



# **COUNTY GOVERNMENT OF MOMBASA**

## **PROPOSION OF MEDIA CONTENT SERVICE FOR MARKETING DESTINATION MOMBASA**

**TENDER NO. CGM/PRO/T/41/2020-2021**

### **TENDER DOCUMENT**

***CLOSING DATE: 19<sup>TH</sup> MARCH 2021***

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS .....</b>	<b>2</b>
<b>ABBREVIATIONS AND ACRONYMS.....</b>	<b>3</b>
<b>VISION, MISSION, &amp; CORE VALUES .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>HEALTH, SAFETY AND ENVIRONMENT .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>POLICY STATEMENT.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>SECTION II: INSTRUCTION TO TENDERERS (ITT).....</b>	<b>6</b>
<b>SECTION III: TENDER DATA SHEET .....</b>	<b>29</b>
<b>SECTION IV: GENERAL CONDITIONS OF CONTRACT .....</b>	<b>35</b>
<b>SECTION V - CONTRACT DATA SHEET .....</b>	<b>49</b>
<b>(SPECIFIC CONDITIONS OF CONTRACT).....</b>	<b>49</b>
<b>SECTION VI: SCHEDULE OF REQUIREMENTS.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>SECTION VII: TECHNICAL SPECIFICATIONS.....</b>	<b>52</b>
<b>SECTION VIII: PRICE SCHEDULE OF SERVICES .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>SECTION IX: TENDER FORMS .....</b>	<b>55</b>
<b>SECTION X: FORMS OF SECURITY .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>SECTION XI: APPLICATION TO PUBLIC PROCUREMENT REVIEW BOARD .....</b>	<b>ERROR!</b>
<b>BOOKMARK NOT DEFINED.</b>	

---

## ABBREVIATIONS AND ACRONYMS

<b>CDS</b>	Contract Data Sheet
<b>GCC</b>	General Conditions of Contract
<b>ICB</b>	International Competitive Tendering
<b>IFQ</b>	Invitation for Quotation
<b>NCB</b>	National Competitive Tendering
<b>PE</b>	Procuring Entity
<b>PIN</b>	Personal Identification Number
<b>PPADA 2015</b>	Public Procurement and Asset Disposal Act, 2015
<b>SBD</b>	Standard Tendering Documents
<b>SOR</b>	Statement of Requirements
<b>SP</b>	Service Provider
<b>EACC</b>	Ethics and Anti-Corruption Commission
<b>PPRA</b>	Public Procurement Regulatory Authority
<b>PPRB</b>	Public Procurement Regulatory Board
<b>VAT</b>	Value Added Tax

---

**SECTION I: INVITATION FOR TENDERS****Tender No. CGM/PRO/T/41/2020-2021****TENDER NAME: PROPOSITION OF MEDIA CONTENT SERVICE FOR MARKETING DESTINATION MOMBASA.**

- 1.1 The County government of Mombasa invites sealed tenders from eligible consultants qualified in land use and planning for **PROPOSITION OF MEDIA CONTENT SERVICE FOR MARKETING DESTINATION MOMBASA.**
- 1.2 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 Disposal Regulations, 2020 and is open to all National Tenderers as defined in the Regulations.
- 1.3 Interested eligible candidates may obtain further information from and inspect the tender documents at the office of the Director Supply Chain Management during normal office working hours or the RFP document can be viewed and downloaded from [www.mombasa.go.ke](http://www.mombasa.go.ke) at no fee.
- 1.4 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.**
- 1.5 Prices quoted should be net inclusive of all taxes and delivery costs, must be in Kenya Shillings and shall remain valid for (120) days from the closing date of the tender.
- 1.6 Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and name and addressed as follows

**TENDER NO.: CGM/PRO/T/41/2020-2021****TENDER NAME: PROPOSITION OF MEDIA CONTENT SERVICE FOR MARKETING DESTINATION MOMBASA.****“DO NOT OPEN BEFORE 1000 HOURS 19<sup>TH</sup> MARCH 2021**

Addressed:

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 19<sup>TH</sup> MARCH 2021.**

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 19<sup>TH</sup> MARCH 2021**

- 1.7 Tenders will be opened immediately thereafter in the presence of bidders/representatives who choose to attend the opening process at 1015Hrs in the Finance Committee Room, County Assembly Hall 2nd or where directed by the County Secretary.
- 1.8 Canvassing or lobbying for the tender shall lead to automatic disqualification.

**COUNTY SECRETARY,**

**COUNTY GOVERNMENT OF MOMBASA.**

---

## **SECTION II: INSTRUCTION TO TENDERERS (ITT)**

## Table of Clauses

<b>SECTION II: INSTRUCTION TO TENDERERS (ITT)</b> .....	<b>6</b>
<b>A. Introduction</b> .....	<b>8</b>
1. Scope of Tender.....	8
2. Source of Funds.....	8
3. Eligible Tenderers.....	8
4. One Tender per Tenderer.....	9
5. Alternative Tenders by Tenderers.....	9
8. Cost of Tendering.....	10
9. Site Visit and Pre-Tender meeting (optional).....	10
<b>B. Tender Documents</b> .....	<b>10</b>
10. Content of Tendering Documents.....	10
11. Clarification of Tendering Documents.....	11
12. Amendment of Tender Documents.....	11
<b>C. Preparation of Tenders</b> .....	<b>11</b>
13. Language of Tender.....	11
14. Documents Constituting the Tender.....	11
15. Documents Establishing Eligibility and Qualifications of the Tenderer.....	12
16. Form of Tender.....	14
17. Tender Prices.....	14
18. Tender Currencies.....	14
19. Tender Validity Period.....	15
20. Tender Securing Declaration.....	15
21. Format and Signing of Tender.....	16
<b>D. Submission of Tenders</b> .....	<b>17</b>
22. Sealing and Marking of Tenders.....	17
23. Deadline for Sub-mission of Tenders.....	17
24. Late Tenders.....	18
25. Modification, Substitution and Withdrawal of Tenders.....	18
<b>E. Opening and Evaluation of Tenders</b> .....	<b>18</b>
26. Opening of Tenders.....	18
27. Confidentiality.....	19
28. Clarification of Tenders.....	20
29. Preliminary Examination of Tenders.....	20
30. Technical Evaluation.....	21
31. Financial Evaluation.....	21
34. National Preference.....	22
35. Post-qualification of Tenderer.....	23
<b>F. Award of Contract</b> .....	<b>23</b>
36. Criteria of Award.....	23
37. Procuring Entity's Right to Accept any Tender and to Reject any or all Tenders.....	24
38. Procuring Entity's Right to Vary Quantities at the Time of Award.....	24
39. Notification of Award.....	24
40. Notifying Unsuccessful Tenderers.....	25
41. Signing of Contract.....	25
42. Performance Security.....	25
43. Advance Payment.....	25
44. Adjudicator.....	25
45. Fraud and Corruption.....	26
<b>G. Review of Procurement Decisions</b> .....	<b>27</b>
46. Right to Review.....	27
47. Time Limit on Review.....	27
48. Submission of Applications for Review by the Public Procurement Administrative Review Board	28

## A. INTRODUCTION

- |    |                       |   |
|----|-----------------------|---|
| 1. | 1. SCOPE OF TENDER    | <p>1.1 The Procuring Entity indicated in the <b>Tender Data Sheet (TDS)</b>, invites Tenders for the provision of Services as specified in the <b>Tender Data Sheet, Section VI, Technical Specification and Section VII, Activity Schedule.</b></p> <p>1.2 The successful tenderer will be expected to provide the service(s) within the period stated in the <b>Tender Data Sheet</b> from the start date specified in the <b>Tender Data Sheet.</b></p>  |
| 2. | 2. SOURCE OF FUNDS    | <p>2.1 The Procuring Entity has set aside sufficient funds for the operations of the Procuring Entity named in the <b>Tender Data Sheet</b> during the Financial Year indicated in the <b>Tender Data Sheet.</b> 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 <b>Tender Data Sheet.</b></p> <p>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.</p>  |
| 3. | 3. ELIGIBLE TENDERERS | <p>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 <b>Tender Data Sheet</b>, all parties shall be jointly and severally liable.</p> <p>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, 2006 – Government Notice No. 97, except as provided hereinafter.</p> <p>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.</p> <p>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:<br/>         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.<br/>         have controlling shareholders in common; or</p> <p>a) receive or have received any direct or indirect subsidy from any of them; or</p> <p>b) have the same legal representative for purposes of this Tender; or</p> <p>c) 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,</p> |



