

*Final: March 1, 2013*

*Ownership and Construction of the Learning Centre  
Borderless Higher Education for Refugees (BHER) Project*

**AMENDED AND RESTATED MEMORANDUM OF AGREEMENT**

**AMONG:**

**THE WINDLE CHARITABLE TRUST,  
a non-governmental organization registered in the Republic of Kenya**

**And**

**KENYATTA UNIVERSITY,  
a university located in Kenya**

**And**

**YORK UNIVERSITY,  
a university established by the Province of Ontario, Canada**

**Each of the above being referred to in this Agreement as a “Party”,  
and collectively, “the Parties”**

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## I. BHER Overview

The Borderless Higher Education for Refugees (BHER) project is a development initiative that delivers higher education to refugees in refugee camps situated in the Global South. Informed by an approach to design and strengthen locally based educational services, the BHER model undertakes to deliver on-line/onsite courses and programs that meet international standards, and are “portable” within the unique environment and circumstances of refugee camps and marginalized/remote communities. These programs will enhance the life chances of vulnerable youth from refugee and marginalized communities, and build educational and teaching capacity. The ultimate goal is to provide refugee youth a greater likelihood of successful and productive repatriation to their home country when possible, and a rise in the quality of education in host/home countries concerned with building peaceful, equitable and socially inclusive societies.

The BHER initiative has been conceptualized and is implemented through a multi-institutional collaboration of various entities (the “**BHER Consortium**”). The BHER Consortium includes: **In Canada:** York University (“YU”), the University of British Columbia (“UBC”), and the World University Service of Canada (“WUSC”); **In Kenya:** Kenyatta University (“KU”), Moi University (“MU”), the African Virtual University (“AVU”), the United Nations High Commissioner for Refugees (“UNHCR”) (Dadaab), and The Windle Charitable Trust, registered in the Republic of Kenya (“WTK”); **Internationally:** the Interagency Network for Education in Emergencies (“INEE”), the International Rescue Committee (“IRC”), and the Refugee Educational Trust (“RET”). YU’s role is twofold: a) to use a grant of funds that YU has received or will be receiving from the Canadian International Development Agency (“CIDA”) to fund construction and purchase as described below; and b) to provide, with the other universities named above, onsite and online tertiary education to refugees and local Dadaab Kenyans. The non-university members of the BHER Consortium will be providing support for such education.

The BHER project will be carried out in Dadaab, a town located in Lagdera District which is located in Garissa County, in north-eastern Kenya. Surrounding the Dadaab town is the world's largest refugee site, with over 450,000 displaced people in five camps: Ifo, Ifo 2 and Dagahaley which are located in Lagdera District and Hagadera and Kambioos which are located in Fafi District. The camps were established in 1991-2 and designed for 90,000 people. Annex 1 contains a map that indicates the location of Dadaab town in relation to the five camps in the two districts. The project will serve refugees coming from the camps as well as local residents of Lagdera and Fafi Districts. It will be funded by CIDA and is supported by the institutions comprising the BHER Consortium.

## II. BHER Learning Centre

To deliver the above described model, the BHER Consortium is in need of a learning area. It is intended that the BHER Learning Centre will be self-contained and fenced. It will be located on a parcel of land (the “BHER Parcel”) of approximately 200m x 200m within the larger area where KU will have its own campus for the delivery of its programs to KU students. Annex 2 is

a sketch indicating the approximate proposed location of the BHER Parcel on which the BHER Learning Centre (new construction) will be located.

### **III. Legal Structure Pertaining to Land Ownership and Construction of BHER Learning Centre**

#### ***Current Situation***

KU and WTK represent and warrant to YU that they have conducted due diligence and that:

- a. Lagdera Community, as represented by the Lagdera Constituency Development Fund Committee (“LCDFC”) and KU jointly own legal title to the BHER Parcel; and
- b. The Government of Kenya (“GOK”), as represented by Garissa County Council (“GCC”), regulates and gives authority regarding the use of lands in Kenya, including the BHER Parcel.

#### ***Legal Structure***

The Parties to this Memorandum of Agreement agree as follows.

1. KU:
  - a. confirms that KU has a binding agreement with LCDFC whereby LCDFC has agreed to allow KU and the BHER Consortium the use of the BHER Parcel for purposes of an onsite and online higher education Learning Centre for a period of time that does not expire prior to February 7, 2019;
  - b. confirms that KU has obtained permission from the GCC, on behalf of the GOK, that the BHER Parcel be used for the foregoing purposes; and
  - c. acknowledges and agrees that the BHER Consortium has the right to use the BHER Parcel for the foregoing purposes for a period of time that does not expire prior to February 7, 2019.
2. WTK, YU and KU confirm and agree as follows:
  - a. YU confirms that, pursuant to a Contribution Agreement between YU and CIDA signed by YU on February 6, 2013 and by CIDA on February 7, 2013 (the “CIDA Agreement”), YU has received or will be receiving funding from CIDA for purposes, among other things, of funding the construction of the BHER Parcel and the purchase of all items set forth in Sections A, B 2, B 3, B 4, C, D, E, F, G, and H of the attached Table 1 for the aggregate cost set forth in Table 1;

- b. WTK agrees that it will take responsibility for ensuring the construction, through subcontractors, of the BHER Parcel and the purchase of all items set forth in Sections A, B 2, B 3, B 4, C, D, E, F, G, and H of the attached Table 1 for not more than the aggregate cost set forth in Table 1, it being understood that YU and WTK may jointly agree from time to time to amend any line item amount by up to 10% so long as the aggregate cost does not change;
- c. Pursuant to the **CIDA Agreement**, YU agrees that it will forward to WTK the funding which YU has received or will be receiving from CIDA, in stages to pay for the actual costs (as set forth in and not to exceed the costs set forth in Table 1) of such construction and purchase, in accordance with a schedule and terms and conditions to be settled between WTK and YU and also in accordance with any funding requirements from CIDA;
- d. WTK, YU and KU agree that all facilities and structures as well as all items set forth on the attached Table 1 shall be owned by KU;
- e. WTK agrees that it will carry Course of Construction, Property and Liability Insurance covering the BHER Parcel while under construction up until the date on which all such facilities, structures and items are certified as being ready for occupancy;
- f. KU agrees that it will carry property and liability insurance covering all such facilities, structures and items after they are ready for occupancy;
- g. WTK and KU agree that YU has no liability arising from its involvement in the BHER project except to the extent of YU's responsibilities contained in this Memorandum of Agreement; and
- h. all Annexes attached hereto and Table 1 and all Appendices attached to it form an integral part of this Memorandum of Agreement.

3. ***CIDA Agreement***


- a. Anti- Corruption: As required by Article 9.5.4 of the CIDA Agreement , each of WTK and KU declare and guarantee all of the matters set out in Articles 9.5.1, 9.5.2 and 9.5.3 of the CIDA Agreement (which Article 9.5 is attached as part of Annex 3) , as if they were an original signatory to the CIDA Agreement.
- b. Anti-Terrorism: As required by Article 9.6.3 of the CIDA Agreement, each of WTK and KU declare, guarantee and agree to the matters set out in Articles 9.6.1, and 9.6.2 of the CIDA Agreement (which Article 9.6 is attached hereto as part of Annex 3) as if they were an original signatory to the CIDA Agreement.

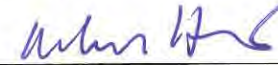
- c. International Sanctions: As required by Article 9.7.3 of the CIDA Agreement, each of WTK and KU declare, guarantee and agree to the matters set out in Articles 9.7.1 and 9.7.2 of the CIDA Agreement (which Article 9.7 is attached hereto as part of Annex 3) as if they were an original signatory to the CIDA Agreement.
  - d. Liability and Security: As required by Article 10.4.4 of the CIDA Agreement, each of WTK and KU agrees to be bound by Article 10.4 of the CIDA Agreement (which Article 10.4 is attached hereto as Annex 4) as if they were an original signatory to the CIDA Agreement.
  - e. CIDA General Terms and Conditions requirements: WTK and KU agree, as if they were an original signatory to the CIDA Agreement, to the following provisions of the CIDA General Terms and Conditions (which provisions are attached as Annex 5) insofar as they apply to WTK and KU as subcontractors under said Terms and Conditions: Subcontracting and sub-agreements and procurement in sections 10 and 11; Monitoring and Evaluation in section 14; CIDA's right to Audit in section 16; Auditor General's Right To Audit in section 17; Termination or Suspension for Convenience in section 20; Intellectual Property in section 30; FlowThrough Funds in section 37 and any other provisions of said General Terms and Conditions which may, by their nature, apply to or involve WTK and/or KU.
  - f. Subcontractors: As required by the CIDA Agreement, WTK and KU agree to ensure that all subcontractors abide by the provisions of the CIDA Agreement set forth above.
4. Continuation of CIDA Agreement. The obligations of YU under this Memorandum of Agreement are subject to and conditional upon the continuation of the CIDA Agreement.
5. Further Assurances. Each of the Parties agrees to provide further assurances which are reasonably requested by any other Party hereto.
6. Document from Lagdera Community. Each and every agreement and covenant herein by YU is subject to YU obtaining an agreement from Lagdera Community, as represented by LCDFC in which Lagdera Community as represented by LCDFC confirms that it holds, jointly with KU, legal title to the BHER Parcel; that it agrees to the use of the BHER parcel for the purposes described herein; and that it has obtained permission from the GCC, on behalf of the GOK, that the BHER Parcel be used for said purposes.
7. Amended and Restated Memorandum of Agreement. The Parties hereto acknowledge that the original form of the Memorandum of Agreement dated February 5, 2013 was settled between them and signed by KU and WTK on March 1, 2013 (the "Original MOA"). Prior to execution by YU, it was agreed that the Original MOA would be amended and restated by this Agreement which, when executed by all of the Parties hereto, shall supersede and replace the Original MOA.

The undersigned Parties each hereby agrees to be bound by this Memorandum of Agreement.

DATED as of the first day of March, 2013.


**YORK UNIVERSITY**


By:   
Name: Gary Brewer  
Title: Vice President, Finance and Administration

By:   
Name: Robert Hache  
Title: Vice President, Research and Innovation

We have authority to bind the university


**THE WINDLE CHARITABLE TRUST**


By: MARANGU NJOGU   
Name:  
Title: Executive Director

By:   
Name: Phyllis Mureu  
Title: Finance & Admin Manager

We have authority to bind the trust

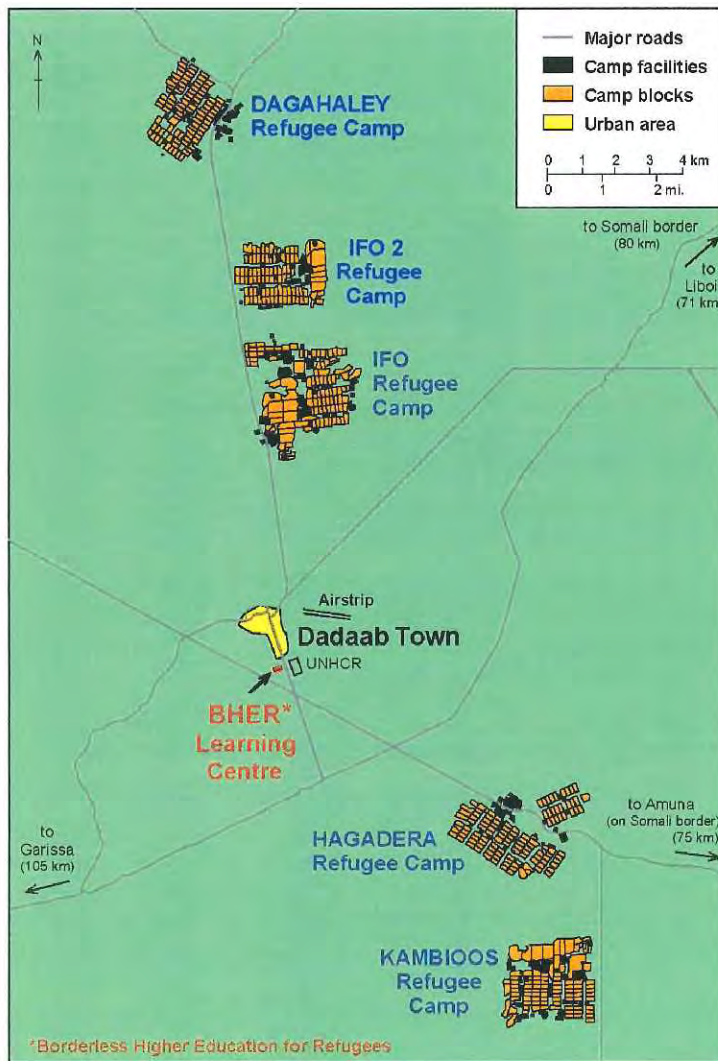
**KENYATTA UNIVERSITY**

By:   
Name: Prof. Olive M. Mugenda, Ph.D, EBS, CBS  
Title: Vice-Chancellor

By:   
Name: Prof. P. K. Wainaina  
Title: Deputy Vice-Chancellor (Administration)

We have authority to bind the university.

