD).

It opened its doors on 9<sup>th</sup> March 1958 as Embakasi Airport and later renamed Nairobi International Airport in 1964.

### **THE AERIAL VIEW OF THE AIRPORT**

The image part with relationship ID r1d7 was not found in the file.

In 1972 more structures were built amongst them the International Arrivals Terminal Building that caught fire on Wednesday 7<sup>th</sup> August 2013 at about 0430 hours.

### **INTERNATIONAL ARRIVALS TERMINAL BUILDING BEFORE THE FIRE INCIDENT**



The International Arrivals Terminal Building was officially opened on 14<sup>th</sup> March 1978 by the first President of the Republic of Kenya, Jomo Kenyatta. Later on the Nairobi International Airport was renamed to Jomo Kenyatta International Airport on 22<sup>nd</sup> August 1978, in honor of the late first president of the Republic of Kenya.

The airport has since improved service delivery to various clients and currently facilitates a daily traffic flow of about sixteen thousand (16,000) passengers. The airport offers services to over thirty seven (37) International and Domestic airlines besides handling over 300 million kilograms of cargo per annum.

In 1991, the Government of Kenya transferred ownership and management of JKIA and other civilian airports and airstrips within the country to Kenya Airports Authority (KAA) through "The Kenya Airports Authority Act".

The airport is currently undergoing major construction including Unit 4 and on its completion will have the capacity to handle double the current capacity.

Given the role that JKIA plays in the country's economy, it is classified as a VITAL INSTALLATION that MUST be safeguarded at all costs.

#### **4.0 INCIDENT DESCRIPTION**

##### **4.1 FIRE**

Since its inception, the airport had not experienced any serious incident until Wednesday the 7<sup>th</sup> August 2013 at about 0430 hours when fire broke out at the immigration arrivals 1 and 2 within International Arrivals Terminal building. The fire gutted down most of the building and destroyed properties worth millions of shilling.

It was fortunate that no deaths or injuries were reported during the incident.

Following the fire incident the airport was closed for about 24 hours.

#### **GENERAL VIEW OF INTERNATIONAL ARRIVAL TERMINAL BURNING**



#### 4.2 EMERGENCY RESPONSE

The fire engines from Nairobi County responded promptly to fight off the fire after being informed by Kenya Police Service Nairobi Area Control Room who had been informed by the Kenya Airports Police Unit. Fire engines from Kenya Pipeline Corporation, Kenya Army, Nairobi County Government, National Youth Service, Group 4 Security Services and Kenya Airports Authority teamed up to fight the fire that was eventually contained at about 1100 hours of the same day. The building however, continued smoldering for another forty eight (48) hours.

#### **FIRE ENGINES FIGHTING FIRE**



## **5.0 INCIDENT ANALYSIS**

### **5.1 THE FIRE ANALYSIS**

The evidence collected from the witnesses and CCTV footage supported the fact that smoke was first seen emanating from the ceiling roof of Immigration Arrival 2 at around 0430 hours and within minutes, the building burst into flames. Though smoke was emanating from the ceiling roof of Immigration Arrivals 2, it did not prove that the roof was the origin of fire.

The witnesses' accounted that when they accessed the Kenya Airports Authority Information Control Room/office; they experienced a smell of "burnt rubber-like" scent but could not establish where it was coming from.

In the course of assessing and reassessing the scene, the investigation team, in the company of David Kariuki Nguthi, Electrical Expert from Public Works Department found and examined an Electric Distribution Board (a sub-distribution board connected to the main distribution board) that is sandwiched between the Kenya Airports Authority Server room and Kenya Airports Authority Information Control room/office.

David, in his expertise, established that the referred electric distribution board had electric cables that underwent oxidation and overheating as shown in the picture below.

**WHITE SURFACE IN THE ELECTRIC DISTRIBUION BOARD DUE TO OXIDATION**



He also found out that;

1. The isolation switch in the electric distribution board had burnt out due to intense heat making it difficult to know the rating.
2. The main cable to the electric distribution board was burnt and broken.
3. The main isolation rated 160A at the main distribution board was found to be "off" position.

David explained that within the distribution board, there was an isolator switch which may have been corroded due to heating of the contacts (electric cables) thus creating more resistance and heat between the contacts. The resultant heat was transferred to the insulating material that eventually got destroyed, exposing bare live conductors. The exposed live wires created contact with the earth cable line which in turn attempted to conduct power in the opposite direction but due to resistance, it heated up gradually and became hot, burning off the mechanical cover. Once the mechanical cover got burnt, the conductors got into contact with the metallic tray (a tray where the electric cables ran in) and the steel beams within the ceiling roof of the affected building: The steel beams got energized and became hot hence short-circuiting the conductors.

### **BROKEN ELECTRICAL CABLE**



According to David's electrical report, the conductors broke down due to insulation failure and metal degradation. The metal works eventually absorbed heat causing combustible material in contact to ignite. This process resulted into a "flush-over" point occurring before total failure and then on-going arcing occurring, generating enough heat for ignition of cable insulation and ceiling that were close to this electrical arcing.

## **6.0 FINDINGS**

### **6.1 TERRORISM ACT**

The team conducted thorough interviews, analysis of recorded statements, reviewing of CCTV footage and physical assessment of the area to establish whether there was any involvement of acts of terror in the incident.

Mr. Eliud Langat (SP), Bomb expert confirmed in his report that there were no explosives, explosive devices and/or ordinances that ignited or accelerated the fire.

Mr. Simon Nandi Sunguti, Government Chemist Analyst, analyzed various items and exhibits samples collected from the scene and his report indicated that there were no any traces of explosive and foreign materials.

Mr. Boniface N. Mwilu from National Counter Terrorism Centre ascertained in his report that the incident had no link to terrorism.

Robert Jeffer, an investigator from British High Commission added that had the fire been caused by an explosive device, most of the building parts and accessories would have been BLOWN OUTWARDS. Contrary to this, parts of the building's ROOF CAVED INWARDS.

The team established that even though some of the witnesses' heard a mini-explosion within the fire duration and area, the explosion was NOT CONSISTENT with that caused by EXPLOSIVES, EXPLOSIVE DEVICES and/or ORDINANCES

**PART OF THE ROOF THAT CAVED AT THE INTERNATIONAL ARRIVALS BUILDING**

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Though terror acts are not only limited to explosion and explosive devices, after taking into account all the above facts, the team ruled that there was NO any involvement of TERRORISTS ACTS in the incident.

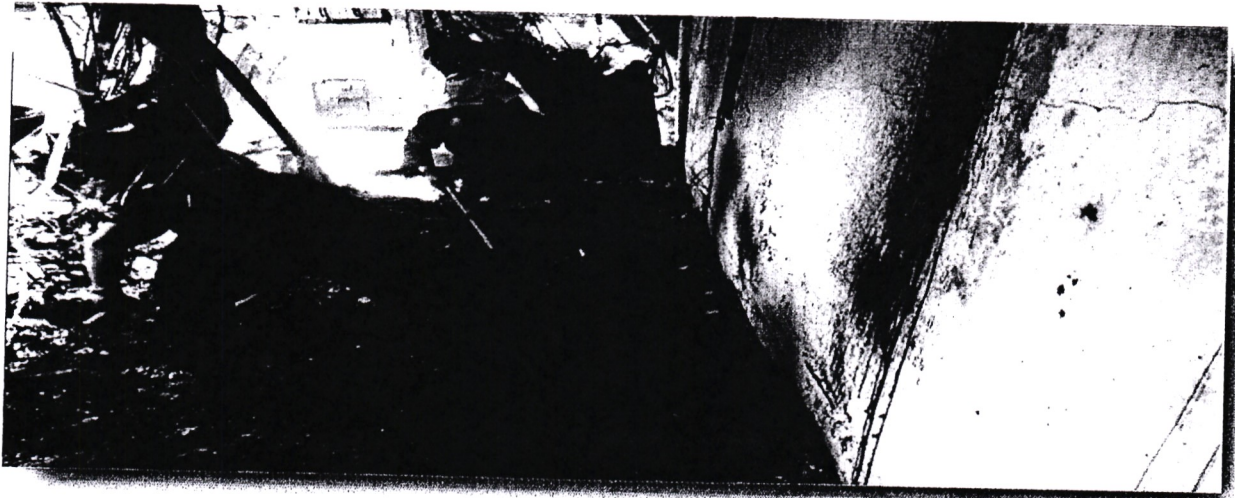
## 6.2 ACT OF ARSON

The witness testimony which included recorded statements and interviews established that the smoke was first seen emanating from the ceiling roof around the Area of Immigration Arrivals 2.

Sgt. Joseph Kolum, a Computer and Cellular Investigator with Anti-Terrorism Police Unit reviewed the CCTV footage with the team and established that the smoke was captured emanating from some location near the Immigration Offices. The CCTV displayed how the intensity of smoke increased gradually until it engulfed all areas that were captured within the building.

Senior Sergeant (w)Bev Csikos of Royal Canadian Mounted Police led the Investigation Team to excavate debris on the floor area within the Kenya Airports Authority Information Control Room where the fire was suspected to have originated. According to Senior Sergeant (w) Csikos the fire would have created a depression on the floor if it could have started from there. The team established that there was no depression on the floor.

**EXCAVATION OF DEBRIS AT KAA INFORMATION CONTROL ROOM FLOOR**



Robert Martin, Fire Investigation Expert from United States of America, said that most arson fires are always conveniently set on from the ground/floor of buildings. He added that it would be very difficult for an arsonist to gain access within the ceiling roof and set on fire in it without being noticed by anyone or getting captured by the CCTV cameras.

The team analyzed all the above facts and based on the findings, witness' testimonies, CCTV footage and experts' assessments, the team concluded that the fire was not set on from the floor. The above findings are inconsistent with those of arson cases hence the team concurred that there was no arson involvement in the fire incident.

### 6.3 ELECTRIC FAULT

The International Arrivals building of JKIA had several electrical appliances that have been used over the years without causing any major incident. However, history cannot rule out any unfortunate occurrence in the future.

Among the items that were found in the building that were using electric power included the following;

1. Air conditioners
2. Computer Servers
3. computers
4. Electric kettle
5. Flight Information Display System (FIDS)
6. Lighting bulbs
7. Room heaters
8. Printers
9. Microwaves

Mr. David Kariuki Nguthi, Electrical Expert with Public Works Department informed the team that these appliances drew their power from a designated central Electric Distribution Board.

The Electric Distribution board had one visible Isolator Switch and it was meant turn on/off the power to areas connected to it.

**ELECTRIC DISTRIBUTION BOARD**



The team analyzed interview results and statements recorded from witnesses to establish whether any of the electrical appliances within the building had malfunctioned prior to the fire incident. It was established that there was no malfunctioning electrical appliance except the electric kettle which was found to have been unserviceable for the preceding three (3) months.

The team analyzed the performance of the Kenya Airports Authority server equipment room within the building to find out whether it overheated and

affected the electric cables. It was established that there were air conditioners in the server room that regulated temperature hence over heating was unlikely to have occurred.

Mr. Idd Murunga, Chief Fire Officer from Public Works Department said that if fire would have started in the server room, then the personnel at the Kenya Airports Authority Information Control Office would have felt heat emanating from the room and burning smell as the fire progressed.

The team, drawing support from accounts of witnesses' who were within the building, established that before fire outbreak, some of electrical appliances and electrically supported gadgets went off yet there was no power outage within the airport. Among the items that went off were Kenya Airports Authority Public Address System, Computer Monitors and Flight Information Display System. This pointed out to the team that there must have been an electrical fault within the system.

Mr. Idd Murunga a Fire Expert with Public Works Department after assessing the electrical distribution board sand witched between the Kenya airports authority information control room/office and the server room belonging to Kenya airport authority said that the insulation in the electric distribution board was damaged by overheating. This overheating exposed the copper conductors leading into a contact with metal casing and resulted into a continuous sparking.

Mr. David Kariuki Nguthi an Electric Expert with the Public Works Department concurred with Mr. Murunga and ascertained in his report that

the fire was caused by electrical arcing due to accumulation of dirt on contacts or loose terminal connection on the isolator terminals shown below



## **7.0 KEY FINDINGS**

### **7.1 PYROLYSIS OF FIRE**

It was evident from CCTV footage review and statements of witnesses that smoke spread in the areas of Simba II lounge kitchenette, former duty free shop, staircase leading to Simba II lounge, church, mosque areas and Kenya Airports Authority Information Control Room/Office among other areas, it did

not necessarily imply that fire originated in those areas but denoted existence of fire. This was because smoke travelled for considerable distance from the Electrical distribution board by reason of air currents. It started as a small fire which bolted up in the ceiling for some time, gradually resulting to large quantities of smoke. Other material also started burning and emitting varied quantities of smoke with varied characteristic smell.

The smoke has characteristic of rising when heated since it becomes less dense than air. When it cools the density increases and its heavier particles start to descend again. Due to heating within the building, smoke was driven upwards through the lift shafts, staircases, light wells and any vertical openings which were in communication with the compartment in which the fire occurred. The smoke rose more vertical until it stroke the roof or ceiling then started to spread sideways.

## 7.2 GROWTH AND SPREAD OF FIRE

About 75% of the heat from the fire was carried away by air and other gases in the conventional mode. Due to heating the air became less dense than the surrounding atmosphere and mixed with gases produced by fire then moved upwards forming convectional currents that carried with them heat and smoke. The high temperature of these rising gases lighted up all the combustible materials in their path.

The supply of air was not cut off hence the displacement of air upwards drew fresh air towards the fire that also got heated and rose upwards, continuing the process of convection. The convection process increased oxygen supply that reached the fire, fueling its intensity. The force of these currents became enormous and large masses of air drew in over the fire together with violent turbulence and rushed upwards in assort of whirlwind. This upward rush was capable of lifting burning materials and dropping them over wide areas starting new fires.

Consequently, the extreme heat vaporized most of the water directed to extinguish the fire and the water never reached the flames source. Ceiling convectional currents spread sideways while others were forced downwards. A thick layer of heated air was formed under the fire which progressed to the floor below.

The objects that were in the neighborhood of fire were exposed directly to radiated heat from the flames. The intensity of radiated heat reached these combustible materials and became heated to an ignition point.

Metals are good conductors of heat hence steel beams and columns that were heated at one end, carried the heat throughout their lengths. This resultant heat caused combustible materials to smoulder up to ignition point.

### 7.3 DEVELOPMENT OF FIRE

Fire began without visible flames in the electrical distribution board causing the heated currents to rise in the ceiling. It smouldered for some time before any sign of fire could be noticed. Suddenly the fire burst out of its relatively small pockets of local heats, setting the whole building into flames within minutes and raged with such violence that no part of it could be saved.

The limited supply of oxygen within confined space of the ceiling roof did not hinder the fire from smouldering. Combustible solids smoulder gradually when the proportion of oxygen supply is less than a third ( $1/3$ ) of the normal requirement. There was no much convection going on due to limited ventilation but there was radiation and limited convection that led to gradual built up of heat from decomposing materials like gases and vapour that were produced but could not escape.

There was also pressure that caused the windows and ceiling roof to collapse leading to contact between the heated inside atmosphere and the outer cold air. When the inner atmosphere reached the right temperature and concentration it resulted to a "flush-over" and ignited explosively. Some of the witnesses accounted that they heard a mini-explosion during the fire incident; this was as a result of the "flush-over"

## **8.0 THE CAUSE OFFIRE**

From the evidence collected, experts' reports and eye witness's account, it is evident that the fire was an accidental incident that resulted from arcing that started from the Electric Distribution Board. The fire incident was an accidental act beyond human detection and control.

## **9.0 RECOMMENDATIONS**

Though the fire incident was accidental due to electric power fault at the Electric Distribution Board, the investigation team recommends the following to avert future fire incidents in all airports in Kenya.

1. Kenya Airports Authority must purchase and maintain sufficient multipurpose Firefighting Engines that can serve in fighting both airplane and domestic fires. The engines must be situated at strategic places, not only at the airside but also at terminal buildings amongst other key installations in the airport.
2. The Kenya Airports Authority must strengthen the manpower of firefighters within all airports and facilitate them to acquire modern firefighting skills and equipment.
3. Architectural designs of the buildings within the airports must accommodate access ways for fire engines, firefighters and their equipment.