- or influence the decisions of the Procuring Entity regarding this Tendering process; or
- d) 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
- e) 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.
- 4. ONE TENDER PER TENDERER**
- 4.1 A firm shall submit only one Tender, in the same Tendering process except where a Tenderer is Tendering for service contracts put out for tendering together and each Tenderer is eligible to Tender for more than one lot, either individually as a Tenderer or as a partner in a joint venture. No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process. A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity. A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals in which the Tenderer has participated to be disqualified.
- 5. ALTERNATIVE TENDERS BY TENDERERS**
- 5.1 Tenderers shall submit offers that comply with the requirements of the Tender documents, as indicated in Section VI, Statement of Requirements (or Terms of Reference) and Section VII, Activity Schedule. Alternatives will not be considered, unless specifically allowed for in the **Tender Data Sheet**. If so allowed, sub-Clause 5.2 and 5.3 shall govern.
6. 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.
7. 5.3 If so allowed in the **Tender Data Sheet**, Tenderers wishing to offer technical alternatives to the requirements of the Tender documents must also submit a Tender that complies with the requirements of the Tender documents, including the scope, basic technical data, graphical documents and specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including design calculations, technical specifications, breakdown of prices, proposed work methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by

- the Procuring Entity. Alternatives to the specified performance levels shall not be accepted.
6. 8. **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. 9. **SITE VISIT AND PRE-TENDER 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.

#### B. TENDER DOCUMENTS

8. 10. **CONTENT OF TENDERING DOCUMENTS** 8.1 The services to be provided, Tendering, procedures and contract terms are prescribed in the Tender Documents. In addition to the Section I Invitation for Tenders the Tender documents which should be read in conjunction with any addenda issued in accordance with ITT Clause 10 include:
- Section II. Instructions to Tenderers
  - Section III. Tender Data Sheet (TDS)
  - Section IV. General Conditions of Contract (GCC)
  - Section V. Contract Data Sheet (CDS)
  - Section VI. Statement of Requirements Performance Specifications and Drawings (if applicable)
  - Section VII. Technical Specifications
  - Section VIII. Activity Schedule
  - Section IX. Tender Forms
    - Form of Tender
    - Tender Securing Declaration
    - 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/insurance company Guarantee for
				Advance payment
		8.2		The number of copies to be completed and returned with the Tender is specified in the <b>Tender Data Sheet</b> .
		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.	11. 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 <b>Tender Data Sheet</b> prior to the deadline for the submission of Tenders prescribed in the <b>Tender Data Sheet</b> .
		9.2		The Procuring Entity will, within the period stated in the <b>Tender Data Sheet</b> respond to any request for clarification received no later than the period stated in the <b>Tender Data Sheet</b> 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.	12. 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 sub-Clause 21.2.
				C. PREPARATION OF TENDERS
11.	13. LANGUAGE OF TENDER	11.1		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 <b>Tender Data Sheet</b> . 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 <b>Tender Data Sheet</b> , in which case, for purposes of interpretation of the Tender, the translation shall govern.
12.	14. DOCUMENTS CONSTITUTING	12.1		The Tender prepared by the Tenderer shall constitute the following components:

- NG THE  
TENDER**
- a) The Form of Tender (in the format indicated in Section VIII);  
b) Information requested by sub-Clauses 13.3; 13.4 and 13.5  
c) Tender securing declaration or Tender security in accordance with ITT Clause 18 or 18A;  
d) Priced Activity Schedule;  
e) Qualification Information Form and Documents;  
f) Alternative offers where invited in accordance with ITT Clause 5;  
g) Written power of attorney authorizing the signatory of the Tender to commit the Tenderer in accordance with ITT Clause 19.  
h) Any other document required in the **Tender Data Sheet**.
- 13. 15. 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 The documentary evidence of conformity of the services to the Tender documents may be in the form of literature, drawings, and data, and shall consist of:
- a) a detailed description of the essential technical and performance characteristics of the services;  
b) an item-by-item commentary on the Procuring Entity's Technical Specifications demonstrating substantial responsiveness of the Services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications; and  
c) Any other specific documentation requirement as stated in the **Tender Data Sheet**.
- 13.4 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **Tender Data Sheet**:
- a) the Tender shall include all the information listed in 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 ITT 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 the PPADA, 2015 and Regulations 28 of PPDR 2006.

- 13.8 When Tendering for more than one Contract under the lotting and package arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being applied for in regard to:-
- a) average annual turnover;
  - b) particular experience including key production rates;
  - c) financial means, etc;
  - d) personnel capabilities; and
  - e) Equipment capabilities.
- In case the Tenderer fails to fully meet any of these criteria, it may be qualified only for those slices for which the Tenderer meets the above requirement.
14. 16. **FORM OF TENDER** 14.1 The Tenderer shall fill the Tender Form furnished in the Tender Documents. The Tender Form must be completed without any alterations to its format and no substitute shall be accepted.
15. 17. **TENDER PRICES** 15.1 The Contract shall be for the service(s), as described in sub-Clause 1.1, based on the priced Activity Schedule submitted by the Tenderer.
- 15.2 The Tenderer shall fill in rates and prices for all items of the Service(s) described in Section VI, the Specifications (or Terms of Reference), and listed in Section VII, the Activity Schedule. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule. On the other hand, if the Tenderer introduces new Activity Schedule items not specified in the Tendering documents, the new items, corresponding quantities and prices shall not be accepted and the Tender may be disqualified as being substantially non responsive.
- 15.3 All duties, taxes, and other levies payable by the service provider under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the rates, prices, and total Tender price submitted by the Tenderer.
- 15.4 The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the **Tender Data Sheet** and the provisions of Clause 38 of the General Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the **Tender Data Sheet** and Clause 38 of the General Conditions of Contract.
16. 18. **TENDER CURRENCIES** 16.1 The price shall be quoted by the Tenderer separately in the following currencies:
- a) for those inputs to the Services which the Tenderer expects to provide from within Kenya, the prices shall be quoted in Kenya Shillings, unless otherwise specified in the **Tender Data Sheet**; and
  - b) for those inputs to the Services which the Tenderer expects to provide from outside Kenya, the prices shall be quoted in the international currency specified in the **Tender Data Sheet**.
- 16.2
- a) For purposes of evaluating Tenders, the PE shall fix exchange rates for the nominated foreign currency by foreign or international Tenderers from eligible countries.
  - b) In fixing the exchange rates for the nominated foreign currencies indicated in the **Tender Data Sheet**, the PE shall use ruling mean

- rate obtained from the Central Bank of Kenya (Website: [www.centralbank.go.ke](http://www.centralbank.go.ke) for more information) for the nominated foreign currency on the date of the Tender opening. The fixed exchange rate, which shall be indicated in the **Tender Data Sheet** by the PE, is for purposes of evaluation of tenders **ONLY**.
- c) The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the proportions mentioned in sub-Clause 16.1 above shall be the selling rates for similar transactions established by the Central Bank of Kenya prevailing on the date specified in the **Tender Data Sheet** or, if no date is specified, the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall be adjusted for all payments so that no exchange risk will be borne by the Tenderer. If the Tenderer uses other rates of exchange, the provisions of sub-Clause 30.1 shall apply. In any case, payments will be computed using the rates quoted in the Tender.
- 16.3 Tenderers shall indicate details of their expected foreign currency requirements in the Tender.
- 16.4 Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in any Lump Sum and in the Contract Data Sheet are reasonable and responsive to sub-Clause 16.1.
- 17. 19. 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. 20. 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 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:

