



**COUNTY GOVERNMENT OF MOMBASA**

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**PROVISION OF CLEANING  
SERVICES**

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**TENDER NO. CGM/PRO/T/22/2019-2020**

**TENDER DOCUMENT**

**JANUARY, 2020**

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## ABBREVIATIONS AND ACRONYMS

|                   |  |
|-------------------|--|
| <b>CDS</b>        | Contract Data Sheet                                    |
| <b>GCC</b>        | General Conditions of Contract                         |
| <b>ICB</b>        | International Competitive Tendering                    |
| <b>IFQ</b>        | Invitation for Quotation                               |
| <b>NCB</b>        | National Competitive Tendering                         |
| <b>PE</b>         | Procuring Entity                                       |
| <b>PIN</b>        | Personal Identification Number                         |
| <b>PP&amp;AD</b>  | Public Procurement and Asset Disposal Act, 2015        |
| <b>PPOA</b>       | Public Procurement Oversight County                    |
| <b>SBD</b>        | Standard Tendering Documents                           |
| <b>Supervisor</b> | Person appointed by the County to oversee the services |
| <b>SOR</b>        | Statement of Requirements                              |
| <b>SP</b>         | Service Provider                                       |
| <b>VAT</b>        | Value Added Tax  |

## Newspaper Advertisement

### SECTION I: INVITATION FOR TENDERS

#### Invitation to Tender

#### TENDER NO. CGM/PRO/T/22/2019-2020

#### Provision of Cleaning Services

#### Invitation for Tenders

**Date: January 2020**

1. The County Government of Mombasa now invites sealed Tenders from Preference Groups for the **Provision of Cleaning Services**. This contract shall run for a period of 24 months. Eligible tenderers are firms registered under youth, women and persons with disabilities (preference groups).
2. Tendering will be conducted through the National Competitive Bidding procedures specified in the *Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations, 2006 and Amendment Regulations (2013) Nos. 106 and 114* and are open to all Tenderers as defined in the Regulations.
3. Interested eligible Tenderers may obtain further information from and inspect the Tendering Documents at the offices of the Director Supply Chain Management located on the 2<sup>nd</sup> floor County Assembly Hall, Treasury Square, Mombasa.
4. The tender document can be viewed and downloaded from the County of Mombasa Website at no fee through the following link [www.mombasa.go.ke](http://www.mombasa.go.ke)
5. A complete tender document may be obtained by interested candidates upon payment of a non-refundable fee of (kshs 1000) in cash or bankers cheque payable to County Government of Mombasa Account.
6. Bidders are advised to regularly visit the County website to obtain any additional information/addendum on the tender. **All addenda/additional information on the tender shall be posted on the county website as they become available.**
7. Bidders shall be required to submit a duly filled, signed and stamped Tender – Securing Declaration Form.
8. Completed Tender Documents in plain, sealed envelopes bearing ONLY the Tender Number and its description, and without bearing any name or mark, whatsoever to

indicate the identity of the sender must be deposited at the Tender Box located at the County Assembly Hall ground floor next to the main office. The tenders must be received or returned to the Procurement office, 2<sup>nd</sup> floor County Assembly Hall, Treasury Square, Mombasa to reach him not later than **10.00 a.m. on 5<sup>th</sup> February 2020.**

9. Tenders shall be publicly opened immediately thereafter in the presence of bidders/representatives who choose to attend the opening process at 10.30 a.m. in the Committee Room, County Assembly Hall first Floor or where directed by the County Secretary.
10. Prices quoted should be inclusive of all taxes and delivery and must be in Kenya Shillings shall remain valid for 90 days from the closing date of the tender.
11. Canvassing or lobbying for the tender shall lead to automatic disqualification.

**COUNTY SECRETARY COUNTY GOVERNMENT OF MOMBASA**

## SECTION II: INSTRUCTIONS TO TENDERERS

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## Introduction

1. Scope of Tender
  - 1.1 The Procuring Entity indicated in the **Tender Data Sheet (TDS)**, invites Tenders for the provision of Services as specified in the **Tender Data Sheet, Section VI, Technical Specification and Section VII, Activity Schedule.**
  - 1.2 The successful Tenderer will be expected to provide the service(s) within the period stated in the **Tender Data Sheet** from the start date specified in the **Tender Data Sheet.**
2. Source of Funds
  - 2.1 The Procuring Entity has set aside sufficient funds for the operations of the Procuring Entity named in the **Tender Data Sheet** during the Financial Year indicated in the **Tender Data Sheet.** It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the provision of services as described in the **Tender Data Sheet.**
  - 2.2 Payments will be made directly by the Procuring Entity (and will be subject in all respects to the terms and conditions of the resulting Contract placed by the Procuring Entity.
3. Eligible Tenderers
  - 3.1 A Tenderer may be a natural person, private Entity, government owned Entity, subject to ITT sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the **Tender Data Sheet**, all parties shall be jointly and severally liable.
  - 3.2 The invitation for Tenders is open to all service providers as defined in the Public Procurement (Goods, Works, Non Consultant Service and Disposal of Public Assets by Tender) Regulations, 2005 – Government Notice No. 97, except as provided hereinafter.
  - 3.3 National Tenderers shall satisfy all relevant licensing and/or registration requirements with the appropriate statutory bodies in Kenya. Foreign Tenderers who are selected as having submitted the lowest evaluated Tender the successful Tenderer shall register with the appropriate statutory body and shall be required to submit evidence of registration as an approved Service Provider in Kenya before signing the Contract.
  - 3.4 A Tenderer shall not have a conflict of interest. All Tenderers found to be in 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 they:
    - a) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the services to be procured under this Invitation for Tenders.
    - b) have controlling shareholders in common; or

- c) receive or have received any direct or indirect subsidy from any of them; or
  - d) have the same legal representative for purposes of this Tender; or
  - e) have a relationship with each other, 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
  - f) Submit more than one Tender in this Tendering process except where a Tenderer is Tendering for service contracts put out for tendering together and each Tenderer is eligible to Tender for more than one Tender. However, this does not limit the participation of subcontractors in more than one Tender, or as Tenderers and subcontractors simultaneously; or
  - g) Participated as a consultant in the preparation of the design or technical specifications of the services that are the subject of the Tender.
- 3.5 Tenderers must not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Government of Kenya in accordance with Clause 45.
- 3.6 Government-owned enterprises in Kenya may participate only if they are legally and financially autonomous, if they operate under commercial law, and if they are not a dependent agency of the Government, registered by the relevant registration Board or County.
- 3.7 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
4. One Tender per Tenderer
- 4.1 A firm shall submit only one Tender, in the same Tendering process except where a Tenderer is Tendering for service contracts put out for tendering together and each Tenderer is eligible to Tender for more than one lot, either individually as a Tenderer or as a partner in a joint venture. No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process. A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity. A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals in which the Tenderer has participated to be disqualified.
- 5 Alternative Tenders by Tenderers
- 5.1 Tenderers shall submit offers that comply with the requirements of the Tender documents, as indicated in Section VI, Statement of Requirements (or Terms of Reference) and Section VII, Activity Schedule. Alternatives will not be considered, unless specifically allowed for in the **Tender Data Sheet**. If so allowed, sub-Clause 5.2 and 5.3 shall govern.

- 5.2 When alternative terms for provision of services are explicitly invited, a statement to that effect will be included in the **Tender Data Sheet** as will the method of evaluating different terms for completion.
- 5.3 If so allowed in the **Tender Data Sheet**, Tenderers wishing to offer technical alternatives to the requirements of the Tender documents must also submit a Tender that complies with the requirements of the Tender documents, including the scope, basic technical data, graphical documents and specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including design calculations, technical specifications, breakdown of prices, proposed work methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity. Alternatives to the specified performance levels shall not be accepted.
6. Cost of Tendering 6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.
7. Site Visit and Pre-Tender meeting 7.1 The Tenderer, at the Tenderer's own responsibility and risk, is advised to visit and examine the site on which service(s) are to be provided and obtain all information that may be necessary for preparing the Tender and entering into a Contract for provision of the service(s). The costs of visiting the Site shall be at the Tenderer's own expense.
- 7.2 The Procuring Entity may arrange a site visit and a pre-Tender meeting whose purpose shall be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.3 The Tenderer's designated representative is invited to attend any such site visit and pre-Tender meeting which, if convened, will take place at the venue and time stipulated in the **Tender Data Sheet**.
- 7.4 The Tenderer is requested as far as possible, to submit any questions in writing, to reach the Procuring Entity or by electronic means before the pre-Tender meeting. It may not be practicable at the meeting to answer all questions received late, but questions and responses will be transmitted in accordance with sub-Clause 7.5.
- 7.5 Minutes of the pre-Tender meeting, including the text of the questions raised and the responses given together with any responses prepared after the pre-Tender meeting will be transmitted within the time stated in the **Tender Data Sheet** to all purchasers of the Tendering documents. Any modification of the Tender documents listed in sub-Clause 23.1 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 Clause 10 and not through the minutes of the pre-Tender meeting.
- 7.6 Non-attendance during the site visit or pre-Tender meeting will not be a cause for disqualification of a Tenderer.



## **Tender Documents**

8. Content of Tendering Documents
- 8.1 The services to be provided, Tendering, procedures and contract terms are prescribed in the Tender Documents. In addition to the Section I Invitation for Tenders the Tender documents which should be read in conjunction with any addenda issued in accordance with ITT Clause 10 include:
- Section II. Instructions to Tenderers
  - Section III. Tender Data Sheet (TDS)
  - Section IV. General Conditions of Contract (GCC)
  - Section V. Contract Data Sheet (CDS)
  - Section VI. Statement of Requirements Performance Specifications and Drawings (if applicable)
  - Section VII. Technical Specifications
  - Section VIII. Activity Schedule
  - Section IX. Tender Forms
    - Form of Tender
    - Confidential Business Questionnaire
      - Standard undertaking by Tenderer on Anti-Bribery Policy.
    - Letter of Acceptance
    - Form of Agreement
  - Section X Security Forms
    - Tender security
    - Performance Bank/insurance company Guarantee
    - Bank Guarantee for Advance payment
- 8.2 The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet**.
- 8.4 The Procuring Entity is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the appropriate Procurement Unit.
9. Clarification of Tendering Documents
- 9.1 A prospective Tenderer requiring any clarification of the Tender documents may notify the Procuring Entity in writing or by electronic mail, or facsimile at the Procuring Entity's address indicated in the **Tender Data Sheet** prior to the deadline for the submission of Tenders prescribed in the **Tender Data Sheet**.
- 9.2 The Procuring Entity will, within the period stated in the **Tender Data Sheet** respond to any request for clarification received no later than the period stated in the **Tender Data Sheet** prior to the deadline for submission of Tenders.
- 9.3 Copies of the Procuring Entity's response will be forwarded to all Purchasers of the Tender documents, including a description of the inquiry, but without identifying its source.
- 9.4 Should the Procuring Entity deem it necessary to amend the Tender

documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10.

- 10.** Amendment of 10.1 Before the deadline for submission of Tenders, the Procuring Entity Tender for any reason, whether at its own initiative or in response to a Documents clarification requested by a prospective Tenderer, may modify the Tender documents by issuing addenda.
- 10.2** Any addendum thus issued shall be part of the Tender documents pursuant to sub-Clause 9.1 and shall be communicated in writing which may include Electronic Mail or facsimile to all who have obtained the Tendering documents directly from the Procuring Entity. Prospective Tenderers shall acknowledge receipt of each addendum by Electronic Mail, or facsimile to the Procuring Entity.
- 10.3** In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity at its discretion may extend the deadline for submission of Tenders, in accordance with sub-Clause 21.2.

## Preparation of Tenders

- 11.** Language of 11.1 The Tender, prepared by the Tenderer as well as all Tender correspondence and documents related to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in English unless another language is specified in the **Tender Data Sheet**. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the **Tender Data Sheet**, in which case, for purposes of interpretation of the Tender, the translation shall govern.
- 12.** Documents 12.1 The Tender prepared by the Tenderer shall constitute the Constituting the following components:
- Tender
- a) The Form of Tender (in the format indicated in Section VIII);
  - b) Information requested by sub-Clauses 13.3; 13.4 and 13.5
  - c) Tender securing declaration or Tender security in accordance with ITT Clause 18 or 18A;
  - d) Priced Activity Schedule;
  - e) Qualification Information Form and Documents;
  - f) Alternative offers where invited in accordance with ITT Clause 5;
  - g) Written power of attorney authorizing the signatory of the Tender to commit the Tenderer in accordance with ITT Clause 19.
  - h) Any other document required in the **Tender Data Sheet**.
- 13.** Documents 13.1 Pursuant to ITT Clause 12, the Tenderer shall furnish, as part of its Establishing Eligibility and Qualifications of the Tenderer Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.

