STANDARD TENDER DOCUMENT

FOR

PROVISION OF CUSTODY SERVICES FOR KENYA REVENUE AUTHORITY STAFF PENSION SCHEME (KRASPS)

TENDER NO. KRA/HQS/NCB 007/2021-2022

TIMES TOWER BUILDING
P.O. BOX 48240-00100
TEL: +254 02 281 7022
EMAIL: eprocurement@kra.go.ke

REGISTER FOR ON-LINE PRE-BID MEETING HERE

https://kra.webex.com/kra/j.php?MTID=m8c79799b5ddbdd5083070b315c36f126

PRE-BID CONFERENCE

29TH SEPTEMBER 2021 at 14:00 AM

NAIROBI, KENYA.

October, 2021

CLOSING DATE: TUESDAY 15TH OCTOBER 2021
AT 11:00 AM

BID VALIDITY 335 DAYS

Table of Contents

PART 1 - TENDERING PROCEDURES 3

SECTION I - INSTRUCTIONS TO TENDERERS 4

A. General 4
1. Scope of Tender and Definition of Terms 4
2. Fraud and Corruption 4
3. Eligible Tenderers 4
4. Margin of Preference and Reservations 6
B. Contents of Tendering Document 6
5. Sections of Tendering Document 6
PART 2 Services' Requirements 7
6. Site Visit and Data Room 7
7. Pre-Tender Meeting and a pre-arranged pretender visit of the site of the works 7
8. Clarification of Tender Documents 8
9. Amendment of Tendering Document 8
C. Preparation of Tenders 8
10. Cost of Tendering 8
11 Language of Tender 8
12 Documents Comprising the Tender 8
13 Documents Comprising the Methodology and Approach 9
14 Documents Comprising the Financial Proposal 9
15 Forms of Tender 9
16 Power of Attorney 9
17 Tender Security 10
18 Documents Establishing the Eligibility and Qualifications of the Tenderer 10
19 Currencies of Tender and Payment 11
20 Period of Validity of Tenders 11
21 Format and Signing of Tender 11
D. Submission of Tenders 11
23 Deadline for Submission of Tenders 12
24 Late Tenders 12
25 Withdrawal, Substitution, and Modification of Tenders 12
E. Public Opening of Technical Proposal 13
27 Public Opening of Financial Proposals 14
28 Confidentiality 14
29 General Clarification of Tenders 15
30 Selection Method and Evaluation Process 15
32 Determination of Responsiveness 15
33 Non material Non-conformities 16
34 Technical proposal Evaluation 16
35 Financial Proposal Evaluation 16
36 Correction of Arithmetical Errors 17
37 Conversion to Single Currency 17
38 Abnormally Low Tenders 17
39 Abnormally High Tenders 17
40 Unbalanced and/or Front-Loaded Tenders 18
41 Qualification of the Tenderer 18
42 Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders.. 18
F. Contract Negotiations and Award of Contract 19
44 Technical negotiations 19

45 Financial negotiations 19
46 Award Criteria 19
47 Award of Contract 19
48 Notice of Intention to enter into a Contract/Notification of award 19
49 Standstill Period 19
50 Debriefing by KRA 20
51 Letter of Award 20
52 Signing of Contract 20
53 Performance Security 20
54 Publication of Procurement Contract 20
55. Procurement Related Complaints 21

SECTION II - TENDER DATA SHEET 22

SECTION III - EVALUATION AND QUALIFICATION CRITERIA 26
1. General Provision 26
2. Evaluation and contract award Criteria 26
Preliminary examination for Determination of Responsiveness- 26

I Tender Responsiveness Criteria 26

A 27

Description 27

1 27

Submission of Tender Documents 27

(Financial Proposal to be submitted on the Notes & Attachment) 27

2 27

Company Profile 27

3. 27

- **Valid Certificate of registration with Retirement Benefits Authority (RBA) 27**

- **List of Directors with respective shareholding and details of their citizenship 27**

- **CBK registration Certificate 27**

- **Valid Certificate of registration with Capital Markets Authority (CMA) 27**

- **List of Directors with respective shareholding and details of their citizenship 27**

- **Certified Audited and signed accounts for the last three (3) years, ... 27**

- **A valid Professional Indemnity Insurance Cover worth Kenya Shillings Five Hundred Million(Kshs.500,000,000) 27**

4. ..... **27**

Financial Resources **27**

5. ..... **27**

Social Obligations **27**

6. ..... **27**

Tenderers must fill the following forms found under Section IV – Tendering Forms. **27**

- **Tenderer's Eligibility - Confidential Business Questionnaire** **27**
- **Disclosure of Interest- Interest of the Firm in KRA.** **27**
- **Certificate of Independent Tender Determination** **27**
- **Self-Declaration Forms - SD1** **27**
- **Self-Declaration that the Person/Tenderer will not engage in any Corrupt or Fraudulent Practice. – SD2** **27**
- **Declaration and Commitment to the Code of Ethics** **27**
- **Form CCC-Current Contract Commitments/Works In Progress** **27**

NB: The tender submission shall; 27
B. Vendor/ Technical Evaluation Criteria 28
NOTE 29
(C) Tender Evaluation Criteria 30
c) Tender-Securing Declaration: 31

2 40% PERCENT RULE FORM (NOT APPLICABLE) **33**

3 TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE **34**
a) Instructions to Tenderer 34
Tenderer's details 34

4 DISCLOSURE OF INTEREST- Interest of the Firm in KRA. **35**
ii) Conflict of interest disclosure 35

6. SELF-DECLARATION FORMS **38**
SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015. 38

FORM SD2 ..... **39**

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS **40**
7 APPENDIX 1 - FRAUD AND CORRUPTION 41
1. Purpose 41
2. Requirements 41

Description of the Methodology and Work Plan **43**

10. Form ELI 1.2 44
Party to JV Information Sheet (WHERE APPLICABLE) 44

11. FORM CCC-CURRENT CONTRACT COMMITMENTS/WORKS IN PROGRESS 45
12. Form FIN 3.3- Financial Resources 45

13. Form EQU- Contractor's Equipment (NOT REQUIRED) 46

14. Form PER -1- Proposed Personnel 47

PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS 62

SECTION VI - GENERAL CONDITIONS OF CONTRACT 63
1. Definition and Interpretation 63
1.1.1 The Contract 63
1.1.2 Parties and Persons 63
1.1.3 Dates, Tests, Periods and Completion 64
1.1.4 Money and Payments 64
1.1.5 Services and Goods 65
1.1.6 Fraud and Corruption 65
1.1.7 Other Definitions 65
1.2 Interpretation 66
1.3 Communications 67
1.4 Law and Language 67
1.5 Priority of Documents 67
1.6 Recitals and Objectives 67
1.6.1 Recitals 67
1.6.2 Objectives 67
2 Commencement and Duration 67
2.1 Conditions of Effectiveness 68
2.2 Commencement 68
2.3 Duration 68
3. General Provisions 68
3.1 Assignment 68
3.2 Contractor's Representative 68
3.3 Procuring Entity's Representative 69
3.4 Communications by the Contractor 69
3.5 Sub-Contractor 69
3.6 Key Sub-Contractor 70
3.7 Assignment of Benefit of Subcontract 70
3.8 Compliance with Laws 70
3.9 Joint and Several Liability 70
3.10 Inspections and Audit by the PPRA 70
4 Obligations of the Contractor 71
4.1 Services to be Performed and Other Obligations 71
4.2 Pre-Conditions 71
4.3 Non-Availability of the Pre-Conditions 71
4.4 Cost of Performing the Services 71
5 Conflict of Interest 71
5.1 General 71
5.2 Contractor not to benefit from commissions, discounts, etc. 71
5.3 Contractor and Affiliates not to engage in certain activities 71
5.4 Prohibition of conflicting activities 72

6 Know-How Transfer and Training ... 72
6.1 Requirement to transfer know-how and systems ... 72
6.2 Requirement to provide training ... 72
6.3 Cost of know-how transfer and training ... 72
7 Performance Targets ... 72
8 Staff to be Provided by the Contractor ... 72
8.1 Provision of Contractor' Personnel ... 72
8.2 Substitution of Contractor' Key Staff Member or Key Subcontractor ... 72
8.3 Labor Laws ... 73
8.4 Health and Safety ... 73
8.5 Contractor's Personnel Qualifications ... 73
8.6 Foreign Personnel ... 73
9 Procurement and Management of Capital Works and Finance ... 73
9.1 Responsibility to Manage Utility Capital Works and Finance ... 73
9.2 Responsibilities for Specified Capital Works ... 73
9.3 Responsibilities for Specified Finance ... 73
9.4 Procurement Rules ... 73
9.4.1 Procurement for Utility operations ... 74
9.4.2 Procurement for Provision of the Services ... 74
9.4.3 Procurement for Utility Capital Works and Specified Capital Works ... 74
10 Contractor's reporting ... 74
10.1 Contractor's reporting requirements ... 74
11 Delegation of Management Authority to the Contractor ... 74
11.1 Delegation of Management Authority ... 74
11.2 Contractor to be advisor on other management matters ... 74
11.3 Further Delegation during the term of the Contract ... 74
11.4 Purpose of Exercise of Delegated Management Authority ... 74
11.5 Suspension of Delegated Management Authority ... 75
11.6 Utility's Personnel ... 75
11.7 Utility Personnel Retrenchment ... 75
12 Contractor's Remuneration and Costs ... 75
12.1 Contractor's Remuneration ... 75
12.2 Advance Payment ... 75
12.3 Delayed Payment ... 76
12.4 Sufficiency of the Contractor's Remuneration ... 76
12.5 Contractor's Costs and Account ... 76
12.5.1 Contractor' Account ... 76
12.6 Utility Financial Issues ... 76
12.6.1 Utility's Account ... 76
12.6.2 Procedure if the Utility's incomings are not sufficient to cover its outgoings ... 76
12 Obligations and Rights of KRA ... 76
12.1 Access to land ... 76
12.2 Right to use facilities ... 76
12.3 Payments by KRA ... 76
12.4 Support by KRA ... 77
12.5 Supervision by KRA ... 77
12.6 Permits, Licenses or Approvals ... 77
12.7 Utility's Personnel Cooperation ... 77
12.8 Procuring Entity's Financial Arrangements ... 77
13 Procuring Entity's Reporting ... 77
13.1 Procuring Entity's reporting requirements ... 77
14 Intellectual and Industrial Property Rights ... 77
14.1 Intellectual Property and Copyright ... 77
15.2 Intellectual Property Infringements ... 78