4. The airports buildings must be fitted with smoke/fire detectors.
5. All electrical connections within the airports must be subjected to periodical audits by an external authorized institution.
6. All airports must be subjected to periodical fire and safety inspection by an external authorized institution.
7. All personnel working at the airports must be subjected to proper training and/or sensitization on fire drills and response.
8. The security agents and other key stake holders in all airports must be placed under a central command coordinated through the Emergency Operation Centre.
9. All airports must have an alternative Emergency Operation Centre and be located in separate strategic buildings within the airport.
10. Disaster preparedness and awareness must be done periodically in all airports.
11. The Kenya Airports Authority training school must be equipped with a fire training system that will impact realistic skills to firefighters in their profession. The training school must make use of simulators with a variety of internal and external fire scenarios.

## **10.0 APPENDICES**

### **10.1 CCTV FOOTAGE REPORT**

10.2 NATIONAL COUNTER TERRORISM CENTRE FIRE INQUIRY REPORT

10.3 REPORT OF A GOVERNMENT ANALYST -1

10.4 REPORT OF A GOVERNMENT ANALYST -2

10.5 REPORT OF A GOVERNMENT ANALYST -3

10.6 DEPARTMENT OF PUBLIC WORKS FIRE REPORT

10.7 DEPARTMENT OF PUBLIC WORKS ELECTRICAL FIRE REPORT

10.8 CID BOMB DISPOSAL UNIT REPORT

ANNEX 2



**MEMO**

Eric

**To: Managing Director**  
**From: General Manager (SS)**  
**Date: 1<sup>st</sup> August 2014**  
**RE: PARLIAMENTARY INVESTMENT COMMITTEE VISIT**

This is OK. You need to have this included in the report that is going to parliament.

Following the visit by the Parliamentary Investment Committee, I was advised to make a report on Intruder Detection Systems at JKIA.

L. Njiru

Attached is a matrix of security operation at JKIA and it is my request the document be treated as confidential material.

4/08/14

**KIRAITHE E.K.(MBS)**

Encls.

Mr. Chondle  
see MD's comments  
and proceed accordingly.  
Eric  
04/08/2014



**INTRUDER DETERRENCE & DETECTION SYSTEMS – JKIA**

<b>REGION</b>	<b>AREA</b>	<b>DETECTION/TERRENCE SYSTEMS</b>	<b>CO-ORDINATING OFFICE</b>
Northern Flight Path	Nairobi National Park	KWS patrols and surveillance of the park	Director, KWS
	From KWS fence to KAA perimeter fence including area around Mombasa Road	<ul style="list-style-type: none"> <li>➤ Mobile GSU patrols</li> <li>➤ Manned GSU surveillance towers equipped with advanced equipments</li> </ul>	Commandant GSU
Southern Flight Path	Utawala/Ruai Estates and the environs	Community synthetisation in liaison with Njiru Sub County Security Agencies	Njiru Sub-county Commissioner
	From Utawala Estate to KAA Perimeter fence	<ul style="list-style-type: none"> <li>➤ Mobile GSU Patrols</li> <li>➤ Manned GSU surveillance tower equipped with advanced equipments</li> </ul>	Commandant - GSU
Airside	All area enclosed by the perimeter fence also known as Restricted Area	<ul style="list-style-type: none"> <li>➤ Mobile patrols by KAPU and KAA Security jointly or separately (KAA has availed patrol-vehicles to KAPU)</li> <li>➤ CCTV surveillance with advanced for night vision equipments</li> </ul>	MD KAA/Commandant-KAPU
		<ul style="list-style-type: none"> <li>➤ KAPU's physical inspection of all vehicles and persons entering the airport</li> <li>➤ Use of security equipments and canines where necessary</li> </ul>	Commandant – KAPU
Access Road and Car Parks	Main gate - Police check point	Automated access by use of drop arm barriers, CCTV cameras and car park charging system	MD – KAA
		Main gate Automated Vehicle Access	

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	Car Parks	Police and KAA Security patrols and surveillance of all car parks	Commandant – KAPU and MD KAA
Terminal Access	Main entrance	<ul style="list-style-type: none"> <li>➤ Airport permit system</li> <li>➤ Passenger travel document check by KAA Security</li> </ul>	MD – KAA
	Security check point	Inspection of all persons, airport workers, passengers and their <b>hold bags</b> by use of advanced security equipments	MD- KAA
Inside Terminal	Airline Check-in Systems	Passengers identification and ticket inspections	Airlines
	Immigration Check Points	Passport inspection and clearance	Director of Immigration
	Crime Detection and Investigation	Identification of wanted and other persons of security interest	Commandant - KAPU
	Check in and Immigration desks	Crime detection	Commandant - KAPU
Boarding gate access	General Areas	<ul style="list-style-type: none"> <li>➤ CCTV surveillance</li> <li>➤ Patrols by KAA Security and KAPU</li> </ul>	MD-KAA Commandant - KAPU
	Security Check Point	Re-inspection of passenger and their <b>carry-on bags</b> by use of advanced security equipments	MD-KAA
	Airline Security Checks	Re-inspection of travel documents – passports and boarding cards	Airlines
Aircraft Security	When on ground	Access control by beaconing and surveillance	Airline and GSU for VIP and high risk carriers
	Onboard	Crew inspection of passengers	Airline

**NB:**

- Coordination of the above systems is done by the National Aviation Security Committee (NAVSEC) chaired by Director, KCAA
- KCAA is the Regulator of Aviation Security activities in Kenya



## **Greenfield Terminal Project - Report**

### **1. Background information**

#### **1.1 Project Objective**

KAA is expanding infrastructure at JKIA as part of key Vision 2030 flagship projects.

The objective is to increase passenger handling capacity and enhance aviation security and safety for Jomo Kenyatta International Airport. The objective is to be achieved through implementation of the projects in various packages.

#### **1.2 Historical Background**

The current passenger terminal facilities were opened in 1978 with a capacity to handle 2.5 million passengers per annum and no major improvement has been carried out since, resulting in congestion and low level of passenger service.

The ongoing expansion commenced in 2006 with the aim of decongesting the airport through increasing the capacity from 2.5 million passengers per annum to 9.3 million passengers per annum and to improve safety and security at the airport. However, following completion of the master plan review, further expansion was necessary to expand capacity for the airport to handle 17.1million passenger per annum in the year 2020 and 35.4million in the year 2030.

### **2.0 Construction of the New Greenfield Terminal Complex**

#### **2.1 Background**

On the basis of the traffic projection, the capacity of 9.3million that will be achieved with the ongoing expansion packages will only provide capacity to handle traffic for the next five years i.e. up to 2015. Therefore, to provide capacity to satisfy demand for the years 2020 and 2030, it was necessary that additional capacity be provided through construction of the new Greenfield terminal and associated facilities.

Construction of the New Greenfield terminal complex and associated facilities will provide the additional long term capacity to handle passengers and enhance operational efficiency necessary to consolidate the position of JKIA as the premier hub in the region.

The new terminal shall be of new state of the art landmark building designed with an overriding Kenyan/African theme with a contemporary look and feel.

The design footprint is modular and in line with current airport design practices, allows for future expansion without interrupting operations of the Terminal building during construction.

## **2.2 Scope of development**

The scope of the proposed development shall include the construction of a new terminal building with floor area of about 178,000 square metre on four levels conceived as a hub terminal for efficient connectivity for transiting passengers. Among other facilities, it will have 50 international checks in positions; 32 contact and 8 remote gates; associated apron with 45 aircraft stands complete with fuel hydrant and all associated services. It will also include railway terminal, parking garage and airport hotel.

## **2.3 Status of Implementation**

### **2.3.1 Tendering**

9<sup>th</sup> March 2011, the 147<sup>th</sup> Board of Directors meeting approved the Greenfield Terminal Project after meeting minister of transport on JKIA Master Plan.

JKIA Greenfield Project was tendered using section 76(1) of the Public procurement and Disposal Act, and advertised in an open process in local newspapers on **24<sup>th</sup> June 2011** as well as posted to KAA Website. Scope included:

- Design & Construction of a 178,000 square meter terminal building on 4 levels
- 50 international Check-in positions
- 32 Contact and 8 Remote gates
- 45 Aircraft stand apron
- Landside and Airside roadwork
- Associated utilities

The bidders were to provide a Financier who would engage KAA directly. Minimum terms were provided in the Tender document.

The bid submission was on 17<sup>th</sup> November 2011

### **2.3.2 Award**

On 16<sup>th</sup> December, 2011 the contract was awarded to the best evaluated bidder, i.e. Anhui Construction Group and CATICF JV with Pascall + Watson architects as the design consultants at a cost of **USD 653,782,814.57**

Comparative analysis of the costs was done with recently completed similar Airports globally. The price was found to be reasonably comparable to average rates of the following completed terminal building;

- i) Cairo International Airport Terminal 3 – 2009.
- ii) King Abdul Aziz, Jeddah Saudi Arabia – 2011.
- iii) Manado Airport, Indonesia – 2001.
- iv) Sofia airport, Bulgaria – 2006.

## **2.4 Works Supervision**

On 19<sup>th</sup> January 2012, following a competitive bidding, KAA awarded the Supervision services to a leading project consultant Louis Berger from USA. The consultant is currently conducting the Environmental and Social Impact Assessment (ESIA)

## **2.5 Project financing options**

Negotiations for financing are ongoing with Africa Development Bank

## **2.6 Loan serving**

The project is supported by the Passenger Service charge of which charges have been reviewed by Treasury from USD 20 to USD 40 which will be used to service the loan.

A financial model has been prepared for KAA to the JKIA expansion project and other projects being carried out by the Authority,

## **2.7 Government support**

The Government has supported the project through:

- Cabinet approval of the project
- Allowing KAA to retain the service charge revenue
- Approval of the loan for the current project.

## **3.0 Current status**

- The contract is on design and build basis
- Concept design been finalized following consultation with major stakeholders
- 30% detailed design to be completed by September, 2014
- The order to commence was issued January, 2014 and the contractor is going on with excavation.
- Foundation works to commence in November, 2014 when 60% detailed design is complete
- Construction of terminal to be completed after three years in November, 2017



**UPDATE ON AIRPORT HOTEL PROJECT**  
**Proposed Airport Hotel, Expo cum Convention & Trade Centre at JKIA**

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1. **AIRPORT HOTEL PROJECT:** The project was for development of an Expo-Cum Convention and Trade Centre Hotel and Tourist Hospital at Jomo Kenyatta International Airport on a Build Operate and Transfer (BOT) basis.
  
2. **SIGNING OF AGREEMENTS:** Upon due approval by the Authority's Board, Concession Agreement, Agreement for Lease, and the Lease (hereinafter referred as to "the Agreements") between Kenya Airports Authority ("the Authority) and Qatar's Afro Asia Investment Corporation ("the Investor") were signed on 15<sup>th</sup> January 2009. The Attorney General had given legal clearance for the Agreements to be signed subject to a thorough due diligence forming a condition precedent to implementation of the Project. *(Annexed hereto are copies of the subject agreements)*
  
3. **TAKING POSSESSION OF THE SITE:** The Investor was to take possession of the identified project site within eighteen (18) months from the date of execution of the Agreements for purposes of commencing implementation of the project. The conditions precedent to be fulfilled before the Investor takes possession of site were as follows:
  - (a) *Due diligence on the investor for the purposes of verifying the warranties given in the contractual documents, and determining the legal status and financial standing in relation to execution of the project;*
  
  - (b) *Provision of Bank Guarantee in the sum of Kshs.36 million as security for carrying out the project works.*

4. **BOARD ACTION:** During 151<sup>st</sup> (Special) Board Meeting held on 28<sup>th</sup> September 2011, the Board advised Management to proceed with formal termination of the Agreements for the reason that the aforesaid conditions precedent had not been fulfilled. The position taken by the Authority is as follows:

- (i) *Under the agreements, the Investor was under obligation to facilitate conduct of due diligence within ninety (90) days from the date of execution of the project. Therefore, it is the Investor that failed to facilitate the process.*
  - (ii) *The investor did not provide the said required Bank Guarantee which was to be issued immediately after signing the Agreements.*
  - (iii) *The Lease Agreement provided that immediately upon signing, the Investor would pay the costs and disbursements incidental to the Grant and Registration of the Lease. The Investor did not provide requisite payments for perfection of the lease by way of registration.*
5. **REGISTRATION:** Due the Investor's failure to fulfill the above mentioned Conditions precedent, the Agreements could not be lodged for registration at the lands office to pave way for implementation of the project.

Dated the                      day of                      200

**Kenya Airports Authority**

And

**Afro Asia Investment Corporation**

**Agreement for Lease**

Over

Part of L.R. No. 21919

**Drawn jointly by**

Nyiha, Mukoma & Co. Advocates

3<sup>rd</sup> Floor, Old Mutual Building

Kimathi Street

P.O. Box 28491, 00200

Nairobi – Kenya

Tel: 2249247/8

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Email: [nyihamukoma@africaonline.co.ke](mailto:nyihamukoma@africaonline.co.ke)

Website: [www.nyihamukoma.com](http://www.nyihamukoma.com)

And

AHMEDNASIR ABDIKADIR & CO. ADVOCATES

2<sup>nd</sup> Floor, CBA Building

Standard Street

P.O. Box 57731-00200 Nairobi, Kenya

Tel: 2217886/2215422/343957

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Website: [www.ahmednasirabdikadir.com](http://www.ahmednasirabdikadir.com)

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THIS AGREEMENT is made the ..... day of ..... Two  
Thousand and \_\_\_\_\_ **BETWEEN THE KENYA AIRPORTS AUTHORITY** a body  
corporate duly incorporated under the provisions of the Kenya Airports Authority Act (Chapter 395  
Laws of Kenya) and of care of Post Office Box Number 19001 Nairobi in the Republic of Kenya  
(hereinafter called "the **Lessor**" which expression shall where the context so admits include its  
successors and assigns) of the one part and **AFRO ASIA INVESTMENT CORPORATION** a  
Qatari Company registered under Commercial Registration Number 29658 and of care of Post  
Office Box Number 2061, Doha within the State of Qatar (hereinafter called "the **Lessee**" which  
expression shall where the context so admits include its successors and assigns) of the other part.

NOW IT IS AGREED as follows:

## 1 **DEFINITIONS AND INTERPRETATION**

In this agreement the following expressions have the meanings given below.

### 1.1. **'The Airport'**

'The Airport' means the Jomo Kenyatta International Airport erected and being on the land described in Schedule 5 hereof.

### 1.2. **'The Building Documents'**

"The Building Documents" means, subject to schedule 4 paragraph 4-5.5, the proposal, the plans, drawings, specifications and other documents relating to the Works listed in schedule 3.

### 1.3. **'The Certificate Date'**

"The Certificate Date" has the meaning specified in schedule 4 paragraph 4-11.3.

### 1.4. **'The Commencement Date'**

Means the date on which this Agreement for Lease is executed by the parties thereto and unless otherwise determined shall terminate upon the issuance of the Certificate of Practical Completion.

### **1.5. 'The Continuing Covenants'**

The 'Continuing Covenants' mean those covenants of this Agreement that continue to be in force for the entire period of the term granted in the Lease.

### **1.6. Gender and number**

Words importing one gender include all other genders; words importing the singular include the plural and vice versa.

### **1.7. Headings**

The clause and paragraph headings do not form part of this document and must not be taken into account in its construction or interpretation.

### **1.8. Infrastructure**

"Infrastructure" means the infrastructure to be constructed by the Lessee and which is needed for the use and enjoyment of the Premises, comprising the necessary extension of the roads and paths and any other extension that could be required to allow the Premises to connect to its service utilities, as well as the sewers, drains, watercourses, cables, channels, flues and all other conducting media – including any fixings, louvers, cowls and any other ancillary apparatus - that are over or under the Premises

### **1.9. Interpretation of 'the Lessor'**

"The Lessor" includes the Lessor's the successors in title to the Site and any other person who is at any time entitled to the reversion immediately expectant on the term agreed to be granted by this agreement.

### **1.10. Interpretation of 'the Lessee'**

"The Lessee" includes successors in title of the Lessee and its assigns.

### **1.11. Joint and several liability**

Where any party comprises two or more persons, the obligations and liabilities of that party under this agreement are to be joint and several obligations and liabilities of those persons.

**1.12. 'The Lessor's Advocates'**

"The Lessor's Advocates" means the firm of Nyiha, Mukoma & Co. Advocates, 3<sup>rd</sup> Floor, Old Mutual Building, Kimathi Street, P.O. Box 28491, 00200, Nairobi or any other firm of advocates the Lessor from time to time notifies to the Lessee as being its advocates for the purposes of this agreement.