- (a) If the Tenderer withdraws its Tender, except as provided in sub-Clauses 18.2 and 30.2; or
- (b) In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:
- (i) Sign the contract, or
- (ii) Furnish the required performance security.
- 18A. Tender Security
- 18A.1 In addition, pursuant to ITT Clause 12, if specified in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet**.
- 18A.2 The Tender security shall be denominated in the currency of the Tender and shall be in one of the following forms:
- a) cash
- b) a bank guarantee;
- c) an insurance company guarantee issued by an insurance firm approved by the PPOA; or
- d) an irrevocable letter of credit.
- 18A.3 Any Tender security must be valid for a period of at least 30 (Thirty) days after the expiry of the Tender Validity Period.
- 18A.4 The Tender security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 19.A.7 are invoked.
- 18A.5 Unsuccessful Tenderers' Tender security will be discharged or returned as promptly as possible as but not later than the expiration of the period of Tender validity prescribed by the Procuring Entity pursuant to ITT Clause 18.
- 18A.6 The successful Tenderer's Tender security will be discharged upon the Tenderer signing the contract pursuant to ITT Clause 38, and furnishing the performance security, pursuant to ITT Clause 39.
- 18A.7 The Tender security shall be forfeited if a Tenderer:
- a) Withdraws its Tender during the period of Tender validity specified in sub-Clause 18.1 except as provided for in sub-Clause 18.2; or
- b) Does not accept the correction of errors pursuant to sub-Clause 30.2; or
- c) In the case of a successful Tenderer, if the Tenderer fails:
- i. To sign the contract in accordance with ITT Clause 38; **or**
- ii. To furnish performance security in accordance with ITT Clause 39.
19. 21. **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. 22. SEALING AND MARKING OF TENDERS

20.1 **The Tenderer shall seal the original and each copy of the Tender, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single plain envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.**

20.2 The inner and outer envelopes shall

a) be addressed to the Procuring Entity at the address provided in the **Tender Data Sheet**;

b) bear the Tender name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFT) title and number indicated in the **Tender Data Sheet**, and a statement: “DO NOT OPEN BEFORE,” to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to sub-Clause 21.1.

20.3 In addition to the identification required in sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Tenderer to enable the Tender to be returned unopened in case it is declared late, pursuant to ITT Clause 22, and for matching purposes under ITT Clause 23.

20.3 If all envelopes are not sealed and marked as required by sub-Clause 20.2, the Procuring Entity shall assume no responsibility for the misplacement or premature opening of the Tender.

### 21. 23. DEADLINE FOR SUB-MISSION 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. 24. **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. 25. **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. 26. **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. 27. 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. 28. 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. 29. 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. 30. TECHNICAL EVALUATION**
- 28.1 The Procuring Entity shall examine the Tender to confirm that all terms and conditions specified in the General Conditions of Contract and the **Contract Data Sheet** have been accepted by the Tenderer without any material deviation or reservation.
- 28.2 The Procuring Entity shall evaluate the technical aspects of the Tender submitted to confirm that all requirements specified in Section VI – Schedule of Requirements of the Tender documents and Section VII – Technical Specifications have been met without material deviation or reservation
- 28.3 If after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the Tender is not substantially responsive in accordance with ITT Clause 27, it shall reject the Tender.
- 28.4 A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation or reservation as defined in the PPADA 2015. 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. 31. FINANCIAL EVALUATION**
- 29.1 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected by the evaluation committee as follows:-
- a) if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;
  - b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - c) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.
- 29.2 The amount stated in the Tender will be adjusted in accordance with the above procedure for the correction of errors and, with the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected

- amount, its Tender will then be rejected, and the tender security shall be forfeited or the Tender securing declaration may be executed in accordance with sub-Clause 17.8.
32. 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.**
33. 29.4 The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive pursuant to ITT Clause 27 and the proposals of which have been determined to be adequate in accordance with sub-Clause 28.2 or 28.3.
- 29.5 In evaluating the Tenders, the evaluation committee will determine for each Tender the evaluated Tender Price by adjusting the Tender Price as follows:-
- a) making any correction for errors pursuant to ITT Clause 29;
  - b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, but including 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 34. NATIONAL PREFERENCE
- 32.1 In the evaluation of Tenders the Procuring Entity shall apply exclusive preference to citizens of Kenya where:
- a) The funding is 100% from the Government of Kenya or a Kenyan body;
  - b) The amounts are below the prescribed threshold of KShs.50 million (or KShs.200 million for procurements of works);

- 32.2 To qualify for the preference the candidate shall provide evidence of eligibility by:
- a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
  - b) Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.
- 32.3 In the event of the Minister for Finance prescribing additional preference and/or reservation schemes, details will be given in the Tender Data Sheet.
- 33. 35. 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. 36. 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.	37. <b>PROCURING ENTITY'S RIGHT TO ACCEPT ANY TENDER AND TO REJECT ANY OR ALL TENDERS</b>	35.1	Notwithstanding ITT Clause 34, the Procuring Entity reserves the right to accept or reject any Tender, and to reject all Tenders, at any time prior to notification of Contract award, without thereby incurring any liability to the affected Tenderer or Tenderers
		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	38. <b>PROCURING ENTITY'S RIGHT TO VARY QUANTITIES AT THE TIME OF AWARD</b>	36.1	The Procuring Entity reserves the right at the time of Contract award to increase or decrease the scope of services originally specified in these Tender documents provided this does not exceed by the percentage indicated in the <b>Tender Data Sheet</b> , without any change in unit price or other terms and conditions of the Tender and Tender documents.
37.	39. <b>NOTIFICATION OF AWARD</b>	37.1	The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e mail or, facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Service provider in consideration of the provision and maintenance of the Service(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price).
		37.2	<ul style="list-style-type: none"> <li>a) The Procuring Entity and the Tenderer submitting the successful Tender shall enter into a written contract.</li> <li>b) The written contract shall be entered into within the period specified in the notification under the PPADA, 2015 but not until at least fourteen days have elapsed following the giving of that notification.</li> </ul>
38.	Post Tender Concurrence	38.1	<ul style="list-style-type: none"> <li>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.</li> </ul> <p>Limited negotiations may be undertaken with the evaluated Tender under Direct procurement method relating to the following areas:</p> <ul style="list-style-type: none"> <li>a) A minor alteration to the technical details of the statement of requirements;</li> <li>b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the solicitation documents;</li> </ul>
		38.2	<ul style="list-style-type: none"> <li>c) A minor amendment to the contract data s;</li> <li>d) Finalising payment arrangements;</li> <li>e) Delivery arrangements;</li> <li>f) The methodology; or</li> <li>g) Clarifying details that were not apparent or could not be finalised at the time of Tendering.</li> </ul>



- 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. 40. **NOTIFYING UNSUCCESSFUL TENDERERS** 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. 41. **SIGNING OF CONTRACT** 40.1
- Promptly after notification, Procuring Entity shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.
- 40.2
- Within twenty eight (28) days of receipt of the Contract Agreement Form, the successful Tenderer shall sign and date the Contract and return it to the Procuring Entity.
41. 42. **PERFORMANCE SECURITY** 41.1
- Within twenty one (21) days, but no earlier than fourteen (14) days, after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the **Tender Data Sheet** and the **Contract data sheet**, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.
- 41.2
- If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:
- a) at the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located in Kenya,
- 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. 43. **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**.
43. 44. **ADJUDICATOR** 43.1
- The Procuring Entity proposes the person named in the **Tender Data Sheet** to be appointed as Adjudicator under the Contract, at an hourly fee specified in the **Tender Data Sheet**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be

44. 45. **FRAUD AND  
CORRUPTION**

44.1

appointed by the Appointing Authority designated in the **Contract Data Sheet** at the request of either party.

