

COUNTY GOVERNMENT OF MOMBASA



TENDER DOCUMENT

PROVISION OF GARBAGE COLLECTION SERVICES IN MOMBASA COUNTY– ZONES

TENDER NO. CGM/PRO/T/2/2020-2021

SEPTEMBER 2020

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ABBREVIATIONS AND ACRONYMS

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| CDS | Contract Data Sheet |
| GCC | General Conditions of Contract |
| ICB | International Competitive Tendering |
| IFQ | Invitation for Quotation |
| NCB | National Competitive Tendering |
| PE | Procuring Entity |
| PIN | Personal Identification Number |
| PPADA 2015 | Public Procurement and Asset Disposal Act, 2015 |
| PPRA | Public Procurement Regulatory Authority |
| SBD | Standard Tendering Documents |
| SOR | Statement of Requirements |
| SP | Service Provider |
| VAT | Value Added Tax |

SECTION I: INVITATION FOR TENDERS

TENDER NO. CGM/PRO/T/2/2020-2021

TENDER DESCRIPTION: PROVISION OF GARBAGE COLLECTION SERVICES IN MOMBASA COUNTY– ZONES

1. The County Government of Mombasa now invites sealed tenders from eligible, authorized and qualified garbage collection service providers for **PROVISION OF GARBAGE COLLECTION SERVICES IN MOMBASA COUNTY– ZONES**
2. Tendering will be conducted through the National Competitive (NCB) Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Asset Disposal Regulations, 2020 and is open to all Tenderers as defined in the Regulations.
3. A complete set of bidding documents in English may be purchased by interested eligible bidders upon submission of a written application to the address below and upon payment of a non-refundable fee of **Kshs. 1,000**. The method of payment will be cash or banker's Cheque from a reputable bank in Kenya payable to Mombasa County. The Bidding documents can also be downloaded from the county website www.mombasa.go.ke at no fee.
4. Bidders are advised to regularly visit the County Government of Mombasa 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.**
5. All Tenders in one original plus *[two-2 copies]*, properly filled in, and enclosed in plain envelopes must be delivered in hard copies to the address below and addressed as follows:

TENDER NO.: CGM/PRO/T/2/2019-2020

TENDER NAME: PROVISION OF GARBAGE COLLECTION SERVICES IN MOMBASA COUNTY– ZONES

"DO NOT OPEN BEFORE 1000 HOURS ON 25TH SEPTEMBER 2020"

Addressed to:

THE COUNTY SECRETARY,
COUNTY GOVERNMENT OF MOMBASA,
P.O BOX 80133-80100, MOMBASA
EMAIL: countysec@mombasa.go.ke

Completed tenders shall be placed in **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, 2nd floor County Assembly Hall, Treasury Square, Mombasa to reach not later than 1000HRS on 25TH SEPTEMBER 2020.**

Bulky tenders shall be submitted at the office of the **Director of Procurement & Supplies located on the 2nd floor of County Assembly Building BEFORE 1000HRS EAST AFRICAN TIME, ON 25TH SEPTEMBER 2020.**

6. Tenders will be opened promptly 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.
7. Late Tenders, incomplete Tenders, Tenders not opened at the Tender opening ceremony shall not be accepted for evaluation.
8. Canvassing or lobbying for the tender shall lead to automatic disqualification.

COUNTY SECRETARY

COUNTY GOVERNMENT OF MOMBASA

A. 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 Authority.
- 3.7 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

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| 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 | <p>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.</p> <p>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.</p> <p>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.</p> |
| 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 Pretender meeting (optional)
- 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 Nonattendance during the site visit or pre-Tender meeting will not be a cause for disqualification of a Tenderer.

B. Tender Documents

8.1 Content: The services to be provided, Tendering, procedures and Tendering contract terms are prescribed in the Tender Documents. In Documents 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:

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| 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) |

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| Section VII. | Technical Specifications |
| Section VIII. | Activity Schedule |
| Section IX. | Tender Forms |
| | Form of Tender |
| | Tender Security |
| | 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 Tender Documents**
- 10.1 Before the deadline for submission of Tenders, the Procuring Entity for any reason, whether at its own initiative or in response to a 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 subClause 21.2.

C. Preparation of Tenders

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| <p>11 . Language of Tender</p> | <p>11.1</p> | <p>The Tender, prepared by the Tenderer as well as all 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.</p> |
| <p>12 . Documents Constituting the Tender</p> | <p>12.1</p> | <p>The Tender prepared by the Tenderer shall constitute the following components:</p> <ul style="list-style-type: none"> 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.

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| 13 Documents Establishing Eligibility and Qualifications of the Tenderer | 13.1 | Pursuant to ITT Clause 12, the Tenderer shall furnish, as part of its 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 | <p>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:</p> <ul style="list-style-type: none">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; andc) Any other specific documentation requirement as stated in the Tender Data Sheet. |
| | 13.4 | <p>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:</p> <ul style="list-style-type: none">a) the Tender shall include all the information listed in sub-Clause 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.

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| 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. |
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| 15 Tender Prices . | 15.1 | The Contract shall be for the service(s), as described in subClause 1.1, based on the priced Activity Schedule submitted by the Tenderer. |
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| 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 |
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- 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 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 19.5 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

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| | | 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 non-responsive, 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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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 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 subClause 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.

D. 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 subClause 20.2, the Procuring Entity shall assume no responsibility for the misplacement or premature opening of the Tender.
- 21. Deadline for Submission of Tenders**
- 21.1 Tenders shall be received by the Procuring Entity at the address specified in sub-Clause 20.2 (a) no later than the date and time 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, Substitution and Withdrawal of Tenders
- 23.1 A Tenderer may modify, substitute or withdraw its Tender after submission provided that written notice of the modification, substitution or withdrawal is received by the Procuring Entity prior 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.