**1.13. 'The Lease'**

"The Lease" means a lease of the Premises for a term of **Eighty (80) Years**, commencing on the Commencement Date, at the annual rent reserved therein.

**1.14. 'The Legal Costs'**

'The Legal Costs' means the Lessor's and the Lessee's Advocates' fees, disbursements and incidental expenses for negotiating this agreement and the Lease, and preparing, completing and implementing this agreement and the Lease, including any VAT payable on them, and stamp duties and the registration of this Agreement and the Lease.

**1.15. 'The Premises'**

'The Premises' means the Site together with such of the Works as may from time to time have been carried out on the Site.

**1.16. References to clauses, paragraphs and schedules**

Any reference in this agreement to a clause, subclause, paragraph, subparagraph or schedule without further designation is to be construed as a reference to the clause, subclause, paragraph, subparagraph or schedule of this agreement so numbered.

**1.17. References to 'working days'**

References to 'working days' means Monday to Friday 8.00 a.m. to 5 p.m. and Saturday 8.00 a.m. to 1.00 p.m.

**1.18. 'The Site'**

'The Site' means the premises described in schedule 1 being a portion of the land described in Schedule 5.

### **1.19. 'The Surveyors'**

'The Surveyors' means the Lessor's Chief Quantity Surveyor or any other firm of quantity surveyors that the Lessor from time to time appoints and notifies to the Lessee as having been appointed.

### **1.20. 'The Surveyor's Costs'**

'The Surveyors' Costs' means the Quantity Surveyors' fees, disbursements and incidental expenses for an initial perusing and advising the Lessor on the Building Documents and the contract entered into between the Lessee and the Contractor, including any VAT payable on them.

### **1.21. 'The Start Date'**

'The Start Date' is the latest date by which the Lessee shall be required to have obtained all approvals and clearances and to have commenced actual construction of the Works at the Site. The start date shall not exceed Eighteen (18) months from the date of execution of this Agreement and the Lease.'

### **1.22. 'The Lessee's Advocates'**

"The Lessee's Advocates" means Ahmednasir, Abdikadir & Company Advocates, 2<sup>nd</sup> Floor, Commercial Bank of Africa Building, Standard Street, P.O. Box 57731, 00200 Nairobi or any other firm of advocates the Lessee from time to time notifies to the Lessor as being its advocates for the purposes of this agreement.

### **1.23. 'The Works'**

'The Works' means the works briefly described in schedule 2 that are to be carried out on the Site by the Lessee in accordance with the terms of this agreement.

## **2 THE WORKS**

### **2.1 Possession to carry out the Works**

Immediately this agreement is executed, vacant possession of the Site is to be given to the Lessee and it shall have the right to enter the Site to carry out the Works in accordance with schedule 4. The provisions of schedule 4 are to have effect accordingly. The Lessee shall within a period of Eighteen (18) Months (the Start Date) from the date of execution of this Agreement and the Lease subject, however, to extension of time as provided in Schedule 4:

- 2.1.1 prepare or cause to be prepared all the Building Documents and forward the same to the Lessor for approval;
- 2.1.2 apply for and obtain the necessary local authority approvals or other necessary approvals;
- 2.1.3 subject to clause 2.1.2 and the permitted delays specified in Clause 4-10.2 of Schedule 4, start the Works.
- 2.2 The Lessor shall grant the Lessee access to existing or new quarries that are on the Lessor's parcel of land described in Schedule 5 hereof for purposes of mining fill and aggregate materials for use by the Lessee in carrying out the Works and the Lessor shall permit the Lessee to deposit in such quarries black cotton soil and surplus excavated material PROVIDED HOWEVER that on completion of quarrying, the Lessee shall backfill all such open quarries in a manner that is environmentally friendly and to standards acceptable to the Lessor.
- 2.3 The Lessor shall further permit the Lessee to install a crusher plant, concrete batching plant, storage and manufacturing yards adjacent to and near the existing quarry.
- 2.4 The Lessor hereby undertakes and covenants with the Lessee that all roads, water, power, sewer, drainage and utilities together with their connections will at the time of executing this Agreement be available at, on or immediately adjacent to the Site IT BEING AGREED AND UNDERSTOOD that this covenant applies only and is limited only to such roads, water, power, sewer, drainage and utilities that are exterior to the Site and the on site infrastructure as defined in this Agreement shall at all times be provided by and be the responsibility of the Lessee .
- 2.5 The Lessor shall use its best endeavours to ensure that the Site is designated by the Government of Kenya as a Free Zone and the failure by the Lessor to procure such designation shall in no way be construed as a breach by the Lessor of this Agreement for Lease.

- 2.6 The condition of the Site shall be the sole responsibility of the Lessee. Accordingly (without prejudice to any other obligation of Lessee under this Agreement for Lease), the Lessee shall be deemed to have:
- 2.6.1 carried out a ground physical and geophysical, climatic, hydrological, hydro geological, ecological, environmental, geotechnical, geological, paleontological, and archaeological investigation and to have inspected and examined the Site and its surroundings and (where applicable) any existing structures or works on, over or under the Site;
  - 2.6.2 satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution of the Works;
  - 2.6.3 satisfied itself as to the adequacy of the rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement for Lease (such as additional land or buildings outside the Site);
  - 2.6.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Lessor ), with access to or use of, or rights in respect of, the Site, with particular regard to the owners of any land adjacent to the Site; and
  - 2.6.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- 2.7 To avoid doubt, Lessee accepts full responsibility for all matters referred to in Clause 2.6 and Clause 7.5.

## **2.8 Outgoings**

With effect from the Commencement Date and as a continuing covenant, the Lessee must pay and indemnify the Lessor against all rates, taxes, assessments, duties, charges, impositions and outgoings from time to time charged, assessed or imposed on the Premises or on the Lessor relating to the Premises or occupier of them PROVIDED however that such rates, taxes, assessments, duties, charges, impositions and outgoings payable by the Lessee shall relate only to the share of such taxes, assessments, duties, charges, impositions and outgoings attributable to the Premises.

## **2.9 Construction Regulations and Bye Laws**

In carrying out the Works, the Lessee must comply with all the construction regulations and bye laws that are in force and be the only "client/employer" vis a vis the contractors that it might appoint in terms of the meaning of the word "client/employer" in the building industry, fulfill in relation to the Works all the obligations of the client, and make whatever declarations as may be necessary to that effect to the Public Health Department and all relevant authorities.

# **3 THE LEASE**

## **3.1 Grant and acceptance**

Subject as provided in schedule 4, the Lessor hereby grants unto the Lessee and the Lessee hereby accepts the Lease over the Premises for a term of **Eighty (80)** Years from the \_\_\_\_\_ day of \_\_\_\_\_ together with the rights granted in the Lease subject to the terms and conditions and at the annual rent stipulated in the Lease. Where the provisions of this agreement contradict the Lease, the provisions of the Lease shall prevail.

## **3.2 Preparation of Documents**

The Lease and the counterpart shall be prepared by the Lessor's Advocates. An engrossment of the Lease must be delivered to the Lessee's Advocates for execution together with this Agreement.

# **4 CONCESSION, CHARGE AND RENT COMMENCEMENT**

## **4.1 Commencement of payments**

The rent shall be payable in accordance with the terms of the Lease with effect from the commencement date stated in the Lease.

On execution of the Lease, the Lessee shall also execute a separate Concession Agreement with the Lessor to run with the term of the Lease and shall comply with the terms of such Concession Agreement and pay to the Lessor such Concession Fees as shall be provided for in the Concession Agreement.

## **5 DAMAGE ETC**

Subject to the provisions of schedule 4, no damage to, or destruction of, the Site or the Premises or any part of them, however occasioned, is to affect the obligations of the parties under this agreement in any way provided that if the Premises are totally destroyed the Lessee shall be at liberty to terminate this agreement on giving to the Lessor one (1) month's notice to that effect.

## **6 TITLE AND USER**

### **6.1 Deduction of title**

The Lessor's title to the Site is to be deduced, commencing with the original title document to the land described in schedule 5.

### **6.2 Requisitions excluded**

The Lessee or the Lessee's Advocates having been supplied with copies of the original title documents, and they having been afforded an opportunity to inspect the originals of those documents, the Lessee has entered into this agreement with notice of the terms and conditions of the documents.

### **6.3 Subjections**

#### **6.3.1**

The Lessee is to hold the Site and the Premises pursuant to clause 2, and the Premises are demised pursuant to Clause 3, subject to the matters set out or referred to in the Lease, and the Lessee or its advocates having been supplied with such information as the Lessor has concerning them, the Lessee has entered into this agreement with notice of, and may raise no objection, requisition or inquiry in respect of them.

#### **6.3.2**

The Lessee is to hold the Site and the Premises pursuant to clause 2 and 6.3.1, and with the benefit of all consents obtained pursuant to schedule 4 paragraph 4-3.

## **7 RESTRICTIONS**

### **7.1 Restrictions**

References to 'restrictions' are references to any matters affecting the Site or the Premises or their use that are, or should be, registered as local land charges, and to any notices, charges, orders, resolutions, demands, proposals, requirements, regulations, restrictions, agreements, directions or other matters affecting the Site, the Premises or their use, or affecting the Works, that are served or made by a local or other competent authority or that arise under a statute, or a regulation or order made under a statute.

### **7.2 Demise subject to any restrictions**

The Lessee is to hold the Site and the Premises pursuant to clause 2 and 6.3.1 subject to any restrictions in existence at the Commencement Date. The Lessor warrants to the Lessee that it is not aware of any restrictions save for those disclosed in the Title Documents to the Site and confirms that any and all currently existing restrictions have been properly disclosed to the Lessee.

### **7.3 Lessee's obligations and indemnity**

The Lessee acknowledges that its respective obligations under this agreement are not to be affected or lessened in any way by the fact that the Site may not after the Commencement Date comply with any restrictions, or that any restrictions may then or subsequently exist, and the Lessee must comply with restrictions which arise after the Commencement Date.

### **7.4 Lessor's Warranties**

**The Lessor covenants, warrants and agrees with the Lessee that:**

7.4.1 It is the sole and lawful owner and lessee from the Government of the Republic of Kenya of the site and its is duly authorized and able to enter into this Agreement and perform its obligations herein.

7.4.2 The Site is not on a buffer zone or road reserve and its ownership is not subject to any challenge whatsoever from the Government of Kenya, any local authority (including but not limited to the City Council of Nairobi) or any other person and shall fully indemnify the Lessee for any loss suffered as a result of breach of this warranty.

7.4.3 All covenants, restrictions, stipulations, conditions and other terms affecting the Site or the Premises have been observed and performed and there are no circumstances which would entitle or require any Lessor or other person to exercise any powers of entry and taking possession or which would otherwise restrict or terminate the continued possession or occupation of any of the Site or the Premises.

7.4.4 There are no outstanding disputes, notices or complaints which affect or might in the future affect the use of any of the Site or the Premises for the purposes for which they are now used.

7.4.5 The present use of the Site or the Premises is the permitted use for the purpose of applicable regulations and is not adversely or likely to be adversely affected by any planning proposals.

#### **7.5 The Lessee's Warranties**

**The Lessee covenants, warrants and agrees with the Lessor that:**

7.5.1 It is duly incorporated and validly existing and in good standing under the laws of Qatar as a limited liability company and has the full power to enter into and perform the obligations under this Agreement for Lease;

7.5.2 It has taken all necessary corporate and other action under its constitutive documents and all applicable laws to authorize the execution, delivery and performance of this Agreement for Lease;

7.5.3 The execution delivery and performance of this Agreement for Lease does not and will not contravene any contractual restrictions or any existing applicable law or regulation binding on the Lessee;

7.5.4 It has the financial standing and capacity to undertake the Works;

- 7.5.5 This Agreement for Lease constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- 7.5.6 It is subject to civil and commercial laws of Kenya with respect to this Agreement for Lease and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- 7.5.7 The execution, delivery and performance of this Agreement for Lease will not conflict with or result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Lessee's constitutional documents or of its holding companies or subsidiaries or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- 7.5.8 There are no actions, suits, proceedings or investigations pending or to the Lessee's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute a default in this Agreement for Lease or which individually or in the aggregate may result in an effect adverse to the ability of the Lessee to perform its obligations under this Lease;
- 7.5.9 It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority which may result in an effect adverse to the ability of the Lessee to perform its obligations under this Lease;
- 7.5.10 It has complied with all applicable laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an effect adverse to the ability of the Lessee to perform its obligations under this Agreement for Lease;
- 7.5.11 No representation or warranty by the Lessee contained herein or in any other document furnished by it to the Authority or to any Government Authority contains or will contain no untrue statement of material fact or omits or will not omit to state a material fact necessary to make such representation or warranty not misleading;
- 7.5.12 The Lessee acknowledges that the Lessor reserves the right to carry out a due diligence on the veracity of the Warranties set out hereinabove and on the financial standing of the

Lessee. and hereby agrees that in the event that the Lessor finds any warranty herein provided to be untrue then this Agreement for Lease shall be deemed to be *ipso facto* terminated without the necessity of any further acts or action on the part of the Lessor PROVIDED THAT the Lessor shall carry out and complete the said due diligence within Ninety (90) Days from the date of execution of this Agreement for Lease.

## **8 REPRESENTATIONS**

### **8.1 No authorised representations**

Except as provided in clause 8.2, no agent, adviser or other person acting for the Lessor has at any time before the making of this agreement been authorised by the Lessor to make to the Lessee or to any agent, adviser or other person acting for the Lessee any representation whatever, whether written, oral or implied, in relation to the Site or the Premises or to any matter contained or referred to in this agreement.

### **8.2 Preliminary enquiries**

Any statement made in writing by the Lessor's Advocates to the Lessee's Advocates before the making of this agreement in reply to an enquiry made in writing by the Lessee's Advocates was made with the authority of the Lessor.

### **8.3 Immaterial errors**

No immaterial error, omission or misstatement in this agreement, or in any plan of the Site referred to in this agreement, or in any statement made by any person before the making of this agreement, is to affect the obligations of the parties under this agreement in any way, or entitle any party to damages or compensation.

### **8.4 Encumbrances**

8.4.1 The Lessor warrants that the Site is free from any adverse claim or encumbrance

8.4.2 The Lessor warrants to the Lessee that during the term of the Lease the Lessor shall not sell or charge or otherwise encumber the Title to the Site and the Premises.

## **9 ASSIGNMENT**

The Lessee may assign, sublet, charge or otherwise deal in any way with the benefit of this agreement in whole or in part subject only to the Lessor giving a prior written consent, such

consent not to be unreasonably withheld or delayed IT BEING AGREED AND UNDERSTOOD that a fundamental change in shareholding in the Lessee shall be deemed to be a permissible assignment that shall not require the consent of the Lessor.

## **10 NOTICES**

### **10.1 Form and service**

Any notice or other communication given or made in accordance with this agreement must be in writing, may, in addition to any other effective mode of service, be sent by registered or recorded delivery post and must—

10.1.1 in the case of a notice or other communication to the Lessor, but subject to clause 10.2, be served on the Lessor at his address shown on the first page of this agreement or such other address as he from time to time notifies to the Lessee as being his address for service for the purposes of this agreement,

10.1.2 in the case of a notice or other communication to the Lessee, but subject to clause 10.2, be served on the Lessee at his address shown on the first page of this agreement or such other address as he from time to time notifies to the Lessor as being his address for service for the purposes of this agreement, and

### **10.2 Service by or on advocates**

Any notice served by or on, or other communication given or made by or to, the Lessor in accordance with this agreement may be served by or on, or given or made by or to, the Lessor's Advocates on behalf of the Lessor. Any notice served by or on, or other communication given or made by or to, the Lessee in accordance with this agreement may be served by or on, or given or made by or to, the Lessee's advocates on behalf of the Lessee. Any change in the parties' respective Advocates must be immediately advised in writing to the other party.

## **11 COSTS**

### **11.1 Contribution to costs on making of agreement**

The Lessee must, on the making of this agreement, pay the Legal Costs and on demand pay to the Lessor such of the Surveyor's Costs as shall have been incurred by the Lessor in relation to the approval of the Building Documents as per clause 2.1.1 above. All the costs to be paid shall be duly justified, and the Lessor shall send to the Lessee the invoices showing the amounts incurred.

