



**TENDER NO: KRA/HQS/RFP/013/2025-2026**  
**SPECIALLY PERMITTED PROCUREMENT (SPPP)**

**REQUEST FOR PROPOSALS**

**FOR**  
**DESIGN, SUPPLY, INSTALLATION, COMMISSIONING,**  
**MAINTENANCE AND SUPPORT OF A COMPREHENSIVE**  
**TECHNOLOGY PLATFORM FOR KENYA REVENUE**  
**AUTHORITY(KRA)**

**LOT 1: DESIGN, SUPPLY, INSTALLATION, COMMISSIONING, SUPPORT &**  
**MAINTAINANCE OF INTEGRATED ENTERPRISE INFRASTRUCTURE,**  
**INFORMATION SECURITY AND REVENUE MANAGEMENT PLATFORM**

**LOT 2: DESIGN, SUPPLY, DELIVERY, INSTALLATION, COMMISSIONING,**  
**MAINTENANCE AND SUPPORT OF ENHANCED NON-INTRUSIVE**  
**INSPECTION (NII), UNMANNED AERIAL VEHICLE (UAV) – DRONES AND**  
**MARINE PATROL BOATS**

**LOT 3: PROVISION OF CONSULTANCY SERVICES FOR PROJECT**  
**MANAGEMENT, BUSINESS PROCESS RE-ENGINEERING, CHANGE**  
**MANAGEMENT AND STAKEHOLDER MANAGEMENT FOR KENYA REVENUE**  
**AUTHORITY**

**TENDER PREBID 27<sup>TH</sup> JANUARY, 2026 AT 11.00 AM**

**PREBID LINK**

**TENDER CLOSING/OPENING DATE 17<sup>TH</sup> FEBRUARY, 2026**

**AT 11.00AM**

**TIMES TOWER BUILDING**

**P.O. BOX 48240 – 00100, NAIROBI**

**TEL: +254 02 310900**

**EMAIL: [eprocurement@kra.go.ke](mailto:eprocurement@kra.go.ke)**

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## SECTION 1: LETTER OF REQUEST FOR PROPOSAL (RFP)

**Reference No.: RFP No. KRA/HQS/RFP-013/2025-2026**

**Name of Assignment: Design, Supply, Installation, Commissioning, Maintenance and Support of a Comprehensive Technology Platform for Kenya Revenue Authority (KRA)**

To: **Commissioner General,  
Kenya Revenue Authority  
Times Tower, Building,  
P.O BOX 48240-00100 GPO.**

### **All eligible prospective bidders**

1. The Kenya Revenue Authority (KRA) intends to engage strategic partners for the provision of Goods and services as categorized in the following LOTs:
  - i. **LOT 1: Design, Supply, Installation, Commissioning, Support & Maintenance of an Integrated Enterprise Infrastructure, Information Security and Revenue Management Platform for Kenya Revenue (KRA).**
  - ii. **LOT 2: Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII), Unmanned Aerial Vehicle (UAV) – Drones and Marine Patrol Boats**
  - iii. **LOT 3: Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority**
2. KRA now invites proposals for the three (3) LOTs from prospective bidders who wish to participate in the tender process. More details on the Terms of Reference are provided in ***Section 5 Terms of Reference*** of this RFP document.
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](http://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. This Request for Proposal (RFP) is to eligible firms/consortiums who meet the qualification criteria set in the RFP. It is not permissible to transfer this RFP to any other firm.
5. Bidders are allowed to submit a proposal for **only one (1) LOT**
6. If the Bidder is a Joint Venture (JV), the full name of the JV shall be used and all members, starting with the name of the lead member. Where sub-contractor has been proposed, they shall be named. The maximum number of JV members shall be specified in the Data Sheet (DS).
7. 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, 21<sup>ST</sup> Floor, P.O Box 48240– 00100 GPO, Tel. +254 020 2817022 Nairobi, Kenya. website: [www.kra.go.ke](http://www.kra.go.ke) Email :[eprocurement@kra.go.ke](mailto:eprocurement@kra.go.ke)
8. The bidder(s) will be selected under the **Specially Permitted Procurement Procedure- Quality and Cost Based Selection (QCBS) Method** and in a format as described in this RFP, in accordance with the Public Procurement and Asset

Disposal Act 2015 (Laws of the Republic of Kenya) and its attendant Regulations, a copy of which is found at the following website: [www.ppra.go.ke](http://www.ppra.go.ke).

9. The Procuring Entity hereby confirms that |:
  - a. This procurement has been duly included in its approved annual procurement plan;
  - b. a written justification for the use of the Specially Permitted Procurement Procedure- has been duly provided to the National Treasury by the Procuring Entity's accounting officer;
  - c. This RFP, the proposed procurement procedure and the written justification for the use of the Specially Permitted Procurement Procedure- have been duly approved by the Cabinet Secretary to the National Treasury in accordance with section 114A of the PPADA and the stepwise procedure for Specially Permitted Procurement method for this procurement has been included in the relevant register maintained by the National Treasury and has been duly notified to the Public Procurement Regulatory Authority in accordance with Regulation 107 (3) of the Public Procurement and Asset Disposal Regulations, 2020.
10. The following items are in this RFP:
  - Section 1:** Letter of Request for Proposals
  - Section 2:** Instructions to Bidders and Data Sheet Section
  - Section 3:** Technical Proposal Standard Forms Section
  - Section 4:** Financial Proposal Standard Forms Section
  - Section 5:** Terms of Reference
  - Section 6:** Standard Forms of Contract
  - Section 7:** General Conditions of Contract
  - Section 8:** Special Conditions of Contract
  - Section 9:** Annexures
11. Please inform us by **27<sup>th</sup> January, 2026**, in writing at the address below or by e-mail to **[eprocurement@kra.go.ke](mailto:eprocurement@kra.go.ke)**
  - a. That you are interested in this Request for Proposals; and
  - b. Whether you intend to submit a proposal alone or intend to enhance your experience by associating with other firm(s) (if permissible under Section 2, Instructions to Bidders (ITC), Data Sheet 14.1(i)).
12. The tenderer shall chronologically serialize all pages of the tender documents submitted.
13. Submission should strictly be done via the KRA E-Procurement Portal. Bidders to note that system bid submission issues shall not be addressed within 24 hours to the tender opening date and time.
14. Bids will be opened electronically promptly after closing time and Bidders or their representatives are welcome to witness the opening at Times Tower Building. Details on the proposal's submission date, time and address are provided in the ITC 18.5 of the Data Sheet.
15. Bidders are required to submit a bid security for each LOT as follows;
  - LOT 1 Fifty- Million Kenya Shillings (50,000,000),**
  - LOT 2 Twenty- Million Kenya Shillings (20,000,000),**
  - LOT 3 Ten Million Kenya Shillings (10,000,000).**An original hard copy of the amount specified under each LOT or equivalent amount in the form of Bank Guarantee, Bankers Cheque from financial institutions approved by Insurance Regulatory Authority (IRA) and in a freely convertible currency valid for **Three hundred and sixty-five (365) days** from the date of tender closing / opening.

In case of submission of a digital tender security, the issuer must provide a verifiable mechanism to authenticate the security, such as a QR code or an online verification portal. The Tender Security should be submitted in the ERP SRM portal under notes and attachments.

16. Presentation of the proposal should be in a logical/sequential manner indicated in the table of content per LOT and the related solutions/initiatives.
17. and page numbers and serialization of the tender document i.e. 1,2, 3...
18. Late tenders will be rejected
19. Any canvassing or giving of false information will lead to automatic disqualification.

Yours sincerely,

**COMMISSIONER GENERAL  
KENYA REVENUE AUTHORITY**

## **SECTION 2 (A) INSTRUCTIONS TO BIDDERS (ITC)**

### **A. General Provisions**

#### **1. Meanings/ Definitions**

- a. “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the bidder.
- b. “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- c. “Procuring Entity” means the entity that is carrying out the bidder selection process and signs the Contract for the Works with the selected bidder.
- d. “Bidder” means a legally established professional firm or an entity that may provide or provides the Works to the Procuring Entity under the Contract.
- e. “Contract” means a legally binding written agreement signed between the Procuring Entity and the Bidder and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- f. “Data Sheet” means an integral part of the Instructions to Bidders (ITC) Section-2 that is used to reflect specific assignment conditions to supplement, but not to over- write, the provisions of the ITC.
- g. “Day” means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- h. “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Bidder, Sub-Contractor or Joint Venture member(s).
- i. “Government” means the Government of the Republic of Kenya.
- j. “In writing” means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the Procuring Entity with proof of receipt.
- k. “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Bidder where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l. “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Works under the Contract and whose CV is considered in the technical evaluation of the Bidder's proposal.
- m. “ITC” (this Section2 of the RFP) means the Instructions to Bidders that provides the Bidders with all information needed to prepare their Proposals.
- n. “Letter of RFP” means the letter of invitation being sent by the Procuring Entity to the Bidder
- o. “KRA” stands for the Kenya Revenue Authority.
- p. “Non-Key Expert(s)” means an individual professional provided by the Bidder or its Sub-Bidder and who is assigned to perform the Works or any part thereof under the Contract and whose CVs are not evaluated individually.
- q. “Proposal” means the Technical Proposal and the Financial Proposal of the Bidder.
- r. “Public Procurement Regulatory Authority (PPRA)” means the statutory



authority of the Government of Kenya that mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.

- s. “RFP” means the Request for Proposals to be prepared by the Procuring Entity for the selection of Bidders.
- t. “Works” means the work to be performed by the bidder pursuant to the Contract.
- u. “Sub-contractor” means an entity to whom the Bidder intends to subcontract any part of the Works while the Bidder remains responsible to the Procuring Entity during the whole performance of the Contract.
- v. “Terms of Reference (TORs)” means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Bidder, and expected results and deliverables of the assignment.

## **2. Introduction**

- 2.1 The Procuring Entity named in the Data Sheet intends to select a bidder from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the Data Sheet.
- 2.2 The Bidder is invited to submit a Technical Proposal and a Financial Proposal, for the Provision of Design and Implementation Of Comprehensive ICT Enterprise Architecture For Kenya Revenue Authority as mentioned in the Data Sheet. The Proposal will be the basis for negotiating and ultimately signing the Contract with the Bidder.
- 2.3 The Bidders should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including adherence to the requirements specified in Section 51 (7) of the Public Procurement and Asset Disposal Act 2015 (Revised 2022) and attending a pre-proposal conference if one is specified in the Data Sheet. Attending any such pre-proposal conference is optional and is at the Bidders' expense.
- 2.4 The Procuring Entity will timely provide, at no cost to the Bidders, the inputs, relevant project data, and reports required for the preparation of the Bidder's Proposal as specified in the Data Sheet.

## **3. Conflict of Interest**

- 3.1 The Bidder is required to provide professional, objective, and impartial advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.
- 3.2 The Bidder has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its capacity to serve the best interest of the Procuring Entity. Failure to disclose such situations may lead to the disqualification of the Bidder or the termination of its Contract.
- 3.3 Without limitation on the generality of the foregoing, and unless stated otherwise in the Data Sheet, the Bidders shall not be hired under the circumstances set forth below:

### **(i) Conflicting Activities**

Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Procuring Entity to provide goods, works, or non-consulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide

consulting services for the preparation or implementation of a project, or any of its Affiliates, shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

**(ii)Conflicting Assignments**

Conflict among consulting assignments: A Bidder (including its Experts and Sub-contractors) or any of its Affiliates shall not be hired for any assignment that, by its nature, may conflict with another assignment of the Bidder for the same or for another Procuring Entity.