E. 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. Thereafter, all envelopes marked **“SUBSTITUTION”** shall be opened and the submissions therein read out in appropriate detail.

24.4 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**
- 28.1 The Procuring Entity shall examine the Tender to confirm

Evaluation

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 29.1** Tenders determined to be substantially responsive will be Evaluation 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 subClause 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 Daywork, 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 sub-Clause 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 32.1** In the evaluation of Tenders the Procuring Entity shall apply Preference 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 sub-Clause 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.

F. Award of Contract

34. Criteria of Award 34.1

Subject to ITT Clause 33, the Procuring Entity will award the 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 Entity's Right to reserves the right to accept or reject any Tender, and to Accept any reject all Tenders, at any time prior to notification of Tender and to Contract award, without thereby incurring any liability to

- Reject any or all the affected Tenderer 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 Entity's Right to Contract award to increase or decrease the scope of Vary Quantities services originally specified in these Tender documents at the Time of provided this does not exceed by the percentage Award indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tender documents.
- 37.** Notification of 37.1 The Tenderer whose Tender has been accepted will be Award 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.** 38.1 Post Tender Limited negotiations may be undertaken with the Concurrence evaluated Tender under Direct procurement method relating to the following areas:

- 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) Finalizing payment arrangements;
- e) Delivery arrangements;
- f) The methodology; or
- g) Clarifying details that were not apparent or could not be finalized at the time of Tendering.

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 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 40.1 Promptly after notification, Procuring Entity shall send Contract 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 41.1 Within twenty-one (21) days, but no earlier than fourteen Security (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.

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| 43. | Adjudicator | 43.1 | <p>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 Authority designated in the Contract Data Sheet at the request of either party.</p> |
| 44. | Fraud and Corruption | 44.1 | <p>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:-</p> <p>a) defines, for the purposes of this provision, the terms set forth below as follows:-</p> <ul style="list-style-type: none"> 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 authority or of a beneficiary of the funds during the procurement or the execution of that contract, without the procuring entity or approving authority 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 authority 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.

46 Time Limit on
. Review

47 Submission of
. Applications for Review by the
Public

Procurement

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.

45 Right to Review

44.3 In pursuant of section 115 of the Public Procurement and Disposal Act, 2005 (PPDA), the Director General of Public Procurement Oversight Authority, 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.

G. Review of Procurement Decisions

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 authority by the Public

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| <p>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:</p> | <ul style="list-style-type: none"> 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. <p>46.1 The Tenderer shall submit an application for review in the number 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.</p> <p>47.1 Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 (which may be downloaded from the PPOA website) at the address shown in the Tender Data Sheet. The secretary to the review board shall immediately after filing of the request under Regulation</p> |
| <p>Administrative Review Board</p> | <p>73, serve a copy thereof on the procuring entity or Director General as the case may be.</p> <p>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:</p> <ul style="list-style-type: none"> 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 Public Procurement Administrative Review Board**
- 48.1 The Administrative Review Board shall within thirty days after receipt of a application for administrative review deliver a written decision which shall indicate:
- a) Whether the application is upheld in whole, in part or rejected;
 - 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.

Tender Data Sheet (BDS)

| TDS Clause Number | ITT Clause Number | Amendments of, and Supplements to, Clauses in the Instruction to Tenderers |
|------------------------|-------------------|--|
| A. Introduction | | |
| 1. | 1.1 | <p>Name of Procuring Entity: [<i>The County Government of Mombasa</i>].</p> <p>subject of procurement is: [[Provision of Garbage Collection Services in Mombasa County] for a period of: [<i>three-3 years with possibility of renewal subject to performance renewal</i>]</p> <p>Name and identification number of the Contract: Tender No.</p> <p>CGM/PRO/T/2/2020-2021</p> <p>TENDER NO: PROVISION OF GARBAGE COLLECTION SERVICES</p> |

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|------------|---------------------------|---|
| 2. | 1.2 | Expected period to provide the service(s) – three (3) Years with possibility of renewal subject to performance renewal Expected commencement date: as per contract agreement Required finish date: as per contract agreement |
| 3. | 2.1 | Payments will be made by [<i>The Clients within the respective Zone</i>] in monthly basis |
| 4. | 3.1 | Joint venture, consortium or association liability will be: [<i>Not applicable</i>] |
| 5. | 5 | Alternative tenders to the requirements of the Tender documents [<i>“will not”</i>] be permitted with respect to [<i>any of the tender requirements</i>] |
| 8. | 8.2 19.1 | The number of copies of the Tender to be completed and returned in addition to the original will be [<i>Two -2</i>]. |
| 10. | 9.2 | The PE will respond to a request for clarification within (<i>Two-2 days</i>) provided the clarification has been requested at least (<i>Seven -7</i>) prior to the deadline for submission of tenders. |
| 11. | 11.1 | The language of all correspondences and documents related to the Tender is: English |