## **11.2 Costs on determination of agreement**

If this agreement determines in accordance with schedule 4 paragraph 4-12.6, the Lessee must pay to the Lessor on demand an amount equal to all the Surveyors' Costs and the Legal Costs incurred by the Lessor up to the date of the determination, including any of the Surveyors' Costs and Legal Costs incurred in relation to the determination, credit being given for the amount paid in accordance with clause 11.1. The Lessor shall send copies of the invoices from third parties, before any payment is due under this clause.

## **12 MISCELLANEOUS**

### **12.1 Merger**

To the extent that they remain to be observed and performed, all the provisions of this agreement, including without limitation the provisions of schedule 4, are to continue in full force and effect for the duration of the Lease.

### **12.2 Entire understanding**

This agreement and the Lease together embody the entire understanding of the parties and there are no other arrangements between the parties relating to the subject matter of this agreement.

### **12.3 Amendments**

No amendment or modification of this agreement is to be valid or binding on any party unless it is made in writing, refers expressly to this agreement and is signed by or on behalf of all parties.

### **12.4 Governing Law**

This Agreement shall be governed, construed and enforced in accordance with the Laws of Kenya.

### **12.5 Language**

This agreement is made in the English language. If there is any conflict in meaning between the English language that this Agreement is made in and any translation of this Agreement in any other language that any of the parties may for its own convenience make, the English language Agreement, being this Agreement, shall prevail.

### **13. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

**13.1** The Parties agree that at all times during and after the Term, it will hold all confidential information in strict confidence and neither Party will directly or indirectly:

**13.1.1** disclose, publish, transmit or otherwise reveal in part or deliver in any document or other way or form any confidential information to any person other than an authorized representatives of the other party; or

**13.1.2** use any information, strategy, know-how or other confidential information other than for the benefit of either Party.

**13.2** The Parties shall ensure that all their employees, agents and officers do not disclose any confidential information during and upon leaving the employment of either Party.

**13.3** Under no circumstances shall any of the Lessee's trademarks or logos or the image or likeness of any trademark or logo be used without Lessee's prior written authorisation.

#### **SCHEDULE 1:**

##### **THE SITE**

All that piece or parcel of land containing by measurement Ninety (90) Acres or thereabouts situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya being a portion of the land described in Schedule 5 hereto and for purposes of identification only bordered in red on the plan annexed hereto.

#### **SCHEDULE 2:**

##### **THE WORKS**

All that construction operation and running of:

- (i) A 5 star hotel with 450 rooms with the usual hotel amenities

- (ii) Exhibition Centre comprising of a Main Exhibition Centre and Auxiliary Exhibition Centre
- (iii) A Convention Centre comprising a Main Convention Centre and Auxiliary Convention Centre
- (iv) Five office Towers
- (v) Warehouses
- (vi) A 4 star hotel with 300 rooms with usual hotel amenities
- (vii) A modern tourist hospital with bed capacity of 200 beds
- (viii) Service apartments.
- (ix) A power plant
- (x) The Infrastructure
- (xi) Water boreholes

and all matters ancillary to the running thereof but subject to the provisions contained in the Lease, Agreement for Lease and the Concession Agreement.

### **SCHEDULE 3:**

#### **THE BUILDING DOCUMENTS**

The Lessee's proposals in relation to the Works described in Schedule 2 hereof and the preliminary plans, drawings, specifications and other documents approved by the Lessor. Prior to the commencement of construction, final plans, drawings, specifications and other documents agreed and initialed by the parties will replace the preliminaries.

## **SCHEDULE 4:**

### **PROVISIONS RELATING TO THE WORKS**

#### **4-1 Definitions and interpretation**

In this schedule—

- 4-1.1 words and expressions defined in clause 1 of this agreement and in the other paragraphs of this schedule have the meanings specified,
- 4-1.2 'the Architect' means, subject to paragraph 4-6.7, the Lessee's Architect or any such Architect as the Lessee may appoint from time to time.
- 4-1.3 references to 'restrictions' are references to restrictions as specified in clause 7.1.

#### **4-2 Approvals**

##### **4-2.1 Planning permission**

'The Planning Permission' means the detailed planning permission for the Works to be applied for by the Architect in the normal manner.

##### **4-2.2 Approvals**

Subject to paragraph 4-2.4, references to 'approvals' are references to the Planning Permission and all other approvals, consents, permissions and licenses of any local or other competent authority that may from time to time be necessary including but not limited to approvals and consents from the City Council of Nairobi and the National Environment Management Authority (NEMA) to enable the Lessee to commence and carry out the Works lawfully and, if the Works are destroyed or damaged, to reinstate them.

##### **4-2.3 Obtaining the approvals needed**

###### **4-2.3.1 Obligation to obtain approvals**

The Lessee shall use all reasonable endeavours to obtain all approvals that are from time to time necessary, and must supply to the Lessor file (1) a copy of every application for an approval, with a copy of any accompanying drawings and other documents, and (2) a copy of every approval obtained.

#### **4-2.3.2 Continuance of approvals**

The Lessee shall use all reasonable endeavours to ensure that no approval is revoked and that all approvals continue in full force and effect.

#### **4-2.3.3 Cost of approvals**

The Lessee must pay, and indemnify the Lessor against, all fees, costs and expenses of and incidental to the matters referred to in this paragraph 4-2.3.

#### **4-2.4 Variation of approvals**

The Lessee must not, without prior written consent of the Lessor which consent must not be unreasonably withheld, apply for or agree to any variation, relaxation or waiver of any approval, whether obtained before or after the date of this agreement, or of any condition attached to any approval, and must ensure that no other person does so, but subject to compliance by the Lessee with its obligations under this paragraph 4-2.4, references in this schedule to 'approvals' are to be construed as referring to them as from time to time varied, relaxed or waived.

### **4-3 Consents of adjoining Lessors and indemnity**

#### **4-3.1 Adjoining property**

References to 'adjoining property' are references to any property adjoining or in the neighbourhood of the Site, including any roads, footpaths, walls, fences, buildings and other erections, and pipes, wires, cables and other apparatus on that property.

#### **4-3.2 Adjoining Landlords**

References to 'adjoining Landlords' are references to all the Landlords and occupiers of any adjoining property.

#### **4-3.3 Apparatus**

References to 'apparatus' are references to any pipes, wires, cables or other apparatus on the Site that serve any adjoining property or belong to or are used for the purposes of the undertaking of any competent authority, undertaker or supplier.

#### **4-3.4 Adverse rights**

References to 'adverse rights' are references to any rights of light and air and other rights and easements whatever, including any rights and easements in respect of apparatus, and any other restrictions that are enjoyed over the Site by any adjoining property.

#### **4-3.5 Consent**

References to 'consent' in relation to any adverse right or apparatus that will, or might be, interfered with by the carrying out of the Works are references to the consent in writing of all adjoining Landlords and other persons entitled to or interested in the adverse right in question, or as the case may be, the consent in writing of the relevant local or other competent authority, undertaker or supplier to either—

**4-3.5.1** removal, or temporary or permanent diversion, of the apparatus in question or the subject matter of the adverse right in question, or

**4-3.5.2** the Works being carried out notwithstanding the interference,

in either case on terms previously approved in writing by the Lessor, whose approval may not be unreasonably withheld.

#### **4-3.6 Obligation to obtain consents**

If the Works cannot be carried out without interfering with an adverse right or with any apparatus, the Lessee shall promptly use all reasonable endeavours to obtain the necessary consents, and the Lessee must pay any reasonable sums by way of compensation that may be required for giving them.

#### **4-3.7 Nuisance**

The Lessee must not do, or permit or suffer to be done, on the Site anything that might be or become a danger or nuisance to any adjoining Landlords or to members of the public generally, or cause damage to any adjoining property or to any apparatus, or interfere with any adverse rights or apparatus, unless permitted by a consent and then only in accordance with the terms of the consent. In carrying out the Works the Lessee must take all necessary measures and precautions to avoid such danger, nuisance, damage or interference.

#### **4-3.8 Indemnity against liability for nuisance**

The Lessee is to be answerable for, and must indemnify the Lessor against, all actions, costs, claims, demands and liability whatever in relation to any failure by the Lessee to comply with its obligations under this paragraph 4-3 or with the terms of any consent or otherwise in relation to the carrying out of the Works, including without limitation all actions, costs, claims, demands and liability in respect of the death of, or personal injury to, any person, whether engaged in the carrying out of the Works or otherwise, unless they arise from any willful or negligent act or omission of the Lessor or of any person acting for or under the control of the Lessor.

#### **4-4 Materials**

##### **4-4.1 Unavailable materials**

If, due to circumstances beyond its control that were not reasonably foreseeable at the date of this agreement, the Lessee is unable, despite having used all reasonable endeavours, to obtain any of the materials referred to in the Building Documents, it may substitute alternative materials of no lesser quality as nearly as may be of the same quality.

##### **4-4.2 Undertaking as to materials**

Notwithstanding anything to the contrary contained or implied elsewhere in this agreement, the Lessee undertakes that no material or substance not in accordance with good current building practice will be used or incorporated in the Works.

#### **4-5 Variations**

##### **4-5.1 Variation**

References to a 'variation' are references to any major amendment to or major departure from the Building Documents and the details of the Works contained in them, whether by way of alteration addition or omission.

##### **4-5.2 Unacceptable variations**

References to an 'unacceptable variation' are references to any variation that would substantially alter the design, layout, nature, capacity or standard of construction of the Premises as provided for in the Building Documents without the consent of the Lessor.

### **4-5.3 Permitted variations**

References to a 'permitted variation' are references to—

- 4-5.3.1 any variation, not being an unacceptable variation, that is required by a local or other competent authority either as a condition of the grant or continuance in force of an approval or in consequence of any variation, relaxation or waiver of an approval,
- 4-5.3.2 any variation that is made in order to comply with the Lessee's obligations under paragraph 4-3,
- 4-5.3.3 any variation made in accordance with paragraph 4-4.1, and
- 4-5.3.4 any other variation, not being an unacceptable variation, that is proposed by the Architect.

### **4-5.4 Notification of variations required**

The Lessee must promptly notify the Lessor of any variation required by a local or other competent authority either as a condition of the grant or continuance in force of an approval or in consequence of any variation, relaxation or waiver of an approval.

### **4-5.5 Building Documents**

References in this schedule to 'the Building Documents' are to be construed as referring to the Building Documents as from time to time varied by any permitted variations.

## **4-6 The Building Contract and related matters**

### **4-6.1 'The Building Contractor'**

Subject to paragraph 4-6.6, 'the Building Contractor' means the Building Contractor who shall be awarded the contract for the construction of the Works by the Lessee.

### **4-6.2 'The Building Contract'**

Subject to paragraph 4-6.6, 'the Building Contract' means a contract for the carrying out of the Works which contract will have to be approved by the Lessor which approval shall not be

unreasonably withheld or delayed once the award of the contract to construct the Works has been awarded to the Building Contractor;

### **4-6.3 The Lessee's obligations**

#### **4-6.3.1 Entry into the Building Contract**

Upon awarding of the contract the Lessee will enter into a formal Building Contract with the Building Contractor and appoint the Architect to perform the functions of the architect under it.

#### **4-6.3.2 Variation of the Building Contract**

The Lessee must not without the prior written consent of the Lessor, whose consent shall not be unreasonably withheld vary or modify the terms and conditions of the Building Contract, but references in the remainder of this schedule to the Building Contract are to be construed as referring to the Building Contract as from time to time varied or modified with that consent.

#### **4-6.3.3 Compliance with the Building Contract—the Lessee**

The Lessee must comply with its obligations under the Building Contract at all times.

#### **4-6.3.4 Compliance with the Building Contract—the Building Contractor**

The Lessee must use all reasonable endeavours to ensure that the Building Contractor complies with his obligations under the Building Contract at all times.

#### **4-6.3.5 Waiver of rights**

The Lessee must not waive any of its rights under the Building Contract, but use all reasonable endeavours to enforce them.

#### **4-6.3.6 Notification of breaches of contract**

The Lessee must notify the Lessor promptly of any failure by the Building Contractor to comply with his obligations under the Building Contract and of any circumstances likely to give rise to such failure.

#### **4-6.3.7 Determination**

The Lessee must not without the prior written consent of the Lessor, whose consent shall not be unreasonably withheld exercise or seek to exercise any right that may be or become available to it to determine the Building Contract or to treat it as determined.

#### **4-6.4 The Lessor and the Building Contractor**

##### **4-6.4.1 The Contractor's Deed**

The Lessee must ensure that a deed in the form or substantially the same form as the draft deed annexed to this agreement marked **A** and initialed by or on behalf of the parties ('the Contractor's Deed'), is delivered to the Lessor as soon as the same is executed by the Building Contractor.

##### **4-6.4.2 Assignment of the Building Contract**

If so required in writing by the Lessor on or at any time after determination of this agreement in accordance with paragraph 4-12.5, the Lessee must assign the full benefit of the Building Contract and his rights and remedies under it to the Lessor, in any manner the Lessor requires.

##### **4-6.5 Restriction on replacement contracts**

If the Building Contract determines, the Lessee may not enter into another contract with any person for the carrying out of the Works unless that person and the form of the contract have been previously approved in writing by the Lessor, in which case a deed to the same effect as the Contractor's Deed, duly executed by that person, shall be delivered to the Lessor as soon as the same is executed.

##### **4-6.6 The New Building Contract**

If the Lessee enters into a contract ('the New Building Contract') with any person ('the New Contractor') in accordance with paragraph 4-6.5, this schedule is subsequently to have effect as if references to the Building Contract and the Building Contractor were references to the New Building Contract and the New Contractor respectively and as if references to specific clauses of the Building Contract were references to the corresponding clauses of the New Building Contract.

## **4-6.7 The Architect**

### **4-6.7.1 The Architect's Deed**

The Lessee must ensure that a deed in the form or substantially the same form as the draft deed annexed to this agreement marked **B** and initialed by or on behalf of the parties ('the Architect's Deed'), is delivered to the Lessor as soon as the same is executed by the Architect.

### **4-6.7.2 Replacement of the Architect**

The Lessee must not appoint any person other than the Architect to perform the functions of the architect under the Building Contract or appoint any person to perform any equivalent functions under any New Building Contract unless that person has been previously approved in writing by the Lessor, in which case a deed to the same effect as the Architect's Deed, duly executed by that person, shall be delivered to the Lessor as soon as the same is executed.

If the Lessee appoints any person in accordance with this paragraph, this schedule is subsequently to have effect as if references to the Architect were references to the person so appointed.

## **4-6.8 Fundamental breach**

Failure by the Lessee, for any reason, to comply with its obligations under paragraphs 4-6.3.1, 4-6.4.1 or 4-6.7.1 is to constitute a breach of a fundamental term of this agreement

## **4-7 Carrying out of the Works**

### **4-7.1 Commencement**

Subject to Clause 2.1 of this Agreement the Lessee and the Lessor must commence their respective Works immediately as soon as all approvals necessary to enable them to do so lawfully have been obtained.

### **4-7.2 Completion and maintenance of the Works**

Subject to all approvals and consents from time to time necessary being obtained and continuing in force, the Lessee must diligently carry out and complete the Works—

**4-7.2.1** in a good and workmanlike manner and with sound materials of their respective kinds

**4-7.2.2** in accordance with the terms of all approvals, and otherwise in compliance with any restrictions,

**4-7.2.3** in accordance with the terms of all consents,

**4-7.2.4** in accordance with the Building Documents, and

**4-7.2.5** otherwise in accordance with the provisions of this schedule.

### **4-7.3 Maintenance of the Works**

During the progress of the Works the Lessee must maintain them in good order and condition, and take all necessary measures and precautions to protect them from damage by fire and to keep the Site secure against trespassers.

### **4-7.4 Indemnity against fees and costs**

The Lessee must—

**4-7.4.1** pay, and indemnify the Lessor against, all fees, charges and other payments whatever that may at any time be payable to any local or other competent authority in respect of the Works, including any VAT payable on them, and

**4-7.4.2** be answerable for and indemnify the Lessor against all actions, costs, claims, demands and liability in relation to any failure by the Lessee to comply with its obligations under paragraphs 4-7.2.1 to 4-7.2.5

### **4-7.5 Use of the Site**

#### **4-7.5.1 Purpose**

The Lessee must not use or occupy the Site, or permit or suffer the Site to be used or occupied, for any purpose other than carrying out the Works, or as otherwise agreed in this agreement.

#### **4-7.5.2 Unneeded materials**

The Lessee must not deposit, or permit or suffer to be deposited, on the Site any materials that are not required for carrying out the Works or as otherwise agreed in this Agreement.