- 13.2 The documentary evidence of the Tenderer's eligibility to Tender shall establish to the Procuring Entity's satisfaction that the Tenderer, at the time of submission of its Tender, is from an eligible country as defined under ITT Clause 3.3
- 13.3 The documentary evidence of conformity of the services to the Tender documents may be in the form of literature, drawings, and data, and shall consist of:
- a) a detailed description of the essential technical and performance characteristics of the services;
  - b) an item-by-item commentary on the Procuring Entity's Technical Specifications demonstrating substantial responsiveness of the Services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications; and
  - c) Any other specific documentation requirement as stated in the **Tender Data Sheet**.
- 13.4 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **Tender Data Sheet**:
- a) the Tender shall include all the information listed in subClause 13.3 above for each joint venture partner;
  - b) the Tender shall be signed so as to be legally binding on all partners;
  - c) one of the partners will be nominated as being the lead, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
  - d) the partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
  - e) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms and a statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Tender and in the Contract (in case of a successful Tender);
  - f) A copy of the joint Venture Contract entered into by all partners shall be submitted with the Tender. Alternatively, a Letter of Intent to execute a joint Venture Contract in the event of a successful Tender shall be signed by all partners and submitted with the Tender, together with a copy of the proposed Contract; and
  - g) The Tender securing declaration or Tender security as stated in accordance with ITTITT Clause 18 or 18A, the Tender, and in case of a successful Tender, the Contract, shall be signed so as to be legally binding on all partners.

13.5 To qualify for award of the Contract, Tenderers shall meet the following minimum qualifying criteria:-

- a) annual volume of service(s) over a period and of at least the amount specified in the **Tender Data Sheet**;
- b) experience as prime service provider in the provision of at least two service(s) of a nature and complexity equivalent to the service(s) over the period stated in the **Tender Data Sheet**;
- c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential property and/or equipment listed in the **Tender Data Sheet**;
- d) a Contract Manager with the experience of the duration stated in the **Tender Data Sheet** in service(s) of an equivalent nature and volume;
- e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the **Tender Data Sheet**

**13.6** The figures for each of the partners of a joint venture shall be added together to determine the Tenderer's compliance with the minimum qualifying criteria of sub-Clause 13.5(a) and (e); however, for a joint venture to qualify, its partners must meet at least the percentages of minimum criteria 13.5(a), (b), and (e) as stated in the **Tender Data Sheet**. Failure to comply with this requirement will result in rejection of the joint venture's Tender. Subcontractors' experience and resources will not be taken into account in determining the Tenderer's compliance with the qualifying criteria, unless otherwise stated in the **Tender Data Sheet**

**13.7** Domestic Tenderers and joint ventures of domestic and foreign  
Tenderers applying for eligibility for a margin of preference in Tender evaluation shall supply all information to satisfy the criteria for eligibility to fulfil the requirements of Sections 39 of PPDA 2005 and Regulations 28 of PPDR 2006.

**13.8** When Tendering for more than one Contract under the lotting and package arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being applied for in regard to:-

- a) average annual turnover;
- b) particular experience including key production rates;
- c) financial means, etc;
- d) personnel capabilities; and
- e) Equipment capabilities.

In case the Tenderer fails to fully meet any of these criteria, it may be qualified only for those slices for which the Tenderer meets the above requirement.

**14. Form of Tender**      14.1 The Tenderer shall fill the Tender Form furnished in the Tender Documents. The Tender Form must be completed without any alterations to its format and no substitute shall be accepted.

15. Tender Prices
- 15.1 The Contract shall be for the service(s), as described in sub-Clause 1.1, based on the priced Activity Schedule submitted by the Tenderer.
- 15.2 The Tenderer shall fill in rates and prices for all items of the Service(s) described in Section VI, the Specifications (or Terms of Reference), and listed in Section VII, the Activity Schedule. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule. On the other hand, if the Tenderer introduces new Activity Schedule items not specified in the Tendering documents, the new items, corresponding quantities and prices shall not be accepted and the Tender may be disqualified as being substantially non responsive.
- 15.3 All duties, taxes, and other levies payable by the service provider 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, prices, and total Tender price submitted by the Tenderer.
- 15.4 The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the **Tender Data Sheet** and the provisions of Clause 38 of the General Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the **Tender Data Sheet** and Clause 38 of the General Conditions of Contract.
16. Tender Currencies
- 16.1 The price shall be quoted by the Tenderer separately in the following currencies:
- a) for those inputs to the Services which the Tenderer expects to provide from within Kenya, the prices shall be quoted in Kenya Shillings, unless otherwise specified in the **Tender Data Sheet**; and
  - b) for those inputs to the Services which the Tenderer expects to provide from outside Kenya, the prices shall be quoted in the international currency specified in the **Tender Data Sheet**.

- 16.2 a) For purposes of evaluating Tenders, the PE shall fix exchange rates for the nominated foreign currency by foreign or international Tenderers from eligible countries.
- b) In fixing the exchange rates for the nominated foreign currencies indicated in the **Tender Data Sheet**, the PE shall use ruling mean rate obtained from the Central Bank of Kenya (Website: [www.centralbank.go.ke](http://www.centralbank.go.ke) for more information) for the nominated foreign currency on the date of the Tender opening. The fixed exchange rate, which shall be indicated in the **Tender Data Sheet** by the PE, is for purposes of evaluation of tenders **ONLY**.
- c) The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the proportions mentioned in sub-Clause 16.1 above shall be the selling rates for similar transactions established by the Central Bank of Kenya prevailing on the date specified in the **Tender Data Sheet** or, if no date is specified, the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall be adjusted for all payments so that no exchange risk will be borne by the Tenderer. If the Tenderer uses other rates of exchange, the provisions of sub-Clause 30.1 shall apply. In any case, payments will be computed using the rates quoted in the Tender.
- 16.3 Tenderers shall indicate details of their expected foreign currency requirements in the Tender.
- 16.4 Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in any Lump Sum and in the Contract Data Sheet are reasonable and responsive to sub-Clause 16.1.
17. Tender Validity Period
- 17.1 Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the deadline for Tender submission Specified in ITT Clause 21. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 17.2 In exceptional circumstances, prior to expiry of the original Tender validity period, the Procuring Entity may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing or by electronic mail, telex or facsimile. A Tenderer may refuse the request without forfeiting its tender security or causing to be executed its Tender securing declaration. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender, but will be required to extend the validity of its tender security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 21 in all respects.
18. Tender Securing Declaration
- 18.1 Fill and submit the Tender Securing Declaration as specified in the **Tender Data Sheet** in the format provided in Section IX.
- 18.2 The Tender securing declaration is required to protect the Procuring Entity against any of the risks set out in Clause 18.5 which would warrant the security's forfeiture.

- 18.3 The Tender security or Tender Securing Declaration shall be in accordance with the Form of the Tender security or Tender Securing Declaration included in Section VIII or another form approved by the Procuring Entity prior to the Tender submission.
- 18.4 Any Tender not accompanied by a Declaration in accordance with sub-Clauses 19.1 shall be rejected by the Procuring Entity as nonresponsive, pursuant to ITT Clause 28.
- 18.5 A Tenderer shall be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time indicated in the Tender Securing Declaration:
- (a) If the Tenderer withdraws its Tender, except as provided in sub-Clauses 18.2 and 30.2; or
  - (b) In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:
    - (i) Sign the contract, or
    - (ii) Furnish the required performance security.
- 18A.Tender Security
- 18A.1 In addition, pursuant to ITT Clause 12, if specified in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet**.
- 18A.2 The Tender security shall be denominated in the currency of the Tender and shall be in one of the following forms:
- a) cash
  - b) a bank guarantee;
  - c) an insurance company guarantee issued by an insurance firm approved by the PPOA; or
  - d) An irrevocable letter of credit.
- 18A.3 Any Tender security must be valid for a period of at least 30 (Thirty) days after the expiry of the Tender Validity Period.
- 18A.4 The Tender security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 19.A.7 are invoked.
- 18A.5 Unsuccessful Tenderers' Tender security will be discharged or returned as promptly as possible as but not later than the expiration of the period of Tender validity prescribed by the Procuring Entity pursuant to ITT Clause 18.
- 18A.6 The successful Tenderer's Tender security will be discharged upon the Tenderer signing the contract pursuant to ITT Clause 38, and furnishing the performance security, pursuant to ITT Clause 39.
- 18A.7 The Tender security shall be forfeited if a Tenderer:
- a) Withdraws its Tender during the period of Tender validity specified in sub-Clause 18.1 except as provided for in sub-clause 18.2; or
  - b) Does not accept the correction of errors pursuant to sub-Clause 30.2; or
  - c) In the case of a successful Tenderer, if the Tenderer fails:
    - i. To sign the contract in accordance with ITT Clause 38; **or**
    - ii. To furnish performance security in accordance with ITT Clause 39.

19. Format and Signing of Tender
- 19.1 The Tenderer shall prepare one original of the documents constituting the Tender as described in ITT Clause 12, bound with the volume containing the Form of Tender, and clearly marked "ORIGINAL". In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **Tender Data Sheet**, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.
- 19.2 The original and the copy or copies of the Tender shall be typed or written in indelible ink and shall be signed by the Tenderer or a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **Tender Data Sheet** 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, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender.
- 19.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the Tender.
- 19.4 The Tenderer shall furnish information as described in the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to Contract execution if the Tenderer is awarded the Contract.

### **Submission of Tenders**

20. Sealing and Marking of Tenders
- 20.1 The Tenderer shall seal the original and each copy of the Tender, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single plain envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 20.2 The inner and outer envelopes shall
- a) be addressed to the Procuring Entity at the address provided in the **Tender Data Sheet**;
  - b) bear the Tender name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFT) title and number indicated in the **Tender Data Sheet**, and a statement: "DO NOT OPEN BEFORE," to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to sub-Clause 21.1.
- 20.3 In addition to the identification required in sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Tenderer to enable the Tender to be returned unopened in case it is declared late, pursuant to ITT Clause 22, and for matching purposes under ITT Clause 23.
- 20.3 If all envelopes are not sealed and marked as required by sub-Clause 20.2, the Procuring Entity shall assume no responsibility for the misplacement or premature opening of the Tender.
21. Deadline for Sub- 21.1 Tenders shall be received by the Procuring Entity at the address mission of specified in sub-Clause 20.2 (a) no later than the date and time Tenders specified in the **Tender Data Sheet**.



- 21.2** The Procuring Entity shall extend the deadline as necessary to allow any amendment of the tender documents to be taken into account if the tender documents are amended particularly when the time remaining before the deadline for submitting tenders is less than one third of the original time allowed. The Procuring Entity may, in exceptional circumstances and at its discretion, extend the deadline for submission of Tenders by issuing an amendment of the Tender documents in accordance with ITT Clause 9, in which case all rights and obligations of the Procuring Entity and the Tenderers previously subject to the original deadline will thereafter be subject to the new deadline although Tenderers are not obliged to extend the validity of their Tenders in these circumstances if they choose not to do so.
- 21.3** The extension of the deadline for submission of Tenders shall be made not later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline.
- 22.** Late Tenders
- 22.1** The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 21.
- 22.2** 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.
- 23.** Modification,
- 23.1** A Tenderer may modify, substitute or withdraw its Tender after Substitution and submission provided that written notice of the modification, Withdrawal of substitution or withdrawal is received by the Procuring Entity prior Tenders to the deadline for submission.
- 23.2** The Tenderer's modification, substitution, and withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITT Clauses 20 and 21, with the outer and inner envelopes additionally marked "MODIFICATION", "SUBSTITUTION, or "WITHDRAWAL," as appropriate. The notice may also be sent by electronic mail, or facsimile but followed by a signed confirmation copy postmarked not later than the deadline for submission of Tenders.
- 23.3** Tenders may only be modified by withdrawal of one or more pages of the original Tender and submission of replacement pages of the Tender in accordance with sub-Clause 23.1. Modifications submitted in any other way shall not be taken into account in the evaluation of Tenders. Each modified page must be marked "MODIFIED" with the date of modification.
- 23.4** Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this Clause, or included in the original Tender submission.
- 23.5** No Tender may be withdrawn, replaced 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. Withdrawal of a Tender during this interval shall result in the Tenderer's execution of the Tender Securing Declaration or forfeiture of its Tender security, pursuant to the ITTT Clause 18.5 or 18A.7.

