Kenya National Highways Authority
Quality Highways, Better Connections
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P.O Box 49712 - 00100 Nairobi, **Tel** 020 - 4954000 / 0700 423 606 **Email** dg@kenha.co.ke / Website www.kenha.co.ke

TENDER No: KeNHA/2772/2024

REQUEST FOR PROPOSAL FOR PROVISION OF CONSULTANCY SERVICES FOR COMMUNICATION, BRAND MONITORING AND MEDIA MANAGEMENT

MAY, 2024

DIRECTOR - PRC **KENYA NATIONAL HIGHWAYS AUTHORITY** **P.O. BOX 49712 - 00100** **NAIROBI**	**DIRECTOR GENERAL** **KENYA NATIONAL HIGHWAYS AUTHORITY** **P.O. BOX 49712 - 00100** **NAIROBI**

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INVITATION TO TENDER

PROCURING ENTITY: KENYA NATIONAL HIGHWAYS AUTHORITY
P.O.BOX 49712 - 00100 NAIROBI

TENDER REFERENCE No.: KeNHA/2772/2024

TENDER NAME: REQUEST FOR PROPOSAL FOR PROVISION OF CONSULTANCY SERVICES FOR COMMUNICATION, BRAND MONITORING AND MEDIA MANAGEMENT

1. The Kenya National Highways Authority invites sealed tenders for the provision for Brand and Media Management Consultancy services.
2. Tendering will be conducted under open competitive tendering method using a standardized tender document and is open to all qualified and interested Tenderers. There shall be no reservation for any special group.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours [8:00am - 5:00pm] at the address given below. Tender documents may be viewed and/or downloaded from the website **(www.kenha.co.ke)** or **(www.tenders.go.ke).**
4. A complete set tender documents may be obtained by interested Bidders free of charge by downloading from KeNHA website: www.kenha.co.ke or Public Procurement Information Portal (PPIP): www.tenders.go.ke or from KeNHA Office JKIA BaraBara Plaza Block C, 2nd Floor Supply Chain Office during normal working hours upon payment of non-refundable fee of Kshs. 1,000.00 (One thousand shillings only) in form of a banker cheque payable to Kenya National Highways Authority.
5. All Tenders must be accompanied by an Original tender security of Kenya shillings One Hundred Thousand (Kshs 100,000.00) in the form of Unconditional Bank Guarantee from a reputable bank in Kenya and valid for 30 days beyond tender validity period.
6. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
7. Completed tender document are to be enclosed in a plain sealed envelope clearly marked with tender name and reference number, and addressed to: -

Deputy Director, Supply Chain Management
Kenya National Highways Authority,
Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters)
Block C, Second Floor
P. O. Box 49712 - 00100, Nairobi, Kenya

or be deposited in the Tender Box at the Barabara Plaza, Block C, Second Floor, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters), so as to be received on or before, **4th June 2024 at 11.00 AM**

8. Electronic Tenders will **NOT** be permitted.
9. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the **KeNHA Board Room, BlockC, 2nd Floor, Barabara Plaza.**
10. Late tenders will be rejected.

All interested bidders are required to continually check the Kenya National Highways Authority website: www.kenha.co.ke and Public Procurement Information Portal (PPIP) (www.tenders.go.ke) for any other tender addenda or clarifications that may arise before the submission date.

Deputy Director, Supply Chain Management
For: DIRECTOR GENERAL

PART 1 - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A. General

1. Scope of Tender and Definition of Terms

1.1 The Procuring Entity, as specified in the TDS, issues this Tendering Document for the provision of Management Services as specified in Section V-Schedules of Services and Requirements. The name and identification of this ITT are specified in the TDS.

1.2 Throughout this tendering document:

a) The term "in writing" means communicated in written form (e.g. by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;

b) If the context so requires, "singular" means "plural" and vice versa; and

c) "Day" means calendar day, unless otherwise specified as "Business Day". A Business Day is any day that is an official working day of the Procuring Entity. It excludes the Procuring Entity's official public holidays.

2. Fraud and Corruption

2.1 Consultant firms or any of its members shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Consultant firms or any of its members that are proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.

2.2 In further pursuance of this policy, Tenderers shall permit and shall cause their agents (whether declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, shall permit Public Procurement Regulatory Authority (PPRA)to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, tender submission, proposal submission and contract performance (in the case of award), and to have them audited by auditors appointed by the PPRA.

2.3 Unfair Competitive Advantage -Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this service being tendered for. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

3. Eligible Tenderers

3.1 A Tenderer may be private entity, a state-owned enterprise or institution, subject to ITT 4.7, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a Form of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS.**

3.2 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke.

3.3 A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this tendering process, if:

a. Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or

b. Receives or has received any direct or indirect subsidy from another Tenderer; or

c. has the same legal representative for purposes of this tender; or

d. has a relationship with another Tenderer, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or

e. any of its affiliates participated as a consultant in the preparation of the design or technical specifications of any works related to the services that are the subject of the Tender; or

f. any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or as Procuring Entity's Representative for the Contract; or

g. would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the ITT 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that tenderer; or

3.4 has a close business or family relationship with a professional staff of the Procuring Entity or of the project implementing agency, who: (i) are directly or indirectly involved in the preparation of the Tendering Document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity.

3.5 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.6 A tenderer that is a JV (either individually or as a JV member) shall not participate in more than one Tender. This includes participation as a subcontract or in other Tenders. Such participation shall result in the disqualification of all Tenders in which the tenderer is involved. A firm or person that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender.

3.7 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case maybe. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services.

3.8 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

3.9 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not under supervision of the Procuring Entity.

3.10 A Tenderer shall not be under suspension from Tendering by the Procuring Entity as the result of the operation of a Tender–Securing or Proposal-Securing Declaration.

3.11 Tenderers and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Kenya prohibits commercial relations with that country; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.

3.12 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met is provided in *"SECTION III- EVALUATION AND QUALIFICATIONS CRITERIA".*

3.13 A Tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

3.14 A tenderer that is under a sanction of debarment by the PPRA from being awarded a contract is NOT eligible to participate in this procurement.

3.15 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act., 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke.

3.16 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

3.17 Applicant must confirm that all materials, equipment and services to be supplied under the Contract shall have their origin in any eligible country and all expenditures under the Contract will not contravene any restrictions. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of materials, equipment and services.

4. Margin of Preference and Reservations

4.1 A margin of preference may be allowed only when the contract is open to international competition where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.

4.2 A margin of preference shall not be allowed unless it is specified so in the TDS.

4.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 5.4 below.

4.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by a competent authority, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

B. Contents of Tendering Document

5. Sections of Tendering Document

5.1 The Tendering Document consists of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITT 9.

PART 1: Tendering Procedures

Section I- Instructions to Tenderers (ITT)

Section II-Tender Data Sheet (TDS)

Section III - Evaluation and Qualification Criteria

Section IV-Tendering Forms

PART 2: Services' Requirements

Section V - Description of Services

PART 3: Conditions of Contract and Contract Forms

Section VI - General Conditions of Contract

Section VII - Particular Conditions of Contract

Section VIII- Contract Forms

5.2 The notice of Invitation to Tenders Notice issued by the Procuring Entity to the prequalified Tenderers is not part of this Tendering Document.

5.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness

of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the Tendering Document in accordance with ITT9. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

5.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tendering Document. Failure to furnish all information or documentation required by the Tendering Document may result in the rejection of the Tender.

6. Site Visit and Data Room

6.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be at the Tenderer's own expense.

6.2 If specified **in the TDS**, the Procuring Entity has established a data room (herein after called the Data Room) with a selection of relevant data to be accessible to Tenderers or their representatives. The address of the Data Room, and other information considered relevant by the Procuring Entity (such as an inventory of materials, or dates, rules and procedures for access, and dates of availability) areas specified in the **TDS**.

7. Pre-Tender Meeting and a pre-arranged pretender visit of the site of the works

7.1 The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender visit of the site of the works will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.

7.3 Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.

7.4 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the webpage identified **in the TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

8. Clarification of Tender Documents

8.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-arranged pretender visit of the site of the works if provided for in accordance with ITT 10. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 10.

9. Amendment of Tendering Document

9.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.

9.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 8.4.

9.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 23.2.

C. Preparation of Tenders

10. Cost of Tendering

10.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

11 Language of Tender

11.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity, shall be written in ENGLISH language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages in the same ENGLISH language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

12 Documents Comprising the Tender

12.1 The Tender shall comprise two Parts, namely the Technical Proposal and the Financial Proposal. These two Parts shall be submitted simultaneously in two separate sealed envelopes (two-envelope Tendering process). One envelope shall contain only information relating to the Technical Proposal and the other, only information relating to the Financial Proposal. These two envelopes shall be enclosed in a separate sealed outer envelope marked "ORIGINAL TENDER". The Tenderer shall chronologically serialize all pages of the tender documents submitted.

12.2 The **Technical Proposal** shall contain the following**:**

a. **Form of Tender and Technical Proposal**, prepared in accordance with ITT 15.1;

b. **Tender Security or Tender- Securing Declaration**, in accordance with ITT 17;

c. **Authorization**: written authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 21.3;

d. **Conformity**: Methodology and Approach in accordance with ITT 13.1;

e. **Tenderer's Qualifications**: documents establishing the qualifications of the Tenderer in accordance with ITT 18.1; and

f. Any other documents required in the **TDS.**

12.3 The **Financial Proposal** shall contain the following:

a. **Form of Tender–Financial Proposal**, prepared in accordance with ITT 14 and ITT 15;

b. **Price Schedules**: completed prepared in accordance with ITT 14 and ITT 15; and

c. Any other document required in the **TDS.**

12.4 The Technical Proposal shall not include any financial information related to the Tender price. Where material financial information related to the Tender price is contained in the Technical Proposal the Tender shall be declared non-responsive.

12.5 In addition to the requirements under ITT 12.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The proposed JV Agreement shall indicate at least the parts of the services to be performed by the respective members.

12.6 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

13 Documents Comprising the Methodology and Approach

a. The Methodology and Approach shall consist of the following sub-parts:

b. a detailed work plan (hereinafter referred to as the Work Plan) using the corresponding form included in

Section IV, Tendering Forms, and setting out the manner in which the Tenderer proposes to carry out the services as defined in the Contract and to meet any performance targets specified in the Contract;

c. a detailed staffing plan (hereinafter referred to as the Staffing Plan) setting out the Tenderer's proposed staffing arrangements as they relate to the requirements in the Contractor's Personnel Schedule (Schedule B), included in Section VII, Schedule of Services Requirements; and

d. any other information as stipulated in Section IV, Tendering Forms.

14 Documents Comprising the Financial Proposal

14.1 The Financial Proposal shall consist of a completed and properly executed Tender Price Form. The Price Schedule is included in Section IV of this Tendering Document. Tenderers shall complete the Price Schedule in full and shall not amend or change the form in any way.

14.2 The Tenderer may quote its prices in accordance with ITT 19.

14.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

15 Forms of Tender

15.1 Each Tenderer shall provide a completed Form of Tender – Technical Proposal and Form of Tender – Financial Proposal using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested.

16 Power of Attorney

16.1 Each Tenderer shall provide a written power of attorney duly notarized, indicating that the person(s) signing the Tender has the authority to sign the Tender and thus that the Tender is binding upon the Tenderer during the full period of its validity.

17 Tender Security

17.1 The Tenderer shall furnish as part of the Technical Proposal of its Tender, either a Tender-Securing Declaration or a Tender Security as specified **in the TDS.** If a Tender Security is specified, the Tender Security shall be in the amount and currency specified **in the TDS.**

17.2 A Tender-Securing Declaration shall use the form included in Section IV, Tendering Forms.

17.3 If a Tender Security is specified pursuant to ITT 18, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:

a. cash; or

b. a bank guarantee; or

c. a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority, listed by the Authority; or

d. a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from a reputable source, and an eligible country.

e. Other forms specified in the **TDS.**

17.4 If a Tender Security or Tender Securing Declaration is specified pursuant to ITT 17.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.

17.5 The Tender Security shall be returned/release as promptly as possible:

a. The procurement proceedings are terminated;

b. The procuring entity determines that none of the submitted tenders is responsive;

c. A bidder declines to extend the tender validity.

d. Once the successful Tenderer has signed the Contract and furnished the required Performance Security.

17.6 The Tender Security may be forfeited or the Tender-Securing Declaration executed:

a) If a Tenderer withdraws its Tender during the Period of Validity of Tenders, except as provided in ITT 20.2; or

b) If the successful Tenderer fails to:

i) Sign the Contract in accordance with ITT 52; or

ii) Furnish a Performance Security in accordance with ITT 53.

17.7 Where the Tender-Securing Declaration is executed the Procuring Entity will recommend to the PPRA to debar the Tenderer from participating in public procurement as provided in the law.

17.8 The Tender Security or Tender-Securing Declaration of a Joint Venture (JV) shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted at the time of Tendering, the Tender Security shall be in the names of all future members as named in the Form of intent to execute the JV.

18 Documents Establishing the Eligibility and Qualifications of the Tenderer

18.1 Tenderers shall complete the Form of Tender and all the Tendering Forms included in Section IV to establish their eligibility in accordance with ITT 4.

18.2 The documentary evidence of the Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

18.3 In the event that prequalification of Tenderers has been undertaken, only Tenders from prequalified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original prequalification applications or, alternatively, confirm in their Tenders that the originally submitted prequalification information remains essentially correct as of the date of Tender submission.

18.4 If prequalification has not taken place before Tendering, the qualification criteria for the Tenderers are specified in Section III, Evaluation and Qualification Criteria.

19 Currencies of Tender and Payment

19.1 The currency (ies) of the Tender and the currency (ies) of payments shall be the same. The Tenderer shall quote in Kenya shillings and if the Tenderer wishes to be paid a portion foreign currency, it may indicate so but shall use no more than two foreign currencies in addition to the Kenya shilling.

19.2 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and Variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price–tender price)/tender priceX100*.

20 Period of Validity of Tenders

20.1 Tenders shall remain valid for the period specified **in the TDS** after the Tender submission deadline date prescribed by the Procuring Entity. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 17.1, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

21 Format and Signing of Tender

21.1 The Tenderer shall prepare one original of the Technical Part and one original of the Financial Part as described in ITT 12.1, and clearly mark each as "ORIGINAL." In addition, the Tenderer shall submit copies of the Technical Proposal and the Financial Proposal, in the number specified **in the TDS** and clearly mark them "COPY."

21.2 Tenderers shall mark as "CONFIDENTIAL" information in their Tenders which is confidential or proprietary to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information.

21.3 The original and all copies of each Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confederation as specified **in the TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

21.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.

21.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. Submission of Tenders

22 Sealing and Marking of Tenders

22.1 The tenderer shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to the Procuring Entity and a warning "DO NOT OPEN BEFORE……. (the time and date for Tender opening date". Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

a. In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall be enclosed and shall be addressed as follows:
b. in an envelope or package or container marked "ORIGINAL", all documents comprising the Technical Proposal, as described in ITT 12; and
c. in an envelope or package or container marked "COPIES", all required copies of the Technical Proposal; and
d. in an envelope or package or container marked "ORIGINAL", all required copies of the Financial Proposal; and

22.2 The inner envelopes or packages or containers shall:-

a. Bear the name and address of the Procuring Entity.
b. Bear the name and address of the Tenderer; and
c. Bear the name and Reference number of the Assignment.

22.3 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the proposal.

Tenders that are misplaced or opened prematurely will not be accepted.

22.4 If the envelopes and packages with the Proposals are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement, loss, or premature opening of the Proposal.

Tenders that are misplaced or opened prematurely will not be accepted.

22.5 The Proposal or its modifications must be sent to the address indicated in the **Data Sheet** and received by the Procuring Entity no later than the deadline indicated in the Data Sheet, or any extension to this deadline. Any Proposal or its modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

23 Deadline for Submission of Tenders

23.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time indicated **in the TDS**. When so specified **in the TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified **in the TDS**.

23.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the

Tendering Document in accordance with ITT 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadlines hall thereafter be subject to the deadline as extended.

24 Late Tenders

24.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 23. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

25 Withdrawal, Substitution, and Modification of Tenders

25.1 A Tenderer may withdraw or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include copies of the authorization in accordance with ITT 21.3, (except that withdrawal notices do not require copies). A Tenderer's modification or withdrawal must be:

a. prepared and submitted in accordance with ITT 21 and ITT 22 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "Withdrawal," "Substitution," "Modification;" and
b. received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.

25.2 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.

25.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender Form or any extension thereof.

E. Public Opening of Technical Proposal

26 Public Opening of Technical Proposals

26.1 Except as in the cases specified in ITT 24 and ITT 25.2, the Procuring Entity shall, at this Tender opening, publicly open and readout, in accordance with this ITT, all tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 23.1, shall be as specified in the **TDS.**

26.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "power of attorney" contending the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is readout at the Tender opening.

26.3 Next, envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted proposal shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is readout at Tender opening.

26.4 Next, envelopes marked "Modification" shall be opened and readout with the corresponding Tender. No, Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is readout at the Tender opening.

26.5 Next, all other envelopes marked "TECHNICAL PROPOSAL" shall be opened one at a time. All envelopes marked "FINANCIAL PROPOSAL" shall remain sealed, and kept by the Procuring Entity in safe custody until they are opened, at a later public opening, following the evaluation of the Technical Proposal of the Tenders. On opening the envelopes marked "TECHNICAL PROPOSAL" the Procuring Entity shall readout: the name of the Tenderer and whether there is a modification, presence or absence of a Tender Security, or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

26.6 Only envelopes that are opened and readout at the Tender opening shall be considered further in the evaluation. The Form of Tender–Technical Proposal and the separate sealed envelope marked "FINANCIAL PROPOSAL" are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified **in the TDS.**

26.7 At the Tender opening the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1).

26.8 Following the Tender opening of the Technical Proposals of the Tender, the Procuring Entity shall prepare a record that shall include, as a minimum:

a. The name of the Tenderer and whether there is a withdrawal, substitution, or modification;

b. The presence or absence of a duly sealed envelope marked "FINANCIAL PROPOSAL"; and

c. The presence or absence of a Tender Security or Tender-Securing Declaration.

26.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Tenderers.

27 Public Opening of Financial Proposals

27.1 Following the completion of the evaluation of the Technical Proposals, the Procuring Entity shall notify, in accordance with option specified **in the TDS**, in writing those Tenderers whose Tenders were considered non-responsive to the Tendering Document or failed to meet the Qualification Criteria, advising them of the following information:

a. The grounds on which their Technical Proposal failed to meet the requirements of the tendering document;

b. their envelopes marked "FINANCIAL PROPOSAL" will be returned to them unopened after the completion of the selection process and the signing of the Contract; and

c. notify them of the date, time and location of the public opening of the envelopes marked "FINANCIAL PROPOSAL".

27.2 The opening date should allow Tenderers sufficient time to make arrangements for attending the opening. The Financial Proposal of the Tender shall be opened in the presence of Tenderers' designated representatives and anyone who chooses to attend.

27.3 Tenderers who met the Qualification Criteria and whose Tenders were evaluated as substantially responsive will have their envelopes marked "FINANCIAL PROPOSAL" opened at the second public opening. Each of these Envelopes marked "FINANCIAL PROPOSAL" shall be inspected to contend that they have remained sealed and unopened. These envelopes shall then be opened by the Procuring Entity. The Procuring Entity shall readout the names of each Tenderer, and the total Tender prices, per lot (contract) if applicable, including any discounts, technical score, if applicable, and any other details as the Procuring Entity may consider appropriate. Only discounts read out at the Tender opening shall be considered for evaluation. The Form of Tender - Financial Proposal and the Price Schedules are to be initialed by a representative of the Procuring Entity attending the Tender opening in the manner specified **in the TDS**.