#### **4-7.5.3 Sale of gravel etc**

The Lessee must not sell or dispose of any earth, clay, sand, gravel or other material from the Site or permit or suffer it to be removed except so far as is necessary for carrying out the Works.

#### **4-7.5.4 Articles of value**

The Lessee must notify the Lessor immediately if any articles of value or of historic or prehistoric interest are discovered in the course of carrying out the Works. Subject to the rights of the Government of the Republic of Kenya over such articles, the Lessor is to have the sole property in any such articles and they must be dealt with as the Lessor directs.

#### **4-7.6 Notices received**

The Lessee must promptly inform the Lessor if it receives any notice, whether from a local or other competent authority or from an adjoining Lessor, relating in any way to the Site or the Works, and must supply a copy of every notice to the Lessor within Five (5) working Days after receipt of it.

#### **4-7.7 Indemnity against unpaid suppliers**

The Lessee must indemnify the Lessor against all claims by unpaid suppliers in respect of any goods or materials from time to time on the Site.

### **4-8 Review of the Works**

#### **4-8.1 Site inspection**

##### **4-8.1.1 Right of Inspection**

The Lessor and/or the Surveyors acting on its instructions may at any reasonable time, on giving the Lessee or the Architect reasonable prior notice of their intention to do so, enter the Site and the Premises to view the state and progress of the Works and at no cost to the Lessee.

##### **4-8.1.2 Unnecessary interference**

In the exercise of their rights under this paragraph, the Lessor must not unnecessarily or unreasonably interfere with the carrying out of the Works.

## **4-9 Insurance of the Works**

### **4-9.1 Insured risks**

References to 'insured risks' are references to—

**4-9.1.1** fire, lightning, explosion, aircraft, including articles dropped from aircraft, riot, civil commotion, malicious persons, earthquake, storm, tempest, flood, bursting and overflowing of water pipes, tanks and other apparatus and impact by road vehicles,

**4-9.1.2** any other risks required to be insured against pursuant to the Building Contract, and

**4-9.1.3** such other insurable risks as the Lessor requires and notifies in writing to the Lessee.

### **4-9.2 Lessee's obligation to insure**

From the date of this agreement until completion of the Lease, the Lessee must insure the Works against loss or damage by the insured risks, in an amount equal to the full cost of reinstating the Works, or such part of them as have from time to time been carried out, in the event of their total destruction, together with the cost of demolition, site clearance, architects' and other professional fees.

### **4-9.3 Liability insurance**

The Lessee must immediately effect and subsequently maintain any insurance, for any amount, that the Lessor from time to time reasonably requires in respect of the Lessee's liability under, and any liability of the Lessor in relation to, the matters referred to in paragraphs 4-3.7 and 4-3.8.

### **4-9.4 Approved insurers**

Insurance must be effected in such reputable insurance office or with such underwriters and through such agency as the Lessor may from time to time approve, such approval not to be unreasonably withheld.

### **4-9.5 Premiums**

The Lessee must pay all premiums and other money necessary to effect and maintain the insurance required by this schedule, and must produce to the Lessor on demand a copy of the certificate of the policy of insurance and the receipt for the current year's premium.

#### **4-9.6 Lessor's power in default**

If the Lessee fails to insure in accordance with this schedule, the Lessor may, without prejudice to any other right or remedy of its in respect of the failure, itself effect and maintain the required insurance. All premiums and other money paid by the Lessor for that purpose must be repaid by the Lessee to the Lessor on demand.

#### **4-9.7 Insurers' requirements**

The Lessee must comply with all requirements of the insurers, and must ensure that the Building Contractor, the Architect and all persons acting for or under its control comply with them. Neither the Lessor nor the Lessee may do, or permit or suffer to be done, on the Site or in relation to the Works anything that might render any policy of insurance effected in accordance with the provisions of this schedule void or voidable, or as a result of which payment of the policy money might be withheld in whole or in part.

#### **4-9.8 Damage and reinstatement**

The Lessee must notify the Lessor immediately on the occurrence of any damage to, or destruction of, the Works, whether or not caused by any of the insured risks, and in any such case must, subject to all necessary consents and approvals being obtained, promptly reinstate the Works in accordance with the provisions of this schedule.

#### **4-9.9 Insurance money**

All money received under any policy of insurance effected in accordance with paragraph 4-9.2 must be placed in a bank account and must subsequently be released to the Lessee from the account by installments against certificates issued by the Architect or other evidence acceptable to the Lessor.

#### **4-10 Time for completion of the Works**

##### **4-10.1 Estimated completion date**

Subject to the provisions of paragraph 4-10.2, the Lessee must use all reasonable endeavour to carry out the Works to a stage entitling the Architect to issue a certificate in respect of all of the Works pursuant to the provisions of the Building Contract not later than Fifty Four (54) Months from the Commencement Date or Thirty Six (36) Months from the Start Date ('the Estimated Completion Date').

#### **4-10.2 Delaying factors and extension of time**

If on one or more occasions the carrying out of the Works is delayed and the delay is notified to the Lessor and to the Surveyors by the Architect as being in the Architect's opinion attributable to—

**4-10.2.1** force majeure,

**4-10.2.2** exceptionally adverse weather conditions,

**4-10.2.3** civil commotion, local combination of workmen, strike or lock-out affecting any of the trades employed upon the Works or any of the trades engaged in the preparation manufacture or transportation of any of the goods or materials required for the Works,

**4-10.2.4** the Government of the Republic of Kenya exercising, after the date of this agreement, any statutory power directly affecting the execution of the Works by restricting the availability or use of labour essential to the proper carrying out of the Works, or preventing the Lessee or the Building Contractor from, or delaying the Lessee or the Building Contractor in, securing any goods, materials, fuel or energy that are essential to the proper carrying out of the Works,

**4-10.2.5** a local authority or statutory undertaker carrying out work in pursuance of its statutory obligations in relation to the Works, or failing to carry out such work,

**4-10.2.6** destruction of, or damage to, the Works by any insured risk in respect of which the Lessee has complied with his obligations under paragraphs 4-9.2 and 4-9.7,

**4-10.2.7** any labour, goods or materials required for any of the Works being unavailable due to any circumstances beyond the control of the Lessee and the Building Contractor and not foreseeable at the date of this agreement;

then on each such occasion the Lessee must be allowed an extension of time for carrying out the Works to be determined in accordance with paragraph 4-10.3, and the date by which the Lessee is required to carry out the Works as provided in paragraph 4-10.1 is to be postponed accordingly IT BEING AGREED AND UNDERSTOOD that if the Lessee is entitled to an extension of time as a

result of the delay on the part of the Lessor together with an extension of time as a result of any of the matters provided for in this paragraph 4-10.2 then the extension of time granted to the Lessee under paragraph 4-10.3 shall be in addition to the extension of time granted pursuant to the delay on the part of the Lessor and such extensions of time shall run separately and not concurrently.

#### **4-10.3 The period of extension**

The period of the extension of time is to be that certified by the Architect as being reasonable and approved in writing by the Lessor.

#### **4-11 Practical completion**

##### **4-11.1 Certificate, practical completion and inspection**

References to a 'certificate' are references to a certificate by the Architect to the effect that in his opinion practical completion of the Works has been achieved. 'Practical completion', for the purposes of this agreement, has the meaning as in the Building Contract.

##### **4-11.2 'The Certificate of Practical Completion'**

'The Certificate of Practical Completion' means the certificates issued by the Architect pursuant to the provisions of the Building Contract and paragraph 4-11.1 above.

##### **4-11.3 'The Certificate Date'**

'The Certificate Date' means the date on which the Certificate of Practical Completion is issued.

##### **4-11.4 Outstanding work and rubbish clearance**

The issue of the Certificate of Practical Completion is not to lessen or affect the obligations of the Lessee under this schedule in relation to the Works in any way, and the Lessee must as soon as practicable after the Certificate Date, carry out and complete in accordance with the provisions of this schedule any of the Works that have not been completed on the Certificate Date, and on completion of the Works, ensure that all rubbish and all building and other materials and equipment are removed from the Site.

#### **4-11.5 As built plans**

Within Twenty (20) working days after the Certificate Date, the Lessee must supply to the Lessor a complete set of 'as built' plans and drawings in relation to the Works.

#### **4-12 Termination**

##### **4-12.1 Termination on failure to commence or complete the Works**

Subject to the provisions of Clause 2 of the Agreement and Clauses 4-10.1 and 4-10.2 of Schedule 4, if for any reason the Works have not been started by the Start Date, time being of the essence, or if for any reason, and notwithstanding the provisions of paragraph 4-10.1, the Certificate of Practical Completion has not been issued by the end of the period of Fifty Four (54) ) Months immediately following the Commencement Date or Thirty Six (36) Months from the Start Date , time being of the essence, or if for any reason not involving default by the Lessor, the Lease is not executed, then the provisions of paragraph 4-12.4 are to have effect immediately or, as the case may be, at the end of the relevant period.

##### **4-12.2 Termination for suspension of, or defects in, the Works**

If, at any time and for any reason either the carrying out of the Works is wholly or substantially suspended or the Works are otherwise not proceeded with regularly and diligently, and in either case the default continues for or is not remedied within Six (6) Months after service on the Lessee by the Lessor or the Surveyors of a notice specifying the default and invoking the provisions of this paragraph, time being of the essence—provided that a notice may not be served in circumstances where an extension of time has been granted in accordance with paragraph 4-10.3 or in circumstances to which paragraph 4-12.6 applies, then the provisions of paragraph 4-12.4 are to have effect immediately at the end of the relevant period - provided further however that if the stoppage in the carrying of the Works is caused by a dispute between the Lessee and the Building Contractor and one of the parties thereto has invoked the arbitration clause contained in the Building Contract, time shall not run until the resolution of the arbitration or the expiry of Twelve (12) months from the date of issuance of the notice whichever shall be earlier.

##### **4-12.3 Termination on winding-up etc of the Lessee**

If at any time the Lessee, or where the Lessee comprises more than one person any one or more of those persons, being an individual dies, or has a receiving order made against him, or is adjudicated bankrupt, or being a company has a petition presented for its winding up, or enters into liquidation whether compulsory or voluntary, except for the purpose of reconstruction or

amalgamation on terms previously approved in writing by the Lessor, or has a receiver appointed over all or any of his or its assets, or enters into a composition with his or its creditors, then the provisions of paragraph 4-12.4 are to have effect immediately.

#### **4-12.4 Termination by the Lessor**

In the circumstances specified in paragraph 4-12.1 the Lessor may, immediately or at any time subsequently, re-enter the Site or any part of it in the name of the whole, and take and retain possession of it, with all completed or partially completed works on it and any building and other materials and plant and equipment on it belonging to the Lessee, which are to be forfeited and become the property of the Lessor without the Lessor being liable to make to the Lessee any compensation or allowance in respect of them. On such re-entry this agreement is to determine immediately and cease to have effect, except for clause 11.2 and paragraphs 4-6.4.2 and 4-9.9 and without prejudice to any pre-existing right of action of any party in respect of any breach by any other party of his obligations under this agreement, including where applicable the breach giving rise to the Lessor's right of re-entry, and the parties are to be released from any further liability under this agreement.

#### **4-12.5 Failure to obtain approvals**

If, despite compliance by the Lessee with its obligations in that behalf under this schedule, an approval is revoked, or if the Lessee is unable despite having used all reasonable endeavours to obtain a necessary consent or approval, or to obtain it except on terms involving a variation, not being a permitted variation, or to obtain a necessary consent otherwise than on terms involving payment of an unreasonable sum by way of compensation, and if in any such case the Works cannot as a result be carried out in accordance with this schedule, the Lessee may at any time, unless the provisions of paragraph 4-12.4 have already taken effect, invoke the provisions of paragraph 4-12.6 by notice to the Lessor.

#### **4-12.6 Termination by the Lessee**

Immediately on service of notice in accordance with paragraph 4-12.5, this agreement is to determine immediately and cease to have effect, except for clause 11.2 and paragraph 4-9.9 and without prejudice to any right of action of any party in respect of any breach by any other party of its obligations under this agreement, and the parties are to be released from any further liability under this agreement.

#### **4-12.7**

Upon termination of this Agreement, the Lease shall also be terminated and the Lessor shall cause to be registered against the Title of the Premises a note indicating the termination of the Lease and its discharge as an encumbrance against the Lessor's title over the parcel of land.

### **4-13 Arbitration**

#### **4-13.1 Arbitration of disputes**

Subject to the provisions of paragraph 4-13.4, any dispute or difference that arises between the parties as to the construction of this schedule, or the respective rights, duties and obligations of the parties under it, or any other matter arising out of or connected with the subject matter of it, must be referred to the decision of an arbitrator if either the Lessor or the Lessee so requires at any time by a notice served on the other (an 'arbitration notice'). The arbitration must be conducted in accordance with the Arbitration Act 1995.

#### **4-13.2 Appointment of the arbitrator**

The arbitrator is to be appointed by agreement between the Lessor and the Lessee, or if within Thirty (30) days after service of an arbitration notice the Lessor and the Lessee have been unable to agree, then on the application of either of them by whichever they agree to be appropriate having regard to the nature of the dispute or difference in question of (1) the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Chapter) (2) the Chairman of the Architectural Association of Kenya (AAK) or, in each case any other person authorised by the Chairman to make appointments on his behalf.

#### **4-13.3 Appointment in default of agreement**

If, within Forty Five (45) days after service of an arbitration notice the Lessor and the Lessee have been unable to agree which of the persons referred to in paragraph 4-13.2 is appropriate to appoint the arbitrator, then he is to be appointed, on the application of either the Lessor or the Lessee, by the Chairman for the time being of the Law Society of Kenya or any other person authorised by him to make appointments on his behalf.

#### **4-13.4 Certificate of Practical Completion excluded from arbitration**

Paragraph 4-13.1 is not to apply to any dispute or difference between the parties as to the propriety of the issue or non-issue by the Architect of a Certificate of Practical Completion for the Works.

#### SCHEDULE 5

All that parcel of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya containing by measurement Four Thousand Six Hundred and Seventy Four decimal Six Nought (4,674.60) Hectares or thereabouts and known as Land Reference Number 21919 comprise in a Grant registered in the Land Titles Registry at Nairobi as Number I.R. 70118/1 the dimensions abutments and boundaries of which are more particularly delineated and described on Land Survey Plan Number 205580 deposited in the Survey Records Office at Nairobi and thereon bordered;

**Drawn jointly by**

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**STALLED PROJECT - CONSTRUCTION FOR STAFF FENCING PROJECT  
AT EMBAKASI, NAIROBI**

**STATUS REPORT AS AT 4<sup>TH</sup> AUGUST, 2014**

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In the meeting between the contractor and KAA committee members on 17<sup>th</sup> April, 2014 the parties discussed the contractor's claim. It was noted that:

- a) The contractor never mobilized equipment and casual personnel
- b) The contractor never took over the site due to squatters' problem and approval of design by NCC
- c) The issue of city council approval beyond the Authority's control
- d) The contractor fell short in sustaining most items in the claim forwarded to the Authority, as mentioned below.

Upon request from the negotiation team on the final compensation request, the contractor indicated that he would leave it to the Authority to propose a figure for payment/ compensation.

The negotiation committee, had earlier on after diligently considering all the factors, recommended the following:-

- a) That compensation be considered for only actual costs incurred in relation to this contract, which were:
  - Payment to CIC insurance Co. for renewal of performance bond of Kshs. 910,000/= subject to validation of the same. This covered the period from 2008 to 2010.
  - Preliminaries as per the initial BQs and which have actually been incurred: Kshs.100, 000/= subject to validation of the same.
  - Payment to supervisory staff during the initial 6 months contract period of Ksh.990, 000/=. The contractor had engaged supervisory staff on standby just in case the green light to embark on the project was given by KAA. Casual employees were not considered in this case.

Upon verification of the receipts, and upon emerging that the same are a forgery as explained here in above, the Committee recommends that the Contract be considered terminated from the time of occurrence of the fraud, and that the Authority does not make any payments to the Contractor.

A copy of the negotiation committee report is attached.