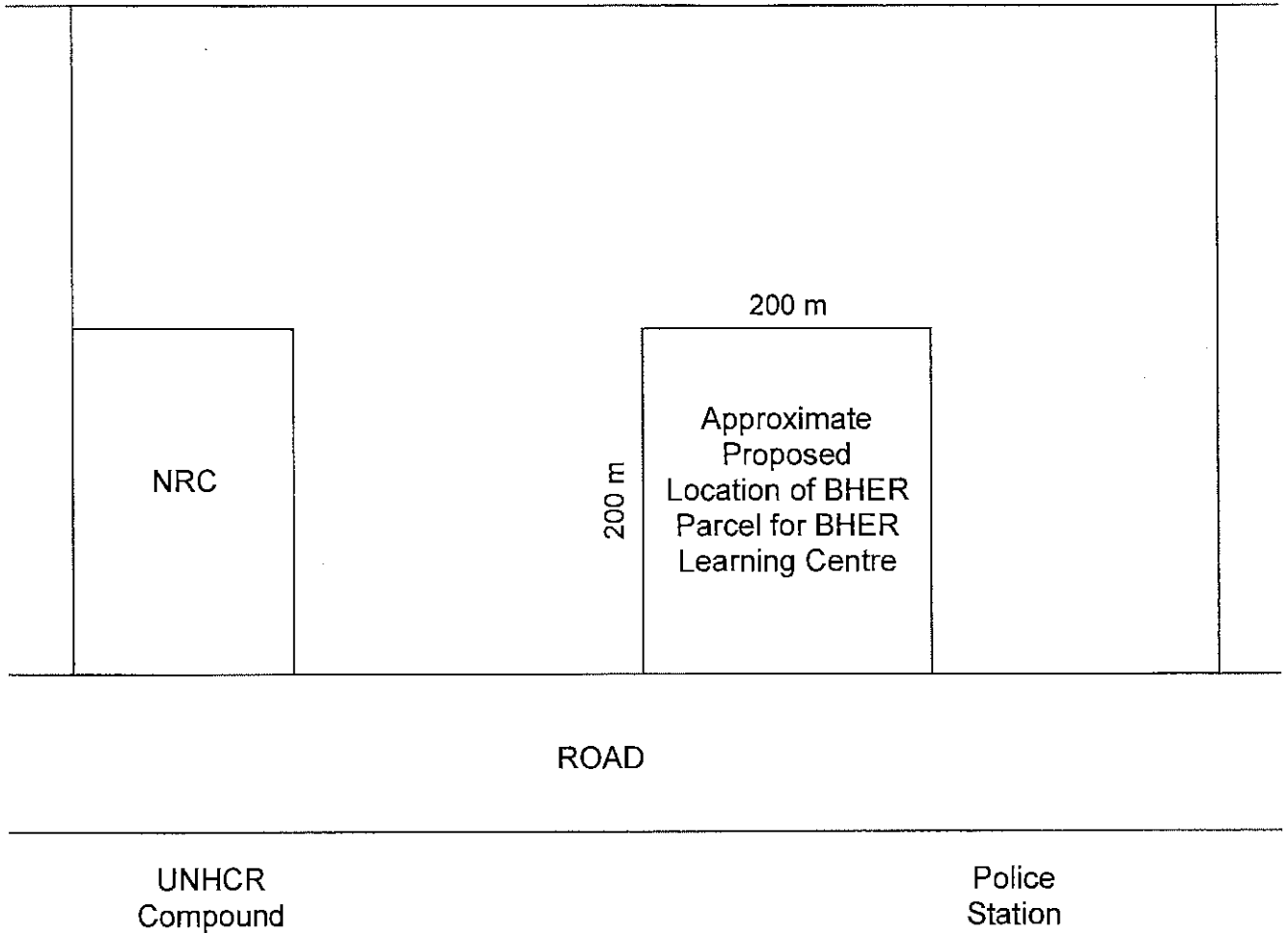
# Annex 1: Location of Dadaab town in relation to the five refugee camps





**Annex 2**

**Approximate proposed location  
of BHER Parcel and BHER Learning Centre**



## Contribution Agreement

Purchase Order: 7059286  
Project number: S065648  
GLAcct/CC/Fund: 52302/6108/0310  
Vendor: 1000803

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### 9.5 Anti-Corruption

- 9.5.1. The Organization declares and guarantees that no offer, gift or payment, consideration or benefit of any kind, which constitutes an illegal or corrupt practice, has been or will be made to anyone by the Organization, either directly or indirectly, as an inducement or reward for the award or execution of the Agreement.
- 9.5.2. The Organization declares and guarantees that neither the Organization, nor its employees involved in the Project:
- Were convicted during a period of three (3) years prior to the submission of the Project proposal, by a court of law in Canada or in any other jurisdiction for an offence involving bribery or corruption or;
  - Are under sanction, for an offence involving bribery or corruption, imposed by a government, a governmental organization or a development organization providing development assistance.
- 9.5.3. Should there be any changes, the Organization shall promptly update this declaration by completing the Anti-Corruption Declaration form that can be obtained from CIDA's Internet site at: <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/JUD-1241527-RHD>. This updated declaration shall form an integral part of the Agreement.
- 9.5.4. The Organization shall include a corresponding provision in any sub-contract or sub-agreement that the Organization enters into for the purposes of the Project.

### 9.6 Anti-Terrorism

- 9.6.1. The Organization declares and guarantees that the funding for the purposes of the Project will not knowingly be used to benefit terrorist groups as defined in the Criminal Code or individual members of those groups, or for terrorist activities, either directly or indirectly. The Canadian government list of terrorist entities can be found at the following web addresses: [http://www.osfi-bsif.gc.ca/osfi/index\\_e.aspx?ArticleID=3](http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=3) or <http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx>;
- 9.6.2. The Organization is responsible to consult the list in order to keep itself current of the listed terrorist groups during the period of the Agreement;
- 9.6.3. The Organization shall include a corresponding provision in any sub-contract or sub-agreement that the Organization enters into for the purposes of the Project.

### 9.7 International Sanctions

- 9.7.1. The Organization declares and guarantees that the funding for the purposes of the Project will not knowingly be used, either directly or indirectly, in dealing with countries or persons subject to economic sanctions. Details on existing sanctions can be found at: <http://www.international.gc.ca/sanctions/index.aspx?lang=eng&view=d>;
- 9.7.2. The Organization is responsible to consult the list in order to keep itself current of the listed countries/persons subject to economic sanctions during the period of the Agreement;
- 9.7.3. The Organization shall include a corresponding provision in any sub-contract or sub-agreement that the Organization enters into for the purposes of the Project.

## 10.4 Liability and Security

### 10.4.1. Obligations related to Security

- a) The Organization is responsible to ensure its own security and the security of its Personnel. CIDA shall assume no responsibility for the security of the Organization or the Organization's Personnel.
- b) The Organization recognizes that work involved in this project could expose its Personnel to serious risks of injury and/or death.
- c) The Organization is responsible to fully and openly disclose to its Personnel the inherent risks of the Project.
- d) The Organization is also responsible to keep itself, as well as its Personnel, informed of any "Travel Reports and Warnings" issued by the Department of Foreign Affairs and International Trade and shall comply with any Post Rating restrictions with respect to family accompaniment included in the "Schedules to the Technical Assistance Handbook" issued by CIDA.

### 10.4.2. Security Measures

- a) It is the sole responsibility of the Organization to conduct a security assessment and take any and all necessary measures to ensure its own security and the security of its Personnel. If the Organization determines that a security plan is necessary, the Organization will develop, adapt and implement a security plan based on international best practices in this area, taking the following into consideration:
  - i. Security related issues and challenges in Kenya in general, and within the Project area;
  - ii. Local customs, laws and regulations;
  - iii. Restrictions and protocols for movement in the Project area, where applicable;
  - iv. Security equipment and equipment-related protocols (vehicles, communications, personal protective equipment, etc.), as required;
  - v. Security and Personnel safety protocols (guards, office, staff housing, the Project area, etc.);
  - vi. Evacuation, including emergency medical evacuation, procedures;
  - vii. Abduction/Missing person protocol(s); and
  - viii. Processes for security awareness updates, as required.
- b) The Organization should also put in place for its Personnel, but not limited to, the following:
  - i. Hospitalization and medical treatment arrangements;
  - ii. Mortuary affairs arrangements;
  - iii. Procedures for expected conduct and discipline;
  - iv. Health and safety protocols as well as insurance requirements; and
  - v. Critical incident management procedures, which should be in accordance with the Organization's internal policies and harmonized, where practicable, with the Canadian Embassy consular procedures.

### 10.4.3. Personnel

- a) For the purposes of Article 10.4 the term Personnel includes:
  - i. all individuals involved in the Project under an employment contract with the Organization;
  - ii. all individuals not included in sub-article 10.4.3 a) i) who are authorized by the Organization to be involved in the Project, including, but not limited to, volunteers and interns; and
  - iii. each family member, if applicable, of each individual included in sub-articles 10.4.3 a) i) and ii).
- b) For the purposes of Article 10.4 the term Personnel excludes Subcontractors and individuals involved in the Project either under employment or service contracts with Subcontractors.

### 10.4.4. Subcontractors

The Organization shall, unless CIDA agrees in writing, ensure that each of its Subcontractors is bound by terms and conditions compatible with and not less favourable to CIDA than the terms and conditions of Article 10.4

# General Terms and Conditions - Contribution Agreement

Effective: July 4, 2011

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# General Terms and Conditions - Contribution Agreement

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## 1 Definitions (July/4/2011)

Unless otherwise specified in the Agreement, the expressions listed below shall have the following meanings:

**“Advance Payment”** - means a payment made, under the terms of the Agreement, before the performance of that part of the Agreement for which the payment is being made.

**“Agreement”** - means this Agreement and Annexes, as updated from time to time and the General Terms and Conditions applicable on the Effective Date of the Agreement. This publication can be obtained from CIDA's Internet Site at ([www.acdi-cida.gc.ca/contributionagreement](http://www.acdi-cida.gc.ca/contributionagreement)).

**“Arms Length Relationship”** - means a relationship whereby in the implementation of the Project, the Organization has entered into a contract or agreement with a Subcontractor and where the Organization and the Subcontractor are independent of each other and are not controlled by the same person or group of persons.

**“Asset”** - means any individual item acquired for the purpose of the Project, which has an estimated lifespan greater than one year at the time of acquisition or disposal.

**“Canadian Personnel”** - means all individuals involved in the Project either as Employees of the Organization or Subcontractors that are Canadian citizens, landed immigrants or permanent residents of Canada.

**“Canadian Volunteers”** - means a Canadian citizen, a landed immigrant or a permanent resident who meets the eligibility criteria for volunteers established in Appendix II of the Overhead Compensation Policy for CIDA's Contribution Agreements with Canadian Organizations. This policy can be found at the following address: (<http://www.acdi-cida.gc.ca/CIDAWEB/acdicida.nsf/En/STE-320155313-SMQ>).

**“Contribution”** - means the funding provided by CIDA under this Agreement.

**“Eligible Costs”** means those costs reasonably and properly incurred and paid by the Organization, the Ultimate Recipients and the Local Partners which are cash disbursements made with respect to the activities set out in Appendix A, as itemized in the Estimated Project Budget - Appendix B, in accordance with the principles of Part 1 of Appendix C.

**“Employees”** - means individuals who perform services or works for an employer in return for wages or salary under an employer/employee relationship.

**“Fiscal Year”** - means the period beginning on April 1 in one year and ending on March 31 in the next year, or if applicable, the Organization's fiscal year as agreed by CIDA and stipulated in the Agreement.

**“Flow-Through Funds”** - means funds included in the Contribution Agreement exclusively for providing an administrative mechanism to transfer funds to an Ultimate Recipient for the delivery of a Sub-Project, and for which the Organization has administrative and financial management responsibility, but is not responsible for the ultimate results/outcomes of the Sub-Project.

**“In-Kind Contribution”** - means a contribution of materials, goods, services or time to the Project to which a dollar value can be attributed, that would otherwise be purchased and paid for by the Organization to achieve the Project results. The cost of goods and services contributed in kind must be eligible under the Agreement and must be recorded at a fair value.