The Government of Kenya requires that procuring entities (including beneficiaries of public funds) as well as Tenderers under public - financed Contracts observe the highest standard of ethics during the procurement and execution of such Contracts. In pursuance of this policy, the Government of Kenya:-

- a) defines, for the purposes of this provision, the terms set forth below as follows:-
  - i) "**Corrupt practice**" means the offering, giving receiving or solicitation of anything of value to influence the action of a public official in the procurement process or in Contract execution and includes inter alia, bribery, extortion or coercion, which involves threats of injury to person, property or reputation,
  - ii) "**Fraudulent practice**" means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Procuring Entity, and includes collusive practice among Tenderers [prior to or after Tender submission] designed to establish Tender prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition;
  - iii) "**Collusive practice**" means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of a procuring entity (PE) prior to or after Tender submission, designed to establish Tender prices at artificial non-competitive levels and to deprive the PE of the benefit of free and open competition;
  - iv) "**Coercive practice**" means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of either to influence improperly the actions of a PE;
  - v) "**Obstructive practice**" means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and /or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation
- b) A procuring entity (PE) has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by EACC/PPRA to inspect their accounts and records and other documents relating to the Tender submission and contract performance,

- b) 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;
- c) 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
- d) 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.
- 44.2 The Government of Kenya reserves the right, where a firm has been found by a foreign country, international organization or other foreign organization to have engaged in corrupt or fraudulent practice, to declare that such a firm is be barred, for a period of not less than five years to be awarded a public financed contract in Kenya in.
- 44.3 In pursuant of Section 41 of the Public Procurement and Asset Disposal Act, 2015, the Public Procurement Regulatory Board may debar a person for a period of not less than three years for fraud, corruption and other offences under the PPADA, 2015.
- 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 46. RIGHT TO REVIEW**
- 45.1 A Tenderer who claims to have suffered or to risk suffering, loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity or an approving authority by the Public Procurement and Asset Disposal Act 2015 or regulations, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:
- a) The choice of procurement method;
- b) a decision by the procuring entity to reject all tenders, proposals or quotations;
- c) Where a contract is signed in accordance to section 68 of the Public Procurement and Asset Disposal Act,2015; and
- d) Where an appeal is frivolous.
- 46. 47. TIME LIMIT ON REVIEW**
- 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.
- 47. SUBMISSION OF APPLICATIONS FOR REVIEW BY THE PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**
- 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 73, serve a copy thereof on the procuring entity or Director-General as the case may be.
- 47.2 The application for administrative review shall be in accordance with the requirements of Regulation 73 of the Public Procurement and Disposals Regulations, 2006, including:
- a) Reasons for the complaint, including any alleged breach of the Act or Regulations;
  - b) An explanation of how the provisions of the Act, Regulation or provision has been breached or omitted, including the dates and name of the responsible public officer, where known;
  - c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request;
  - d) Remedies sought; and
  - e) Any other information relevant to the complaint
- 48. 49. 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. 50. JUDICIAL REVIEW**
- 49.1 Any Tenderer not satisfied with the decision of the Public Procurement Administrative Review Board may appeal to the High Court within fourteen days after the decision is made and the decision of the High Court will be final.

---

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

### Tender Data Sheet (TDS)

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

TDS Clause Number	ITT Clause Number	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
<b>A. INTRODUCTION</b>		
<b>1.</b>	<b>1.1</b>	Name of Procuring Entity: <b>COUNTY GOVERNMENT OF MOMBASA</b>  Subject of procurement is: <b>PROPOSION OF MEDIA CONTENT SERVICE FOR MARKETING DESTINATION MOMBASA.</b>
<b>4.</b>	<b>3.1</b>	Joint venture, consortium or association liability will be: [ <i>Not applicable</i> ]
<b>5.</b>	<b>5</b>	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> ]
<b>6.</b>	<b>7.3</b>	There shall be a mandatory a mandatory site visit: <b>N/A, but bidders are advised to familiarize themselves with Mombasa County and its environments</b>

### B. TENDER DOCUMENTS

<b>8.</b>	<b>8.2 19.1</b>	The number of copies of the Tender to be completed and returned in addition to the original <b>will be [<i>two -2</i>]</b> .
<b>9.</b>	<b>9.1</b>	The address for clarification of Tender documents  THE COUNTY SECRETARY, COUNTY GOVERNMENT OF MOMBASA, P.O BOX 80133-80100, MOMBASA EMAIL: countysec@mombasa.go.ke  Deadline for submission of tenders: <b>BEFORE 1000HOURS ON 19<sup>TH</sup> MARCH 2021.</b>
<b>10.</b>	<b>9.2</b>	The PE will respond to a request for clarification within ( <i>Three-3 days</i> ) provided the clarification has been requested at least ( <i>Seven -7</i> ) prior to the deadline for submission of tenders.

### C. PREPARATION OF TENDERS

<b>11.</b>	<b>11.1</b>	The language of all correspondences and documents related to the Tender is: <b>English</b>
<b>12.</b>	<b>12 &amp; 13</b>	Tenders shall be submitted in a <b>two envelope system (Envelope A Technical Submission and Envelope B financial Submission).</b>

		<p>The two sealed envelopes shall then be sealed in an <b>outer envelope</b> bearing the tender number and description and a statement <b>‘DO NOT OPEN BEFORE 1000HOURS, 19<sup>TH</sup> MARCH 2021.</b></p> <p><b>Envelope A</b> shall contain the Technical submission and shall be clearly marked <b>“Envelope A – Technical Submission”</b>. Envelope A shall contain <b>NO</b> indication of the tender price or other financial information of the bid and:-</p> <ol style="list-style-type: none"> <li>i. Shall have a table contents page clearly indicating Sections and Page Numbers <b>(Mandatory)</b>.</li> <li>ii. Shall have pages in the whole document numbered in the correct sequence. In addition the whole submission shall be serialized numerically including all appendixes and attachments <b>(Mandatory)</b>.</li> <li>iii. Shall be firmly bound and should not have any loose pages <b>(Mandatory)</b>.</li> </ol> <p><b>Failure to meet the above requirements shall lead to automatic disqualification.</b></p> <p><b>Envelope A</b> shall have the following requirements and attachments clearly marked and arranged in the following order:-</p> <ol style="list-style-type: none"> <li>i. Company profile including the Company background, statutory registration documents i.e. Taxpayer Registration Certificate, a <b>Valid /Current</b> Tax Compliance Certificate, Incorporation/Registration Certificate, valid and current county business permit <b>(MANDATORY)</b>.</li> <li>ii. Original Tender Security of <b>Kshs. 150,000</b> in form of a Banker’s guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA), or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 120 days from the date of tender opening in the format provided in the tender document - <b>(MANDATORY)</b>.</li> <li>iii. Duly filled, signed and stamped Confidential Business questionnaire. <b>(MANDATORY)</b>.</li> <li>iv. Duly filled, signed and stamped Declaration Form <b>(MANDATORY)</b>.</li> <li>v. Duly filled, signed and stamped Anti-Corruption Declaration Commitment/ Pledge <b>(MANDATORY)</b>.</li> <li>vi. Workman’s Compensation and Group Personal Accident Insurance, Third Party of Public Liability Insurance <b>(MANDATORY)</b>.</li> <li>vii. Experience in works of a similar nature and size for each of the last 5 years expressing knowledge and experience in both public and private sector. This should include details of work under way or contractually committed with documentary proof and names and addresses of clients who may be contacted for further</li> </ol>
--	--	---