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| 12. | 12 & 13 | <p>In addition to the documents stated in ITT Clause 12, the following documents must be included with the Tender and submitted as prescribed below;</p> <p>Tenders shall be submitted in a two envelope system (Envelope A - Technical Submission and Envelope B - financial Submission).</p> <p>The tender prepared by the tenderers shall comprise of a Technical submission "Envelope A" and a financial submission "Envelope B" sealed in two separate envelopes clearly marked Envelope A and Envelope B. Envelope A – Shall contain NO indication of the tender price or other financial information of the bid.</p> <p>The two sealed envelopes shall then be sealed in an outer envelope bearing the tender number and name and a statement ' DO NOT OPEN BEFORE 1000HOURS ON 31ST JULY 2020.</p> <p>(a) be addressed to the County at the address given in the Invitation to Tender as follows:</p> <p style="text-align: center;">THE COUNTY SECRETARY, COUNTY GOVERNMENT OF MOMBASA, P.O BOX 80133-80100, MOMBASA EMAIL: countysec@mombasa.go.ke</p> <p>Note:</p> <p>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, "DO NOT OPEN BEFORE 1000 31ST JULY 2020.</p> <p>The inner envelope of Financial Bid (Envelope B) 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. 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> <p>Envelope A shall contain the Technical submission and shall be clearly marked "Envelope A – Technical Submission".</p> <p>The tender submission:</p> <ol style="list-style-type: none"> 1. Shall have a table of contents page clearly indicating Sections and Page Numbers (Mandatory). 2. Shall have pages in the whole document numbered in the correct sequence including all appendixes and attachments (Mandatory). |
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| | | <p>3. Shall be firmly bound and should not have any loose pages. Spiral binding and files (spring and box) are not acceptable (Mandatory).</p> <p>4. Shall be submitted in one original and two copies of the original (Mandatory).</p> <p>Note: Non-compliance with any MANDATORY requirement will automatically result in disqualification.</p> <p>The Technical submission shall contain the following documents; clearly marked and arranged in the following order; -</p> <p>i. Particulars of Tendering Company including:</p> <ul style="list-style-type: none"> a. The Company background/profile (Mandatory). b. Postal and physical address of the business (Mandatory). c. Email address (Mandatory). d. Certificate of Registration/Incorporation (Mandatory). e. Valid and Current Tax Compliance or Tax Exempt Certificate from Kenya Revenue Authority where the business operations of tenderer are domiciled (Mandatory). f. PIN Number of the Company (Mandatory). g. CR12 Letter from Registrar of Companies or equivalent to show names of Directors of the tendering company (in case of a company), /Name of Proprietor (for Sole Proprietor and Business Name) and/or Names of Partners (for Partnerships) – as applicable (Mandatory). h. National ID Copies for owner (s) of the tendering company (Mandatory). <p>ii. A valid and current County Business Permit (Mandatory).</p> <p>iii. Tenderers shall be required to submit a Tender Security amounting to Kenya Shillings One Hundred Fifty Thousand (Kshs. 150,000.00) in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA), letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 180 days from the date of tender opening in the format provided in the tender document (Mandatory).</p> <p>iv. Duly filled, signed and stamped Confidential Business Questionnaire (Mandatory).</p> |
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| | | <p>v. Duly filled, signed and stamped Declaration Form (Mandatory).</p> <p>vi. Duly filled, signed and stamped Anti-Corruption Declaration Commitment/ Pledge (Mandatory).</p> <p>vii. Written undertaking that should the tenderer 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).</p> <p>viii. Company Health and Safety Policy Statement (signed by Tendering Company CEO) (Mandatory).</p> <p>ix. Certificate of Good Conduct for each of the Directors of the firm (Mandatory).</p> <p>x. Current/ Valid NEMA license for transportation of waste. (Mandatory).</p> <p>xi. List of personal protective equipment/clothing (PPE/C) specific to the job, to be provided during the contract period (to include but not limited to Safety shoes/Gumboots, Gloves, Dust masks, Helmets, Reflectors, Overalls and High visibility safety cone. (Mandatory).</p> <p>xii. A written undertaking that the tenderer will comply with payment of minimum wage approved by the Ministry of Labour. This must also reflect in financial bid. (Mandatory).</p> <p>xiii. Experience in works of a similar nature and size for the last three years (2017, 2018 and 2019) and documentary proof and names and addresses of clients who may be contacted for further information on these contracts (attach extract copies of contracts, LSO, LPOs etc).</p> <p>xiv. List of equipment proposed to execute the contract, their location and proof of ownership. All equipment facilities and transport vehicles must have been inspected for conformity by all relevant Authorities (certified copies of current inspection certificates to be provided as proof).</p> <p>xv. CVs of at least one Management staff - minimum degree holder (Environmental Studies,/Science/Mgt/Health) and one supervisor - minimum diploma holder (Environmental Studies,/Science/Mgt/Health)</p> <p>xvi. Method of work Statement - should include but not limited to:-</p> <ul style="list-style-type: none"> <input type="checkbox"/> Methodology & a waste management procedure <input type="checkbox"/> Health & Safety Precautions (attach Health, Safety & Environment policy) |
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| | | xvii. Audited Accounts for the last two years. |
| | | <p>Only tenders that are responsive to the mandatory requirements and have attained the pass mark of 75% in the technical evaluation shall have their financial submissions opened.</p> <p>Envelope B shall contain:</p> <ol style="list-style-type: none"> Form of Tender. Appendix E—Breakdown of Contract Price per zone <p>Detailed breakdown of the lump-sum price into cost elements:-</p> <ol style="list-style-type: none"> Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel). Staff costs. Overheads and Profit. |
| 14. | 15.4 | Rates and prices quoted by the Tenderer are subject to adjustment during the performance of the contract to the extent allowed by the PPADA 2015. |
| 15. | 16.1 | All prices must be in Kenya Shillings and inclusive of all taxes |
| 16. | 18.1 | Tenderers shall be required to submit a Tender Security amounting to Kenya Shillings One Hundred Fifty Thousand (Kshs. 150,000.00) in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA), letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 180 days from the date of tender opening in the format provided in the tender document (Mandatory). |
| 17. | 18.10 | A Tenderer who is successful but fails to sign a contract or provide the specified performance security within the specified time limit may not be eligible to Tender to the PE for a period of [up to 4] years. |
| 20. | 9.1 21.1 | The deadline for submission of tenders shall be BEFORE 1000HOURS ON 25TH SEPTEMBER 2020. |
| 21. | 21.3 | Extension of the deadline for submission of tenders shall not be made later than [7 days before tender closing date]. |