**“Interest Earned on Advances”** - means the interest earned or calculated by the Organization on the Advance Payments made by CIDA.

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**“Interest Rate”** - means the Bank of Canada Rate, as defined in the Treasury Board's *Interest And Administrative Charges Regulations* ([http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/tbm\\_142/iacr\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/tbm_142/iacr_e.asp)), in effect on the due date, plus 300 basis points, compounded monthly. The Interest Rate for a given month can be found at: <http://www.tpsgc-pwgsc.gc.ca/recgen/txt/index-eng.html>.

**“Local Employees”** - means all individuals (professional and non-professional) that are hired in the Recipient Country by the Organization or through Local Partners, are citizens or permanent residents of the Recipient Country, and are subject to all applicable local laws and policies.

**“Local Partner”** - means an organization established in a Recipient Country participating in the implementation of the Project pursuant to a Sub-Agreement.

**“Monthly Payment”** - means a payment made on a monthly basis by CIDA under the terms of the Agreement, for Eligible Costs incurred during the preceding month.

**“Payment Request”** - means a form prescribed by CIDA that is to be completed by the Organization to request an Advance Payment, a Progress Payment or Monthly Payment of funds from CIDA under the terms of the Agreement.

**“Personnel”** - means all individuals involved in the Project including, but not limited to Employees and Subcontractors.

**“Progress Payment”** - means a payment made, under the terms of the Agreement, after the performance of that part of the Project for which the payment is being made but before completion of the entire Project.

**“Project”** - means the project, the program or the set of activities including sub-projects, as fully described in Appendix A.

**“Project Beneficiary”** – Population(s) and organization(s) in the Recipient Country (ies) which are within the immediate reach of the Project (i.e. are identified in one or more outcome statements) and that are expected to benefit at the outcome level of the Project.

**“Recipient Country”** - means the country or countries in which the Project is being implemented.

**“Recipient Country Government Employees”** - Government employees of the Recipient Country identified to work with the Organization or Personnel in the implementation of the Project.

**“Subcontractor”** - means an individual (other than an Employee), a firm, a for-profit or not-for-profit organization or institution, acting alone or in a consortium, a joint venture, a partnership (limited or otherwise), having entered into a contract or agreement with the Organization to provide goods or services in relation to the implementation of the Project. The term Subcontractor includes Canadian and local consultants.

**“Sub-Agreement”** - means the agreement signed between the Organization and an Ultimate Recipient or a Local Partner.

**“Sub-Contract”** – means the agreement signed between the Organization and a Subcontractor.

**“Sub-Project”** - means the activities that will be carried out by an Ultimate Recipient.

**“Supporting Documentation”** - means but is not limited to: original vouchers, invoices, statements of account, receipts, contracts, lease agreements, and timesheets or other data supporting the Organization's actual costs incurred. The term also includes cancelled cheques, bank drafts and other forms of data supporting disbursements.

**“Ultimate Recipient”** - means the individual or organization that has entered into a contribution agreement with the Organization and will receive payments distributed by the Organization from the Contribution to carry out a Sub-Project under the Agreement.

# General Terms and Conditions - Contribution Agreement

Effective: July 4, 2011

## **2 Interpretation (May/10/2004)**

Unless otherwise specified in the Agreement, words importing the singular include the plural and vice-versa and words importing gender include all genders.

## **3 Amendment (July/4/2011)**

Unless otherwise stipulated in the Agreement, no amendment made to the Agreement is valid unless it is incorporated into the Agreement in writing and the amendment is signed by CIDA and the Organization.

## **4 Assignment (May/10/2004)**

The Organization shall not assign the Agreement, in whole or in part, without the written consent of CIDA. Any assignment carried out without such consent is null and void.

## **5 Notices and Communications (July/4/2011)**

- 5.1 Any notice given pursuant to the Agreement shall be in writing and delivered in person, sent by registered mail or by facsimile addressed to the party for whom it is intended at the address mentioned in Section 8 of the Agreement.
- 5.2 Any communication under the Agreement, other than a notice covered by Subsection 5.1 above, shall be in writing and delivered in person, sent by registered mail, by facsimile or by e-mail addressed to the party for whom it is intended at the address mentioned in Section 8 of the Agreement.
- 5.3 Any notice or communication is deemed to have been received:
  - a) On the day of delivery, if hand-delivered;
  - b) When the other party acknowledges receipt, if sent by registered mail;
  - c) One work day following transmission, if sent by facsimile or e-mail.
- 5.4 Change of Address

The change of address of either party shall be made by a notice sent in accordance with subsection 5.1 above.

## **6 Communication with Canadian Embassies and High Commissions (July/4/2011)**

Canadian Personnel working on the Project in a developing country will register with the Canadian Embassy or High Commission in the Recipient Country. The Organization will keep the respective Canadian Embassy or High Commission informed regarding the Project, including the participation of local collaborators. If assistance is needed, the Organization will advise the Canadian Embassy or High Commission in advance of planned visits to the Recipient Country with regard to the Project.

## **7 Publication of information (July/4/2011)**

All information provided by the Organization will be treated in accordance with the *Access to information Act* and the *Privacy Act*. CIDA may compile and publish statistics based on information contained in the documents comprising the Agreement and arising from its performance. CIDA may publish the Organization's name and address, the amount of the Contribution, the type of activities funded, the title of the Project and the name of the Recipient Country.





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## **8 Confidential Information - Non-Disclosure (July/4/2011)**

- 8.1 The Organization shall not disclose any confidential information or document that it becomes aware of or takes possession of during the implementation of the Project, without having obtained written authorization from the appropriate authority that can release it from the obligation to confidentiality. Upon CIDA's request, the Organization shall provide CIDA with a copy of the authorization obtained.
- 8.2 The Organization shall ensure that all its Employees, Personnel, Ultimate Recipients and Subcontractors are obliged to comply with section 8.1 by including or attaching these General Terms and Conditions, and any part of the Agreement relating to these General Terms and Conditions to the contracts or agreements with them. The Organization shall further ensure that all its Personnel, Ultimate Recipients and/or Subcontractors do likewise in any Sub-agreements they sign in the implementation of the Project and so on.

## **9 Business Conduct (July/4/2011)**

The Organization shall refrain from practices or activities which might be prejudicial to the relations between Canada and the Recipient Country, and shall require that all its Employees, Personnel, Ultimate Recipients or Subcontractors act accordingly.

## **10 Contractual Commitments with Third Parties (May/10/2004)**

CIDA shall not be held liable for any loans, leases, capital leases or any other contractual commitments entered into by the Organization with any third party for the implementation of the Project.

## **11 Subcontracting and Sub-Agreements (July/4/2011)**

Agreements signed between the Organization and its Subcontractors or Ultimate Recipients shall be in written form and shall be consistent with the provisions of the Agreement. The Organization shall retain these agreements and supporting documents relating to their performance. These agreements are subject to audit by CIDA and its representatives as per Section 16 below.

## **12 Procurement (July/4/2011)**

- 12.1 The Organization shall be responsible and accountable for the procurement of goods, services or Assets related to the Project.
- 12.2 The Organization shall favour a competitive process for the procurement of goods, Assets and services for the Project that enhances access, transparency, competition and fairness and results in best value. The Organization agrees to ensure that a reasonable number of suppliers are given an opportunity to bid and should avoid situations where there may be a bias toward awarding a contract for goods, services or Assets for the Project to a specific person or entity.
- 12.3 The Organization shall maintain procurement files containing all relevant procurement documentation including, without being limited to, purchase requisitions, tender documents or records of telephone bids, tender evaluations, contracts or purchase orders, invoices, and shipping and receiving documentation. Any procurement deviating from the provisions stipulated in section 12.2 above shall be fully justified and documented in the Organization's procurement file(s).
- 12.4 For the purposes of this section, "best value" means the optimal combination of quality, service, time and cost considerations, over the useful life of the good, service or Asset acquired for the purposes of the Project.
- 12.5 The Organization shall maintain an active inventory of all project Assets.

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## 13 Disposal of Assets (July/4/2011)

- 13.1 The Organization shall dispose of all assets at the end of the Agreement at the latest, in one of the following methods of disposal:
- a) Transfer of property to the Project beneficiaries identified in Appendix A;
  - b) Transfer of property to another CIDA project;
  - c) Sale through public tender or auction (or other agreed method) and the proceeds of disposition credited to the Project; or
  - d) If warranted, an alternate disposition as approved by CIDA.
- 13.2 Where the Assets identified above are to be transferred to Project beneficiaries or to another CIDA Project, the following procedures shall be followed:
- a) An inventory list shall be prepared of all assets, listing the individual items (make and model number, if applicable) and the quantity being transferred;
  - b) A covering letter shall be prepared with the inventory list attached, in which the Organization confirms the transfer to the designated recipient organization;
  - c) Both the Organization and the designated recipient organization shall sign the letter at the bottom acknowledging the transfer of ownership of the Assets;
  - d) A copy of the executed letter and the inventory list shall be sent to CIDA.

## 14 Monitoring and Evaluation (July/4/2011)

The Organization shall permit, or cause to be permitted, reasonable access to any authorized CIDA representative to the Organization's premises, including third parties under contract with the Organization for the implementation of this Project, and any premises where the Project takes place to review and assess the progress of the Project or any element thereof and supply promptly upon request such data as CIDA may reasonably require for statistical or Project evaluation purposes. CIDA reserves the right to proceed with an evaluation, whenever it deems it necessary, during the implementation of the Project and for three (3) years following the termination of the Agreement. CIDA will inform the Organization of the results of such evaluations.

## 15 Accounts and Financial Records (July/4/2011)

The Organization must maintain separate accounting and financial records for the purpose of producing financial reports required by CIDA pursuant to the Agreement. These shall be established to account for the total funds budgeted for the implementation of the Project, regardless of the source of funding, and for the expenses related to the implementation. The Organization must retain the original supporting documentation for each expense for three (3) years following the termination of the Agreement.

## 16 CIDA's Right to Audit (July/4/2011)



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- 16.1 During the implementation of the Project and for a period of three (3) years following the termination of the Agreement, the Organization shall, at its own expense, preserve and make available for audit and examination by CIDA or CIDA's representatives the books, accounts and records of the Project and of the information necessary to ensure compliance with the General Terms and Conditions of this Agreement and all supporting documentation relating to expenses incurred to implement the Project, including those of its Subcontractors or Ultimate Recipients or Local Partners. CIDA shall have the right to conduct such additional audits at CIDA's expense as may be considered necessary using audit staff selected by CIDA. For this purpose, the Organization must afford CIDA or its authorized representatives proper facilities for the duration of the audit. The Organization shall make the necessary contractual arrangements with third parties to provide CIDA with similar audit rights in respect of those third parties.
- 16.2 The Organization's expenses associated with an audit conducted pursuant to subsection 16.1 above shall not be recoverable from CIDA.

## **17 Auditor General's Right to Audit (July/4/2011)**

Where the Organization under this Agreement meets the definition of a recipient under subsection 42.(4) of the Financial Administration Act:

- 17.1 The Organization acknowledges that the Auditor General of Canada may, at the Auditor General's cost, after consultation with the Organization, conduct an inquiry under the authority of subsection 7.1 (1) of the Auditor General Act in relation to any funding agreement (as defined in subsection 42.(4) of the Financial Administration Act) with respect to the use of funds received;
- 17.2 For the purposes of any such inquiry undertaken by the Auditor General, the Organization shall provide, upon request and in a timely manner, to the Auditor General or anyone acting on behalf of the Auditor General:
- a) All records held by the Organization, or third parties under contract with the Organization, relating to this Agreement and the use of the funds provided under this Agreement; and
  - b) Such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request relating to this Agreement or the use of the funds provided under this Agreement.
- 17.3 The Organization shall, at all times, ensure that third parties are obligated to provide to the Auditor General or his or her authorized representative records and other information that are in possession of those third parties and that relate to this Agreement or to the use of the funds.

## **18 Status of the Organization (July/4/2011)**

- 18.1 The Agreement is a contribution agreement only, not a contract for services or a contract of service or employment. No provision in the Agreement creates or may create a joint venture, an association, or a partnership, employment or agency relationship, mandate, representation or delegation between CIDA and the Organization.
- 18.2 The Organization shall not represent itself to third parties as the joint venturer, associate, partner, agent, representative or delegate of CIDA or the Government of Canada, and shall require that all its Employees, Personnel, Ultimate Recipients, Subcontractors or Local Partners act accordingly.