**(iii)Conflicting Relationships**

Relationship with the Procuring Entity's staff: a Bidder (including its Experts and Sub-contractors) that has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and: (i) are directly or indirectly involved in the preparation of the Terms of Reference for the assignment,(ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from such relationship has been resolved in a manner that determines there is no conflict to affect this selection process.

**(iv)Others**

Any other types of conflicting relationships as indicated in the Data Sheet.

#### **4. Unfair Competitive Advantage**

- 4.1 Fairness and transparency in the selection process require that the Bidders or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided services related to the assignment in question. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all Bidders together with this RFP all information that would in that respect give such bidder any unfair competitive advantage over competing bidders.

#### **5. Corrupt and Fraudulent Practices**

- 5.1 Bidder firms or any of its members shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Bidder 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.
- 5.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any Bidder found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Bidders shall be required to complete and sign the "Certificate of Independent Proposal Determination" annexed to the Proposal Form.
- 5.3 In further pursuance of this policy, Bidders shall permit and shall cause their agents (where declared or not), Sub-contractors, service providers, suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

#### **6. Eligibility**

- 6.1 In selection of Bidders, short-listing shall be composed of firms who belong to the same line of business and who are of similar capability.

- 6.2 Unless otherwise specified in the Data Sheet, the Procuring Entity permits Bidders including proposed experts, joint ventures from all countries and categories to offer consulting services. The maximum number of members so far JV shall be specified in the TDS.
- 6.3 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 bidder 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](http://www.cak.go.ke)
- 6.4 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 6.5 It is the Bidder's responsibility to ensure that it's Experts, joint venture members, Sub-contractors, agents (declared or not), service providers, suppliers and/or their employees meet the eligibility requirements.
- 6.6 As an exception to the foregoing ITC 6.1 and 6.2 above:
- (a) Sanctions — A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA [www.ppra.go.ke](http://www.ppra.go.ke).
- (b) Prohibitions — Firms and individuals of a country or goods in a country may be ineligible if:
- i. As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
  - ii. 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, Kenya prohibits any import of goods or services from that country or any payments to any country, person, or entity in that country.
- (c) Restrictions for Government-owned Enterprises — Government-owned enterprises or institutions in Kenya shall be eligible only if they can establish that they:
- i. Are legally and financially autonomous
  - ii. Operate under commercial law, and
  - iii. That they are not dependent agencies of the Procuring Entity.
  - iv. Restrictions for public employees — Government officials and civil servants and employees of public institutions shall not be hired for consulting contracts.
- 6.7 Margin of Preference and Reservations — no margin of preference shall be allowed in the selection of bidders. Reservations may however be allowed 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 the authority to be specified in the Data Sheets. A procuring entity shall ensure that the invitation to submit proposals specifically includes only businesses or firms belonging to one group.

## **B. Preparation of Proposals**

### **7. General Considerations**

7.1 In preparing the Proposal, the Bidder is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

### **8. Cost of Preparation of Proposal**

8.1 The Bidder shall bear all costs associated with the preparation and submission of its Proposal, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Procuring Entity is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to Contract award, without there by incurring any liability to the Bidder.

### **9. Language**

9.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Bidder and the Procuring Entity shall be written in the English language.

### **10. Documents Comprising the Proposal**

10.1 The Proposal shall comprise the documents and forms listed in the Data Sheet.

10.2 The Bidder shall declare in the Financial Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti- competitive practices including bid rigging.

10.3 The Bidder shall furnish information on commissions, gratuities and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution, as requested in the Financial Proposal Submission Form.

### **11. Only One Proposal**

11.1 The Bidder (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Bidder, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected.

11.2 Members of a joint venture may not also make an individual Proposal, be a subcontractor in a separate proposal or be part of another joint venture for the purposes of the same Contract.

11.3 Should a Joint Venture subsequently win the Contract; it shall consider whether an application for exemption from the Competition Authority of Kenya is merited pursuant to Section 25 of the Competition Act 2010.

### **12. Proposal Validity**

(a) Proposal Validity Period

12.1 The Data Sheet indicates the period during which the Bidder's Proposal must remain valid after the Proposal submission deadline.

12.2 During this period, the Bidder shall maintain its original Proposal without any change, including the availability of key personnel, subject matter experts, IT hardware, IT infrastructure or software solution and the total price.

12.3 If it is established that any Key Personal or Organization proposed in the bidder's proposal to execute the solution was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with ITC

5.

#### (b)Extension of Validity Period

12.4 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Bidders who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

12.5 If the Bidder agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of all the components of the solution except as provided in ITC 12.7.

12.6 The Bidder has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

12.7 If any of the solution module or human resource for implementation become unavailable for the extended validity period, the Bidder shall provide a written adequate justification and evidence satisfactory to the Procuring Entity together with the substitution request. In such case, a replacement shall have equal or better than the originally proposed component of the solution. The technical evaluations core, however, will remain to be based on the evaluation of the specifications provided in this document.

12.8 If the Bidder fails to provide a substitute items with equal or better specifications, or if the provided reasons for the replacement or justification are unacceptable to the Procuring Entity, such Proposal will be rejected.

#### (d)Sub-Contracting

12.9 The Bidder reserves the right to subcontract the whole or part of the Works to third party entities for execution of the project described in this proposal and in compliance with the provisions of Section 149 of the Public Procurement and Disposal Act , 2015 ( Revised 2022)

### **13. Clarification and Amendment of RFP**

13.1 The Bidder may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the Data Sheet. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all Bidders. Should the Procuring Entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:

13.2 At any time before the proposal submission deadline, the Procuring Entity may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Bidders and will be binding on them. The Bidders shall acknowledge receipt of all amendments in writing.

13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Bidders reasonable time to take an amendment in to account in their Proposals.

13.4 The Bidder may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

### **14. Preparation of Proposals – Specific Considerations**

14.1 While preparing the Proposal, the Bidder must give particular attention to the following:

(i) If a Bidder considers that it may enhance its capacity to supply for the assignment by associating with other bidders in the form of a Joint Venture or as Sub- contractors, it may



do so long as only one Proposal is submitted, in accordance with ITC 11. Above. A Bidder cannot associate with any other shortlisted Bidder(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-contractor, the shortlisted/invited Bidder shall be a lead member. If shortlisted/invited Bidder associates with each other, any of them can be a lead member.

(ii)The Procuring Entity may indicate in the Data Sheet the estimated amount and specifications of items, or the Procuring Entity's estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the Bidder's own estimates for the same. This clause shall not apply when using Fixed Budget selection method.

(iii)For assignments under the Fixed-Budget selection method, the estimated cost of items will not be disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the Data Sheet, and the Financial Proposal shall not exceed this budget.

## **15. Technical Proposal Format and Content**

15.1The Technical Proposal shall be prepared using the Standard Forms provided in SECTION 3 of the RFP and shall comprise the documents listed in the Data Sheet under ITC 10.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non- responsive.

## **16. Financial Proposal**

16.1The Financial Proposal shall be prepared using the Standard Forms provided in SECTION 4 of the RFP. It shall list all costs associated with the assignment, including (a) Cost of Licenses, (b) Cost of Human Resource required to customize, implement and maintain the proposed solutions, (c) Taxes, Price escalations as mentioned in the Data Sheet.(d) Cost of Data warehousing , internet connectivity and any other cost associated with and implementation and operation of the solution proposed by the bidder Irrespective of the bidder's selection method, any bidder that does not submit itemized and priced financial proposal, or merely refers the Procuring Entity to other legal instruments for the applicable fees shall be considered non-responsive.

(a)Price Adjustment

16.2For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates apply if so, stated in the Data Sheet.

(b)Taxes

16.3The Bidder is responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the Data Sheet. Information on taxes in Kenya is provided in the Data Sheet.

(c)Currency of Proposal

16.4The Bidder may express the price for its Works in the currency or currencies as stated in the Data Sheet. If indicated in the Data Sheet, the portion of the price representing local cost shall be stated in Kenya Shillings.

(d)Currency of Payment

16.5Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

## **C. Submission, Opening and Evaluation**

### **17. Submission, Sealing, and Marking of Proposals**

17.1The Bidder shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITC 10 (Documents Comprising Proposal). Bidders shall mark as "CONFIDENTIAL" information in their Proposals which is confidential to their business.

This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the Data Sheet, the Bidder has the option of submitting its Proposals electronically.

17.2 An authorized representative of the Bidder shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposals and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.

17.3 A Proposal submitted by a Joint Venture/consortium shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.

17.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.

17.5 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

## **18. Sealing and Marking of Proposals**

18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and reference number of the assignment, addressed to the Procuring Entity and a warning "**DO NOT OPEN BEFORE the Specified Date and Time**". Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:

18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall be closed and shall be addressed as follows:

(i) in an envelope or package or container marked "ORIGINAL", all documents comprising the Technical Proposal, as described in ITC 11;

(ii) in an envelope or package or container marked "COPIES", all required copies of the Technical Proposal;

(iii) in an envelope or package or container marked "ORIGINAL", all required copies of the Financial Proposal; and

18.3 The inner envelopes or packages or containers shall:

(i) Bear the name and address of the Procuring Entity.

(ii) Bear the name and address of the Firm; and

(iii) Bear the name and Reference number of the Assignment.

18.4 If an envelope or package or container is not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the proposal. Proposals that are misplaced or opened prematurely will not be accepted.

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

## **19. Confidentiality**

19.1 From the time the Proposals are opened to the time the Contract is awarded, the Bidder should not contact the Procuring Entity on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award

recommendations shall not be disclosed to the Bidders who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

19.2 Any attempt by Bidders or any one on behalf of the Bidder to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.

19.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Bidder wishes to contact the Procuring Entity on any matter related to the selection process, it should do so only in writing.

## **20. Opening of Technical Proposals**

20.1 The Procuring Entity's opening committee shall conduct the opening of the Technical Proposals in the presence of the Bidders' authorized representatives who choose to attend (in person, or online if this option is offered in the Data Sheet). The opening date, time and the address are stated in the Data Sheet. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored by the Procuring Entity or with a reputable public auditor or independent authority until they are opened in accordance with ITC 20.2.

20.2 At the opening of the Technical Proposals the following shall be read out:

- (i) the name and the country of the Bidder or, in case of a Joint Venture/consortium, the name of the Joint Venture, the name of the lead member and the names and the countries of all members;
- (ii) the presence or absence of a duly sealed envelope with the Financial Proposal;
- (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and
- (iv) any other information deemed appropriate or as indicated in the Data Sheet.

## **21. Proposals Evaluation**

21.1 Subject to provision of ITC 20.1, the evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after the Procuring Entity notifies all the Bidders in accordance with ITC 31.1.

21.2 The Bidder is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC 12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

## **22. Evaluation of Technical Proposals**

22.1 The Procuring Entity's evaluation committee shall evaluate the Technical Proposals that have passed the eligibility and mandatory criteria, on the basis of their responsiveness to the Terms of Reference and the RFP. The eligibility and mandatory criteria shall include the following, advisory but binding circulars by the Public Procurement and Administrative review Board and any other that may include in the Data sheet. (ALIGN AS PER FORM TECH 7)

- (a) Certificate of Registration/Incorporation
- (b) Valid Tax Compliance certificate
- (c) Duly filled and stamped confidential business questionnaire
- (d) The Bidder is not insolvent, in receivership, bankrupt or in the process of being wound up.



(e)The Bidder has not proposed employing public officials, civil servants and employees of public institutions.

(f)The Bidder, its subcontractors and experts have no conflicts of interest.

22.2 Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the Data Sheet.