27.4 At the Tender opening the Procuring Entity shall neither discuss the merits of any Tender nor reject any envelopes marked "FINANCIAL PROPOSAL".

27.5 The Procuring Entity shall prepare a record of the Financial Proposal of the Tender opening that shall include, as a minimum:

a. The name of the Tenderer whose Financial Proposal was opened;

b. The Tender price, per lot (contract) if applicable, including any discounts.

27.6 The Tenderers whose envelopes marked 'FINANCIAL PROPOSAL" have been opened or their representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not in validate the contents and effect of the record. A copy of the tender opening register shall be distributed to all Tenderers upon request.

28 Confidentiality

28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the Notification of Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 48.

28.2 Any attempt by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award

decisions may result in the rejection of its Tender.

28.3 Notwithstanding ITT 28.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it may do so in writing.

29 General Clarification of Tenders

29.1 To assist in the examination, evaluation, and comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered, and the Procuring Entity's invitation to clarification and the response shall be in writing. If the Tender includes a financial proposal, no change in the prices or substance of the Tender shall be sought, offered, or permitted, except to contend the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT 36.

29.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's invitation to clarification, its Tender may be rejected.

30 Selection Method and Evaluation Process

30.1 Selection of the Lowest Evaluated Tender will be conducted using one of the following methods, as specified **in the TDS**: (i) Lowest-Evaluated Cost Selection, (ii) Quality and Cost-Based Selection (QCBS), or (iii) Fixed-Budget Selection.

30.2 Prior to the evaluation of any Tender, the Procuring Entity will determine whether each Tender:

a. Has been properly signed;

b. Is accompanied by the required securities; and

c. Is substantially responsive to the Tender requirements, pursuant to ITT 32.

30.3 If the selection method pursuant to ITT 30.1 is Lowest-Evaluated Cost, after a Tender is deemed substantially responsive in accordance with ITT 32, the next stage will be the evaluation of the Financial Proposal in accordance with ITT 35.

30.4 If the selection method pursuant to ITT 30.1 is QCBS or Fixed-Budget, after the Tender is deemed substantially responsive, the evaluation process will consist of two stages: (i) evaluation of the Technical Proposal in accordance with ITT 34 and (ii) Evaluation of the Financial Proposal in accordance with ITT35.

30.5 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.

31 Deviations, Reservations, and Omissions

31.1 During the evaluation of Tenders, the following definitions apply:

a. “Deviation” is a departure from the requirements specified in the Tendering Document;

b. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tendering Document; and

c. “Omission” is the failure to submit part or all of the information or documentation required in the Tendering Document.

32 Determination of Responsiveness

32.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.

32.2 A substantially responsive Tender is one that meets all the requirements, terms, conditions and specifications of the Tendering Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

a. If accepted, would:

i. affect in any substantial way the scope, quality, or performance of the Services specified in the Schedules in Section VII; or

ii. limit in any substantial way, in consistent with the Tendering Document, the Procuring Entity's

rights or the Tenderer's obligations under the proposed Contract; or

b. if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

32.3 If the selection method pursuant to ITT 30.1 is Lowest-Evaluated Cost, the determination of responsiveness will include the Procuring Entity's examination of the technical aspects of the Tender submitted in accordance with ITT 12, Methodology and Approach, in particular, to contend that all criteria in Section III, Evaluation and Qualification Criteria, and the Service Requirements described in Schedules B through F of Section VII, have been met without any material deviation or reservation.

32.4 If a Tender is not substantially responsive to the requirements of the Tendering Document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

32.5 If a Tender is not substantially responsive, the Procuring Entity will notify the Tenderer that its Tender has been rejected.

33 Non material Non-conformities

33.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformities in the Tender that do not constitute a material deviation, reservation or omission.

33.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

33.3 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison Purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in TDS.**

34 Technical proposal Evaluation

34.1 For those Tenders that are found to be substantially responsive pursuant to ITT 32, the Procuring Entity shall evaluate the Technical Proposals using the following evaluation methodology:

a. The Procuring Entity shall score Technical Proposals by applying the point system specified in **Section III** for each evaluation criterion. Each proposal will be given an aggregate technical score (St) by adding the scores assigned under each evaluation criterion;

b. A proposal shall be rejected at this stage if it fails to achieve the minimum aggregate technical score specified in the **TDS**; and

c. The Procuring Entity will apply any additional steps to the evaluation methodology as may be indicated in the **TDS.**

35 Financial Proposal Evaluation

35.1 Only Tenders that have been found substantially responsive in accordance with ITT 32 and have achieved the minimum aggregate technical score in accordance with ITT 34.1 shall have their Financial Proposals opened and evaluated.

35.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender cost by adjusting the Tender price as follows:

a. Price adjustment due to discounts offered in accordance with ITT 27.5;

b. Price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3;

c. converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 37; and

d. any additional evaluation factors specified in the TDS and Section III, Evaluation and Qualification Criteria.

36 Correction of Arithmetical Errors

36.1 The tender sum as submitted and readout during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in anyway by any person or entity.

36.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:

a. Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.

b. Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and

c. If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail.

36.3 The Procuring Entity shall calculate the difference between the corrected price and tender price and workout the percentage difference, which will be plus or minus tender price as the case may be;[i.e.(corrected tender price– tender price)/tenderpriceX100].

36.4 On award of contract, all payment valuation certificates, variation orders on omissions and additions valued based on rates in the tender document will be adjusted by such a percentage specified in ITT 36.4 to ensure the service provider is not paid less or more relative to the contract price which would be the tender price.

37 Conversion to Single Currency

37.1 For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted into a single currency as specified **in the TDS**. The source of the exchange rate shall be as specified **in the TDS**. The date for the exchange rate shall be the deadline for submission of proposals pursuant to ITT 23.1.

38 Abnormally Low Tenders

38.1 An Abnormally Low Tender is one where the Tender price, in combination with other constituent elements of the Tender, appears unreasonably low to the extent that the Tender price raises material concerns with the Procuring Entity as to the capability of the Tenderer to perform the Contract for the offered Tender price.

38.2 In the event of identification of a potentially Abnormally Low Tender by the evaluation committee, the Procuring Entity shall seek written clarification from the Tenderer, including a detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the tendering document.

38.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the contract for the offered Tender price, the Procuring Entity shall reject the Tender.

39 Abnormally High Tenders

39.1 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

39.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.

ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

39.3 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition

between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

39.4 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

40 Unbalanced and/or Front-Loaded Tenders

40.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

40.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:

a. Accept the Tender; or
b. Require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a10% of the Contract Price; or
c. agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
d. reject the Tender.

41 Qualification of the Tenderer

41.1 The Procuring Entity shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

41.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

41.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

42 Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders

42.1 The Procuring Entity reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

F. Contract Negotiations and Award of Contract

43 Negotiations

43.1 The negotiations will be held at the date and address indicated in the **TDS** with the Tender's Representatives who must have written power of attorney to negotiate a Contract on behalf of the Tenderer.

43.2 The Procuring Entity shall prepare minutes of negotiations that are signed by the Procuring Entity and the Tender's authorized representative.

44 Technical negotiations

44.1 The negotiations include discussions of the Schedule of Requirements, the proposed methodology, the Procuring Entity's inputs, the Particular Conditions of the Contract, and finalizing the "Schedule of Requirements" part of the Contract. These discussions shall not substantially alter the original scope of services or the terms of the contract, lest the quality of the final product, its price, or the relevance of the initial evaluation be affected.

45 Financial negotiations

45.1 The financial negotiations include the clarification of the tax liability in Kenya and how it should be reflected in the Contract. The total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated. The Procuring Entity may ask for clarifications on the costs if they are very high.

46 Award Criteria

46.1 Subject to ITT 40, the Procuring Entity shall award the Contract to the successful Tenderer. This is the Tenderer whose Tender has been determined to be the Lowest Evaluated Tender and has concluded the negotiations successfully.

47 Award of Contract

47.1 After completing the negotiations, the Procuring Entity shall sign the Contract; publish the award information as per the instructions in the **ITT 54 and** promptly notify the other Tenderers.

48 Notice of Intention to enter into a Contract/Notification of award

48.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

a. The name and address of the Tenderer submitting the successful tender;
b. The Contract price of the successful tender;
c. a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
d. the expiry date of the Stand still Period; and
e. instructions on how to request a debriefing and/or submit a complaint during the standstill period;

49 Standstill Period

49.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Stand still Period shall not apply.

49.2 Whereas Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

50 Debriefing by the Procuring Entity

50.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 48, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

50.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

51 Letter of Award

51.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 49.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

52 Signing of Contract

52.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

52.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

52.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

53 Performance Security

53.1 Within twenty-one (21) days of the receipt of the Letter of Award from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Contract, subject to ITT 38.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.

53.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the **TDS** or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

53.3 Performance security shall not be required for contracts estimated to cost less than the amount specified in the Regulations.

54 Publication of Procurement Contract

Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

a) Name and address of the Procuring Entity;
b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;
c) The name of the successful Tenderer, the final total contract price, the contract duration.
d) Dates of signature, commencement and completion of contract;
e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

55 Procurement Related Complaints and Administrative Review

55.1 The procedures for making a Procurement-related Complaint are as specified in the **TDS.**

55.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION II - TENDER DATA SHEET

The following specific data for the Management Services to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

[Where an e-procurement system is used, modify the relevant parts of the TDS accordingly to reflect the e-procurement process.]

[Instructions for completing the Tender.]

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	A. General
ITT 1.1	The reference number of the Request for Tenders is: **KeNHA/2772/2024** The Procuring Entity is: ***Kenya National Highways Authority*** The name of the Project is: **Request for Proposal for Provision of Consultancy Services for Communication, Brand Monitoring and Media Management**
ITT 1.2 (a)	**Electronic – Procurement System** The Procuring Entity shall use the following electronic-procurement system to manage this procurement process: **N/A** The electronic-procurement system shall be used to manage the following aspects of the Procurement process: **N/A**
ITT 3.1	Maximum number of members in the JV shall be: **N/A**
ITT 3.3	The firms (if any) that provided consulting services for the contract being tendered for are **N/A**
ITT 4.1	Margin of Preference **shall not apply.**
ITT 4.9	The Procuring Entity may require tenderers to be registered with **N/A**
	B. Tendering Document
ITT 7	A Pre-Tender meeting_ **N/A**_____ _____ ***[insert "shall" or "shall not"]*** take place at the following date, time and place: Date: _____**N/A**_____ Time: _____**N/A**_____ Place: _____**N/A**_____ A site visit conducted by the Procuring Entity _ ***shall not be [insert "shall be" or "shall not be"]*** organized.
ITT 8.1	For **Clarification of Tender purposes only**, the Procuring Entity's address is: **Deputy Director – Supply Chain Management,** **Kenya National Highways Authority,** **P. O. Box 49712-00100, Nairobi** **Barabara Plaza, Jomo Kenyatta International Airport,** **Mazao Road, Off Airport North Road, Block C 2nd Floor** **Email address:** *procurement@kenha.co.ke* Requests for clarification should be received by the Procuring Entity no later than: **Seven (7) days to Tender Submission date at *5.00pm*.**
ITT 9.2	The Procuring Entity shall publish its response at the website: www.kenha.co.ke
	C. Preparation of Tenders

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 15.1	Alternative Tenders are **not permitted.**
ITT 15.1	Alternatives to the Time Schedule **Not permitted**. If alternatives to the Time Schedule are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.
ITT 15.1	Alternative technical solutions shall be permitted for the following parts of the Information System: _____**N/A**_____as further detailed in the Specification. If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.
ITT 16.1	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of**: Valid Power of Attorney issued by the Director if the signatory of the tender is not a Director**
ITT 17.1	The Tender Security shall be required; the amount and currency of the Tender Security shall be of **Kshs. 100,000.00** in the form of Unconditional Bank Guarantee from a reputable bank in Kenya and valid for **30 days** beyond the tender validity period.
ITT 17.1	Other types of acceptable securities are__**N/A**_____
ITT 17.2	Prequalification _ ***has not been*** undertaken.
ITT 19	The Tenderer *[insert "must" or "must not"]* tender Recurrent Cost Items – **N/A**
	The Tenderer *[insert "must" or "must not"]* tender for contracts of Recurrent Cost Items not included in the main Contract. – N/A
	The prices quoted by the Tenderer ***shall not"*** be subject to adjustment during the performance of the Contract.
ITT 20.1	The Tenderer **[*insert "is" or "is not"*] _____is_____**required to quote in the currency of Kenya the portion of the Tender price that corresponds to expenditures incurred in that currency.
ITT 20.1	The Tender validity period shall be **140 days**
ITT 21.1	The Proposal shall comprise the following: 1st Inner Envelope with the Technical Proposal: Power of Attorney to sign the Proposal TECH-I :Technical Proposal Submission Form TECH-2: Consultant 's Organization and Experience TECH-3: Comments and Suggestions TECH-4: Description of Approach, Methodology and Work plan TECH-5: Work Schedule and Planning for Deliverables TECH-6: Team Composition, Assignment, and Key Experts' Input TECH-7: Mandatory Documentary Evidence AND 2nd Inner Envelope with the Financial Proposal: FIN-1: Financial Proposal Submission Form FIN-2: Summary of Costs FIN-3: Breakdown of Remuneration FIN-4: Breakdown of Reimbursable Expenses
ITT 21.3	In addition to the original of the Tender, the number of copies is: The Consultant must submit: a) Technical Proposal: **one (1) original** b) Financial Proposal: **one (1) original.**
D. Submission and Opening of Tenders	

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 23.1	For **Tender submission purposes only**, the Procuring Entity's address is: **Deputy Director - Supply Chain Management,** **Kenya National Highways Authority,** **P. O. Box 49712-00100, Nairobi** **Barabara Plaza, Jomo Kenyatta International Airport,** **Mazao Road, Off Airport North Road, Block C 2nd Floor** **Email address:** *procurement@kenha.co.ke :* *Tel: +254 700423606, 0204954000* Time: **4th June 2024 at 11:00 am East Africa Time**
ITT 26.1	Tenderers ***shall not*** have the option of submitting their Tenders electronically.
ITT 26.1	The Tender opening shall take place at: **Kenya National Highways Authority,** **P. O. Box 49712-00100, Nairobi** **Barabara Plaza, Jomo Kenyatta International Airport,** **Mazao Road, Off Airport North Road, Block C 2nd Floor Boardroom.** **Time: 4th June, 2024 at 11:00 am East Africa Time** The electronic Tender opening procedures shall be: **N/A**
ITT 26.6	The Form of Tender and Price Schedules shall be initialed by at least two employer representatives of the Procuring Entity conducting Tender opening.
ITT 30.1	Name of the Procuring Entity: Kenya National Highways Authority The consultant selection method is: [Procuring Entity to choose ONE of the selection methods by placing an X} Quality and Cost Based Selection Method (QCBS) **(X)** Quality Based Selection Method (QBS) ( ) Least Cost Selection Method (LCS) ( ) Consultant Qualification Selection Method (CQS) ( ) Fixed Budget Selection Method (FBS) ( ) Single Source Selection Method (SSS) ( )
E. Evaluation, and Comparison of Tenders	
ITT 35	In the case of Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in this Data Sheet. The formulae for determining the Financial Score (Sf) shall, unless an alternative formula is indicated shall be as follows: - Sf = 100 X FM/F where Sf is the financial score; FM is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal: P = the weight given to the Financial Proposal; T + P = I) indicated in the weightings below. The combined technical and financial score, S, is calculated as follows: - S = St x T % + Sf x P %. The Consultant that achieves the highest combined technical and financial score will be notified and invited for negotiations. The minimum technical score required to pass is **80%**

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	Weightings: **T = 0.8** **P = 0.2**
ITT 37.1	The currency shall be in Kenya shillings and the source of exchange rate shall be Usually the Central Bank of Kenya is the source.
ITT 49	The award will be made on the basis of ***rated criteria*** pursuant to ITT 35.7, if applicable, in accordance with Section III, Evaluation and Qualification Criteria.
ITT 51.1	The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA website info@ppra.go.ke or complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to: **For the attention**: Director General **Title/position**: Director General **Procuring Entity**: Kenya National Highways Authority **Email address***: dg@kenha.co.ke; procurement@kenha.co.ke* In summary, a Procurement-related Complaint may challenge any of the following: 1. the terms of the Tendering Documents; and 2. the Procuring Entity's decision to award the contract.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

(a) For construction turnover or financial data required for each year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.

b) Value of single contract-Exchange rate prevailing on the date of the contract signature.

c) Exchange rates shall be taken from the publicly available source identified in the ITT 37.1. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Report for Goods and Works** for evaluating Tenders.

2. Evaluation and contract award Criteria

Use only criteria in this Section-The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

Preliminary examination for Determination of Responsiveness-

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

[The Procuring Entity will provide the preliminary evaluation criteria. To facilitate, a template may be attached or clearly described all information and list of documentation to be submitted by Tenderers to enable preliminary evaluation of the Tender]

Appendix to Instructions to tenderers

1. PRELIMINARY REQUIREMENTS (MANDATORY)

Item	Mandatory Requirements	YES/NO
1.	Must provide a copy of certificate of incorporation/registration	
2.	Must provide valid practicing certificate from the Media Council of Kenya	
3.	Must Provide Valid copy of Tax Compliance Certificate (Will be confirmed online with TCC Checker).	
4.	Confidential Business Questionnaire dully filled, signed & stamped	
5.	Proof of a Physical registered office address, Mobile Number and e-mail address ie provide a copy of the Organization's valid and current Business Permit.	
6.	Original Bid document must be duly serialized sequentially from page one up to the last including attachments/appendices and the document should be bound. Only One Original document is to be submitted.	
7.	Tender security of Kshs. 100,000.00 in form of unconditional Bank Guarantee from a reputable Bank in Kenya valid for **30 days beyond the tender validity period** and in the format prescribed in the tender document.	
8.	Must provide a copy of CR12 from Registrar of Companies (Issued within the last twelve (12) months from the Tender opening date). Attach ID or copies of passport of all directors /shareholders and any individual listed on the CR12).	
9.	Must attach a duly signed and filled form of tender in the prescribed format and instructions in the tender document and in the **bidder's official letterhead**	
10.	Prices quoted should be net inclusive of all taxes and delivery costs, must be in Kenya Shillings and shall remain valid for the entire contract period.	
11.	Attach membership certificate for the two (2) key personnel from a relevant professional body (the Public Relations Society of Kenya (PRSK) or Marketing Society of Kenya).	
12.	Must provide audited financial statements for the last two years (2023 & 2022).	
13.	All forms to be filled/ signed /stamped shall be duly filled/signed/stamped as required in the tender document	
14.	A Company Profile with a detailed Firm's Organogram.	
15.	The proposal MUST be duly signed by the person lawfully authorized to do so through a Notarized Power of Attorney.	
16.	Any alterations made in the document should be countersigned	

Note:

- **Only Bidders who will have met all the Preliminary Requirements shall proceed for Technical Evaluation**
- **Certificates/Licenses may be verified from or with the Issuing Authorities or Agencies**
- **Please note that all pages of the tender documents submitted by bidders shall be sequentially serialized. That is, serialization shall be undertaken by the bidder, by doing fresh numbering on its documents. The pagination of the tender documents as downloaded from the KeNHA website should not be used as a means of Serialization. The bidder's serialization should follow the same logical sequence from the first page to the end.**