15.2.1 Meaning of Infringement and Claim 78
15.2.2 Notice of Claims 78
15.2.3 Contractor to Indemnify Procuring Entity 78
15.2.4 Procuring Entity to indemnify Contractor 78
15.2.5 Right to manage settlement and litigation 78
15.3 Confidentiality Obligations of the Contractor 78
15.3.2 Confidentiality 78
15.3.3 Use of information 79
15.3.4 Exceptions for publicly available information 79
15.4 Confidentiality and Publication Obligations of KRA 79
16 Liability, Risk Allocation, Securities, Bonds and Insurance 79
16.2 Limitation of Liability 79
16.3 Indemnities 79
16.4 Performance Security 80
16.5 General Requirements for Insurances 80
16.6 Insurance Required 81
16.7 Procuring Entity's Risks 81
16.8 Consequences of Procuring Entity's Risks 81
17 Force Majeure 82
17.5 Definition of Force Majeure 82
17.6 Notice of Force Majeure 82
17.7 Duty to Minimize Delay 82
17.8 Consequences of Force Majeure 83
17.9 Force Majeure Affecting Subcontractor 83
17.10 Optional Termination, Payment and Release 83
17.11 Release from Performance 83
18 Suspension of Services 83
18.5 Suspension for non-payment 83
18.6 No prejudice to other remedies 83
18.7 Compensation for costs from suspension 84
18.8 Procuring Entity's Entitlement to Suspend the Services and Delegated Management Authority 84
19 Contract Variation, Extension and Retendering 84
19.1 Procuring Entity Variations 84
19.2 Decision on Procuring Entity's Variation Request 84
19.3 Value Management 84
19.4 Decision on Value Management Proposal 85
19.5 Adjustments for Changes in Law 85
19.6 Extension and Subsequent Tendering 85
b) Subsequent Tendering for a Similar Contract 85
20 Dispute Resolution 86
20.1 Amicable Settlement 86
20.2 Independent Expert 86
20.3 Payment of the Independent Expert 87
20.4 Arbitration 87
20.5 Survival 88
21 Default and Termination 88
21.1 Notification and Cure Plans 88
21.2 Remedying the Default within the Applicable Cure Period 88
21.3 Failure to cure 88
21.4 Ways the Contract may be terminated 89
21.5 Termination by KRA for Convenience 89
21.6 Termination by KRA for Cause 89
21.7 Termination by the Contractor for Cause 90

21.8 Payment on Termination by KRA for Convenience 90
21.9 Payment on Termination by KRA for Cause..... 90
21.10 Payment on Termination by the Contractor for Cause 91
21.11 Payment on Termination for Prolonged Force Majeure 91
21.12 Actions on Termination..... 91

SECTION VII - SPECIAL CONDITIONS OF CONTRACT 93

SECTION VIII - CONTRACT FORMS 95
1. NOTIFICATION OF INTENTION TO AWARD..... 95
a. The successful Tenderer..... 95
e. How to make a complaint..... 96
Further information: 96
f. Standstill Period 97
Signature: Name: Title/position: Telephone: Email: Date 97
Attachment: Contract Agreement 98

4. Performance Security – Option 1: (Bank Guarantee) 100

5. Performance Security- Option 2: Performance Bond..... 101

[LGO1]

1 INVITATION TO TENDER

KENYA REVENUE AUTHORITY

Tender Notice

1. On behalf of the Kenya Revenue Authority Staff Pension , Kenya Revenue Authority invites sealed bids from eligible candidates for the following tenders:

NO.	DESCRIPTION	ELIGIBILITY	CLOSING DATE AND TIME
1.	KRA/HQS/NCB 007/2021-2022: Provision of Custody Services for Kenya Revenue Authority Staff Pension Scheme **(KRASPS)**	OPEN	15TH OCTOBER, 2021 11.00 AM

2. Interested eligible candidates may obtain further information and inspect the tender documents with detailed requirements at the office of the:

Deputy Commissioner - Supply Chain Management
Times Tower Building, 21st Floor,
P.O Box 48240– 00100 GPO,
Tel. +254 020 310900
Nairobi, Kenya.
website: www.kra.go.ke
Email :eprocurement@kra.go.ke

3. A complete set of bidding documents in English may be obtained from KRA E-Procurement portal available on the KRA website www.kra.go.ke free of charge. Prospective bidders should register for E-Procurement to enable them access the KRA portal under "New Supplier Registration" found under the Tender Tab.

4. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours 8:00am-5:00pm. Completed Bids are to be saved as PDF documents marked "**KRA/HQS/NCB 007/2021-2022:** Provision of custodial services for Kenya Revenue Authority Staff Pension Scheme **(KRASPS)** and submitted to the appropriate KRA E-procurement Web Portal found on the KRA website so as to be received on or before **15th October, 2021 at 11.00 a.m.**

5. Tendering will be conducted under National Open Competitive method using a standardized tender document. Tendering is open to all qualified and interested Tenderers

6. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours *i.e. 0800 to 1700 hours.*

7. Tender documents may be viewed and downloaded for free from the website **www.kra.go.ke** free of charge. Tenderers who download the tender document must forward their particulars immediately to **eprocurement@kra.go.ke**, *telephone* **+254 02 2817022** *and* **P.O. BOX 48240 – 00100** to facilitate any further clarification or addendum.

8. The tenderer shall chronologically serialize all pages of the tender documents submitted.

9. Completed Tender documents should be submitted in plain sealed envelopes and clearly marked **"KRA/HQS/NCB-007/2021 -2022"** and addressed to the above address:

10. Tenders shall be quoted in Kenya Shillings and shall include all taxes. Tenders shall remain valid **for 335 days** from the date of opening of tenders.

11. An original hard copy of the Bid Security of not less than the indicated amount or equivalent amount in a freely convertible currency must be dropped in the Tender Security Box located at Times Tower Building, Ground Floor any day before the tender closing date. The Bid Security must be in a sealed envelope bearing the Tender Description and addressed to the address indicated above.

12. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address above.

13. Late tenders will be rejected

    Any canvassing or giving of false information will lead to automatic disqualification.

PART 1 - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A. General

1. Scope of Tender and Definition of Terms

1.1 KRA, as specified in the TDS, issues this Tendering Document for the **Provision of Custody Services** as specified in Section V-Schedules of Services and Requirements. The name and identification of this ITT are specified in the TDS.

2.1 Throughout this tendering document:

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

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

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

2. Fraud and Corruption

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

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

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

3. Eligible Tenderers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Margin of Preference and Reservations

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

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

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

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

B. Contents of Tendering Document

5. Sections of Tendering Document

5.1 The Tendering Document consists of Parts 1, 2, and 3, which include all the Sections

indicated below, and should be read in conjunction with any addenda issued in accordance with ITT 9.

PART 1: Tendering Procedures Section I- Instructions to Tenderers (ITT) Section II- Tender Data Sheet (TDS)

Section III - Evaluation and Qualification Criteria Section IV-Tendering Forms

PART 2 Services' Requirements
Section V - Description of Services

PART 3 Conditions of Contract and Contract Forms Section VI - General Conditions of Contract Section VII - Particular Conditions of Contract Section VIII- Contract Forms

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

5.3 Unless obtained directly from KRA, KRA is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the Tendering Document in accordance with ITT9. In case of any contradiction, documents obtained directly from KRA shall prevail.

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

6. Site Visit and Data Room

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

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

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

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

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

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

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

disqualification of a Tenderer.

8. Clarification of Tender Documents

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

9. Amendment of Tendering Document

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

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

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

C. Preparation of Tenders

10. Cost of Tendering

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

11 Language of Tender

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

12 Documents Comprising the Tender

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

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

a. **Form of Tender and Technical Proposal**, prepared in accordance with ITT 15.1;
b. **Tender Security or Tender- Securing Declaration**, in accordance with ITT 17;
c. **Authorization**: written authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 21.3;

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

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

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

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

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

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

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

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

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

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

13 Documents Comprising the Methodology and Approach

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

b. a detailed work plan (hereinafter referred to as the Work Plan) using the corresponding form included in Section IV, Tendering Forms, and setting out the manner in which the Tenderer proposes to carry out the services as defined in the Contract and to meet any performance targets specified in the Contract;

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

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

14 Documents Comprising the Financial Proposal

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

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

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

15 Forms of Tender

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

16 Power of Attorney

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

17 Tender Security

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

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

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

a. cash; or
b. a bank guarantee; or
c. a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
d. a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from a reputable source, and an eligible country.
e. Other forms specified in the **TDS.**

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

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

a. The procurement proceedings are terminated;
b. KRA determines that none of the submitted tenders is responsive;
c. A bidder declines to extend the tender validity.
d. Once the successful Tenderer has signed the Contract and furnished the required Performance Security.

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

a) If a Tenderer withdraws its Tender during the Period of Validity of Tenders, except as provided in ITT 20.2; or
b) If the successful Tenderer fails to:
   i) Sign the Contract in accordance with ITT 52;or
   ii) Furnish a Performance Security in accordance with ITT 53.

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

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

18 Documents Establishing the Eligibility and Qualifications of the Tenderer

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

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

18.3 In the event that prequalification of Tenderers has been undertaken, only Tenders from

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

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

19 Currencies of Tender and Payment

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

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

20 Period of Validity of Tenders

20.1 Tenders shall remain valid for the period specified **335 days after** the Tender submission deadline date prescribed by KRA. A Tender valid for a shorter period shall be rejected by KRA as non-responsive.

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

21 Format and Signing of Tender

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

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

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

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

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

D. Submission of Tenders

22 Sealing and Marking of Tenders

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

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

22.2 The inner envelopes or packages or containers shall:-

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

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

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

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

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

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

23 Deadline for Submission of Tenders

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

23.2 KRA may, at its discretion, extend the deadline for the submission of Tenders by amending the Tendering Document in accordance with ITT 9, in which case all rights and obligations of KRA and Tenderers previously subject to the deadlines hall thereafter be subject to the deadline as extended.

24 Late Tenders

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

25 Withdrawal, Substitution, and Modification of Tenders

25.1 A Tenderer may withdraw or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include copies of

the authorization in accordancewithITT21.3, (except that withdrawal notices do not require copies).A Tenderer's modification or withdrawal must be:

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

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

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

E. Public Opening of Technical Proposal

26 Public Opening of Technical Proposals

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

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

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

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

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

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

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

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

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

modification;

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

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

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

27 Public Opening of Financial Proposals

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

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

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

c. Notify them of the date, time and location of the public opening of the envelopes marked “FINANCIAL PROPOSAL”.

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

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

27.4 At the Tender, opening KRA shall neither discuss the merits of any Tender nor reject any envelopes marked “FINANCIAL PROPOSAL”.

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

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

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

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

28 Confidentiality

28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the Notification of Intention to Award the Contract is transmitted to all Tenderers in accordancewithITT48.

28.2 Any attempt by a Tenderer to influence KRA in the evaluation of the Tenders or Contract

award decisions may result in the rejection of its Tender.

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

29 General Clarification of Tenders

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

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

30 Selection Method and Evaluation Process

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

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

a. Has been properly signed;
b. Is accompanied by the required securities; and
c. Is substantially responsive to the Tender requirements, pursuant to ITT 32.

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

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

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

31 Deviations, Reservations, and Omissions

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

a. “Deviation” is a departure from the requirements specified in the Tendering Document;
b. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tendering Document; and
c. “Omission” is the failure to submit part or all of the information or documentation required in the Tendering Document.

32 Determination of Responsiveness

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

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

a. If accepted, would:
   i. affect in any substantial way the scope, quality, or performance of the Services specified in the Schedules in Section VII; or
   ii. limit in any substantial way, in consistent with the Tendering Document, KRA's rights or the Tenderer's obligations under the proposed Contract; or
b. if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

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

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

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

33 Non material Non-conformities

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

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

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

34 Technical proposal Evaluation

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

a. KRA shall score Technical Proposals by applying the point system specified in **Section III** for each evaluation criterion. Each proposal will be given an aggregate technical score (St) by adding the scores assigned under each evaluation criterion;
b. A proposal shall be rejected at this stage if it fails to achieve the minimum aggregate technical score specified in the **TDS**; and
c. KRA will apply any additional steps to the evaluation methodology as may be indicated in the **TDS.**

35 Financial Proposal Evaluation

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

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

a. Price adjustment due to discounts offered in accordance with ITT 27.5;
b. Price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3;

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

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

36 Correction of Arithmetical Errors

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

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

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

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

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

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

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

37 Conversion to Single Currency

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

38 Abnormally Low Tenders

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

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

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

39 Abnormally High Tenders

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

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

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

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

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

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

40 Unbalanced and/or Front-Loaded Tenders

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

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

a. Accept the Tender; or

b. Require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a10% of the Contract Price; or

c. agree on a payment mode that eliminates the inherent risk of KRA paying too much for undelivered works; or

d. reject the Tender.