### **23. Public Opening of Financial Proposals**

#### **23.1 Unsuccessful Proposals**

After the technical evaluation is completed, the Procuring Entity shall notify those bidders whose proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score, advising them the following:

(i)their Proposal was not responsive to the RFP and TOR or did not meet the minimum qualifying technical score;

(ii)provide information relating to the bidder's overall technical score, as well as scores obtained for each criterion and sub-criterion;

(iii)their Financial Proposals will be returned unopened after completing the selection process and Contract signing; and

(iv)notify them of the date, time and location of the public opening of the Financial Proposals and invite them to attend.

#### **23.2 Financial Proposals for QBS, CQS and SSS**

Following the ranking of the Technical Proposals, when the selection is based on QBS or CQS, the top-ranked bidder is invited to negotiate the Contract. Only the Financial Proposal of the technically top-ranked bidder is opened by the opening committee. All other Financial Proposals shall be returned unopened after the Contract negotiations are successfully concluded and the Contract is signed with the successful bidder.

When the selection is based on the SSS method and if the invited bidder meets the minimum technical score required passing, the financial proposal shall be opened and the bidder invited to negotiate the contract.

#### **23.3 Financial Proposals for QCBS, FBS, LCS**

Following the ranking of the Technical Proposals, and after internal approvals, the Procuring Entity shall simultaneously notify in writing those bidders whose proposals were considered responsive to the RFP and TOR, and that have achieved the minimum qualifying technical score, advising them the following:

(i) their Proposal was responsive to the RFP and TOR and met the minimum qualifying technical score;

(ii) provide information relating to the bidder's overall technical score, as well as scores obtained for each criterion and sub-criterion;

(iii) their Financial Proposal will be opened at the public opening of Financial Proposals; and

(iv) notify them of the date, time and location of the public opening and invite them for the opening of the Financial Proposals.

### **24. Opening of Financial Proposals**

24.1The opening date should allow the bidders sufficient time to decide for attending the opening and shall be no less than five (5)Business Days from the date of notification of the results of the technical evaluation, described in ITC 22.1and 22.2.

24.2 The Bidder's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the Data Sheet) is optional and is at the Bidder's choice.

24.3 The Financial Proposals shall be opened publicly by the Procuring Entity's opening committee in the presence of the representatives of the bidders and anyone else who chooses to attend. Any interested party who wishes to attend this public opening should contact the Procuring Entity as indicated in the Data Sheet. At the opening, the names of the bidders, and the overall technical scores, including the break-down by criterion, shall be read aloud. The Financial Proposals will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copies of the record shall be sent to all bidders who submitted Proposals.

## **25. Correction of Errors**

25.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.

25.2 Time-Based Contracts — If a Time-Based contract form is included in the RFP, in case of discrepancy between (i) a partial amount(sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between figures and words, the latter will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Procuring Entity's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

25.3 Lump-Sum Contracts — If a Lump-Sum contract form is included in the RFP, the Bidder is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per ITC 24 below, specified in the Financial Proposal (Form FIN- 1) shall be considered as the offered price.

## **26. Taxes**

26.1 Subject to ITC 24.2, all taxes are deemed to be included in the Bidder's financial proposal as separate items, and, therefore, considered in the evaluation.

26.2 All local identifiable taxes levied on the contract in voices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and in come and withholding tax payable to Kenya are dealt with in accordance with the instructions in the Data Sheet.

## **27. Conversion to Single Currency**

27.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the Data Sheet.

## **28. Abnormally Low Prices**

28.1 An Abnormally Low Price is one where the financial price, in combination with other constituent elements of the proposal, appears unreasonably low to the extent that the price raises material concerns with the Procuring Entity as to the capability of the Consulting firm to perform the Contract for the offered price.

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

28.3 After evaluation of the price analyses, if the Procuring Entity determines that the firm has failed to demonstrate its capability to perform the contract for the offered price, the Procuring Entity shall reject the firm's proposal.

## **29. Abnormally High Prices**

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

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

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

(ii) If specifications, TOR, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, the Procuring Entity shall reject all proposals and may re-invite for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.

29.3 If the Procuring Entity determines that the Proposal Price is abnormally too high because genuine competition between bidders is compromised (often due to collusion, corruption or other manipulations), the Procuring Entity shall reject all Proposals and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before re-inviting for proposals.

## **30. Combined Quality and Cost Evaluation**

### **(a) Quality and Cost Based Selection (QCBS) Method**

30.1 In the case of Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data Sheet. The bidder that achieves the highest combined technical and financial score will be notified and invited for negotiations.

### **(b) Fixed Budget Selection (FBS) Method**

30.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1.4 of the Data Sheet shall be rejected. The Procuring Entity's evaluation committee will select the bidder with the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP, notify and invite such bidder to negotiate the Contract.

### **(c) Least Cost Selection (LCS) Method**

30.3 In the case of Least-Cost Selection (LCS), the Procuring Entity's evaluation committee will select the bidder whose Proposal is the lowest evaluated total price among those

Proposals that achieve the minimum technical score required to pass, notify the bidder and invite the bidder to negotiate the Contract.

#### **(d) Combined Technical and Evaluation Report**

30.4 The evaluation committee shall prepare a combined technical and financial evaluation report, with specific recommendations for award or otherwise and subject to the required approvals within the Procuring Entity prior to notifications and invitation of bidder for negotiations.

### **31. Notification of Intention to Award**

31.1 The Procuring Entity shall send to each bidder (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful bidder. The Notification of Intention to enter into a Contract/ Notification of Award shall contain, at a minimum, the following information:

- (i) The name and address of the bidder with whom the Procuring Entity successfully negotiated a contract;
- (ii) the contract price of the successful Proposal;
- (iii) a statement of the reasons why the recipient's Proposal was unsuccessful
- (iv) the expiry date of the Standstill Period, and
- (v) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

### **32. Stand still Period**

32.1 The Standstill Period shall be the number of days stated in the Data Sheet. The Standstill Period commences the day after the date the Procuring Entity has transmitted to each bidder (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. The Contract shall not be signed earlier than the expiry of the Standstill Period. This period shall be allowed for aggrieved bidders to lodge an appeal. The procedure for appeal and the authority to determine the appeal or complaint is as indicated in the Data Sheet.

### **33. Negotiations**

33.1 The negotiations will be held at the date and address indicated in the Data Sheet with the bidder's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the bidder.

33.2 The evaluation committee shall prepare minutes of negotiations that are signed by the Accounting Officer and the bidder's authorized representative.

#### **33.3 Availability of all the Resources required to fulfil the proposed solution.**

The invited bidder shall confirm the availability of all the components required for the design and implementation of a comprehensive technology platform as mentioned in Section 5 Terms of Reference included in the proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with ITC 12.7. Failure to confirm the item/items availability may result in the rejection of the bidder's Proposal and the Procuring Entity proceeding to negotiate the Contract with the next-ranked bidder.

33.4 Notwithstanding the above, the substitution of items at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Bidder. In such case, the bidder shall offer a substitute item/item within

the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

### **33.5 Technical negotiations**

The technical negotiations include discussions of the Terms of Reference (TORs), the proposed methodology, the Procuring Entity's inputs, the special conditions of the Contract, and finalizing the "Description of Works" part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, test the quality of the final product, its price, or the relevance of the initial evaluation be affected.

### **33.6 Financial negotiations**

33.7 The financial negotiations include the clarification of the bidder's tax liability in Kenya and how it should be reflected in the Contract. All applicable taxes shall be itemized separately and included in the contract price.

33.8 If the selection method included cost as a factor in the evaluation (that is QCBS, FBS, LCS), the unit rates and the total price stated in the Financial Proposal for a Lump- Sum contract shall not be negotiated.

33.9 Where QBS or CQS methods was used for a Lump-sum Contract as indicated in the RFP, the unit rates negotiations shall not take place, except when the offered items price are much higher than the typically market price. In such case, the Procuring Entity may ask for clarifications and, if the prices are very high, ask to change the rates. The format for (i) providing information on prices in the case of QB Sand CQS; and (ii) clarifying pricing structure under this Clause, is provided in FORM FIN-2: SUMMARY OF COSTS. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked bidder to open its financial proposal and negotiate the contract.

33.10 In the case of a Time-Based contract, negotiation of unit rates shall not take place, except when the total offered price is much higher than the typical market price of the items. In such case, the Procuring Entity may ask for clarifications and, if the prices are very high, ask to change the price. The format for (i) providing information on market prices of individual items in the case of QBS and CQS; and (ii) clarifying item rates under this Clause, is provided FORM FIN-2: SUMMARY OF COSTS. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked bidder for negotiations.

33.11 Where SSS method was used as indicated in the RFP, both the unit rates and total price shall be negotiated. If the negotiations fail, the Procuring Entity shall terminate the bidder selection process. In that event, the Procuring Entity shall review the consultancy requirements and market conditions prior to deciding to use an appropriate selection method to again procure the consulting services.

## **34. Conclusion of Negotiations**

34.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Accounting Officer and the Bidder's authorized representative and minutes prepared to record the outcome of the negotiations.

34.2 If the negotiations fail, the Procuring Entity shall inform the Bidder in writing of all pending issues and disagreements and provide a final opportunity to the Bidder to respond. If disagreement persists, the Procuring Entity shall terminate the negotiations informing

the Bidder of the reasons for doing so. The Procuring Entity will invite the next-ranked Bidder to negotiate a Contract. Once the Procuring Entity commences negotiations with the next-ranked Bidder, the Procuring Entity shall not reopen the earlier negotiations.

### **35. Notification of Award/ Letter of Award**

35.1 Upon expiry of the Standstill Period, specified in ITC 32, after satisfactorily addressing any appeal that has been filed within the Standstill Period, and upon successful negotiations, the Procuring Entity shall send a Letter of Award to the successful Bidder. The letter shall confirm the Procuring Entity's award of Contract to the successful Bidder and requesting the Bidder to sign and return the draft negotiated Contract within Seven (7) Days from the date of the Letter of Award.

### **36. Signing of Contract**

36.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITC 32.1 and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.

36.2 The Bidder is expected to commence the assignment on the date and at the location specified in the Data Sheet.

### **37. Publication of Procurement Contract/ Contract Award Notice**

37.1 Within the period specified in the Data Sheet, the Procuring Entity shall publish the awarded Contract which shall contain, at a minimum, the following information:

- (a) Name and address of the Procuring Entity;
- (b) Name and reference number of the contract being awarded,
- (c) The selection method used;
- (d) Names of the bidders that submitted proposals;
- (e) Names of all Bidders whose Proposals were rejected or were not evaluated;
- (f) The name of the successful bidder, the final total contract price, the contract duration and a summary of its scope.

37.2 Consider carefully the information on Bidders to be published, particularly evaluation by the Procuring Entity, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:

37.3 The awarded Contract shall be published on the Procuring Entity's website with free access if available and in the official procurement tender portal.