1. TECHNICAL EVALUATION CRITERIA

EXPERIENCE OF THE CONSULTANT		**37 Marks**
	1) Demonstrate with examples, (at least 2 public sectors related), that you have over five (5) years of experience in: i. Brand Strategy and Management (4 examples). ii. PR Campaigns & Media Relations (2 examples). 2) Demonstrate that you understand: i. Content production ii. Social Media Management iii. Show your success in reaching and engaging large audiences organically (2 examples). 3) Demonstrate that you have experience in handling crises by giving instances of major crises you have handled and how you managed them. (2 examples). ***(Experience in the Road Sector will be an added advantage)***	4 Marks 2 Marks 5 Mrks 4 Mrks 2 Mrks 6 Mrks
	Provide proof of having worked with at least three (3) public sector clients (attach signed contract/LSOs). Include narratives of the work that you did with examples.	3 Mrks
	Provide three (3) recommendation letters from public agencies you have served before, indicating contact persons names and their contacts	3 Mrks
	Provide proof of ownership, or easy and assured access to key facilities, equipment, and resources that may be required by the consultant to execute the assignment. The resources should include but not limited to: i. Video production equipment (HD Cameras, Lighting Equipment, Audio recording equipment, Narration artists, studios, and editing suites) ii. Drone video and photography equipment. iii. Photography (professional DLSR cameras, lighting, studios). iv. Desktop publishing, graphic design, and printing capacity.	8 Mrks
APPROACH, METHODOLOGY & WORK PLAN.		**15 Marks**
	1) Interpretation of the terms of reference The tenderer should demonstrate an understanding of the scope of work as described in the Terms of Reference, the Authority itself, the environment in which it operates, and her vision.	5 Mrks

	2) Adequacy of the proposed approach and methodology The tenderer should demonstrate the ability to develop and execute elaborate strategies and plans that shall help improve the image of the Authority, increase the awareness and visibility of the KeNHA brand and protect the Authority from reputational damage.	5 Mrks
	3) Work plan Attach a detailed sample work plan that encompasses the entire contract period indicating all the deliverables at each stage	5 Mrks
SOCIAL MEDIA MANAGEMENT		**20 Marks**
	1) Demonstrate ability and proven track record on complex social media engagement	5 Mrks
	2) Proof of credible social accounts, partnerships, and executions that are more than five years	5 Mrks
	3) Proof of ability to develop social media content complete with graphics, demonstration of catchy hashtags that have been deployed in past campaigns.	3 Mrks
	4) A recommendation letter on social media management from at least two clients	4 Mrks
	5) Recognition by either media council of Kenya Communication Authority.	2 Mrks
KEY PERSONNEL EXPERIENCE		**27 Marks**
The personnel recommended for the execution of this assignment must be experienced in the area of Public Relations. They must have worked in the PR industry for at least five (5) years and above		
	Brand Management Specialist Must i. Have experience of at least eight (8) years in brand management, provide evidence 8 ii. Be a member of a PR/Marketing professional body 2 iii. Have a Master's Degree in Marketing, Communications, Public Relations, Advertising or any other relevant social science degree 5 NB-Submit an updated CV and attach all relevant certificates	12 Mrks
	Link Personnel Must i. Have experience of at least six (5) years, provide evidence. ii. Be a member of a PR/Marketing professional body.	9 Mrks

	iii. Have a Master's Degree in Marketing, Communications, Public Relations, Advertising or any other relevant social science degree NB-Submit updated CV and attach all relevant certificates	
	Other professionals required include i. Creative Director ii. Digital and Social Media Manager iii. Graphics Designer Attach evidence of relevant training i.e. academic certificates or any other relevant documentation and CV	 2 Mrks 2 Mrks 2 Mrks
	Overall Scores	**100**

The pass mark for proceeding to financial evaluation is 80%.

FINANCIAL EVALUATION

Tenderers who shall have passed technical evaluation will be subjected to financial evaluation.

The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals: *[Note to Client: Allocation of points shall be within the range provided for each criteria and sub-criteria]*

Points

i) **Specific experience of the Tenderer, as a service provider, relevant to the contract:** *[0 -10]*

ii) Adequacy and quality of the proposed methodology, and work plan in responding to the schedule of Requirements:

a) Technical approach and methodology *[Insert points]*

b) Work plan *[Insert points]*

c) Organization and staffing *[Insert points]*

Total points for criterion (ii): *[20 - 50]*

*[**Notes to Tenderer:** The Procuring Entity will assess whether the proposed methodology is clear, responds to the* **Services Requirements**, *work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill mix; and the work plan has right input of Experts]*

iii) Key Experts' qualifications and competence for the Assignment:

*{**Notes to Consultant**: each position number corresponds to the same for the Key Experts inform TECH-6 to be prepared by the Consultant}*

a) Position K-1: [Team Leader][Insert points]

b) Position K-2: [Insert position title] [Insert points]

c) Position K-3:[Insert position title] [Insert points]

Total points for criterion (iii): *[30 -60]*

The number of points to be assigned to each of the above Key Experts positions shall be determined considering the following three sub-criteria and relevant percentage weights:

1) General qualifications (general education, training, and experience):*[insert weight between 10 and 30%]*

2) Adequacy for the contract (relevant education, training, experience in the sector or similar assignments)*: [insert weight between 60 and 70%]*

3) Relevant experience in the Kenya (working level fluency in local language(s)/ knowledge of local culture

or administrative system, government organization, etc.):*[insert weight between 0 and 10%]*

Total weight: 100%

iv) **Transfer of knowledge and training program** (relevance of approach and methodology): *[Normally not to exceed 10 points. When transfer of knowledge is a particularly important component of the assignment, more than 10 points maybe allocated; the following sub-criteria may be provided]*

a) Relevance of training program [Insert points]

b) Training approach and methodology [Insert points]

c) Qualifications of experts and trainers [Insert points]

Total points for criterion (iv): *[0 – 10]*

v) **Participation by Kenya citizens among proposed Key Experts** *[0–10]*
[not to exceed 10 points] [Sub-criteria shall not be provided. Calculated as a ratio of the Kenyan Key Experts 'time-input (in person-months) to the total number of Key Experts 'time-input (in person-months) in the Consultant's Technical Proposal]

The minimum technical score (St) required to pass is*:80%.* Tenderers who score less than the required pass will be automatically disqualified.

2. **Tender Evaluation (ITT 34) Price evaluation: in addition to the criteria listed in ITT 35.2 (a)–(d) the following criteria shall apply:**

i) **Other Criteria, i**f permitted under ITT 34.2(e):

……

ii) **Preliminary examination** if the tender price has unacceptable errors, is abnormally too low or is too high.

5. POST QUALIFICATION CRITERIA

1. In case the tender was not subject to pre-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions (post qualification Criteria applied on a GO/NO GO basis).

i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shillings_____.

ii) Minimum average annual construction turnover of Kenya Shillings_____*[insert amount]*, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last_____*[insert of year]* years.

iii) At least_____(*insert number)* of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings _____equivalent.

(iv) Equipment, The Tenderer must demonstrate that it has the key equipment listed hereafter: ***[Specify requirements for each lot as applicable]***

No.	Equipment Type and Characteristics	Minimum Number required
1		
2		
3		

(i) Other conditions depending on their seriousness.

a) **History of non-performing contracts**:

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last **(*two years*)**. The required information shall be furnished in the appropriate form.

b) Pending Litigation

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) Litigation History

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last **Two *years*)**. All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

(ii) Pursuant to ITT 4.10, a foreign tenderer must demonstrate that the tender fulfils the 40% Rule by completing the appropriate form in the Tender Document.

SECTION IV - TENDERING FORMS

1. Form of Tender – Technical Proposal Form

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS

i) All italicized text is to help the Tenderer in preparing this form.

ii) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a mandatory requirement.

iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION FORMS OF THE TENDERER as listed under (o) below.

Date of this Tender submission:.....*[insert date (as day, month and year) of Tender submission]* **Tender Name and Identification**:.....*[insert identification]* **Alternative No.**:.....*[insert identification No if this is a Tender for an alternative]*

To: ..... *[Insert complete name of Procuring Entity]*

We, the undersigned Tenderer, hereby submit our Tender, in two parts,

namely:

i) The Technical Proposal, and

ii) The Financial Proposal.

In submitting our Tender, we make the following declarations:

a) **No reservations:** We have examined and have no reservations to the Tendering Document, including Addenda issued in accordance with Instructions to Tenderers (ITT 8);

b) **Eligibility**: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;

c) **Tender-Securing Declaration**:
We have not been debarred by the Authority based on execution of a Tender-Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 4.8;

d) **Conformity:** We offer to supply in conformity with the Tendering Document and in accordance with the Schedules specified in the Schedule of Service Requirements the following Management Services:[*insert a brief description of the Management Services*];

e) **Tender Validity Period**: Our Tender shall be valid for the period specified in TDS ITT 20.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS ITT 23.1 (as amended, if applicable), and it shall remain binding upon us, and may at any time before the expiration of that period;

f) **Performance Security**: If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering Document;

g) **One Tender per Tenderer**: We are not submitting any other Tender(s) as an individual Tenderer, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 4.4.

h) **Suspension and Debarment**: We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;

i) **State-owned enterprise or institution**: [*select the appropriate option and delete the other*] [*We are not a state-owned enterprise or institution*]/[*We are a state-owned enterprise or institution but meet the requirements of ITT 4.7*];

j) **Binding Contract**: We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;

k) **Not Bound to Accept**: We understand that you are not bound to accept the lowest evaluated cost Tender, the Lowest Evaluated Tender or any other Tender that you may receive; and

l) **Fraud and Corruption**: We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

m) We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from ***www.pppra.go.ke*** during the procurement process and the execution of any resulting contract.

n) **Beneficial Ownership Information:** We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.

o) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:

i) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.

ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.

iii) Self-Declaration of the Tenderer–to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.

iv) Declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya,

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in **"Appendix 1- Fraud and Corruption**" attached to the Form of Tender.

Name of the Tenderer: *[*insert complete name of Tenderer*]

Name of the person duly authorized to sign the Tender on behalf of the Tenderer: ** [*insert complete name of person duly authorized to sign the Tender*]

Title of the person signing the Tender: [*insert complete title of the person signing the Tender*]
Signature of the person named above: [*insert signature of person whose name and capacity are shown above*] **Date signed** [*insert date of signing*] **day of** [*insert month*], [*insert year*]
*****: In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as Tenderer.

**: Person signing the Tender shall have the power of attorney given by the Tenderer. The power of attorney shall be attached with the Tender Schedules.

2. TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

a) Instructions to Tenderer

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV*. Tenderer is further reminded that it is an offence to give false information on this Form.

Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Name of the Tenderer	
3	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
4	Reference Number of the Tender	
5	Date and Time of Tender Opening	
6	Current Trade License No and Expiring date	
7	Maximum value of business which the Tenderer handles.	
8		

General and Specific Details

b) **Sole Proprietor,** provide the following details.

Name in full_____Age_____

Nationality_____Country of Origin_____

Citizenship _____

c) **Partnership,** provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

d) **Registered Company,** provide the following details.

i) Private or public Company _____

ii) State the nominal and issued capital of the Company-

Nominal Kenya Shillings (Equivalent).....……

Issued Kenya Shillings (Equivalent).....……

iii) Give details of Directors as follows

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

3. DISCLOSURE OF INTEREST- Interest of the Firm in the Procuring Entity.

i) Are there any person/persons in.....? (*Name of Procuring Entity)* who has an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

(ii) **Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Certification

On behalf of the Tenderer, I certify that the information given above is correct.

Full Name_____

Title or Designation_____

_____ _____

(Signature) *(Date)*

5 CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the_____
_____*[Name of Procuring Entity]* for:
_____*[Name and number of tender]* in response to the request for tenders made by:_____*[Name of Tenderer]* do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of_____*[Name of Tenderer]*

that:

i). I have read and I understand the contents of this Certificate;

ii). I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;

iii). I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;

iv). For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:

a) Has been requested to submit a Tender in response to this request for tenders;

b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;

v). The Tenderer discloses that [check one of the following, as applicable]:

a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;

b) The Tenderer has entered in to consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;

vi). In particular, without limiting the generality of paragraphs(5) (a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

a) prices;
b) methods, factors or formulas used to calculate prices;
c) the intention or decision to submit, or not to submit, a tender; or
d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above;

vii). In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5) (b) above;

viii). thetermsoftheTenderhavenotbeen,andwillnotbe,knowinglydisclosedbytheTenderer,directlyorindirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5) (b) above.

Name_____

Title_____

Date_____

[Name, title and signature of authorized agent of Tenderer and Date]

6. SELF-DECLARATION FORMS

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I, ... of Post Office Box.....being a resident of……in the Republic of.....do hereby make a statement as follows: -

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of ……...…….. *(insert name of the Company)* who is a Bidder in respect of **Tender No.……...**for…….. *(insert tender title/ description)* for…….. *(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

…… …… ……
(Title) (Signature) (Date)

Bidder's Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I, ……. of P. O. Box.....being a resident of ……... in the Republic of ……... do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of……..... ……..... *(insert name of the Company)* who is a Bidder in respect of **Tender No. ……..** for ……... *(insert tender title/description)* for …… *(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of……..*(insert name of the Procuring entity)* which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of……..*(name of the procuring entity).*

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender

5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

…… …… ……
(Title) (Signature) (Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I ..... (person) on behalf of ***(Name of the Business/ Company/Firm***) .....declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal activities in Kenya and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory…….....…….…….

Sign…….....

Position …….....……

Office address…….....……. Telephone…….

E-mail…….....……

Name of the Firm/Company …….....……

Date …….....…

(Company Seal/ Rubber Stamp where applicable) Witness

Name …….

Sign…….....……

Date…….....……

7 APPENDIX 1 - FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act, 2015 (the Act) and the Public Procurement and Asset Regulations, 2020 (the Regulations) and any other relevant Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

2. Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Section 66 of the Act describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

i) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;

ii) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;

iii) Without limiting the generality of the subsection (1) and (2), the person shall be:-

   a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or

   b) if a contract has already been entered into with the person, the contract shall be voidable;

iv) The voiding of a contract by the procuring entity under subsection(7) does not limit any legal remedy the procuring entity may have;

v) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—

   a) Shall not take part in the procurement proceedings;

   b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

   c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

vi) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;

vii) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

a) Defines broadly, for the purposes of the above provisions, the terms:

   i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

v) "obstructive practice" is:

1) Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

2) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

(b) Defines more specifically, in accordance with the Act, provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

(c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(d) Pursuant to the Act and the Regulations, the Procuring Entity may recommend to PPRA for sanctioning and debarment of a firm or individual, as applicable under the Act and the Regulations;

(e) Requires that a clause be included in the tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2] all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

(f) Pursuant to Section 62 of the Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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[1] *For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.*

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, throughtheappropriatemechanisms.Suchactivityincludesbutisnotlimitedto:accessingandexaminingafirm'sorindividual'sfinancial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

8. Form TECH – Attachment to the Technical Proposal Description of the Methodology and Work Plan

[in accordance with ITT 13.1]

i) Detailed Work Plan
[Procuring Entity to insert more specific requirements, if any, for this section]

ii) Detailed Staffing Plan
[Procuring Entity to insert more specific requirements, if any, for this section]

9. **Form ELI 1.1**

Tenderer Information Sheet

Date: _____

ITT No.: _____

1. Tenderer's Legal Name
2. In case of JV, legal name of each party:
3. Tenderer's actual or intended Country of Registration:
4. Tenderer's Year of Registration:
5. Tenderer's Legal Address in Country of Registration:
6. Tenderer's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: Articles of Incorporation or Registration of tenderer named in 1, above, in accordance with ITT 4.1 and ITT 4.4. In case of JV, Form of intent to form JV including a draft agreement, or JV agreement, in accordance with ITT 4.1 and ITT 12. In case of state-owned enterprise or institution from the Kenya, documents establishing legal and financial autonomy and compliance with the principles of commercial law, and is not under the supervision of the Procuring Entity in accordance with ITT 4.6.

Please note that a written authorization needs to be attached to this sheet as required by ITT 21.3

10. Form ELI 1.2

Party to JV Information Sheet

Date:_____

ITT No.: _____

1. Tenderer's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration:
4. JV's Party Year of Registration:
5. JV's Party Legal Address in Country of Registration:
6. JV's Party Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: Articles of Incorporation or Registration of tenderer named in 1, above, in accordance with ITT 4.1 and ITT 4.4. In case of state-owned enterprise or institution from the Kenya, documents establishing legal and financial autonomy and compliance with the principles of commercial law and is not under the supervision of the Procuring Entity, in accordance with ITT 4.7.

11. FORM CCC-CURRENT CONTRACT COMMITMENTS/WORKS IN PROGRESS

Tenderers and each partner to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a Form of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Name of contract	**Procuring Entity, contact address/tel/fax**	**Value of outstanding work (current US$ equivalent)**	**Estimated completion date**	**Average monthly invoicing over last six months (US$/month)**
1.				
2.				
3.				
4.				
5.				
etc.				

12. Form FIN 3.3- Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contractor contracts as indicated in Section III, Evaluation and Qualification Criteria

Source of financing	**Amount (currency)**
1.	
2.	
3.	
4.	

13. Form EQU- Contractor's Equipment

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to perform the contract. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment ☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

14. Form PER -1- Proposed Personnel

Tenderers should provide the names of suitably qualified personnel to perform the contract. The data on their experience should be supplied using the Form below for each candidate.

Procuring Entity shall complete columns 2 and 3. Tender shall complete columns 4 and provide CVs.

1	2	3	4	5
S/N	**Title of personnel**	**Key qualification**	**Name proposed by Tenderer**	**Qualification**
1.				
2.				
3.				
4.				
5.				
6.				

15. FORM PER - 2 - RESUME OF PROPOSED PERSONNEL

Name of Tenderer

Position		
Personnel information	**Name**	**Date of birth**
	Professional qualifications	
Present employment	**Name of Procuring Entity**	
	Address of Procuring Entity	
	Telephone	**Contact (manager / personnel officer)**
	Fax	**E-mail**
	Job title	**Years with present Procuring Entity**

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience

16. FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]

Beneficiary:_____

Request for Tenders No:_____

Date:_____

TENDER GUARANTEE No.:_____

Guarantor: _____

1. We have been informed that_____(herein after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (herein after called" the Tender") for the execution of_____ under Request for Tenders No._____(“the ITT”).

2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____(_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

(a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Applicant; or

b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provide by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

_____

[signature(s)]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: _____

1. Whereas …… [*Name of the tenderer]* (Herein after called "the tenderer") has submitted its tender dated …… [*Date of submission of tender]* for the …… *[Name and/or description of the tender]* (Herein after called "the Tender") for the execution of under Request for Tenders No._____("the ITT").

2. KNOW ALL PEOPLE by these presents that WE …… of …… [**Name of Insurance Company**] having our registered office at …… (Herein after called "the Guarantor"), are bound unto …….. [*Name of Procuring Entity*] (hereinafter called "the Procuring Entity") in the sum of …… (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

   Sealed with the Common Seal of the said Guarantor this ___day of _____ 20 __.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:

   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or

   b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

   then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii)twenty-eight days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

_____	_____
[Date]	*[Signature of the Guarantor]*
_____	_____
[Witness]	*[Seal]*

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

17. TENDER - SECURING DECLARATION FORM {r 46 and 155 (2)}

[The Bidder shall complete this Form in accordance with the instructions indicated]

Date: ..... *[Insert date (as day, month and year) of Tender Submission]*

Tender No.: ..... *[Insert number of tendering process]*

To: ..... *[Insert complete name of Purchaser]*

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation (s) under the bid conditions, because we–(a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
   a) Our receipt of a copy of your notification of the name of the successful Tenderer ; or
   b) thirty days after the expiration of our Tender.

4. I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: ……..……..

Capacity / title (director or partner or sole proprietor, etc.) …….…….