		<p>information on these contracts (attach extract copies of contracts, purchase orders e.t.c.). <b>(MANDATORY)</b>.</p> <p>viii. Method of work Statement- should include but not limited to:-</p> <ol style="list-style-type: none"> <li>i. Assignment of manpower,</li> <li>ii. Supervision of work,</li> <li>iii. Any equipment that could be required to undertake the assignment.</li> </ol> <p><b>(MANDATORY)</b>.</p> <p>ix. List of personnel to be involved in executing the assignment including one supervisor with their Curriculum Vitaes. Supervisor must have at least five (7) years' experience in Media and Information. <b>(MANDATORY)</b>.</p> <p>x. Copies of Audited Financial reports for the last two years, 2018, and 2019. <b>(MANDATORY)</b>.</p> <p><b>Envelope B</b> shall contain:</p> <ol style="list-style-type: none"> <li>i. Form of Tender.</li> <li>ii. Priced Schedule for Services.</li> </ol>
13.	13.6	Joint ventures not allowed
15.	16.1	All prices must be in Kenya Shillings and inclusive of all taxes

#### D. SUBMISSION OF TENDERS

19.	20.2	<p>The inner and outer envelopes shall be addressed to the Authority at the address given in the Invitation to Tender as follows:</p> <p style="text-align: center;"><b>THE COUNTY SECRETARY, COUNTY GOVERNMENT OF MOMBASA, P.O BOX 80133-80100, MOMBASA</b></p> <p><b>EMAIL: countysec@mombasa.go.ke</b> Note: <i><u>The cover envelope shall not bear the name and identification of the Bidder, while the inner envelopes should bear the name and address of the service provider to enable return if received late unopened.</u></i></p>
-----	------	---

#### E. OPENING AND EVALUATION OF TENDERS

22.	24.1	Tenders will be opened promptly thereafter in the presence of Tenderers' representatives who choose to attend the opening from <b>1015Hours</b> at the Finance Boardroom located 2 <sup>nd</sup> Floor Treasury Square, and Tenderers or their representatives may attend.
23.	28.1	<b>Criteria for Tender evaluation shall be:-</b>



		<p>Technical proposals shall be subjected to the following evaluation criteria:-</p> <p>i. <b>Company's Experience - (30 Marks):-</b> Experience in works of a similar nature and size for each of the last 5 years expressing knowledge and experience in both public and private sector. This should include 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, purchase orders e.t.c.)</p> <p>i. At least 5 works/services of similar nature and size with all documentary evidence as proof of undertaking media and showcasing entities both in print and video forms –provide invoices, contracts /Purchase orders, certificate of completion or reference letters <b>(6 marks each)</b>.</p> <p><i>Failure to attach documentary evidence will result to no marks awarded.</i></p> <p>ii. <b>Personnel Capability - (30Marks):-</b> List of personnel including:-</p> <p>i. <b><u>Media and Information Expert</u></b> who must have:</p> <ul style="list-style-type: none"> <li>• At least seven (7) years' experience in preparing videos, print information in an effort of showcasing clients. Have evidence of supervision for this assignment <b>(6 marks)</b></li> <li>• At least a Bachelors degree in media and information/Society or related assignment. <b>(6 marks)</b></li> <li>• Detailed CV and copies of academic/professional qualification <b>(6 marks)</b>.</li> <li>• Good communication skills, able to read and write national languages <b>(2 marks)</b></li> </ul> <p>ii. <b><u>Video Editor</u></b> who must have</p> <ul style="list-style-type: none"> <li>• at least 4 years' experience in video editing, print media and showcasing events <b>(2.5 marks)</b></li> <li>• At least degree in IT/Journalism from a recognized institution of Higher Learning <b>(2.5)</b></li> </ul> <p>iii. <b>Support Staff</b></p> <ul style="list-style-type: none"> <li>• at least 3 years' experience in photography, video editing, print media and showcasing events <b>(2.5 marks)</b></li> <li>• Diploma/certificate in the relevant field from a recognized institution of higher learning <b>(2.5 marks)</b></li> </ul>
--	--	--

		<p>iv. <b>Method of work Statement - (20 Marks):-</b> should include but not limited to:-</p> <p>i. The work plan for undertaking the assignment, should include images (ganth charts or flow charts), Assignment of manpower and schedule of work <b>(15 marks)</b></p> <p>ii. Supervision procedure <b>(5 marks)</b></p> <p>v. <b>Organization Structure - (10 Marks)</b></p> <p>vi. <b>Financial strength - (10 Marks):</b> Copies of Audited Financial reports for the last two years 2019 and 2020 or (Financial strength shall be pegged on the following ratios: liquidity, gearing, and profitability ratios.</p> <ul style="list-style-type: none"> <li>• Liquidity ratios CA/CL &gt; 1.4 = <b>5 marks</b></li> <li>• Gearing ratios not more than 20% = <b>2.5 marks</b></li> <li>• Profitability ratios 20% and above = <b>2.5 marks</b></li> </ul> <p>Marks will be awarded on the ratio indicated as an average for the two years as follows:</p> <p><input type="checkbox"/> Full marks for meeting requirement</p> <p><input type="checkbox"/> prorated marks for not meeting requirement</p> <p><b>Candidates will be required to score a minimum of 75% to proceed to the next stage of evaluation of opening financial bids.</b></p>
--	--	--

#### F. AWARD OF CONTRACT

25.	34.2	The contract will be awarded to the <b>lowest evaluated bidder (Least Cost Method to be applied as the selection method)</b>
28.	42.1	The Advance Payment shall not be allowed
29.	43.1	The Adjudicator proposed by the Procuring Entity is [ <i>Chairman Chartered Institute of Arbitrators of Kenya</i> ]. The hourly fee for this proposed Adjudicator shall be [ <i>the ruling rate</i> ].

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

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

## Table of Clauses

<b>SECTION IV: GENERAL CONDITIONS OF CONTRACT .....</b>	<b>35</b>
1. Definitions .....	37
2. Application .....	38
3. Governing Language .....	38
4. Applicable Law .....	38
5. Country of Origin and Nationality of Supplier .....	39
6. Standards .....	39
7. Use of Contract Documents and Information; Inspection and Audit by the Government of Kenya .....	39
8. Patent and Copy Rights .....	39
9. Performance Security .....	40
10. Inspections and Test .....	40
11. Packing .....	41
12. Delivery and Documents .....	41
13. Incidental Services .....	41
14. Spare Parts .....	42
15. Warranty .....	42
16. Payment .....	43
17. Prices .....	43
18. Change Orders .....	44
19. Contract Amendments .....	44
20. Assignment .....	44
21. Subcontracts .....	44
22. Delays in the Supplier's Performance .....	45
23. Liquidated Damages .....	45
24. Termination for Default .....	45
25. Termination for Insolvency .....	46
26. Force Majeure .....	46
27. Disputes .....	46
28. Procedure for Disputes .....	47
29. Replacement of Adjudicator .....	47
30. Limitation of Liability .....	47
31. Notices .....	48
32. Taxes and Duties .....	48

## General Conditions of Contract

1. DEFINITIONS
- 1.1 In this Contract, the following terms shall be interpreted as indicated:
- a) “CDS” means the Contract data sheet.
  - b) “Completion” means the fulfilment of the related services by the Supplier in accordance with the terms and conditions set forth in the contract
  - c) “Contract” means the agreement entered into between the Procuring Entity and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - d) “corrupt practice” means the offering, giving, receiving, or soliciting 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 and extortion or coercion which involves threats of injury to person, property or reputation.
  - e) “Day” means calendar day.
  - f) “Delivery” means the transfer of the goods from the supplier of equipment, machinery, and /or other materials which the Supplier is required to supply to the Procuring Entity under Contract.
  - g) “Effective Date” means the date on which this Contract becomes effective pursuant to GCC Clause
  - h) “Eligible Country" means the countries and territories eligible for participation in procurements financed by the specified institution.
  - i) “End User” means the organization(s) where the goods will be used, as named in the CDS.
  - j) “Force Majeure” means an event or situation beyond the control of the Supplier and not involving the Supplier’s fault or negligence and not foreseeable, is unavoidable, and is not due to negligence or lack of care on the part of the Supplier. Such events may include, but are not restricted to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine, restrictions, acts of terrorism piracy and freight embargoes.
  - k) “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 Purchaser, and includes

collusive practices among Tenderers (prior to or after Tender submission)

- l) “GCC” means the General Conditions of Contract contained in this section.
- m) “Origin” means the place where the Goods were mined, grown, or produced or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized new produce results that is substantially different in basic characteristics or in purpose or utility from its components.
- n) “Procuring Entity” means the entity purchasing the Goods and related service, as named in **CDS**.
- o) “Project Site” where applicable, means the place or places named in CDS.
- p) “Related Services” means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, initial maintenance and other such obligations of the Supplier covered under the Contract.
- q) “Supplier” means the individual, private or public entity or a combination of the above whose Tender to perform the contract has been accepted by the Procuring Entity Procuring Entity and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the supplier.
- r) “The Contract Price” means the price payable to the Supplier as specified under the Contract, subject to such additions and adjustment here to or deduction there from as may be made pursuant to the contract for the full and proper performance of its contractual obligations.