MEMO

TO SECRETARY, TENDER COMMITTEE  
FROM CHAIR, NEGOTIATION COMMITTEE  
REF TENDER No KAA/ES/HQ/576/C - EMBAKASI STAFF  
HOUSING FENCING PROJECT  
DATE 23<sup>RD</sup> JUKY 2014

SUBJECT NEGOTIATION FOR COMPENSATION TO CONCEPT  
CONSTRUCTION CO. FOR STAFF FENCING PROJECT AT EMBAKASI, NAIROBI

**1. BACKGROUND**

The project for fencing of Embakasi staff houses was tendered in July 2008. The objective was to fence KAA land in Embakasi to protect it from encroachment by unauthorized people. The scope of works included survey to re-establish beacons; demolition of existing barbed wire and timber fencing and construction of a masonry fence and installation of 3 no. steel gates.

The project was awarded to Concept Construction Co. on 16<sup>th</sup> October 2008. The contract for the same project was signed in February 2009. The effective date of the project implementation was on 8<sup>th</sup> June 2009.

**2. CHALLENGE**

The project did not start as planned as the Nairobi City Council did to approve the project design following KAA's application for approval. Eviction of the squatters from the site was a problem then, however, that has since been resolved.

Due to the above, the contractor never took over the site.

The contract has also not been terminated to date.

The contractor has written a demand letter for compensation of Kshs. 25,337,663.50 which culminated in the Authority appointing a negotiation team on 25<sup>th</sup> February 2014 to agree on an amicable amount for award to the contractor.

The Committee requested for more time to study the documents the contractor presented and to verify the receipts presented with regard to claim for Performance Guarantee renewals.

On 26<sup>th</sup> June, 2014 the Authority wrote to CIC General Insurance Limited seeking authentication of the following receipts for purposes of verification to enable the Authority consider them for payment.

- a. Receipt No. 1490 dated 16<sup>th</sup> October 2008 for payment of Kshs. 245,199.35 being payment of renewal of Performance Bond No KAA/ES/HO/576/C
- b. Receipt dated 13<sup>th</sup> April, 2009 for payment of Kshs. 245,199.35 being payment of renewal of Performance Bond No KAA/ES/HO/576/C
- c. Receipt No. 2585 dated 14<sup>th</sup> October 2009 for payment of Kshs. 245,199.35 being payment of renewal of Performance Bond No KAA/ES/HO/576/C
- d. Receipt No. 3628 dated 12<sup>th</sup> April, 2010 for payment of Kshs. 245,199.35 being payment of renewal of Performance Bond No KAA/ES/HO/576/C
- e. Receipt no. 4801 dated 13<sup>th</sup> October 2010 for payment of Kshs. 245,199.35 being payment of renewal of Performance Bond No KAA/ES/HO/576/C

By a letter dated 3<sup>rd</sup> July, 2014 CIC General Insurance Limited wrote to the Authority and stated the following:

- a. That during the period within which the receipts are purported to have been issued (16<sup>th</sup> October 2008 and 13<sup>th</sup> October 2008), CIC General Insurance, the purported issuer of the receipts was not even in existence.
- b. That in view of a. above, CIC General Insurance was not in a position to find the receipts in their records and as such confirmed the same a forgery.

The Committee held a second meeting with the Contractor on 16<sup>th</sup> July, 2014 and where the following was addressed:

- a. The contractor was updated with regard to payments made with regard to renewal of the Performance Guarantee taken out by the Contractor in favour of the Authority.
- b. The meeting was told that, the Authority verified the receipts and was informed that the said receipts were a forgery as they had not emanated from CIC General Insurance.
- c. The meeting noted that although the Contractor repeatedly put in a claim for payment of the renewals, the Authority had remained exposed during the entire period of the claims.

SS

- d. The Contractor was reminded of the seriousness of presenting a fraudulent payment claim and the grave ramifications that could accompany such actions.
- e. The Contractor was informed that the matter will be forwarded to the relevant structures of the Authority for a final decision and that he would be advised formally after the completion of the internal processes.

### 3. NEGOTIATION

In the meeting between the contractor and KAA committee members on 17<sup>th</sup> April 2014, the parties discussed the contractor's claim. It was noted that:

- a. The contractor never mobilized equipment and casual personnel
- b. The contractor never took over the site due to squatters' problem and approval of design by NCC.
- c. The issue of city council approval was beyond the Authority's control.
- d. The contractor fell short in substantiating most items in the claim forwarded to the Authority, as mentioned below.

Upon request from the negotiation team on the final compensation request, the contractor indicated that he would leave it to the Authority to propose a figure for payment/compensation.

Further, the contractor observed the need to maintain a good relationship with the Authority and the need to avoid lengthy litigation processes.

With emergence of the forgery claims however, the meeting of 16<sup>th</sup> July, the Contractor was informed the gravity of presenting fraudulent claims to the Authority.

The Contractor took note of the issues raised and indicated ignorance on the forgery vowing to conduct investigations for himself.

He nevertheless hoped that due consideration would be given to the rest of the claim but the team indicated that matter of forgery would be the pertinent matter and had to be dealt with first before all other matters.

Further, considering his overall claim comprised of forged documents, the basis of which the initial proposed compensation was based, there would be no further negotiation and the initial proposed compensation of Kshs. 2,000,000= had been withdrawn.

### 4. RECOMMENDATION

Sb

The negotiation committee, had earlier on after diligently considering all the factors, recommended the following: -

a) That compensation be considered for only actual costs incurred in relation to this contract, which were:


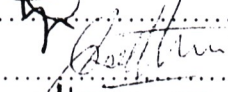
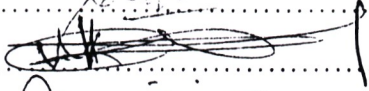
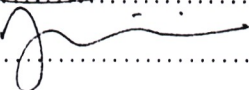
- Payment to CIC insurance Co. for renewal of performance bond of Kshs. 910,000/=, subject to validation of the same. This covered the period from 2008 to 2010.
- Preliminaries as per the initial BQs and which have actually been incurred: Kshs. 100,000/=. Subject to validation of the same.
- Payment to supervisory staff during the initial 6 months contract period of kshs. 990,000/=. The contractor had engaged supervisory staff on standby just in case the green light to embark on the project was given by KAA. Casual employees were not considered in this case.

Upon verification of the receipts, and upon emerging that the same are a forgery as explained here in above, the Committee recommends that the Contract be considered terminated from the time of occurrence of the fraud, and that the Authority does not make any payments to the Contractor.

**TENDER COMMITTEE ACTION:**

1. Immediately terminate the contract.
2. Take further necessary action with regard to the forgery as required under the law.

**Report submitted by**

Carol Mwanzia.....		Date.....	22/7/14
George Kamau.....		Date.....	22/7/2014
Martin Kamau.....		Date.....	22/07/2014
Fred Odawo.....		Date.....	22-7-14

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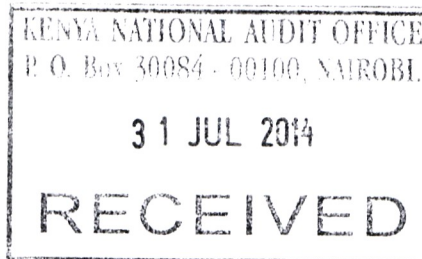
**Kenya Airports Authority**

Head Office, Airport North Road  
P.O. Box 19001 - 00501 Nairobi, Kenya  
Tel: +254 - 020 - 822111 / 6611000 / 6612000  
Fax: +254 - 020 - 822078, 827304  
Email: info@kenyaairports.co.ke  
www.kenyaairports.co.ke

CAA/6/24/VOL. 12 (16)

30<sup>th</sup> July, 2014

Clerk of the National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Buildings  
P.O. Box 41842, 00100 GPO  
**NAIROBI**



Dear Sir,

**RE: ADDITIONAL INFORMATION**

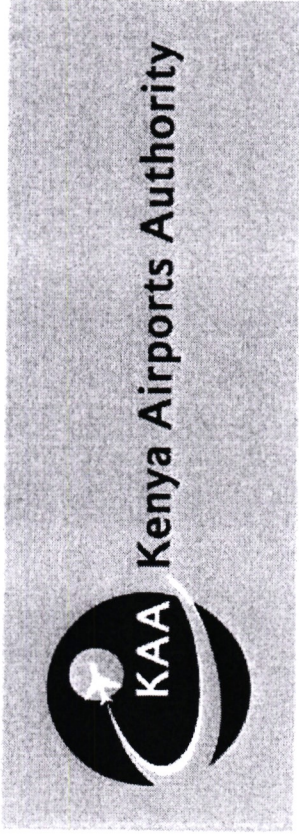
Please find attached Updated Matrix on illegally acquired land, as directed by the Public Investment Committee (PIC) in a meeting held on 2<sup>nd</sup> July 2014.

Kindly sign and stamp a copy of this letter to acknowledge the receipt of the documents as stated above.

Yours faithfully,

**JOHN THUMBI**  
**GENERAL MANAGER-FINANCE**

Cc: Kenya National Audit Office  
Anniversary Towers,  
P.O. Box 30084-0100  
Loita St.  
**NAIROBI**



## Updated Matrix on Illegally Acquired Land as at 30<sup>th</sup> July 2014

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				<b>JOMO KENYATTA INTERNATIONAL AIRPORT</b>					
	Land Ref No.	IR No.	Area in Ha	Original Allottee	Name of Current Owner	Directors	Status		
1.	209/12303	64235	0.2021	Unifilers Kenya Ltd	Unifilers Kenya Ltd	CR 12 C. 48803 Gurdeep Singh Flora Amarjit Singh Flora	Developed		
2.	209/12304	63565	0.12	High Grove Investment Ltd	High Grove Investment Ltd	CR 12 C. 56953 Karim Haiderali Popat Teja Zeenat Haiderali Popat Teja	Developed		
3.	209/12420	65618	0.2	Bildad Mwangi Maina	Steel Stone (K)Ltd	CR 12 C. 18789 Constantine Wekesa Lasi Dalnos Mukabalasi	Developed		
4.	209/12422	72427	0.1021	A Romantic Food Ltd	Singh Matsingh Manky		Developed		
5.	209/12423	72445	0.1003	Malkit Singh Rupra	Satram Singh Seehra		Developed		
6.	209/12424	72444	0.1003	Kulwait Kaur Kalsi	Kulwait Kaur Kalsi		Developed		
7.	209/12425	72420	0.1003	Abba Associates Limited	Abba Associates Limited	CR 12 C. 93890 Abbabakhar Mohammed Abba Rashan Hasham Salerno	Developed		
8.	209/12426	72429	0.1003	Abba Associates Limited	Abba Associates Limited	CR 12 C. 93890 Abbabakhar	Developed		

9.	209/12428	70416	0.1003	Yash Pal Saggar	Yash Pal Saggar	Mohammed Abba	Rashan Hasham Salemo	Not Developed
10.	209/12429	66697	0.1002	Bulk Medicals Limited	Dairy Systems & Services Limited	CR 12 C. 115196	James Muya Wamuguda	Not Developed
11.	209/12430	68423	0.0626	Bulk Medicals Limited	Poinsettia Limited	CR 12 C. 125212	Vincent Mwandime Masawi Michael Mugo Kimani	Developed
12.	209/12431	68329	0.1011	Serinder Kaur Rehal	Kinetic Controls Limited	CR 12 C. 82997	Edward Mwangi Wanjihia Mr. Jaidev Singh Rehal Mrs. Surinder Kaur Rehal Mr. Gagandeep Singh Rehal	Not Developed
13.	209/12433	68485	0.1011	Malkit Singh Rupra	Malkit Singh Rupra	N/A	N/A	Not Developed
14.	209/12434	69672	0.0454	Abba Associates Limited	Abba Associates Limited	CR 12 C. 93890	Abbabakhar	Not Developed

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15.	209/12435	69461	0.0728	Abba Associates Limited	Abba Associates Limited	Mohammed Abba	Not Developed	
						Rashan Hasham Salemo		
16.	209/12436	68482	0.0728	Abbabakhar Mohamed Abba	Abbabakhar Mohamed Abba	N/A	Not Developed	
17.	209/12437	69460	0.0728	Janardan Dahyabhai Patel and Divya Janardan Patel	Living Stone Ministries International	N/A	Developed	
18.	209/12438	68302	0.0728	Janardan Dahyabhai Patel and Divya Janardan Patel	Harji Ramji Jetha and Nanbai Harji Ramji	N/A	Developed	
19.	209/12439	90595	0.045	Michael Mochama	Lumumba O. Isaac	N/A	Not Developed	
20.	209/12441	90896	0.045	Simon Peter Onderi	Simon Peter Onderi	N/A	Not Developed	
21.	209/12443	90898	0.045	Catherine Millicent Bitengo	Lumumba O. Isaac	N/A	Not Developed	
22.	209/12446	91524	0.045	Peter Samuel Njagi	Boniface Njoroge Kinuthia	N/A	Developed	
23.	209/12447	91522	0.045	Sicily Muthoni Kenneth	Victoria Homes Limited	C. 106538 Juma Kiprono Kandie	Not Developed	
						Karen Njeri Kandie		
24.	209/12449	90897	0.045	Joseph Onderi Maroro	Victoria Homes Limited	C. 106538 Juma Kiprono	Not Developed	



						Samow Edin Osman	
						Billow Adan Kerow Kipngetich Arap Korir Bett	
33.	9042/693	76144	0.8052	Joshua kipchumba Chepkwony and James Ng'ang'a	Roseville Trustees Limited	<i>Official searches not yet obtained</i>	Not Developed
34.	9042/2	19828	2.75	Esso Standard (East Africa) Limited	Esso Standard (East Africa) Limited	<i>Official searches not yet obtained</i>	Not Developed
35.	9042/3	19775	2.75	Kenya Shell Limited	Kenya Shell Limited	<i>Official searches not yet obtained</i>	Not Developed
36.	9042/11	20037	0.459	Mobil Oil East Africa Limited	Mobil Oil Kenya Limited	John Clark Dean Rodger Macpherson Grant Newlin Headley Victor Henry King Charles Barlus Plog Id Metherell 9-12 Cheapside London, E 12 (Solicitor) John C. Gore 9-12 Cheapside	Not Developed

37.	9042/13	20174	0.459	Caltex Oil (Kenya) Limited	Caltex Oil (Kenya) Limited	London, EC 2 (Solicitors Clerk)	Not Developed
38.	9042/14	19982	0.459	Total Oil Product (EA) LTD	Total Oil Product (EA) LTD	CR 12 C. 19788 Anthony Thuo Mathi	Not Developed
39.	9042/223	51767	10.0023	Shilarie Holding Limited	Kanti Pindoria and Manju Pindoria	Martin Lal Thuo	Not Developed
40.	9042/616	74602	0.607	Trade World Kenya Limited	Trade World Kenya Limited	Robert Scott Walcutt Nawshad Lal N/A	Not Developed
41.	9042/618	70303	0.8093	Abma Investment Limited	Abma Investment Limited	CR 12 C. 10148 Constantine Wekesa Mukabalasi  Dalmus Baraza Mukabalasi  Sheila Shinda Wechabe	Not Developed
42.	9042/632	74619	2	Hunting Aerospace Limited	Hunting Aerospace Limited	CR 12 C. 34383 Abraham Kipsang Kiptanum  Mary Jeruto Kiptanui	Not Developed
						CR 12 C. 67187 Harbans Singh Amrit	Not Developed

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						Mandip Singh Amrit Wilson Boinett	
43.	9042/633	76320	0.3962	Isaac Mutuma, Anne Njoka Racheal Muthoni Nyaga Mary Anne Kiungu and Signon Freight Limited	Ganshyambhai Desabhai Patel and Sarlaben Signon Freight Limited	N/A CR 12 C:30002 Joshua Chelelgo Kulei Gideon Kipsielei Moi Meshack Toroitich Kipturgo Henry Kiplagat Canon Mumba Chris Kisire Chepkoit Paul Kirwa Maiyo Sacho High School Trust Moi High School Kabarak Trade World	Not Developed Not Develop
44.	21687	90144	3.232				

45.	9042/678	80230	0.332	Charles Ayako Nyachae	Charles Ayako Nyachae	Kenya Limited Kabarak Farm Limited Prize Holdings Limited Migotiyo Plantations Limited N/A	Not Developed
46.	9042/700	86688	8	World Air Trade Corporation (K) Limited	World Air Trade Corporation (K) Limited	CR 12 C. 19788 Wekesa Luli Dalmus	Not Developed
47.	9042/692	90601	1.598	Dakawou Transport Limited	Dakawou Transport Limited	Njau Dalmus CR 12 C. 42326 Sudhir Kent	Not Developed
48.	20753/1	76601/4	0.5012	Emayian Properties Limited	Emayian Properties Limited	Kumar Shital Kent CR 12 C. 87240 Amarjeet Singh Flora Gurdeep Singh Flora	Developed
49.	20613	75577	3.004	George Mutua	George Mutua	N/A	Developed
50.	12689	11218/24	1.93	Ethan Luois Ngattia Ndirango	12689/7 Jim Elijah Ndirangu IR 38866	N/A	Developed