B. Opening and Evaluation of Tenders

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| 22. | 24.1 | Tenders will be opened promptly thereafter in the presence of Tenderers' representatives who choose to attend the opening from 1030 HOURS ON 25TH SEPTEMBER 2020 at the Finance Boardroom located at the County Treasury . |
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| 23. | 28.2 | <p>Criteria for Tender evaluation shall be:</p> <p>a) Company's Experience in works of a similar nature and size for the last three years (2017, 2018 and 2019) and details of work under way or contractually committed with documentary proof and names and addresses of clients who may be contacted for further information on these contracts (attach extract copies of contracts, etc.) – Six diverse clients (24 marks)</p> <p>Note: bidders Must submit reference letters signed by current service providers addressed to County Government of Mombasa by CEOs or Heads of Procurement Department</p> <p>i. Evidence of at least three works of a similar nature and size for each of the last three years– 15 marks</p> <p>ii. Names and addresses of clients who may be contacted for further information on these contracts (attach extract copies of contracts, Reference letters etc.) – 9 marks</p> <p>b) Supervision Capability (10 marks): List of personnel including:</p> <ul style="list-style-type: none"> • Qualifications and experience of one (1) supervisor with a certificate in Environmental Health/ science/ management/ studies / planning (Attach CVs and Copies of Certificates) - 2 marks • Three (3) years' work experience in solid waste management - 2 marks • 6 support staff including drivers and other hand on personnel (Attach CVs and Copies of Certificates) (1 mark each, totalling 6 marks) <p>c) Method of work Statement (30 marks)- Method of work Statement- should include but not limited to:</p> <ul style="list-style-type: none"> • Methodology & a waste management procedure- 15 marks • Health & Safety Precautions (attach Health, Safety & Environment policy)- 15 marks <p>d) Transportation capability (30 marks) – List of vehicles proposed to execute the contract, their location and proof of ownership (Must attach current NEMA waste transportation license).</p> <ul style="list-style-type: none"> • Ownership for Truck 1 and Truck 2– 10 Marks • NEMA license for truck 1 and truck 2 – 5 Marks • Evidence of delivery of waste to the final disposal site -5 Marks • Proof of capacity above (7 tonnes) for truck 1 and truck 2-10 marks <p>e) Financial Strength and Performance of the Tenderer: (6 marks</p> |
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| | | <p>Certified copies of Audited Financial reports for the last two years 2018 and 2019 (Financial strength shall be pegged on the following ratios:</p> <p>□ Liquidity ratios CA/CL \geq 1:1 = 3 marks CA/CL \geq 0.5:1 = 2 marks CA/CL < 0.5 = 1 marks □</p> <p>Gearing ratios: not more than 50% = 1.5 marks 50% - 99% = 1 marks 100% and above = 0.5 mark</p> <p>□ Profitability ratios: 10% and above = 1.5 marks 5% - 9% = 1 marks Below 5% - 0.5 mark</p> <p>NOTE: Candidates will be required to score a minimum of 75% to proceed to the next stage of evaluation of prices.</p> |
| 24. | 33.1 | Post-qualification [“will”] be undertaken where deemed necessary. |
| C. Award of Contract | | |
| 25. | 34.2 | The contract will be awarded to the lowest evaluated bidder in each Zone and a bidder will NOT be awarded more than One (1No.) Zone. |
| 26. | 36.1 | Percentage for maximum quantity increase or decrease at time of award of contract is [15%] |
| 27. | 41.1 | <p>The Standard Form of Performance Security acceptable to the Procuring Entity shall be [Bank Guarantee]</p> <p>Amount of Performance Security shall be 10% of contract sum awarded per zone in form of bank guarantee in the format provided herein for the duration of contract period.</p> |
| 28. | 42.1 | The Advance Payment shall not be allowed |
| 29. | 43.1 | The Adjudicator proposed by the Procuring Entity is [Chairman Chartered Institute of Arbitrators of Kenya. The hourly fee for this proposed Adjudicator shall be [the ruling rate]. |
| D. Review of Procurement Decisions | | |
| 30. | 46.1 | Fee for administrative review shall be as set out in Part II of the Fourth Schedule of the PPDR 2006. |

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| 31. | 47.1 | <p>Address for submission of application for review:</p> <p>The Secretary</p> <p>Public Procurement Administrative Review Board,</p> |
| | | <p>The Public Procurement Regulatory Authority,</p> <p>10th Floor, National Bank House</p> <p>P.O. Box 58535-00200, NAIROBI,</p> <p>Kenya.</p> <p>Tel: +254 (0) 20 324 4000</p> <p>Email: info@ppoa.go.ke</p> <p>Website: www.ppoa.go.ke</p> |

SECTION IV: GENERAL CONDITIONS OF CONTRACT

A. General Provisions

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| 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"> 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; 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; c) “CDS” means the Contract Data Sheet applying to the named contract. d) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the PE; 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; f) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 35.1; 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, h) “Day works” 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; i) “PE” means the party who employs the Service Provider, the Procuring Entity; j) “Foreign Currency” means any currency other than the currency of the country of the PE; 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. |
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| | | | <p>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;</p> <p>m) “GCC” means these General Conditions of Contract;</p> <p>n) “Government” means the Government of Kenya;</p> <p>o) “Local Currency” means the currency of Kenya;</p> <p>p) “Member,” in case the Service Provider consists of a joint venture of more than one Entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the Entity specified in the CDS to act on their behalf in exercising all the 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> |
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| | | | <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> |
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| | | | y) "Site" means the place(s) named in CDS. |
| 2. | Applicable Law and Interpretation | 2.1 | <p>The Contract shall be interpreted in accordance with the laws of Kenya, unless otherwise specified in the CDS. The documents forming the Contract shall be interpreted in the following order of priority:</p> <ol style="list-style-type: none"> 1. Contract, 2. Letter of Acceptance, 3. Service Provider's Tender, 4. Contract Data Sheet 5. Conditions of Contract, 6. Specifications, 7. Activity Schedule 8. Any other document listed in the CDS as forming part of the Contract. |
| 3. | Language | 3.1 | This Contract shall be executed in English, unless another language is specified in the CDS , which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. |
| 4. | Communications | 4.1 | 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 CDS . |
| 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. |