41 Qualification of the Tenderer

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

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

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

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

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

F. Contract Negotiations and Award of Contract

43 Negotiations

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

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

44 Technical negotiations

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

45 Financial negotiations

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

46 Award Criteria

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

47 Award of Contract

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

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

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

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

49 Standstill Period

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

49.2 Whereas Standstill Period applies, it shall commence when KRA has transmitted to each

Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

50 Debriefing by KRA

50.1 On receipt of KRA's Notification of Intention to Enter into a Contract referred to in ITT 48, an unsuccessful tenderer may make a written request to KRA for a debriefing on specific issues or concerns regarding their tender. KRA shall provide the debriefing within five days of receipt of the request. .2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

51 Letter of Award

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

52 Signing of Contract

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

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

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

53 Performance Security

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

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

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

54 Publication of Procurement Contract

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

a) Name and address of KRA;

b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;

c) The name of the successful Tenderer, the final total contract price, the contract duration.

d) Dates of signature, commencement and completion of contract;

e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

55. Procurement Related Complaints

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

SECTION II - TENDER DATA SHEET

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

A GENERAL	
ITT 1.1	The Number of invitation to tender is **KRA/HQS/NCB- 007/2021-2022** The project name is: Provision Of Custodial Services for Kenya Revenue Authority Staff Pension Scheme **(KRASPS)** The Procuring Entity is : Kenya Revenue Authority
ITT 3.3	The Bidders to note that the **submission of TECHNICAL AND FINANCIAL** proposals shall be submitted separately through the KRA Tender box and envelopes clearly marked as a) Technical Proposal: and (b) Financial Proposal:
ITT 3.3	The firms that provided consulting services for the contract being tendered for are: N/A
ITT 5.1	ITT5.1 Margin of preference will not be allowed
	B.CONTENTS OF TENDERING DOCUMENTS
ITT 7.2	The procuring Entity has not established a data room.
ITT8.1	*A* tender pre- bid shall be held on **29th September 2021 at 14.00 PM.** Bidders to note that due to Covid 19 rules and guidelines, the tender pre-bid shall be virtual and bidders shall register for the pre-bid using the link provided at the invitation to tender page.
ITT 8.2	The tendered bids requested to submit any request for clarification in writing on or before **7th October, 2021** to eprocurement@kra.go.ke
ITT 8.4	The Website where minutes may be accessed is www.kra.go.ke
ITT 9.1	Enquiries during the pre- tender meeting and pre- arranged pretender visit of the site shall be referred to the Manager Sourcing Tel: 0709 012 372 Email: eprocurement@kra.go.ke

C. Preparation of Tenders

ITT 12.2 (t)	Other documents required as part of the Tender Documents *[list them and provide reference to the relevant forms in Section:*
ITT 12.3 (c)	Other document required in the tendering process of tendering are Certificate of incorporation and Power of attorney and certified CR-12
ITT 13.1	No work plan is required in this procurement except an indication of the delivery time.
ITT 17.1	A *bid security of* **Kshs 100,000.00** shall be furnished and valid for a period of **365 days**.
ITT 17.8 (b)	If the Tenderer performs any of the actions prescribed in ITT 17.8 (a) or (b) of this provision, KRA will declare the Tenderer ineligible to be awarded contracts by KRA.
ITT 20.1	The tender shall be valid for **335 days.**
ITT 21.1	The Bidders to note that the **submission of TECHNICAL AND FINANCIAL** proposal shall be submitted separately through the KRA Tender box and envelopes clearly marked as a) Technical Proposal: and (b) Financial Proposal:
ITT21.3	The written authorization to sign on behalf of the Tenderer shall consist of: Power of Attorney
D. **Submission and Opening of Tenders**	
ITT 23.1	The date and time for submission of Tenders are: Date: **15TH OCTOBER,2021** Time: **11.00am** For **Tender submission purposes** only, the Procuring Entity's address is: Attention: Deputy Commissioner Street Address: Haile Selassie Avenue Floor/Room number: 21st Floor City: Times Tower, Nairobi Kenya The Bidders to note that the **submission of TECHNICAL AND FINANCIAL** proposal shall be submitted **SEPARATELY** through the KRA Tender box and envelopes clearly marked as a) Technical Proposal: and (b) Financial Proposal:

ITT 26.1	The opening of the tender shall take place at: Street Address: Haile Selassie Avenue Floor/Room number: Times Tower – 21st Floor City: Nairobi Kenya. **Date: 15th October, 2021 Time : 11.00am**
ITT 26.6	The Form of Tender 5 member representatives of KRA conducting Tender opening shall attend the tender opening of the separated Technical Proposal and Financial Proposal of Tender. The tenders shall be opened and the bids read out in systematic manner.___*Each bidder shall be given a unique number for identification purpose.*
ITT 27.1	The Bidders to note that the submission of TECHNICAL AND FINANCIAL proposal shall be submitted separately through the KRA tender box a) Technical Proposal (b) Financial Proposal
ITT 27.3	The opening of the tender shall take place at: Street Address: Haile Selassie Avenue Floor/Room number: Times Tower – 21st Floor City: Nairobi, Kenya. **Date: 15th October, 2021** **Time : 11.00am**

E. EVALUATION AND COMPARISON OF TENDERS

ITT 33.3	Tenders shall be evaluated using the criteria provided in the tender document. The lowest evaluated bidder shall be awarded the tender.
ITT 34.1 (b)	The minimum aggregate technical score is: _ *insert score if QCBS or Fixed-Budget apply; otherwise,* ***"not applicable"***
ITT 34.1 (c)	KRA will apply the following additional steps to the evaluation methodology. Bidders ***Clause By clause technical comparison***.

Criteria	**Maximum Score/Requirement**	**Cut-Off Score**
Tender Responsiveness	Mandatory	Mandatory
Vendor Evaluation	80	64
Clause by Clause technical	Pass	Pass
Financial Evaluation	To be awarded to the lowest evaluated bidder	
Post Qualification Evaluation	KRA has an option to make site visits to the bidder's proposed sites to ascertain its ability to deliver the solution	

ITT 35.2 (d)	KRA will apply the following additional steps to the evaluation methodology [insert, for example: "KRA shall calculate the cost of the Financial Proposal in net present value by applying an annual discount factor of 8 percent;" otherwise, " (not applicable"]

ITT 36.3	No adjustment of errors. Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and sub-total and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive.
ITT 37.1	The currency that shall be used for Tender evaluation and comparison purposes to convert all Tender prices expressed in various currencies into a single currency is: Kenya Shillings .The source of exchange rate shall be: ***[Central Bank of Kenya Mean Exchange Rate as at the date of tender closure/submission.***
ITT43 Stands till Period	The Standstill Period is 14 calendar days. after the date KRA has transmitted to all Tenderers that submitted Tenders, the Notification of its Intention to Award the Contract to the successful Tenderer. Note: Where a Tenderer has previously received notification of exclusion from the process at an interim stage of the procurement process, the Tenderer will not receive a Notification of Intention to Award the Contract.

F. AWARD OF CONTRACT

ITT 50.1	The negotiations (where applicable) will be held at Haile Selassie Avenue Times Tower,21st Floor. email address **eprocurement@kra.go.ke**
ITT53.2	The successful Tenderer shall sign, date, and return the Contract Agreement to KRA within 15 days.
ITT53.3	The successful Tenderer [insert "shall" or "shall not"] incorporate in the Kenya. {When "shall" is selected above, the following shall be added.] Additional requirement that a Successful Tenderer shall meet when required to incorporate locally as a " special vehicle" company or joint venture: {select one of the following options as applicable: The Successful Tenderer's parent company shall co-sign the Contract Agreement. Or The successful Tenderer shall furnish, along with the signed Contract Agreement and within the timeframe specified pursuant to ITT 45.2, an additional Parent Company Guarantee acceptable to KRA, in an amount equivalent to a period of {insert number of months; 6 months is recommended] months of expenses of the Management Contract.
ITT 55.1	The procedures for making a Procurement-related Complaint are detailed in the "Notice of intention to Award the Contract" herein and are also available from the PPRA Website www.ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to: For the attention: *{insert full name of person receiving complaints]* Title/position:*{insert title/position]* Procuring Entity: *{insert name of Procuring Entity]* Email address: *{insert email address]* In summary, a Procurement-related Complaint may challenge any of the following: 1. the terms of the Tendering Documents; and 2. KRA's decision to award the contract.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

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

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

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

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

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

2. Evaluation and contract award Criteria

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

Preliminary examination for Determination of Responsiveness-

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

I Tender Responsiveness Criteria

The submission of the following items will be required in the determination of the Completeness of the Bid. Bids that do not contain all the information required will be declared non responsive and shall not be evaluated further.

The bidder must attach the following mandatory documents.

A	Description
1	**Submission of Tender Documents** **(Financial Proposal to be submitted on the Notes & Attachment)** ▪ Form of Tender – Financial Submission Form duly **filled, signed** and **stamped.** ▪ **A detailed signed & stamped price schedule for services.**
	(Submission of Technical Proposal) ▪ Tender Security of **Kshs 100,000.00 - valid for 365 days** from the date of tender closing. ▪ Power of Attorney (except for sole proprietors)
2	**Company Profile** ▪ Certificate of Incorporation/ Registration.
3.	▪ Valid Certificate of registration with Retirement Benefits Authority (RBA) ▪ List of Directors with respective shareholding and details of their citizenship. ▪ CBK registration Certificate ▪ Valid Certificate of registration with Capital Markets Authority (CMA) ▪ List of Directors with respective shareholding and details of their citizenship ▪ Certified Audited and signed accounts for the last three (3) years, ▪ A valid Professional Indemnity Insurance Cover worth Kenya Shillings Five Hundred Million**(Kshs.500,000,000)**
4.	**Financial Resources** Submit: ▪ Reference Letter from the bank indicating that the firm is currently operating an account(dated at least within the last 6 months)
5.	**Social Obligations** Submit certificate of compliance for the following; ▪ A valid Tax Compliance Certificate
6.	**Tenderers must fill the following forms found under Section IV – Tendering Forms.** • Tenderer's Eligibility - Confidential Business Questionnaire • Disclosure of Interest- Interest of the Firm in KRA. • Certificate of Independent Tender Determination • Self-Declaration Forms - SD1 • Self-Declaration that the Person/Tenderer will not engage in any Corrupt or Fraudulent Practice. – SD2 • Declaration and Commitment to the Code of Ethics • Form CCC-Current Contract Commitments/Works In Progress

NB: The tender submission shall;

i. Have table contents pages clearly indicating Sections and Page Numbers.
ii. Have pages in the whole document bound, numbered in the correct sequence, serialized and initialed.

B. Vendor/ Technical Evaluation Criteria

The following criteria will be used in the evaluation of all potential Custodian.

The documents submitted will be evaluated for suitability and awarded marks which will contribute to a maximum 80% of the total tender evaluation.