51.	26810	90958	1.9852	Muktar Muhamud Mohamed	Ainus -Shamsi Haulers	Official searches not yet obtained	Not Developed
52.	26811	90961	0.9971	Munyes Villas Limited	Munyes Villas Limited	Official searches not yet obtained	Not Developed
53.	23359/6	86468	0.3968	Seeff Project Company Limited	Seeff Project Company Limited	Official searches not yet obtained	Not Developed
54.	23359/7	84469	0.3968	Seeff Project Company Limited	Seeff Project Company Limited	Official searches not yet obtained	Not Developed
55.	23359/8	86470	0.3968	Seeff Project Company Limited	Sacco Fresh Limited	Official searches not yet obtained	Not Developed
56.	23359/10	86471	0.3965	Remtone Holding company Limited	Remtone Holding company Limited	CR 12 C. 87028 Augustine Kiptoo Cheserem	Not Developed
57.	23359/11	86472	0.3963	Remtone Holding company Limited	Remtone Holding company Limited	Hellen Cheserem	Not Developed
58.	23359/12	86659	0.397	Leazy Holdings Limited	Leazy Holdings Limited	CR 12 C. 93890 Millecent Anyango	Not Developed
59.	23359/13	86785	0.3968	Interspan Limited	Interspan Limited	Amos Nakhisa C. 74081 Joseph Mwangi Ndirangu	Not Developed
60.	24482	90793	0.3999	Chemchemi Holdings	Bilkis Kara	Agnes Gakenia Karani N/A	Not Developed

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61.	9091	87517	2	Shutter Development Limited	Impala Glass Limited	Official searches not yet obtained	Not Developed
62.	9186	88701	0.4177	Peter Njuguna	Peter Njuguna	N/A	Not Developed
63.	9199	87917	0.4051	Samay Singh and Manorama Singh	Samay Singh and Manorama Singh	N/A	Not Developed
64.	25472	89082	0.988	Alcop Limited	Alcop Limited	Official searches not yet obtained	Not Developed
65.	25727	87516	1.2	Leazy Holding Limited	Leazy Holding Limited	CR 12 C. 93890 Millicent Anyango	Not Developed
						Amos Nakhisa	
66.	22405	72255	2.028	Jimben Investment Limited	LR 22405/2 Jimben Investment Limited IR 87487/1 (0.3200Ha)	CR 12 C. 71460 Sudhir Kent Shital Kumar Bhandari	Not Developed
					LR 22405/3 Jimben Investment Limited IR 87488/1 (0.3200Ha)		
					LR 22405/4 Jimben Investment Limited IR 87489/1 (0.3167Ha)		
					LR 22405/5 Jimben Investment		

67.	22591	72710	0.4047	Mar- Liz Enterprises	Limited IR 87490 (0.3504Ha)  LR 22405/6 Jimben Investment Limited IR 87491 (0.6889Ha) Mar- Liz Enterprises	Official searches not yet obtained	Not Developed
68.	23964	90813	2.62	Segerama Investment Limited	Kenya Joinery Limited	CR 12 C. 13755 Subodh Raojibhai Patel	Not Developed
69.	209/14701	89903	1.541	Dosama Holding Limited	Booker Mbugua t/ V as Distributors	Nila Subodh Patel Booker Mbugua	Not Developed

**WILSON AIRPORT**

	Land Ref No.	IR No.	Area in Ha	Original Allottee	Name of Current Owners	Directors	Status
1.	20871	76273	4	Lands and Housing Co-operative Society	Lands and Housing Co- operative Society	Official searches not yet obtained	
2.	209/12921	76144	0.8052	Joshua Kipchumba Chepkwony & James Ng'ang'a	Roseville Trustees Limited	Official searches not yet obtained	Not Developed
3.	209/14701	89903	1.541	Dosama Holding Limited	Booker Mbugua t/ Vas Distributors	Booker Mbugua	Not Developed

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**KISUMU AIRPORT**

	Land Ref. No.	IR No.	Area in Ha	Original Allottee	Name of Current Owner	Directors	Status
1.	L.R. No. 22981	86776	1.025	Multiple Hauliers (E.A.) Limited	Multiple Hauliers (E.A.) Limited	CR 12 C.24828 Manvir Singh Baryan Rajinder Singh Baryan Tarlochan Singh Heer Amrik Singh Heer	Not developed

**ELDORET AIRSTRIP**

	Land Ref No.	Area in Ha	Original Allottee	Name of Current Owner	Directors	Status
1.	Eldoret Municipality/P arcel No. 420	2.023	Benedict Simon Ondiek	Benedict Simon Ondiek	N/A	Not developed

**UKUNDA AIRSTRIP**

1.	Parcels Nos. 1366 – 1377: EACC assisted KAA to recover the title through Court process, but the subject parcels of land are still occupied by squatters.
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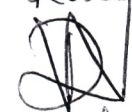
# Kenya Airports Authority

Head Office, Airport North Road  
P.O. Box 19001 - 00501 Nairobi, Kenya  
Tel: +254 - 020 - 822111 / 6611000 / 6612000  
Fax: +254 - 020 - 822078, 827304  
Email: info@kenyaairports.co.ke  
www.kenyaairports.co.ke

KAA/6/24/VOL. 12 (16)

15<sup>th</sup> August, 2014

Clerk of the National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Buildings  
P.O. Box 41842, 00100 GPO  
**NAIROBI**

*Rose Wangari*  
  
15/08/2014

Dear Sir,

**RE: ADDITIONAL INFORMATION**

---

Please find attached Report on NAS Airport Services Ltd. as directed by the Public Investment Committee (PIC).

Kindly sign and stamp a copy of this letter to acknowledge the receipt of the documents as stated above.

Yours faithfully,



*for* **JOHN THUMBI**  
**GENERAL MANAGER-FINANCE**

Cc: Kenya National Audit Office  
Anniversary Towers,  
P.O. Box 30084-0100  
Loita St.  
**NAIROBI**



## REPORT ON NAS AIRPORT SERVICES LIMITED

### 1. The Parcels of Land & Official Searches at Lands Office

The subject parcels of land are Land Reference No. 9042/45 (IR 86453) and 46 (IR 54199) respectively. The following information was obtained from official searches at the Lands Office:

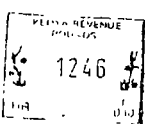
- The titles in respect of the two parcels were surrendered on 8<sup>th</sup> September 2009 to the Government in exchange for New Grant Number IR 120695/1.
- The Deed File No. 120695 was missing at the Lands Office; therefore, official search could not be obtained.
- At the time of the surrenders, the registered proprietor of the parcels was NAS AIRPORT SERVICES LIMITED.
- Official searches could not be issued for titles that had already been surrendered.
- Copies of the titles obtained are attached herewith for ease of reference.

### 2. Official Searches on NAS Airport Services Limited at Companies Registry

As per the official search CR12 obtained at the Companies Registry on 5<sup>th</sup> August 2014 (and in respect of the last annual returns dated 8<sup>th</sup> May 2014), the directors/shareholders of the company were as follows:

Name	Address	Nationality	Shares
<b>DIRECTORS</b>			
Richard Omwela	P.O. Box 30333-00100, NBI	Kenyan	Nil
Denis Joseph Hasdenteufel	4 Place De Londres Continental Square BP 19701, 95726 Roissy Charles De Gaulle De Cedex France	French	Nil
Alan Mukittrick	P.O. Box 19010, NBI	Kenyan	Nil
James Mworira	P.O. Box 10518, NBI	Kenyan	Nil

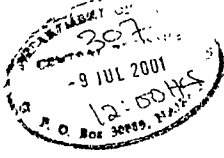
F. 95:633



REPUBLIC OF KENYA



**THE REGISTRATION OF TITLES ACT**  
(Chapter 281)



SDF 1246  
18/5

GRANT No 1R 86453

ANNUAL RENT Kshs. 1,245,065/- (Revisable)

TERM: 75 years from 1.1.2000

**K** NOW ALL MEN BY THESE PRESENTS that in pursuance of a surrender registered in the Government Land Titles Registry at Nairobi as I.R. 30687/3 THE PRESIDENT OF THE REPUBLIC OF KENYA hereby Grants Unto NAS AIRPORT SERVICES LIMITED, a limited liability company having its registered office at NAIROBI (Post Office Box Number 19010)

(hereinafter called "the Grantee") all that piece of land situate in the City of Nairobi in NAIROBI AREA

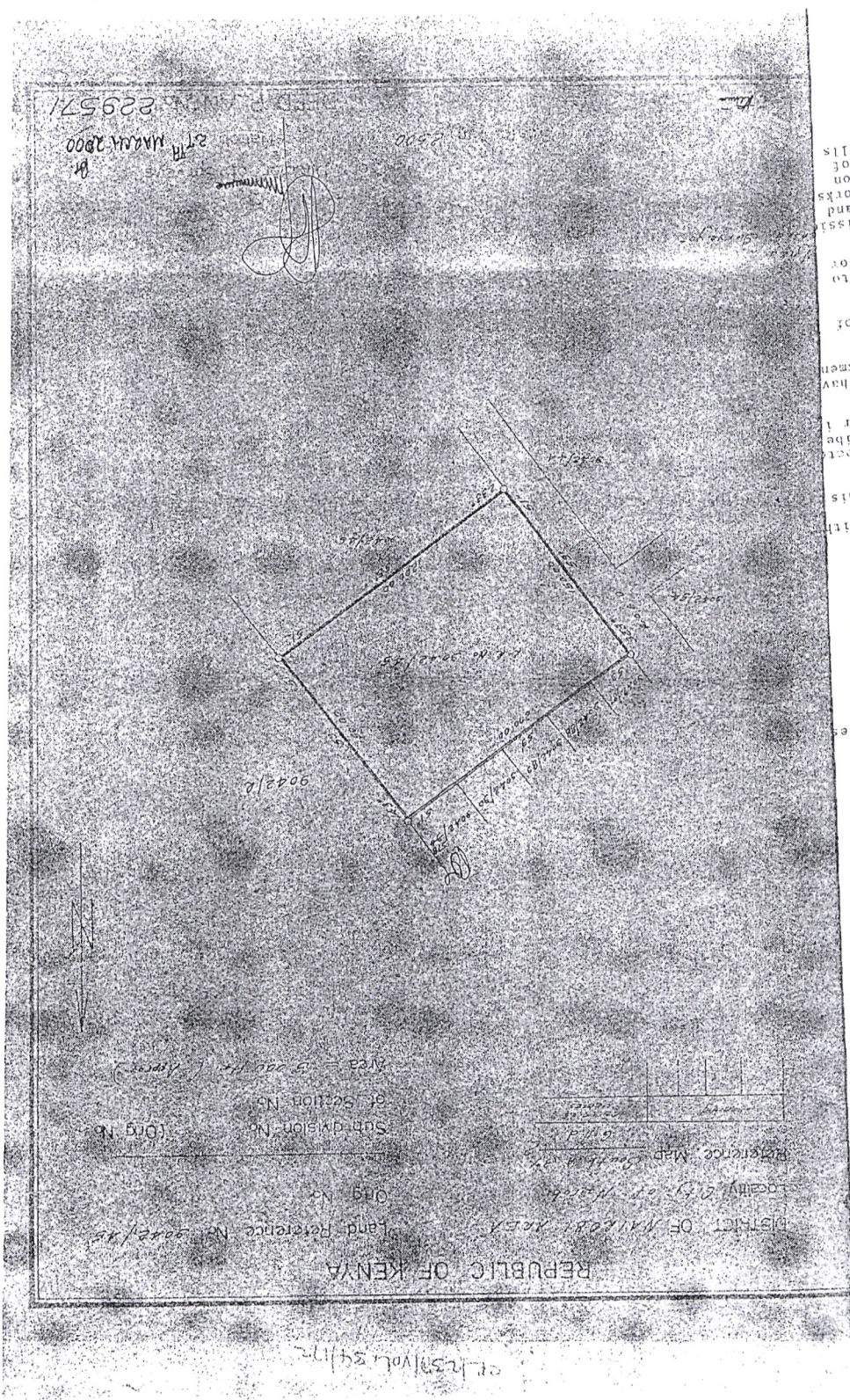
XXXXXX containing by measurement three decimal nought nought nought (3.000) hectares

XXXXX or thereabouts that is to say Land Reference Number 9042/45

which said piece of land with the dimensions abutals and boundaries thereof is delineated on the plan annexed hereto and more particularly on Land Survey Plan Number 229571 deposited in the Survey Records Office at Nairobi To Hold for the term of seventy five (75) years

from the First day of January ~~One thousand two hundred and~~ Two thousand  
Subject to (a) the payment in advance on the first day of January in each year of the annual rent of  
Shillings one million two hundred and forty five thousand and sixty five  
(Kshs. 1,245,065/-) (Revisable) w.e.f. 1.1.2000

- (b) the provisions of the Government Lands Act (Chapter 280)
- (c) the following special conditions (Namely):-



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IN THE WITNESS WHEREOF I, SAMMY SILAS KOMEN MWAITA )  
the Commissioner of Lands have by order of the )  
President herunto set my hand this 18TH )  
day of MAY Two thousand and one )  
in the presence of:- )

*Sammy Silas Komen Mwaita*

*[Signature]*  
REGISTRAR OF TITLES  
CATHERINE KUNGU

Drawn By:  
Catherine Kungu  
Registrar of Titles  
P.O. Box 30089  
NAIROBI

LAND TITLES REGISTRY - NAIROBI REGISTRY  
REGISTRAR OF TITLES ACT  
REGISTERED AS No. L.R. 86453/1  
PRESENTED 9th July 2001  
TIME 12:00 PM  
Registrar of Titles

1213  
5/05

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED:  
Charge to Barclays Bank of Kenya  
Limited for KShs. 60,000,000/-

(2)

Registered No. 1213 Date of Registration 25-5-2005

Discharge of charge of No. 296

(3)

Date of Discharge 6-2-2008

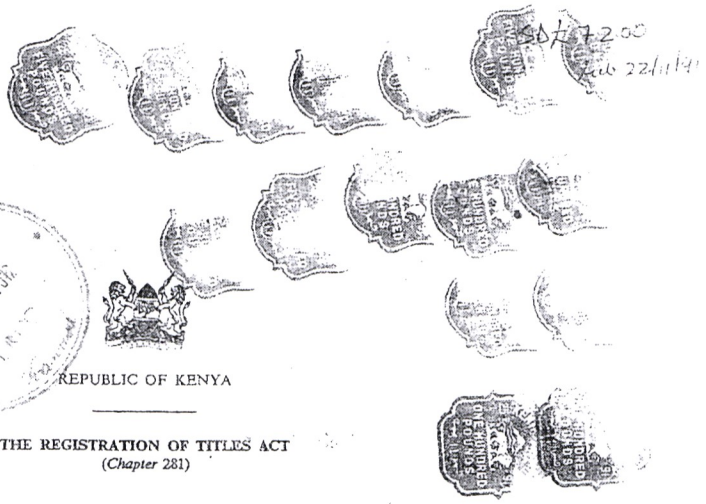
THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE:  
Granted to the Government of the Republic of Kenya in the name of the Exchange of New Grant No. 12059/51

(A)

Presented to the Registrar of Titles

*[Signature]*  
Registrar

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REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT  
(Chapter 281)

GRANT: Number L.R. 54199  
ANNUAL RENT: SHS. 450,000/- (REVISABLE)  
TERM: 99 YEARS FROM 1.11.1988

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of Shillings two million two hundred fifty thousand (Shs.2,250,000/-) by way of stand premium paid on or before the execution hereof THE PRESIDENT OF THE REPUBLIC OF KENYA hereby GRANTS unto NAS AIRPORT SERVICES LIMITED a limited liability company having its registered office at Nairobi (Post Office Box Number 19010)

(hereinafter called "the Grantee ") ALL that piece of land situate in the City of Nairobi in the Nairobi Area ~~District~~ containing by measurement three decimal nought nought nought (3.000)

hectares/~~acres~~ or thereabouts that is to say L.R. No. 9042/46

which said piece of land with the dimensions abuttals and boundaries thereof is delineated on the plan annexed hereto and more particularly on Land Survey Plan Number 100861 deposited in the Survey Records Office at Nairobi

TO HOLD

for the term of Ninety nine (99) years from the  
First day of November One thousand nine hundred and  
Eighty eight SUBJECT to (a) the payment in advance on the first day of January in  
each year of the annual rent of Shillings four hundred fifty thousand (Shs.450,000/-) (REVISABLE)  
(b) the provisions of the Government Lands Act (Chapter 280) and (c) the following Special Conditions (namely):-

[P.T.O.]