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| 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. |

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

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| 10. | Effectiveness of Contract | 10.1 | This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be stated in the CDS . |
| 11. | Commencement of Services | | |
| | Programme | 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. |
| | Starting Date | 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 . |

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| 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 |

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| | | | consent of the appropriate Tender committee, as the case may be, has been obtained. |
| 14. | Force Majeure | | |
| | A. No Breach of Contract | 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. Extension of Time | 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. |
| | C. Payments | 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. |

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| | | 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. |
| 15. | Termination | | |
| | A. By the PE | 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"> 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; b) if the Service Provider become insolvent or bankrupt; |
| | | | <ul style="list-style-type: none"> 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 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. e) if the Service Provider does not maintain a Performance Security in accordance with Clause 28; 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; g) if the PE, in its sole discretion, decides to terminate this Contract. |

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| | B. By the Service Provider | 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> <ul style="list-style-type: none"> 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 b) if, as the result of Force Majeure, the Service Providers are unable to perform a material portion of the Services for a period of not less than sixty (60) days. |
| | C. Payment upon Termination | 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> <ul style="list-style-type: none"> a) remuneration pursuant to Clause 34 for Services satisfactorily performed prior to the effective date of termination; 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. c) in the case of (g) reimbursement of the Service Providers' profit to the end of the original Contract. |

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| 16 | 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> |
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C. Obligations of the Service Provider

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| 17. | General | 17.1 | 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. |
| 18. | Conflict of Interests | | |
| | A. Service Provider not to benefit from Commissions and Discounts. | 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. |

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| | B. Service Provider and Affiliates not to be otherwise interested in Project | 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 the Services. |
| | C. Prohibition of Conflicting Activities | 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: (a) during the term of this Contract, any business or professional activities which would conflict with the activities assigned to them under this Contract; (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; (c) after the termination of this Contract, such other activities as may be specified in the CDS . |
| 19 | 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. |
| 20. | 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 CDS ; 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. |
| 21. | 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. |

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| | | 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. |
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| 22. | Labour Laws | 22.1 | The Service Provider shall comply with all the relevant labour laws applicable in the Country, including laws relating to worker's employment, working hours, health, safety, welfare, immigration and shall 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 CDS to reduce the risk of transfer of HIV virus between and among Service Provider's personnel, the PEs Staff and the surrounding community. |

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| 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: (a) entering into a subcontract for the performance of any part of the Services, (b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"), (c) changing the Program of activities; and (d) any other action that may be specified in the CDS . |
| 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 | 26.1 | All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Providers |

| | | | |
|------------|--|------|---|
| | Service Providers to be the Property of the PE | | 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 CDS . |
| 27. | Liquidated Damages | | |
| | a) Payments of Liquidated Damages | 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 CDS . The total amount of liquidated damages shall not exceed the amount defined in the CDS . 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) Correction for Overpayment | 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 |
| 28. | 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 CDS . |

D. Service Provider's Personnel

| | | | |
|------------|---|------|--|
| 29. | 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. |
| 30. | 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 |

E. Obligations of the PE

| | | | |
|------------|------------------------------|------|--|
| 31. | 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 CDS . |
| 32. | 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. |
| 33. | Services and Facilities | 33.1 | The PE shall make available to the Service Provider the Services and Facilities listed under Appendix F. |

F. Payments to the Service Provider

| | | | |
|------------|-----------------------|------|--|
| 34. | 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. |
|------------|-----------------------|------|--|

| | | | |
|------------|---------------------------------|------|---|
| 35. | Contract Price | 35.1 | <p>a) The price payable in local currency is set forth in the CDS.</p> <p>b) The price payable in foreign currency is set forth in the CDS.</p> |
| 36. | 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. |
| 37. | Terms and Conditions of Payment | 37.1 | Payments will be made to the Service Provider and according to the payment schedule stated in the CDS . Unless otherwise stated in the CDS , 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 CDS . Any other payment shall be made after the conditions listed in the CDS for such payment have been met, and the Service Provider has submitted an invoice to the PE specifying the amount due. |
| 38. | Interest on Delayed Payments | 38.1 | If the PE has delayed payments beyond twenty eight (28) days after the due date stated in the CDS , interest shall be paid to the Service Provider for each day of delay at the rate stated in the CDS |

| | | | |
|-----|------------------|------|---|
| 39. | Price Adjustment | 39.1 | <p>a) Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the CDS. 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>$P_c = A_c + B_c \frac{L_{mc}}{L_{oc}} + C_c \frac{I_{mc}}{I_{oc}}$ Where:</p> <p>P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.</p> <p>A_c, B_c and C_c are coefficients specified in the CDS, representing: A_c the nonadjustable portion; B_c the adjustable portion relative to labour costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and</p> <p>L_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and</p> <p>L_{oc} is the index prevailing 28 days before Tender opening for labour; both in the specific currency “c”.</p> <p>I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} 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 | If applicable, the Daywork 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. |
| | | 40.2 | All work to be paid for as Dayworks 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. |
| | | 40.3 | The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Clause 40. |

G. Quality Control

| | | | |
|------------|---|------|--|
| 41. | Identifying Defects | 41.1 | 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. |
| 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> |

H. 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. |

| | | | |
|--|--|------|---|
| | | | 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 CDS . |
| | | 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 Authority designated in the CDS at the request of either party, within 14 days of receipt of such request. |
| | | 44.3 | The Adjudicator shall be paid by the hour at the rate specified in the CDS , together with reimbursable expenses of the types specified in the CDS , 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 |