## **Opening and Evaluation of Tenders**

- 24.** Opening of Tenders
- 24.1** The Procuring Entity will open all Tenders, including modifications, substitutions or withdrawal notices made pursuant to ITT Clause 23, in public, in the presence of Tenderers or their representatives who choose to attend, and other parties with a legitimate interest in the Tender proceedings, at the place, on the date and at the time specified in the **Tender Data Sheet**. Tenderers' representatives present shall sign a register as proof of their attendance.
- 24.2** a. Where a two-stage system is used, only technical envelopes

will be opened first and financial envelopes kept securely unopened until the technical evaluation has been completed.

- b. Where a Tenderer fails the technical evaluation the Procuring Entity shall return the financial proposal unopened to the Tenderer

**24.3** Envelopes marked “**WITHDRAWAL**” shall be opened and read out first except where Tenders for which an acceptable notice of withdrawal has been submitted pursuant to **ITT** Clause 23. These envelopes shall not be opened but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “Power of Attorney” confirming the signature of a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked "**MODIFICATION**" shall be opened and the submissions therein read out in appropriate detail.

- 24.4 Thereafter, all envelopes marked “**SUBSTITUTION**” shall be opened and the submissions therein read out in appropriate detail. All other envelopes shall be opened one at a time. The Tenderers' names, the Tender prices except where numerous items are quoted separately, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of tender security or Tender securing declaration, and such other details as specified in the **Tender Data Sheet**, will be announced by the Secretary of Tender Opening Committee or his delegate at the opening. One of the Tenderer’s representatives shall be nominated to verify the information read out. If technical evaluation precedes the opening of financial offers, no prices will be read out at the opening of the technical offers.
- 24.5 Tenders or modifications that are not opened and not read out at the Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.
- 24.6 Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer’s representative shall indemnify the Procuring Entity against any claim or failure to read out the correct information contained in the Tenderers Tender.
- 24.7 No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 22.
- 24.8 The Secretary of the Tender Opening Committee shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderers and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender security or Tender Securing Declaration.
- 24.9 The Tenderers’ representatives who are present shall be requested to sign the record. The omission of a Tenderer’s representative’s signature on the record shall not invalidate the contents and affect the record.

- 24.10 A copy of the minutes of the Tender opening shall be furnished to the individual Tenderers upon request.
- 25. Confidentiality**
- 25.1 Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.
- 25.2 Any effort by a Tenderer to influence the Procuring Entity's processing of Tenders or award decisions may result in the rejection of its Tender.
- 25.3 Notwithstanding sub-Clause 25.2, 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 should do so in writing.
- 26. Clarification of Tenders**
- 26.1 To assist in the examination, evaluation, and comparison of Tenders, and post-qualification of Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for clarification of its Tender, including breakdowns of prices in the Activity Schedule. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered.
- 26.2 The request for clarification and the response shall be in writing or by email, facsimile, or telex but no change in the price or substance of the Tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the evaluation committee in the evaluation of the Tenders in accordance with ITT Clause 29.
- 26.3 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 Tender it should do so in writing.
- 27. Preliminary Examination of Tenders**
- 27.1 Prior to the detailed evaluation of Tenders, the Procuring Entity, through its Evaluation Committee, shall first conduct a preliminary evaluation of Tenders or tenders to determine whether:
- a) each Tender has been submitted in the required format;
  - b) any tender security submitted is in the required form, amount and validity period;
  - c) the tender has been signed by the person lawfully authorised to do so;
  - d) the required number of copies of the tender have been submitted;
  - e) the tender is valid for the period required;
  - f) all required documents and information have been submitted; and
  - g) Any required samples have been submitted.
- 27.2 The Procuring Entity will confirm that the documents and information specified under ITT Clause 11 and ITT Clause 12 have been provided with the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.

- 27.3 The Procuring Entity may waive any minor informality, nonconformity or irregularity in a Tender that does not constitute a material deviation, and that does not prejudice or affect the relative ranking of any Tenderer as a result of the technical or commercial evaluation pursuant to ITT Clause 28 and 31.
- 27.4 If a Tender is not initially responsive, it will be rejected by the Procuring Entity, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 28. Technical Evaluation**
- 28.1 The Procuring Entity shall examine the Tender to confirm that all terms and conditions specified in the General Conditions of Contract and the **Contract Data Sheet** have been accepted by the Tenderer without any material deviation or reservation.
- 28.2 The Procuring Entity shall evaluate the technical aspects of the Tender submitted to confirm that all requirements specified in Section VI – Schedule of Requirements of the Tender documents and Section VII – Technical Specifications have been met without material deviation or reservation
- 28.3 If after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the Tender is not substantially responsive in accordance with ITT Clause 27, it shall reject the Tender.
- 28.4 A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation or reservation as defined Section 64 of PPDA 2005. A material deviation or reservation is one that:-
- a) affects in any substantial way the scope, quality, or performance of the Service(s);
  - b) limits in any substantial way, inconsistent with the Tender documents, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
  - c) if rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.
- 29. Financial Evaluation**
- 29.1 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected by the evaluation committee as follows:-
- a) if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;
  - b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - c) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.

**29.2** The amount stated in the Tender will be adjusted in accordance with the above procedure for the correction of errors and, with

the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the tender security shall be forfeited or the Tender securing declaration may be executed in accordance with sub-Clause 17.8.

**29.3** To facilitate evaluation and comparison, the Procuring Entity will convert all Tender prices expressed in the various currencies in which they are payable to either:

a) The Kenya Shilling at the selling exchange rate established for similar transactions by the Bank of Kenya or a commercial bank in Kenya specified in the **Tender Data Sheet**.

**OR**

b) The currency widely used in international trade, such as U.S. dollars, specified in the **Tender Data Sheet** at the specified rate of exchange.

29.4 The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive pursuant to ITT Clause 27 and the proposals of which have been determined to be adequate in accordance with sub-Clause 28.2 or 28.3.

29.5 In evaluating the Tenders, the evaluation committee will determine for each Tender the evaluated Tender Price by adjusting the Tender Price as follows:-

- a) making any correction for errors pursuant to ITT Clause 29;
- b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, but including Day work, when requested in the Specifications Section VI;
- c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted;
- d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with subClause 23.4; and
- e) applying any discounts offered by the Tenderer for the award of more than one Contract, if Tendering for this Contract is being done concurrently with other Contracts (sub-Clause 14.2)

**29.6** The Procuring Entity reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the Tendering documents or otherwise result in unsolicited benefits for the Procuring Entity will not be taken into account in Tender evaluation.

**29.7** The estimated effect of any price adjustment conditions under Clause 38 of the Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Tender evaluation.

- 29.8 In the case of several Lots, pursuant to sub-clause 12.8 the Procuring Entity will determine the application of discounts so as to minimize the combined cost of all the Lots.
- 32 National Preference
- 32.1 In the evaluation of Tenders the Procuring Entity shall apply exclusive preference to citizens of Kenya where:
- a) The funding is 100% from the Government of Kenya or a Kenyan body;
  - b) The amounts are below the prescribed threshold of KShs.50 million (or KShs.200 million for procurements of works);
- 32.2 To qualify for the preference the candidate shall provide evidence of eligibility by:
- a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
  - b) Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.
- 32.3 In the event of the Minister for Finance prescribing additional preference and/or reservation schemes, details will be given in the Tender Data Sheet.
33. Post-qualification of Tenderer
- 33.1 If specified in the **Tender Data Sheet**, post-qualification shall be undertaken.
- 33.2 The Procuring Entity will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in subClause 12.3.
- 33.3 The determination will take into account the Tenderer’s financial, technical, and managerial capabilities. It will be based upon an examination of the documentary/physical evidence of the Tenderer’s qualifications submitted by the Tenderer, pursuant to sub-Clause 12.3, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tender documents shall not be used in the evaluation of the Tenderers’ qualifications.
- 33.4 An affirmative determination will be a prerequisite for award of the Contract to the Tenderer. A negative determination will result in rejection of the Tenderer’s Tender, in which event the Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer’s capabilities to perform satisfactorily.

### **Award of Contract**

34. Criteria of Award Contract
- 34.1 Subject to ITT Clause 33, the Procuring Entity will award the Award Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tender documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:

- a) eligible in accordance with the provisions of ITT Clause 3, and
- b) qualified to perform the Contract satisfactorily; and
- c) Any permitted negotiations have been concluded successfully.

**34.2** If, pursuant to sub-Clause 12.8, this Contract is being let on a “lotting and package” basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderers for award of more than one Contract.

**35.** Procuring 35.1 Notwithstanding ITT Clause 34, the Procuring Entity reserves Entity’s Right to the right to accept or reject any Tender, and to reject all accept any Tenders, at any time prior to notification of Contract award, Tender and to without thereby incurring any liability to the affected Tenderer

Reject any or all or Tenderers Tenders

**35.2** Notice of the rejection of all Tenders shall be given promptly to all service providers that have submitted Tenders.

**35.3** The Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.

**36** Procuring 36.1 The Procuring Entity reserves the right at the time of Contract Entity’s Right to award to increase or decrease the scope of services originally Vary Quantities specified in these Tender documents provided this does not at the Time of exceed by the percentage indicated in the **Tender Data Sheet**,

Award without any change in unit price or other terms and conditions of the Tender and Tender documents.

**37.** Notification of Award 37.1 The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e mail or, facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Service provider in consideration of the provision and maintenance of the Service(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price).

**37.2** a) The Procuring Entity and the Tenderer submitting the successful Tender shall enter into a written contract.

b) The written contract shall be entered into within the period specified in the notification under section 67(1) of the

PPDA but not until at least fourteen days have elapsed following the giving of that notification.

c) No contract shall be formed between the successful Tenderer and the Procuring Entity until a written contract is entered into in compliance to section 68.

**38.** Post Tender 38.1 Limited negotiations may be undertaken with the evaluated

the  
Concurrence

Tender under Direct procurement method refollowing areas: lating to

- a) A minor alteration to the technical details of the statement of requirements;
- b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the solicitation documents;
- c) A minor amendment to the contract data sheet;
- d) Finalising payment arrangements;
- e) Delivery arrangements;
- f) The methodology; or
- g) Clarifying details that were not apparent or could not be finalised at the time of Tendering.

**38.2** Where negotiation fails to result into an agreement, the Procuring Entity may invite the next ranked Tenderer for negotiations. Where negotiations are commenced with the next ranked Tenderer, the Procuring Entity shall not reopen earlier negotiations.

**39.** Notifying 39.1 a) The procuring entity shall notify all unsuccessful Unsuccessful Tenderers at the same time as successful Tenderers are notified. The Procuring Entity shall also return the unopened Financial Proposals, as the case may be, to the unsuccessful Tenderers.

b) The Procuring Entity shall promptly respond in writing to any unsuccessful Tenderer who requests the Procuring Entity in writing to provide a brief statement of the reason (s) its Tender was not accepted

**40.** Signing of Contract 40.1 Promptly after notification, Procuring Entity shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.

**40.2** Within twenty eight (28) days of receipt of the Contract Agreement Form, the successful Tenderer shall sign and date the Contract and return it to the Procuring Entity.

**41.** Performance Security 41.1 Within twenty one (21) days, but no earlier than fourteen (14) days, after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the **Tender Data Sheet** and the **Contract data sheet**, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.



- 41.2 If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:
- a) at the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located in Kenya,
- OR**
- b) With the consent of the Procuring Entity, directly by a foreign bank acceptable to the Procuring Entity.
- 41.3 Failure of the successful Tenderer to comply with the requirements of sub-Clause 41.2 shall constitute sufficient grounds for cancellation of the award and forfeiture of the tender security or execution of the Tender securing declaration and any other remedy the Procuring Entity may take under the Contract and the Procuring Entity may resort to awarding the Contract to the next ranked Tenderer.
- 42. Advance Payment**
- 42.1 The Procuring Entity will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the **Tender Data Sheet**.
- 42.2 The advance payment should be accompanied by Advance Payment Security (Guarantee) in the provided in section VIII. For the purpose of receiving the Advance Payment, the Tender shall make and estimate of, and include in its Tender, the expense that will be incurred in order to commence the service. These expenses will relate to the purchase of equipment, machinery, materials and on the engagement of labour during the first month beginning with the commencement date of the Contract.
- 43. Adjudicator**
- 43.1 The Procuring Entity proposes the person named in the **Tender Data Sheet** to be appointed as Adjudicator under the Contract, at an hourly fee specified in the **Tender Data Sheet**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing County designated in the **Contract Data Sheet** at the request of either party.
- 44. Fraud and Corruption**
- 44.1 The Government of Kenya requires that procuring entities (including beneficiaries of public funds) as well as Tenderers under public - financed Contracts observe the highest standard of ethics during the procurement and execution of such Contracts. In pursuance of this policy, the Government of Kenya:-
- a) defines, for the purposes of this provision, the terms set forth below as follows:-
    - i) **"Corrupt practice"** means the offering, giving receiving or solicitation of anything of value to influence the action of a public official in the procurement process or in Contract execution and includes inter alia, bribery, extortion or

coercion, which involves threats of injury to person, property or reputation,

- ii) **“Fraudulent practice”** means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Procuring Entity, and includes collusive practice among 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;
  - iii) **“Collusive practice”** means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of a procuring entity (PE) prior to or after Tender submission, designed to establish Tender prices at artificial non-competitive levels and to deprive the PE of the benefit of free and open competition;
  - iv) **“Coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of either to influence improperly the actions of a PE;
  - v) **“Obstructive practice”** means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation 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
- b) A procuring entity (PE) has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by KACC/PPOA to inspect their accounts and records and other documents relating to the Tender submission and contract performance,
  - c) The Procuring Entity will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in any of the above practices in competing for the contract;
  - d) In pursuit of the policy defined in sub-Clause 45.1 the Procuring Entity will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt or fraudulent practices

were engaged in by representatives of the procuring entity or approving county or of a beneficiary of the funds during the procurement or the execution of that contract, without the procuring entity or approving county having taken timely and appropriate action satisfactory to the Government of Kenya to remedy the situation

- e) In pursuant of the policy defined in sub-clause 44.1(a) the Government will cancel the portion of the funds allocated to the contract for goods, work or services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the procuring entity or approving county or of a beneficiary of the funds during the procurement or the executions of that contract, without the Procuring Entity having taken timely and appropriate action satisfactory to the Government of Kenya to remedy the situation.