Name: …….. Duly authorized to

sign the bid for and on behalf of: .....*[insert complete name of Tenderer]* Dated

on……. day of…….…… *[Insert date of signing]*

Seal or stamp

18. FORM OF TENDER – FINANCIAL PROPOSAL FORM

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE

DOCUMENT Place this Form of Tender - Financial Proposal in the second envelope marked "FINANCIAL

PROPOSAL".

The Tenderer must prepare the Form of Tender- Financial Proposal on stationery with its Form head clearly showing the Tenderer's complete name and business address.

Note: *All italicized text is to help Tenderers in preparing this form.*

Date of this Tender submission: ..... *[insert date (as day, month and year) of Tender submission]*

Invitation to Tender No.: **.....***[insert identification]*

To: ..... *[insert complete name of Procuring Entity]* We, the under signed Tenderer, hereby

submit the second part of our Tender, the Financial Proposal in submitting our Financial Proposal, we make the

following additional declarations:

(a) **Tender Validity Period**: Our Tender shall be valid for the period specified in TDS 20.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 23.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(b) **Total Price:** The total price of our Tender (as indicated in our detailed price schedule), excluding any discounts offered in item (c) below is: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*.

(c) **Discounts:** The discounts offered and the methodology for their application are:

i) The discounts offered are:*[Specify in detail each discount offered]*

ii) The exact method of calculations to determine the net price after application of discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts];*

(d) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: [*insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity*].

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

(e) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed.

Name of the Tenderer: **[insert complete name of the Tenderer]*

Name of the person duly authorized to sign the Tender on behalf of the Tenderer: ** *[insert complete name of person duly authorized to sign the Tender]*

Title of the person signing the Tender: *[insert complete title of the person signing the Tender]*

Signature of the person named above: *[insert signature of person whose name and capacity are shown above]* **Date signed**..... *[insert date of signing]* **day of** *[insert month], [insert year]*

*: In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as Tenderer.

**: Person signing the Tender shall have the power of attorney given by the Tenderer. The power of attorney shall be attached with the Tender Schedules.

19 DETAILED PRICE SCHEDULE

[Form provided as sample only– Procuring Entity may change as necessary.

Contractor's/Service Provider's detailed Remuneration

	COST ITEM			
1.	**Staff/personnel costs**			
2.	**Reimbursable costs**			
3	**Equipment costs**			
4	Insurance			
5	ETC.			
	Total Cost of the Financial Proposal			

PART 2 - SERVICES' REQUIREMENTS

Terms of Reference For

REQUEST FOR PROPOSAL FOR PROVISION OF CONSULTANCY SERVICES FOR COMMUNICATION, BRAND MONITORING AND MEDIA MANAGEMENT

1. INTRODUCTION

The Authority Brand continues to shine and faces eminent threat as does any brand whose success in the market is evident. There is need, therefore, to maintain the brand by riding on the services of a media management consultant. This consultant will lead in tacit planning and execution of a sound media strategy so as to ensure that the Authority Brand and image remain intact. This deliberate effort will ensure that any threat to the Brand is minimized.

2. BACKGROUND

Since inception, in 2008, the Authority has curved a niche of excellence among her peers in government, both in the Ministry of Roads and Transport and other Semi-Autonomous Government Agencies (SAGAs).

Despite the relative young age, the Authority has established her role as a key enabler of the economy, a major catalyst for economic growth, and the platform on which devolution benefits have trickled down to the 47 counties in the country. The Authority also boasts as a key connecting link between Kenya and her neighbours and across the continent. Such is the success story of the Authority that there is no county today that has not benefited from the excellence in road construction and maintenance by the Authority.

The Authority Brand is generally held in high regard. Evidently, the Authority was recently awarded the best performing engineering agency in Kenya by the Institute of Engineers of Kenya (IEK).

a) THREATS

The success story of the Authority is bound to attract negative perception and peer jealous both locally and internationally. Further exposure follows the perception that the Authority is a fairly liquid parastatal with substantial support from development partners.

Nonetheless, the role of the Authority remains to provide a framework, a bridge, and a path, through which funds budgeted for the road sector are utilized and laid out within the confines of the attendant laws.

Over time, however, a cross-section of stakeholders have used the media to create varied perceptions around the pricing of goods and services of the Authority. Key among these is the cost of construction of roads per kilometer, which has been distorted and in the process creating a fertile ground for negative energy.

b) PROJECTS

The mandate of the Authority stretches across the country. However, there could arise allegations regarding project implementation being skewed towards certain regions in what would be perceived as unfair distribution of resources. This is rife especially now that the country is entering into an electioneering period. Although such a perception may be erroneous, the issue would easily stick out and affect the execution of the mandate of the Authority.

c) ROAD MAINTENANCE

Over time, more and more kilometres of road have been handed over to the Authority. However, these roads have not come with the requisite maintenance budget. This has left the Authority struggling in terms of prioritization of maintenance works. This has been another issue of concern.
Further, roads domiciled at other agencies have erroneously been tagged to the Authority, leading to unfair criticism. Nevertheless, through inter-agency cooperation, the consultant brought on board will ensure all issues raised by the public are addressed without pointing out to them under whose jurisdiction the project is.

d) AXLE LOAD

Transporters promises to put on a sustained fight in a bid to evade the axle load net. This includes a proposal to only weight trucks at the exit point from the point and at the boarder exits. This will expose the roads more and some culprits often load and offload luggage mid-way after and before the said weighing stations.
Another new challenge here is the transportation of illicit goods and drugs concealed as other products such as construction materials. This is likely to paint the Authority in bad light. The consultant should, therefore, clearly elaborate what aspects Axle Load deals with so that other relevant agencies handle tasks in their docket.

e) PROJECT COMPLETION AND MANAGEMENT

Absence of sufficient information regarding project completion and management has, in the past, offered fodder for skewed reporting. This, often, culminates into allegations of misappropriation of funds and graft. There is need for consistent sharing of information about the project status and the challenges encountered to avoid any negative publicity due to insufficient information sharing.

3. TERMS OF REFERENCE (ToRs)

The Communication Consultant will be responsible for the following tasks:

i. Undertake daily media monitoring
ii. Develop weekly social media engagement campaigns
iii. Undertake monthly mainstream media engagement
iv. Prepare media packs and fact sheets to be used in key events
v. Schedule quarterly project media briefing
vi. Undertake annual stakeholder engagement and management initiative
vii. Assist in the coordination of responses and statements to Parliamentary questions in liaison with relevant Directorates
viii. Coordinate attendance to Parliament Committee Sessions by top management.
ix. Continuously communicate the mission, vision, and mandate of the Authority in a way that is relatable to her audiences.
x. Response to negative media publicity as need arises

4. TIMELINE:

The consultancy will be undertaken for a period of two years, renewable after the initial 12 months subject to satisfactory performance.
The consultant will be sharing progress report after every two months to support payment.

5. TEAM COMPOSITION, QUALIFICATION AND EXPERIENCE REQUIREMENTS FOR THE KEY EXPERTS

The firm shall deploy key professional personnel with appropriate professional qualifications and suitable experience required for the consultancy assignment as described in the tender documents.

6. CONTRACT PERIOD

The consultant will be expected to complete the exercise within 12 Months upon receipt of the signed contract. This could be extended for a further 12 months subject to satisfactory performance

7. INDEPENDENCE AND CONFIDENTIALITY

The Consultant must maintain independence and impartiality throughout the consultancy services. Confidentiality of consultancy services must be always upheld.

8. TAXES AND DUTIES

The consultant shall be liable to pay all duties and taxes in connection with this assignment including VAT and other tax payables under the Laws of Kenya. No tax or duty exemption shall be given to the consultant. The consultant shall be deemed to have taken the above into consideration while preparing his financial proposal.

9. WORK SCHEDULE

The consultant shall propose a schedule of activities and corresponding deployment of manpower, which will ensure that all duties entrusted to him/her, will be adequately performed. This schedule, together with a comprehensive statement justifying the proposed deployment will be incorporated in the methodology statement.

10. PAYMENTS

The payment scheduled for the winning bidder is proposed as follows:

a) Payment of **10%** of the **12-month** contract sum upon submission of the Bank Guarantee and Professional Indemnity.

b) Payment of **10%** of the **12-month** contract sum upon submission of the Inception Report to the Corporate Communications Department.

c) Payment of the remaining sum to be spread into equal instalments after every two months from inception of the contract and upon delivery of the agreed upon deliverables.

CONCLUSION

It is evident that the Authority has mega turnkey projects that need maximum attention. Some of the projects are donor supported. Such investors would shy away would the KeNHA Brand be negatively embroiled in any issue. This explains the need for the Authority to engage an external media consultant who, however, must have an implicit understanding of the Authority and the Brand.

SECTION V - SCHEDULES OF SERVICES REQUIREMENTS

[This Section includes the various schedules that comprise the contract specific Management Services requirements, completed by the Procuring Entity as appropriate.]

Schedule A: Recitals and Objectives

A.1 Recitals
[Insert Background and Context – See Section VI, General Conditions, Sub-Clause 1.6]

A.2 Objectives
[Insert Objectives – See Section VI, General Conditions, Sub-Clause 1.6]

Schedule B: Services

Table 1: Services

Services	**Pre-Conditions**
[List services as required including: ▪ *General management of the utility* ▪ *Specific Services such as* *(i) Improving billing system* *(i) Developing maintenance plans* *(ii) Managing network extensions* *(iii) Managing meter installations* *(iv) Etc.]*	*[For each service, list key complementary inputs, such as loans, capital costs, Government decisions, on which it depends]*

Schedule C: Knowledge Transfer and Training

C.1 Knowledge and systems to be transferred
C.2 Software, systems, and manuals to be left at the end of the contract
C.3 Training program required

Schedule D: Performance Targets

Table 2: Performance Targets

	Periods			
Performance Targets		*[Insert target value for each period]*		
[Insert indicative Services Requirements to be used]				

Schedule E: Contractor's Personnel

[List positions and Key Staff members and Key Subcontractor.]

[Specify Substitution Fee for Key Staff and Key Subcontractor. See Section VI, General Conditions, Sub-Clauses 3.6 and 8.2. The Substitution fee should be high enough to deter changes, but not so large as to seem punitive to the Contractor.]

Schedule F: Specified Capital Works and Finance

[Specify any Capital Works the Contractors is to manage, and its role.]
[Specify any Finance the Contract Services Requirements is to procure, and its role. See Section VI, General Conditions, Clause 9.]
[When the Contractor is to be responsible for sourcing, negotiating, and otherwise procuring finance for the Utility, these obligations need to be thoroughly spelled out.

Schedule G: Contractor's Remuneration
[See Section VI, General Conditions, Sub-Clause 12.1.]

G.1 Contractor's Base Remuneration
Table 3: Base Remuneration

Period					
Amount Currency Units					

[List Base Remuneration to be paid in each period or delete above and describe alternative basis for Base Remuneration payments, e.g., on basis of staff inputs times unit rates]

G.2 Contractor's Incentive Remuneration

[Insert here amount to be paid for achieving performance targets in schedule D]

G.3 Contractor's Capital Works Remuneration

[Insert remuneration for managing Capital Works. See Section VI, General Conditions, Sub-Clause 9.2]

G.4 Contractor's Sourcing of Finance Remuneration

[Insert any remuneration for managing finance raising. See Section VI, General Conditions, Sub-Clause 9.3]

G.5 Contractor's Other Remuneration

[Insert any other remuneration to be paid]

G.6 Payment Terms

*[**Payment maybe made monthly subject to milestone (s) as agreed by both parties**.]*

G.7 Advance Payments

Amount of Advance Payment **_____None**__

[*Should generally be enough to cover Contractor's expected mobilization costs. See Technical Note, Section 4.8.3*]

[Insert here rules for repaying advance payment, for example by deductions from Base Remuneration payments. See Section VI, General Conditions, Sub-Clause 12.2]

G.8 Rate for Delayed Payments

[Insert here – see Section VI, General Conditions, Sub-Clause 12.3]

G.9 Adjustment of Remuneration

*[*Note: In order to adjust the remuneration inflation, a price adjustment provision should be included here if the contract has duration of more than _____ (say 18 months).

The inflation shall be _____ % of the contract price every 12 months after the date of signing/starting the contract.

Payments for remuneration made in accordance with Section VIII, General Conditions, Clause 12.1 in *foreign and/or local* currency as the case may be.

Schedule H: Procurement Rules

[Insert in this Schedule any specific procurement rules the Contractor is to observe. See Section VIII, General Conditions, Sub-Clause 9.4].

The Rules to be followed shall be those set out in the Public Procurement and Disposal Act 2015 of the Laws of Kenya.

Schedule I: Delegation of Management Authority

Table 4: Delegation of Management Authority

Delegations	**Limits**
Delegated power to manage Utility Personnel *[List here delegated powers if any]* Delegated power to commit Utility to expenditure *[List here delegated powers if any]* Delegated power to commit Utility to borrowing *[List here delegated powers if any]* Delegated power to enter contracts *[List here delegated powers if any]* Any other delegated power [List here delegated powers if any]	*[List here limits or controls on each delegated power]*

Schedule J: Financial Management of the Utility

[Specify here how to deal with cash shortfall and other Utility financial management issues- See Section VI, General Conditions, Sub-Clause 12.6]

Schedule K: Reporting Requirements

[Insert reports either Party is to produce including contents, deadlines and formats. See Section VI, General Conditions, Clauses 10 and 14.]

Schedule L: Utility Personnel Retrenchment

[Enter here any limits on retrenchment, or any retrenchment plan which is to be implemented. See Section VI, General Conditions, Sub-Clause 11.7]

Schedule M: Insurance Required

Table 5: Insurance Required

Risk	**Insuring Party**	**Amount per occurrence**	**Minimum Total Limit**	**Detailed description of risk**
Protection of Contractor's Personnel				
Professional Indemnity				
Public Liability				
More Services Requirements Vehicle				

Schedule M: Insurance Required (continued)

Periods for submission of insurance: (a) evidence of insurance. (b) relevant policies	*[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 28 days.]* _____days _____days
Maximum amount of deductibles for insurance of the Procuring Entity's risks	*[Insert maximum amount of deductibles]*

Schedule N: Extension and Subsequent Tendering

[See Section VI, General Conditions, Sub-Clause 19.5]

PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VI - GENERAL CONDITIONS OF CONTRACT

1. Definition and Interpretation

1.1 Definitions

In the Contract the following words and expressions shall have the meanings stated below, unless otherwise required by the context.

1.1.1 The Contract

d) "Contract" means the General Conditions, the Particular Conditions which include Part A and Part B, the Form of Acceptance, the Form of Tender, the Schedules, and any Addenda.

e) "Particular Conditions of Contract" means the pages completed by the Procuring Entity to elaborate on General Conditions of Contract.

f) "Form of Acceptance" means the Form of formal acceptance, signed by the Procuring Entity, of the Form of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such Form of acceptance, the expression "Form of Acceptance" means the Contract Agreement and the date of issuing or receiving the Form of Acceptance means the date of signing the Contract Agreement.

g) "Form of Tender" means the document entitled Form of Tender, which was completed by the Contractor and includes the signed offer to the Procuring Entity for the Services.

h) "Schedules" means the documents entitled Schedule of Services Requirements, included in Section V of the tendering document used to award the Contract.

i) "Tender" means the Form of Tender.

1.1.2 Parties and Persons

(a) "Contractor" means the person(s) named as contractor in the Form of Tender and the legal successors in title to this person(s).

(b) "Personnel" means the Representative and all personnel whom the Contractor utilizes on the Facilities, who may include the staff, labor and other employees of the Contractor and of each Sub-Contractor (including Key Subcontractor); and any other personnel assisting the Contractor in the execution of the Services.

(c) "Representative" means the person named by the Contractor in the Contractor appointed from time to time by the Contractor under Sub-Clause 3.2 [Contractors Representative], who acts on behalf of the Contractor.

(d) "Procuring Entity" means the agency/body named as Procuring Entity in the Special Conditions of Contract (SCC) and the legal successors in title to this person.

(e) "Procuring Entity's Representative" means the person named by the Procuring Entity in accordance with Sub-Clause 3.3 (a) to represent and act for the Procuring Entity at all times during the performance of the Contract.

(f) "Procuring Entity's Personnel" means all staff employed by the Procuring Entity.

(g) "Government" means the Government of Kenya.

(h) "Independent Expert" means the person appointed in accordance with Sub-Clause 20.1.2 [Independent Expert].

(i) "Key Staff" means those individuals listed as Key Staff in the Tender, or any person appointed, with the agreement of the Procuring Entity, as a Key Staff, for a part of the Services; and the legal successors in title to each of these persons.

(j) “Key Subcontractors” means those Sub Contractors listed as Key Sub Contractors in the Tender, or any person appointed, with the agreement of the Procuring Entity, as a Key Subcontractor, for a part of the Services; and the legal successors in title to each of these persons.

(k) “Party” means the Procuring Entity or the Contractor, as the context requires, and “Parties” means both.

(l) “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Services; and the legal successors in title to each of these persons.

(m) “Third Party” means a person or an entity other than a Party, the Utility, the Utility Board, or the Government.

(n) “Utility” means the utility (if any) named in the Particular Conditions of Contract.

(o) “Utility Board” means the Board or other body with governance and management supervision responsibilities over the Utility specified in the Special Conditions of Contract pursuant to Sub-Clause 1.1.2.

(p) Public Procurement Authority (PPRA) means the statutory the Government agency charged with oversight of public procurement functions.

1.1.3 Dates, Tests, Periods and Completion

(a) “Base Date” means the date 28 days prior to the latest date for submission of the Tender.

(b) “Commencement Date” means the date defined under Sub-Clause 2.2 [Commencement].

(c) “Day” means a calendar day and “year” means 365 days.

(d) “Effective Date” has the meaning given in Sub-Clause 2.1 [Conditions of Effectiveness].

1.1.4 Money and Payments

i. “Contractor's Account” means the account defined in Sub-Clause 12.5.1.

ii. “Contractor's Base Remuneration” means the Remuneration specified in Schedule G to be the Contractor's Base Remuneration, or is no such amount is specified, the amount of the Contractor's Remuneration which is not dependent on meeting Performance Targets.

iii. “Contractor's Remuneration” means the price defined in Clause 12.1 [Contractor's Remuneration], and includes adjustments in accordance with the Contract.

iv. “Cost” means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Facilities, including overhead and similar charges, but does not include profit.

v. “Foreign Currency” means a currency in which part (or all) of the Contract is payable, but not the Kenya shilling.

vi. “Liquidated Damages on Termination for the Procuring Entity's Convenience” means the amount specified in the Special Conditions of Contract pursuant to Sub-Clause 21.10 (f) (i) to be payable in the event of Termination by the Procuring Entity for Convenience pursuant to Sub-Clauses 21.5 and 21.8.

vii. “Local Currency” means Kenya shillings.

viii. “Utility's Account” means paid for the by the Utility, as defined in Sub-Clause 12.6.1.

1.1.5 Services and Goods

(a) “Contractor's Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Services and the remedying of any defects. But excludes Procuring Entity's

Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Facilities.

(b) "Goods" means Contractor's Equipment, Materials, Plant, or any of them as appropriate.

(c) "Services" has the meaning given in Clause 4.1 [Services to be Performed and Other Obligations].

1.1.6 Fraud and Corruption

The Procuring Entity requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

1.1.7 Other Definitions

(a) "Arbitration" means the process described as arbitration in Sub-Clause 20.1.4 [Arbitration].

(b) "Capital Works" means construction work or the procurement and installation of capital equipment intended to extend, rehabilitate or replace the Facilities.

(c) "Condition Precedent" means one of the Conditions of Effectiveness listed in Sub-Clause 2.1 [Conditions of Effectiveness].

(d) "Contractor's Documents" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

(e) "Country" means the country in which the Facilities (or most of it) is located, where the Services are to be executed.