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 Clause Number | GCC Clause Number | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|------------------------------|-------------------------|--|
| A. General Provisions | | |
| 1. | 1.1(d) | The completion date is <i>[36 months after start date]</i> |
| | 1.1(e) | The contract name is <i>[PROVISION OF GARBAGE COLLECTION SERVICES IN MOMBASA COUNTY– ZONES]</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 is as prescribed in the specifications and scope of work |
| 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 | <p>The addresses are:</p> <p>PE: _____</p> <p>Attention: _____</p> <p>Email: _____</p> <p>Facsimile: _____</p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Email: _____</p> <p>Facsimile: _____</p> |
| 5. | 6.1 | <p>The Authorized Representatives are:</p> <p>For the PE: <u>Head of Procurement and Supplies</u></p> |

| | | |
|--|--|---|
| | | <p><u>Chief Officer, Department of Environment</u></p> <p>For _____ the _____ Service Provider: _____</p> |
|--|--|---|

B. COMMENCEMENT, COMPLETION, MODIFICATION, AND TERMINATION OF CONTRACT

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

C. OBLIGATIONS OF THE SERVICE PROVIDER

| | | |
|-----|----------|--------------------|
| 10. | 18.3 (c) | clause deleted N/a |
|-----|----------|--------------------|

| | | |
|--|----------------|---|
| 11. | 20.1 | <p>The risks and coverage by insurance shall be: _____</p> <p>(ii) Third Party liability _____</p> <p>(iii) PE's liability and workers' compensation _____</p> <p>((iv) Professional liability _____</p> <p>i) Third Party motor vehicle _____</p> <p>(v) Loss or damage to equipment and property _____</p> |
| 12. | 23.4 | Other Measures for HIV-Aids awareness programme: <i>[specify]</i> . |
| 13. | 24.1(d) | The other actions requiring the PE's prior approval are <i>[specify]</i> |
| 14. | 26.1 | Restrictions about future use of documents submitted by Service Providers requires written approval |
| 15. | 27.1 | <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/(ies) is <i>[insert percentage]</i></p> |
| 16. | 28.1 | <p>Performance security shall be valid for <i>[30 days beyond expiry of contract]</i></p> <p>Amount of Performance Security shall be <i>10 percent</i> of the Contract Sum for the zone awarded</p> |
| D. OBLIGATIONS OF THE PE | | |
| 17. | 31.1 | <i>["Not applicable]."</i> |
| E. PAYMENTS TO THE SERVICE PROVIDER | | |
| 18. | 35.1(a) | The amount in local currency is <i>[insert amount and currency]</i> . |
| 19. | 35.1(b) | <i>["Not applicable]."</i> |

| | | |
|----------------------------------|---------------|--|
| 20. | 37.1 | Payments shall be made in arrears |
| 21. | 38.1 | <p>Payment shall be made within <i>[30]</i> days of receipt of the invoice and the relevant documents and upon inspection and acceptance of the service offered specified in GCC 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> |
| 22. | 39.1 | Price adjustment is as governed in Public Procurement and Asset Disposal Act, 2015. |
| F. SETTLEMENT OF DISPUTES | | |
| 23. | 1.1(a) | <i>Resolution of disputes shall be through arbitration. The Arbitrator shall be the Nairobi Centre for International Arbitration.</i> |
| | 44.3 | <i>The rules shall be the Nairobi Centre for Arbitration Rules.</i> |

SECTION VI: STATEMENT OF REQUIREMENTS FOR FRANCHISE SYSTEM OF OPERATION ON SOLID WASTE MANAGEMENT IN MOMBASA COUNTY

TERMS OF REFERENCE FOR FRANCHISE SYSTEM OF OPERATION ON SOLID WASTE MANAGEMENT IN MOMBASA COUNTY

1. INTRODUCTION

The county has a population of 1.2 million inhabitants with an estimated 200,000 people operating in the county but staying outside the county. This population generates approximately 900 tons of solid waste per day. Approximately 46 percent of the total waste generated is formally managed and the county government and private collectors; about 500 tons of waste not collected necessitating a change of strategy in management. The new strategy is geared towards improving waste collection, boosting material recovery and improving waste disposal. The franchise system is hereby adopted, supported by legislation, to release waste collection and transportation into private investors while restricting the role of the county government to regulation of the industry.

2.0 FRANCHISE SYSTEM OPERATION

This franchise system is designed for provision of waste collection, transportation and disposal services in the county. The Franchisee, who shall be a single company or a joint venture will be given exclusive authority to provide waste collection and transportation services in a geographical zone and in turn collect fees from recipients of those services to sustain the same. A company or joint venture cannot bid for more than two geographical zones.

3.0 GEOGRAPHICAL ZONES

The following zones are designated for the purpose of waste collection under the franchise system.

| Zone | Reference No. | Description | Category |
|------|---------------|---|-----------------|
| 4 | M04 | Majengo, Mvita Subcounty | Open |
| 5 | L01 | Likoni, Likoni Subcounty | Youth and Women |
| 6 | L02 | Shika adabu & Mtongwe, Likoni subcounty | Youth and Women |

| | | | |
|----|-----|--|-----------------|
| 7 | L03 | Timbwani, Likoni subcounty | Youth and Women |
| 8 | L04 | Bofu, Likoni Subcounty | Youth and Women |
| 9 | K01 | Mjambere & Junda, Kisauni Subcounty | Open |
| 10 | K02 | Bamburi ward, Kisauni Subcounty | Youth and women |
| 11 | K03 | Magogoni & Mtopanga, Kisauni Subcounty | Youth and women |
| 12 | K04 | Shanzu ward, Kisauni Subcounty | Open |
| 13 | J01 | Mikindani, Jomvu subcounty | Youth and women |
| 14 | J02 | Miritini, Jomvu subcounty | Open |
| 15 | C01 | Changamwe, Changamwe subcounty | Open |
| 16 | C02 | Airport ward, Changamwe subcounty | Open |
| 17 | N01 | Mkomani, Nyali Subcounty | Open |
| 18 | N02 | FrereTown & Kadzandani, Nyali Subcount | Open |