- |                              |     |   |
|------------------------------|-----|---|
| 2. <b>APPLICATION</b>        | 2.1 | These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.   |
| 3. <b>GOVERNING LANGUAGE</b> | 3.1 | The Contract and all correspondence and documents relating to the contract exchanged by the Supplier and the Procuring Entity shall be written in English, unless another language is <b>specified in CDS</b> . Subject to GCC Clause 3.1, the version of the Contract written in the specified language shall govern its interpretation. |
| 4. <b>APPLICABLE LAW</b>     | 4.1 | The contract shall be governed and interpreted in accordance with the laws of Kenya, unless otherwise <b>specified in CDS</b> .   |

- 
5. **COUNTRY OF ORIGIN AND NATIONALITY OF SUPPLIER**
- 5.1 The origin of Goods and Services means the place where the goods are mined, grown, cultivated, produced, manufactured, or processed, or through manufacture, process, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components or the place from which the related services are supplied.
- The nationality of the firm that produces, assembles, distributes, or sells the goods and services shall not determine their origin.
6. **STANDARDS**
- 6.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to Kenya. Such standards shall be the latest issued by the concerned institution.
7. **USE OF CONTRACT DOCUMENTS AND INFORMATION; INSPECTION AND AUDIT BY THE GOVERNMENT OF KENYA**
- 7.1 The Supplier shall not, without the Procuring Entity's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 7.2 The Supplier shall not, without the Procuring Entity's prior written consent, make use of any document or information enumerated in GCC Clause 7.1 except for purposes of performing the Contract.
- 7.3 Any document, other than the Contract itself, enumerated in GCC Clause 7.1 shall remain the property of the Procuring Entity and shall be returned (all copies) to the Procuring Entity on completion of the Supplier's performance under the Contract if so required by the Procuring Entity .
- 7.4 The Supplier shall permit the Government of Kenya or / and donor agencies involved in financing the project to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Government of Kenya or / and the appropriate donor agencies, if so required by the Government of Kenya or / and the appropriate donor agencies.
8. **PATENT AND COPY RIGHTS**
- 8.1 The Supplier shall indemnify the Procuring Entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in Kenya.
- 8.2 The patent right in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Supplier herein shall remain vested in the supplier, or, if they are furnished to the Procuring Entity directly, or through the Supplier by any third party, including suppliers of materials, the patent right in such materials shall remain vested in such third party.

9. **PERFORMANCE SECURITY**
- 9.1 Within twenty-one (21) days of receipt of the notification of Contract award, the successful Tenderer shall furnish to the Procuring Entity the performance security in the amount **specified in CDS**.
- 9.2 The proceeds of the performance security shall be payable to the Procuring Entity as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 9.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring Entity and shall be in one of the following forms:
- a) A bank guarantee,
  - b) an irrevocable letter of credit, or
  - c) an insurance bond issued by a reputable insurance company approved by PPOA in the form provided in the Tender documents or another form acceptable to the Procuring Entity ; or
  - d) A banker's or certified cheque.
- 9.4 The performance security will be discharged by the Procuring Entity and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless otherwise **specified in CDS**.
10. **INSPECTIONS AND TEST**
- 10.1 The Procuring Entity or its representative shall have the right to inspect and /or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Procuring Entity. **CDS** and the Technical Specifications shall specify what inspections and tests shall be carried out. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 10.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.
- 10.3 Should any inspected or tested Goods fail to conform to the Specifications, the Procuring Entity may reject the Goods, and the Supplier shall replace the rejected Goods to meet specification requirements free of cost to the Procuring Entity.
- 10.4 The Procuring Entity 's right to inspect, test and, where necessary, reject Goods after the Goods' arrival in the Procuring Entity 's country shall in no way be limited by reason of the Goods having previously been inspected, tested, and passed by the Procuring Entity or its representative prior to the Goods' shipment from the country of origin.



- 10.5 Nothing in GCC Clause 10 shall in any way release the supplier from any warranty or other obligations under this Contract.
- 11. PACKING**
- 11.1 The supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods final destination and the absence of heavy handling facilities at all points in transit.
- 11.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, **specified in CDS**, and in any subsequent instructions ordered by the Procuring Entity.
- 12. DELIVERY AND DOCUMENTS**
- 12.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of insurance and transportation shall be as provided by the INCOTERM DDP or such other INCOTERM and / or other documents to be furnished by the Supplier as are **specified in CDS**.
- 12.2 For purposes of the Contract, “DDP”, “CIP”, “CIF”, “FCA”, “FOB”, “EXW” and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of INCOTERMS published by the International Chamber of Commerce, Paris.
- 12.3 Documents to be submitted by the Supplier are **specified in CDS**.
- 13. INCIDENTAL SERVICES**
- 13.1 The Supplier may be required to provide any or all of the following services, including additional services, if any, **specified in CDS**:
- a) Performance or supervision of on-site assembly and/or start-up of the supplied Goods;
  - b) Furnishing of tools required for assembly and/or maintenance of the supplied Goods;
  - c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
  - d) Performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
  - e) Training of the Procuring Entity’s personnel, at the Supplier’s plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

- 14. SPARE PARTS**
- 14.1 Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods. Other spare parts and components shall be supplied as promptly as possible and in any event within the period specified in the CDS.
- a) Such spare parts as the Procuring Entity may select to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
- b) In the event of termination of production of the spare parts:
- a) Advance notification to the Procuring Entity of the pending termination, in sufficient time to permit the Procuring Entity to procure needed requirements; and
- b) Following such termination, furnishing at no cost to the Procuring Entity, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. WARRANTY**
- 15.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Procuring Entity, specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the Republic of Kenya.
- 15.2 This warranty shall remain valid for a period specified in the **CDS** after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, or for a period specified in the **CDS** after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless **specified otherwise in CDS**.
- 15.3 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the Supplier shall, within the period **specified in CDS** and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Procuring Entity other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from EXW or the port or place of entry to entry to the final destination.

- 
- 15.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period **specified in CDS**, the Procuring Entity may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.
16. **PAYMENT**
- 16.1 The method and conditions of payment to be made to the Supplier under this Contract shall be **specified in CDS**.
- 16.2 The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to GCC Clause 12, and upon fulfilment of other obligations stipulated in the Contract.
- 16.3 After delivery and acceptance of the Goods, payments shall be made promptly by the Procuring Entity, within thirty (30) days after submission of a valid invoice or claim by the Supplier, or such other period as **specified in the CDS**.
- 16.4 If the Procuring Entity 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**.
- 16.5 The currency or currencies in which payment is made to the Supplier under this Contract shall be **specified in CDS** subject to the following general principle: payment will be made in the currency or currencies in which the payment has been requested in the Supplier's Tender.
- 16.6 All payments shall be made in the currency or currencies specified in the **CDS** pursuant to GCC Clause 18.4
17. **PRICES**
- 17.1 The contract price shall be as specified in the Contract Agreement subject to any additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- 17.2 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments **authorized in the CDS**.