(f) "Cure Period" means, in respect of a Default Notice given to the Contract or under Sub-Clause 21.1 [Notification and Cure Plans], the period specified in the Default Notice (or if no such period is specified 10 Business Days from the date of the Default Notice) as varied or extended under Sub-Clause 21.2 [Remedying the Default with in the Applicable Cure Period].

(g) "Default" means a failure by a Party to perform its obligations under the Contract.

(h) "Delegation of Management Authority" means the delegation to the Contractor of authority to manage the Facilities and the Utility which is granted under Clause11 [Delegation of Management Authority to the Contractor].

(i) "Pre-Conditions" means something the Procuring Entity, the Utility or a third party shall door provide, on which performance of the Service is contingent, and which is listed as a dependency in Schedule B.

(j) "Procuring Entity's Equipment" means the apparatus, machinery and vehicles (if any) made available by the Procuring Entity for the use of the Contractor in the execution of the Services, as stated in the Specification; but does not include Plant which has not been taken over by the Procuring Entity.

(k) "Facilities" means all assets of the Procuring Entity which are to be managed by the Contractor, and any other places as may be specified in the Contract as forming part of the Facilities.

(l) "Force Majeure" is defined in Sub-Clause 17.1 [Definition of Force Majeure].

(m) "Laws" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by- laws of any legally constituted public authority.

(n) "Objectives" has the meaning given under Sub-Clause 1.6.2 [Objectives].

(o) "Performance Security" means the security (or securities, if any) under Sub-Clause 16.3 [Performance Security].

(p) "Proposed Substitute Key Staff Member or Key Sub-Contractor" have the meaning given in Sub-Clause8.2 [Substitution of Contractor's Key Staff Member or Key Sub-Contractor].

(q)"Recitals" has the meaning given under Sub-Clause 1.6.1 [Recitals].

(r) "Specified Capital Works" means Capital Works which are the responsibility of the Contractor under Sub-Clause 9.2 [Responsibilities for Specified Capital Works].

(s) "Substitution Fee" is the amount to be paid by the Procuring Entity for substituting another person in place of a Key Staff Member or Key Sub-Contractor, in accordance with Sub-Clause 8.2 [Substitution of Contractor's Key Staff Member or Key Sub-Contractor].

(t) "Unforeseeable" means not reasonably foreseeable and against which adequate preventive precautions could not reasonably be taken by an experienced Contractors by the date for submission of the Tender.

(u)"Utility Capital Works" means Capital Works which are not Specified Capital Works.

(v)"Value Management Proposal" has the meaning given under Sub-Clause 19.2 [Value Management].

(w) "Variation" means any change to the Services, which is instructed or approved as a variation under Clause 19.1 [Procuring Entity Variations].

(x)"Variation Proposal" has the meaning given under Sub-Clause 19.1.1 [Decision on Procuring Entity's Variation Request].

(y)"Variation Request" has the meaning given under Sub-Clause 19.1 [Procuring Entity Variations].

1.2 Interpretation

1.2.1 In the Contract, except where the context requires otherwise:

(a) Words indicating one gender include all genders;

(b) words indicating the singular also include the plural and words indicating the plural also include the singular;

(c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;

(d)"written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;

(e) The word "Tender" is synonymous with "tender" and "Tenderer" with "tenderer" and "Tender Document" with "tendering document".

(f) the marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.3 Communications

1.3.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

(a) In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Particular Conditions of Contract; and

(b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Particular Conditions of Contract. However:

(c) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and

(d) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

1.3.2 Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.

When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Independent Expert, a copy shall be sent to the Procuring Entity's Representative or the other Party, as the case may be.

1.4 Law and Language

1.4.1 The Contract shall be governed by the law of Kenya. The ruling language of the Contract shall be English Language. The language for communications shall be English Language.

1.5 Priority of Documents

1.5.1 The documents forming the Contract (as attached hereto) are to be taken as mutually explanation Services Requirements of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

(a) The Contract Agreement (if any),

(b) The addenda Nos.(if any)

(c) The Form of Acceptance,

(d) The General Conditions,

(e) The Particular Conditions of Contract,

(f) The Schedules of Services Requirements

(g) The Form of Tender

1.5.2 If an ambiguity or discrepancy is found in the documents, the Independent Expert appointed in accordance with Sub-Clause 20.1.2 [Independent Expert] will rule as to the interpretation. This ruling will be binding, unless one of the Parties refers it to Arbitration with 30days of the ruling being given.

1.6 Recitals and Objectives

1.6.1 Recitals

The Recitals are the background facts about the Parties, the provision of utility services in the Country, and other facts and intentions set out in Schedule A (A.1).The Recitals are not legally binding, but may be used as context to assist in interpretation of the contract.

1.6.2 Objectives

The Objectives the Procuring Entity wishes to achieve by entering the Contract are set out in Schedule A (A.2)

2 Commencement and Duration

2.1 Conditions of Effectiveness

2.1.1 This Contract shall become effective from the date, or Effective Date, on which all the following Conditions of Effectiveness are fulfilled, except for Sub-Clause 2.1 [Conditions of Effectiveness], Sub-Clause 19.5 [Extension and Subsequent Tendering], and Clauses 1 [Definitions and Interpretations] and 3 [General Provisions], which become effective on the date of signature of the Form of Acceptance.

(a) If the Contractor is an unincorporated joint venture, notification to the Procuring Entity by the member of a joint venture of their leader, as required by Sub-Clause 3.9 [Joint and Several Liability]

(b) Notification of the Contractor's Representative to the Procuring Entity by the Contractor as required by Sub- Clause 3.2 [Contractor's Representative].

(c) Notification of the Procuring Entity's Representative to the Contractor by the Procuring Entity as required by Sub-Clause 3.3 [Procuring Entity's Representative].

(d) Appointment of the Independent Expert in accordance with Sub-Clause 20.1.2 [Independent Expert].

(e) Delivery of the Performance Security to the Procuring Entity by the Guarantor in accordance with Sub- Clause 16.3 [Performance Security].

(f) Other conditions **listed in the SCC.**

2.2 Commencement

2.2.1 Within (7) days of the satisfaction of the conditions specified in Sub-Clause 2.1 [Conditions of Effectiveness], the Procuring Entity shall issue the Certificate of Commencement to the Contractor. The date of issue of the Certificate of Commencement shall be the "Commencement Date".

2.2.2 The Contract shall commence the provision of the Services no later than 14 days after receipt of the Certificate of Commencement and the Procuring Entity shall return the Tender Security to the Contractor on such Date.

2.2.3 The Contractor and the Procuring Entity shall use their best efforts and endeavors to procure the satisfaction of the Conditions of Effectiveness specified in Sub-Clause 2.1 [Conditions of Effectiveness] as soon as practicable and in any event no later than sixty (60) days after the date hereof.

2.2.4 If the conditions specified in Sub-Clause 2.1 [Conditions of Effectiveness] are not fulfilled or waived by mutual agreement of the Parties within ninety (90) days of the date hereof, each Party shall have the right to terminate this Contract immediately and neither Party hereto shall be liable to the other for any damages or losses in respect thereof, except that if the Contractor has intentionally failed to fulfill any of these conditions, the Contractor shall forfeit the Tender Security.

2.3 Duration

2.3.1 Unless terminated earlier in accordance with Clause 21 [Default and Termination], this Contract shall remain in effect until the period **stated in the SCC** has passed after the Commencement Date.

3. General Provisions

3.1 Assignment

3.1.1 Neither Party shall assign the whole or any part of the Contractor any benefit or interest in or under the Contract. However, either Party:

(a) May assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and

(b) may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

3.2 Contractor's Representative

3.2.1 The Contractor shall appoint a Contractor' Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract. If the Contractor is an unincorporated Joint Venture, the Contractor's Representative shall have the authority to bind all members of the Joint Venture.

3.2.2 The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Procuring Entity Representative has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

3.2.3 The Contractor's Representative shall be fluent in the English language for communications defined in Sub-Clause 1.4 [Law and Language]. If these other persons are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Procuring Entity's Representative.

3.3 Procuring Entity's Representative

(a) The Procuring Entity shall name its representative before the Effective Date.

(b) The Procuring Entity may change its representative from time to time and shall give notice of the change without delay. The Procuring Entity shall not change its representative at a time and in such a manner as to impede the progress of the Services.

(c) The Procuring Entity's Representative shall represent and act for the Procuring Entity at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and

all other communications under the Contract by the Procuring Entity shall be given by the Procuring Entity's Representative otherwise provided.

3.4 Communications by the Contractor

3.4.1 All notices, instructions, information and other communications given by the Contractor to the Procuring Entity under the Contract shall be given to the Procuring Entity's Representative (referred to as Project Manager) except as herein otherwise provided.

3.5 Sub-Contractor

3.5.1 The Contractor shall not subcontract the whole of the Services. The Contractor shall be responsible for the acts or defaults of any Sub-Contractor, his agents or employees, as if they were the acts or defaults of the Contractor. **Unless otherwise stated in the SCC**:

(a) The Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Sub-Contractor is named in the Contract;

(b) the prior consent of the Procuring Entity's Representative shall be obtained to other proposed Sub-Contractor;

(c) the Contractor shall give the Procuring Entity's Representative not less than 28 days' notice of the intended date of the commencement of each Sub-Contractor's work, and of the commencement of such work on the Facilities; and

(d) each subcontract shall include provisions which would entitle the Procuring Entity to require the subcontract to be assigned to the Procuring Entity under Sub-Clause 3.7 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 21.5 [Termination by Procuring Entity for Convenience].

3.5.2 The Contractor shall ensure that the requirements imposed on the Contract by Sub-Clause 0 [Confidentiality Obligations of the Contractor] apply equally to each Sub Contractor. Where practicable, the Contractor shall give fair and reasonable opportunity for Contractor from Kenya to be appointed as Sub Contractor.

3.6 Key Sub-Contractor

3.6.1 The Contractor shall use the services of any Key Sub Contractor specified in its Tender, unless the Procuring Entity is reasonably satisfied that the:

(a) The Key Sub Contractor is not available; or

(b) The performance of the Services will not suffer if the Sub Contractor is not used. The Contractor may provide another person (the “Proposed Substitute Key Sub Contractor”) in substitution for a Key Sub Contractor (as identified in Schedule E) only on fulfillment of the following conditions:

(c) Proving to the reasonable satisfaction of the Procuring Entity that the Key Sub Contractor is not available;

(d) Proving to the reasonable satisfaction of the Procuring Entity that the Proposed Substitute Key Sub Contractor is as suitable for the services as the Key Sub Contractor that is not available.

(e) Payment by the Contractor of a Substitution Fee of the amount specified in Schedule E.

3.7 Assignment of Benefit of Subcontract

3.7.1 If a Sub Contractor's obligations extend beyond the expiry date of the Contract and the Procuring Entity, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Procuring Entity, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Procuring Entity for the work carried out by the Sub Contractor after the assignment takes effect.

3.8 Compliance with Laws

3.8.1 The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in

the Particular Conditions of Contract:

(a) the Procuring Entity shall have obtained (or shall obtain) the planning, zoning, resource abstraction, environmental discharge permission for the normal operation of the Facilities, and the Procuring Entity shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and

(b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and completion of the Services in so far as these relate to the Services themselves and not to the operation of the Facilities, and the Contractor shall indemnify and hold the Procuring Entity harmless against and from the consequences of any failure to do so.

3.9 Joint and Several Liability

3.9.1 If the Contractor constitutes (under applicable Laws) a Joint Venture of two or more persons:

a) These persons shall be deemed to be jointly and severally liable to the Procuring Entity for the performance of the Contract;

b) These persons shall notify the Procuring Entity of their leader who shall have authority to bind the Contractor and each of these persons; and

c) the Contractor shall not alter its composition or legal status without the prior consent of the Procuring Entity.

3.10 Inspections and Audit by the PPRA

3.10.1 The Contractor shall keep, and shall make all reasonable efforts to cause its Sub Contractor and sub-consultants to keep, accurate and systematic accounts and records in respect of the Services in such form and details as will clearly identify relevant time changes and costs.

3.10.2 The Pursuant to paragraph 2.2 e. of Appendix to the General Conditions the Contractor shall permit and shall cause its sub-Contractor and sub-consultants to permit, the PPRA and/or persons appointed by the PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Contractor and its Sub Contractors and sub-consultants' attention is drawn to Sub-Clause1.1.6 which provides, inter-alia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the PPRA's prevailing sanctions procedures).

4. Obligations of the Contractor

4.1 Services to be Performed and Other Obligations

The Contractor shall perform the Services set out in Schedule B–Services and the other obligations described in Clauses 4, 5, 6, 7, 8, and 9.

4.2 Pre-Conditions

The performance by the Managing Contractor of its obligations under the Contract shall be contingent on the availability of the Pre-Conditions listed in Schedule B.

4.3 Non-Availability of the Pre-Conditions

4.3.1 Unless Schedule B provides a different mechanism for determining the implications of non-availability of the Services, in the event that any of the Pre-Conditions pursuant to Sub-Clause 4.2 [Pre-Conditions] are not available to the extent that, in the opinion of the Independent Expert, the non-availability of such Pre-Conditions:

(a) Makes it unreasonable to expect the Contractor to perform some or all of the Services, the Contractor shall be relieved of its responsibilities to perform those services, or

(b) Affects the achievement of any of the Performance Targets, such Performance Targets shall be reduced for the duration for which the Pre-Conditions are not available to the extent that the Independent Expert determines at its sole discretion.

4.4 Cost of Performing the Services

The performance of the Services shall be at the cost of the Contractor, unless otherwise specified in Schedule B.

5. Conflict of Interest

5.1 General

The Contractor shall hold the Procuring Entity's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

5.2 Contractor not to benefit from commissions, discounts, etc.

(a) The payment of the Contractor pursuant to Sub-Clause 12.1 [Contractor's Remuneration] shall constitute the Contractor's only payment in connection with this Contract and, subject to Sub-Clause5.3 [Contractor and Affiliates not to Engage in Certain Activities] hereof, the Contractor shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contractor in the discharge of its obligations hereunder, and the Contractor shall use its best efforts to ensure that any Sub-Contractor, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.

(b) Furthermore, if the Contractor, as part of its obligations under the Contract, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, the Contractor shall comply with the applicable procurement regulations, and shall at all times exercise such responsibility in the Lowest interest of the Procuring Entity. Any discounts or commissions obtained by the Contractor in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.

5.3 Contractor and Affiliates not to engage in certain activities

The Contractor agrees that, during the term of this Contract and after its termination, the Contractor and any entity affiliated with the Contractor, as well as any Sub Contractor and any entity affiliated with such Sub Contractor, shall be disqualified from subsequently providing goods, works or services (other than consulting services) for a project resulting from or directly related to the Contractor' Services for the preparation or implementation of such project.

5.4 Prohibition of conflicting activities

The Contractor shall not engage, and shall cause its Personnel as well as their Sub-Contractor and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

6. Know-How Transfer and Training

6.1 Requirement to transfer know-how and systems

The Contractor shall:

(a) Transfer such know-how, management systems, manuals, utility management software and similar knowledge, tools and capacity for managing a utility as are specified in Schedule C.

(b) Leave with the Utility such, at the Termination or expiration of the Contract, management systems, manuals, utility management software and similar tools as are specified in Schedule C.

6.2 Requirement to provide training

The Contractor shall provide such training and development of Utility Personnel as is specified in Schedule C.

6.3 Cost of know-how transfer and training

The performance of the obligations under this Clause 5shall be at the cost of the Contractor, unless otherwise specified in Schedule C.

7. Performance Targets

The Performance Targets will be the targets for key Indicative Services Requirements set out in Schedule D. In performing the Services and exercising its Delegated Management Authority, the Contractor shall use its Lowest endeavors to achieve or exceed the Performance Targets. Achieving the Performance Targets is not to result in any additional remuneration to the Contractor, except to the extent specified in Schedule G (G.2).Failure to achieve the Performance Targets is not to result in any penalty, or create ground for termination of the Contract, except to the extent specified in Schedule C or Schedule G.

8. Staff to be Provided by the Contractor

8.1 Provision of Contractor' Personnel

The Contractor shall provide the Contractor's Personnel set out in Schedule E, to fill the positions listed in Schedule E, for the periods or days specified in Contractor' Personnel. All costs of providing the Staff specified in Schedule E are to be for the Contractor's Account, unless otherwise specified in Schedule E.

8.2 Substitution of Contractor' Key Staff Member or Key Subcontractor

8.2.1 The Contractor may provide another person (the "Proposed Substitute Key Staff Member" or "Proposed Substitute Key Subcontractor") in substitution for a Key Staff or a Key Subcontractor (as identified in Schedule E) only on fulfillment of the following conditions:

(a) Proving to the reasonable satisfaction of the Procuring Entity that the Key Staff Member or Key Subcontractor is not available because of ill-heath, death, or because he is no longer employed or subcontracted by the Contractor

(b) Proving to the reasonable satisfaction of the Procuring Entity that the Proposed Substitute Key Staff Member or Key Subcontractor is as suitable for the job as the Key Staff Member or Key Subcontractor who is not available. To satisfy itself as to the suitability of the Proposed Substitute Key Staff Member or Proposed Substitute Key Subcontractor, the Procuring Entity may, among other things:

i. check the references of the Proposed Substitute Key Staff Member or Proposed Key Subcontractor, and/or
ii. require the Proposed Substitute Key Staff Member or Proposed Substitute Key Subcontractor to attend an interview with the Procuring Entity. Any costs incurred in the Proposed Substitute Key Staff Member or Proposed Substitute Key Subcontractor attending the interview will be for the Contractor's Account.

(c) Payment by the Contractor of a Substitution Fee of the amount specified in Schedule E.

8.3 Labor Laws

8.3.1 The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, employment of children, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

8.4 Health and Safety

8.4.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel.

8.5 Contractor's Personnel Qualifications

8.5.1 The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Procuring Entity's Representative may require the Contractor to remove (or cause to be removed) from the Facilities or the performance of the Services, any Contractor's Personnel, including the Contractor's Representative if applicable, who:

(a) Persists in any misconduct or lack of care,

(b) Carries out duties in competently or negligently,

(c) Fails to conform with any provisions of the Contract, or

(d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment. If requested by the Procuring Entity, the Contractor shall then substitute the person removed with

another person. This substitution must be in accordance with Sub-Clause 8.2.

8.6 Foreign Personnel

8.6.1 The Contractor may bring into Kenya any foreign personnel who are necessary for the execution of the Services except for the categories of staff specified in **the SCC** that, in accordance with applicable Kenya Laws, must be hired locally if and to the extent that a sufficient number of appropriately qualified staff is locally available. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Procuring Entity will, if requested by the Contractor, use his Lowest endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel. The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in Kenya of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

9. Procurement and Management of Capital Works and Finance

9.1 Responsibility to Manage Utility Capital Works and Finance

9.1.1 Unless otherwise specified in Schedule F, the Contractor will not be directly responsible for Capital Works or sourcing finance, but will be responsible for managing the Utility Personnel responsible for these functions, to the extent that this is within the definition of Services to be performed, and the Delegation of Management Authority.

9.2 Responsibilities for Specified Capital Works

The Contractor will be responsible for designing, procuring, managing and supervising Capital Works to the extent set out in Schedule F. The cost of Specified Capital Works will be to the Utility's Account, unless otherwise specified in Schedule F. The Contractor will not receive any remuneration for discharging its responsibilities under this Sub-Clause 9.2, unless otherwise specified in Schedule G.

9.3 Responsibilities for Specified Finance

The Contractor will be responsible for sourcing, negotiating or otherwise procuring finance for the Utility as specified in Schedule F. The Contractor will not receive any remuneration for discharging its responsibilities under this Sub-Clause, unless otherwise specified in Schedule G.