	Description of Criteria	Max. Score	Cut –Off score
1.	**<u>Capability</u>** ***Professional Qualifications*** The Custodian (firm) shall be: i) Minimum experience of 10 years in Custodial Services.... (5Pts) ii) Duly registered as Custody service providers ....(3Pts) iii) The Custodian shall provide evidence of Professional Indemnity Insurance cover with a reputable **insurance company Kshs. 500 Million**...(4Pts) iv) The Custodian shall submit Curriculum vitae of at least one Lead Custodian and three (3) other Key personnel proposed as part of the custodian team ***....(Attach CV/Resume)*** **Lead Custodian (1) –** Masters..... 4 points Degree..... 3 points **Associates (3)** Degree..... 2 points Diploma .....1 point ***(Academic Certificates (Economics, Finance, Banking or any other related areas) should be attached.***	**22**	**18**
	2. Experience The Custodian Must demonstrate experience in carrying out Custodial services for Pension schemes with **a Fund value of Ksh. Five (5) billion or more(**Attach written and certified references from at **least five(5)** existing clients complete with telephone & email address)..... **(3Pts for each)** **Lead Custodian(1)** Over 10 years' experience.....6Pts 5-10 years' experience ..... 5pts 3-5 years' experience ..... 4pts 1-2 years' experience..... 3Pts	**30**	**24**

	Associate(3) Over 5 years' experience..... 3Pts each 3-5 years' experience..... 2pts each 1-3 years' experience.....1pt each **NB**: Provide copies of CV's and Certificates for all proposed staff in this assignment.		
3.	**Adequacy of the Proposed Methodology in responding to the Terms of Reference. The Custodian should capture in the proposal how the following will be handled;**) Whether there is preparation of periodic alerts or newsletters on your investment to the clients (provide evidence).....(4Pts)) Advising on legislative developments concerning income treatment received from investments (provide evidence)..... (4Pts).) The Internal control systems in relation to custody of scheme assets..... (5Pts). (d) A copy of sample client agreement .....(3Pts).) The Turnaround time for providing reports after month and quarter end..... (4 pts) Excellent Client Relations (Attach reference letter from client)- (4 pts)) Program for training and transfer of relevant skills....(4 pts)	**28**	**22**
	Total Score	**80**	**64**

NOTE

The total score will be to **80 marks** and a cut- off score of **64 marks** to be considered forbidders to proceed on technical evaluation

(C) Tender Evaluation Criteria

The tender evaluation criteria is weighted as follows; -

Criteria		**Maximum Score/ Requirement**	**Cut Off Marks**
Tender Responsiveness		Mandatory	Met
Vendor Evaluation	Vendor Requirements	80	64
Financial Evaluation		Lowest Technically qualified bidder	
Post Qualification Evaluation		**KRA has an option to undertake a due diligence to ascertain its capability of delivering the custodial service and/or to the successful bidder's reference sites to confirm the authenticity of the service rendered and the scope of work done.**	

SECTION IV – TENDERING FORMS

1. Form of Tender – Technical Proposal Form

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

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

Date of this Tender submission: 15th October, 2021 at 11.00am

ITT No: KRA/HQS/NCB 007/2021-2022

To: Kenya Revenue Authority

We, the undersigned Tenderer, hereby

submit our Tender, in two parts, namely:

i) The Technical Proposal, and

ii) The Financial Proposal.

In submitting our Tender, we make the following declarations:

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

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

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

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

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

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

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

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

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

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

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

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

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

n) We, the Tenderer, have fully completed and signed the following Forms as part of our Tender:

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

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

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

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

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

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

.....

Name of the person duly authorized to sign the Tender on behalf of the Tenderer:

.....

Title of the person signing the Tender:

.....

Signature of the person named above:

.....

Date ..... day of .....

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

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

2 40% PERCENT RULE FORM (NOT APPLICABLE)

Tenderers must complete this form to indicate they conform to the 40% Rule, i.e. 40% of their tender price is sourced from within Kenya.

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
A	Local Labor			
	TOTAL COST LOCAL CONTENT		XXXXX	
	PERCENTAGE OF CONTRACT PRICE			

3. TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

a) Instructions to Tenderer

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

Tenderer's details

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

<u>General and Specific Details</u>

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

Name in full_____

Age_____

Nationality_____

Country of Origin_____

Citizenship _____

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

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				

3				

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

i) Private or public Company _____

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

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

4. DISCLOSURE OF INTEREST- Interest of the Firm in KRA.

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

If yes, provide details as follows.

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

ii) Conflict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provide details of relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specifiedin this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Certification

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

Full Name_____

Title or Designation_____

CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

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

that:

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

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

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

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

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

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

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

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

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

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

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

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

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

Name_____

Title_____

Date_____

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

6. SELF-DECLARATION FORMS

FORM SD1

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

I,.....of Post Office Box.....being a resident

of.....in the Republic of.....do hereby make a statement as follows: -

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

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

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

.....	.....	.....
(Title)	(Signature)	(Date)

Bidder Official Stamp

FORM SD2

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

I, ... of P. O. Box.....being a resident

of ..... in the Republic of ..... do hereby make a statement as follows: -

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

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

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

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

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

.....	.....	.....
(Title)	(Signature)	(Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory.....

Sign.....

Position .....

Office address.....Telephone.....

E-mail.....

Name of the Firm/Company .....

Date .....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name .....

Sign.....

Date.....

7 APPENDIX 1 - FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

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

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

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

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

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

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

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

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

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

   a) Shall not take part in the procurement proceedings;

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

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

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

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

In compliance with Kenya's laws, regulations and policies mentioned above, KRA:

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

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

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

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

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

v) "obstructive practice" is:

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

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

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

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

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

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

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

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

[1] *For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in*

A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

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

Description of the Methodology and Work Plan

[in accordance with ITT 13.1]

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

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

1.Tenderer's Legal Name
2.In case of JV, legal name of each party:
3.Tenderer's actual or intended Country of Registration:
4.Tenderer's Year of Registration:
5.Tenderer's Legal Address in Country of Registration:
6.Tenderer's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: Articles of Incorporation or Registration of tenderer named in 1, above, in accordance with ITT 4.1 and ITT 4.4. In case of JV, Form of intent to form JV including a draft agreement, or JV agreement, in accordance with ITT 4.1 and ITT12. In case of state-owned enterprise or institution from the Kenya, documents establishing legal and financial autonomy and compliance with the principles of commercial law, and is not under the supervision of the Procuring Entity in accordance with ITT 4.6.

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

10. Form ELI 1.2

Party to JV Information Sheet (WHERE APPLICABLE)

Date:_____

ITT No.: _____

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

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

TenderersandeachpartnertoaJVshouldprovideinformationontheircurrentcommitmentsonallcontractsthat have been awarded, or for which a Form of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

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

12. Form FIN 3.3- Financial Resources

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

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

13. Form EQU- Contractor's Equipment (NOT REQUIRED)

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

14. Form PER -1- Proposed Personnel

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

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

1	2	3	4	5
S/N	Titleof personnel	Key qualification	Name proposedby Tenderer	Qualification
1.				
2.				

15. FORM PER - 2 - RESUME OF PROPOSED PERSONNEL

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

Attach academic /professional certificates

Summarize professional experience over the last 10 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

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

16. FORM OF TENDER SECURITY - Form of Demand Guarantee

Beneficiary:_____

Invitation to Tender No:_____

Date:_____**TENDER**

GUARANTEE No.:_____

Guarantor: _____

We have been informed that_____(herein after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (herein after called "the Tender") for the execution of _____under Invitation to Tender No._____("the ITT").
Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or

sums not exceeding in total an amount of figures and words .....

upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

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

b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Tenderers ("ITT") of the Beneficiary's Tendering Document.

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

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

_____
[Signature]

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

17. TENDER - SECURING DECLARATION FORM {r 46 and 155 (2)}(not applicable to this tender)

[The Bidder shall complete this Form in accordance with the

instructions indicated] Date:.....*[insert*

date (as day, month and year)of Tender Submission]
Tender No.:.....*[insert*

number of tendering process]

To:.....*[insert*

complete name of Purchaser] I/We, the

undersigned, declare that:

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

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

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

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

Signed:..... Capacity / title (director or

partner or sole proprietor, etc.) .....

Name: ..... Duly

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

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

Seal or stamp

18. FORM OF TENDER – FINANCIAL PROPOSAL FORM

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

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

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

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

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

We, the under signed Tenderer, hereby submit the second part of our Tender, the

Financial Proposal in submitting our Financial Proposal, we make the following

additional declarations:

(a) **Tender Validity Period**: Our Tender shall be valid for the period specified in TDS 20.1 (as amended, if applicable) **335** days from the date fixed for the Tender submission deadline specified in TDS 23.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

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

.....

.....

.....

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

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

ii) The exact method of calculations to determine the net price after application of discounts is shown below:

..... *Where applicable*

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

Name of Recipient	Address	Reason	Amount

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

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

Name of the Tenderer: .....

Name of the person duly authorized to sign the Tender on behalf of the Tenderer:

.....

Title of the person signing the Tender:
.....

Signature of the person named above: .....**Date**

signed.....

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

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

PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VI - GENERAL CONDITIONS OF CONTRACT

1. Definition and Interpretation

1.1 Definitions

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

1.1.1 The Contract

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

b) "Particular Conditions of Contract" means the pages completed by KRA to elaborate on General Conditions of Contract.

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

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

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

f) "Tender" means the Form of Tender.

1.1.2 Parties and Persons

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

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

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

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

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

vi. "Procuring Entity's Personnel" means all staff employed by KRA.

vii. "Government" means the Government of Kenya.

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

ix. “Key Staff” means those individuals listed as Key Staff in the Tender, or any person appointed, with the agreement of KRA, as a Key Staff, for a part of the Services; and the legal successors in title to each of these persons.

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

xi. “Party” means KRA or the Contractor, as the context requires, and “Parties” means both.

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

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

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

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

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

1.1.3 Dates, Tests, Periods and Completion

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

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

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

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

1.1.4 Money and Payments

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

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

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

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

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

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

g) “Local Currency” means Kenya shillings.

f) "Utility's Account" means paid for the by the Utility, as defined in Sub-Clause 12.6.1.

1.1.5 Services and Goods

i. "Contractor's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Services and the remedying of any defects. But excludes Procuring Entity's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Facilities.

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

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

1.1.6 Fraud and Corruption

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

1.1.7 Other Definitions

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

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

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

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

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

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

vii. "Default" means a failure by a Party to perform its obligations under the Contract.

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

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

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

xi. “Facilities” means all assets of KRA which are to be managed by the Contractor, and any other places as may be specified in the Contract as forming part of the Facilities.

xii. “Force Majeure” is defined in Sub-Clause 17.1 [Definition of Force Majeure].

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

xiv. “Objectives” has the meaning given under Sub-Clause 1.6.2 [Objectives].

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

xvi. “Proposed Substitute Key Staff Member or Key Sub-Contractor” have the meaning given in Sub-Clause8.2 [Substitution of Contractor's Key Staff Member or Key Sub-Contractor].

xvii. “Recitals” has the meaning given under Sub-Clause 1.6.1 [Recitals].

xviii. “Specified Capital Works” means Capital Works which are the responsibility of the Contractor under Sub- Clause 9.2 [Responsibilities for Specified Capital Works].

xix. “Substitution Fee” is the amount to be paid by KRA for substituting another person in place of a Key Staff Member or Key Sub-Contractor, in accordance with Sub-Clause 8.2 [Substitution of Contractor's Key Staff Member or Key Sub-Contractor].

xx. “Unforeseeable” means not reasonably foreseeable and against which adequate preventive precautions could not reasonably be taken by an experienced Contractors by the date for submission of the Tender.

xxi. “Utility Capital Works” means Capital Works which are not Specified Capital Works.

xxii. “Value Management Proposal” has the meaning given under Sub-Clause 19.2 [Value Management].

xxiii. “Variation” means any change to the Services, which is instructed or approved as a variation under Clause
xxiv. 19.1 [Procuring Entity Variations].

xxv. “Variation Proposal” has the meaning given under Sub-Clause 19.1.1 [Decision on Procuring Entity's Variation Request].

xxvi. “Variation Request” has the meaning given under Sub-Clause 19.1 [Procuring Entity Variations].