4.0 SCOPE OF WORKS

4.1 Responsibilities of the Franchisee in the Zone

Franchisee shall:

- a) Collect, transport and dispose waste generated from the following sources:
 1. Households;
 2. Business premises such as restaurants, hotels, shops, supermarkets
 3. Private office blocks
 4. Learning institutions such as schools, technical colleges and universities
 5. Religious premises
 6. Private social halls
 7. Go-downs and warehouses

- b) Maintain an updated inventory of all the waste generators in the zone
- c) Enter into contract with waste generators for the collection of the waste

4.2 Waste Collection Time and Frequency

The Franchisee shall inform the customers of their collection schedule prior to the commencement of the operation. In addition, collection and transportation shall be conducted at least 2 times a week for residential areas. The franchisee will organize collection from the other sources based on need and call. Waste collection and transportation will only be done between 6am and 6pm.

4.3 Garbage Bags/liners

The County Government has adopted two colour coding system for municipal waste containment. In this respect, the franchisee shall provide appropriate number of garbage bags/liner bags to their clients in two colours as detailed below:- 1) Green garbage liner bags and/containers for organic waste (wet waste)

- 2) Blue garbage liner bags and/containers for inorganic waste (Dry waste)

The garbage liner bags should have the following information;

- 1) Contact details including name, address and phone number of the franchisee
- 2) Thickness of the liner; at least 80 micron thickness measuring 70cm by 100cm.
- 3) Details on characterization of the wet (foods, fruits, vegetables, etc) or dry waste (paper, cans, plastic/glass, bottles, cardboard etc).

4.4 Waste Charge

It will be the responsibility of the Franchisee to propose the waste charge upon which an agreement will be reached with the County Government. Such rates will be guided by the current charges as follows:

- 1) Households in High income estates; not more than Kshs. 1,000/household/month
- 2) Households in Middle income estates; not more than Kshs. 500/household/month
- 3) Households in low income estates; not more than Kshs. 200/household/month
- 4) Restaurants, Hotels, Shops, Offices, Private school; not more than Kshs. 400 per collection
- 5) Public markets; not more than Kshs. 300 per month

Further, the franchisee will be expected to collect all the agreed waste charges and ensure effective and efficient services.

4.5 Franchise Fee

The Franchisee shall pay to the County Government of Mombasa a franchise fee of 10 percent of the total income of the franchisee. This fee shall be paid monthly.

4.6 Ownership of Segregated Recyclable Waste

The Franchisee will have ownership of any recyclable waste segregated at source or by the Franchisee. Where the county government has developed relevant infrastructure, it may manage the segregated recyclable waste stream.

4.7 Contract Period

The contract period for the franchise shall be three years. Renewal will be based on performance. Any franchisee who does not fulfill the requirements of the operation will have the contract terminated and re-advertised. Any authority previously granted for provision of solid waste management services in the zone will cease to be valid immediately upon award of the contract to the successful franchisee.

4.8 Cancellation of the contract

The contract may be cancelled under the following circumstances:

- 6) Failure to collect waste in the manner and frequency agreed upon
- 7) Development of illegal dumpsites in the zone
- 8) Non-compliance in payment of franchise fees
- 9) Charging for waste collection above the rates provided for in the contract 10)
Dealing in waste other than municipal waste or as provided for in the contract.
- 11) Violating Human Resource standard practices.

5.0 UNDERTAKINGS OF CGM IN THE ZONE

The County Government of Mombasa will undertake the following:

- 1) Monitoring for Non-Licensed Private Service Providers: ensure that no other actor will provide solid waste management services in the zone allocated to a franchisee or joint venture.
- 2) Public Awareness of the Franchise System: carry out continuous awareness creation in the zone on solid waste management, responsibilities of the waste generator and the licensed franchisee.

- 3) Regulation of Community Based Organizations' Activities: facilitate agreeable and sustainable partnerships between the franchisee and CBOs working in the low income areas of each of the zones.
- 4) Subscription to the franchisee for waste collection service: enforce subscription to the franchisee in each zone by the waste generator

6.0 LEGAL COMPLIANCE

The contractor shall comply with all the provisions of EMCA and other relevant legal requirements in executing the contract

7.0 PERSONAL PROTECTIVE EQUIPMENT

The Contractor shall provide suitable PPE to the loaders, driver, ground men and the supervisor

SECTION VIII: ACTIVITY SCHEDULE /PRICE SCHEDULE OF SERVICES
(TO BE SUBMITTED IN ENVELOPE B)

**DETAILED BREAKDOWN OF THE LUMP SUM PRICE INTO COST ELEMENTS PER
MONTH FOR EACH ZONE (TO BE SUBMITTED IN ENVELOPE B): -**

Name of Tenderer _____ Tender Number _____

ZONE NAME AND DESCRIPTION

Name of Tenderer _____ Tender Number _____ Page ____ of ____

| NO. | COST ELEMENTS | RATE PER MONTH (KSHS). | VAT (KSHS). | TOTAL RATE PER MONTH IN (KSHS). |
|--------------|--|---------------------------|----------------|------------------------------------|
| 1. | Rates for equipment usage | | | |
| | 1. Truck (including fuel) | ..... | ..... | ..... |
| | 2. Refuse storage facilities/bins | ..... | ..... | ..... |
| | 3. Other tools/equipment | ..... | ..... | ..... |
| | 4. Personal protective equipment for staff | ..... | ..... | ..... |
| 2. | Staff Costs: | | | |
| | 1. Supervisor | ..... | ..... | ..... |
| | 2. Ground men | ..... | ..... | ..... |
| | 3. Other Staff | ..... | ..... | ..... |
| 3. | Other Overheads and profit: | ..... | ..... | ..... |
| Total |  | ..... | ..... | ..... |

Signature of tenderer _____

Note:

- 1) This detailed breakdown should be done for each zone quoted for.
- 2) Award shall be per zone. No bidder shall be awarded more than one zone.