9.4 Procurement Rules

9.4.1 Procurement for Utility operations

In discharging its responsibilities to procure, or manage the procurement of, materials, supplies and services for the operations of the Utility, the Contractor will follow good commercial practice designed to ensure fairness, transparency and value for money, including any specific procurement rules set out in Schedule H.

9.4.2 Procurement for Provision of the Services

The Contractors free to procure anything required for the provisions of Services as it wishes provided that:

a. This Contract was awarded competitively to the satisfaction of the Procuring Entity, and

b. The thing being procured is for the Contractor's Account. Except that if there are any provisions governing the procurement of things required for the provisions of the Services stated in Schedule H, the Contractor shall comply with those provisions.

9.4.3 Procurement for Utility Capital Works and Specified Capital Works

In discharging its responsibilities to procure, or manage the procurement of anything required for Utility Capital Works and Specified Capital Works, the Contractor will follow good commercial practice designed to ensure fairness, transparency and value for money, including any specific procurement rules set out in Schedule H.

10 Contractor's reporting

10.1 Contractor's reporting requirements

Unless otherwise stated in Schedule K, monthly progress reports shall be prepared by the Contractor and submitted to the Procuring Entity's Representative in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates. The Contractor shall comply with all other reporting requirements specified in Schedule K.

11 Delegation of Management Authority to the Contractor

11.1 Delegation of Management Authority

Regardless of the relationship and interdependency between the Utility Board and the Procuring Entity, as may be defined by the Utility's charter or other internal documents, for the purpose of this Contract, the Procuring Entity is the Party to the Contract and is deemed to act on behalf and with the authorization of the Utility Board. In this capacity, the Procuring Entity confers on the Contractor the Delegated Management Authority over the areas and to the in Schedule I**.** This delegation is irrevocable during the term of the Contract.

11.2 Contractor to be advisor on other management matters

(a) All management authority not explicitly delegated to the Contractors retained by the Procuring Entity. If in the Contractor's opinion it would be beneficial to the performance of the Services and achievement of the Objectives for such management authority to be exercised in a particular way, the Contractor shall advise the Procuring Entity of this, and provide reasons in writing. The Procuring Entity will give the Contractor written notice of its decision within the period **specified in the SCC**. If the Procuring Entity decides not to follow the Contractor's advice, it will give written reasons for its decision when it in forms the Contractor.

(b) The Contractor shall comply with the decisions of the Procuring Entity in management matters which are not the subject of Delegated Management Authority, to the extent that this is consistent with this Contract, and in particular with Schedule B, Schedule F, and Schedule H.

11.3 Further Delegation during the term of the Contract

The Procuring Entity may delegate further powers to the Contractor during the term of the Contract. Such further delegations are to be in writing. The delegations may be revocable or irrevocable, as specified in the delegation. Such delegations will be effective unless the Contractor refuses to accept the delegation. To be effective, such refusal must be given in writing within 30 days of receiving the notice of delegation.

11.4 Purpose of Exercise of Delegated Management Authority

The Contractor shall exercise any Delegated Management Authority to perform the Services and meet the Performance Targets, in accordance with good utility management practices.

11.5 Suspension of Delegated Management Authority

The delegation of powers shall be suspended during periods of Suspension of the Service, in accordance with Sub-Clause 18.2 [Procuring Entity's Entitlement to Suspend the Services and Delegated Management Authority].

11.6 Utility's Personnel

(a) The Utility's Personnel will continue to be employed by the Utility. They will not become employees of the Contractor by virtue of this Contract.

(b) The Contractor's Personnel will not be employees of the Utility by virtue of this Contract.

(c) The Contractor's power to manage the Utility's Personnel will be as set out in the delegation of management authority to the Contractor under this Clause.

11.7 Utility Personnel Retrenchment

Provisions related to staff retrenchment set out in Schedule L will be binding on the Parties.

12 Contractor's Remuneration and Costs

12.1 Contractor's Remuneration

12.1.1 Amount and conditions of payment-The amount and conditions of payment of the Contractor's Remuneration shall be as specified in Schedule G.
Responsibility for Payment-Payment of the Remuneration shall be the responsibility of the Procuring Entity, unless otherwise specified in Schedule G.

12.1.2 Payment to be made without penalty or deduction- The Remuneration shall be paid in full without penalty or deduction unless otherwise provided in Schedule G, or this Contract.

12.1.3 Dates for payment- The dates for payment of the Contractor's Remuneration shall be as specified in Schedule G.

12.1.4 Currencies of Payment - The Contractor's Remuneration shall be paid in the currency or currencies named in Schedule G.

12.1.5 Adjustment of Remuneration for Inflation - The Contractor's Remuneration shall be adjusted as stated in Schedule G.

12.2 Advance Payment

12.2.1 The Advance Payment or payment to the Contractor in advance of work done, if any, shall be as specified in Schedule G.

12.2.2 Any advance payment shall be paid as an interest-free loan for mobilization, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total Advance Payment, the number and timing of installments (if more than one), and the applicable currencies and proportions, shall be as stated in Schedule G.

12.2.3 The guarantee shall be in amounts and currencies equal to the Advance Payment. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) approved by the Procuring Entity, and shall be in the form annexed to the Particular Conditions or in another form approved by the Procuring Entity.

12.2.4 The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

12.2.5 Unless stated otherwise in Schedule G, the advance payment shall be repaid through equal percentage deductions from the Contractor's Base Remuneration.

12.2.6 If the advance payment has not been repaid prior to the Termination of the Contract, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Procuring Entity.

12.3 Delayed Payment

12.3.1 If the not receive payment in accordance with Sub-Clause 12.1 [Contractor's Remuneration], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment.

12.3.2 Unless otherwise stated in Schedule G, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the Central Bank of Kenya of the currency of payment, and shall be paid in such currency.

12.3.3 The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

12.4 Sufficiency of the Contractor's Remuneration

12.4.1 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the

Contractor's Remuneration, taking into account all available data, and fully understanding the Services to be provided, and the conditions in which the Services are to be performed.

12.5 Contractor's Costs and Account

12.5.1 Contractor' Account

An item which is expressed to be "for the Contractor's Account" shall be paid for by the Contractor from its own funds and not from the funds of the Procuring Entity or the Utility. The Contractor will be responsible for meeting the cost of items for the Contractor's Account whether or not the Contractor's Remuneration is sufficient to cover the cost, or whether or not the cost was anticipated, and whether or not the Contractor has the funds available.

12.6 Utility Financial Issues

12.6.1 Utility's Account

An item which is expressed to be "for the Utility's Account" shall be paid for by the Procuring Entity. All costs which are not specified by this Contract to be for the Contractor's Account, or the responsibility of another person, shall be for the Procuring Entity's Account.

12.6.2 Procedure if the Utility's incomings are not sufficient to cover its outgoings

The Utility shall cause the Parties responsible for its financial management to manage it prudently and in accordance with good commercial practice, and attempt to pay the obligations of the Utility as they fall due. In the event that the Utility is unable to pay its obligations as they fall due, the Utility shall cause the Parties responsible for its financial management to follow the rules and processes set out in Schedule J.

13 Obligations and Rights of the Procuring Entity

13.1 Access to land

The Procuring Entity here by grants free of charge to the Contractor, as from the Commencement Date, access to all land within the Service Area in respect of which access is required for the performance of the Services by the Contractor.

13.2 Right to use facilities

The Procuring Entity hereby grants free of charge to the Contractor, as from the Commencement Date, the right to access and use the Facilities. If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Procuring Entity to give any such right, the Contractor shall be entitled on request to an adjustment in the Opera Services Requirements Remuneration sufficient to put it in the same position it would have been in had the Procuring Entity honored its obligations under this Sub-Clause.

13.3 Payments by the Procuring Entity

The Procuring Entity shall make payments to the Contractor in accordance with the terms of this Contract.

13.4 Support by the Procuring Entity

The Procuring Entity shall use its best efforts to ensure that the Government shall provide the Contractor such assistance as may be required (e.g., issuance of permits, licenses, approvals, authorizations, etc.) during the term of this Contract. The Procuring Entity shall use its best efforts to ensure adequate finance pursuant to the Project as defined here into fund any capital investment program and shall keep the Contractor informed of the progress of such applications and negotiations.

13.5 Supervision by the Procuring Entity

(a) The Procuring Entity shall supervise the Contractor in the performance of its obligations under this Contract.

(b) The Procuring Entity shall review and approve or comment upon all reports submitted by the Contractor pursuant Clause 14 [Procuring Entity's Reporting].

(c) The Procuring Entity shall be given reasonable access during normal working hours to premises, works and sites of the Contractor for the purposes of inspection and certification. For the avoidance of doubt the term "Procuring Entity" as used herein shall include duly authorized officers, employees, representatives of the Procuring Entity and the Financial and Technical Audit Services Requirements.

13.6 Permits, Licenses or Approvals

13.6.1 The Procuring Entity shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

(a) By obtaining copies of the Laws of Kenya which are relevant to the Contract but are not readily available, and

(b) For the Contractor's applications for any permits, licenses or approvals required by the Laws of Kenya:

(i) Which the Contractors required to obtain

(ii) For the delivery of Goods, including clearance through customs, and

(iii) For the export of Contractor's Equipment when it is removed from the Facilities.

13.7 Utility's Personnel Cooperation

13.7.1 The Procuring Entity and the Utility shall be responsible for ensuring that the Utility's Personnel and other Contractor on the Facilities co-operate with the Contractor's efforts in performance of the Services.

13.8 Procuring Entity's Financial Arrangements

13.8.1 The Procuring Entity shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Procuring Entity to pay the Contractor's Remuneration (as estimated at that time) in accordance with Clause 12 [Contractor's Remuneration]. Before the Procuring Entity makes any material change to his financial arrangements, the Procuring Entity shall give notice to the Contractor with detailed particulars.

14 Procuring Entity's Reporting

14.1 Procuring Entity's reporting requirements

14.1.1 The Procuring Entity shall comply with the reporting requirements specified in Schedule K.

15 Intellectual and Industrial Property Rights

15.1 Intellectual Property and Copyright

15.1.1 As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in any technical or Procuring Entity's Representative inventions or innovations made by or on behalf of the Contractor in providing the Services and in the Contractor's, Parent's and Shareholders' proprietary software, as applicable, that the Contractor modified for use in connection with the Services (the "Contractor's Innovations and Software").

15.1.2 The Contractor, by signing the Contract, gives the Procuring Entity a non-terminable, transferable, non-exclusive, royalty-free license to copy, use and communicate the Contractor's Innovations and Software and any other software used or purchased by the Contractor in the performance of the Services (the "Other Software"), including making and using modifications of them. This license shall,

(a) apply throughout the actual or intended working life, whichever is longer, of the relevant parts of the Facilities;

(b) entitle any person in proper possession of the relevant part of the Facilities to copy, use and communicate the Contractor's Innovations and Software and the Other Software for the purposes of managing, operating and maintaining the Facilities;

(c) in the case of Contractor's Innovations and Software and the Other Software which are in the form of computer programs and other software, permit their use on any computer at the Facilities and other places as envisaged by the Contract, including replacements of any computers supplied by the

Contractor; and

(d) entitle the Procuring Entity to make the Contractor's Innovations and Software and the Other Software available for inspection by a prospective Tenderer who may be involved in the process to select a Subsequent Contractor.

15.1.3 As between the Parties, the Procuring Entity owns and will continue to own all data with respect to the Facilities and Customers.

15.2 Intellectual Property Infringements

15.2.1 Meaning of Infringement and Claim

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, tradename, trade secret or other intellectual or industrial property right relating to the Services; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

15.2.2 Notice of Claims

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under Sub-Clause 15.2[Intellectual Property Infringement].

15.2.3 Contractor to Indemnify Procuring Entity

The Contractor shall indemnify and hold the Procuring Entity and the Utility harmless against and from any other claim which arises out of or in relation to the performance of the Services or the Contractor' management of the Utility.

15.2.4 Procuring Entity to indemnify Contractor

15.2.4.1 The Procuring Entity shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

(a) An unavoidable result of the Contractor's compliance with the Contract, or

(b) A result of any Services being used by the Procuring Entity:

(i) For a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or

(ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contract or prior to the Base Date or is stated in the Contract.

15.2.5 Right to manage settlement and litigation

15.2.5.1 If a Party is entitled to be indemnified under this Sub-Clause 15.2 [Intellectual Property Infringement], the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

15.3 Confidentiality Obligations of the Contractor

15.3.1 Confidentiality

15.3.1.1 The Contractor shall keep confidential and shall not, without the written consent of the Procuring Entity, divulge to any Third Party any documents, data or other information arising directly or indirectly from the performance of Services under the Contract, whether such information has been furnished prior to, during or following termination of the Contract.

15.3.1.2 However, the Contractor may furnish to its Subcontractor such documents, data and other information to the extent required for the Subcontractor to perform their work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under this Sub-Clause 15.3 [Confidentiality Obligations of the Contractor].

15.3.2 Use of information

15.3.2.1 The Contractor shall not use such documents, data and other information received from the Procuring Entity for any purpose other than as are required for the performance of the Contract. The Contractor shall not publish, permit to be published, or disclose any particulars of the Contract, Assets or Facilities in any trade or technical paper or advertising materials without the prior written consent of the Procuring Entity.

15.3.3 Exceptions for publicly available information

(a) The obligations of the Contractor under Sub-Clause 15.3 [Confidentiality Obligations of the Contractor] shall not apply to that information which,

(b) Now or hereafter enters the public domain through no fault of the Contractor;

(c) Can be proven to have been possessed by the Contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the Procuring Entity; or

(d) Otherwise lawfully becomes available to the Contractor from a Third Party that has no obligation of confidentiality.

15.4 Confidentiality and Publication Obligations of the Procuring Entity

15.4.1 Unless otherwise stated in the SCC, the Procuring Entity has the right and intention to publish the Contract in its entirety in its website and in such other media as it deems appropriate.

16 Liability, Risk Allocation, Securities, Bonds and Insurance

16.1 Limitation of Liability

16.1.1 Neither Party shall be liable to the other Party for loss of use of any Services, loss of profit, loss of any contractor for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, whether in contract, Services Requirements or otherwise, other than as specifically provided in Sub- Clause21.9 [Payment on Termination by the Procuring Entity for Cause]; Sub-Clause 16.2 [Indemnities]; Sub- Clause 16.7 [Consequences of Procuring Entity's Risks] and Sub-Clause 15.1 [Intellectual Property and Copyright]. The total liability of the Contractor to the Procuring Entity, under or in connection with the Contract, whether in contract, Services Requirements or otherwise, shall not exceed the sum **stated in the SCC**, or (if such multiplier or other sum is not so stated), the Contract Base Remuneration.

16.1.2 This Sub-Clause shall not limit liability in any case of fraud, deliberate default, gross negligence, or reckless misconduct by the defaulting Party.

16.2 Indemnities

(a) The Contractor shall indemnify and hold harmless the Procuring Entity, the Procuring Entity's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

(b) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the execution and completion of the Services, unless attributable to any negligence, willful actor breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of the irrespective agents, and

(c) damage to or loss of any property, real or personal, to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's performance or non-performance of the Services and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, their respective agents, or any one directly or indirectly employed by any of them.

(d) The Procuring Entity shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the

Procuring Entity's Personnel, or any of their respective agents.

16.3 Performance Security

16.3.1 Unless an amount is **not stated in the Particular Conditions of Contract**, the Contractor shall obtain (at his cost) a Performance Security for proper performance, in the form, amount and currencies **stated in the SCC**. The Contractor shall deliver the Performance Security to the Procuring Entity within 28 days after receiving the Form of Acceptance, and shall send a copy to the Independent Expert. The Performance Security shall be issued by an entity and from within Kenya (or other jurisdiction) approved by the Procuring Entity, and shall be in the form annexed to the Particular Conditions or in another form approved by the Procuring Entity. If the 16.3 institution issuing the Performance Security is located outside Kenya of the Procuring Entity, it shall have a corresponding financial institution located in Kenya of the Procuring Entity to make it enforceable.

16.3.2 The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Services and been released from liability under this Contract. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Services have been completed and any defects have been remedied.

The Procuring Entity shall not make a claim under the Performance Security, except for amounts to which the Procuring Entity is entitled under the Contract.

16.3.3 The Procuring Entity shall not make a claim under the Performance Security unless the Independent Expert first certifies that there are “prima facie” grounds for making a claim. The Procuring Entity shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Procuring Entity was not entitled to make the claim. The Procuring Entity shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.

16.4 General Requirements for Insurances

16.4.1 In this Clause, “insuring Party” means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

16.4.2 Wherever the Contractors the insuring Party, each insurance shall be effected with insurers and in terms approved by the Procuring Entity. These terms shall be consistent with any terms agreed by both Parties before the date of the Form of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

16.4.3 Wherever the Procuring Entity is the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details annexed in Schedule M. If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Procuring Entity shall act for Procuring Entity's Personnel,(ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy. Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

16.4.4 The relevant insuring Party shall, within the respective periods **stated in the Special Conditions of Contract** (calculated from the Commencement Date), submit to the other Party:

a. Evidence that the insurances described in this Clause have been effected, and
b. copies of the policies for the insurances as required by Schedule M.

16.4.5 When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Services and ensure that insurance is maintained in accordance with this Clause.

16.4.6 Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

16.4.7 If the insuring Party fails to effect and keep inforce any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory Services Requirements evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contractor's Remuneration shall be adjusted accordingly.

16.4.8 Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Procuring Entity, under the other terms of the Contractor otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Procuring Entity in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

16.5 Insurance Required

16.5.1 Each Party shall effect and maintain insurance as specified in Schedule M.

16.6 Procuring Entity's Risks

16.6.1 The risks referred to in Sub-Clause 16.7 [Consequences of Procuring Entity's Risks] below, in so far as they directly affect the execution of the Services in Kenya are:

a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractor, revolution, insurrection, military or usurped power, or civil war, within Kenya,

c) riot, commotion or disorder within Kenya by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractor,

d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, within Kenya, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio- activity,

e) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,

f) use or occupation by the Procuring Entity of any part of the Permanent Services, except as may be specified in the Contract,

g) any operation of the forces of nature which is Unforeseeable.

16.7 Consequences of Procuring Entity's Risks

16.7.1 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to,

(a) Destruction of or damage to the Facilities or any part thereof;

(b) Destruction of or damage to property of the Procuring Entity or any Third Party; or

(c) Injury or loss of life, if such destruction, damage, injury or loss of life is caused by any Procuring Entity's Risks, and the Procuring Entity shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising on consequence of or in connection with the same.

16.7.2 If the Facilities or any property of the Contract or used or intended to be used for the purposes of the Services sustains destruction or damage by reason of any Procuring Entity's Risks, the Procuring Entity shall pay for,

(a) Replacing or making good any property or investments of the Contractor destroyed or damaged; and

(b) Replacing or making good any such destruction or damage to the Facilities or any part thereof, so far as

may be required by the Procuring Entity, and as may be necessary for completion of the Services.

16.7.3 If the Procuring Entity does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Procuring Entity shall either request a change in accordance with Sub-Clause 19.1 [Procuring Entity Variations] excluding the performance of the Services in respect of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to Sub-Clause 17.7 [Release from Performance].

Notwithstanding anything contained in the Contract, the Procuring Entity shall pay the Contractor for any increased Costs that are in anyway attributable to, consequent on, resulting from, or in any way connected with any Procuring Entity's Risks, if the Contractor notifies the Procuring Entity in writing of any such increased cost as soon as practicable.