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## 19 Appropriation (July/4/2011)

Any payment to be made to the Organization is subject to there being an appropriation by the Parliament of Canada for the fiscal year in which the payment is to be made. If CIDA's appropriation is changed by Parliament or if funds are not available for any other reason, this Contribution may be reduced or this Agreement terminated, by notice sent to the Organization.

## 20 Termination or Suspension for Convenience (July/4/2011)

- 20.1 CIDA or the Organization may, by written notice, terminate for convenience all or part of the Agreement or suspend its performance, in whole or in part. The termination or suspension for convenience takes effect on the date stipulated in the notice.
- 20.2 As a result of the termination or suspension for convenience, the Organization shall have no claim against CIDA other than the reimbursement of reasonable and proper Eligible Costs, as defined in Appendix C - Financial Terms, actually incurred by the Organization up to the termination or suspension, less the sums already paid in this regard.
- 20.3 In cases where CIDA terminates this Contribution Agreement for convenience, CIDA may reimburse proper and reasonable relocation costs as provided under this Agreement.

## 21 Default and Remedies (July/4/2011)

### 21.1 Default

CIDA may declare that an event of default has occurred if:

- a) The Organization becomes insolvent or is adjudged or declared bankrupt or if it goes into receivership or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;
- b) An order is made which is not being contested or appealed by the Organization or a resolution is passed for the winding-up of the Organization or it is dissolved;
- c) The Organization has submitted false or misleading information to CIDA or made a false or misleading representation; or
- d) The Organization neglects or fails to pay to CIDA any amount due in accordance with this Agreement.

### 21.2 Remedies

If CIDA declares that an event of default has occurred, in addition to all other remedies provided under contract laws, CIDA may exercise one or more of the following remedies:

- a) Suspend any obligation to contribute or continue to contribute to the Eligible Costs of the Project or a part of the Project, including any obligation to pay any amount owing prior to the date of such suspension;
- b) Require the Organization to repay all or part of the Contribution which has been paid to the Organization, together with interest from the date of demand at the Interest Rate; or
- c) Terminate any obligation to contribute or continue to contribute to the Eligible Costs of the Project, including any obligation to pay any amount owing prior to the date of such termination.

## 22 No Waiver (July/4/2011)

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The fact that CIDA refrains from exercising a remedy that CIDA is entitled to exercise under this Agreement will not constitute a waiver of such right and any partial exercise of a right will not prevent CIDA in any way from later exercising any other right or remedy under this Agreement or other applicable law.

## **23 Indemnification (May/10/2004)**

The Organization shall, both during and following the expiry or termination of the Agreement, save harmless and indemnify Her Majesty, her employees and her agents from and against all claims, losses, damages, costs and expenses or actions or other proceedings made against them in any manner, attributable to any injury, death, damage or loss of property arising or alleged to arise from the execution of the Project, except to the extent that the injury, death, damage or loss has been caused by the negligence of Her Majesty, her employees or agents.

## **24 Dispute Resolution (May/10/2004)**

In the event that a dispute arises from or is related to the Agreement, the parties agree to attempt to resolve the dispute through negotiation or through another appropriate alternate dispute resolution process.

## **25 Health Protection for Canadians Assigned Abroad (July/4/2011)**

- 25.1 The Organization shall ensure that, prior to their departure from Canada, Canadian Personnel assigned abroad for the purpose of the Agreement, as well as any accompanying dependants, are provided with full information on health maintenance in the Recipient Country and are physically capable of performing their assigned duties in that country.
- 25.2 The Organization shall ensure that Canadian Personnel assigned abroad for the purposes of the Agreement, as well as any accompanying dependants, have adequate health insurance coverage. All costs associated with the repatriation of Canadian Personnel as well as any accompanying dependants for medical reasons are to be assumed by the Organization.

## **26 Briefings and Language Training (May/10/2004)**

### **26.1 Pre-departure**

In order to facilitate individual and family adjustment in the Recipient Country and to promote professional effectiveness, CIDA may require that Personnel assigned abroad for the purpose of the Agreement, as well as accompanying dependants, attend a pre-departure program provided by the Centre for Intercultural Learning. In such a case, the Organization shall ensure that these individuals attend such program.

### **26.2 Language Training**

If, in CIDA's opinion, knowledge of a language other than one of the two official languages of Canada is essential to the proper performance of the Agreement, CIDA may require that Personnel assigned abroad for the purpose of the Agreement take language-training classes. Should such knowledge be required by CIDA, the Organization shall ensure that these individuals attend such training.

### **26.3 Debriefings**

In order to obtain a better understanding of the lessons learned during the assignment, to draw conclusions on the experience abroad and to provide the Organization with valuable feedback that will enable it to improve its methods, CIDA may organize a debriefing session at the Centre for Intercultural Learning at the end of the assignment. In such a case, the Organization shall

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ensure that Personnel assigned abroad for the purposes of the Agreement attend such a debriefing session.

## 26.4 Payment of Training Costs

If such costs are not already assumed by the Centre for Intercultural Learning as part of its overall agreement with CIDA, CIDA may reimburse the following training costs associated with the sessions mentioned in sections 26.1 to 26.3:

- a) The actual cost of the training;
- b) The cost of travel (except international travel), accommodation and meal expenses in accordance with the *Treasury Board Travel Directive*.

## 27 Training for Foreign Professionals, Students and Trainees (July/4/2011)

### 27.1 On-arrival Orientation

In order to facilitate their initial contact with Canada as well as their integration into Canadian culture, CIDA may require that, upon their arrival in Canada, foreign professionals, students and trainees attend an orientation course provided by the Centre for Intercultural Learning. In such a case, the Organization shall ensure that those foreign professionals, students and trainees attend such a course.

### 27.2 Mid-term Review

CIDA may invite foreign professionals, students and trainees to attend a mid-term review offered by the Centre for Intercultural Learning once a third or one half of their stay in Canada has elapsed in order to assist them and their Canadian counterparts to review all aspects of their shared experience and to take steps toward making their interactions more satisfactory and effective and optimize their learning for the remainder of their stay in Canada. If such an invitation is made by CIDA, the Organization shall ensure that these individuals attend.

### 27.3 Pre-return

CIDA may, upon completion of their training or work, invite foreign professionals, students and trainees to attend a pre-return session provided by the Centre for Intercultural Learning. If such an invitation is made by CIDA, the Organization shall ensure that these individuals attend.

### 27.4 Payment of training costs

If such costs are not already assumed by the Centre for Intercultural Learning as part of its overall agreement with CIDA, CIDA may reimburse the following costs associated with the sessions mentioned in sections 27.1 to 27.3:

- a) The actual cost of the sessions;
- b) The cost of travel (except international travel), accommodation and meal expenses in accordance with the *Treasury Board Travel Directive*.

### 27.5 Health Care

The Organization shall ensure that health care coverage for foreign professionals, students and trainees is in accordance with the *Management Guide for CIDA Students and Trainees in Canada*.

## 28 Conflict of Interest (July/4/2011)

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- 28.1 It is a term of the Agreement that no current or former public office holder or public servant who is not in compliance with the *Conflict of Interest and Post-Employment Code for Public Office Holders* or the *Values and Ethics Code for the Public Service* ([www.tbs-sct.gc.ca](http://www.tbs-sct.gc.ca)) shall derive a direct benefit from the Agreement.
- 28.2 During the term of the Agreement, any persons engaged in the course of carrying out the Agreement shall conduct themselves in compliance with the principles of the *Conflict of Interest and Post-Employment Code for Public Office Holders* and the *Values and Ethics Code for the Public Service*. Should any such interest be acquired during the life of the Agreement that would cause the conflict of interest, or seem to cause a departure from the principles, the Organization shall promptly declare it to the CIDA representative.

## **29 Members of the House of Commons of Canada (May/10/2004)**

The Organization declares and guarantees that no member of the House of Commons of Canada is or will be, in any way, admitted to any part of the Agreement or to any benefit or profit that may arise there from.

## **30 Intellectual Property (July/4/2011)**

### 30.1 Definitions

The following definitions apply to this clause:

“applicable national law” means, notwithstanding the law applicable to the contract, the law of a country which is applicable to the work for which is done, in that country, any act reserved to the owner by this law, such as, in Canada, the *Copyright Act*.

“intellectual property rights” or “rights” means, for the work, all or any of the acts reserved to the owner by the applicable law in the country where the licence or assignment of rights is exploited under the Agreement, or the acts that the parties to the Agreement recognize as being reserved to the owner, especially by reference to the applicable law in Canada if there is no applicable law in a country or if this law is silent regarding an act.

“owner of intellectual property rights” or “owner” means any holder of intellectual property rights in a work as defined by the applicable national law or by the parties to the Agreement, especially by reference to the applicable law in Canada, if there is no national law or if this law is silent regarding a definition thereof, including the creator of the work, the creator’s employer if the creator’s employer owns rights under the applicable national law or under an agreement with the employee, co holders of rights in the work produced by the collaboration of two or more co-creators whose respective contributions cannot be distinguished, or the assignee or coassignees of rights in the work.

“work” means the original expression of any literary, artistic, or scientific production, or the original expression of any literary, artistic, dramatic or musical production, but not the idea itself expressed by the work, the original expression resulting from the selection or arrangement of works or of parts thereof, or of data, in the case of a compilation, the original expression produced by the collaboration of two or more creators whose respective contributions cannot be distinguished in the case of a work of joint authorship, or the original expression written in distinct parts by different authors, or which incorporates works or parts thereof by different authors, in the case of a collective work, whether or not protected under an applicable national law.

### 30.2 Works other than software

#### **Project Beneficiary**

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### 30.2.1 Licence for the work created under the Agreement for the needs of the licence beneficiaries

For any work other than software created under the Agreement that is intended, according to CIDA, to meet the needs of the Project Beneficiary, the Organization shall ensure that the owner of rights, or the Organization with the owner's authorization, grants in writing to any beneficiary designated by CIDA, a worldwide, perpetual, revocable, non-exclusive, non-commercial and free licence, authorizing the beneficiary:

- a) to do the acts reserved to the owner by the applicable national law or, if there is no law in a country where the licence is exploited, or if this law is silent regarding an act, the acts reserved to the owner by the applicable law in the country of the beneficiary or, if there is no law, by the applicable copyright law in Canada;
- b) To grant a sublicense to any person, authorizing the sublicensee to do any or all of the acts mentioned in paragraphs a) and b), subject to the terms and conditions of the licence to the beneficiary, with the difference that the sublicense may be restricted to a territory or for a shorter period.

### 30.2.2 Undertakings from the employed creators

The Organization shall ensure that any creator employed by the Organization or employed by any Subcontractor or Ultimate Recipient or Local Partner in any of the Organization, who retains his or her rights in the work created or to be created in the course of his or her employment, grants to the Organization the rights allowing the Organization to honour the assignment granted to Her Majesty pursuant to section 30.2.1.

### 30.2.3 Transfer of obligations to any contractual network of the Organization

Before the creation of any work by Subcontractor or Ultimate Recipient or Local Partner of the Organization, the Organization shall transfer in writing, to each of its Subcontractors, the obligations stipulated in these General Terms and Conditions, allowing the Organization not to be in default to Her Majesty. Without limiting the generality of the above, the Organization shall ensure that the Subcontractor ensures that the assignment of rights granted to Her Majesty under the Agreement is honoured, for any work created or to be created by the Subcontractor, any employee of the Subcontractor, or any other creator in any Ultimate Recipient or Local Partner of the Subcontractor.

### Her Majesty

### 30.2.4 Licence for the work created under the Agreement for the needs of beneficiaries

For any work other than software created under the Agreement except the works mentioned in section 30.2.2 or 30.2.3 and those indicated by CIDA, the Organization grants to Her Majesty a worldwide, perpetual, irrevocable, non-exclusive, and non-commercial licence, authorizing Her Majesty:

- a) To do, directly or through a third person, the acts reserved to the owner by the applicable national law or, if there is no law in a country where the licence is exploited or if this law is silent regarding an act, the acts reserved to the owner by the applicable copyright law in Canada, including first publication of the work if it has not yet been published, its reproduction upon any medium, its performance in public, its presentation at a public exhibition in the case of an artistic work, its adaptation, including in translation or in digest form, and its telecommunication to the public on CIDA's website:



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- i) to publicize or report on CIDA's mandate;
  - ii) to promote the use of the work in any assistance project funded wholly or in part by CIDA;
- b) To grant the licence mentioned in this section to any Project Beneficiary funded wholly or in part by CIDA.