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 *[description of services]* in conformity with the said Tender documents for the sum of *[total Tender amount in words and figures]* 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 deliver the Goods in accordance with the delivery schedule 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.

Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has not been declared ineligible by the Government of Kenya under Kenyan laws.

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

B. Tender Securing Declaration

[The Tenderer shall fill in this Form in accordance with the instructions indicated.]

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

Tender No.: *[insert **number of Tendering process**]*

Alternative No.: *[insert **identification No if this is a Tender for an alternative**]*

To: *[insert **complete name of Procuring Entity**]*

We, the undersigned, declare that:

We understand that, according to your conditions, tenders must be supported by a Tender Securing Declaration.

We accept that our future ability to tender shall be jeopardized if we are in breach of our obligation(s) under the Tender conditions, because we:

- (a) have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- (b) having been notified of the acceptance of our Tender by the Purchaser during the period of Tender 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.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

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

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

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

Dated on _____ day of _____, _____ *[insert **date of signing**]*

Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Tender Securing Declaration must be in the name of all partners to the Joint Venture that submits the tender.]

C. Confidential Business Questionnaire

Part 1 – General:

Business Name

Location of business premises.

Plot No..... Street/Road

Postal Address

Tel No.

E- Mail Address.....

Nature of Business.....

Registration Certificate No.

Maximum value of business which you can handle at any one time – Kshs.....

Name of your bankers

Branch

A/c No.....

Part 2 (a) – Sole Proprietor

Your name in full Age

Nationality Country of origin

| | <input type="checkbox"/> Citizenship details..... | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---------------------|-------------|---------------------|--------|---------|--|--|--|---------|--|--|--|---------|--|--|--|---------|--|--|--|---------|--|--|--|
| | <p style="text-align: center;"><u>Part 2 (b) Partnership</u></p> <p>Given details of partners as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 30%;">Citizenship Details</th> <th style="width: 20%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>4.</td> <td></td> <td></td> <td></td> </tr> </tbody> </table> | Name | Nationality | Citizenship Details | Shares | 1. | | | | 2. | | | | 3. | | | | 4. | | | | | | | |
| Name | Nationality | Citizenship Details | Shares | | | | | | | | | | | | | | | | | | | | | | |
| 1. | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <p style="text-align: center;"><u>Part 2 (c) – Registered Company</u></p> <p>Private or Public</p> <p>State the nominal and issued capital of company-</p> <p style="margin-left: 40px;">Nominal Kshs.</p> <p style="margin-left: 40px;">Issued Kshs.</p> <p>Given details of all directors as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 30%;">Citizenship Details</th> <th style="width: 20%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>4.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>5</td> <td></td> <td></td> <td></td> </tr> </tbody> </table> | Name | Nationality | Citizenship Details | Shares | 1..... | | | | 2. | | | | 3. | | | | 4. | | | | 5 | | | |
| Name | Nationality | Citizenship Details | Shares | | | | | | | | | | | | | | | | | | | | | | |
| 1..... | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Date</p> <p>Signature of Candidate</p> | | | | | | | | | | | | | | | | | | | | | | | | | |

☐ If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

D. 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

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 the Public Procurement and Asset Disposal Act 2015, 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.

[Letterhead paper of the PE]

[date]

E. 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 Asset Disposal Act, 2015 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 Authority]*, we are hereby requesting *[name]*, the Appointing Authority, 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

F. 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

G. Tender Security (Bank/Insurance Company Guarantee)

Bank/insurance co letterhead

Whereas [name of the tenderer]

(hereinafter called "the tenderer") has submitted its tender dated [date of submission of tender] for the execution of[name and/or description of the service] (hereinafter called "the Tender") KNOW ALL PEOPLE by these presents that WE of having our registered office at (hereinafter called "the Bank/Insurance Company"), are bound unto [name of Procuring entity] (hereinafter called "the Procuring Entity") in the sum of for which payment well and truly to be made to the said Procuring Entity, the Bank/Insurance Company binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank/Insurance Company this day of
20

THE CONDITIONS of this obligation are:-

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
fails or refuses to execute the Contract Form, if required; or
fails or refuses to furnish the performance security in accordance with the Instructions to tenderers;

We undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This tender guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank/Insurance Company not later than the above date.

[signature of the Bank/Insurance Company]_____

[seal]

H. Performance Bank Guarantee [Unconditional]

To

[name of Procuring entity]

WHEREAS [name of tenderer] (hereinafter called "the tenderer") has undertaken , in pursuance of Contract No. [reference number of the contract] dated 20 to supply [description of goods] (hereinafter called "the Contract").

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a Bank guarantee by a reputable Bank for the sum specified therein as security for compliance with the Tenderer's performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of [amount of the guarantee in words and figure] and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of [amount of guarantee] as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the day of 20

Signed and seal of the Guarantors

[name of Bank]

[address]

[date]

Bank/Insurance Company Guarantee for Advance Payment

To

[name of Procuring entity]

[name of tender]

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Contract Data Sheet, which amends the General Conditions of Contract to provide for advance payment, [name and address of tenderer](hereinafter called “the tenderer”) shall deposit with the Procuring entity a Bank/Insurance Company guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of [amount of guarantee in figures and words].

We, the [Bank/Insurance Company], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding [amount of guarantee in figures and words]

We further agree that no change or addition to or other modification of the terms of the Contract to be performed there-under or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid in full effect from the date of the advance payment received by the tenderer under the Contract until [date].

Yours truly,

Signature and seal of the Guarantors

[name of Bank/Insurance Company]

[address]

[date]

**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 of20.....in the matter of Tender No.....of20...

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