## SECTION 2 (B) TENDER DATA SHEET

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>A. General Provisions</b>	
1	<p><b>Meanings/Definitions</b></p> <p>“Contract” shall include any other form of contract agreed to between the parties together with any other ancillary agreements as may be required following negotiations.</p> <p>“Data Sheet” all Data Sheet provisions should be construed to give clarity to the provisions of the ITC which includes instances of inconsistencies between the ITC and the Data Sheet. In cases of inconsistencies, the provisions of the Data Sheet shall prevail.</p> <p>“Joint Venture (JV)” shall also mean “Consortium”. The definition of the term Consortium in this document shall be construed accordingly and the terms may be used interchangeably. All members of a JV or Consortium will be required to contract with the Procuring Entity and assume responsibility for their respective deliverables under the contract. Any notice sent to the person identified as the lead bidder in the Proposal shall be deemed to have been sent to each Joint Venture or Consortium member.</p>
2.1	<p>Name of the Procuring Entity: <b>Kenya Revenue Authority</b></p> <p>The bidder selection method is: <b>Specially Permitted Procurement Method applying Quality and Cost Based Selection (QCBS) Method</b></p>
2.2	<p>Financial Proposal to be submitted together with Technical Proposal in separate envelopes: <b>YES</b></p> <p>i. Technical Proposal to be Submitted in <b>The Tech bid C – Folder</b> and  ii. Financial Proposals in the <b>Notes and Attachment Folder</b></p> <p>The name of the assignment is: <b>Request for Proposals for the Design, Supply, Installation, Commissioning, Maintenance and Support of a Comprehensive Technology Platform for Kenya Revenue (KRA). (specify the LOT)</b></p> <p><b>LOT 1:</b> Design, Supply, Installation, Commissioning, Support &amp; Maintenance of an Integrated Enterprise Infrastructure, Information Security and Revenue Management Platform for Kenya Revenue (KRA).</p> <p><b>LOT 2:</b> Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII), Unmanned Aerial Vehicle (UAV) – Drones and Marine Patrol Boats.</p> <p><b>LOT 3:</b> Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority.</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.3	A virtual pre-proposal conference will be held: Yes Please use the link to join the virtual meeting: <a href="#">Click here</a> Date of pre-proposal conference: <b>27<sup>th</sup> January, 2026</b> Time: <b>11.00A.M</b>
2.4	All the information needed for the <b>Three (3) LOTs</b> are provided in <b>Section 5</b> of this RFP document. <b>LOT1:</b> Request for Proposals for the Design, Supply, Installation, Commissioning, Maintenance and Support of a Comprehensive Technology Platform for Kenya Revenue (KRA).  <b>LOT 2:</b> Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII), unmanned Aerial vehicle (UAV) - Drones and Marine Patrol Boats.  <b>LOT 3:</b> Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority.  Any further information needed can be requested in writing to the email address <b><a href="mailto:eprocurement@kra.go.ke">eprocurement@kra.go.ke</a></b>
6.1	Not applicable
6.2	No maximum number of members of the JV.
6.3	Competition Authority of Kenya approval or exemption, if required, will be a Condition Precedent under the Contract and not a condition precedent to contract award.
6.6(a)	The list of debarred firms and individuals is available at the PPRA's website <b><a href="http://www.ppra.go.ke">www.ppra.go.ke</a></b> or email <b><a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a></b> . <b>For international firms the information may be accessed from other sources</b>
6.7	Reservations has been allowed to a specific group of businesses: <b>None</b>
<b>B. Preparation of Proposals</b>	
10.1	<b>The following information/documentation will be required for all proposed assignments/Solutions/Services/Goods under this RFP.</b>  <b>The Proposal shall comprise the following:</b> <b>(A) Technical proposal documents/Forms which will be Submitted electronically via the supplier portal to Tech Bid C-Folder:</b> <ol style="list-style-type: none"> <li>(1) Power of Attorney to sign the Proposal</li> <li>(2) FORM TECH-1: Technical Proposal Submission Form</li> <li>(3) FORM TECH-2: Bidder's Organization and Experience</li> <li>(4) FORM TECH-3: Comments and Suggestions</li> <li>(5) FORM TECH-4: Description of Approach, Methodology, and Work plan</li> <li>(6) FORM TECH-5: Work Schedule and Planning for Deliverables</li> <li>(7) FORM TECH-6A: - Team Composition, Assignment and Key Key</li> </ol>



Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p>Experts' Inputs</p> <p>(8) FORM TECH-7: - Mandatory and Support Document</p> <p>(9) FORM TECH-8: -Self-Declaration Forms</p> <p>(10) FORM TECH 9: -Tender-Securing Declaration Form</p> <p>(11) FORM TECH 10: Comments/proposed amendments or term sheet outlining comments to any proposed form of procurement contract contained in the RFP</p> <p><b>AND</b></p> <p><b>(B) Financial Proposal shall comprise the following financial proposal documents which will be submitted electronically via the supplier portal to Notes and Attachment Folder</b></p> <p>(1) FIN-1: Financial Proposal Submission Form</p> <p>(2) FIN-2: Summary of Costs</p> <p>(3) Breakdown of remuneration – (if applicable)</p> <p>(4) Breakdown of reimbursable expenses – (if applicable)</p>
11.1	Participation of Sub-bidders, Sub-Contractors and Key Experts in more than one Proposal is permissible: <b>Not Applicable</b>
12.1	Proposals must remain valid for <b>Three Hundred and Thirty Five (335) days</b> after the proposal submission deadline.
12.9	The Bidder may sub-contract part of the works and services.
13.1	<p>Clarifications may be requested no later than <b>Seven (7)</b> days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is:</p> <p>E-mail: <u>eprocurement@kra.go.ke</u></p>
14.1(i)	The Bidder may associate with other firms in the form of a consortium provided that <b>only one proposal</b> would be submitted by the Consortium and that a <b>lead bidder</b> will be identified from the consortium members and for the purposes of the proposal shall be the point of contact for the Procuring Entity.
14.1(ii)	<p>This is a Specially Permitted Procurement which KRA seeks Strategic Partners to fund the specified Project which comprise three (3) LOTS and recover their return on investment through instalment payments during the contract period as negotiated.</p> <p><b>Capital Investment, Recovery and Payment Terms</b></p> <p><b>1. Upfront Capital Investment:</b></p> <p>The Strategic Partner shall make all necessary capital investments for the specific LOT/Project of their interest.</p> <p><b>LOT1:</b> Request for Proposals for the Design, Supply, Installation, Commissioning, Maintenance and Support of a Comprehensive Technology Platform for Kenya Revenue (KRA).</p> <p><b>LOT 2:</b> Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII),</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p>unmanned Aerial vehicle (uav) – Drones and Marine Patrol Boats.</p> <p><b>LOT 3:</b> Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority</p> <p><b>Recovery Mechanism:</b> The Strategic Partner(s) shall recover its capital investment, operational expenditure, financing costs, and reasonable profit margin through periodic instalments payments made by KRA in accordance with the Payment terms negotiated and agreed in the Contract.</p> <p>Total Engagement period for this contract (<b>the three LOTs</b>) is estimated to be <b>Ten (10) years i.e. for Contract Implementation, Support and Maintenance. (The term of the contract may be extended accordingly beyond the period stated in this section through a mutual agreement if by the lapse of the period stated herein, the Bidder would not have recovered their return on investment.</b></p> <p>The Specifications, and associated infrastructure/specifications requirement or Terms of Reference are specified in <b>Section 5 Terms of Reference.</b></p>
16.1	Bidders are permitted to customize the Financial Proposal to meet the requirements of its financing model or it's Technical Proposal.
16.2	A price adjustment provision shall apply as per the price adjustment mechanisms mutually agreed by the parties
16.3	<p>Taxes to be borne by the Bidder will be set out in the Contract. The Bidder may in its Financial Proposal specify any tax exemptions or reliefs that support its Financial Proposal. During Contract negotiations, the parties will negotiate any tax exemptions or reliefs that will apply to the Works and/or the supplier and/or any subcontractors. Where such tax reliefs and exemptions have been agreed they will be reflected in the Contract.</p> <p>Information on the Vendor's tax obligations in the Procuring Entity's country can be found on the Kenya Revenue Authority website: <a href="http://www.kra.go.ke">www.kra.go.ke</a>. Vendors are also advised to seek independent advise on the applicable taxes.</p>
16.4	The Financial Proposal shall be stated in the following currencies: <b>THE APPLICABLE CURRENCY IS KENYA SHILLINGS</b>
<b>C. Submission, Opening and Evaluation</b>	
17.1	<p>The Vendors "shall" submit their Proposals electronically.</p> <p>Prospective bidders should be registered on the supplier registration portal found in the KRA website <a href="http://www.kra.go.ke">www.kra.go.ke</a> under E-Procurement tab. The supplier registration manual is also provided therein. Bidders may also visit KRA's Supplier Relationship Management Support desk on 21<sup>st</sup> floor Times Towers for assistance. Upon registration, submission of the proposal shall be through the supplier portal found in the KRA website <a href="http://www.kra.go.ke">www.kra.go.ke</a> under E-procurement tab.</p> <p><b>Technical Proposal to be submitted together with Financial Proposal in separate folders:</b></p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	i. Technical Proposal to be Submitted in <b>The Tech bid C – Folder</b> and ii. Financial Proposals in the <b>Notes and Attachment Folder</b> <i>Supplier guidelines on submission the proposal will be shared on the supplier portal</i>
17.5	The submission will be done electronically; 1) Technical Proposal to be Submitted in <b>The Tech bid C – Folder</b> 2) Financial Proposals in the <b>Notes and Attachment Folder</b> 3) Supplier guidelines on submission of the proposal will be shared on the supplier portal
18.5	The Proposals must be submitted no later than: <b>Date: 17<sup>th</sup> February, 2026 at 11.00 Hrs East African Time</b> or such other date as the Procuring Entity may communicate in writing prior to expiry of the deadline. The Proposal submission address is: <b><i>TO BE SUBMITTED ELECTRONICALLY through KRA E-PROCUREMENT PORTAL</i></b>
19.1	This provision shall only be exempted during evaluation of the Proposal while seeking clarifications as provided in the Public Procurement and Asset Disposal Act 2015 and during negotiations as per the provisions of the ITC 33 – Negotiations and the Public Procurement and Asset Disposal Act 2015 and Regulations.
20.1	Proposals shall be <b>opened online</b> . <i>The online opening procedure shall be: <b>Initiation of RFX opening by two KRA responsible officers simultaneous log in, opening of the RFX and reading out of the Technical proposals submitted on Tech Bid C Folder.</b></i>  The opening shall take place at: Street Address: <b>Haile Selassie Avenue</b> Floor Number <b>21<sup>st</sup> Floor</b> Room Number <b>SCM MEETING ROOM 1</b> City: <b>NAIROBI</b> County: <b>NAIROBI</b> Country: <b>KENYA</b> Date: <b>17th February, 2026</b> Time: <b>11:00 am East African Time</b>
20.2	At the opening of the Technical Proposals the following shall be read out: 1) the name and the country of the bidder or, in case of a Joint Venture/Consortium, the name of the Joint Venture/Consortium, the name of the lead member and the names and the countries of all members; 2) the presence or absence of the Financial Proposal; and 3) tender security and any other relevant information
22	The Detailed Evaluation criteria is provided in <b>Section II of the RFP Document</b> – under each <b>Initiative/Solution/Services/Goods/Works Terms of Reference &amp; Evaluation Criteria</b>
23.2	When the selection is based on the QCBS method ranking of the Technical Proposals will be carried out and bidders who meet the minimum score will be invited for financial opening. The notification of intention to award shall be issued in accordance with ITC-31 and the bidder shall be invited to