## 30.2.5 Licence for components and complements created outside the Agreement

For any subject-matter of rights created outside the Agreement that the Organization, any of its Employees, or any other creator or co creator in any contractual network of the Organization, or any external co creator in relation to them, has included as a component of, or associated as a complement with, the work other than software created under the Agreement, the Organization shall be deemed to have granted Her Majesty under the Agreement a licence in which no term or condition shall interfere with the full exploitation of the licence granted pursuant to section 30.2.1, 30.2.4, or 30.2.6.

## 30.2.6 Assignment of rights in the work created under the Agreement used to define or manage the Project

For any work other than software created under the Agreement that is intended, according to CIDA, to define or manage the Project, including the prefeasibility or feasibility study and proposals pertaining to the design, conceptualization, planning, or implementation of the assistance project, the implementation plan, work plans, and narrative, financial, and technical reports pertaining to the Project, the Organization undertakes and shall ensure that the owner of rights, or the Organization after acquiring the owner's rights, assigns to Her Majesty, in writing and free of charge, all intellectual property rights in each draft and version of any work other than software created under the Agreement.

## 30.2.7 Conditions for granting of licence

CIDA shall mention the name of the creator or each co-creator, the name of the owner or each co-owner, the symbol used to indicate ownership, and any other usual information, such as the year of first publication if the work has been published, on copies, drafts, and versions of the work other than software created under the Agreement, and on copies of the work other than software created outside the Agreement that is used as a component or complement.

## 30.2.8 Copies to be delivered

Unless otherwise specified in the terms of reference, the Organization shall deliver to the Project Beneficiary and to CIDA, prior to CIDA's final or last payment under the Agreement one (1) electronic and two (2) hard copies of any work under the licences mentioned in sections 30.2.1 and 30.2.4, and of any work under the assignment of rights mentioned in 30.2.6.

## 30.3 Declaration and description of the work other than software to be created under the Agreement

### 30.3.1 Work other than software

Except where the work other than software to be created under the Agreement is described therein, the Organization shall declare and describe in writing to CIDA, as the Agreement is executed, any work other than software to be created under the Agreement.

## 30.4 Capacity and authority of the Organization

### 30.4.1 Clearance of rights



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The Organization certifies that it is the owner of intellectual property rights in any work other than software for which the licences are granted pursuant to sections 30.2.1 and 30.2.4 and for which the assignment of rights is granted pursuant to section 30.2.6 and has obtained, from the owner of intellectual property rights in any work other than software created outside the Agreement, written authorization to include the work as a component of, or associate the work as a complement with, the work other than software created under the contract and to grant the licence mentioned in section 30.2.5.

## 30.5 Moral rights

The Organization shall also ensure that authors or co-authors undertake in writing not to hinder, by reason of their moral rights, the exploitation of the rights assigned or licensed pursuant to the Agreement.

## 31 Environment (Jan/01/2008)

### 31.1 Sustainable Development

The Organization shall plan and implement the Project in a manner that promotes sustainable development and ensures the protection of the environment to the greatest extent possible.

### 31.2 Environmental Assessment

31.2.1 Under the Canadian Environmental Assessment Act ("CEAA"), CIDA is required to ensure that an environmental assessment of all "projects" (as defined in the CEAA) is conducted before providing financial assistance to carry out such projects in whole or in part. Should such an assessment be required, the obligations of the Recipient Organization shall vary depending on the different situations that may arise, in accordance with the CEAA.

31.2.2 CIDA reserves the right to take any action necessary to ensure compliance with the requirements of the CEAA or to ensure environmental protection more generally, including but without being limited to, the termination of the Agreement or the imposition of any mitigation or follow-up measures necessary to reduce, eliminate or control any adverse environmental effects of the Project. Without restricting the generality of the foregoing, this right shall apply in situations where CIDA deems that the Recipient Organization has not respected the environmental clauses in the Contribution Agreement.

## 32 Overpayment (July/4/2011)

Where for any reason CIDA determines that the amount of the Contribution disbursed exceeds the amount to which the Organization is entitled or that the Organization is not entitled to the Contribution, the Organization shall repay CIDA in accordance with Section 33 below.

## 33 Repayment and Recovery of the Contribution (July/4/2011)

The Organization shall repay CIDA, within the time specified in the notice requesting such repayments, the amount of the Contribution disbursed or the amount of the overpayment, as the case may be, together with interest at the Interest Rate, from the date of the notice to the day of the payment to CIDA in full. Any such amount is a debt due to Her Majesty and is recoverable as such.

## 34 Right of Set-Off (July/4/2011)

Her Majesty reserves the right to set off against any amount payable to the Organization and any amount which the Organization owes to Her Majesty. This Section does not restrict any right of set-off given by law or by any provision of the Agreement or of any other agreements between Her Majesty and the Organization.

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## **35 Successors (July/4/2011)**

This Agreement is binding on the Parties and their successors and permitted assigns.

## **36 Severability ((July/4/2011)**

Any provision of this Agreement prohibited by law or otherwise ineffective, will be ineffective only to the extent of such prohibition or ineffectiveness and will be severable without invalidating or otherwise affecting the remaining provisions of the Agreement.

## **37 Flow-Through Funds (July/4/2011)**

### 37.1 Selection and Approval

For payment of Flow-Through Funds, the Organization shall enter into Sub-Agreements with Ultimate Recipients whose proposals have been approved for funding by the Organization, in accordance with the following:

***Note for CIDA: <Provide details of the process to be put in place by the Organization with respect to selection of Sub-Recipients and/or selection and approval of initiatives to be funded.>***

### 37.2 Sub-Agreement's Provisions

The Sub-Agreement shall, at a minimum, contain the following provisions:

- a) A description of the Sub-Project, including activities, goal and purpose, expected impacts, outcomes and outputs, and if applicable, Environmental Analysis and Gender Equality;
- b) A clear description of roles and responsibilities, including financial roles and responsibilities;
- c) Monitoring and reporting provisions ensuring the fulfilment of the Organization's monitoring and reporting obligations under this Agreement;
- d) Requirement that the Ultimate Recipient retain books, records, and any supporting documents relating to the Sub-Project, including Eligible Costs, for the duration of the term of the Sub-Project and for three (3) years following the termination of the agreement, and for the Organization and CIDA to have access to such documentation for Sub-Project monitoring, auditing and program evaluation purposes;
- e) Authorization for the Organization to provide CIDA with copies of any such reviews, evaluations or audit reports;
- f) CIDA's right to access the Ultimate Recipient's premises and any premises where the Project takes place, for monitoring and audit purposes;
- g) Detailed terms and conditions addressing the respective liabilities of the parties;
- h) Description of the Eligible Costs consistent with section 1 – Eligible Costs Elements of Appendix C - Financial Terms;
- i) Publicity and public acknowledgment of the funding by CIDA, in accordance with this Agreement;
- j) A requirement for the Ultimate Recipient to report to the Organization immediately any government assistance to be received for the Sub-Project;

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- k) Default and remedies, including automatic termination in the event that this Agreement is terminated;
- l) Insertion of a Sub-Project completion date consistent with the terms of the Agreement.
- m) A clause relating to anti-terrorism obligations.

### **38 Initial Visits (Jun/10/2010)**

To improve Project implementation, CIDA may conduct an initial visit after the signature of the Agreement. The objective of the initial visit is to review the terms and conditions of the Agreement with the Organization, and to ensure that the Organization's financial management of the Project can be done efficiently and in accordance with the requirements of the Agreement. The Organization agrees to allow for the initial visit and to provide CIDA's authorized representatives with the facilities, personnel, and any information required for the purposes of the initial visit, at no costs.

**Table 1: Equipment and Capital Costs for the BHER Learning Centre**  
 See Appendix 1 for a sample of what the BHER Compound Plan may look like  
 Average exchange rate KES to CAD

Description	Unit	Area Measured	Unit Price		Number of Units	Total Costs	
			KES	CAN\$		KES	CAN\$
<b>Section A: Fencing</b>							
Fencing of BHER Parcel for 200m x 200 m (See Appendix 2 for a sample of what fencing may look like.)							
A.1. 730mm razor wire rolls	Roll						
A.2. 2.4m by 18m Chainlink rolls			KES 4,200 \$	53	308	KES 1,293,600 \$	16,170
A.3. 0.5m x 0.5m x 0.003m angle 3m with 3 holes and wallfast welded down	Roll		KES 5,200 \$	65	44	KES 228,800 \$	2,860
A.4. Shipping costs: Nairobi to Dadaab	Piece		KES 1,500 \$	19	257	KES 395,500 \$	4,819
A.5. Labor and installation costs (Takes up to two months. Flat fee. Paid in installments of 30% upon completion of an agreed upon benchmark.)	Truck		KES 200,000 \$	2,500	1	KES 200,000 \$	2,500
	Contractor		KES 1,000,000 \$	12,500	1	KES 1,000,000 \$	12,500
<b>Total Cost - Section A</b>			<b>KES 1,210,900 \$</b>	<b>15,136</b>		<b>KES 3,107,900 \$</b>	<b>38,849</b>
<b>Section B: Architectural Design</b>							
B.1 Local expert architect to design the BHER Learning Centre							
B.2. Travel to and from Dadaab	ticket		KES 24,000 \$	300	1	KES 24,000 \$	300
B.3 Per diem for four days and three nights	day		KES 2,000 \$	25	4	KES 8,000 \$	100
B.4 Accommodation USD 25 per day for three nights	night		KES 2,000 \$	25	3	KES 6,000 \$	75
<b>Total Cost - Section B</b>						<b>KES 38,000 \$</b>	<b>475</b>
<b>Section C: Construction of the Following Buildings:</b>							
<b>C.1 Living quarters (A quarter of the whole compound of the BHER Learning Centre will be for the accommodation of faculty, teaching assistants and permanent on-site staff).</b>							
C.1.1 8 bedrooms, each room measuring ~4.9x 5.4 (50,000 sqm. Building materials to be used include tiles and cement blocks. Cost includes flooring, roofing, plumbing, electrical wiring; 20 Lower windows (2 per each room measuring 1.3m x 1.4m; plastic screens, 8 bathrooms measuring 1.2m x 2m each with toilet, shower and sink, and 26 doors. These are rooms for faculty and TAs and 3 permanent on-site staff. See Appendix 3 for a sample of what the staff bedrooms may look like )	Piece	26.95	KES 1,347,500 \$	16,844	8	KES 10,780,000 \$	134,750
C.1.2 One common kitchen measuring 4.6m x 6.6m (KES30,000 per sqm Building materials to be used include tiles and cement blocks. Cost includes flooring, roofing, plumbing, electrical wiring; 7 windows measuring 1.2m x 1.4m for kitchen and 7 plastic window screens.)	Pieces	30.36	KES 910,800 \$	11,385	1	KES 910,800 \$	11,385
C.1.3 One common dining room measuring 7.6m x 4.6m 30,000 per sqm. Building materials to be used include tiles and cement blocks. Cost includes flooring, roofing, plumbing, electrical wiring; 3 windows measuring 1.2m x 1.4m for kitchen and 3 plastic window screens.	Pieces	34.96	KES 1,048,800 \$	13,110	1	KES 1,048,800 \$	13,110
C.1.4 Diesel for 25KVA running 24 hours per day @ a consumption of 1800 litres p.m (28,800 litres p.a) (KES 40,000 per sq m assumed)	Litres		KES 110 \$	1	21600	KES 2,376,000 \$	29,700
C.1.5 Solar power for night lighting : Set (poles, solar panel, solar battery, wiring) - Compound	Sets		KES 35,000 \$	438	8	KES 280,000 \$	3,500
C.1.6 Air Condition 26BTU	Sets		KES 120,000 \$	1,500	4	KES 480,000 \$	6,000
C.1.7 Water tank - Two 10,000litre tanks, including installation (KES 40,000 per sq m assumed)	piece		KES 600,000 \$	7,500	2	KES 1,200,000 \$	15,000
C.1.8 Water piping - 150 metres of pipeline- 1" & accessories (KES 40,000 per sq m assumed)			KES 3,000 \$	38	150	KES 450,000 \$	5,625
C.1.9 Electrification for Security Lighting (150 metres) (KES 40,000 per sq m assumed)			KES 3,000 \$	38	150	KES 450,000 \$	5,625
<b>Subtotal - Construction of Living Quarters</b>						<b>KES 17,975,600 \$</b>	<b>224,695</b>
<b>C.2 Security Guard Post measuring 7.5m x 3.5m with toilet</b>							