**44.2** The Government of Kenya reserves the right, where a firm has been found by a foreign country, international organization or other foreign organization to have engaged in corrupt or fraudulent practice, to declare that such a firm is be barred, for a period of not less than five years to be awarded a public financed contract in Kenya in.

**44.3** In pursuant of section 115 of the Public Procurement and Disposal Act,2005 (PPDA),the Director General of Public Procurement Oversight County, with the approval of the Advisory Board, may debar a person for a period of not less than five years for fraud and corruption and other offences under the PPDA.

**44.4** Any communication between the Tenderer and the Procuring Entity related to matters of alleged fraud or corruption must be made in writing.

## **Review of Procurement Decisions**

- 45** Right to Review 45.1 A Tenderer who claims to have suffered or to risk suffering, loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity or an approving county by the Public Procurement and Disposal Act 2005 or regulations, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:
- a) The choice of procurement method;
  - b) a decision by the procuring entity to reject all tenders, proposals or quotations;
  - c) Where a contract is signed in accordance to section 68 of the Public Procurement and Disposal Act,2005; and
  - d) Where an appeal is frivolous.
- 46.** Time Limit on Review of copies and pay fees as prescribed by regulations within fourteen (14) days of the Tenderer/Tenderer becoming or should have become aware of the circumstances giving rise to the complaint or dispute. 46.1 The Tenderer shall submit an application for review in the number
- 47.** Submission of 47.1 Any application for administrative review shall be submitted in Applications for writing to the Secretary, Public Procurement Administrative Review **by the** Review Board on

Form RB 1 (which may be downloaded from the **Public** PPOA website) at the address shown in the **Tender Data Sheet**.

**Procurement**

The secretary to the review board shall immediately after filing of

**Administrative**

the request procuring entity or Director under Regulation 73, serve a copy thereof on the -General as the case may be.

**Review Board**

47.2 The application for administrative review shall be in accordance with the requirements of Regulation 73 of the Public Procurement and Disposals Regulations, 2006, including:

- a) Reasons for the complaint, including any alleged breach of the Act or Regulations;
- b) An explanation of how the provisions of the Act, Regulation or provision has been breached or omitted, including the dates and name of the responsible public officer, where known;
- c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request;
- d) Remedies sought; and
- e) Any other information relevant to the complaint

**48. Decision by the**

48.1 The Administrative Review Board shall within thirty days after receipt of a application for administrative review deliver a written

**Public**

decision which shall indicate:

**Procurement**

**Administrative** a) Whether the application is upheld in whole, in part or rejected; **Review**

**Board** b) The reasons for its decision;

c) The corrective measures to be undertaken; and

d) Order payment of costs as between parties to review

48.2 The decision of the Administrative Review Board shall be final unless the Tenderer institutes an appeal with High Court under section 112 of the Act.

**49. Judicial Review**

49.1 Any Tenderer not satisfied with the decision of the Public Procurement Administrative Review Board may appeal to the High Court within fourteen days after the decision is made and the decision of the High Court will be final.

## **SECTION III: TENDER DATA SHEET**

### **Tender Data Sheet (BDS)**

| <b>BDS Clause Number</b>   | <b>ITT Clause Number</b>  | <b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>  |
|----------------------------|---------------------------|--|
| <b>A. Introduction</b>     |                           |  |
| <b>1.</b>                  | <b>1.1</b>                | Name of Procuring Entity: [ <i>County Government of Mombasa- CGM</i> ]<br><br>The subject of procurement is: [ <b>Provision of Cleaning Services for the Governor’s Office</b> ]<br><br>Name and identification number of the Contract: <b>CGM/PRO/T/22/2019-2020]</b> |
| <b>2.</b>                  | <b>1.2</b>                | Expected period to provide the service(s)- 24 Months<br><br>Expected commencement date: as per contract<br><br>Required finish date: as per contract   |
| <b>3.</b>                  | <b>2.1</b>                | Name of procuring entity/ institution [ <i>County Government of Mombasa</i> ]<br><br>Financial Year [2019-2020]  |
| <b>4.</b>                  | <b>2.1</b>                | Payments will be made by [ <i>County Government of Mombasa</i> ] <i>monthly in arrears</i>   |
| <b>5.</b>                  | <b>3.1</b>                | Tenderers shall be required to demonstrate proven experience/technical ability to carry out work of complexity and size envisaged and should have appropriate available personnel, equipment, financial strength and managerial capacity.                              |
| <b>6</b>                   | <b>5</b>                  | Alternative tenders to the requirements of the Tender documents [“ <i>will not,</i> ”] be permitted]   |
| <b>7.</b>                  | <b>7.3</b>                | There shall be a <b>mandatory site visit on 30<sup>th</sup> January 2020 Thursday</b>  |
| <b>B. Tender Documents</b> |                           |  |
| <b>9.</b>                  | <b>8.2</b><br><b>19.1</b> | The number of copies of the Tender to be completed and returned in addition to the original will be [ <i>two - 2</i> ].  |

| <b>BDS Clause Number</b> | <b>ITT Clause Number</b> | <b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b> |
|--------------------------|--------------------------|---|
|--------------------------|--------------------------|---|

|   |             |  |
|---|-------------|--|
| <b>10.</b>                              | <b>9.1</b>  | <p>The address for clarification of Tender documents is [<br/> Director Supply Chain Management<br/> 2<sup>nd</sup> floor County Assembly Hall,<br/> Treasury Square, Mombasa</p> <p>Deadline for submission of tenders:</p> <p><b>1000 HOURS ON 5<sup>TH</sup> FEBRUARY 2020.</b></p> |
| <b>12.</b>                              | <b>9.2</b>  | <p>The Procuring Entity will respond to a request for clarification within <i>(2 days)</i> provided the clarification has been requested at least <i>(7 days)</i> prior to the deadline for submission of tenders.</p>   |
| <p><b>C. Preparation of Tenders</b></p> |             |  |
| <b>13.</b>                              | <b>11.1</b> | <p>The language of all correspondences and documents related to the Tender is:<br/> <i>English</i></p>   |

| <b>BDS<br/>Clause<br/>Number</b> | <b>ITT<br/>Clause<br/>Number</b> | <b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b> |
|----------------------------------|----------------------------------|---|
|----------------------------------|----------------------------------|---|

14.

12.1

ion to the documents stated in ITT Clause 12, the following documents included with the Tender

derer shall submit **one (1) ORIGINAL** and **two (2) COPIES** of the original marked ORIGINAL and COPY.

der prepared by the tenderers shall comprise of Technical submission and

**Envelope** Financial submission **Envelope “B” which shall be put in separate envelopes and the two envelopes shall be placed in one envelope/package.**

**outer envelope and inner envelopes shall be clearly marked and labeled with the tender number and tender description as indicated in the Invitation to Tender.**

**Tenders that are responsive to the mandatory requirements and have obtained the passmark of 75% in the technical evaluation shall have their financial submission opened.**

**At the deadline for submission of tenders, only technical submission will be opened on the date of tender opening.**

**Envelope** shall contain the Technical submission and shall be clearly marked “Envelope – Technical Submission”. Envelope A shall contain NO indication

- 1. 2. - have contents pages clearly indicating Sections and Page Numbers
- have pages in the whole document numbered in the correct sequence, serialized and bound.

**Note: Complying with item numbers 1 & 2 above is mandatory and failure to comply shall lead to automatic disqualification.**

- 3. Shall contain the following documents; clearly marked and arranged in the following order;

- i. Particulars of Tendering Company to include Company background/profile (**MANDATORY**).
- ii. Valid and current Tax Compliance Certificate (newly registered firms must provide proof for exemption on Tax Compliance) (**MANDATORY**).
- iii. Company Registration/ Incorporation Certificate (**MANDATORY**).
- iv. Duly filled, signed and stamped Confidential Business Questionnaire (**MANDATORY**).
- v. Duly filled, signed and stamped Tender –Securing Declaration Form (**MANDATORY**).
- vi. Duly filled, signed and stamped Anti – Corruption Declaration Pledge (**MANDATORY**).

- i. Certificate of Good Conduct for the Director (s) of the firmPage . **33** of **81** (**MANDATORY**).

- ii.



Single Business Permit (**MANDATORY**).



| <b>BDS<br/>Clause<br/>Number</b> | <b>ITT<br/>Clause<br/>Number</b> | <b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b> |
|----------------------------------|----------------------------------|---|
|----------------------------------|----------------------------------|---|

- vii.
- viii. Duly filled and signed Declaration Form **(MANDATORY)**.
- ix. Submit a valid and current Single Business Permit **(MANDATORY)**.
- x. Certificate of Registration in a target group issued by the National /County Treasury **(MANDATORY)**.
- xi. Written undertaking that should the tender be awarded the contract they shall process to have a Workman's Compensation and Group Personal Accident Insurance, Third Party of Public Liability Insurance **(MANDATORY)**.
- xii. Certificate of Good Conduct for the Director (s) of the firm. **(MANDATORY)**.
- xiii. Copies of National Identity Card (s) for the Director (s) of the firm **(MANDATORY)**.
- xiv. Method of work Statement- include staff skills, deployment, and methodology in executing scope of work and HSE policy **(MANDATORY)**.
- xv. Relevant Qualifications of one key management staff and one technical personnel proposed for the Contract to include their current CVs and academic qualifications **(MANDATORY)**.
- xvi. Copies of Certified Financial Statements for one year, either 2015 or 2016 **(MANDATORY)**.
- xvii. List of equipment proposed to execute the contract, their location and proof of ownership (own, hire or lease) **(MANDATORY)**.