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	negotiate the terms of the contract
24.2	An online option of the opening of the Financial Proposals is offered. YES
26.1	Unless expressly indicated in the Financial Proposal, the Bidder's Financial For purposes of comparison during evaluation the procuring entity will consider the financial proposal exclusive of Applicable Taxes. However, bidders are required to indicate the applicable taxes in the price schedule which will form the total cost of the contract and subject to negotiation.
26.2	The treatment of Taxes will be agreed during Contract negotiations.
29.1	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:  <math>Sf = 100 \times Fm / F</math>, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are:  <math>T = 0.80</math>  <math>P = 0.20</math></p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: <math>S = St \times T\% + Sf \times P\%</math>.</p> <p><b>The formulae is applicable for all LOTs</b></p>
30.1	<p><b>Quality and Cost Based Selection (QCBS) Method</b></p> <p>Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data Sheet. The bidder that achieves the highest combined technical and financial score will be notified and invited for negotiations.</p>
31.1	<p>The Notification of Intention of Award shall be sent to all bidders informing them if their proposal was successful or not successful following completion of evaluation of Proposal by the Procuring Entity's Evaluation Committee.</p> <p>The notification to the successful Bidder which shall contain, at a minimum, the following information:</p> <ul style="list-style-type: none"> <li>(i) the name and address of the successful bidder (which may include a JV);</li> <li>(ii) confirmation that the Bidder may enter into negotiations of the draft Contract with the Procuring Entity on the basis of its Proposal; and</li> <li>(iii) any other applicable particulars expressly required in law.</li> </ul> <p>Negotiations of the draft Contract between the Procuring Entity and the successful bidder shall commence as soon as practicable after the standstill period in accordance with ITC 31.</p>
32.1	<b>Fourteen (14) days</b> stand-still period shall apply to this RFP
33.0	Negotiation on the terms and conditions including the financial model shall be carried out before award.
33.1	The Procuring Entity shall confirm to the Bidder the time date and address for negotiation meetings and shall give reasonable notice for such

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p>meetings. The Procuring Entity may, at its discretion, discuss the technical, commercial, financial and legal aspects of the Contract together in one session or in separate sessions.</p> <p>The Bidder shall submit to the Procuring Entity the names of their representatives, and their financial/ technical/ legal advisors or representatives who shall attend the negotiation meetings and shall ensure that each such persons have the written authorization of the Bidder to negotiate the Contract on behalf of the Bidder, whether by way of power of attorney or otherwise.</p>
33.3	<p><b>Availability of resources to accomplish the assignment</b></p> <p>The invited bidder shall confirm the availability of all the components required for the design and implementation of a comprehensive technology platform as mentioned in Section 5 Terms of Reference included in the proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with ITC 12.7. Failure to confirm availability may result in the rejection of the bidder's Proposal and the Procuring Entity proceeding to negotiate the Contract with the next-ranked bidder.</p> <p>33.4 Notwithstanding the above, the substitution of items at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Bidder. In such case, the bidder shall offer a substitute item/item within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.</p>
33.5	<p>Clause 33.5 shall be replaced by the following provision:</p> <p>The technical negotiations shall include discussions on the Terms of Reference (TORs), the proposed methodology for implementing the TORs by the Bidder and the Procuring Entity, the Procuring Entity's inputs and the terms and conditions of the Contract including any proposed amendments or comments to the standard form of contract (including the General Conditions and the Special Conditions) proposed by the Bidder. The negotiations shall not:</p> <ul style="list-style-type: none"> <li>a) substantially alter the quality of the deliverables under the TORs, or</li> <li>b) substantially increase the price under the Financial Proposal without a corresponding increase in the scale of the scope of Works, or</li> <li>c) materially affect the relevance of the initial evaluation be affected.</li> </ul>
33.6	<p>Clause 33.6 shall be replaced by the following provision:</p> <p>The financial negotiations shall include:</p> <ul style="list-style-type: none"> <li>(i) discussions on the bidder's tax liability in Kenya, any tax incentives or reliefs sought by the Bidder in its Proposal and any other relevant comments or proposed amendments to the Contract proposed by the Bidder and the extent to which these items should be reflected in the Contract.</li> <li>(ii) discussions on the payment model/instalments to be applied by the Procuring Entity with regard to payments to the Bidder under the Contract.</li> <li>iii) any other aspects of the Financial Proposal to be included in the Contract</li> </ul>
34.1	<p>The Procuring Entity and the Bidder shall be entitled to negotiate and agree amendments to the form of Contract (including the General Conditions and the Special Conditions) consistent with the successful Proposal.</p> <p>The negotiations will concluded with a review of the finalized draft Contract,</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	which then shall be initialed by the Accounting Officer and the Bidder's authorized representative and minutes prepared to record the outcome of the negotiations.
34.2	If the negotiations fail, the Procuring Entity shall inform the Bidder in writing of all pending issues and disagreements and provide a final opportunity to the Bidder to respond. If disagreement persists, the Procuring Entity shall terminate the negotiations informing the Bidder of the reasons for doing so. The Procuring Entity will invite the next-ranked Bidder to negotiate a Contract. Once the Procuring Entity commences negotiations with the next-ranked Bidder, the Procuring Entity shall not reopen the earlier negotiations.
35	<p>Clause 35 shall be replaced by the following provision:</p> <p>35.1 Upon successful negotiations, the Procuring Entity shall, send a Letter of Award to the successful Bidder. The letter shall confirm the Procuring Entity's award of Contract to the successful Bidder and requesting the Bidder to submit a letter of acceptance within Seven (7) days. The final negotiated Contract will be signed within Thirty (30) days or any additional period as the Procuring Entity may communicate.</p>
36.1	The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITC 32.1 and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.
36.2	The bidder is expected to commence the assignment on such a date upon execution of the contract as agreed by parties.
<b>D. Award of Contract</b>	
37.1	<p>The procedures for making a Procurement-related Complaints are detailed in the "Regulations" available from the PPRA Website <b>www.ppra.go.ke</b> or email <b>complaints@ppra.go.ke</b>. 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 hand delivery or email to:</p> <p>For the attention: <i>Head of Procurement</i>  Title/position: <i>Deputy Commissioner-Supply Chain Management</i>  Procuring Entity: Kenya Revenue Authority  Email address: <u><a href="mailto:eprocurement@kra.go.ke">eprocurement@kra.go.ke</a></u></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <p>(i) the terms of the Tender Documents; and</p> <p>(ii) the Procuring Entity's decision to award the contract.</p>



## DETAILED TENDER EVALUATION CRITERIA

**General Instructions cutting across all initiative and (sub initiatives/Domains/Solutions)**

### 1. Evaluation will be carried out in four (4) stages as follows:

The evaluation will be carried out through the following stages as follows:

**Stage 1:** Compliance with the Mandatory Requirements

**Stage 2:** Technical Evaluation.

a) Technical Requirements/Schedule of Requirements

b) Presentation/Solution Demonstration

**Stage 3:** Financial Evaluation

**Stage 4:** Due Diligence/Post Qualification/Benchmarking

Upon completion of the evaluation and due diligence process the following shall be carried out

**Stage 5:** Negotiation with the recommended bidder

**Stage 6:** Contract award

### 2. BIDDERS ARE NOT ALLOWED TO BID FOR MORE THAN ONE LOT

### 3. BIDDERS MUST BID FOR ALL INITIATIVES, MEET THE MINIMUM QUALIFICATIONS/REQUIREMENTS PROVIDED IN EACH LOT AS PER THE EVALUATION CRITERIA PROVIDED UNDER EACH INITIATIVE AND SUB INITIATIVES THEREIN FOR ONE TO BE DEEMED RESPONSIVE TO THE TENDER REQUIREMENTS.

### STAGE 1: COMPLIANCE WITH THE ELIGIBILITY & MANDATORY REQUIREMENTS

The eligibility and mandatory criteria shall include the following.

No.	Requirements	Submitted/Attached/ Not Attached
1.	The bidder submitting the Technical Proposal as required in the ITT 2.2 in the TDS of the RFP Document. Technical Proposal submitted <b><i>electronically via the supplier portal to Tech Bid C- Folder</i></b>	
2	The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.	
3	The bidder submitting the Financial Proposal as required in the ITT 2.2 in the TDS of the RFP Document. Submit duly filled, signed/stamped: <b>FORM FIN 1:</b> Financial Proposal Submission Form <b>FORM FIN 2:</b> Summary of Costs (Price Schedule) <b>FORM FIN 3:</b> Breakdown of remuneration (where applicable): <b>FORM FIN 4:</b> Breakdown of Reimbursable expenses (where applicable): <b><i>to be submitted electronically via the supplier portal to Notes and Attachment Folder</i></b>	
4	Submit duly filled, signed/stamped TECH 1 –Technical Proposal Submission Form	

5	A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms or its equivalent for international firms based on the firm's jurisdiction. Valid at least up to the tender closing date	
6	Power of attorney authorizing the person signing the proposal on behalf of the bidder.	
7	Certificate of Incorporation/ Registration or an equivalent document based on the firm's jurisdiction.	
8	Current CR12 Certificate or it's equivalent based on the firm's jurisdiction. Current CR12 for Limited Companies issued by the Registrar of Companies Or an equivalent official registration document issued by the competent authority in the bidder's country of registration provided it serves the same purpose and is issued within the last six (6) months to the tender closing date.	
9	<p><b>Bid Security Applicable to Lot 1</b></p> <p>An original hard copy of the Bid Security of not less than Kenya Shillings Fifty Million (Kshs. <b>50,000,000</b>) or equivalent amount in the form of Bank Guarantee, Bankers Cheque from financial institutions approved by Insurance Regulatory Authority (IRA) and in a freely convertible currency valid for Three hundred and sixty-five (365) days from the date of tender closing / opening.</p> <p><b>NB:</b> Original tender security MUST be deposited in the TENDER SECURITY BOX Located at Times Tower Building, Ground Floor</p> <p>In case of submission of a digital tender security, the issuer must provide a verifiable mechanism to authenticate the security, such as a QR code or an online verification portal. The Tender Security should be submitted in the ERP SRM portal under notes and attachments.</p> <p><b>A Tender-Securing Declaration shall not be required.</b></p>	
	<p><b>Bid Security Applicable to Lot 2</b></p> <p>An original hard copy of the Bid Security of not less than Kenya Shillings Twenty Million (Kshs. <b>20,000,000.00</b>) or equivalent amount in the form of Bank Guarantee, Bankers Cheque from financial institutions approved by Insurance Regulatory Authority (IRA) and in a freely convertible currency valid for Three hundred and sixty-five (365) days from the date of tender closing / opening</p> <p><b>NB:</b> Original tender security MUST be deposited in the TENDER SECURITY BOX Located at Times Tower Building, Ground Floor</p> <p>In case of submission of a digital tender security, the issuer must provide a verifiable mechanism to authenticate the security, such as a QR code or an online verification portal. The Tender Security should be submitted in the ERP SRM portal under notes and attachments.</p> <p><b>A Tender-Securing Declaration shall not be</b></p>	



	<b>required.</b>	
	<p><b>Bid Security Applicable to Lot 3</b></p> <p>An original hard copy of the Bid Security of not less than Kenya Shillings Ten Million (Kshs. <b>10,000,000.00</b>) or equivalent amount in the form of Bank Guarantee, Bankers Cheque from financial institutions approved by Insurance Regulatory Authority (IRA) and in a freely convertible currency valid for Three hundred and sixty-five (365) days from the date of tender closing / opening</p> <p>NB: Original tender security MUST be deposited in the TENDER SECURITY BOX Located at Times Tower Building, Ground Floor</p> <p>In case of submission of a digital tender security, the issuer must provide a verifiable mechanism to authenticate the security, such as a QR code or an online verification portal. The Tender Security should be submitted in the ERP SRM portal under notes and attachments.</p> <p><b>A Tender-Securing Declaration shall not be required.</b></p>	
	<b>Financial Capability</b>	
10	Submit an original Affidavit addressed to the Commissioner General KRA confirming that the Tenderer is not insolvent, in receivership, bankrupt or in the process of being wound up executed / witnessed by Commissioner of Oaths or an Advocate. Foreign firms may submit the Affidavit under Form Tech-Bid C Folder(SAP).	
11	<p><b>Proof of Financial Resources</b></p> <p>Submit audited Financial statements or, if not required by the laws of the Bidder's country, other financial statements acceptable to KRA, for the last 5 years (2019/2020,2020/2021,2021/2022, 2022/2023 &amp;2023/2024) shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long -term profitability.</p> <p>The copies of audited financial statements must be certified by a Commissioner of Oaths or Notary Public or an equivalent certification in the bidder's country of registration.</p>	
11	Manufacturer Authorization/Original Equipment Manufacturer(OEM) should be provided for all proposed solutions <b>where applicable</b>	
	<b>Standard Tendering Forms</b>	
12	Tenderer's Eligibility – Duly filled, signed and stamped Confidential Business Questionnaire	
13	Duly filled, signed and stamped Certificate of Independent Proposal Determination (Select either section 5 (a) or 5 (b))	
14	Duly filled, signed and stamped form SD 1 - Self Declaration That the Person/Tenderer Is Not Debarred under the Public Procurement and Asset Disposal Act 2015 in Kenya or any other jurisdiction.	
15	Duly filled, signed and stamped form SD 2 – Self Declaration that the person/ tenderer will not engage in any corrupt/ fraudulent practice.	