Description	Unit	Area Measured	Unit Price		Number of Units	Total Costs	
			KES	CANS		KES	CANS
C.2.1 Security Guard Post (KES25,000 per sqm. Building materials to be used include tiles and cement blocks. Cost includes flooring, roofing, plumbing, electrical wiring; two windows measuring 1.2m x 1.4 m each; 2 plastic window screens, a toilet and shower facility. See Appendix 4 for a sample of what the Security Guard Post may look like.)	unit	26.25	KES 656,250	\$ 8,203	1	KES 656,250	\$ 8,203
<b>Subtotal - Construction of Security Guard Post</b>						<b>KES 656,250</b>	<b>\$ 8,203</b>
C.3 Two computer rooms for 80 students per room, totalling 160 students: measuring 8m x 8m (at 1.5 students per sqm for 80 students 54sqm)							
C.3.1 Facility (KES30,000 per sqm. Building materials to be used include tiles and cement blocks. Cost includes flooring, roofing, electrical wiring; 6 windows measuring 1m x 1.2m and 6 plastic window screens. See Appendix 5 for a sample of what the Computer Rooms may look like)	facility	128	KES 1,920,000	\$ 24,000	2	KES 3,840,000	\$ 48,000
<b>Subtotal - Construction of Two Computer Rooms</b>						<b>KES 3,840,000</b>	<b>\$ 48,000</b>
C.4 Three Seminar rooms for 40 students per room, totalling 160 students measuring 8m x 8m (at 2 students per sqm for 40 students 20sqm)							
C.4.1 Seminar rooms (KES3,760,000 per room. Building materials to be used include tiles and cement blocks. Cost includes flooring, roofing, electrical wiring; 6 windows measuring 1.2m x 1.4m and 6 plastic window screens. See Appendix 6 for a sample of what the Seminar Rooms may look like.)	room	256	KES 1,920,000	\$ 24,000	3	KES 5,760,000	\$ 72,000
<b>Subtotal - Construction of Three Seminar Rooms</b>						<b>KES 5,760,000</b>	<b>\$ 72,000</b>
C.5 Pit Toilets							
C.5.1 Toilet facility complete with sink (These are pit latrines. Works include digging & lining if the sand is loose - at the ratio of one latrine per 20 students; in total, 8 latrines with tiled slab. See Appendix 7 for a sample of what the pit toilets may look like.)			KES 150,000	\$ 1,875	8	KES 1,200,000	\$ 15,000
<b>Subtotal - Construction of Pit Toilets</b>						<b>KES 1,200,000</b>	<b>\$ 15,000</b>
<b>Total Cost - Section C</b>						<b>KES 29,431,850</b>	<b>\$ 367,898</b>
<b>Section D: Furnishings</b>							
D.1 Furnishings for Living Quarters (See C.1):							
D.1.1 Single bed	Piece		KES 6,500	\$ 81	8	KES 52,000	\$ 650
D.1.2 Reading table (desk)	Piece		KES 5,000	\$ 63	8	KES 40,000	\$ 500
D.1.3 Chair	Piece		KES 4,000	\$ 50	8	KES 32,000	\$ 400
D.1.4 Book shelf	Piece		KES 3,900	\$ 49	8	KES 31,200	\$ 390
D.1.5 Mattress - High Density - 4ft x 6ft	Piece		KES 8,000	\$ 100	8	KES 64,000	\$ 800
D.1.6 Linens/beddings (2pairs bedsheet/bedcover)	Piece		KES 5,000	\$ 63	8	KES 40,000	\$ 500
D.1.7 Towels	Piece		KES 1,000	\$ 13	8	KES 8,000	\$ 100
D.1.8 Pillows	Piece		KES 1,200	\$ 15	8	KES 9,600	\$ 120
D.1.9 Mosquito net	Piece		KES 785	\$ 10	8	KES 6,280	\$ 79
D.1.10 Curtains	Piece		KES 11,000	\$ 138	8	KES 88,000	\$ 1,100
<b>Subtotal - Furnishings for Living Quarters</b>						<b>KES 371,080</b>	<b>\$ 4,639</b>
D.2. Furnishings for staff offices (contingent upon obtaining space for staff use through other means)							
D.2.1 Reading table (desk)	Piece		KES 5,000	\$ 63	8	KES 40,000	\$ 500
D.2.2 Roller Chairs	Piece		KES 10,000	\$ 125	8	KES 80,000	\$ 1,000

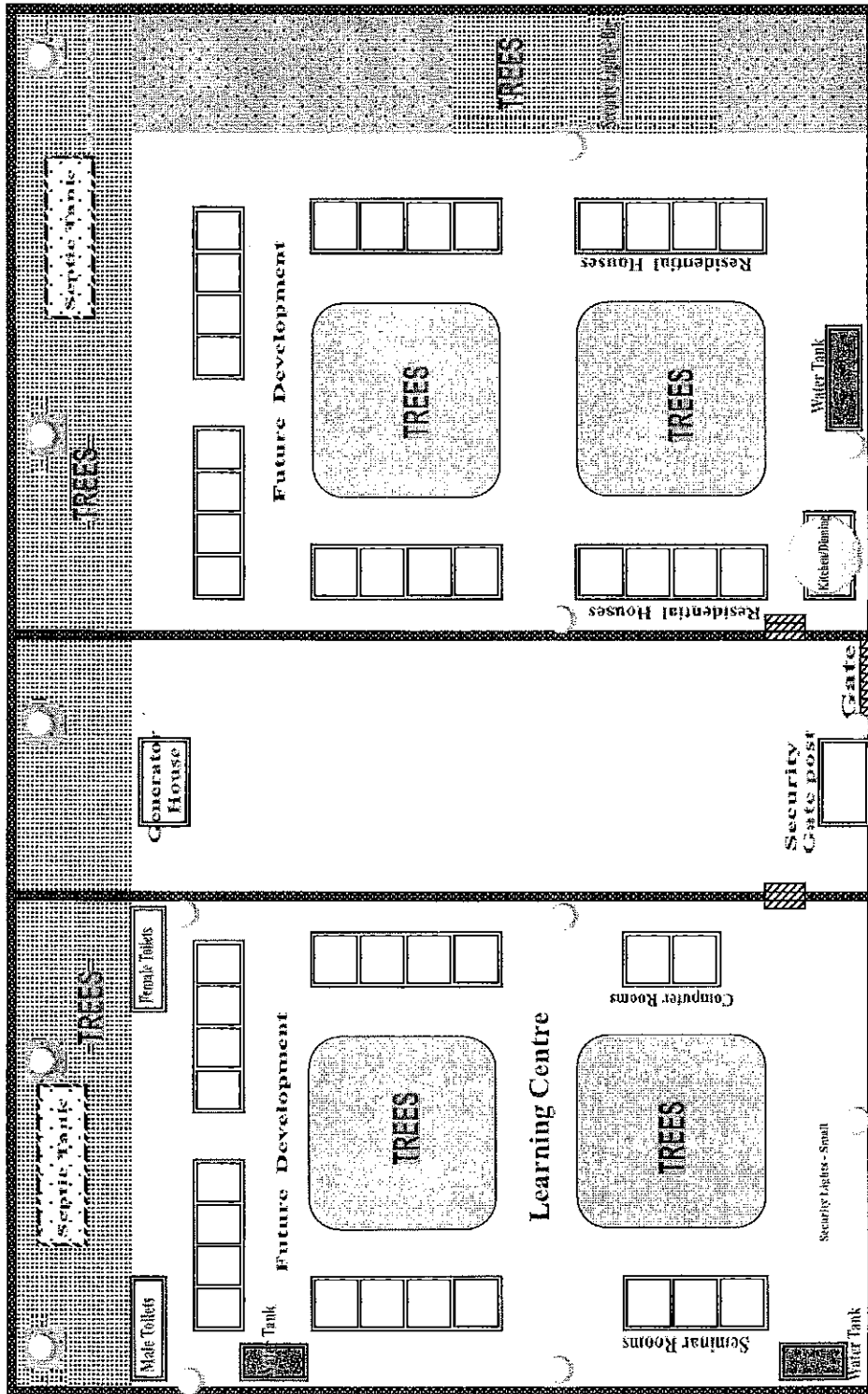
Description	Unit	Area Measured	Unit Price		Number of Units	Total Costs	
			KES	CANS		KES	CANS
<b>Subtotal - Furnishings for staff offices</b>							
<b>D.3 Furnishings for Security Guard Post</b>							
D.3.1 Desk	Piece		KES 2,800	35	1	KES 2,800	\$ 35
D.3.2 Chair	Piece		KES 2,000	25	1	KES 2,000	\$ 25
D.3.3 Security Metal detector	Piece		KES 35,000	438	1	KES 35,000	\$ 438
D.3.4 Handset	Piece		KES 58,400	730	1	KES 58,400	\$ 730
<b>Subtotal - Furnishings for Security Guard Post</b>							
<b>D.4 Furnishings for common kitchen/dining room</b>							
D.4.1 Water dispenser	Piece		KES 5,100	64	1	KES 5,100	\$ 64
D.4.2 Water filter	Piece		KES 24,000	300	1	KES 24,000	\$ 300
D.4.3 Stove	Piece		KES 150,000	1,875	1	KES 150,000	\$ 1,875
D.4.4 Refrigerator	Piece		KES 85,000	1,063	1	KES 85,000	\$ 1,063
D.4.5 Septic Tank	Piece		KES 700,000	8,750	1	KES 700,000	\$ 8,750
D.4.6 Elevated Water Tank (10,000 litres)	Piece		KES 600,000	7,500	1	KES 600,000	\$ 7,500
D.4.7 Lunch/dinner table	Piece		KES 6,400	80	5	KES 32,000	\$ 400
D.4.8. Chairs	Piece		KES 4,500	56	20	KES 90,000	\$ 1,125
D.4.9 Cupboard	Piece		KES 45,000	563	1	KES 45,000	\$ 563
D.4.10 Utensils (Includes plates, cups, spoons, cooking pots, thermos, jugs, sugar dish, stat dish, knives, bowls, sieves, etc)	Piece		KES 245,710	3,071	1	KES 245,710	\$ 3,071
D.4.11 TV Lounge chairs (5-seater)	Piece		KES 50,000	625	4	KES 200,000	\$ 2,500
D.4.12 Televisions - 42"	Piece		KES 120,000	1,500	2	KES 240,000	\$ 3,000
<b>Subtotal - Furnishings for common kitchen/dining room</b>							
<b>D.5 Furnishings for two computer rooms</b>							
D.5.1 Desk			KES 4,000	50	80	KES 320,000	\$ 4,000
D.5.2 Chair			KES 3,000	38	80	KES 240,000	\$ 3,000
<b>Subtotal - Furnishing for two computer rooms</b>							
<b>D.6 Furnishings for three seminar rooms</b>							
D.6.1 Moveable chairs with writing tables attached			KES 7,000	88	80	KES 560,000	\$ 7,000
<b>Subtotal - Furnishings for three seminar rooms</b>							
<b>Total Cost - Section D</b>							
<b>Section E - Electronic Equipment</b>							
E.1. Laptops	number		KES 85,000	813	80	KES 5,200,000	\$ 65,000
E.2. Software licences (Open to cover all computers & users)	number		KES 32,000	400	1	KES 32,000	\$ 400
E.3. Black and white printer (one for each computer room)	number		KES 65,000	813	2	KES 130,000	\$ 1,625
E.4. Four wall-mounted computer screens (one for each seminar room)	number		KES 120,000	1,500	2	KES 240,000	\$ 3,000
E.5. 80 locking cables @ \$15 each	piece		KES 40,000	500	80	KES 3,200,000	\$ 40,000
<b>Total Cost - Section E</b>							
<b>Section F - Internet Connectivity</b>							
F.1 For each of two computer rooms: one ethernet switch @ \$600 each; one UPS @ \$100 each; one Network-Attached Storage @ \$800 each and cables @ \$500 each.	room		KES 160,000	2,000	2	KES 320,000	\$ 4,000