16.7.4 If, during the term of the Contract, any Procuring Entity's Risks occur that financially or otherwise materially affect the execution of the contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractor's personnel engaged in the work on the Services. If the execution of the Services becomes impossible or is substantially prevented for a single period of more than 60 days or an aggregate period of more than 120 days on account of any Procuring Entity's Risks, the Parties will attempt to develop a mutually satisfactory Services Requirements solution, failing which either Party may terminate the Contract by giving a notice to the other.

In the event of termination pursuant to this Sub-clause, the rights and obligations of the Procuring Entity and the Contractor shall be as specified in Sub-Clause17.7 [Release from Performance].

17 Force Majeure

17.1 Definition of Force Majeure

17.1.1 In this Clause, “Force Majeure” means an exceptional event or circumstance:

(a) Which is beyond a Party's control,

(b) Which such Party could not reasonably have provided against before entering into the Contract,

(c) which, having a risen, such Party could not reasonably have avoided or overcome, and

(d) which is not substantially attributable to the other Party.

17.1.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

(i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

(ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractor, revolution, insurrection, military or usurped power, or civil war,

(iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractor, or the Procuring Entity's Personnel

(iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and

(v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

17.2 Notice of Force Majeure

17.2.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

17.2.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

17.2.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract

17.3 Duty to Minimize Delay

17.3.1 Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

17.4 Consequences of Force Majeure

17.4.1 If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 17.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled to:

a. An extension of time for any such delay, if completion of the services is or will be delayed, and

b. if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 17.1 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in Kenya, payment of any such Cost.

17.5 Force Majeure Affecting Subcontractor

17.5.1 If any Subcontractor is entitled under any contract or agreement relating to the Services to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

17.6 Optional Termination, Payment and Release

17.6.1 If the execution of substantially all the Services in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 17.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, the neither Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 21.12 [Actions on Termination].

17.7 Release from Performance

17.7.1 Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

(a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

(b) the sum payable by the Procuring Entity to the Contractor shall be the same as would have been payable under Sub-Clause 21.11 [Payment on Termination for Prolonged Force Majeure] if the Contract had been terminated under Sub-Clause 17.6 [Optional Termination, Payment and Release].

18 Suspension of Services

18.1 Suspension for non-payment

18.1.1 If the Procuring Entity:

(a) Fails to pay the Contractor any sum due under the Contract within the period specified in the Contract;
(b) Fails to approve any invoice or supporting documents without just cause under the Contract;
(c) commits a substantial breach of the Contract, including preventing the exercise of the Contractor's Delegated Management Authority
(d) fails to provide possession of or access to the Facilities
(e) the Contractor may, after giving not less than 14 days' notice to the Procuring Entity, suspend work (or reduce the rate of work) unless and until the failure or breach which gave rise to the suspension has been rectified.

18.2 No prejudice to other remedies

18.2.1 The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 12.3

[Delayed Payment] and to termination under Sub-Clause 21.7 [Termination by the Contractor for Cause].

18.3 Compensation for costs from suspension

18.3.1 If the Contract or suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall be entitled to:

(a) An extension of time for any such delay, and

(b) Payment of a costs actually and reasonably incurred as a result of the suspension

18.4 Procuring Entity's Entitlement to Suspend the Services and Delegated Management Authority

18.4.1 The Procuring Entity may suspend the Services and Delegation of Management Authority, if this is necessary in the public interest, by notice to the Contractor. Such notice shall specify the effective date of the suspension, the reasons for the suspension, and the date on which the suspension will end.

18.4.2 If the Procuring Entity suspends the Services in accordance with this Sub-Clause 18.2, the Contractor shall then cease to perform its obligations under the Contract. However, the Contractor shall still be entitled to the Contractor Remuneration under the Contract. If the suspension continues for more than 90 days, the Contractor may, by notice to the Procuring Entity, treat the suspension as Termination for Procuring Entity Convenience.

19 Contract Variation, Extension and Retendering

19.1 Procuring Entity Variations

19.1.1 At any time during the Term of the Contract the Procuring Entity's Representative may request a Variation by giving to the Contractor Variation Request. A Variation Request shall specify

(a) A brief description of the Change to the Services

(b) The effect on any other provisions of the Contract

(c) A reasonable period within which the Contractor is required to respond.

19.2 Decision on Procuring Entity's Variation Request

19.2.1 On receiving a Variation Request the Contractor shall respond in writing as soon as practicable, and in any event within the period stipulated in accordance with Sub-Clause 19.1 [Procuring Entity Variations], either by giving reasons why he cannot comply (if this is the case) or by submitting a Variation Proposal containing:

(a) A description of the proposed work to be performed and a program for its execution,

(b) An estimate of the adjustment in Opera Services Requirements Remuneration which would be necessary to put the Contractor in the same financial position as if the Variation were not implemented

19.2.2 The Procuring Entity shall then:

(a) Accept the Variation Proposal, which shall then modify the Contracts as far as is specified in the Variation Proposal; or

(b) Notify the Contractor that is has decided not to proceed with Variation or

(c) Notify the Contractor that it does not agree with the proposed adjustment in Opera Services Requirements Remuneration or other terms of the Contract, and refer the issue for determination through the Dispute Resolution procedure under Sub-Clause 20.1 [Dispute Resolution].

19.3 Value Management

19.3.1 The Contractor may, at any time, submit to the Procuring Entity's Representative a written Value Management Proposal which (in the Contractor's opinion) will, if adopted:

i) Reduce the cost of providing the services; or

ii) Further the Objectives of the Contract; or

iii) Otherwise be of benefit to the Procuring Entity or the Utility.

The Value Management Proposal shall be prepared at the cost of the Contractor and shall include:

a) Description of the proposed Change to the Services

b) A description of the proposed work to be performed and a program for its execution,

c) Any proposed adjustment in Opera Services Requirements Remuneration

d) The effect on any other provisions of the Contract.

19.3.2 If the Value Management Proposal would allow the same Services to be performed at lower cost, then the proposed adjustment in the Operational Services Requirements Remuneration shall be such as to share the benefits of the savings equally between the Contractor and the Procuring Entity.

19.3.3 If the effect of the Value Management Proposal would be to increase both the scope of the Services and the cost of the Services, then the proposed adjustment in the Operational Services Requirements Remuneration shall be such as to put the Contractor in the same financial position as it would be if the Value Management Proposal were not implemented

19.4 Decision on Value Management Proposal

19.4.1 On receiving a Value Management Proposal, the Procuring Entity shall either:

a) Accept the Value Management Proposal, which shall then modify the Contract so far as is specified in the Value Management Proposal; or

b) Decline to accept the Value Management Proposal.

19.5 Adjustments for Changes in Law

19.5.1 "Change in Law" means a change in the Laws of Kenya (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contract or in the performance of obligations under the Contract.

19.5.2 If the Contractor incurs additional Cost as a result of a Change in Law, the Operational Services Requirements Remuneration shall be adjusted so as put the Contractor in the same financial position as it would be if the Change in Law had not occurred.

19.5.3 If the Parties cannot agree on the required adjustment to the Operational Services Requirements Remuneration, either Party may refer the issue for determination through the procedure under Sub-Clause 20.1 [Dispute Resolution].

19.6 Extension and Subsequent Tendering

(a) Extension of the Contract

19.6.1 Unless otherwise provided for in Schedule N, the Contract may be extended for an additional period of no more than the initial term of the Contract. Such an extension may be requested by the Procuring Entity, following the process set out in 19.1 [Procuring Entity Variation], or by the Contractor following the process set out in 19.2 [Value Management], must be agreed by the Parties, and may not be determined under the Dispute Resolution process.

19.6.2 However, the Parties may agree to refer the invitation to an extension to the Independent Expert. If the parties refer the invitation to an extension to the Independent Expert they shall agree, prior to the referral, whether the Independent Expert's recommendation will be advisory only, or binding.

19.6.3 If requested to make a recommendation under this section, the Independent Expert shall be guided by:

(a) The Objectives of the Contract

(b) Such additional objectives as the Procuring Entity may inform him of which appear to him to be reasonable

(c) The need for the Contractor to make a fair profit on its efforts, which he may assess by reference to the profits actually achieved or expected to be achieved under the Contract

(d) The desirability of rewarding the Contractor for success in achieving the Procuring Entity's objectives.

(b) Subsequent Tendering for a Similar Contract

19.6.4 Unless otherwise provided in Schedule N, the Contractor shall not be precluded from Tendering for any similar contract which is offered by the Procuring Entity or the Utility after the termination or expiration of this contract. In case of such a subsequent Tendering, the Contractor will be requested by the Procuring Entity to provide in due time a detailed report satisfactory Services Requirements to the Procuring Entity about the Services under this Contract, such Report to be made available by the Procuring Entity to all other potential Tenderers.

20 Dispute Resolution

20.1 Amicable Settlement

a. If any dispute arises out of or in connection with this Contract, either Party may give notice to the other Party of the same, where upon the Parties shall meet promptly and in a good faith attempt to reach an amicable settlement.

b. In the event that the Parties do not resolve a dispute in accordance with this Sub-Clause within twenty (20) days of notice of the dispute being given, the neither Party may refer the dispute to the Independent Expert for determination pursuant to the procedure set for thin Sub-Clause 20.1.2 [Independent Expert].

20.2 Independent Expert

(a) By the date of Contract signing, the Contractor shall indicate to the Procuring Entity in writing its acceptance of one of the potential Independent Experts **proposed in the Special Conditions of Contract** by the Procuring Entity or otherwise present to the Procuring Entity for its acceptance, a counter-proposal with the names of one or more individuals. The Procuring Entity shall respond in writing to the Contractor by the date **stated in the Particular Conditions of Contract**, and in case of a negative response, with a copy to the appointing entity or official **named in the Particular Conditions of Contract**, who shall then appoint the Independent Expert after due consultation with both Parties. If the Contractor fails to indicate its acceptance of one of the Procuring Entity-proposed individuals or present a counter- proposal, or if the Procuring Entity fails to respond to the Contractor's counter proposal by the due dates indicated above for each event, or if the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the Independent Expert declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, then the appointing entity or official **named in the Special Conditions of Contract** shall, upon request of either or both of the Parties and after due consultation with both Parties, appoint the Independent Expert. The appointment(s) made by the appointing entity or official shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

(b) The Independent Expert shall be a professional experienced in the type of services covered under the Contract and with the interpretation of contractual documents, and shall be fluent in the language for communications defined in the Contract. The Independent Expert shall be (and the terms of this appointment shall so provide that he or she is) independent of the Parties and shall act impartially. The Independent Expert's appointment may be terminated only by mutual agreement between the Parties. The Expert's terms of appointment shall expire as the Parties may mutually agree.

(c) In making its determination, the Independent Expert shall:

a. have regard to the Services required to be performed hereunder and the terms and conditions of this Contract; and

b. ensure that the position of the Parties is res Services Requirements to the position they would have been in if the event triggering the dispute under this Section had not occurred and all the Parties had complied with the Contract.

c. The Party who initially issued the notice of intention to refer the dispute to the Independent Expert shall within ten (10) days of such notice submit to the Independent Expert and to the other Party the following documents:

   a. A description of the dispute;

   b. A statement of that Party's position; and

   c. Copies of relevant documentary evidence in support.

d. Within ten (10) days of receipt of the above documents, the other Party shall submit:

   1. A description of the dispute;

   2. A statement of that Party's position; and

   3. Copies of relevant documentary evidence in support.

e. The Independent Expert may call for such further documentary evidence and/or interview such persons as it deems necessary in order to reach their decision.

f. The expert shall give notice to the Parties of its decision within twenty (20) days of receipt of the documents provided under Section d) or e) as the case may be.

g. Unless this Contract has already been terminated or abandoned, the Parties shall in every case

continue to proceed with the performance of their rights and obligations under this Contract with all due diligence whilst the Independent Expert is reviewing the dispute.

a. The decision of the Independent Expert shall be binding unless and until one Party, within ten (10) days of the date of such decision, issues a notice of intention to refer the matter to arbitration in accordance with Sub-Clause 20.1.4 [Arbitration].

j) Each Party shall bear its own costs of preparing the materials for and making presentations to the Expert.

20.3 Payment of the Independent Expert

20.3.1 The costs of engaging the Independent Expert shall be borne equally by the Parties. The Independent Expert shall be paid as follows, in the currency named in the Special Conditions of Contract or as otherwise indicated in the appointment notice issued in accordance with Sub-Clause 20.1.2 [Independent Expert]:

(a) A retainer fee per calendar month, which shall be considered as payment in full for:
i) Being available on 28 days' notice for all site visits and hearings;
ii) Becoming and remaining conversant with all project developments and maintaining relevant files;
iii) All office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with this duties; and
iv) All services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Sub-Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the appointment becomes effective; until the last day of the calendar month in which the Contract expires, unless the Independent Expert resigns or his appointment is otherwise terminated by the Parties.

(b) A daily fee which shall be considered as payment in full for:
i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Independent Expert's home and the site, or another location of a meeting that the Independent Expert is required to attend;
ii) each working day on Site visits, hearings or preparing decisions; and
iii) each day spent reading submissions in preparation for a hearing.

(c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Independent Expert's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Sub-Clause;

(d) any taxes properly levied in Kenya on payments made to the Independent Expert (unless a national or permanent resident of Kenya) under this Sub-Clause.

20.4 Arbitration

20.4.1 All disputes arising out of or in connection with this Contract, not settled by amicable settlement or by the Independent Expert, in respect of which the Independent Expert's determination has not become final and binding, shall be finally settled by arbitration. Unless otherwise agreed by both Parties:

(a) For contracts with foreign Contractor:

(i) international arbitration with proceedings administered by the international arbitration institution appointed in the **SCC**, in accordance with the rules of arbitration of the appointed institution;

(ii) the place of arbitration shall be the place specified in the **SCC** or such other place selected in accordance with the applicable arbitration rules; and

(iii) the arbitration shall be conducted in the English language as defined in Sub-Clause1.4; and

(b) For contracts with domestic Contractor, arbitration with proceedings conducted in accordance with the laws of Kenya.

(c) The arbitral Services Requirements shall have full power to open up, review and revise any determination of the Independent Expert, relevant to the dispute. Nothing shall disqualify representatives of the Parties from being called as a witness and giving evidence before the arbitral Services Requirements on any matter whatsoever relevant to the dispute.

(d) Neither Party shall be limited in the proceedings before the arbitral Services Requirements to the evidence or arguments previously put before the Independent Expert to obtain its determination, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Independent Expert shall be admissible in evidence in the arbitration.

(e) Arbitration may be commenced prior to or after completion of the Services. The obligations of the Parties and the Independent Expert shall not be altered by reason of any arbitration being conducted during the progress of the Services.

20.5 Survival

The dispute resolution provisions contained in Sub-Clause 20.1.4 [Arbitration] shall survive termination of this Contract.

21 Default and Termination

21.1 Notification and Cure Plans

21.1.1 If a Default occurs, the Party not in Default may, in addition to any other remedies it has, give the Defaulting Party a notice in writing ("**Default Notice**") specifying:

(a) That a Default has occurred;

(b) The events or circumstances constituting the Default; and

(c) If the Default is capable of being cured or remedied, a reasonable Cure Period in which to cure or remedy the Default. The Party not in Default may specify in the Default Notice:

(d) That it requires the Defaulting Party to provide to the Party not in Default a written plan ("Cure Plan") which specifies the reason the Default occurred, how the Defaulting Party intends to remedy the Default, the time that the Defaulting Party will require to remedy the Default and includes additional information on such matters as the Party not in Default requires; and

(e) A reasonable time by which the Defaulting Party must provide the Cure Plan to the Party not in Default. The Party not in Default may, by notice to the Defaulting Party, vary the Cure Period having regard to information provided to it in relation to a Cure Plan.

21.2 Remedying the Default within the Applicable Cure Period

21.2.1 Upon receipt of a Default Notice, if the Default is capable of being cured or remedied, the Defaulting Party must cure or remedy the Default within the Cure Period.

21.2.2 In addition to its obligations under Sub-Clause 21.1 [Notification and Cure Plans], if the Party not in Default has required the Defaulting Party to provide a Cure Plan, the Defaulting Party must:

(a) Provide a Cure Plan within the time requested by the Defaulting Party;

(b) Comply with the Cure Plan; and

(c) report to the Party not in Default on progress in relation to the Cure Plan at the times and in the manner specified by the Party not in Default. The Defaulting Party may, by notice to the Defaulting Party, request an extension to a Cure Period. The Defaulting Party may only request such an extension once in relation to a particular Default. The notice must specify:

i. the reason why the Defaulting Party is not able to cure or remedy the Default within the existing Cure Period,

ii. the additional time that the Defaulting Party requires to cure or remedy the Default and

iii. any other information that is relevant to the Party not in Default's assessment of the request.

21.2.3 The Defaulting Party may not give such a notice unless it has diligently sought to cure or remedy the relevant Default. The Party not in Default must not unreasonably withhold its consent to an invitation to such an extension of a Cure Period unless the Party not in Default believes, on reasonable grounds, that the extension of the Cure Period would have a material adverse effect on the provision of the Services or the use by the Party not in Default of the Facilities.

21.3 Failure to cure

21.3.3 If the Party not in Default has given a Default Notice to the Defaulting Party and:

(a) Where the Default is capable of being cured or remedied, the Defaulting Party does not provide a Cure Plan acceptable to the Party not in Default within the time required in the Default Notice (if applicable);

(b) Where the Default is capable of being cured or remedied, the Defaulting Party does not diligently pursue the Cure Plan (if applicable) or otherwise comply with its obligations under Sub-Clause 21.2 [Remedying the Default within the Applicable Cure Period];

(c) where the Default is capable of being cured or remedied, the Default is not cured or remedied within the Cure Period and, if applicable, in accordance with the Cure Plan; or

(d) the Default is not capable of being cured or remedied.
The Party not in Default may (without prejudice to any of its other rights with respect to the Default), exercise all or any of the following remedies:

(i) sue the Defaulting Party for compensation for the Default, and exercise all available legal and equitable remedies including without limitation suing for specific performance, injunctive relief or such other orders as the Party not in Default considers appropriate;

(ii) terminate this Agreement.

21.4 Ways the Contract may be terminated

21.4.1 The Contract may be terminated by:

(a) The Procuring Entity for Convenience, in accordance with Sub-Clause 21.5 [Termination by the Procuring Entity for Convenience],

(b) The Procuring Entity for Cause, in accordance with Sub-Clause 21.6 [Termination by the Procuring Entity for Cause], or

(c) The Contractor for Cause, in accordance with Sub-Clause 21.7 [Termination by the Contractor for Cause].

21.5 Termination by the Procuring Entity for Convenience

21.5.1 The Procuring Entity shall be entitled to terminate the Contract, at any time for the Procuring Entity's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Procuring Entity returns the Performance Security.

21.5.2 The Procuring Entity shall not terminate the Contract under this Sub-Clause in order to arrange for the Services to be executed by another Contractor or to avoid a termination of the Contract by the Contractor under Sub- Clause 21.7 [Termination by the Contractor for Cause].

21.5.3 After this termination, the Contractor shall proceed in accordance with Sub-Clause 21.12 [Actions on Termination] and shall be paid in accordance with Sub-Clause 21.8 [Payment on Termination by the Procuring Entity for Convenience].

21.6 Termination by the Procuring Entity for Cause

21.6.1 The Procuring Entity shall be entitled to terminate the Contract for cause, if the Contractor:

(a) In accordance with Sub-Clause 21.3 [Failure to Cure], is the Defaulting Party referred to in that Sub-Clause,

(b) Fails to comply with Sub-Clause 16.3 [Performance Security],

(c) Abandons the Services or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,

(d) Without reasonable excuse fails to proceed with the Services,

(e) Subcontracts the whole of the Services or assigns the Contract without the required agreement,

(f) Becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his credit Services Requirements, or carries on business under a receiver, trustee or manager for the benefit of his credit Services Requirements, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or

(g) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

(i) for doing or for bearing to do any action in relation to the Contract, or

(ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract,

(iii) or if any of the Contractor's Personnel, agents or Subcontractor gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or.