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SPECIAL CONDITIONS

1. No buildings shall be erected on the land nor shall additions or external alterations be made to any buildings otherwise than in conformity with plans and specifications previously approved in writing by the Commissioner of Lands and the Local Authority. The Commissioner shall not give his approval unless he is satisfied that the proposals are such as to develop the land adequately and satisfactorily.
2. The Grantee shall within six months of the commencement of the term submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and a system of drainage for disposing of sewage surface and sullage water) drawings elevations and specifications of the buildings the Grantee proposes to erect on the land and shall within \_\_\_\_\_ months of the commencement of the term complete the erection of such buildings and the construction of the drainage system in conformity with such plans drawings elevations and specifications as amended (if such be the case) by the Commissioner PROVIDED that notwithstanding anything to the contrary contained in or implied by the Government Lands Act if default shall be made in the performance or observance of any of the requirements of this condition it shall be lawful for the Commissioner of Lands or any person authorized by him on behalf of the President to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the President or the Commissioner of Lands in respect of any antecedent breach of any condition herein contained.
3. The Grantee shall maintain in good and substantial repair and condition all buildings at any time erected on the land.
4. Should the Grantee give notice in writing to the Commissioner of Lands that \_\_\_\_\_ unable to complete the buildings within the period aforesaid the Commissioner of Lands shall (at the Grantee's expense) accept the surrender of the land comprised herein:
  - (i) Provided further that if such notice as aforesaid shall be given within 12 months of the commencement of the term the Commissioner of Lands shall refund to the Grantee \_\_\_\_\_ 50 per centum of the stand premium paid in respect of the land, or
  - (ii) At any subsequent time prior to the expiration of the said building period the Commissioner of Lands shall refund to the Grantee \_\_\_\_\_ 25 per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.
5. The land and the buildings shall only be used for catering unit purposes.
6. The buildings shall not cover a greater area of the land than that prescribed by the Local Authority in its by-laws.
7. The land shall not be used for any purpose which the Commissioner of Lands considers to be dangerous or offensive.
8. The Grantee shall not subdivide the land, without the prior consent in writing of the Commissioner of Lands.
9. The Grantee shall not sell transfer sublet charge or part with the possession of the land or any part thereof or any buildings thereon except with the prior consent in writing of the Commissioner of Lands. No application for such consent (except in respect of a loan required for building purposes) will be considered until special condition No. 2 has been performed.
10. The Grantee shall pay to the Commissioner of Lands on demand such sum as the Commissioner of Lands may estimate to be the proportionate cost of constructing all roads and drains and sewers serving or adjoining the land and the proportionate cost for the supply of both the water and the electric power to the land and shall on completion of such construction and the ascertainment of the actual proportionate cost either pay (within 30 days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.
11. The Grantee shall from time to time pay to the Commissioner of Lands on demand such proportion of the cost of maintaining all roads and drains serving or adjoining the land as the Commissioner may assess.
12. Should the Commissioner of Lands at any time require the said roads to be constructed to a higher standard the Grantee shall pay to the Commissioner on demand such proportion of such construction as the Commissioner may assess.
13. The Grantee shall pay such rates taxes charges duties assessments or outgoings of whatever description as may be imposed charged or assessed by any Government or Local Authority upon the land or the buildings erected thereon including any contribution or other sum paid by the President in lieu thereof.
14. The President or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and lay and have access to water mains service pipes and drains telephone or telegraph wires and electric mains of all descriptions whether overhead or underground and the Grantee shall not erect any buildings in such a way as to cover or interfere with any existing alignments of main or service pipes or telephone or telegraph wires and electric mains.
15. The Commissioner of Lands reserves the right to revise the annual ground rental payable hereunder after the expiration of the thirty sixth and sixty sixth year of the term hereby granted. Such rental will be at the rate of \_\_\_\_\_ per cent of the unimproved freehold value of land assessed by the Commissioner of Lands.
16. The Grantee shall construct at its own expense all internal infrastructure to the standard approved by the Local Authority and the Commissioner of Lands.

\_\_\_\_\_

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THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE  
Surrender to the Government of the Republic  
of Kenya in exchange of a new Grant  
+R 12069511

4

Presentation No: 924 Date of Registration: 8-9-2009

*Atkinson*  
Registrar  
G.N. KIPP

**REF: KAA/6/24/VOL. 12 (16)**

**23<sup>RD</sup> JULY, 2014**

Clerk of the National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Buildings  
P.O. Box 41842- 00100  
**NAIROBI**

Dear Sir,

**RE: SUBMISSION ON JKIA EXPANSION PROJECT VARIATION**

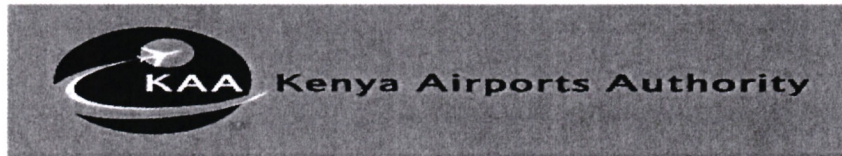
Further to the meeting between KAA and the PIC on 3<sup>rd</sup> July, 2014 on the above, forwarded herewith, please find the report on JKIA package 2 project together with the required attachments.

Yours faithfully,

**JOHN THUMBI**  
**FOR: MANAGING DIRECTOR**

(Encl)

Cc: Kenya National Audit Office  
Anniversary Towers, University Way  
P.O. Box 30084 0100  
**NAIROBI**



## **REPORT TO PIC ON JKIA PROJECT TERMINAL UNIT 4**

### **Construction of Terminal Building, Parking Garage, Grade Parking and other Associated Works – Kshs.4, 147,677,412.88**

#### 1. Tendering process

Expansion of Passenger Terminal Facilities at JKIA, Nairobi – Construction of Terminal (4) – Terminal Building, Parking Garage & Associated Works (KAA/ES/JKIA/476B)

- Invitation for bids was made on 10<sup>th</sup> December, 2008
- 38 firms purchased the tender documents
- Seven bids were received on submission deadline on 5<sup>th</sup> March, 2009

No	Name Of Bidder	Amount Inclusive of VAT at 16%
1.	M/s Benton Chantier Co.	USD 127,589,814.00
2.	M/s Fujian Erjian Construction Group Co Ltd	Kshs. 5,789,196,140.35
3.	M/s China Overseas Engineering Group Co. Ltd	Kshs. 6,355,320,137.00
4.	M/s Sinohydro Corporation Ltd	Kshs. 7,967,249,492.00
5.	M/s SBI International Holding AG	Kshs. 6,848,102,551.00
6.	M/s China Jlanxi Corporation for international Economics and Technical Corporation	Kshs. 6,238,826,920.00
7.	M/s China Aero Technology International Engineering Corporation	Kshs. 4,812,040,723.48

- The tender Committee adjudicated and awarded the contract for Expansion of Passenger Terminal Facilities at JKIA, Nairobi – Construction of Terminal (4) – Terminal Building, Parking Garage & Associated Works to M/s China Aero Technology International Engineering Corporation (CATIC) at the corrected bid sum of Kshs. 4,147,677,412.88 inclusive of:-
  - Contingency sum of Kshs. 350,000,000.00
  - PC & Provisional Sums of Kshs. 1,378,733,527.00
  - But exclusive of VAT at 16% Kshs. 663,628,386.20

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## 1.2 Nominated subcontracts

### 1.2.1 Electrical Installation Sub-Contract Works (KAA/ES/JKIA/476B/E)

- Invitation for bids was made on 11<sup>th</sup> February, 2011
- 35 firms purchased the tender documents
- Five bids were received on submission deadline on 8<sup>th</sup> April, 2011

No.	Name Of Bidder	Amount Inclusive of VAT at 16%	Corrected bid price excluding VAT
1.	M/s Red International Commercial Investment	Kshs. 1,484,120,528.00	Not qualified
2.	M/s Limelight Creations Lts	USD 19,022,882.83	Not qualified
3.	M/s Sterling & Wilson Ltd	USD 19,916,641.00	Not qualified
4.	M/s Schinder Electric France	Kshs. 1,195,126,090.00	1,060,163,361.83
5.	M/s China Aero Technology International Engineering Corporation	Kshs. 1,276,189,430.04	1,162,401,591.97

- The tender Committee adjudicated and awarded the contract for Expansion of Passenger Terminal Facilities at JKIA, Nairobi – Construction of Terminal (4) – Terminal Building, Parking Garage & Associated Electrical Installation Sub-Contract Works to M/s China Aero Technology International Engineering Corporation (CATIC) at the corrected bid sum of Kshs. 1,100,163,361.83 inclusive of:-
  - Contingency sum of Kshs. 40,000,000.00
  - But exclusive of VAT at 16% Kshs. 176,026,137.89

### 1.2.2 Mechanical, Plumbing and HVAC Installation Works, Subcontract under the Main Works Expansion of Passenger Terminal Facilities at JKIA, Nairobi - Construction of Terminal (4) - Terminal Building, Parking Garage & Associated Works (KAA/ES/JKIA/476B/M)

- Invitation for bids was made on 13<sup>th</sup> May, 2011
- 10 firms purchased the tender documents
- Three bids were received on submission deadline on 24<sup>th</sup> June, 2011

No.	Name Of Bidder	Amount Inclusive of VAT at 16%	Corrected bid price excluding VAT
1.	M/s Refrigeration Centre Ltd	Kshs. 461,666,611.28	Not qualified
2.	M/s Trident Plumbers Ltd	Kshs. 361,881,609.93	298,182,060
3.	M/s China Aero Technology International Engineering Corporation	Kshs. 359,176,885.36	293,635,246

- The tender Committee adjudicated and awarded the contract for Mechanical, Plumbing and HVAC Installation Works, Subcontract under the Main Works Expansion of Passenger Terminal Facilities at JKIA, Nairobi - Construction of Terminal (4) - Terminal Building, Parking Garage & Associated Works to M/s China Aero Technology International Engineering Corporation (CATIC) at the corrected bid sum of Kshs. 309,635,246.00 inclusive of:-
  - Contingency sum of Kshs. 16,000,000.00
  - But exclusive of VAT at 16% Kshs. 49,541,639.36

### 1.2.3 Lifts, Escalators & Powerwalks Installation Sub-Contract Works (KAA/ES/JKIA/476B/L)

- Invitation for bids was made on 9<sup>th</sup> May, 2011
- 8 firms purchased the tender documents
- Two bids were received on submission deadline on 29<sup>th</sup> June, 2011

No	Name Of Bidder	Amount Inclusive of VAT at 16%	Corrected bid price excluding VAT
1.	M/s Schindler Lifts(SA) (pty) Ltd	Kshs. 343,198,987.00	280,861,195.59
2.	M/s Marryat & Scott (Kenya) Ltd	Kshs. 262,389,976.00	Not qualified

- The tender Committee adjudicated and awarded the contract for Lifts, Escalators & Powerwalks Installation Sub-Contract Works M/s Schindler Lifts(SA) (pty) Ltd at the corrected bid sum of Kshs. 297,930,161.21 inclusive of:-
  - Contingency sum of Kshs. 150,000,000.00
  - But exclusive of VAT at 16% Kshs. 45,268,825.79

## 2. Feasibility study

The feasibility study was carried out by Queen's Quay Architects International commenced the study in August 2004 and submitting their final report in February, 2005. Copy of the report is attached.

Detailed design was carried out and the project was to implement in three packages.

- Package 1 covering civil works for extension of the Apron and taxiways which construction works commenced in October, 2006 and was completed in April, 2008
- Package 2 covering construction of parking garage and terminal unit 4 which commenced in August, 2010.

- Package 3 renovation and upgrading of terminal unit 1, 2, and 3 for which the designs are to be carried out.

### **3. Correspondences – on scope of the works**

- i. The original scope of works in Package 2 included the following:
  - Terminal 4 building as a domestic terminal floor area 17,575m<sup>2</sup>
  - Parking garage on five floors for 1500 vehicles of floor area 60,566m<sup>2</sup>
  - Grade parking for 400 vehicles
- ii. The revised scope of works as captured in Addendum 3 include
  - Construction of terminal unit 4 as international terminal with a floor area of about 25,000m<sup>2</sup>
  - Parking garage on five floors for 1500 vehicles of floor area 60,566m<sup>2</sup>
  - Grade parking for 400 vehicles
  - Upgrading of power supply to the airport from 11kv to 66kv through construction of a new substation necessary for stability of power supply to the airport. This had originally planned to be carried out as separate contract but for uniformity and timely delivery for operation of terminal 4 it was agreed that it is carried out as part of the works in electrical installation for package 2
- iii. Correspondence with respect to changes with scope
  - Minutes of meetings between KAA, Consultant and Stakeholders
  - World Bank acknowledge through supervision mission Aide Memoire for 30<sup>th</sup> May – 10<sup>th</sup> June, 2011
  - Board approval of financial model incorporating this changes
  - No objection for variation through addendum 3

### **4. Relevant loan agreements**

A copy of the loan agreement with Bank and minutes of negotiation are attached as follows:

- i) Minutes of negotiation with World Bank
- ii) Financing Agreement 2009 Schedule 2 section III which states on page 16 of the Agreement that *all goods and works under the project shall be procured in accordance with requirements set forth in the World Bank Procurement guidelines Section I.*

- iii) Applicable World Bank procurement guidelines for carrying out a project that is financed in whole or in part by a loan from the Bank. Section 1.5 on applicability of the guidelines page 2 states as follows 'The principles, rules and procedures outlined in these guidelines apply to all contracts for goods and works financed in whole or in part from Bank loans'

#### **5. The rationale of continuing with contract for the works even after changes to scope**

- The contractor for the works mobilized and commenced works in August, 2010
- Changes to the scope from domestic to international became apparent in June, 2011
- Termination of the contract would have resulted in substantial penalties as per the contract agreement
- A new contractor would have to be procured resulting in delays and cost escalation
- Airport was already congested and delays in implementation and delivery of completed works would adversely affect development of JKIA as a hub airport

#### **6. Tender Committee Approvals**

Attached please find Tender Committee approvals for the following:

- 1) Expansion of Passenger Terminal Facilities at JKIA, Nairobi – Construction of Terminal (4) – Terminal Building, Parking Garage & Associated Works
  - Tender Committee minutes
  - World Bank no objection to award
  - Evaluation Report which include advertisement notices
  - Bidding Documents
  
- 2) Electrical Installation Sub-Contract Works
  - Tender Committee minutes
  - World Bank no objection to award
  - Evaluation Report which include advertisement notices
  - Bidding Documents
  
- 3) Mechanical, Plumbing and HVAC Installation Works, Subcontract under the Main Works Expansion of Passenger Terminal Facilities at JKIA, Nairobi - Construction of Terminal (4) - Terminal Building, Parking Garage & Associated Works
  - Tender Committee minutes

- World Bank no objection to award
- Evaluation Report which include advertisement notices
- Bidding Documents

- 4) Lifts, Escalators & Powerwalks Installation Sub-Contract Works
- Tender Committee minutes
  - World Bank no objection to award
  - Evaluation Report which include advertisement notices
  - Bidding Documents

## **7. Contingencies sum**

The contingency sum is a normal provision in building and civil works contracts to provide for any omissions in the designs and bill of quantities and for foreseen site conditions.

In this case it was to cover for relocation of high voltage cables, water, fire hydrant system and sewage. Allowance for contingency is a normal practice on large projects

# DELIVERY NOTE

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DATE	NAME	DESCRIPTION	No.	NAME OF PERSON RECEIVING	SIGNATURE
24.2.14	Eng. Mihokovic b.1 M/S NRAD	KAK LESI SKI 4/76B CIV FOR AREA A18 A2 Ground floor kandide	1		
"	Anthony Kulic-NIKIC	"	1		
23/7/14	Clerk of the National Assembly	Submission on SKA expansion project variation KAK LESI SKI 4/76B Documents: B/E B-L	1	Assumpta	23/7/14