1.2 Interpretation

In the Contract, except where the context requires otherwise:

a) Words indicating one gender include all genders;

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

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

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

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

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

1.3 Communications

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

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

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

iii. if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and

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

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Independent Expert, a copy shall be sent to KRA's Representative or the other Party, as the case may be.

1.4 Law and Language

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

1.5 Priority of Documents

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

a. The Contract Agreement (if any),

b. The addenda Nos.(if any)

c. The Form of Acceptance,

d. The General Conditions,

e. The Particular Conditions of Contract,

f. The Schedules of Services Requirements

g. The Form of Tender

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

1.6 Recitals and Objectives

1.6.1 Recitals

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

1.6.2 Objectives

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

2 Commencement and Duration

2.1 Conditions of Effectiveness

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

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

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

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

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

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

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

2.2 Commencement

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

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

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

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

2.3 Duration

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

3. General Provisions

3.1 Assignment

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

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

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

3.2 Contractor's Representative

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

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

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

3.3 Procuring Entity's Representative

a) KRA shall name its representative before the Effective Date.

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

c) KRA's Representative shall represent and act for KRA at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract by KRA shall be given by KRA's Representative otherwise provided.

3.4 Communications by the Contractor

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

3.5 Sub-Contractor

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

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

   b. the prior consent of KRA's Representative shall be obtained to other proposed Sub- Contractor;

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

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

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

3.6 Key Sub-Contractor

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

a) The Key Sub Contractor is not available; or

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

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

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

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

3.7 Assignment of Benefit of Subcontract

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

3.8 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Particular Conditions of Contract:

a) KRA shall have obtained (or shall obtain) the planning, zoning, resource abstraction, environmental discharge permission for the normal operation of the Facilities, and KRA shallindemnifyandholdtheContractorharmlessagainstandfromtheconsequencesofanyfailuretodoso; and

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

3.9 Joint and Several Liability

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

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

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

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

3.10 Inspections and Audit by the PPRA

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

b) The Pursuant to paragraph 2.2 e. of Appendix to the General Conditions the Contractor shall permit and shall cause its sub-Contractor and sub-consultants to permit, the PPRA and/or persons appointed by the PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection

and/or contract execution, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Contractor and its Sub Contractors and sub-consultants' attention is drawn to Sub-Clause1.1.6 which provides, interalia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the PPRA's prevailing sanctions procedures).

4 Obligations of the Contractor

4.1 Services to be Performed and Other Obligations

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

4.2 Pre-Conditions

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

4.3 Non-Availability of the Pre-Conditions

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

a. Makes it unreasonable to expect the Contractor to perform some or all of the Services, the Contractor shall be relieved of its responsibilities to perform those services, or
b. Affects the achievement of any of the Performance Targets, such Performance Targets shall be reduced for the duration for which the Pre-Conditions are not available to the extent that the Independent Expert determines at its sole discretion.

4.4 Cost of Performing the Services

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

5 Conflict of Interest

5.1 General

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

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

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

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

5.3 Contractor and Affiliates not to engage in certain activities

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

from or directly related to the Contractor' Services for the preparation or implementation of such project.

5.4 Prohibition of conflicting activities

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

6 Know-How Transfer and Training

6.1 Requirement to transfer know-how and systems

The Contractor shall:

a) Transfer such know-how, management systems, manuals, utility management software and similar knowledge, tools and capacity for managing a utility as are specified in Schedule C.
b) Leave with the Utility such, at the Termination or expiration of the Contract, management systems, manuals, utility management software and similar tools as are specified in Schedule C.

6.2 Requirement to provide training

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

6.3 Cost of know-how transfer and training

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

7 Performance Targets

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

8 Staff to be Provided by the Contractor

8.1 Provision of Contractor' Personnel

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

8.2 Substitution of Contractor' Key Staff Member or Key Subcontractor

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

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

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

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

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

8.3 Labor Laws

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

8.4 Health and Safety

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

8.5 Contractor's Personnel Qualifications

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

a. Persists in any misconduct or lack of care,

b. Carries out duties in competently or negligently,

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

d. persists in any conduct which is prejudicial to safety, health, or the protection of the environment. If requested by KRA, the Contractor shall then substitute the person removed with another person. This substitution must be in accordance with Sub-Clause 8.2.

8.6 Foreign Personnel

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

9 Procurement and Management of Capital Works and Finance

9.1 Responsibility to Manage Utility Capital Works and Finance

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

9.2 Responsibilities for Specified Capital Works

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

9.3 Responsibilities for Specified Finance

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

9.4 Procurement Rules

9.4.1 Procurement for Utility operations

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

9.4.2 Procurement for Provision of the Services

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

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

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

9.4.3 Procurement for Utility Capital Works and Specified Capital Works

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

10 Contractor's reporting

10.1 Contractor's reporting requirements

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

11 Delegation of Management Authority to the Contractor

11.1 Delegation of Management Authority

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

11.2 Contractor to be advisor on other management matters

All management authority not explicitly delegated to the Contractors retained by KRA. If in the Contractor's opinion it would be beneficial to the performance of the Services and achievement of the Objectives

for such management authority to be exercised in a particular way, the Contractor shall advise KRA of this, and provide reasons in writing. KRA will give the Contractor written notice of its decision within the period **specified in the SCC**. If KRA decides not to follow the Contractor's advice, it will give written reasons for its decision when it in forms the Contractor.

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

11.3 Further Delegation during the term of the Contract

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

11.4 Purpose of Exercise of Delegated Management Authority

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

11.5 Suspension of Delegated Management Authority

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

11.6 Utility's Personnel

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

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

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

11.7 Utility Personnel Retrenchment

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

12 Contractor's Remuneration and Costs

12.1 Contractor's Remuneration

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

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

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

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

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

12.2 Advance Payment

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

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

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

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

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

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

12.3 Delayed Payment

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

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

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

12.4 Sufficiency of the Contractor's Remuneration

The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contractor's Remuneration, taking into account all available data, and fully understanding the Services to be provided, and the conditions in which the Services are to be performed.

12.5 Contractor's Costs and Account

12.5.1 Contractor' Account

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

12.6 Utility Financial Issues

12.6.1 Utility's Account

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

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

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

12 Obligations and Rights of KRA

12.1 Access to land

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

12.2 Right to use facilities

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

12.3 Payments by KRA

KRA shall make payments to the Contractor in accordance with the terms of this Contract.

12.4 Support by KRA

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

12.5 Supervision by KRA

a. KRA shall supervise the Contractor in the performance of its obligations under this Contract.

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

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

12.6 Permits, Licenses or Approvals

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

i. By obtaining copies of the Laws of Kenya which are relevant to the Contract but are not readily available, and

ii. For the Contractor's applications for any permits, licenses or approvals required by the Laws of Kenya:

a. Which the Contractors required to obtain

b. For the delivery of Goods, including clearance through customs, and

c. For the export of Contractor's Equipment when it is removed from the Facilities.

12.7 Utility's Personnel Cooperation

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

12.8 Procuring Entity's Financial Arrangements

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

13 Procuring Entity's Reporting

13.1 Procuring Entity's reporting requirements

KRA shall comply with the reporting requirements specified in Schedule K.

14 Intellectual and Industrial Property Rights

14.1 Intellectual Property and Copyright

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

The Contractor, by signing the Contract, gives KRA a non-terminable, transferable, non- exclusive, royalty-free license to copy, use and communicate the Contractor's Innovations and Software and any other software

used or purchased by the Contractor in the performance of the Services (the "Other Software"), including making and using modifications of them. This license shall,

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

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

c. in the case of Contractor's Innovations and Software and the Other Software which are in the form of computer programs and other software, permit their use on any computer at the Facilities and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor; and
d. entitle KRA to make the Contractor's Innovations and Software and the Other Software available for inspection by a prospective Tenderer who may be involved in the process to select a Subsequent Contractor.

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

15.2 Intellectual Property Infringements

15.2.1 Meaning of Infringement and Claim

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

15.2.2 Notice of Claims

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

15.2.3 Contractor to Indemnify Procuring Entity

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

15.2.4 Procuring Entity to indemnify Contractor

KRA shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

i. An unavoidable result of the Contractor's compliance with the Contract, or
ii. A result of any Services being used by KRA:
    1. For a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
    2. in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contract or prior to the Base Date or is stated in the Contract.

15.2.5 Right to manage settlement and litigation

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

15.3 Confidentiality Obligations of the Contractor

15.3.2 Confidentiality

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

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

15.3.3 Use of information

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

15.3.4 Exceptions for publicly available information

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

ii. Now or hereafter enters the public domain through no fault of the Contractor;

iii. can be proven to have been possessed by the Contractor at the time of disclosure and which was not previouslyobtained,directlyorindirectly,fromtheProcuringEntity;or

iv. otherwise lawfully becomes available to the Contractor from a Third Party that has no obligation of confidentiality.

15.4 Confidentiality and Publication Obligations of KRA

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

16 Liability, Risk Allocation, Securities, Bonds and Insurance

16.2 Limitation of Liability

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

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

16.3 Indemnities

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

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

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

one directly or indirectly employed by any of them.

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

16.4 Performance Security

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

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

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

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

16.5 General Requirements for Insurances

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

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

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

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

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

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

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

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

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

16.6 Insurance Required

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

16.7 Procuring Entity's Risks

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

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

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

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

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

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

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

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

16.8 Consequences of Procuring Entity's Risks

16.8.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to,

a. Destruction of or damage to the Facilities or any part thereof;

b. Destruction of or damage to property of KRA or any Third Party; or

c. Injury or loss of life, if such destruction, damage, injury or loss of life is caused by any Procuring Entity's Risks, and KRA shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising on consequence of or in connection with the same.

16.8.3 If the Facilities or any property of the Contract or used or intended to be used for the purposes of the Services sustains destruction or damage by reason of any Procuring Entity's Risks, KRA shall pay for,

a. Replacing or making good any property or investments of the Contractor destroyed or damaged; and

b. Replacing or making good any such destruction or damage to the Facilities or any part thereof, so far as may be required by KRA, and as may be necessary for completion of the Services.

16.8.4 If KRA does not require the Contractor to replace or make good any such destruction or damage to the Facilities, KRA shall either request a change in accordance with Sub-Clause 19.1 [Procuring Entity Variations] excluding the performance of the Services in respect of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to Sub-Clause 17.7 [Release from Performance].

Notwithstanding anything contained in the Contract, KRA shall pay the Contractor for any increased Costs that are in anyway attributable to, consequent on, resulting from, or in any way connected with any Procuring Entity's Risks, if the Contractor notifies KRA in writing of any such increased cost as soon as practicable.