**Envelope B**

- i. ii. ll contain the following:
    - Form of Tender
    - Priced Schedule for Services
- Th
- ( follows: ter envelopes shall:  
dressed to the County at the address given in the Invitation to Tender as

**The County Secretary,  
County Government of Mombasa,  
P.O Box 90440-80100,  
Mombasa.**

| <b>BDS<br/>Clause<br/>Number</b> | <b>ITT<br/>Clause<br/>Number</b> | <b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>  |
|----------------------------------|----------------------------------|--|
|                                  |                                  | <p>Note: The cover envelope shall not bear the name and identification of the Bidder.</p> <p>(b) bear, tender number and name in the Invitation for Tenders and the words, “<b>DO NOT OPEN BEFORE 1000 HOURS 5<sup>TH</sup> FEBRUARY 2020</b>”.</p> <p>The inner envelope shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late” or does not qualify for financial opening.</p> <p>If the outer envelope is not sealed and marked as required, the County will assume no responsibility for the tender’s misplacement or premature opening.</p> |
| <b>15.</b>                       | <b>13.3</b>                      | The information required from Tenderers in ITT Clause 13.3 is modified as follows: NONE  |
| <b>16.</b>                       | <b>13.4</b>                      | The qualification data required from Tenderers in ITT Clause 13.4 is modified as follows: NONE   |
| <b>17(a)</b>                     | <b>13.5(a)</b>                   | Clause deleted   |
| 17(b)                            | 13.5(b)                          | Clause deleted   |
| 17(c)                            | 13.5(c)                          | The essential property and/or equipment to be made available for the Contract by the successful Tenderer shall be as detailed in the scope of works and technical specifications   |
| <b>17(d)</b>                     | <b>13.5(d)</b>                   | The minimum experience required to be demonstrated the Manager of the successful Tenderer for this Contract shall be 6 months in service(s) of an equivalent nature and volume.  |
| <b>17(e)</b>                     | <b>13.5(e)</b>                   | clause deleted   |
| <b>18.</b>                       | <b>13.6</b>                      | CLAUSE DELETED joint venture NOT applicable  |
| <b>19.</b>                       | <b>15.4</b>                      | Rates and prices quoted by the Tenderer <i>are not</i> subject to adjustment during the performance of the contract  |
| <b>20.</b>                       | <b>16.1</b>                      | Prices for inputs from within Kenya are to be quoted in Kenyan Shillings   |

|            |                            |  |
|------------|----------------------------|--|
| <b>21.</b> | <b>16.2</b><br><b>30.1</b> | clauses deleted bids must be in Kenya Shillings  |
| <b>22.</b> | <b>17.1</b>                | The Tender Validity Period shall be [90] days after the deadline for Tender submission specified in the Tender Data Sheet. |

| <b>BDS Clause Number</b>                    | <b>ITT Clause Number</b> | <b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>   |
|---|--------------------------|---|
| <b>23.</b>                                  | <b>18.1<br/>18A.1</b>    | Tenderers shall submit a Tender Securing Declaration Form   |
| <b>24</b>                                   | <b>18.10</b>             | Clause deleted  |
| <b>25.</b>                                  | <b>19.2</b>              | Form of authorization that person signing tender can commit the Tenderer: power of attorney   |
| <b>D. Submission of Tenders</b>             |                          |   |
| <b>26.</b>                                  | <b>20.2</b>              | Tender Box located at the County Assembly Hall ground floor next to the main office. The tenders must be received or returned to the Procurement office, 2 <sup>nd</sup> floor County Assembly Hall, Treasury Square, Mombasa to reach him not later than <b>10.00 a.m. on 5<sup>TH</sup> February 2020.</b>                        |
| <b>27.</b>                                  | <b>9.1<br/>21.1</b>      | The deadline for submission of tenders shall be<br><b>1000 HOURS ON 5<sup>TH</sup> February 2020.</b>   |
|   | <b>21.3</b>              | Extension of the deadline for submission of tenders shall not be made later than [7 days]. Before tender closing date   |
| <b>E. Opening and Evaluation of Tenders</b> |                          |   |
| <b>28.</b>                                  | <b>24.1</b>              | The Tender opening shall take place at<br><br>Tenders will be opened promptly thereafter in the presence of Tenderers' representatives who choose to attend the opening from <b>1000HRS 5<sup>TH</sup> February 2020</b> at the and Tenderers or their representatives may attend. Late or incomplete tenders shall not be accepted |
| <b>29.</b>                                  | <b>24.4</b>              | clause deleted  |
| <b>BDS Clause Number</b>                    | <b>ITT Clause Number</b> | <b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>   |

|                      |      |   |
|----------------------|------|---|
| 30.                  | 28.2 | <p>Criteria for Tender evaluation shall be:</p> <p><b>a) Previous experience in assignments similar in nature (20 Marks)</b></p> <p>(List 2 Assignments carried in the last four years with details of clients, addresses and contacts, attaching relevant documents of proof of work) <b>10 Marks Each</b></p> <p><b>b) Personnel Capability (30 marks):</b> List of personnel including: Qualifications of one key management staff (relevant diploma in related studies} and one technical personnel (relevant certificate in related studies) proposed for the Contract to include their current CVs.</p> <p><b>c) Method of work Statement (20 marks)-</b> Method of work Statement- should include but not limited to:</p> <ul style="list-style-type: none"> <li>• Schedule of Work</li> <li>• The materials to be used and quantities</li> <li>• Staff skills and redeployment including number of staff</li> <li>• General Methodology in executing the scope of work    <input type="checkbox"/></li> </ul> <p>Health &amp; Safety precautions (attach HSE policy)</p> <p><b>d) Equipment capability (20 marks)</b></p> <p>List of equipment and materials proposed to execute the contract. Details of their operating condition. Their location. Proof of ownership (own, hire or lease)</p> <p><b>e) Financial capability (10 Marks)</b></p> <p><b>Profitability ratios: (&gt;=20%) 5 Marks and (&lt;20) 3 Marks</b></p> <p><b>Current Ratio (&gt;=1) 5 Marks (&lt;1) 3 Marks</b></p> <p><b>NOTE: Candidates will require scoring a minimum of 75% to proceed to the next stage of evaluation of prices.</b></p> |
| 31.                  | 32   | clause deleted no preferences shall be given  |
| 32.                  | 33.1 | Post-qualification “will” be undertaken where deemed necessary  |
| F. Award of Contract |      |   |
| 33.                  | 36.1 | Percentage for maximum quantity increase or decrease at time of award of contract is .....[ 15%]  |
| 34.                  | 41.1 | Clause deleted  |
| 35.                  | 42.1 | N/a clause deleted  |



| <b>BDS Clause Number</b>                  | <b>ITT Clause Number</b> | <b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>   |
|---|--------------------------|---|
| <b>36.</b>                                | <b>43.1</b>              | The Adjudicator to be appointed by the Chairman chartered institute of arbitrators Kenya  |
| <b>G: Review of Procurement Decisions</b> |                          |   |
| <b>37.</b>                                | <b>46.1</b>              | Fee for administrative review shall be as set out in Part II of the Fourth Schedule of the PPDR 2006.   |
| <b>38.</b>                                | <b>47.1</b>              | Address for submission of application for review:<br><br>Secretary<br>Public Procurement Administrative Review Board, The<br>Public Procurement Oversight County,<br>10 <sup>th</sup> Floor, National Bank House<br>P.O. Box 58535-00200, NAIROBI,<br>Kenya.<br>Tel: +254 (0) 20 324 4000 Email:<br><a href="mailto:info@ppoa.go.ke">info@ppoa.go.ke</a><br>Website: <a href="http://www.ppoa.go.ke">www.ppoa.go.ke</a> |

## **SECTION IV: GENERAL CONDITIONS OF CONTRACT**

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## A. General Provisions

|    |             |     |  |
|----|-------------|-----|--|
| 1. | Definitions | 1.1 | <p>Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:</p> <ul style="list-style-type: none"> <li>a) “Adjudicator” is the person appointed jointly by the PE and the Service Provider to resolve disputes in the first instance, as provided for in Clause 44 below;</li> <li>b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender under Section VIII;</li> <li>c) “CDS” means the Contract Data Sheet applying to the named contract.</li> <li>d) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the PE;</li> <li>e) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 2.1 of such signed Contract;</li> <li>f) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 35.1;</li> <li>g) “Corrupt practice” means the offering, giving receiving or solicitation of anything of value to influence the action of a public official in the procurement process or in Contract execution and includes inter-alia, bribery, extortion or coercion, which involves threats of injury to person, property or reputation,</li> <li>h) “Dayworks” means varied work inputs subject to payment on a time basis for the Service Provider’s employees and equipment, in addition to payments for associated materials and administration;</li> <li>i) “PE” means the party who employs the Service Provider, the Procuring Entity;</li> <li>j) “Foreign Currency” means any currency other than the currency of the country of the PE;</li> <li>k) “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.</li> <li>l) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Procuring Entity, and includes collusive practice among 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;</li> <li>m) “GCC” means these General Conditions of Contract;</li> <li>n) “Government” means the Government of Kenya;</li> <li>o) “Local Currency” means the currency of Kenya;</li> <li>p) “Member,” in case the Service Provider consists of a joint venture of more than one Entity, means any of these entities; “Members” means</li> </ul> |
|----|-------------|-----|--|

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>all these entities, and “Member in Charge” means the Entity specified in the CDS to act on their behalf in exercising all the</p> |
|--|--|--|--|

|    |                                   |     |   |
|----|-----------------------------------|-----|---|
|    |                                   |     | <p>Service Provider’s rights and obligations towards the PE under this Contract;</p> <p>q) “Party” means the PE or the Service Provider, as the case may be, and “Parties” means both of them;</p> <p>r) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;</p> <p>s) “Service Provider” is a person or corporate body whose Tender to provide the Services has been accepted by the PE;</p> <p>t) “Service Provider’s Tender” means the completed Tendering document submitted by the Service Provider to the PE</p> <p>u) “CDS” means the Contract Data Sheet by which the GCC may be amended or supplemented;</p> <p>v) “Specifications” means the specifications of the service included in the Tendering document submitted by the Service Provider to the PE</p> <p>w) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider’s Tender.</p> <p>x) “Subcontractor” means any Entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Clauses 7.1 and 8.1.</p> <p>y) “Site” means the place(s) named in CDS.</p> |
| 2. | Applicable Law and Interpretation | 2.1 | <p>The Contract shall be interpreted in accordance with the laws of Kenya, unless otherwise <b>specified in the CDS</b>. The documents forming the Contract shall be interpreted in the following order of priority:</p> <ol style="list-style-type: none"> <li>1. Contract,</li> <li>2. Letter of Acceptance,</li> <li>3. Service Provider's Tender,</li> <li>4. Contract Data Sheet</li> <li>5. Conditions of Contract,</li> <li>6. Specifications,</li> <li>7. Activity Schedule</li> <li>8. Any other document listed in the <b>CDS</b> as forming part of the Contract.</li> </ol>   |
| 3. | Language                          | 3.1 | <p>This Contract shall be executed in English, unless another language is specified in the <b>CDS</b>, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.</p>  |
| 4. | Communications                    | 4.1 | <p>Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, email, telex, telegram, or facsimile to such Party at the address specified in the <b>CDS</b>.</p>   |

|    |                            |     |  |
|----|----------------------------|-----|--|
| 5. | Location                   | 5.1 | The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, as the PE may approve.  |
| 6. | Authorized Representatives | 6.1 | Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the PE or the Service Provider may be taken or executed by the officials specified in the CDS.   |
| 7. | Subcontracting             | 7.1 | The Service Provider may subcontract with the approval of the PE's Representative, but may not assign the Contract without the approval of the PE in writing. Subcontracting shall not alter the Service Provider's obligations.   |
| 8. | Other Service Providers    | 8.1 | The Service Provider shall cooperate and share the Site with other Service Providers, public authorities, utilities, and the PE between the dates given in the Schedule of Other Service Providers, as referred to in the CDS. The Service Provider shall also provide facilities and services for them as described in the Schedule. The PE may modify the Schedule of Other Service Providers, and shall notify the Service Provider of any such modification. |
| 9. | Taxes and Duties           | 9.1 | The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.  |

### **Commencement, Completion, Modification, and Termination of Contract**

|    |                           |      |  |
|----|---------------------------|------|--|
| 10 | Effectiveness of Contract | 10.1 | This Contract shall come into effect on the date the Contract is signed by both parties and such other later date as may be stated in the CDS.   |
| 11 | Commencement of Services  |      |  |
|    | <b>Programme</b>          | 11.1 | Before commencement of the Services, the Service Provider shall submit to the PE for approval a Programme showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Programme as updated.  |
|    | <b>Starting Date</b>      | 11.2 | The Service Provider shall start carrying out the Services within thirty (30) days after the date the Contract becomes effective, or at such other date as may be specified in the CDS.  |
| 12 | Intended Completion Date  | 12.1 | Unless terminated earlier pursuant to Clause 15, the Service Provider shall complete the activities by the Intended Completion Date, as is specified in the CDS. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Clause 27. In this case, the Completion Date will be the date of completion of all activities. |
| 13 | Modification              | 13.1 | Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written Contract between the Parties and shall not be effective until the consent of the appropriate Tender committee, as the case may be, has been obtained.   |

|                |                                 |      |   |
|----------------|---------------------------------|------|---|
| <b>14</b><br>. | Force Majeure                   |      |   |
|                | <b>A. No Breach of Contract</b> | 14.1 | The failure of a Party to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry |

|  |                             |      |   |
|--|-----------------------------|------|---|
|  |                             |      | out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.  |
|  | <b>B. Extension of Time</b> | 14.2 | Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.   |
|  | <b>C. Payments</b>          | 14.3 | During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period. |
|  |                             | 14.4 | Payments shall be made promptly by the Purchaser, within thirty (30) days after submission of an invoice or claim by the Supplier. If the Purchaser makes a late payment, the Supplier shall be paid interest on the late payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the rate as specified in the CDS.            |

|                |                     |      |  |
|----------------|---------------------|------|--|
| <b>15</b><br>. | Termination         |      |  |
|                | <b>A. By the PE</b> | 15.1 | <p>The PE may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause and sixty (60) days' in the case of the event referred to in (g):</p> <ul style="list-style-type: none"> <li>a) if the Service Providers do not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the PE may have subsequently approved in writing;</li> <li>b) if the Service Provider become insolvent or bankrupt;</li> <li>c) if, as the result of Force Majeure, the Service Provider/s are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or</li> <li>d) if the Service Provider/s, in the judgment of the PE has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.</li> <li>e) if the Service Provider does not maintain a Performance Security in accordance with Clause 28;</li> <li>f) if the Service Provider has delayed the completion of the Services by the number of days for which the maximum amount of liquidated damages can be paid in accordance with Clause 27.1 and the CDS.;</li> <li>g) if the PE, in its sole discretion, decides to terminate this Contract.</li> </ul> |

|           |                                    |      |   |
|-----------|------------------------------------|------|---|
|           | <b>B. By the Service Provider</b>  | 15.2 | <p>The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the PE, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Clause:</p> <p>a) if the PE fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 44 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or</p> <p>b) if, as the result of Force Majeure, the Service Providers are</p>  |
|           |                                    |      | unable to perform a material portion of the Services for a period of not less than sixty (60) days.   |
|           | <b>C. Payment upon Termination</b> | 15.3 | <p>Upon termination of this Contract pursuant to sub-Clauses 15.1 or 15.2, the PE shall make the following payments to the Service Provider:</p> <p>a) remuneration pursuant to Clause 34 for Services satisfactorily performed prior to the effective date of termination;</p> <p>b) except in the case of termination pursuant to paragraphs (a), (b), (d), (e), (f) of Clause 15.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.</p> <p>c) in the case of (g) reimbursement of the Service Providers' profit to the end of the original Contract.</p>  |
| <b>16</b> | Limitation of Liability            | 16   | <p>Except in cases of criminal negligence or wilful conduct, and in the case of infringement pursuant to GCC Clause 8,</p> <p>a) The Service Provider shall not be liable to the procuring entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and</p> <p>b) The aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.</p> |