16	Duly filled, signed and stamped Declaration and commitment to the code of ethics	
17	Specify the lead contact person(s) for the entire assignment.	
	<b>Requirements applicable to Consortium/Joint Ventures</b>	
18	<p><b>APPLICABLE TO ALL LOTS</b></p> <p>Where bidders are consortium/Joint Venture, the firm must submit a teaming/Joint venture/Consortium agreement clearly indicating the lead partner and the roles of the members in the consortium /Joint venture agreement specifying clear responsibilities, scope ownership and roles for each partner/ member and shall be executed by the authorized representatives of all members of the joint venture/consortium (attach Power of Attorney for each partner).The bidder should demonstrate availability of the proposed key experts.</p> <p><b>NB: Lead Partner should have a local presence in Kenya during implementation of the contract.</b></p>	
19	Bidders are required to submit project team members of the core team expected to be involved in the project and clearly indicating where the teams have carried out similar implementations involving enterprise technology landscape modernization.	
	<b>For teaming/Joint venture/consortium partners – all partners are required to submit the following:</b>	
20	Copy of certificate of incorporation or registration certificate or its equivalent	
21	Copy of a valid tax compliance / tax clearance certificate or its equivalent	
22	<b>Financial capacity:</b> The bidder is required to submit audited Financial statements or, it's equivalent acceptable to KRA from the Bidder's country within their jurisdiction, for the last 5 financial years (2019,2020, 2020/2021, 2021/2022, 2022/2023 & 2023/2024) and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long -term profitability.	
23	Duly filled, signed and stamped confidential Business Questionnaire	
24	Duly filled, signed and stamped form SD 1 - Self Declaration That the Person/Tenderer Is Not Debarred in the Matter of the Public Procurement and Asset Disposal Act 2015	
25	<p>Duly filled, signed and stamped form SD 2 – Self Declaration that the person/ tenderer will not engage in any corrupt/ fraudulent practice.</p> <p>Submit Sworn Anti-Corruption Affidavit issued by a commissioner of Oaths for local bidders and a notary public in the case of international bidders.</p>	
26	Duly filled, signed and stamped Declaration and commitment to the code of ethics	
	<b>Other Requirements for evaluation under each Initiative (Where applicable)</b>	<b>Commitment statement Required</b>
27	<p><b>Warranty</b></p> <p>Bidder is required to provide solution warranty as per the requirements per TOR.</p>	

28	<b>Support and Maintenance</b> Bidder is required to provide three (3) years post-warranty support and maintenance including manufacturer's premier technical support (provided 24*7*365).	
29	<b>Implementation and Knowledge Transfer</b> The solution implementation shall require on-site physical presence of key project team adequate knowledge transfer to ensure future supportability and upgradeability of the solution. Bidder to indicate how they will empower Kenya Revenue Authority team such that post implementation customizations are done internally. Bidders are advised to provide commitment letter	
30	The key experts shall be required on-site; physical presence of key project team is key. The bidder to provide a commitment to comply.	
	<b>Commercial &amp; Operational Model applicable</b>	
31	<p>The bidder is expected to fund the project immediately upon execution of the contract and payment of the funds by KRA will be within Ten (10) years during implementation of the contract. The total engagement period for this contract (applicable to all LOTs) is estimated to be Ten (10) years i.e. for Contract implementation, support and maintenance.</p> <p>Financial evaluation shall be carried out upon opening of the financial proposals for the technically highly ranked bidder in line with QCBS method. The financial proposal is expected to cover costing for all the initiatives set out in the LOT bided in the RFP.</p> <p>a) Financial Evaluation shall involve checking completeness and any minor deviations.</p> <p><b>Financial capacity:</b> Financial evaluation shall be carried out upon opening of the financial proposals for the technically highly ranked bidder in line with QCBS method. The financial proposal is expected to cover costing for all the initiatives set out in the LOT bided in the RFP.</p> <p>a) Financial Evaluation shall involve checking completeness and any minor deviations.</p> <p><b>Financial capacity:</b> The bidder is required to submit audited Financial statements or, it's equivalent acceptable to KRA from the Bidder's country within their jurisdiction, for the last 5 financial years (2019,2020, 2020/2021, 2021/2022, 2022/2023 &amp; 2023/2024) and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long -term profitability.</p> <p>The bidder's financial capacity will be assessed by checking the following parameters from the Audited Financial Statements.</p> <p>The Bidder's financial Capacity will be Evaluated based on the following financial Health Assessment parameters;</p> <p>i. <b>Average Annual Turnover</b></p>	

The lead partner must have a Minimum average annual turnover of Kshs.5 billion per year calculated as total certified payments/Revenue within the last 5 years, divided by 5 years.

The minimum average annual turnover will be as follows  
LOT 1 Kshs.5 billion calculated as total Revenue within the last 5 years, divided by 5 years.

LOT 2 Kshs.500 Million calculated as total Revenue within the last 5 years, divided by 5 years.

LOT 3 Kshs. 1 billion calculated as total Revenue within the last 5 years, divided by 5 years.

## **ii. Financial stability Assessment**

The lead partner's audited financial statements of the last 5 years will be subjected to a standard financial ratio analysis evaluated on a **PASS/FAIL** Basis as below;

a) Gearing Ratio (Debt to equity ratio) of 25%- 50%

Computed as  $\text{Non-current liabilities} \div \text{ordinary shareholders funds} \times 100\%$

b) Debt Service Coverage Ratio of at least 1.25

Computed as  $\text{Operating Income (EBITDA)} \div \text{Total Debt Service Costs}$

c) Liquidity Ratio (Current ratio at least 1.3

Computed as  $\text{Current Assets} \div \text{Current Liabilities}$

d) Evidence from the firm's bank demonstrating credit worthiness as follows:

**LOT 1-** 10 Billion

**LOT 2-** 500 Million

**Lot 3-** 1 Billion

The Financial Evaluation shall also include a review of the terms and conditions of the Financial Proposal and the relevant Bidder's comments to the standard form of contract.

**The bidder to provide a statement of commitment of how they intend to fund the project within the specified contract period**

This is a **Specially Permitted Procurement** which KRA seeks Strategic Partners to fund the specified Project which comprise three (3) LOTS and recover their return on investment through instalment payments during the contract period as negotiated.

**CAPITAL INVESTMENT, RECOVERY AND PAYMENT TERMS**

**Upfront Capital Investment:**

The Strategic Partner shall make all necessary capital investments for the specific LOT/Project of their interest.

**LOT1:** Request for Proposals for Design, Supply, Installation, Commissioning, Maintenance and Support of a Comprehensive Technology Platform for Kenya Revenue (KRA).

**LOT 2:** Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII), unmanned Aerial vehicle (uav) – Drones and Marine Patrol Boats.

**LOT 3:** Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority

**Recovery Mechanism:**

The Strategic Partner(s) shall recover its capital investment, operational expenditure, financing costs, and reasonable profit margin through periodic instalments payments made by KRA in accordance with the Payment terms negotiated and agreed in the Contract.

Total Engagement period for this contract **(the three LOTs) is estimated to be Ten (10) years i.e. for Contract implementation, support and maintenance.** The term of the contract may be extended accordingly beyond the period stated in this section through a mutual agreement if by the lapse of the period stated herein, the Bidder would not have recovered their return on investment.

The Specifications, and associated infrastructure/specifications requirement or Terms of Reference are specified in Section 5 Terms of Reference and agreed in the Contract.

**2. Payment Schedule:**

The payment schedule shall specify:

- (a) The total amount to be recovered over a negotiated Period;
- (b) The number, frequency, and amount of instalments payments;
- (c) The commencement date for instalments payments;
- (d) Any performance-based adjustments or penalties that may affect payment amounts.

**3. Payment Commencement:**

Instalment payments shall commence upon achievement of Deliverables/Milestones specified in the TORs and as agreed by both parties during negotiation and shall continue for the duration of the negotiated contract period or until full recovery of the amounts specified in the Investment Agreement, whichever occurs first.

	<b>4. Payment Security (Optional):</b> Kenya Revenue Authority shall provide an escrow arrangement to secure the instalment payment obligations for the contract period as negotiated.	
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***Note: Tenderer should meet all the above requirements in order to proceed to the next stage of evaluation i.e. technical evaluation.***

## **STAGE 2: TECHNICAL EVALUATION**

### **Technical Evaluation Requirements**

Bidders are hereby informed that this tender comprises **three (3) lots**, with each lot consisting of **several initiatives**. Each initiative has a **separate Terms of Reference (TOR)** provided as **Annexures** to this Tender Document (Zipped folder(s)).

The **technical evaluation** shall be conducted **strictly in accordance with the specific technical requirements and evaluation criteria outlined in the respective TORs attached as Annexures**. Bidders are therefore required to **review and comply with the TORs applicable to each initiative and LOT they intend to bid for**, and to submit all technical information and documentation as specified therein.

### **Guidance on Responses to the Technical Requirements Tables which require Bidders Response**

- i. Bidders **MUST** complete the Table below in the format provided.
- ii. Bids **MUST** meet all mandatory (**MUST**) requirements in the Tables below in order to be considered for further evaluation.
- iii. Bidders **MUST** provide a substantial response or clear commitment to meeting the requirements for all features irrespective of any attached technical documents in the table format (bidders Response) below. Use of Yes, No, tick, compliant, blank spaces etc. will be considered non-responsive.
- iv. Bidders who do not comply with any of the below requirements without adequate explanation shall be deemed non-responsive and therefore will **NOT** be considered for further evaluation
- v. **For each technical requirement, bidders shall:**

Provide a clear and detailed response demonstrating how the requirement will be met;

Indicate the relevant page number(s) in the submitted Technical Proposal where supporting details, evidence, or explanations can be found; and Provide a clear commitment statement confirming compliance with the requirement, where applicable.

**NB: Bidders who shall meet the cut-off score for the technical and demonstration requirements shall be evaluated at the financial evaluation stage.**

### **Determination of Technical Score per LOT**



The Procuring Entity shall award this tender on a per-lot basis.

Where a LOT comprises of more than one (1) initiative (TOR), each initiative shall be technically evaluated separately in accordance with the evaluation criteria provided in its respective TOR attached as an Annexure.

**The technical score** for each LOT shall be determined by calculating the simple average of the technical scores obtained for all initiatives under that lot, as follows:

**LOT Technical Score =**

(Sum of the prorated Technical scores of all initiatives under the LOT) ÷ (Number of initiatives under the LOT)

The resulting score shall constitute the bidder's overall technical score for the lot and shall be applied to the technical weight of 80%.

For avoidance of doubt, each initiative shall carry equal weight in determining the technical score for the LOT.

Failure to meet the minimum technical requirements or minimum technical score for any initiative under a lot may render the bidder non-responsive for that LOT.