- 18. CHANGE ORDERS**
- 18.1 If the Procuring Entity at any time wishes to make changes within the general scope of the Contract to any one or more of the following, by a written order given to the Supplier pursuant to GCC Clause 21:
- a) Drawings, designs, or specifications, where Specialized Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity ;
  - b) The method of shipment or packing;
  - c) The place of delivery; and/or
  - d) the Services to be provided by the Supplier,
- he may request the Supplier to provide a quotation on the effect of the change on the time and the cost of the contract.
- 18.2 Any quotation for additional cost or time by the Supplier for adjustment under this clause must be presented within thirty (30) days from the date of the Supplier's receipt of the Procuring Entity's request for change order.
- 18.3 Prices to be charged by the supplier for any related services that might be needed but which were not included in the Contract shall be agreed upon in advance by the Parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.
- 18.4 If the Procuring Entity accepts the Supplier's quotation he will issue a formal Change Order in writing. The Supplier will not be eligible to claim reimbursement for any change to the contract unless he is in receipt of such formal written instruction.
- 18.5 All variations must collectively not exceed 10% of the original contract quantity for goods and/or incidental services. Any price variation must be based on the consumer price index or the Central Bank of Kenya inflation rate.
- 19. CONTRACT AMENDMENTS**
- 19.1 Subject to GCC Clause 20, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.
- 20. ASSIGNMENT**
- 20.1 Neither the Procuring Entity nor the Supplier shall assign, in whole or in part, obligations under this Contract, except with the prior written consent of the other party.
- 21. SUBCONTRACTS**
- 21.1 The Supplier shall notify the Procuring Entity in writing of all subcontracts awarded under this contract if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Supplier from any liability or obligation under the contract.
- 21.2 Subcontracts must comply with the provision of GCC Clause 5.

- 
22. **DELAYS IN THE SUPPLIER'S PERFORMANCE**
- 22.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity in the Schedule of Requirements.
- 22.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.
- 22.3 Except as provided under GCC Clause 27, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 25, unless an extension of time is agreed upon pursuant to GCC Clause 24.2 without the application of liquidated damages.
23. **LIQUIDATED DAMAGES**
- 23.1 Subject to GCC Clause 27, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Procuring Entity shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage **specified in CDS** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage **specified in CDS**. Once the maximum is reached, the Procuring Entity may consider termination of the Contract pursuant to GCC Clause 26.
24. **TERMINATION FOR DEFAULT**
- 24.1 The Procuring Entity or the Supplier, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the concerned party may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 24.2 Fundamental breaches of Contract shall include, but shall not be limited to the following:
- a) The Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 24; or
  - b) The Supplier fails to perform any other obligation(s) under the Contract;
  - c) The supplier has abandoned or repudiated the contract.
  - d) The Procuring Entity or the Supplier is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - e) A payment is not paid by the Procuring Entity to the Supplier within 0 days of the due date for payment;

- f) The Procuring Entity gives Notice that goods delivered with a defect is a fundamental breach of Contract and the Supplier fails to correct it within a reasonable period of time determined by the Procuring Entity ; and
- g) The supplier, in the judgment of the Procuring Entity, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- 24.3 In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 26.1, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- 24.4 If the Procuring Entity terminates the Contract pursuant to GCC Clause 26.2 (g) above the amount of Liquidated Damages specified in the Contract Data Sheet shall immediately become due from the Supplier to the Procuring Entity.
- 25. TERMINATION FOR INSOLVENCY**
- 25.1 The Procuring Entity may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity.
- 26. FORCE MAJEURE**
- 26.1 Notwithstanding the provisions of GCC Clauses 24, 25, and 26, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 26.2 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 27. DISPUTES**
- 27.1 If any dispute or difference of any kind whatsoever shall arise between the Procuring Entity and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

- 27.2 If after thirty days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice for adjudication.
- 27.3 If either party believes that a decision taken by the other was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the decision.
- 28. PROCEDURE FOR DISPUTES**
- 28.1 The Adjudicator stated in the **CDS** shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 28.2 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 Procuring Entity and the Supplier, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.
- 28.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the **CDS**.
- 29. REPLACEMENT OF ADJUDICATOR**
- 29.1 Should the Adjudicator resign or become incapacitated, or should the Procuring Entity and the Supplier agree that the Adjudicator is not functioning in accordance with the provisions of the Contract a new Adjudicator will be jointly appointed by the Procuring Entity and the Supplier. In case of disagreement between the Procuring Entity and the Supplier, 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.
- 30. LIMITATION OF LIABILITY**
- 30.1 Except in cases of criminal negligence or wilful conduct, and in the case of infringement pursuant to GCC Clause 8,
- a) The supplier 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 Procuring Entity ; and
  - b) The aggregate liability of the Supplier to the Procuring Entity , 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 Procuring Entity with respect to patent infringement..

- 
31. **NOTICES**
- 31.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by facsimile or e-mail and confirmed in writing or by facsimile or e-mail to the other party's address **specified in CDS**. The term "in writing" means communicated in written form with proof of receipt.
- 31.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.
32. **TAXES AND DUTIES**
- 32.1 The Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed inside and outside the Republic of Kenya.
- 32.2 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Republic of Kenya, the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.



---

**SECTION V - CONTRACT DATA SHEET  
(SPECIFIC CONDITIONS OF CONTRACT)**

**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.

<b>CDS Clause Number</b>	<b>GCC Clause Number</b>	<b>Amendments of, and Supplements to, Clauses in the General Conditions of Contract</b>
<b>33. A. GENERAL PROVISIONS</b>		
<b>1.</b>	<b>1.1(b)</b>	The completion date is <i>[as stated in the contract]</i>
	<b>1.1(c)</b>	The contract name is <i>PROPOSION OF MEDIA CONTENT SERVICE FOR MARKETING DESTINATION MOMBASA.</i>
	<b>1.1(n)</b>	The Employer PE is <i>[ County Government of Mombasa]</i>
	<b>1.1(o)</b>	The Member in Charge is <i>[Appointed by the Authority].</i>
	<b>1.1(q)</b>	The Service Provider is <i>[.....]</i>
<b>2.</b>	<b>9.1</b>	Performance Security shall be 10% of the contract price in the form of a bank guarantee in the format provided herein.
<b>3.</b>	<b>4.1</b>	The addresses are: PE: _____ Attention: _____ Email: _____ Facsimile: _____  Service Provider: _____ Attention: _____ Email: _____ Facsimile: _____
<b>4.</b>	<b>6.1</b>	The Authorized Representatives are: For the PE: _____ For the Service Provider: _____
<b>34. B. COMMENCEMENT, COMPLETION, MODIFICATION, AND TERMINATION OF CONTRACT</b>		
<b>5.</b>	<b>8.1</b>	Schedule of other Service Providers <i>(N/a)</i>
<b>6.</b>	<b>10.1</b>	The date on which this Contract shall come into effect is <i>[as per contract agreement].</i>
<b>7.</b>	<b>11.2</b>	The Starting Date for the commencement of Services is <i>[as per contract agreement.]</i>
<b>8.</b>	<b>12.1</b>	The Intended Completion Date is <i>[as per contract agreement].</i>
<b>35. C. OBLIGATIONS OF THE SERVICE PROVIDER</b>		
<b>9.</b>	<b>18.3 (c)</b>	N/a
<b>10.</b>	<b>26.1</b>	Restrictions about future use of documents submitted by Service Providers <i>[specify if any]</i>
<b>11.</b>	<b>27.1</b>	The liquidated damages rate is 0.15 percent per day

		<p>The maximum amount of liquidated damages for the whole contract is <i>10% percent of Contract price equal to the performance Security</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>
<b>12.</b>	<b>38.1</b>	<p>Payment shall be made within <i>[30]</i> days of receipt of the invoice and the relevant documents specified in <b>GCC</b> Clause 37, and within <i>[40]</i> days in the case of the final payment.</p> <p>Rate to be used for paying the interest on the late payment made by Purchaser shall be the Central Bank of Kenya rate.</p>
<b>36. H. SETTLEMENT OF DISPUTES</b>		
<b>13.</b>	<b>1.1(a)</b> <b>44.3</b>	<p>Resolution of disputes shall be through arbitration. Appointment of an Arbitrator shall be in accordance with the provisions of the Arbitration Act Cap 49 of the Laws of Kenya</p>

## SECTION VII: TECHNICAL SPECIFICATIONS

### 1. Introduction

Mombasa is known for the white sandy beach, vibrant culture and historic backgrounds. Visitors visit Mombasa to enjoy the beach and also learn about the Swahili culture and historic backgrounds. The department of Trade, Tourism and Investment is embarking on a journey to showcase all these beautiful elements that make Mombasa special.