### **Obligations of the Service Provider**

|            |                       |      |   |
|------------|-----------------------|------|---|
| <b>17.</b> | General               | 17.1 | <p>The Service Providers shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out their obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Providers shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the PE, and shall at all times support and safeguard the PE's legitimate interests in any dealings with Subcontractors or third parties.</p> |
| <b>18.</b> | Conflict of Interests |      |   |



|  |   |      |   |
|--|---|------|---|
|  | <b>A. Service Provider not to benefit from Commissions and Discounts.</b>   | 18.1 | The remuneration of the Service Providers pursuant to Clause 34 shall constitute the Service Providers' sole remuneration in connection with this Contract or the Services, and the Service Providers shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Providers shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration. |
|  | <b>B. Service Provider and Affiliates not to be otherwise interested in</b> | 18.2 | The Service Providers agree that, during the term of this Contract and after its termination, the Service Providers and their affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to  |

|            |  |      |  |
|------------|--|------|--|
|            | <b>Project</b>                                     |      | the Services.  |
|            | <b>C. Prohibition of Conflicting Activities</b>    | 18.3 | Neither the Service Providers nor their Subcontractors nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities: <ul style="list-style-type: none"> <li>(a) during the term of this Contract, any business or professional activities which would conflict with the activities assigned to them under this Contract;</li> <li>(b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;</li> <li>(c) after the termination of this Contract, such other activities as may be specified in the <b>CDS</b>.</li> </ul> |
| <b>19</b>  | Confidentiality                                    | 19.1 | The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the PE's business or operations without the prior written consent of the PE.  |
| <b>20.</b> | Insurance to be taken out by the Service Providers | 20.1 | The Service Providers (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the PE, insurance against the risks, and for the coverage, as shall be specified in the <b>CDS</b> ; and (b) at the PE's request, shall provide evidence to the PE showing that such insurance has been taken out and maintained and that the current premiums have been paid.  |
| <b>21.</b> | Protection of the environment                      | 21.1 | The Service Provider shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.   |
|            |  | 21.2 | The Service Provider shall ensure that emissions, surface discharges and effluent from his activities shall not exceed values prescribed in relevant environmental laws.   |

|     |  |      |  |
|-----|--|------|--|
| 22. | Labour Laws  | 22.1 | The Service Provider shall comply with all the relevant labour laws applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, NSSF and immigration and shall pay <b>current basic minimum labour</b> wages and shall also allow them all their legal rights.   |
|     |  | 22.2 | The Service Provider shall require his employees to obey all applicable laws, including those concerning safety at work.   |
| 23. | Health and Safety  | 23.1 | The Service Provider shall at all times take all reasonable precautions to maintain the health and safety of his personnel.  |
|     |  | 23.2 | The Service Provider shall ensure that first aid facilities are available at all times at the site and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.   |
|     |  | 23.3 | The Service Provider shall notify the PE details of any accident as soon as practicable after its occurrence. The Service Provider shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to the property, as the PE may reasonably require.  |
|     |  | 23.4 | The Service Provider shall conduct an HIV-Aids awareness programme,  |
|     |  |      | and shall take other such measures as specified in the <b>CDS</b> to reduce the risk of transfer of HIV virus between and among Service Provider's personnel, the PEs Staff and the surrounding community.   |
| 24. | Service Providers' Actions Requiring PE's Prior Approval                 | 24.1 | The Service Provider shall obtain the PE's prior approval in writing before taking any of the following actions:<br>(a) entering into a subcontract for the performance of any part of the Services,<br>(b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),<br>(c) changing the Program of activities; and<br>(d) Any other action that may be specified in the <b>CDS</b> .   |
| 25. | Reporting Obligations  | 25.1 | The Service Providers shall submit to the PE the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.   |
| 26. | Documents Prepared by the Service Providers to be the Property of the PE | 26.1 | All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Providers in accordance with this Clause shall become and remain the property of the PE, and the Service Providers shall, not later than 14 days upon termination or expiration of this Contract, deliver all such documents and software to the PE, together with a detailed inventory thereof. The Service Providers may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the <b>CDS</b> . |
| 27. | Liquidated Damages   |      |  |

|            |  |      |   |
|------------|--|------|---|
|            | <b>a) Payments of Liquidated Damages</b> | 27.1 | The Service Provider shall pay liquidated damages to the Procuring Entity for failure to achieve service levels at the rate stated in the <b>CDS</b> . The total amount of liquidated damages shall not exceed the amount defined in the <b>CDS</b> . The Procuring Entity may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.  |
|            | <b>b) Correction for Over-payment</b>    | 27.2 | If the Intended Completion Date is extended after liquidated damages have been paid, the PE shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Clause 37.   |
|            | Lack of Performance Penalty              | 27.3 | If the Service Provider has not corrected a Defect within the time specified in the PE's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Clause 42.1  |
| <b>28.</b> | Performance Security                     | 28.1 | The Service Provider shall provide the Performance Security to the PE no later than the date specified in the Letter of Acceptance. The Performance Security shall be issued in an amount and form and by a bank/insurance company or surety acceptable to the PE, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 days from the Completion Date of the Contract, unless otherwise specified in the <b>CDS</b> . |

### **Service Provider's Personnel**

|            |   |      |  |
|------------|---|------|--|
| <b>29.</b> | Description of Personnel                | 29.1 | The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the PE.   |
| <b>30.</b> | Removal and/or Replacement of Personnel | 30.1 | Except as the PE may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.  |
|            |   | 30.2 | If the PE finds (i) that any of the Personnel have committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the PE's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the PE. |
|            |   | 30.3 | The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel  |

### **Obligations of the PE**

|            |                              |      |  |
|------------|------------------------------|------|--|
| <b>31.</b> | Assistance and Exemptions    | 31.1 | The PE shall use its best efforts to provide the Service Provider such assistance and exemptions as specified in the <b>CDS</b> .  |
| <b>32.</b> | Change in the Applicable Law | 32.1 | If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by Contract between the Parties, and corresponding adjustments shall be made to the amounts referred to in Clauses 35(a) or (b), as the case may be. |
| <b>33.</b> | Services and Facilities      | 33.1 | The PE shall make available to the Service Provider the Services and Facilities listed under Appendix F.   |

### **Payments to the Service Provider**

|            |                       |      |  |
|------------|-----------------------|------|--|
| <b>34.</b> | Lump-Sum Remuneration | 34.1 | The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Providers in carrying out the Services described in Appendix A. Except as provided in Clause 35.1, the Contract Price may only be increased above the amounts stated in Clause 34 if the Parties have agreed to additional payments in accordance with Clause 36.1. |
| <b>35.</b> | Contract Price        | 35.1 | <p>a) The price payable in local currency is set forth in the <b>CDS</b>.</p> <p>b) The price payable in foreign currency is set forth in the <b>CDS</b>.</p>  |

|            |                                 |      |   |
|------------|---------------------------------|------|---|
| <b>36.</b> | Payment for Additional Services | 36.1 | For the purpose of determining the remuneration due for additional Services as may be agreed under Clause 13, a breakdown of the lump-sum price is provided in Appendices D and E.  |
| <b>37.</b> | Terms and Conditions of Payment | 37.1 | Payments will be made to the Service Provider and according to the payment schedule stated in the <b>CDS</b> . Unless otherwise stated in the <b>CDS</b> , advance payment shall be made against the provision by the Service Provider of a bank guarantee or insurance bond for the same amount, and shall be valid for the period stated in the <b>CDS</b> . Any other payment shall be made after the conditions listed in the <b>CDS</b> for such payment have been met, and the Service Provider has submitted an invoice to the PE specifying the amount due. |
| <b>38.</b> | Interest on Delayed Payments    | 38.1 | If the PE has delayed payments beyond twenty eight (28) days after the due date stated in the <b>CDS</b> , interest shall be paid to the Service Provider for each day of delay at the rate stated in the <b>CDS</b>  |

|     |                  |      |   |
|-----|------------------|------|---|
| 39. | Price Adjustment | 39.1 | <p>a) Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the <b>CDS</b>. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency so long as the adjustment factor is based on the prevailing consumer price index by the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya. A separate formula of the type indicated below applies to each Contract currency:</p> $P_c = A_c + B_c \frac{L_{mc}}{L_{oc}} + C_c \frac{I_{mc}}{I_{oc}}$ <p>Where:</p> <p><math>P_c</math> is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.</p> <p><math>A_c</math>, <math>B_c</math> and <math>C_c</math> are coefficients specified in the <b>CDS</b>, representing: <math>A_c</math> the nonadjustable portion; <math>B_c</math> the adjustable portion relative to labour costs and <math>C_c</math> the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and</p> <p><math>L_{mc}</math> is the index prevailing at the first day of the month of the corresponding invoice date and</p> <p><math>L_{oc}</math> is the index prevailing 28 days before Tender opening for labour; both in the specific currency “c”.</p> <p><math>I_{mc}</math> is the index prevailing at the first day of the month of the corresponding invoice date and <math>I_{oc}</math> is the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency “c”.</p> <p>b) If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.</p> |
| 40. | Dayworks         | 40.1 | <p>If applicable, the Day work rates in the Service Provider’s Tender shall be used for small additional amounts of Services only when the PE has given written instructions in advance for additional services to be paid in that way.</p>   |
|     |                  | 40.2 | <p>All work to be paid for as Day works shall be recorded by the Service Provider on forms approved by the PE. Each completed form shall be verified and signed by the PE representative as indicated in Clause 6 within two days of the Services being performed.</p>  |
|     |                  | 40.3 | <p>The Service Provider shall be paid for Day works subject to obtaining signed Day works forms as indicated in Clause 40.</p>  |

### Quality Control

|     |                     |      |   |
|-----|---------------------|------|---|
| 41. | Identifying Defects | 41.1 | <p>The PE shall check the Service Provider’s performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider’s responsibilities. The PE may instruct the Service Provider to search for a Defect and to uncover and test any service that the PE considers may have a Defect.</p> |
|-----|---------------------|------|---|

|     |   |      |  |
|-----|---|------|--|
| 42. | Correction of Defects and Penalty for Lack of Performance | 42.1 | <p>a) The PE shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.</p> <p>b) Every time a notice of Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the PE's notice.</p> <p>c) If the Service Provider has not corrected a Defect within the time specified in the PE's notice, the PE will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Clause 27.3.</p> |
|-----|---|------|--|

### **Settlement of Disputes**

|     |                     |      |   |
|-----|---------------------|------|---|
| 43. | Amicable Settlement | 43.1 | The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.  |
| 44. | Dispute Settlement  | 44.1 | If any dispute arises between the PE and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 14 days of the notification of disagreement of one party to the other.   |
|     |                     | 44.2 | The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.  |
|     |                     | 44.3 | The Adjudicator shall be paid by the hour at the rate specified in the <b>CDS</b> , together with reimbursable expenses of the types specified in the <b>CDS</b> , and the cost shall be divided equally between the PE and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding. |
|     |                     | 44.4 | The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the <b>CDS</b> .   |
|     |                     | 44.5 | Should the Adjudicator resign or die, or should the PE and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the PE and the Service Provider. In case of disagreement between the PE and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing County designated in the <b>CDS</b> at the request of either party, within 14 days of receipt of such request.  |