16.8.5 If, during the term of the Contract, any Procuring Entity's Risks occur that financially or otherwise materially affect the execution of the contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractor's personnel engaged in the work on the Services. If the execution of the Services becomes impossible or is substantially prevented for a single period of more than 60 days or an aggregate period of more than 120 days on account of any Procuring Entity's Risks, the Parties will attempt to develop a mutually satisfactory Services Requirements solution, failing which either Party may terminate the Contract by giving a notice to the other.

In the event of termination pursuant to this Sub-clause, the rights and obligations of KRA and the Contractor shall be as specified in Sub-Clause17.7 [Release from Performance].

17 Force Majeure

17.5 Definition of Force Majeure

In this Clause, “Force Majeure” means an exceptional event or circumstance:

a. Which is beyond a Party's control,
b. Which such Party could not reasonably have provided against before entering into the Contract,
c. which, having a risen, such Party could not reasonably have avoided or overcome, and
d. Which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

i. war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
ii. rebellion, terrorism, sabotage by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractor, revolution, insurrection, military or usurped power, or civil war,
iii. riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractor, or KRA's Personnel
iv. munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
v. Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

17.6 Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract

17.7 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

17.8 Consequences of Force Majeure

If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 17.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled to:

a. An extension of time for any such delay, if completion of the services is or will be delayed, and

b. if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 17.1 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in Kenya, payment of any such Cost.

17.9 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Services to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

17.10 Optional Termination, Payment and Release

If the execution of substantially all the Services in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 17.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, the neither Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 21.12 [Actions on Termination].

17.11 Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

a. The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

b. the sum payable by KRA to the Contractor shall be the same as would have been payable under Sub-Clause 21.11 [Payment on Termination for Prolonged Force Majeure] if the Contract had been terminated under Sub-Clause 17.6 [Optional Termination, Payment and Release].

18 Suspension of Services

18.5 Suspension for non-payment

If KRA:

a. Fails to pay the Contractor any sum due under the Contract within the period specified in the Contract;
b. Fails to approve any invoice or supporting documents without just cause under the Contract;
c. commits a substantial breach of the Contract, including preventing the exercise of the Contractor's Delegated Management Authority
d. fails to provide possession of or access to the Facilities
e. the Contractor may, after giving not less than 14 days' notice to KRA, suspend work (or reduce the rate of work) unless and until the failure or breach which gave rise to the suspension has been rectified.

18.6 No prejudice to other remedies

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 12.3 [Delayed Payment] and to termination under Sub-Clause 21.7 [Termination by the Contractor for Cause].

18.7 Compensation for costs from suspension

If the Contract or suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall be entitled to:

i. An extension of time for any such delay, and
ii. Payment of a costs actually and reasonably incurred as a result of the suspension

18.8 Procuring Entity's Entitlement to Suspend the Services and Delegated Management Authority

KRA may suspend the Services and Delegation of Management Authority, if this is necessary in the public interest, by notice to the Contractor. Such notice shall specify the effective date of the suspension, the reasons for the suspension, and the date on which the suspension will end.

If KRA suspends the Services in accordance with this Sub-Clause 18.2, the Contractor shall then cease to perform its obligations under the Contract. However, the Contractor shall still be entitled to the Contractor Remuneration under the Contract. If the suspension continues for more than 90 days, the Contractor may, by notice to KRA, treat the suspension as Termination for Procuring Entity Convenience.

19 Contract Variation, Extension and Retendering

19.1 Procuring Entity Variations

a) At any time during the Term of the Contract KRA's Representative may request a Variation by giving to the Contractor Variation Request. A Variation Request shall specify

   a. A brief description of the Change to the Services
   b. The effect on any other provisions of the Contract
   c. A reasonable period within which the Contractor is required to respond.

19.2 Decision on Procuring Entity's Variation Request

On receiving a Variation Request the Contractor shall respond in writing as soon as practicable, and in any event within the period stipulated in accordance with Sub-Clause 19.1 [Procuring Entity Variations], either by giving reasons why he cannot comply (if this is the case) or by submitting a Variation Proposal containing:

a) A description of the proposed work to be performed and a program for its execution,
b) An estimate of the adjustment in Opera Services Requirements Remuneration which would be necessary to put the Contractor in the same financial position as if the Variation were not implemented

KRA shall then:

a) Accept the Variation Proposal, which shall then modify the Contracts as far as is specified in the Variation Proposal; or
b) Notify the Contractor that is has decided not to proceed with Variation or
c) Notify the Contractor that it does not agree with the proposed adjustment in Opera Services Requirements Remuneration or other terms of the Contract, and refer the issue for determination through the Dispute Resolution procedure under Sub-Clause 20.1 [Dispute Resolution].

19.3 Value Management

The Contractor may, at any time, submit to KRA's Representative a written Value Management Proposal which (in the Contractor's opinion) will, if adopted:

i) Reduce the cost of providing the services; or
ii) Further the Objectives of the Contract; or
iii) Otherwise be of benefit to KRA or the Utility.

The Value Management Proposal shall be prepared at the cost of the Contractor and shall include:

a) Description of the proposed Change to the Services

b) A description of the proposed work to be performed and a program for its execution,

c) Any proposed adjustment in Opera Services Requirements Remuneration

d) The effect on any other provisions of the Contract.

If the Value Management Proposal would allow the same Services to be performed at lower cost, then the proposed adjustment in the Operational Services Requirements Remuneration shall be such as to share the benefits of the savings equally between the Contractor and KRA.

If the effect of the Value Management Proposal would be to increase both the scope of the Services and the cost of the Services, then the proposed adjustment in the Operational Services Requirements Remuneration shall be such as to put the Contractor in the same financial position as it would be if the Value Management Proposal were not implemented

19.4 Decision on Value Management Proposal

On receiving a Value Management Proposal, KRA shall either:

a) Accept the Value Management Proposal, which shall then modify the Contract so far as is specified in the Value Management Proposal; or

b) Decline to accept the Value Management Proposal.

19.5 Adjustments for Changes in Law

"Change in Law" means a change in the Laws of Kenya (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contract or in the performance of obligations under the Contract.

If the Contractor incurs additional Cost as a result of a Change in Law, the Operational Services Requirements Remuneration shall be adjusted so as put the Contractor in the same financial position as it would be if the Change in Law had not occurred.

If the Parties cannot agree on the required adjustment to the Operational Services Requirements Remuneration, either Party may refer the issue for determination through the procedure under Sub-Clause 20.1 [Dispute Resolution].

19.6 Extension and Subsequent Tendering

a) Extension of the Contract

Unless otherwise provided for in Schedule N, the Contract may be extended for an additional period of no more than the initial term of the Contract. Such an extension may be requested by KRA, following the process set out in 19.1 [Procuring Entity Variation], or by the Contractor following the process set out in 19.2 [Value Management], must be agreed by the Parties, and may not be determined under the Dispute Resolution process.

However, the Parties may agree to refer the invitation to an extension to the Independent Expert. If the parties refer the invitation to an extension to the Independent Expert they shall agree, prior to the referral, whether the Independent Expert's recommendation will be advisory only, or binding.

If requested to make a recommendation under this section, the Independent Expert shall be guided by:

a. The Objectives of the Contract

b. Such additional objectives as KRA may inform him of which appear to him to be reasonable

c. The need for the Contractor to make a fair profit on its efforts, which he may assess by reference to the profits actually achieved or expected to be achieved under the Contract

d. The desirability of rewarding the Contractor for success in achieving KRA's objectives.

b) Subsequent Tendering for a Similar Contract

Unless otherwise provided in Schedule N, the Contractor shall not be precluded from Tendering for any similar contract which is offered by KRA or the Utility after the termination or expiration of this contract. In case of such a subsequent Tendering, the Contractor will be requested by KRA to provide in due time a

detailed report satisfactory Services Requirements to KRA about the Services under this Contract, such Report to be made available by KRA to all other potential Tenderers.

20 Dispute Resolution

20.1 Amicable Settlement

a. If any dispute arises out of or in connection with this Contract, either Party may give notice to the other Party of the same, where upon the Parties shall meet promptly and in a good faith attempt to reach an amicable settlement.

b. In the event that the Parties do not resolve a dispute in accordance with this Sub-Clause within twenty (20) days of notice of the dispute being given, the neither Party may refer the dispute to the Independent Expert for determination pursuant to the procedure set for thin Sub-Clause 20.1.2 [Independent Expert].

20.2 Independent Expert

a) By the date of Contract signing, the Contractor shall indicate to KRA in writing its acceptance of one of the potential Independent Experts **proposed in the Special Conditions of Contract** by KRA or otherwise present to KRA for its acceptance, a counter-proposal with the names of one or more individuals. KRA shall respond in writing to the Contractor by the date **stated in the Particular Conditions of Contract**, and in case of a negative response, with a copy to the appointing entity or official **named in the Particular Conditions of Contract**, who shall then appoint the Independent Expert after due consultation with both Parties. If the Contractor fails to indicate its acceptance of one of KRA-proposed individuals or present a counter- proposal, or if KRA fails to respond to the Contractor's counter proposal by the due dates indicated above for each event, or if the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the Independent Expert declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, then the appointing entity or official **named in the Special Conditions of Contract** shall, upon request of either or both of the Parties and after due consultation with both Parties, appoint the Independent Expert. The appointment(s) made by the appointing entity or official shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

b) The Independent Expert shall be a professional experienced in the type of services covered under the Contract and with the interpretation of contractual documents, and shall be fluent in the language for communications defined in the Contract. The Independent Expert shall be (and the terms of this appointment shall so provide that he or she is) independent of the Parties and shall act impartially. The Independent Expert's appointment may be terminated only by mutual agreement between the Parties. The Expert's terms of appointment shall expire as the Parties may mutually agree.

c) In making its determination, the Independent Expert shall:

a. have regard to the Services required to be performed hereunder and the terms and conditions of this Contract; and

b. ensure that the position of the Parties is res Services Requirements to the position they would have been in if the event triggering the dispute under this Section had not occurred and all the Parties had complied with the Contract.

c. The Party who initially issued the notice of intention to refer the dispute to the Independent Expert shall within ten (10) days of such notice submit to the Independent Expert and to the other Party the following documents:

   a. A description of the dispute;

   b. A statement of that Party's position; and

   c. Copies of relevant documentary evidence in support.

d. Within ten (10) days of receipt of the above documents, the other Party shall submit:

   1. A description of the dispute;

   2. A statement of that Party's position; and

   3. Copies of relevant documentary evidence in support.

e. The Independent Expert may call for such further documentary evidence and/or interview such persons as it deems necessary in order to reach their decision.

f. The expert shall give notice to the Parties of its decision within twenty (20) days of receipt of the documents provided under Section d) or e) as the case may be.

g. Unless this Contract has already been terminated or abandoned, the Parties shall in every case continue to proceed with the performance of their rights and obligations under this Contract with all due diligence whilst the Independent Expert is reviewing the dispute.

a. The decision of the Independent Expert shall be binding unless and until one Party, within ten (10) days of the date of such decision, issues a notice of intention to refer the matter to arbitration in accordance with Sub-Clause 20.1.4 [Arbitration].

j) Each Party shall bear its own costs of preparing the materials for and making presentations to the Expert.