**STAGE 3: Oral Presentation/Pitch Presentation/Solution/Demonstration (Maximum Score of 10%)**

Short-listed bidders from the technical evaluation shall be required to make a comprehensive product Demonstration of the proposed solution. During the demonstrations, bidders are expected to showcase the latest released version of their systems which will form additional assessment of the solution capabilities and vendor experience. Demonstrations will be evaluated on the degree to which the demo matches the RFP specifications, the product's perceived ease of use, and the bidder's overall use of current technology.

The short-listed bidder presentations will be scheduled in accordance with the KRA's timetable.

The Demo scenarios shall be sent by email to the bidders who qualify the technical evaluation and will be set against the product/Solution/initiative's deliverables as provided under each initiative/Domain/Solution. The key areas of focus have been provided in the RFP under each initiative/Domain/Solution.

***Bidder's comments to the standard form of contract will be considered in ALL LOTS***

**STAGE 4. FINANCIAL EVALUATION (APPLICABLE TO ALL LOTS)**

Financial evaluation shall be carried out upon opening of the financial proposals for the technically highly ranked bidder in line with QCBS method. The financial proposal is expected to cover costing for all the initiatives set out in the LOT bid for.

a) Financial Evaluation shall involve checking completeness and any minor deviations.

## Financial Capability and Method of Demonstration

Bidders shall demonstrate their financial capability to fund the project using audited financial statements for the last five (5) years or, it's equivalent acceptable to KRA from the Bidder's country within their jurisdiction, for the last 5 financial years (2019/2020, 2020/2021, 2021/2022, 2022/2023 & 2023/2024) shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long -term profitability.) financial years.

For each financial requirement, bidders shall:

- Clearly indicate the source statement (Statement of Profit or Loss, Statement of Financial Position, or Statement of Cash Flows);
- Show the figures extracted from the audited financial statements;
- Provide the calculation methodology and formula used; and
- Reference the specific page numbers of the audited financial statements from which the figures are derived.

***Any financial information not supported by audited financial statements or not clearly reconciled to the source documents shall not be considered for evaluation purposes.***

The bidder's financial capacity will be assessed by checking the following parameters from the Audited Financial Statements.

### Financial stability Assessment

The lead partner's audited financial statements of the last 5 years will be subjected to a standard financial ratio analysis evaluated on a **PASS/FAIL** basis as below;

#### i. Average Annual Turnover

The lead partner must have a Minimum average annual turnover of Kshs.5 billion per year calculated as total certified payments/Revenue within the last 5 years, divided by 5 years.

#### Average Annual Turnover

The minimum average annual turnover will be as follows

**LOT 1** Kshs.5 billion calculated as total Revenue within the last 5 years, divided by 5 years.

**LOT 2** Kshs.500 Million calculated as total Revenue within the last 5 years, divided by 5 years.

**LOT 3** Kshs. 1 billion calculated as total Revenue within the last 5 years, divided by 5 years.

#### ii. Financial stability Assessment

**The lead partner's audited financial statements of the last 5 years will be subjected to a standard financial ratio analysis evaluated on a PASS/FAIL Basis as below;**

a) Gearing Ratio (Debt to equity ratio) of 25%- 50%

Computed as  $\text{Non-current liabilities} \div \text{ordinary share-holders funds} \times 100\%$

b) Debt Service Coverage Ratio of atleast 1.25

Computed as  $\text{Operating Income (EBITDA)} \div \text{Total Debt Service Costs}$

c) Liquidity Ratio (Current ratio of between 1.3

Computed as  $\text{Current Assets} \div \text{Current Liabilities}$

b) Evidence credit worthiness from the firm's bankers

c) Evidence from the firm's bank demonstrating credit worthiness as follows:

**LOT 1-** 10 Billion

**LOT 2-** 500 Million

**Lot 3-** 1 Billion

The Financial Evaluation shall also include a review of the terms and conditions of the Financial Proposal and the relevant Bidder's comments to the standard form of contract.

#### **FINANCIAL SCORE (APPLICABLE TO ALL LOTS)**

The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.

The formula for determining the financial scores (Sf) of all other Proposals is calculated as follows:

$Sf = 100 \times Fm / F$ , in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration.

The weights given to the Technical (T) and Financial (P) Proposals are:

T = \_\_\_\_\_ 0.80

P = \_\_\_\_\_ 0.20

Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following:  $S = St \times T\% + Sf \times P\%$ .

#### **STAGE 5: DUE DILIGENCE/BENCHMARKING WITH COMPARATIVE REFERENCE SITES AND JURISDICTIONS (ALL LOTS)**

Due diligence/Benchmarking will be carried out to validate the provided reference sites and authenticate the provided documentation this includes conducting verifications and inspections of the bidder's premises, data centers, or operational facilities and device and equipment samples where applicable to assess capability, infrastructure, and compliance with the technical requirements.

#### **OVERALL RFP EVALUATION SUMMARY APPLICABLE TO ALL LOTS**

The bid evaluation will take into account technical factors in addition to cost factors. The weight the weight for technical evaluation is 80% while for financial evaluation is 20%. Bidders must conform to the specific Mandatory and Technical Requirements for all initiative to be deemed successful and for consideration under financial evaluation.

The overall scores for all initiatives (TORs) will be prorated in line with the key parameters provided under the score summary below;

	ALL LOTS	
Criteria	Maximum Score /	
Tender Responsiveness	Mandatory	
Technical Evaluation		
a) Technical Requirements & Schedule of Requirements	70	
b) Presentation/Demo	10	
Total Technical	80	
Financial Proposal	20	
Recommendation for Award	Recommendation of award shall be to the successful bidder whose proposal has been determined to be substantially responsive and has the highest combined score as the per the evaluation criteria under QCBS.	
Due Diligence/Reference sites	KRA may conduct Visit (s) as part of Post tender qualification. The bidder will be required to facilitate/organize the visit to any such chosen site(s) forming substantive responsiveness where applicable.	
Negotiation	Negotiation will be carried out on the terms and conditions of the contract prior to execution of the contract.	
Contract Award	The contract for each LOT will be awarded upon successful negotiation. Where the negotiation fails, KRA will consider the second highest Combined Score ranked Bidder for negotiation.	
Performance Bond:	The Successful bidder will be required to submit a Performance Security within twenty-one (21) days of receipt of the Form of Acceptance by Kenya Revenue Authority. The successful tenderer shall furnish the Performance Security which shall be denominated in Kenya Shillings for an amount equal to 1% percent of the Contract Price. Performance Bond from Insurance Company (registered , licenced and listed by the Insurance Regulatory Authority or Bank (regulated by CBK) of 10% and in the same currency of the Accepted Contract Amount) is accepted	

#### **STAGE 5– NEGOTIATION APPLICABLE TO ALL LOTS**

The bidder with the highest ranked combined score per LOT based on the award criteria will be invited for negotiation in line with the principles set out in this RFP and applicable law

and take into account the Technical and Financial Proposals and the Bidder's comments to the standard form of contract.

**The key areas of focus will include but not limited to the following:**

- i. **Scope of Work:** Clarify the proposed methodology and expected deliverables including any adjustments or additions required.
- ii. **Timelines:** Discuss and agree on realistic timelines for deliverables, including any milestones and deadlines.
- iii. **Pricing:** Negotiate the proposed contract amount in line with the expected deliverables applicable to each LOT which shall be performance based on successful implementation of deliverables/Milestones per initiative as agreed.
- iv. **Terms and Conditions:** Review and negotiate General and Special Conditions of Contract.
- v. **Risks and Liabilities:** Address any concerns related to risks and liabilities. Discuss how these will be managed and mitigated.
- vi. Any other item related to the assignment

**STAGE 6 – RECOMMENDATION OF AWARD**

Upon successful negotiations with the highly ranked bidder per LOT, recommendation for award shall be done in line with the terms and conditions agreed during negotiation.

**STAGE-7 CONTRACT ADMINISTRATION**

1	Inception/ Kick off meeting
2	Implementation and monitoring of the Contract as per the work plan.
3	Presentation of the Design/inception report/sample for goods by the Vendor to the KRA's project manager ("the project manager").
4	<p>The Project Manager submits the proposed designs/inception reports/sample for goods where applicable to the KRA Management for validation by;</p> <ul style="list-style-type: none"> <li>• <b>Review Designs/Inception report:</b> KRA to review the sample for goods/ design /report to understand the findings, metrics, and any deviations from the expected outcomes.</li> <li>• <b>Compare with Scope:</b> Compare the results with the original scope of work defined in the contract or proposal. Identify any gaps or discrepancies.</li> <li>• <b>Assess viability/Implications:</b> Determine how the design meets the Authority's scope, deliverables, and objectives of the project.</li> </ul>
5	<p>The Project manager presents Management's comments on the sample for goods /Designs/Inception Report's recommendations to the vendor and delivery of the approved sample for goods, submission of the final Design/Inception Report and any other reports as specified in the TORs.</p> <p>The parties will among other things agree on the following;</p> <p><b>Scope Adjustment:</b> Align the scope of work with the approved design. This might include additional work, modifications, or exclusions.</p> <p><b>Timeline Revisions:</b> Agree on any revised timelines for the completion of the project, considering any additional work or delays caused by the scope adjustments.</p>

	<p><b>Document Agreements:</b> Document all agreements reached during the negotiation, including revised scope deliverable and timelines.</p>
6	<p><b>Payment Terms applicable to all LOTS</b></p> <p>Payment shall be milestone based tied to deliverables and subject to negotiation by both parties.</p> <p>This is a Specially Permitted Procurement which KRA seeks Strategic Partners to fund the specified Project which comprise three (3) LOTS and recover their return on investment through instalment payments during the contract period as negotiated.</p> <p><b>Capital Investment, Recovery and Payment Terms</b></p> <p><b>1. Upfront Capital Investment:</b></p> <p>The Strategic Partner shall make all necessary capital investments for the specific LOT/Project of their interest.</p> <p><b>LOT1:</b> Request for Proposals for Design, Supply, Installation, Commissioning, Maintenance and Support of a Comprehensive Technology Platform for Kenya Revenue (KRA).</p> <p><b>LOT 2:</b> Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII), unmanned Aerial vehicle (uav) – Drones and Marine Patrol Boats.</p> <p><b>LOT 3:</b> Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority</p> <p><b>Recovery Mechanism:</b></p> <p>The Strategic Partner(s) shall recover its capital investment, operational expenditure, financing costs, and reasonable profit margin through periodic instalments payments made by KRA in accordance with the Payment terms negotiated and agreed in the Contract.</p> <p><b>Total engagement period for this contract/Project (three (3) LOTs) is estimated to be Ten (10) years i.e. for Contract implementation, support and maintenance.</b> The term of the contract may be extended accordingly beyond the period stated in this section through a mutual agreement if by the lapse of the period stated herein, the Bidder would not have recovered their return on investment.</p>



## SECTION 3 TECHNICAL PROPOSAL- STANDARD FORMS

**The Vendor shall be required to submit the following as provided in the Technical standard forms dully filled, stamped and signed.**

- 1. Form Tech 1:** Technical Proposal Submission Form
- 2. Form Tech 2:** Vendor's Organization and Experience
- 3. Form Tech 3:** Comments and Suggestions
- 4. Form Tech 4:** Description of Approach, Methodology and Work Plan
- 5. Form Tech 5:** Work Schedule and Planning for Deliverables
- 6. Form Tech 6 A:** Team Composition, Assignment and Key Experts' Inputs
- 7. Form Tech 6 B:** Form Tech-6B: Curriculum Vitae (CV)
- 8. Form Tech 7:** Mandatory Support Documents
- 9. Form Tech 8:** Self-Declaration forms
- 10. Form Tech 9:** Tender-Securing Declaration Form

### **1. FORMTECH-1: TECHNICAL PROPOSAL SUBMISSION FORM**

{Location, Date}

To: *[Name and address of Procuring Entity]*

Dear Sirs:

We, the undersigned, offer to provide the consulting services for *[Insert title of assignment]* in accordance with your RFP dated *[Insert Date]* and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope.