## **SECTION V: CONTRACT DATA SHEET**

### **Contract Data Sheet**

The following Contract Data Sheet shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

| CDS<br>Clause<br>Number | GCC<br>Clause<br>Number | Amendments of, and Supplements to, Clauses in the General<br>Conditions of Contract  |
|-------------------------|-------------------------|--|
| A. General Provisions   |                         |  |
| 1.                      | 1.1(d)                  | The completion date is <b>24 Months from the date of contract award.</b>   |
|                         | 1.1(e)                  | The contract name is <i>Tender for Provision of Cleaning Services – preference groups</i>  |
|                         | 1.1(i)                  | The Employer PE is <i>County Government of Mombasa</i>   |
|                         | 1.1(p)                  | clause deleted N/A   |
|                         | 1.1(s)                  | The Service Provider is <i>[ insert name ]</i>   |
|                         | 1.1(w)                  | The works to be performed by the service provider<br><br>Provision of Cleaning services in at Office of the Governor, Mombasa County   |
| 2.                      | 2.1                     | The law that applies to the Contract is the law of Kenya   |
| 3.                      | 3.1                     | The language is <i>English</i>   |
| 4.                      | 4.1                     | The addresses are:<br><br>PE: _____<br><br>Attention: _____<br><br>Email: _____<br><br>Facsimile: _____<br><br>Service Provider: _____<br><br>Attention: _____<br><br>Email: _____<br><br>Facsimile: _____ |

|           |            |  |
|-----------|------------|--|
| <b>5.</b> | <b>6.1</b> | <p>The Authorized Representatives are:</p> <p>For the PE: .....</p> <p>For the Service Provider:</p> |
|-----------|------------|--|

**B. Commencement, Completion, Modification, and Termination of Contract**

|           |             |   |
|-----------|-------------|---|
| <b>6.</b> | <b>8.1</b>  | Schedule of other Service Providers <i>TBA</i>                            |
| <b>7.</b> | <b>10.1</b> | The date on which this Contract shall come into effect is <i>[date]</i> . |
| <b>8.</b> | <b>11.2</b> | The Starting Date for the commencement of Services is <i>[date].</i>      |
| <b>9.</b> | <b>12.1</b> | The Intended Completion Date is <i>[date]</i> .                           |

**C. Obligations of the Service Provider**

|            |                 |  |
|------------|-----------------|--|
| <b>10.</b> | <b>18.3 (c)</b> | clause deleted N/a   |
| <b>11.</b> | <b>20.1</b>     | <p>The risks and coverage by insurance shall be:</p> <p>(i) Third Party motor vehicle _____</p> <p>(ii) Third Party liability _____</p> <p>(iii) PE's liability and workers' compensation _____</p> <p>(iv) Professional liability _____</p> <p>(v) Loss or damage to equipment and property _____</p> |
| <b>12.</b> | <b>23.4</b>     | Other Measures for HIV-Aids awareness programme: <i>[specify]</i> .  |
| <b>13.</b> | <b>24.1(d)</b>  | The other actions requiring the PE's prior approval are <i>[specify]</i>   |
| <b>14.</b> | <b>26.1</b>     | Restrictions about future use of documents submitted by Service Providers requires written approval  |



|                                     |                |  |
|-------------------------------------|----------------|--|
| <b>15.</b>                          | <b>27.1</b>    | <p>The liquidated damages rate is <i>[0.15 percent per day]</i> per day</p> <p>The maximum amount of liquidated damages for the whole contract is <i>[100%]</i> percent of the final Contract Price.</p> <p>The percentage of the cost of having a Defect corrected to be used for the calculation of Lack of Performance Penalty/(i.e.) is <i>[insert percentage]</i></p>   |
| <b>16.</b>                          | <b>28.1</b>    | Clause deleted   |
| E. Obligations of the PE            |                |  |
| <b>17.</b>                          | <b>31.1</b>    | <i>["Not applicable]."</i>   |
| F. Payments to the Service Provider |                |  |
| <b>18.</b>                          | <b>35.1(a)</b> | The amount in local currency is <i>[insert amount and currency]</i> .  |
| <b>19.</b>                          | <b>35.1(b)</b> | <i>["Not applicable]."</i>   |
| <b>20.</b>                          | <b>37.1</b>    | Payments shall be made in arrears upon certification of invoices.  |
| <b>21.</b>                          | <b>38.1</b>    | <p>Payment shall be made within <i>[30]</i> days of receipt of the invoice and the relevant documents specified in <b>GCC</b> Clause 37, and within <i>[40]</i> days in the case of the final payment.</p> <p>Rate to be used for paying the interest on the late payment made by Purchaser shall be the Central Bank of Kenya rate.</p>   |
| <b>22.</b>                          | <b>39.1</b>    | Price adjustment is <i>{not to be applied)}</i> in accordance with Clause F.6.   |
| <b>22.</b>                          | <b>40.1</b>    | <p>Further to the provision contained herein the county shall carry out routine and random inspection of the contract areas, equipment's, materials, records, work method, staff uniforms/ppes or any other aspect to the services.</p> <p>Where the inspection indicates that the contractor has not performed the services to the specified standards, the county shall deduct from the contractors monthly payment an amount equivalent to one day payment calculated as at monthly payment rate divided by the number of days in that month, multiplied by the number of days the contractor failed to perform to the required standards in any of the activities.</p> |
| H. Settlement of Disputes           |                |  |

|     |                    |   |
|-----|--------------------|---|
| 23. | 1.1(a)<br><br>44.3 | <p>The Adjudicator is <i>[insert name]</i>. Who will be paid a rate of <i>[insert amount and currency]</i> per hour of work. The following reimbursable expenses are recognized: <i>[ list expenses]</i></p> <p>The arbitration procedures of <i>Institute of Chartered Arbitrators of KENYA</i> will be used</p> <p>The designated Appointing County for a new Adjudicator is <i>Chairman Chartered Institute of Arbitrators</i></p> |
|-----|--------------------|---|

**Appendices- For information to be appended at time of contract signing**

**APPENDIX A — DESCRIPTION OF THE SERVICES**

The contractor shall:

- Use and produce the best quality equipment materials, products, techniques and standard for provision of the service and ensure that they are fit for intended purposes.
- Provide services with the care skill and diligence required in accordance with the best practice in the cleaning area.
- Perform the services in such a manner that the County and use of all facilities in the contract areas and that no operations of the Governor’s office shall be disrupted in anyway.

The contractor shall permit free and unfettered access to provide such assistance as the County may require to the County representatives or other persons authorized by the County for purposes of determining the standards or services or compliance with this contract to inspect or conduct a survey of the contract areas equipment, materials, records work method or any of the aspect to the services.

The services shall be executed and maintained strictly in accordance with the contract to the satisfaction supervisor assigned by the County

The contractor shall perform the services as detailed in the schedule of requirements.

The contractor shall execute and provide and maintain the services in the contract areas in accordance with the highest standards of performance and to the satisfaction of the County.

They shall be required to submit to the Supervisor for his approved a programme showing the number and strength of personal and equipment

The contractor shall make good any damage caused to any part of the building or to the facilities or structure in the causes of or consequent upon executing the provision of services.

In the event that the contractor fails to comply with the provision herein and the County by itself or by direction to another contractor or agent remedies or makes good the breach, the cost thereof shall be forthwith recoverable as a debt due from the contractor to the County.

Contractors shall provide adequate labour force and employ such staffs for the performance of the service who are:

- Skilled and experienced in their respective calling to properly discharge the services.
- Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of works.
- Staff are good character and possess a valid certificate of good conduct □ Staff to be assigned to specific areas with specific tasks.
- Removal of such worker to be done in consultation with the Supervisor

The contractors shall ensure that its employees and supervisors engaged in provision of the service are smartly attired in appropriate clothing and safety gear befitting the governor's office standards and shall upon being requested by the COUNTY in writing provide them with uniform according to specification provided by the County..

Although the contractor shall be responsible for recruitment of his employees they shall be vetted by County in submission to the Supervisor as schedule of employees as qualifications and position. Transfer/redeployment of staff shall be done in consultation with the Housekeeper.

The contractor shall be compliance to payment of **basic minimum wages** to his staff as stipulated by the labour institutions act, 2007 and also as based on the guidelines of the Ministry of Labour.

The contractor shall also be compliance to other statutory requirements such as NHIF, NSSF etc.

The County may, from time to time, make request from the contractor, information relating to the wages paid to his staff for this contract, proof of compliance to NHIF and NSSF registration of his staff.

Undue delay or non-payment of salaries to staff is not acceptable. In such a case the county shall officially address the contractor on the matter and this shall be considered as a warning letter.

The County shall not be liable for any injury to the contractor, his servants or licenses caused in the cause of or consequential upon the performance of the service contracted herein.

The contractor shall be responsible for the safety of the County property of whatever description in the contract areas and shall ensure that they are secure at all time from theft by its workers and all kinds of risk which may occasion loss and or damage.

Any servant and/ or agent of the contractor who misconduct himself whether due to insobriety or otherwise or conducting himself in a manner prejudicial to the security and good image of the office shall be liable to instant removal from the premises and the County may directly impose such condition as it may deem necessary for his readmission to the premises.

THE CONTRACTOR, HIS STAFFS AT ALL-TIME COMPLY WITH ALL REGULATIONS AND DIRECTIVES WHICH MAY BE ISSUED FROM TIME TO TIME IN CONNECTION WITH THE OPERATION OF THE COUNTY

Further to the provisions contained herein the County shall carry out routine and random inspection of the contract areas.

Where the inspection indicates that the contractor has not performed the services to the specified standard, the County shall deduct from the contractors monthly payment an amount equivalent to one day payment calculated as at payment rate divided by the number of days in that month for failure to perform in any of the activities.

## **DESCRIPTION OF SERVICES**

### **ASPECT 1**

#### **WORK SPECIFICATION**

##### **1.1 Standard**

The contractor shall be required to maintain the highest standards of cleanliness and decorum as is applicable to VIP offices, to the satisfaction of the County and for this purpose his obligations will be as follows and not limited to;

- To clean all dirt, stain, sweep around the surfaces to ensure that they are clean and free of any blemish.
- To ensure that all areas are free from any foul or unpleasant odors.
- To ensure that all polished or smooth surfaces retain their original gloss.
- To provide all toilet accessories including tissue paper, hand wash soap/liquid, disinfectant, air freshener, paragon balls and hand towels.
- Provision of sanitary towel/pads bins and their disposal services
- To collect and dispose all rubbish, dirt, waste material of refuse from the building to places designated for this purpose.
- To clean and empty the shoot.
- To clean all windows and partitions using appropriate window cleaning liquid.
- To check the working conditions of drain pipes, main sanitary apparatus and report to the designated officer of the County any fault for rectification.
- Carpet: spot/vacuum clean and Hoover daily. Shampoo occasionally to retain their clean and fresh nature.
- Laundering of the clinic linen to retain their clean and fresh nature.
- Maintain all planted/developed open areas including roads, lawns, shrubs, flower plants, flower table/beds and potted plants.
- General maintenance on planted/developed areas to include watering, weeding, hedge trimming, mowing, and cutting.
- Removal of cut grass, weed, foliage, and litter to designated waste collection points.
- Unblocking of toilet drainage system to the chambers.
- Clean and unblock storm water drainage system.
- Convectional sign boards must be placed at appropriate locations when cleaning in progress.

##### **1.2 Scope of Work**

- Sweeping
- Dusting
- Scrubbing

- Mopping
- Dump mopping
- Polishing
- Stripping
- Vacuuming
- Shampooing
- Laundry
- Cutting, weeding, mowing and watering planted areas.
- Maintenance of potted plants.
- Removal of litter, foliage and cut grass to designated waste collection points.
- Assist in shifting of furniture within the buildings. □ Adequate provision of consumable materials.

## **ASPECT 2**

### **2.1 Area/Surface Specification**

Surface/Areas defined to include all building areas (inside and outside) and not limited to:

- Floors
- Windows
- Doors
- Door knobs
- Walls
- Toilets
- Elevators
- Staircases
- Furniture
- Equipment's and installation (including but not limited to signboards, displays, panels, ashtrays, bins, counters, partitions, desks/benches and flower pots) removal of nesting's, bird dropping and gnats.
- Carpets
- Curtains
- Clinic linen
- Chairs
- Roof Tops
- Planted/developed open areas.

## **ASPECT 3**

### **CHARACTERISTICS OF THE SURFACE TO BE COVERED**

**The total area to be cleaned is 1742 SQM**

### **3.1 Ceramic**

All ceramic floor areas shall be kept clean and dry at all times.