Description	Unit	Area Measured	Unit Price		Number of Units	Total Costs	
			KES	CANS		KES	CAN\$
F.2 Internet connectivity installation for six rooms (cable and possibly WiFi)	room		KES 80,000	1,000	6	KES 480,000	6,000
<b>Total Cost - Section F</b>						<b>KES 800,000</b>	<b>10,000</b>
<b>Section G - Generators</b>							
G.1 Construction of 1 generator house, 16 sqm (5 metres X 7metres) See Appendix 8 for a sample of what a Generator House may look like.	unit	35	KES 875,000	10,938	1	KES 875,000	10,938
G.2 Two 25 KVA Perkins Generators (Each generator works only for 12 hours.)	piece	42	KES 1,200,000	15,000	2	KES 2,400,000	30,000
G.3 Installation, Commissioning of Two 25 KVA Perkins Generators (Each generator works only for 12 hours.)			KES 600,000	7,500	2	KES 1,200,000	15,000
G.4 Four core Armoured Cable (90mm) - 100metres			KES 1,500	19	100	KES 150,000	1,875
<b>Total Cost - Section G</b>						<b>KES 4,625,000</b>	<b>57,813</b>
<b>Section H - Environmental Impact Assessment</b>							
H.1 Environmental impact assessments for: (a) living quarters; (b) computer rooms; and (c) seminar rooms (This sum includes consultancy fee and travel to Dadaab. Consultant will be approved by the National Environment Management Authority).			KES 300,000	3,750	1	KES 300,000	3,750
<b>Total Cost - Section H</b>						<b>KES 300,000</b>	<b>3,750</b>
<b>Section I - Reserves for Replacement</b>							
I.1 25% reserve for replacement in year 4 of 25% of 80 computers and licences	piece		KES 66,000	813	13	KES 845,000	10,663
I.2 100% reserve for replacement in year 4 of two printers in computer rooms	piece		KES 65,000	813	2	KES 130,000	1,625
I.3 25% reserve for replacement in year 4 of computer screens and projectors	piece		KES 120,000	1,500	1	KES 120,000	1,500
I.4 50% reserve for replacement in year 3 of 50% of 160 ethernet switches, UPS, Network-Attached Storage and cables	piece		KES 160,000	2,000	1	KES 160,000	2,000
<b>Total Cost - Section I</b>						<b>KES 1,255,000</b>	<b>15,688</b>
<b>TOTAL COST</b>						<b>KES 52,485,840</b>	<b>656,073</b>



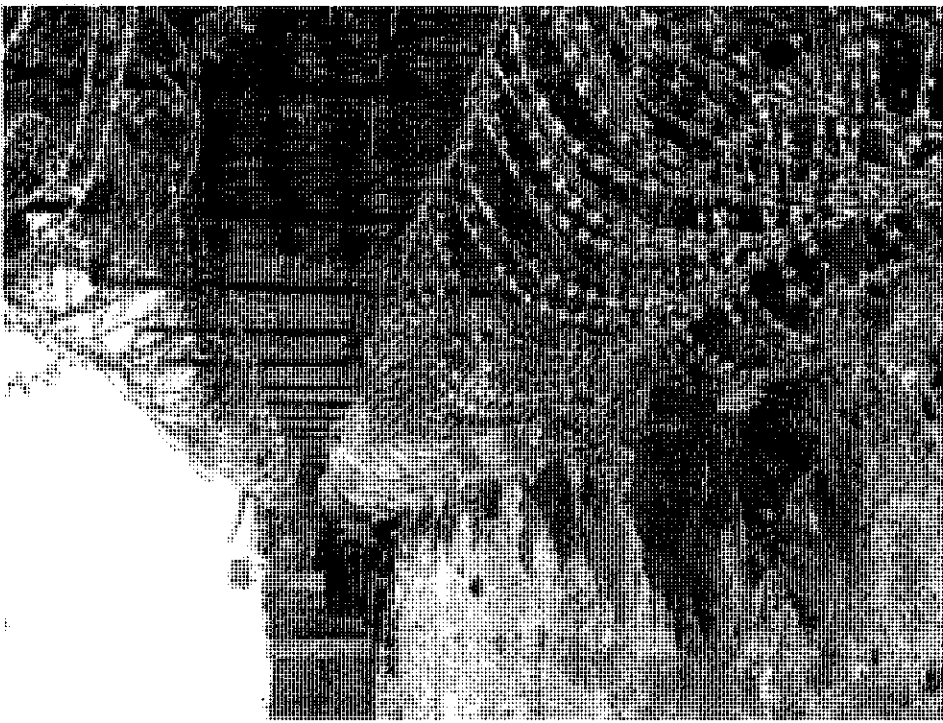
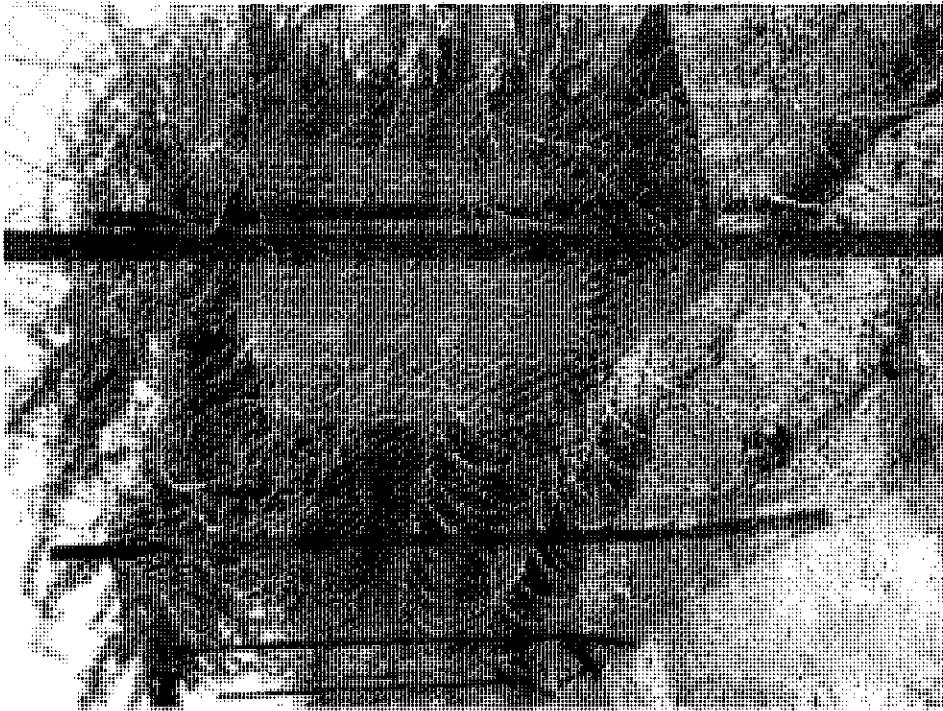
# Appendix 1 - Sample of what the BHER Compound Plan may look like

200m

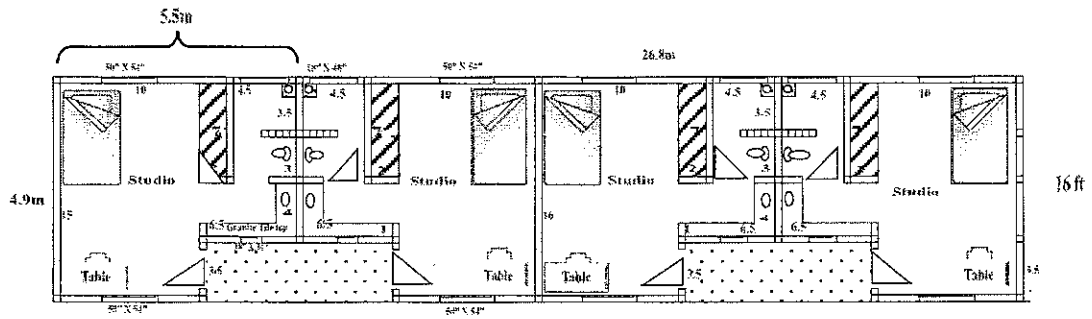


200m

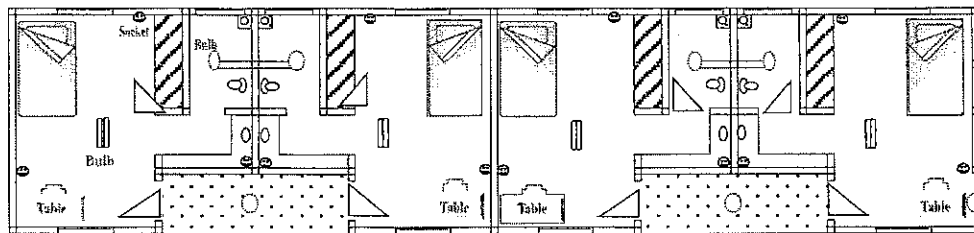
# Appendix 2: Sample of what fencing may look like



Appendix 3: A sample of what the staff bedrooms may look like

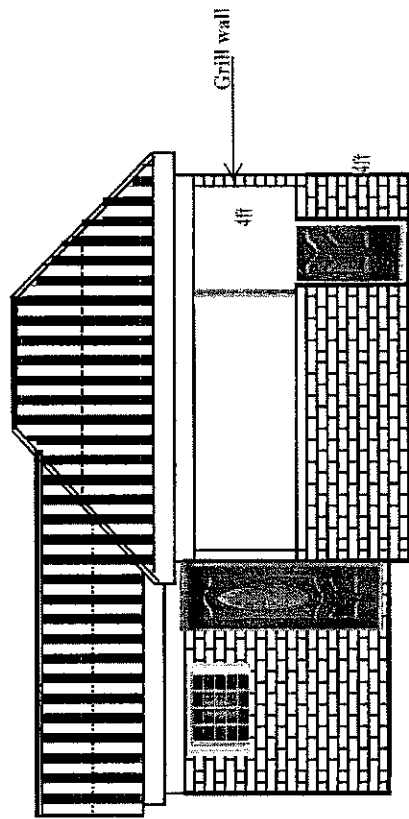
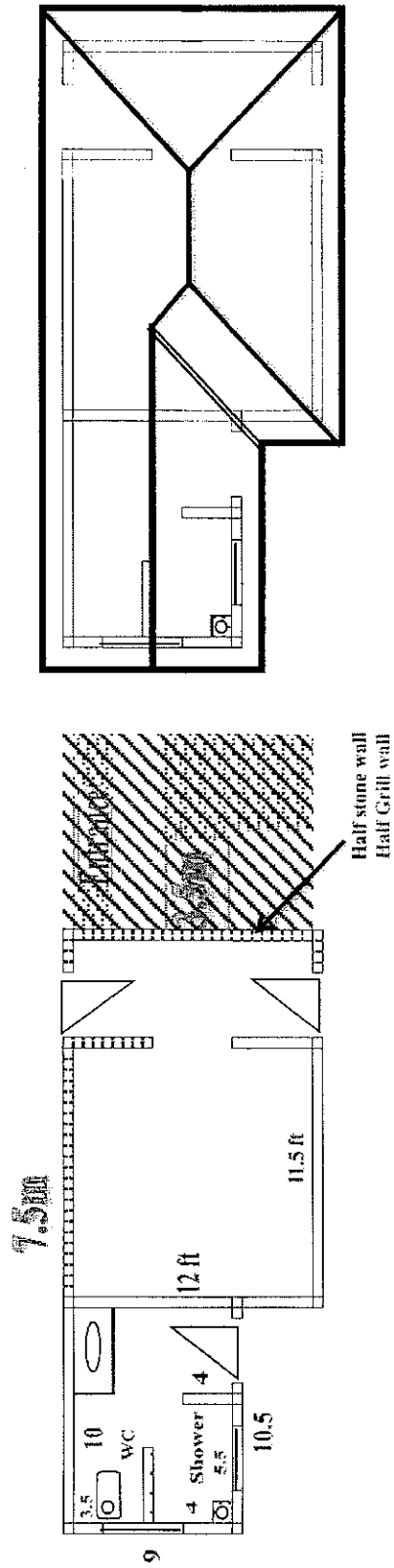