### 2. Objective of Assignment

The objective is to produce content that will showcase a traveler's journey in Mombasa. The different areas a traveler can experience in the County of Mombasa by highlighting Tourism attractions, Commerce, Historical/Cultural, Sports Tourism, and Infrastructure.

### 3. Scope of Work

- Create content that will highlight activities in Mombasa for different travelers.
- Provide a plan that will have itinerary and video production for episodes to showcase
- The production house must have more than 10 years filming and editing captivating travel/lifestyle programming across international platforms and must display a deep knowledge of Kenya's coastal area, specifically Mombasa.
- While focusing on deliverables, the key areas to focus within the County include but not limited to;

#### **Accommodation:**

##### *High Budget*

- ✓ English Point Marina
- ✓ Pride Inn Paradise
- ✓ Sarova Whitesands
- ✓ Serena Beach
- ✓ Kilua Resort
- ✓ Tamarind

##### *Low Budget*

- ✓ City Blue Creekside
- ✓ Bahari Beach
- ✓ Plaza Beach
- ✓ Flamingo Beach
- ✓ Royal Court

#### **Water activities**

- ✓ Water Jet Skiing
- ✓ Deep Sea Fishing
- ✓ Yachting
- ✓ Traditional fishing
- ✓ Snorkeling
- ✓ Wild Waters

#### **Beach Activities**

- ✓ Swahili Picnic
- ✓ Running at the Beach

- ✓ Beach Yoga
- ✓ Beach Football
- ✓ Beach Party
- ✓ Dhow Cruise

### **City tour**

#### *History and culture*

- ✓ Fort Jesus
- ✓ Old Town
- ✓ Mbaraki Pillar
- ✓ Kengeleni Bell
- ✓ African War Memorial Statues
- ✓ African War Memorial Graveyard
- ✓ Krapf Memorial
- ✓ Tusks – Mapembeni
- ✓ Mackinon Market - Markiti

#### *Attraction*

- ✓ Mama Ngina
- ✓ Graffiti Art
- ✓ Akamba Art Craft
- ✓ Bombolulu Workshop
- ✓ Ferry/Floating Bridge

### **Parks**

- ✓ Haller Park
- ✓ Nguuni Animal Sanctuary
- ✓ Butterfly Pavilion
- ✓ Butterfly House
- ✓ Uhuru Gardens
- ✓ Mamba Village

### **Fine Dining**

- ✓ Lido Restaurant – Whitesands Beach
- ✓ Roberto's
- ✓ La Veranda
- ✓ Misono
- ✓ Namaste – Bliss Resort
- ✓ Tamarind Restaurant

### **Swahili / Street Food**

- ✓ Barka
- ✓ Tarboush
- ✓ New Island Dishes
- ✓ Abbas Darbar
- ✓ Damascus Shawarma
- ✓ Naushads
- ✓ Camels Joint

### **Shopping**

- ✓ Somali Market - Markiti
- ✓ City Mall Nyali
- ✓ Likoni Mall
- ✓ Mombasa Mall

- 
- ✓ Sonara Budhaa
  - ✓ Curio Shops Old Town
  - ✓ Weekend Market – Moi Avenue
  - ✓ Limitless Reload

#### **4. Key Deliverables**

- ✓ The production house must produce 1080p video quality for viewer consumption
- ✓ The content must raise awareness for Mombasa as a destination
- ✓ 8 to 10 episodes per season.
- ✓ Each episode should be 24-26 with digital cut downs
- ✓ YouTube with possibility for local/international broadcasters
- ✓ Two Hosts Female and Male
- ✓ Filming licenses Required
- ✓ Producer Background and Experience: Degree in film with 7 years or more experience
- ✓ Editor's background and experience: Must have worked 5+ years on similar formats

#### **5. Production Crew Requirements**

- ✓ Director of Photography
- ✓ Camera Operator
- ✓ First Assistant Camera
- ✓ Second Assistant Camera
- ✓ Grips
- ✓ Gaffer
- ✓ Boom Operator
- ✓ Production Designer
- ✓ Script Supervisor

---

## **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 supply and deliver *[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)

#### PRICE SCHEDULE OF SERVICES

Name of Tenderer \_\_\_\_\_ Tender Number \_\_\_\_\_. Page \_\_\_\_ of \_\_\_\_\_.

1	2	3	4	5
<b>Item</b>	<b>Total Amount exclusive VAT. (Kshs.)</b>	<b>Total No. of Episodes</b>	<b>VAT (16%)</b>	<b>Total Amount inclusive VAT for all episodes. (Kshs.)</b>

*The total summary charges for all the episodes (Summary to be transferred to Form of Tender)*

**Summary Breakdown of activities to be undertaken for production of an episode and the associated standard costs/charges**

1	2	3	4	5	6	7
Item	Description	Quantity & quality	Duration	Unit Price	Total Price EXW per item (cols. 4x5)	Unit Price of other incidental services payable

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

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

### 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 .....

- Citizenship details

.....

- .....

Part 2 (b) Partnership

Given details of partners as follows:

Name	Nationality	Citizenship Details	Shares
1. ....	.....	.....	.....
2. ....	.....	.....	.....
3. ....	.....	.....	.....
4. ....	.....	.....	.....

Part 2 (c) – Registered Company

Private ..... State the nominal and issued capital of company-  Nominal Kshs.....  Issued Kshs.....  Given details of all directors as follows <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 30%;">Name</th> <th style="width: 25%;">Nationality</th> <th style="width: 20%;">Citizenship Details</th> <th style="width: 10%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship Details	Shares	1.	.....	.....	.....	.....	2.	.....	.....	.....	.....	3.	.....	.....	.....	.....	4.	.....	.....	.....	.....	5.	.....	.....	.....	.....	or ..... Public
	Name	Nationality	Citizenship Details	Shares																											
1.	.....	.....	.....	.....																											
2.	.....	.....	.....	.....																											
3.	.....	.....	.....	.....																											
4.	.....	.....	.....	.....																											
5.	.....	.....	.....	.....																											
Date .....  Signature of Candidate .....																															

- 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.....

**37. 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)



[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]*



## H. PERFORMANCE BANK/INSURANCE COMPANY 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/Insurance Company guarantee by a reputable Bank/Insurance Company 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/Insurance Company]

[address]

[date]

FORM RB 1  
**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of  
 .....dated the...day of .....20.....in the matter of Tender No.....of  
 .....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
 address.....Fax No.....Tel. No.....Email ....., hereby request the Public  
 Procurement Administrative Review Board to review the whole/part of the above mentioned decision  
 on the following grounds , namely:-

- 1.
  - 2.
- etc.

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

- 1.
  - 2.
- etc

SIGNED ..... (Applicant)

Dated on.....day of ...../...20...

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of  
 .....20.....

SIGNED

Board Secretary