### **3.2 Terrazzo Floors, Lobbies and Stairs**

To retain their original glitter, terrazzo floors shall be kept clean at all times by washing, scrubbing and polishing using suitable detergent e.g. Encore emulsion polisher and traffic wax shall be applied. Stains on terrazzo floor shall not be accepted.

### **3.3 Ceiling, Roof and Partitioning**

The roof space, ceiling and walls shall be cleaned by constant removal of cobwebs, dirty marks, gnats and bird droppings and any bird nests. Remove litter from gully traps and down pipes ensuring no litter enters into them.

### **3.4 Wash room closets**

The contractor shall ensure that all toilets are kept clean at all times, walls, tiling and fixtures are maintained to their original glitter. They shall be air freshened, sufficient paragon balls placed in urinals and toilets manned at all times, and appropriate toilet paper ( jumbo or mini) and hand wash soap shall be provided at all times.

The contractor shall ensure unblocking of sewage drains from the toilets up to the chambers/soakage pit.

### **3.5 Glass Partitions/Windows**

Window glasses shall be kept clean and washed with an appropriate detergent at all times.

### **3.6 Curtains**

The contractor shall satisfactorily dry clean all fabric curtains **four times a year** to the due satisfaction of the Housekeeper.

### **3.7 Vertical Blinds**

Vertical Blinds shall be cleaned with white spirit or appropriate detergent **twice a year** or when as the need arises. Vacuum clean shall be done **monthly**.

### **3.8 Carpets**

Carpets shall be shampooed **monthly** or as and when need arises using appropriate **shampoo**. Vacuum clean weekly and Hoover daily or as and when required by the Housekeeper

### **3.9 Conference Rooms, Board Room, Governors offices.**

The contractor shall satisfactorily clean and provide the necessary provisions to the conference rooms and board rooms, and Governor's offices as per requirements by the Supervisor.

**4.0 Stairs**

The contractor shall ensure that the stairs are clean at all times by maintaining the surface dry, cleaning the rails and walls and keeping the walls free of marks.

**4.1 Surroundings and pavements**

The contractor shall ensure that the surroundings and pavements are Clean and free of dirt & dust.

**ASPECT 4 EQUIPMENTS/TOOL/MATERIALS**

**4.2 Cleaning equipment's/tools/materials**

Products to be utilized shall be of high quality. The house keeper may call for test reports on the equipment's/tools/materials used if the quality is doubtful. Such costs of testing/ transportation and any other related costs to this test will be borne by the contractor.

**ASPECT 5**

**4.3 Planted/developed areas/flower beds/potted plants**

The contractor shall maintain all such areas to the satisfaction of the Housekeeper.

**PROVISION OF CLEANING SERVICES CONTRACT – SCOPE OF WORK**

**PROVISION OF CLEANING SERVICES WITHIN GOVERNORS BUILDING**

**TASKS AND SPECIFICATIONS**

**(Indicate the Materials to be used and quantities. Bidders are free to add any item omitted but deemed necessary)**

| ITEM                   | QUANTITY PER MONTH |
|------------------------|--------------------|
| Multipurpose detergent |                    |
| Air fresher            |                    |
| Disinfectant           |                    |
| Supa brite             |                    |
| Squeezer               |                    |
| Scraper                |                    |

|                        |  |
|------------------------|--|
| Polish                 |  |
| Steel wool             |  |
| Dettol soap            |  |
| Window cleaner         |  |
| Axion paste            |  |
| Dust check             |  |
| Pledge                 |  |
| Brooms                 |  |
| Mops                   |  |
| Buckets                |  |
| Dust pan               |  |
| Brush                  |  |
| Hand cream             |  |
| Toilet brush           |  |
| Scrubbing machine      |  |
| Window telescopic pole |  |
| Toilet Trolley         |  |
| Caution signs          |  |

**SECTION IX: Tender Forms**  
**A. Form of Tender**

Tender No:

Date:

To: Sir/Madam:

Having examined the Tender documents including Addenda Nos. *[insert addenda numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide caretaker services in conformity with the said Tender documents for *[Total price inclusive of vat]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

We undertake, if our Tender is accepted, to provide the services in accordance with the description specified in the Schedule of Requirements.

If our Tender is accepted, we undertake to provide a performance security in the form, in the amounts, and within the times specified in the Tender documents.



We agree to abide by this Tender for the Tender validity period specified in Clause 17.1 of the Tender Data Sheet, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We are not participating, as Tenderers, in more than one Tender in this Tendering process.

Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any Tender you may receive.

We certify/confirm that we comply with the eligibility requirements as per ITT Clause 3 of the Tender documents

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

(Name)

\_\_\_\_\_

[Signature]

\_\_\_\_\_

[In the capacity of]

Duly authorized to sign Tender for and on behalf of \_\_\_\_\_ **PRICE**

**SCHEDULE OF SERVICES**

**FORM 1A**

Name of Tenderer \_\_\_\_\_ Tender Number \_\_\_\_\_

| ZONE NO. | AREA NAME            | RATE PER MONTH IN KSHS. | VAT | TOTAL RATE PER MONTH IN KSHS. INCLUSIVE OF VAT |
|----------|----------------------|-------------------------|-----|--|
| 1        | NEW GOVERNORS OFFICE |                         |     |  |

Signature of tenderer \_\_\_\_\_

Note: In case of discrepancy between unit price and total, the unit price shall prevail.

## **Confidential Business Questionnaire**

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) and 2 (d) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.

### Part 1 – General

Business Name .....

Location of business premises; Country/Town.....

Plot No. .... Street/Road .....

Postal Address..... Tel No.....

Nature of Business.....

Current Trade Licence No..... Expiring date.....

Maximum value of business which you can handle at any time: Kenya shillings.....

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

Your name in full..... Age.....

Nationality..... Country of Origin.....

\*Citizenship details .....

Part 2 (b) – Partnership

Give details of partners as follows:

Name in full Nationality Citizenship Details Shares

1.....

2.....

3.....

Part 2(c) – Registered Company:

Private or public.....

State the nominal and issued capital of the Company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

Name in full . Nationality. Citizenship Details\*. Shares.

- 1.....
- 2.....
- 3.....
- 4.....

Part 2(d) – Interest in the Firm:

Is there any person / persons in .....(Name of Employer) who has interest in this firm? Yes/No.....(Delete as necessary).

I certify that the information given above is correct.

.....

(Title) (Signature) (Date)

\* Attach proof of citizenship

### Integrity Declaration

#### UNDERTAKING BY TENDERER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME

- 1. Each Tenderer must submit a statement, as part of the Tender documents, in either of the two given formats which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
- 2. Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the Tenderer may cover the subcontractors and consortium partners in its own statement, provided the Tenderer assumes full responsibility.
- (3)
  - a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
  - b) Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.
  - c) The successful Tenderer will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.
  - d) Upon completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made.

- e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
- (4) Tenders which do not conform to these requirements shall not be considered.
- (5) If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
  - a) Cancellation of the contract;
  - b) Liability for damages to the Procuring Entity and/or the unsuccessful competitors in the Tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated).
- (6) Tenderers shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.
- (7) The Government of Kenya has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a Tenderer may be disclosed to another Tenderer or to the public).

**ANTI-CORRUPTION DECLARATION COMMITMENT/  
PLEDGE FORM**

*(Sections 39, 40, 41, 42, 43 & of the PPD Act, 2005)*

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

Declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We.....

Declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender name.....

Tender No .....

For or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

**NAME AND TITLE OF SIGNATORY.....**

**DECLARATION FORM**

Date

\_\_\_\_\_
To \_\_\_\_\_
\_\_\_\_\_

The tenderer i.e. (name and address)\_\_\_\_\_
declare the following:

- a) Has not been debarred from participating in public procurement.
b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

\_\_\_\_\_ Title \_\_\_\_\_ Signature \_\_\_\_\_ Date

(To be signed by authorized representative and officially stamped)

**Letter of notification to Unsuccessful Bidders**

Dear Sir

This is to inform you in accordance with Section 67 of the Public Procurement and Disposal Act 2005 that your offer in relation to [*tender name and number*] has been determined to be unsuccessful upon evaluation. We intend to make a contract with [*name of successful tenderer*] for [*amount*]. Your tender security / tender security declaration will be discharged.

Thank you for your participation in the tendering process.

**Letter of Acceptance**

To: [name and address of the Service provider]

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 Contract Data Sheet] for the Contract Price 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 us and it is our intention to proceed to make a written contract in accordance with the terms of section 68 of the Public Procurement and Disposal Act 2005 after the 14 day period of notification has expired. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.

**Note:** Insert one of the 3 options for the second paragraph. The first option should be used if the Tenderer has not objected the name proposed for Adjudicator. The second option if the Tenderer has objected the proposed Adjudicator and proposed a name for a substitute, who was accepted by the Procuring Entity. And the third option if the Tenderer has objected the proposed Adjudicator and proposed a name for a substitute, who was not accepted by the Procuring Entity.

We confirm that [insert name proposed by Procuring Entity in the Tender Data Sheet], **or**

We accept that [name proposed by Tenderer] be appointed as the Adjudicator **or**

We do not accept that [name proposed by Tenderer] be appointed as adjudicator, and by sending a copy of this letter of acceptance to [insert the name of the Appointing County], we are hereby requesting [name], the Appointing County, to appoint the Adjudicator in accordance with Clause 40.1 of the Instructions to Tenderers

You may proceed with the said Contract in accordance with the Contract documents once the written contract has been signed.

Please return the attached Contract duly signed

Authorized Signature and Title of Signatory.....

Name of Agency: .....

Attachment: Contract

**Form of Agreement**

**Lump-Sum Remuneration**

This AGREEMENT (hereinafter called the “Contract”) is made the [day] day of the month of [month],



[year], between, on the one hand, [name of PE] (hereinafter called the “PE”) and, on the other hand, [name of Service Provider] (hereinafter called the “Service Provider”).

[**Note:** In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one Entity, the above should be partially amended to read as follows: “...(hereinafter called the “PE”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the PE for all the Service Providers’ obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (hereinafter called the “Service Provider”).]

WHEREAS

- (a) the PE has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);
- (b) the Service Provider, having represented to the PE that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of .....;
- (c) the PE has set aside funds towards the cost of the Services and intends to apply a portion of the proceeds of these funds to eligible payments under this Contract, it being understood that such payments will be subject, in all respects, to the terms and conditions of the Contract providing for the funds and that no party other than the PE shall derive any rights from the Contract providing for the funds or have any claim to the funds proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

- 1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - a) The General Conditions of Contract;
  - b) The Contract Data Sheet;
  - c) The Service Provider’s Tender
  - d) The Priced Activity Schedule
  - e) The Specifications (Statement of Requirements)
  - f) The following Appendices: [**Note:** If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]
    - Letter of acceptance
    - Notice to proceed
    - Service Provider’s Tender
    - Appendix A: Description of the Services
    - Appendix B: Schedule of Payments
    - Appendix C: Key Personnel and Subcontractors
    - Appendix D: Breakdown of Contract Price in Foreign Currency

Appendix E: Breakdown of Contract Price in Local Currency

Appendix F: Services and Facilities Provided by the PE

2. The mutual rights and obligations of the PE and the Service Provider shall be as set forth in the Contract, in particular:
  - a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
  - b) the PE shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of PE]*

\_\_\_\_\_

*[Authorized Representative]*

For and on behalf of *[name of Service Provider]*

\_\_\_\_\_

*[Authorized Representative]*

*[Note: If the Service Provider consists of more than one Entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Service Provider

*[name of member]*

\_\_\_\_\_

*[Authorized Representative]*

*[name of member]*

\_\_\_\_\_

*[Authorized Representative]*

## **SECTION X: FORMS OF SECURITY**

### **Tender-Securing Declaration Form**

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

Date: *[insert date (as day, month and year) of Bid Submission]*

Tender No. *[insert number of bidding process]*

To: *[insert complete name of Purchaser]*

We, the undersigned, declare that:

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

2. We accept that we will automatically be suspended from being eligible for bidding 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 Bid during the period of bid validity specified by us in the Bidding 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 ITT.
3. We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Tender.
4. We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the bi, and the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: *[insert signature of person whose name and capacity are shown]* in the capacity of *[insert legal capacity of person signing the Bid Securing Declaration]*

Name: *[insert complete name of person signing the Bid Securing Declaration]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

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

**SECTION XI: APPLICATION TO PUBLIC PROCUREMENT  
REVIEW BOARD**

**FORM RB 1**  
**REPUBLIC OF KENYA 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...

---

**REQUEST FOR REVIEW**

---

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax 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.
- Etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
  - 2.
- Etc.

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