20.3 Payment of the Independent Expert

The costs of engaging the Independent Expert shall be borne equally by the Parties. The Independent Expert shall be paid as follows, in the currency named in the Special Conditions of Contract or as otherwise indicated in the appointment notice issued in accordance with Sub-Clause 20.1.2 [Independent Expert]:

a) A retainer fee per calendar month, which shall be considered as payment in full for:
   i) Being available on 28 days' notice for all site visits and hearings;
   ii) Becoming and remaining conversant with all project developments and maintaining relevant files;
   iii) All office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with this duties; and
   iv) All services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Sub-Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the appointment becomes effective; until the last day of the calendar month in which the Contract expires, unless the Independent Expert resigns or his appointment is otherwise terminated by the Parties.

a) A daily fee which shall be considered as payment in full for:
   a. each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Independent Expert's home and the site, or another location of a meeting that the Independent Expert is required to attend;
   b. each working day on Site visits, hearings or preparing decisions; and
   c. each day spent reading submissions in preparation for a hearing.

b) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Independent Expert's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Sub-Clause;

c) any taxes properly levied in Kenya on payments made to the Independent Expert (unless a national or permanent resident of Kenya) under this Sub-Clause.

20.4 Arbitration

All disputes arising out of or in connection with this Contract, not settled by amicable settlement or by the Independent Expert, in respect of which the Independent Expert's determination has not become final and binding, shall be finally settled by arbitration. Unless otherwise agreed by both Parties:

a) For contracts with foreign Contractor:
   a. international arbitration with proceedings administered by the international arbitration institution appointed in the SCC, in accordance with the rules of arbitration of the appointed institution;
   b. the place of arbitration shall be the place specified in the **SCC** or such other place selected in accordance with the applicable arbitration rules; and
   c. the arbitration shall be conducted in the English language as defined in Sub-Clause1.4; and

b) For contracts with domestic Contractor, arbitration with proceedings conducted in accordance with the laws of Kenya.

c) The arbitral Services Requirements shall have full power to open up, review and revise any determination of the Independent Expert, relevant to the dispute. Nothing shall disqualify representatives of the Parties from being called as a witness and giving evidence before the arbitral Services Requirements on any matter whatsoever relevant to the dispute.

d) Neither Party shall be limited in the proceedings before the arbitral Services Requirements to the evidence or arguments previously put before the Independent Expert to obtain its determination, or to the reasons

for dissatisfaction given in its notice of dissatisfaction. Any decision of the Independent Expert shall be admissible in evidence in the arbitration.

e) Arbitration may be commenced prior to or after completion of the Services. The obligations of the Parties and the Independent Expert shall not be altered by reason of any arbitration being conducted during the progress of the Services.

20.5 Survival

The dispute resolution provisions contained in Sub-Clause 20.1.4 [Arbitration] shall survive termination of this Contract.

21 Default and Termination

21.1 Notification and Cure Plans

If a Default occurs, the Party not in Default may, in addition to any other remedies it has, give the Defaulting Party a notice in writing ("**Default Notice**") specifying:

a) That a Default has occurred;

b) The events or circumstances constituting the Default; and

c) If the Default is capable of being cured or remedied, a reasonable Cure Period in which to cure or remedy the Default. The Party not in Default may specify in the Default Notice:

d) That it requires the Defaulting Party to provide to the Party not in Default a written plan ("Cure Plan") which specifies the reason the Default occurred, how the Defaulting Party intends to remedy the Default, the time that the Defaulting Party will require to remedy the Default and includes additional information on such matters as the Party not in Default requires; and

e) A reasonable time by which the Defaulting Party must provide the Cure Plan to the Party not in Default. The Party not in Default may, by notice to the Defaulting Party, vary the Cure Period having regard to information provided to it in relation to a Cure Plan.

21.2 Remedying the Default within the Applicable Cure Period

Upon receipt of a Default Notice, if the Default is capable of being cured or remedied, the Defaulting Party must cure or remedy the Default within the Cure Period.

In addition to its obligations under Sub-Clause 21.1 [Notification and Cure Plans], if the Party not in Default has required the Defaulting Party to provide a Cure Plan, the Defaulting Party must:

a) Provide a Cure Plan within the time requested by the Defaulting Party;

b) Comply with the Cure Plan; and

c) report to the Party not in Default on progress in relation to the Cure Plan at the times and in the manner specified by the Party not in Default. The Defaulting Party may, by notice to the Defaulting Party, request an extension to a Cure Period. The Defaulting Party may only request such an extension once in relation to a particular Default. The notice must specify:

   i. the reason why the Defaulting Party is not able to cure or remedy the Default within the existing Cure Period,

   ii. the additional time that the Defaulting Party requires to cure or remedy the Default and

   iii. any other information that is relevant to the Party not in Default's assessment of the request.

The Defaulting Party may not give such a notice unless it has diligently sought to cure or remedy the relevant Default. The Party not in Default must not unreasonably withhold its consent to an invitation to such an extension of a Cure Period unless the Party not in Default believes, on reasonable grounds, that the extension of the Cure Period would have a material adverse effect on the provision of the Services or the use by the Party not in Default of the Facilities.

21.3 Failure to cure

If the Party not in Default has given a Default Notice to the Defaulting Party and:

a) Where the Default is capable of being cured or remedied, the Defaulting Party does not provide a Cure Plan acceptable to the Party not in Default within the time required in the Default Notice (if applicable);

b) Where the Default is capable of being cured or remedied, the Defaulting Party does not diligently pursue the Cure Plan (if applicable) or otherwise comply with its obligations under Sub-Clause 21.2 [Remedying the Default within the Applicable Cure Period];

c) where the Default is capable of being cured or remedied, the Default is not cured or remedied within the Cure Period and, if applicable, in accordance with the Cure Plan; or

d) the Default is not capable of being cured or remedied.
The Party not in Default may (without prejudice to any of its other rights with respect to the Default), exercise all or any of the following remedies:

i. sue the Defaulting Party for compensation for the Default, and exercise all available legal and equitable remedies including without limitation suing for specific performance, injunctive relief or such other orders as the Party not in Default considers appropriate;

ii. terminate this Agreement.

21.4 Ways the Contract may be terminated

The Contract may be terminated by:

a) KRA for Convenience, in accordance with Sub-Clause 21.5 [Termination by KRA for Convenience],

b) KRA for Cause, in accordance with Sub-Clause 21.6 [Termination by KRA for Cause], or

c) The Contractor for Cause, in accordance with Sub-Clause 21.7 [Termination by the Contractor for Cause].

21.5 Termination by KRA for Convenience

21.5.1 KRA shall be entitled to terminate the Contract, at any time for KRA's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or KRA returns the Performance Security.

21.5.2 KRA shall not terminate the Contract under this Sub-Clause in order to arrange for the Services to be executed by another Contractor or to avoid a termination of the Contract by the Contractor under Sub- Clause 21.7 [Termination by the Contractor for Cause].

21.5.3 After this termination, the Contractor shall proceed in accordance with Sub-Clause 21.12 [Actions on Termination] and shall be paid in accordance with Sub-Clause 21.8 [Payment on Termination by KRA for Convenience].

21.6 Termination by KRA for Cause

KRA shall be entitled to terminate the Contract for cause, if the Contractor:

a) In accordance with Sub-Clause 21.3 [Failure to Cure], is the Defaulting Party referred to in that Sub-Clause,

b) Fails to comply with Sub-Clause 16.3 [Performance Security],

c) Abandons the Services or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,

d) Without reasonable excuse fails to proceed with the Services,

e) Subcontracts the whole of the Services or assigns the Contract without the required agreement,

f) Becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his credit Services Requirements, or carries on business under a receiver, trustee or manager for the benefit of his credit Services Requirements, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or

g) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

i) for doing or for bearing to do any action in relation to the Contract, or

ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract,

iii) or if any of the Contractor's Personnel, agents or Subcontractor gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or.

h) In the judgment of KRA, has engaged in Fraud and Corruption, as defined in paragraph 2.2a of the Appendix to the GCC, in competing for or in executing the Contract. In any of these events or circumstances, KRA may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Facilities. However, in the case of sub-paragraph (e), (f) or (h), KRA may by notice terminate the Contract immediately.

KRA's election to terminate the Contract shall not prejudice any other rights of KRA, under the Contract or otherwise.

21.7 Termination by the Contractor for Cause

The Contractor shall be entitled to terminate the Contract if:

a) In accordance with Sub-Clause 21.3 [Failure to Cure], if the Contractors the Defaulting Party referred to in that Sub-Clause,

b) KRA fails to pay any part of the Contractor' Remuneration within 56 days of it falling due

c) KRA substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the ability of the Contractor to perform the Contract,

d) KRA fails to comply with Sub-Clause 3.1 [Assignment], or

e) KRA becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his credit Services Requirements, or carries on business under a receiver, trustee or manager for the benefit of his credit Services Requirements, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

21.8 Payment on Termination by KRA for Convenience

21.8.1 Upon termination of this Contract pursuant to Sub-Clause 21.5 [Termination by KRA for Convenience] KRA shall make the following payments to the Contractor:

a. Any portion of the Remuneration payable to the Contractor for Services satisfactory Services Requirements performed or Performance Target achieved prior to the Termination of the Contract;

b. the Costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor's Personnel and its Subcontractor's personnel;

c. any amounts required to be paid by the Contractor to its Subcontractor in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

d. the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination]; and

e. the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.8 [Payment on Termination by KRA for Convenience].

f. The only payments to be made to the Contractor on termination by KRA pursuant to Sub-Clause

g. [Termination by KRA for Convenience] are those set out in this Sub-Clause 21.8. The Contractor shall not make any other claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract**.**

21.9 Payment on Termination by KRA for Cause

Upon termination of this Contract pursuant to Sub-Clause 21.6 [Termination by KRA for Cause], KRA shall make the following payments to the Contractor:

a) Any portion of the Remuneration payable to the Contractor for Services satisfactory Services Requirements performed or Performance Target achieved prior to the Termination of the Contract and

b) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination]. The only payments to be made to the Contractor on termination by KRA pursuant to Sub-Clause 21.6 [Termination by KRA for Cause] are those set out in this Sub-Clause 21.9. The Contractor shall not make another claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract**.**

21.10 Payment on Termination by the Contractor for Cause

Upon termination of this Contract pursuant to Sub-Clause 21.7 [Termination by the Contractor for Cause] KRA shall make the following payments to the Contractor:

a) Any portion of the Remuneration payable to the Contractor for Services satisfactory Services Requirements performed or Performance Target achieved prior to the Termination of the Contract;

b) The Costs reasonably incurred by the Contractor in the removal of the Contractor' Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor' Personnel and its Subcontractor's personnel;

c) Any amounts required to be paid by the Contractor to its Subcontractor in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination];

e) the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.8 [Payment on Termination by KRA for Convenience]; and

f) a payment in compensation for lost profits under the contract, which shall be either:

   i) the amount for Liquidated Damages on Termination for Procuring Entity Convenience **specified in the SCC**, or if no such amount is specified,

   ii) the amount of profit the Contractor would be expected to lose as a result of early termination of the contract. The Contractor shall submit an estimate of this amount. KRA shall either pay this amount, or submit it to dispute resolution under Sub-Clause 20.1 [Dispute Resolution].

g) The only payments to be made to the Contractor on termination by KRA pursuant to Sub- Clause 21.7 [Termination by the Contractor for Cause] are those set out in this Sub-Clause 21.10. The Contractor shall not make another claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract**.**

21.11 Payment on Termination for Prolonged Force Majeure

Upon termination of this Contract pursuant to Sub-Clause 17.6 [Optional Termination, Payment and Release] KRA shall make the following payments to the Contractor:

a) Any portion of the Remuneration payable to the Contractor for Services satisfactory Services Requirements performed or Performance Target achieved prior to the Termination of the Contract

b) the Costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor's Personnel and its Subcontractor's personnel;

c) any amounts required to be paid by the Contractor to its Subcontractor in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination].

e) The reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.11 [Payment on Termination for Prolonged Force Majeure].