(h) In the judgment of the Procuring Entity, has engaged in Fraud and Corruption, as defined in paragraph 2.2a of the Appendix to the GCC, in competing for or in executing the Contract. In any of these events or circumstances, the Procuring Entity may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Facilities. However, in the case of sub-paragraph (e), (f) or (h), the Procuring Entity may by notice terminate the Contract immediately.

21.6.2 The Procuring Entity's election to terminate the Contract shall not prejudice any other rights of the Procuring Entity, under the Contract or otherwise.

21.7 Termination by the Contractor for Cause

21.7.1 The Contractor shall be entitled to terminate the Contract if:

(a) In accordance with Sub-Clause 21.3 [Failure to Cure], if the Contractors the Defaulting Party referred to in that Sub-Clause,

(b) The Procuring Entity fails to pay any part of the Contractor' Remuneration within 56 days of it falling due

(c) The Procuring Entity substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the ability of the Contractor to perform the Contract,

(d) The Procuring Entity fails to comply with Sub-Clause 3.1 [Assignment], or

(e) The Procuring Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his credit Services Requirements, or carries on business under a receiver, trustee or manager for the benefit of his credit Services Requirements, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

21.8 Payment on Termination by the Procuring Entity for Convenience

21.8.1 Upon termination of this Contract pursuant to Sub-Clause 21.5 [Termination by the Procuring Entity for Convenience] the Procuring Entity shall make the following payments to the Contractor:

(a) Any portion of the Remuneration payable to the Contractor for Services satisfactory Services Requirements performed or Performance Target achieved prior to the Termination of the Contract;

(b) the Costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor's Personnel and its Subcontractor's personnel;

(c) any amounts required to be paid by the Contractor to its Subcontractor in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

(d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination]; and

(e) the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.8 [Payment on Termination by the Procuring Entity for Convenience].

(f) The only payments to be made to the Contractor on termination by the Procuring Entity pursuant to Sub-Clause

(g) [Termination by the Procuring Entity for Convenience] are those set out in this Sub-Clause 21.8. The Contractor shall not make any other claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract**.**

21.9 Payment on Termination by the Procuring Entity for Cause

21.9.1 Upon termination of this Contract pursuant to Sub-Clause 21.6 [Termination by the Procuring Entity for Cause], the Procuring Entity shall make the following payments to the Contractor:

(a) Any portion of the Remuneration payable to the Contractor for Services satisfactory Services Requirements performed or Performance Target achieved prior to the Termination of the Contract and

(b) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities

pursuant to Sub-Clause 21.12 [Actions on Termination]. The only payments to be made to the Contractor on termination by the Procuring Entity pursuant to Sub-Clause 21.6 [Termination by the Procuring Entity for Cause] are those set out in this Sub-Clause 21.9. The Contractor shall not make another claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract**.**

21.10 Payment on Termination by the Contractor for Cause

21.10.1Upon termination of this Contract pursuant to Sub-Clause 21.7 [Termination by the Contractor for Cause] the Procuring Entity shall make the following payments to the Contractor:

(a) Any portion of the Remuneration payable to the Contractor for Services satisfactory Services Requirements performed or Performance Target achieved prior to the Termination of the Contract;

(b) The Costs reasonably incurred by the Contractor in the removal of the Contractor' Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor' Personnel and its Subcontractor's personnel;

(c) Any amounts required to be paid by the Contractor to its Subcontractor in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

(d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination];

(e) the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.8 [Payment on Termination by the Procuring Entity for Convenience]; and

(f) a payment in compensation for lost profits under the contract, which shall be either:

i) the amount for Liquidated Damages on Termination for Procuring Entity Convenience **specified in the SCC**, or if no such amount is specified,

ii) the amount of profit the Contractor would be expected to lose as a result of early termination of the contract. The Contractor shall submit an estimate of this amount. The Procuring Entity shall either pay this amount, or submit it to dispute resolution under Sub-Clause 20.1 [Dispute Resolution].

(g) The only payments to be made to the Contractor on termination by the Procuring Entity pursuant to Sub- Clause 21.7 [Termination by the Contractor for Cause] are those set out in this Sub-Clause 21.10. The Contractor shall not make another claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract**.**

21.11 Payment on Termination for Prolonged Force Majeure

21.11.1Upon termination of this Contract pursuant to Sub-Clause 17.6 [Optional Termination, Payment and Release] the Procuring Entity shall make the following payments to the Contractor:

(a) Any portion of the Remuneration payable to the Contractor for Services satisfactory Services Requirements performed or Performance Target achieved prior to the Termination of the Contract

(b) the Costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor's Personnel and its Subcontractor's personnel;

(c) any amounts required to be paid by the Contractor to its Subcontractor in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

(d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination].

(e) The reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.11 [Payment on Termination for Prolonged Force Majeure].

21.12 Actions on Termination

21.12.1In all cases of Termination, the Contractor shall promptly:

(a) Cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting the Facilities, or handing the over for safe and un interrupted operation by the Procuring Entity or another party, including co-operating with the Procuring Entity in such manner as the Procuring Entity reasonably requires to ensure that the Services provided by the Contractor can be provided by another service provider or by the Procuring Entity itself.

(b) Leave the Facilities

(c) Deliver to the Procuring Entity all records related to the Contract and Services

(d) Deliver all documents, know-how, information technology software and other intellectual property required for the provision of the Services and management of the Utility which were required to be left with the Procuring Entity or Utility at the Termination of the Contract under Clauses 6 [Know-How Transfer and Training] and 15 [Intellectual and Industrial Property Rights].

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

The following **Special Conditions of Contract** shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

SCC Clause	Conditions	INSERT CONDITION
1.1.2(d)	Procuring Entity's name	*Kenya National Highways Authority (KeNHA)*
1.1.2(a) & 1.3. 1(b)	Procuring Entity's address	Barabara Plaza, Block A & C, Jomo Kenyatta International Airport(JKIA), Off Airport South Road, Along Mazao Road, P.O Box 49712-00100 **NAIROBI**
1.1.2(n)	Utility's Name	-
1.3.1(a)	Electronic transmission systems	-
2.1(f)	Additional Conditions of Effectiveness	-
2.3.1	Period of Contract	The Overall Contract Period is 24 Months. The Contract is, however, implemented in 12 Months renewable subject to satisfactory performance
3.5.1	Contractor's responsibility for the acts or defaults of its Subcontractor	*[insert any statements different from the requirements established under Sub-Clause 3.5 (a) – (d)]*
3.8	Compliance with Laws	*[insert any statements different from the requirements established under Sub-Clause 3.8]*
8.6	Categories of staff that must be hired locally if and to the extent that a sufficient number of appropriately qualified staff is locally available	As Per TORs and Criteria Provided
11.2	Period within which the Procuring Entity should make a decision on Contractor's management advice	[To be agreed by both parties] days
15.4	Procuring Entity's intention to publish the Contract and Performance Targets	The Procuring Entity _____ *[Subject to KeNHA's Policies and Guidelines]* the right and intention to publish the Contract in its entirety in the ……..
16.1	Maximum total liability of the Contractor to the Procuring Entity	*[As provided in the contract]* The product of_____*[insert a multiplier less or greater than one]* times the Contractor's Remuneration, *or* _____*[insert amount of the maximum total liability]*
16.3	Performance Security	Provide Professional Indemnity Cover of full amount of the contract Sum
16.4	Periods for required submissions by the relevant insuring Party to the other Party	Period (calculated from the Commencement Date) for submission of: (a) evidence that the insurances described in Clause 16 have been effected: _____ *[As provided in the contract]*, and (b) copies of the policies for the insurances as required by Schedule M: As Provided in the

SCC Clause	Conditions	INSERT CONDITION
		contract*]*
20.2(a)	List of Procuring Entity-proposed potential Independent Experts	To be determined by both parties if necessary
	Date by which the Procuring Entity shall respond to Contractor's counterproposal (if any)	To be determined by both parties if necessary
	Appointing entity or official in case of disagreement between the Parties	To be determined by both parties if necessary
20.3.1	Currency for payment of the Independent Expert	To be determined by both parties if necessary
20.4.1 (a) (i)	International Arbitration Institution	*Select United Nations Commission on International Trade Law (UNCITRAL); or the International Chamber of Commerce (ICC).*
20.4.1(a) (ii)	Place of arbitration	To be determined by both parties
21.10 (f)(i)	Amount of Liquidated Damages on Termination for Procuring Entity Convenience	To be determined by both parties subject to contract

SECTION VIII - CONTRACT FORMS

1. NOTIFICATION OF INTENTION TO AWARD

[*This Notification of Intention to Award shall be sent to each Tenderer whose Financial Proposal was opened. Send this Notification to the authorized representative of the Tenderer].*

For the attention of Tenderer's authorized representative

Name: .....*[insert authorized representative's name]*

Address: .....*[insert authorized representative's address]*

Telephone numbers: ..... *[Insert authorized representative's telephone/fax numbers]*

Email Address: ..... *[Insert authorized representative's email address]*

[IMPORTANT: insert the date that this Notification is transmitted to all Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

DATE OF TRANSMISSION: This Notification is sent by: [*email*] on [*date*] (local time)
Notification of Intention to Award

Procuring Entity: .....*[insert the name of the Procuring Entity]*

Contract title: ..... *[insert the name of the contract]*

ITT No: ..... *[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

a) Request a debriefing in relation to the evaluation of your Tender, and/or

b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

1) The successful Tenderer

Name: ..... *[Insert name of successful Tenderer]*

Address: ..... *[Insert address of the successful Tenderer]*

Contract price: ..... *[insert contract price of the successful Tenderer]*

2) Tenderers [INSTRUCTIONS: insert names of all Tenderers. As applicable, insert prices, technical scores and combined scores. Where the selection method requires it, state the price offered by each Tenderer as read out, and as evaluated. Include over all technical scores and scores assigned for each criterion and sub-criterion.**]**

	Name of Tenderer	**Technical scores**	**Financial Proposal price**	**Evaluated Financial Proposal Cost**	**Combined score and ranking (if applicable)**
1.					
2.					
3.					
4.					
5.					

3) **Reason/s why your Tender was unsuccessful [***Delete if the combined score already reveals the reason*]
[INSTRUCTIONS; State the reason/s why this Tenderer's Tender was unsuccessful. Do NOT include: (a) a point by point comparison with another Tenderer's Tender or (b) information that is marked confidential by the Tenderer in its Tender.]

4) **How to request a debriefing *[This applies only if your Tender was unsuccessful as stated under point (3) above]* DEADLINE: The deadline to request a debriefing expires at midnight on *[insert date]* (local time).**

You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the invitation to debriefing as follows:

Attention: .....*[insert full name of person, if applicable]*

Title/position: .....*[insert title/position]*

Agency: .....*[insert name of Procuring Entity]*

Email address: .....*[insert email address]*

If your invitation to a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and contend the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

5) **How to make a complaint**

DEADLINE: The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, [*insert date*] (local time).

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

Attention: .....*[insert full name of person, if applicable]*

Title/position: .....*[insert title/position]*

Agency: .....*[insert name of Procuring Entity]*

Email address: ..... *[Insert email address]*

[At this point in the procurement process] [Upon receipt of this notification] you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

Further information:

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who has submitted a Tender in this selection process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.

3. You must submit the complaint within the deadline stated above.
4. You must include, in your complaint, all of the information required.

6) Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on ..... *[insert date]* (local time).

The Standstill Period lasts fourteen (14) Days after the date of transmission of this Notification of Intention to Award. The Standstill Period may be extended. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens we will notify you of the extension.

If you have any questions regarding this Notification please do not hesitate to contact

us. On behalf of..... *[insert the name of the Procuring Entity]:*

Signature: _____

Name: _____

Title/position: _____

_____

Telephone: _____

Email: _____

Date _____

2 REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO…….OF……..….20……...

BETWEEN

……...…….APPLICANT

AND

……RESPONDENT (Procuring Entity)

Request for review of the decision of the…… (Name of the Procuring Entity of ……dated the…day of …….20…….in the matter of Tender No……..…of ……..20….. for ..... (Tender description).

REQUEST FOR REVIEW

I/We……,the above named Applicant(s), of address: Physical address…….P. O. Box No……. Tel. No……..Email ……, hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

1.

2.

By this memorandum, the Applicant requests the Board for an order/orders that:

1.

2.

SIGNED ……. (Applicant) Dated on…….day of ……/…20……

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on……day of ……....20….……

SIGNED

Board Secretary

3. LETTER OF AWARD

Form of Acceptance

[Form head paper of the Procuring Entity]

.....*[date]*

To: ..... *[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Particular Conditions of Contract]* for the Contractor's Remuneration of the equivalent of *[amount in numbers and words] [name of currency],* as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section X, Annex to the Particular Conditions
- Contract Forms, of the Tendering Document

Authorized Signature: .....

Name and Title of Signal Services Requirements: .....

Name of Agency: .....

Attachment: Contract Agreement

4. Contract Agreement

THIS AGREEMENT made the_____day of_____,_____, between _____of _____ (herein after "the Procuring Entity"), of the one part, and_____of_____(herein after "the Contractor"), of the other part:

WHEREAS the Procuring Entity desires that the Services known as_____should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Management Services and the remedying of any defects therein, The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail overall other Contract documents.

   a) The addenda Nos._____(if any)

   b) The Form of Acceptance

   c) The Special Conditions of Contract

   d) The General Conditions of Contract;

   e) The Schedules of Services Requirements,

   f) The Form of Tender

3. In consideration of the payments to be made by the Procuring Entity to the Contractors indicated in this Agreement, the Contractor hereby covenants with the Procuring Entity to execute the Services therein in conformity in all respects with the provisions of the Contract.

4. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Services, the Contractor Remuneration or such other sum as may be come payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____On the day, month and year indicated above.

Signed by_____(for the Procuring Entity)

Signed by_____(for the Contractor)

Signed by_____(Contractor's Parent Company)

[This last signature line to be added when the Successful Tenderer is required to incorporate in Kenya, pursuant to ITT45.3, and a Parent Company Guarantee is not required in the corresponding TDS]

4. Performance Security – Option 1: (Bank Guarantee)

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated][Guarantee Services Requirements Form head or SWIFT identifier code]

Beneficiary: _____ *[insert name and Address of Procuring Entity]*

Date: _____ *[Insert date of issue]*

PERFORMANCE GUARANTEE No.: _____ *[Insert guarantee reference number]*

Guarantee Services Requirements: *[Insert name and address of place of issue, unless indicated in the Form head]*

We have been informed that _____ *[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (herein after called "the Applicant") has entered into Contract No. _____ *[insert reference number of the contract]* dated _____ *[insert date]* with the Beneficiary, for the supply of _____ *[insert name of contract and brief description of Management Services]* (herein after called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required. At the request of the Applicant, we as Guarantee Services Requirements, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of.....*[insert amount in figures]* ()*[insert amount]*, [1]such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the….....Day of……, 2…[2], and any demand for payment under it must be received by us at this office indicated above on or before that date.

[signature(s)]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

[1] *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Form of Acceptance, and denominated either in the currency (ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2] *Insert the date twenty-eight days after the expected completion date. The Procuring Entity should note that in the event of an extension of this date for completion of The Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written invitation to such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

5. Performance Security- Option 2: Performance Bond

By this Bond_____as Principal (hereinafter called "the Contractor") and_____] as Surety (hereinafter called "the Surety"), are held and severally bound unto_____] as Obligee (herein after called "the Procuring Entity") in the amount of_____, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contractor's Remuneration is payable, the Contractor and the Surety bind themselves, their heirs, executive Services Requirements, administrative Services Requirements, successors and assigns, jointly and severally bound by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the_____ day of_____, 20_____, for_____*[name of contract and brief description of Management Services]* _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

(1) Complete the Contract in accordance with its terms and conditions; or

(2) obtain a Tender or tenders from qualified Tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderer, arrange for a Contract between such Tenderer and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contractor Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contractor's Remuneration; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contractor's Remuneration," as used in this paragraph, shall mean the total amount payable y Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor ;or

(3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Handback Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executive Services Requirements, administrative Services Requirements, successors, and assigns of the Procuring Entity.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____Day of_____20_____.

SIGNED ON_____on behalf of

By_____in the capacity of

In the presence of

SIGNED ON_____on behalf of

By_____in the capacity

of In the presence of

6. Advance Payment Security

[Guarantee Services Requirements Form head or SWIFT identifier code]

Beneficiary: ..... *[Insert name and Address of Procuring Entity]*

Date: ..... *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.:.....*[Insert guarantee reference number]*

Guarantee Services Requirements: .....*[Insert name and address of place of issue, unless indicated in the Form head]*

We have been informed that.....*[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (herein after called "the Applicant") has entered into Contract No.....*[insert reference number of the contract]* dated.....*[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Management Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum_____ _____*[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, here are the Requirements, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____ [*insert amount in figures] [insert amount in words]* [1]upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

a) Has used the advance payment for purposes other than toward delivery of Management Services; or

b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantee Services Requirements of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number_____. *[insert number]* at_____*[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, has been certified for payment, or on the_*[insert day]* day of _____*[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

_____
[signature(s)]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

7. BENEFICIAL OWNERSHIP DISCLOSURE FORM
(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.

Tender Reference No.:_____[*insert identification no*]

Name of the Tender Title/Description:_____*[insert name of the assignment]* to:

_____*[insert complete name of Procuring Entity]*

In response to the requirement in your notification of award dated____*[insert date of notification of award]* to furnish additional information on beneficial ownership:_____*[select one option as applicable and delete the options that are not applicable]*

I) We here by provide the following beneficial ownership information.

Details of beneficial ownership

	Details of all Beneficial Owners		**% of shares a person holds in the company Directly or indirectly**	**% of voting rights a person holds in the company**	**Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer** (Yes / No)	**Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)**
1.	Full Name		Directly---------- % of shares Indirectly---------- % of shares	Directly…… …….% of voting rights Indirectly---------- % of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ----- No---- 2. Is this right held directly or indirectly?: Direct…… …… Indirect…… …...	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes -----No---- 2. Is this influence or control exercised directly or indirectly? Direct…….. Indirect……
	National identity card number or Passport number					
	Personal Identification Number (where applicable)					
	Nationality					
	Date of birth *[dd/mm/yyyy]*					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					

	Details of all Beneficial Owners		**% of shares a person holds in the company Directly or indirectly**	**% of voting rights a person holds in the company**	**Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer** (Yes / No)	**Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)**
2.	Full Name		Directly---------- % of shares Indirectly---------- % of shares	Directly…… …….% of voting rights Indirectly---------- % of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ----- No---- 2. Is this right held directly or indirectly?: Direct…… …… Indirect…… …...	1. Exercises significant influence or control over the Company body of the Company (tenderer**)** Yes -----No---- 2. Is this influence or control exercised directly or indirectly? Direct…….. Indirect……
	National identity card number or Passport number					
	Personal Identification Number (where applicable)					
	Nationality(ies)					
	Date of birth *[dd/mm/yyyy]*					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					
3. **e.t .c**						

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

(a) holds at least ten percent of the issued shares in the company either directly or indirectly;

(b) exercises at least ten percent of the voting rights in the company either directly or indirectly;

(c) holds a right, directly or indirectly, to appoint or remove a director of the company; or

(d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

Name of the Tenderer: .....[insert complete name of the Tenderer]*_____

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: ** [insert complete name of person duly authorized to sign the Tender]*

Designation of the person signing the Tender: ..... [insert complete title of the person signing the Tender]

Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]

Date this ..... [insert date of signing] day of..... [Insert month], [insert year]

Bidder Official Stamp