A 4 Unit Staff Block

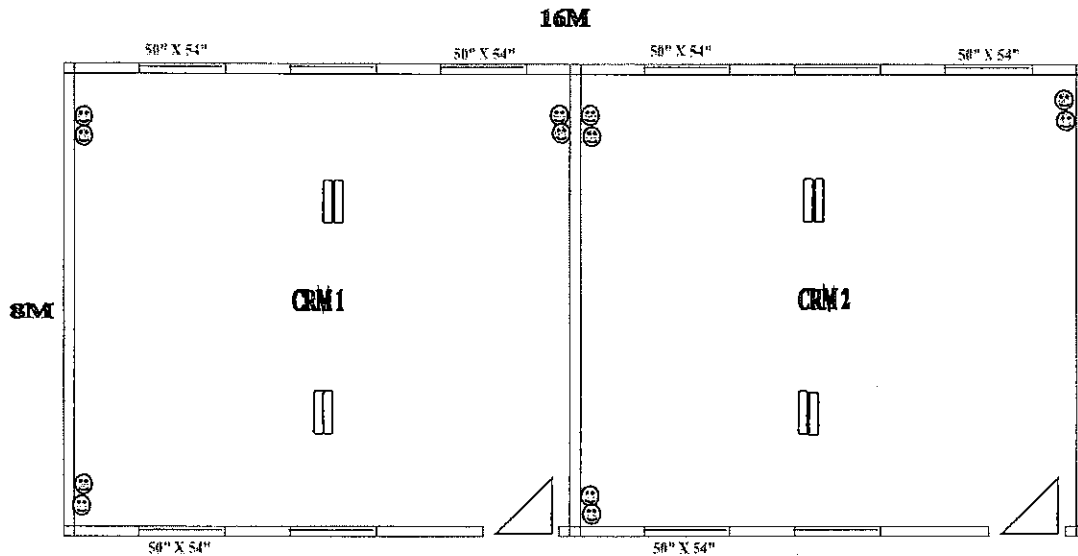
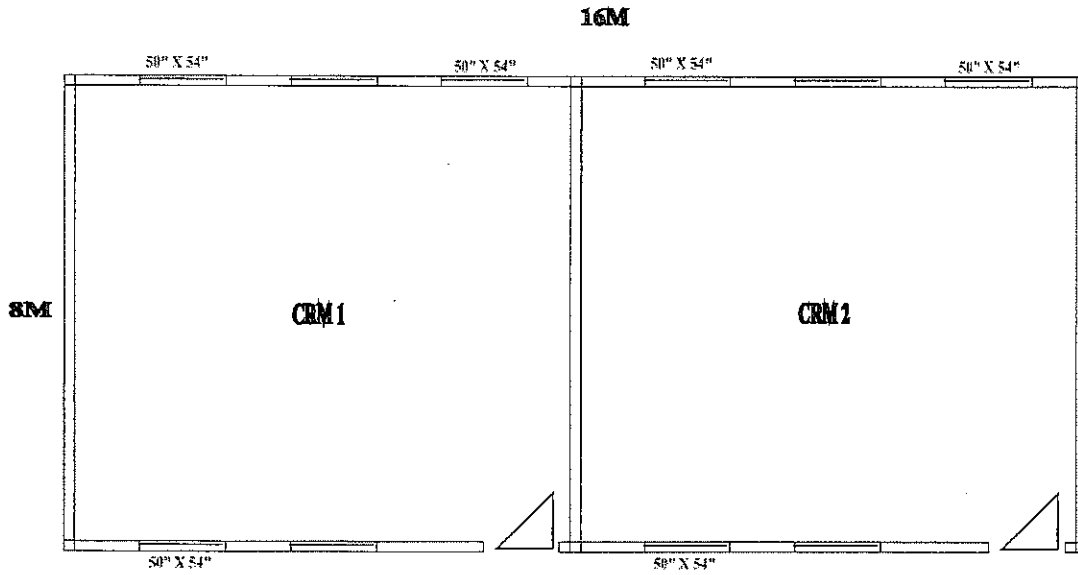


Electrification

# Appendix 4: A sample of what the Security Guard Post may look like

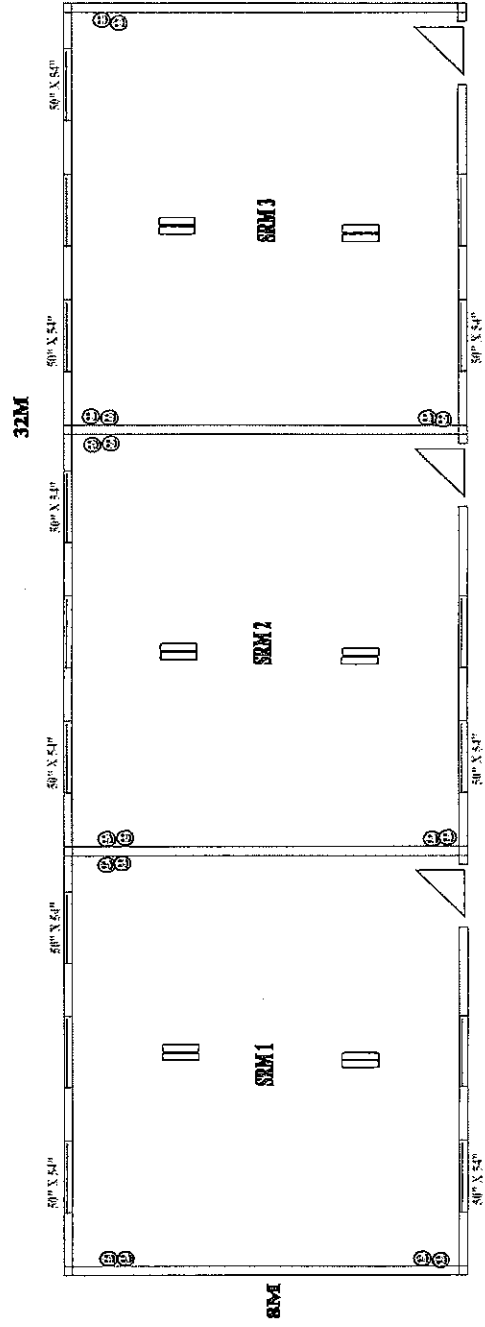
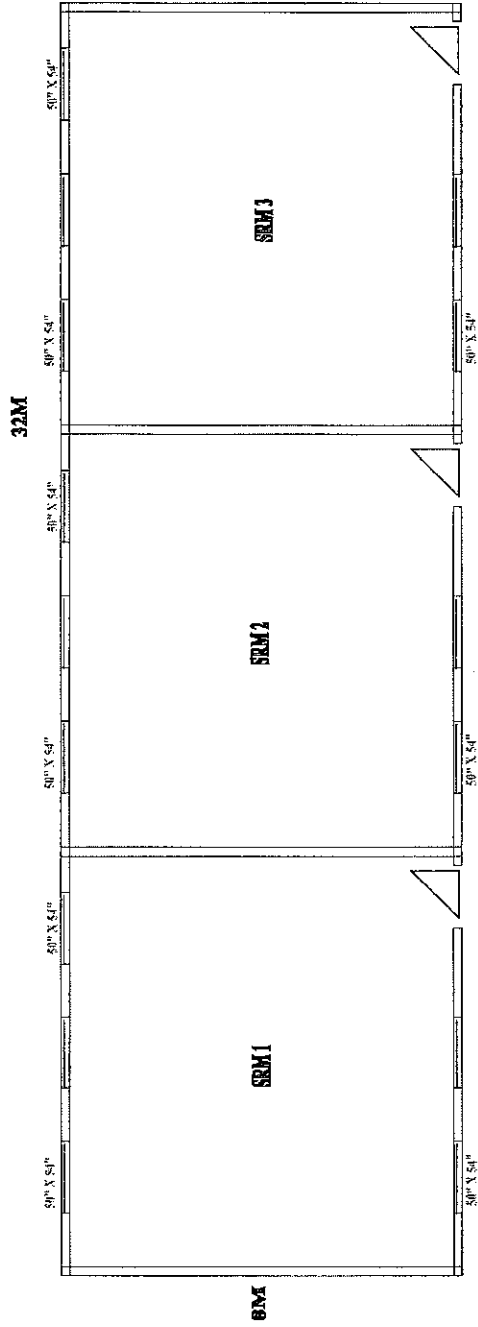


# Appendix 5: A sample of what the Computer Rooms may look like



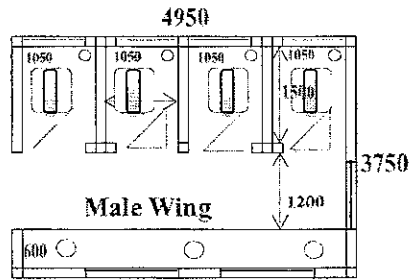
**Electrification**

Appendix 6: A sample of what the Seminar Rooms may look like

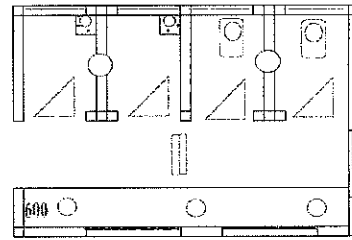
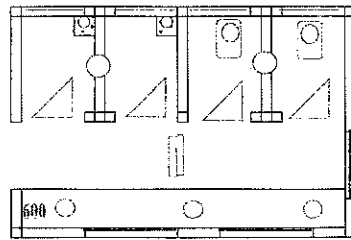
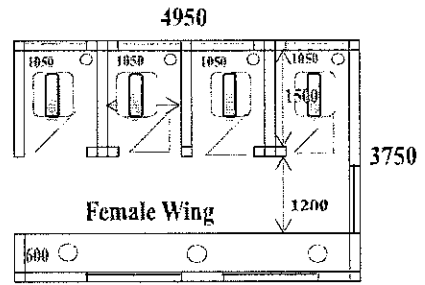


Electrification

## Appendix 7: Sample of what the pit toilets may look like



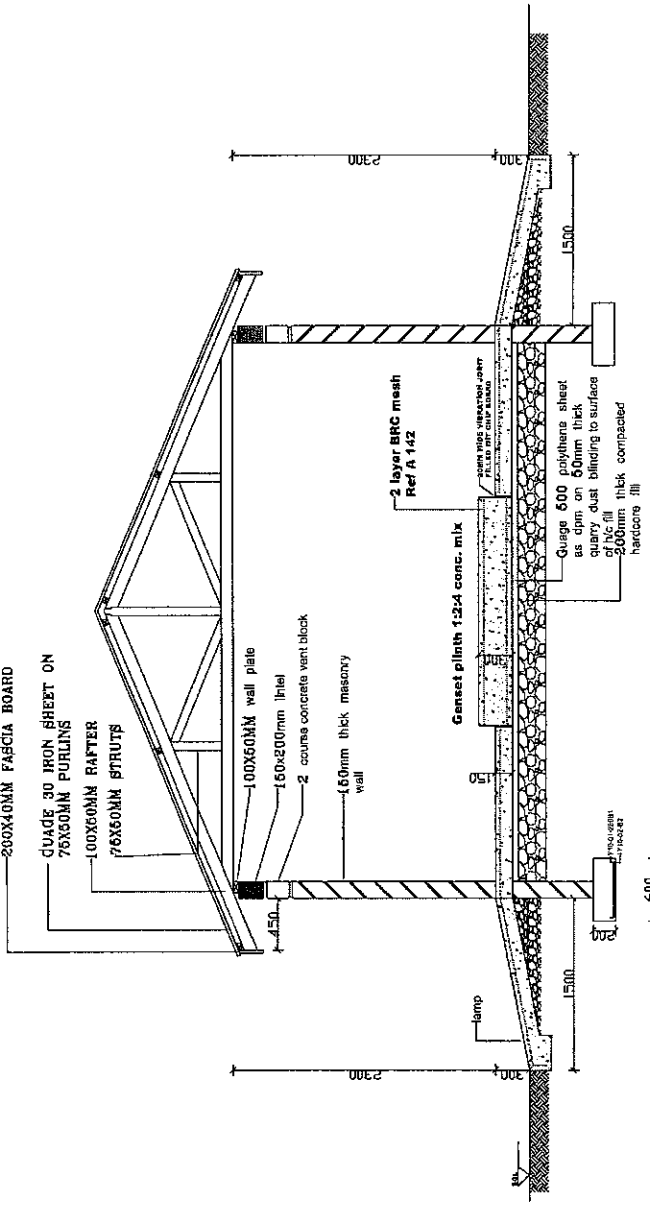
**Ground Plan**



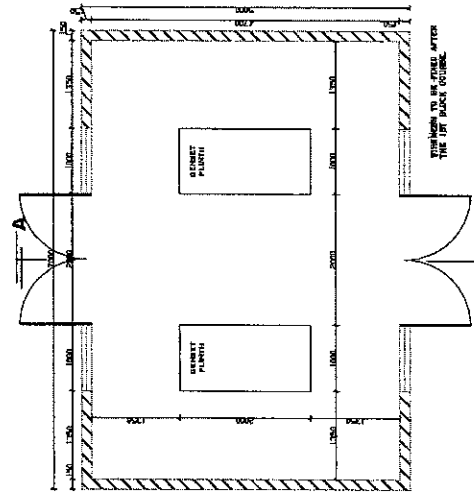
**Electrification**

**NOTES**

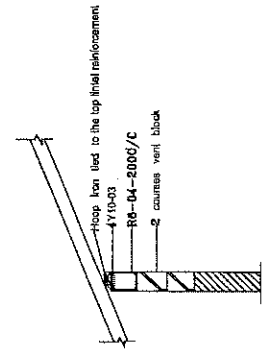
Appendix 8: A Sample of What a Generator House May Look Like



**SECTION A-A**



**PROPOSED GENSET HOUSE FLOOR PLAN**



**RIG BEAM DETAIL**

**PROPOSED GENSET HOUSE AND TAP STAND**

**CARE INTERNATIONAL KENYA**

**SNW**

**25-05-2010**