21.12 Actions on Termination

In all cases of Termination, the Contractor shall promptly:

a) Cease all further work, except for such work as KRA may specify in the notice of termination for the sole purpose of protecting the Facilities, or handing the over for safe and un interrupted operation by KRA or another party, including co-operating with KRA in such manner as KRA reasonably requires to ensure that the Services provided by the Contractor can be provided by another service provider or by KRA itself.

b) Leave the Facilities

c) Deliver to KRA all records related to the Contract and Services

d) Deliver all documents, know-how, information technology software and other intellectual property required for the provision of the Services and management of the Utility which were required to be left with KRA or Utility at the Termination of the Contract under Clauses 6 [Know-How Transfer and Training] and 15 [Intellectual and Industrial Property Rights].

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

The following **Special Conditions of Contract** shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

SCC Clause	Conditions	INSERT CONDITION
1.1.2(j)	Procuring Entity	Kenya Revenue Authority
1.1.2(f) & 1.3 (b)	Address:	P.O. BOX 48240-00100 TEL: +254 02 281 7022
2.1(f)	Other effectiveness conditions	N/A
1.1.2(p)	Utility's Name	N/A
1.3(a)	Electronic transmission systems	***Submission of bids shall be submitted physically in the Tender Box on ground Floor, Times Tower*** The Bidders to note that the **submission of TECHNICAL AND FINANCIAL** proposal shall be submitted in separate envelopes each marked "Technical Proposal" and "Financial Proposal", clearly marked with the Tender Reference.
2.1(f)	Additional Conditions of Effectiveness	N/A
2.3	**Period of the contract**	**36 months or (Three) 3yrs**
3.5	Contractor's responsibility for the acts or defaults of its Subcontractor	The contractor shall be responsible for the acts of the subcontractor.
3.8	Compliance with Laws	The contractor must apply to the laws of Kenya
8.6	Categories of staff that must be hired locally if and to the extent that a sufficient number of appropriately qualified staff is locally available	As specified in the tender evaluation Criteria
11.2	Period within which the Procuring Entity should make a decision on Contractor's management advice	N/A
15.4	Procuring Entity's intention to publish the Contract and Performance Targets	This shall be included in the contract.
16.1	Maximum total liability of the Contractor to the Procuring Entity	N/A
16.3	Performance Security	A performance security of 5% of the contract value shall apply

lSCC Clause	lConditions	lINSERT CONDITION
20.1.2	List of Procuring Entity-proposed potential Independent Experts	N/A
20.1.2	Date by which KRA shall respond to Contractor's counter proposal (if any)	N/A
20.1.2	Appointing entity or official in case of disagreement between the Parties	N/A
20.1.3	Currency for payment of the Independent Expert	Kenya Shillings
20.1.4 (a) (i)	International Arbitration Institution	*N/A*

I **20.1.4 (a) (ii)**

21.10 (f) (i)	Amount of Liquidated Damages on Termination for Procuring Entity Convenience	This shall be included in the contract.

SECTION VIII - CONTRACT FORMS

1. NOTIFICATION OF INTENTION TO AWARD

**[*This Notification of Intention to Award shall be sent to each Tenderer whose Financial Proposal was opened.*

Send this Notification to the authorized representative of the Tenderer].

For the attention of Tenderer's authorized representative

Name: .....*[insert authorized representative's name]*

Address: .....*[insert authorized representative's address]*

Telephone numbers: ..... *[insert authorized representative's telephone/fax*

numbers] Email Address: .....*[insert authorized representative's email address]*

[IMPORTANT: insert the date that this Notification is transmitted to all Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

DATE OF TRANSMISSION: This Notification is sent by: [*email*] on [*date*] (local time)
Notification of Intention to Award

Procuring Entity: .....*[insert the name of KRA]*

Contract title:..... *[insert the name of the contract]*

ITT No:..... *[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

a) Request a debriefing in relation to the evaluation of your Tender, and/or

b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

a. The successful Tenderer
Name:.....*[insert name of successful Tenderer]*
Address:.....*[insert address of the successful Tenderer]*

Contract price:.....*[insert contract price of the successful*

Tenderer]

b. Tenderers [INSTRUCTIONS: insert names of all Tenderers. As applicable, insert prices, technical scores and combined scores. Where the selection method requires it, state the price offered by each Tenderer as read out, and as evaluated. Include over all technical scores and scores assigned for each criterion and sub-criterion.]

1	Name of Tenderer	Technical scores	Financial Proposal price	Evaluated Financial Proposal Cost	Combined score and ranking (if applicable)	
2						
3						
4						
5						
6						

c. Reason/s why your Tender was unsuccessful [*Delete if the combined score already reveals the reason*]
[INSTRUCTIONS; State the reason/s why this Tenderer's Tender was unsuccessful. Do NOT include: (a) a point by point comparison with another Tenderer's Tender or (b) information that is marked confidential by the Tenderer in its Tender.]

d. How to request a debriefing ***[This applies only if your Tender was unsuccessful as stated under point (3) above]*** DEADLINE: The deadline to request a debriefing expires at midnight on *[insert date]* (local time).

You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the invitation to debriefing as follows:

Attention: .....*[insert full name of person, if applicable]*

Title/position: .....*[insert title/position]*

Agency: .....*[insert name of Procuring Entity]*

Email address: .....*[insert email address]*

If your invitation to a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and contend the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

e. How to make a complaint

DEADLINE: The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, [*insert date*] (local time).

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

Attention: .....*[insert full name of person, if applicable]*

Title/position: .....*[insert title/position]*

Agency: .....*[insert name of Procuring Entity]*

Email address:.....*[insert email address]*

[At this point in the procurement process] [Upon receipt of this notification] you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

<u>Further information:</u>

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who has submitted a Tender in this selection process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the deadline stated above.
4. You must include, in your complaint, all of the information required.

f. Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on ..... *[insert date]* (local time).

The Standstill Period lasts fourteen (14) Days after the date of transmission of this Notification of Intention to Award. The Standstill Period may be extended. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens we will notify you of the extension.

If you have any questions regarding this Notification please do not hesitate to contact

us. On behalf of..... *[insert the name of KRA]:*

Signature:_____

Name:_____

Title/position:_____

_____

Telephone:_____

Email:_____

Date_____

2. NOTIFICATION OF AWARD

Form of Acceptance

[Form head paper of KRA]

.....*[date]*

To:.....*[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Particular Conditions of Contract]* for the Contractor's Remuneration of the equivalent of *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section X, Annex to the Particular Conditions
- Contract Forms, of the Tendering Document

Authorized Signature: ..... Name and

Title of Signal Services Requirements: ..... Name of Agency:

.....

Attachment: Contract Agreement

3. Contract Agreement

THIS AGREEMENT made the_____day of_____,_____, between _____of _____ (herein after "the Procuring Entity"), of the one part, and_____of_____(herein after "the Contractor"), of the other part:

WHEREAS KRA desires that the Services known as_____should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Management Services and the remedying of any defects therein, KRA and the Contractor agree as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail overall other Contract documents.

   a) The addenda Nos._____(if any)

   b) The Form of Acceptance

   c) The Special Conditions of Contract

   d) The General Conditions of Contract;

   e) The Schedules of Services Requirements,

   f) The Form of Tender

3. In consideration of the payments to be made by KRA to the Contractors indicated in this Agreement, the Contractor hereby covenants with KRA to execute the Services therein in conformity in all respects with the provisions of the Contract.

4. KRA hereby covenants to pay the Contractor in consideration of the execution and completion of the Services, the Contractor Remuneration or such other sum as may be come payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____On the day, month and year indicated above.

Signed by_____(for KRA) Signed by

_____(for the Contractor)

Signed by_____(Contractor's Parent Company)

[This last signature line to be added when the Successful Tenderer is required to incorporate in Kenya, pursuant to ITT45.3, and a Parent Company Guarantee is not required in the corresponding TDS]

4. Performance Security – Option 1: (Bank Guarantee)

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated][Guarantee Services Requirements Form head or SWIFT identifier code]

Beneficiary:_____*[insert name and Address of Procuring*

Entity] **Date:**_____*[Insert date of issue]*

PERFORMANCE GUARANTEE No.:_____*[Insert guarantee reference number]*

Guarantee Services Requirements: *[Insert name and address of place of issue, unless indicated in the Form*

head]

We have been informed that_____*[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (herein after called "the Applicant") has entered into Contract No. _____*[insert reference number of the contract]* dated _____*[insert date]* with the Beneficiary, for the supply of _____*[insert name of contract and brief description of Management Services]* (herein after called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required. At the request of the Applicant, we as Guarantee Services Requirements, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of.....*[insert amount in figures]* ()*[insert amount]*, [1]such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the….....Day of……,2…[2], and any demand for payment under it must be received by us at this office indicated above on or before that date.

[signature(s)]

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

[1]*The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Form of Acceptance, and denominated either in the currency (ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2]*Insert the date twenty-eight days after the expected completion date. KRA should note that in the event of an extension of this date for completion of The Contract, KRA would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, KRA might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written invitation to such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

5. Performance Security- Option 2: Performance Bond

By this Bond_____as Principal (hereinafter called "the Contractor") and_____] as Surety (hereinafter called "the Surety"), are held and severally bound unto_____] as Obligee (herein after called "KRA") in the amount of, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contractor's Remuneration is payable, the Contractor and the Surety bind themselves, their heirs, executive Services Requirements, administrative Services Requirements, successors and assigns, jointly and severally bound by these presents.

WHEREAS the Contractor has entered into a written Agreement with KRA dated the_____ day of_____, 20_____, for_____*[name of contract and brief description of Management Services]* _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by KRA to be, in default under the Contract, KRA having performed KRA's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

(1) Complete the Contract in accordance with its terms and conditions; or

(2) obtain a Tender or tenders from qualified Tenderers for submission to KRA for completing the Contract in accordance with its terms and conditions, and upon determination by KRA and the Surety of the lowest responsive Tenderer, arrange for a Contract between such Tenderer and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contractor Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contractor's Remuneration; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contractor's Remuneration," as used in this paragraph, shall mean the total amount payable y Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor ;or

(3) pay KRA the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Handback Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than KRA named herein or the heirs, executive Services Requirements, administrative Services Requirements, successors, and assigns of KRA.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____Day of_____20_____.

SIGNED ON_____on behalf of

By_____in the capacity of

In the presence of

SIGNED ON_____on behalf of

By_____in the capacity

of In the presence of

6. Advance Payment Security *[Guarantee*

Services Requirements Form head or SWIFT identifier code] **Beneficiary:**

.....*[Insert name and Address of Procuring Entity]* **Date:**

.....*[Insert date of issue]* **ADVANCE PAYMENT**

GUARANTEE No.:.....*[Insert guarantee reference number]*

Guarantee Services Requirements: .....*[Insert name and address of place of issue, unless indicated in the Form head]*

We have been informed that.....*[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (herein after called "the Applicant") has entered into Contract No.....*[insert reference number of the contract]* dated.....*[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Management Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum_____ _____*[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, here are the Requirements, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____ [*insert amount in figures]* ()*[insert amount in words]*[1]upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

a) Has used the advance payment for purposes other than toward delivery of Management Services; or

b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantee Services Requirements of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number_____. *[insert number]* at_____*[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, has been certified for payment, or on the_*[insert day]* day of _____*[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

_____

[signature(s)]

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