*{If the Vendor is a joint venture, insert the following: We are submitting our Proposal in association/as a consortium/as a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: "of our letter of intent to form a joint venture" or, if a JV is already formed, "of the JV agreement"} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.*

OR

*{If the Vendor's Proposal includes Sub-vendors, insert the following:} We are submitting our Proposal with the following firms as Sub-vendors: {insert a list with full name and address of each Sub-vendor.}*

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity or maybe sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- c) We have no conflict of interest in accordance with ITC3.
- d) We meet the eligibility requirements as stated in ITC6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITC5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; 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 or anti-competitive practices.
- f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being wound up.
- g) The Vendor shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including

bid-rigging.

- h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the “Certificate of Independent Proposal Determination” attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from \_\_\_\_\_(*specify website*) during the procurement process and the execution of any resulting contract.
- i) We, along with any of our sub-vendors 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.
- j) Except as stated in the ITC12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause12 andITCClause29.3 and 29.4 may lead to the termination of Contract negotiations.
- k) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- l) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.  
We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 32.2 of the Data Sheet.

We remain, Yours sincerely,

Authorized Signature *{In full and initials}*: Name and Title of Signatory:

Name of Vendor (*company's name or JV's name*):

Contact information (*phone and e-mail*):

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached}

## 2. CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM 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 have read and I understand the contents of this Certificate;

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
  - a) I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
  - b) 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:
    - i) Has been requested to submit a Tender in response to this request for tenders;
    - ii) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
  - c) The Tenderer discloses that [check one of the following, as applicable]:
    - i) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
    - ii) The Tenderer has entered into 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;
  - d) 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:
    - i) prices;
    - ii) methods, factors or formulas used to calculate prices;
    - iii) the intention or decision to submit, or not to submit, a proposal; or
    - iv) the submission of a proposal which does not meet the specifications of the request for proposals; except as specifically disclosed pursuant to paragraph(5)(b) above;
  - e) 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 RFP relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph(5)(b) above;
  - f) The terms of the RFP have not been, and will not be, knowingly disclosed by the Vendor, directly or indirectly, to any competitor, prior to the date and time of the official proposed 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 Vendor and Date]

### 3. **APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION** **CLAUSE (for information)**

*(Appendix shall not be modified)*

#### 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 (*no. 33 of 2015*) and its Regulation, and any other 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.

#### Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Vendors, Contractors and Suppliers; any Sub-contractors, Sub-vendors, 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.

Kenya's public procurement and asset disposal act (*no.33 of 2015*) under Section 66 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:

- a) 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;
- b) A person referred to under sub section (1) who contravenes the provisions of that subsection commits an offence;
- c) Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - if a contract has already been entered into with the person, the contract shall be avoidable;
- d) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- e) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
  - i) Shall not take part in the procurement proceedings;
  - ii) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - iii) Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.
- f) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- g) If a person contravenes sub section (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.
- h) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
  - Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
  - “corrupt practice” is the offering, giving, receiving, or soliciting, directly or

indirectly, of anything of value to influence improperly the actions of another party;

- “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;
- “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;
- “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;
- “obstructive practice” is:
  - 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
- Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:  
 "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor,  
 and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- Rejects a proposal or award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-vendors, 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;
- Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Vendors, Contractors, and Suppliers and their Sub-contractors, Sub- vendors, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> 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
- Pursuant to Section 62 of the above 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.

<sup>1</sup> 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 vendor, 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.



<sup>2</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial 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.

### 3. FORM TECH-2: VENDOR'S ORGANIZATION AND EXPERIENCE

Form TECH-2: a brief description of the Vendor's organization and an outline of the recent experience of the Vendor that is most relevant to the assignment. In the case of a joint venture, information on similar assignments shall be provided for each partner. For each assignment, the outline should indicate the names of the Vendor's Key Experts and Sub-vendors who participated, the duration of the assignment, the contract amount (total and, if it was done in a form of a joint venture or a sub-consultancy, the amount paid to the Vendor), and the Vendor's role/involvement.

#### A - Vendor's Organization

Provide here a brief description of the background and organization of your company, and-in case of a joint venture-of each member for this assignment.

#### B - Vendor's Experience

- List only previous similar assignments successfully completed in the last [.....] years.
- List only those assignments for which the Vendor was legally contracted by the Procuring Entity as a company or was one of the joint venture partners. Assignments completed by the Vendor's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Vendor, or that of the Vendor's partners or sub-vendors, but can be claimed by the Experts themselves in their Curriculum Vitae (CV).
- The Vendor shall substantiate their claimed experience by presenting copies of relevant documents such as the form of contract (not the whole contract), purchase order, service order, performance certificate, etc.; which shall be included in the proposal as part of *Form Tech 7 Mandatory Documentary Evidence*.

<b>Assignment name:</b>	<b>Approx. value of the contract [KES, US\$ etc.]:</b>
Country:	Duration of assignment (months):
Name of Procuring Entity:	Total N <sup>o</sup> of staff-months of the assignment:
Contact Address: Email:	Approx. value of the services provided by your firm under the contract:
Start date (month/year): Completion date:	N <sup>o</sup> of professional staff-months provided by associated Vendors:
Role on Assignment: (E.g. Lead Member in ABC JV, or Sole Vendor):	Name of senior professional staff of your firm involved and functions performed:
Narrative description of Assignment:	
Description of actual services provided by your staff within the assignment:	
Name of Consulting Firm:	Name and Title of Signatory:



**a) FORMTECH-3: COMMENTS AND SUGGESTIONS**

Form TECH-3: The Vendor to provide comments and suggestions on the Terms of Reference, counterpart staff and facilities to be provided by the Procuring Entity that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Procuring Entity, including: administrative support, office space, local transportation, equipment, data, etc.

A - On the Terms of Reference

*{Improvements to the Terms of Reference, if any}*

B - On Counterpart Staff and Facilities

*{Include comments on counterpart staff and facilities to be provided by the Procuring Entity. For example, administrative support, office space, local transportation, equipment, data, background reports, etc., if any}*

**b) FORMTECH-4: DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN**

Form TECH-4: a description of the approach, methodology and work plan in responding to the terms of reference for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{The structure of your Technical Proposal:

- Technical Approach and Methodology
- Work Plan
- Organization and Staffing}
- Technical Approach and Methodology. *{Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TOR sin here.}*
- Work Plan. *{Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and tentative delivery dates of their ports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.}*
- Organization and Staffing. *{Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff.}*

c) **FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES**

N°	Deliverables <sup>1</sup> (D-..)	Months											
		1	2	3	4	5	6	7	8	9	.....	n	TOTAL
D-1	{e.g., Deliverable #1: Report A												
	1) data collection												
	2) drafting												
	3) inception report												
	4) incorporating comments												
	5) .....												
	6) delivery of final report to Procuring Entity}												
D-2	{e.g., Deliverable #2:.....}												
N													

- a) List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Procuring Entity's approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.

- b) Duration of activities shall be indicated in a form of a bar chart.

3. Include a legend, if necessary, to help read the chart.

a) **FORMT ECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS**

N°	Name	Expert's input (in person/month) per each Deliverable (listed in TECH-5)										Total time-input (in Months)		
		Position		D-1	D-2	D-3	.....	D-...				Home	Field	Total
<b>KEY EXPERTS</b>														
K-1	{e.g., Mr. Abbbb}	[Team Leader]	[Home]	[2 month]	[1.0]	[1.0]								
			[Field]	[0.5 m]	[2.5]	[0]								
K-2														
K-3														
N														
											Subtotal			
<b>NON-KEY</b>														
N-1			[Home]											
			[Field]											
N-2														
N														
											Subtotal			
											Total			

1. For Key Experts, the input should be indicated individually for the same positions as required under the ITC Data Sheet 21.2

2. Months are counted from the start of the assignment/mobilization. One (1) month equals twenty-two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.

3. "Home" means work in the office in the expert's country of residence. "Field" work means work carried out in Kenya, or outside the normal residence of the Expert in Kenya or any other country outside the expert's country of residence.



Full time input



Part time input

**b) FORM TECH-6B: CURRICULUM VITAE (CV)**

Position Title and No.	{e.g., K-1, Team Leader}
Name of Expert:	{Insert full name}
Date of Birth:	{day/month/year}
Country of Citizenship	

**Education:** {List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained} Employment record relevant to the assignment: {Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous Procuring Entity's and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}

Period	Employing organization and your title/position. Contact Infor for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2011-present]	[e.g., Ministry of ....., advisor/vendor to...  For references: Tel...../e-mail.....; Mr. Bbbbbb, deputy manager]		

Membership in Professional Associations and Publications: \_\_\_\_\_  
Language Skills (indicate only languages in which you can work): \_\_\_\_\_

Adequacy for the Assignment:

Detailed Tasks Assigned on Vendor's Team of Experts:	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
{List all deliverables/tasks as in TECH- 5 in which the Expert will be involved)	

Expert's contact information : (e-mail.....) phone.....) Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Procuring Entity, and/or sanctions by the PPRA.

Name of Expert \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_  
{day / month/year}  
Name of authorized \_\_\_\_\_ Signature. \_\_\_\_\_ Date \_\_\_\_\_  
Representative of the Vendor (the same who signs the Proposal

**c) FORMTECH-7: MANDATORY SUPPORT DOCUMENTS**

*[The Vendor shall use this form to submit all the required support documentary evidence as required in the RFP, especially the mandatory and eligibility criteria specified in the Data Sheet ITC 21.1]*

1. Certificate of Incorporation/Certificate of Registration  
*{Insert here a copy of certificate of incorporation or registration}*
2. Tax Compliance Certificate  
*{Vendor to insert a copy of the tax compliance certificate from Kenya Revenue Authority or similar body in the case of foreign consulting firms}*
3. Practice License or Certificate for the Firm  
*{If required, Vendor to insert a copy of the firm's practice license or registration certificate issued by the professional body specified under Data Sheet ITC 21.1}*
4. Similar Consulting Assignments Experience  
*{Vendor to insert here copies of the form of contract, purchase order, service order, and performance certificate or similar evidence of similar assignments carried out by the firm. The assignments shall be the same as those provided under FORM TECH 2B}*
5. Academic Certificates  
*{Vendor to insert copies of the required relevant academic certificates relevant to the assignment for all the key experts}*
6. Professional Certificates  
*{Vendor to insert copies of professional certificates and relevant short-term trainings to demonstrate professional qualifications for all the key experts}*
7. Professional Membership of Key Experts  
*{If applicable, Vendor to insert copies of professional membership certificate for its key experts}*
8. Certificate of Independent Proposal Determination  
*(The Form is available on Tech FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM).*

## FORM TECH - 8: 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: -

- a) THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of..... (Insert name of the Company) who is a Bidder in respect of **Tender No.....** for..... (Insert tender title/description) for..... (*Insert name of the Procuring entity*) and duly authorized and competent to make this statement.
- b) THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
- c) THAT what is deponed to here in 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: -

- a) THAT I am the Chief Executive/Managing Director/Principal Officer/Director of..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.**..... for ..... (*insert tender title/description*) for ..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
- b) THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*insert name of the Procuring entity*) which is the procuring entity.
- c) THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*name of the procuring entity*).
- d) THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.
- e) THAT what is deponed to herein above is true to the best of my knowledge information and belief.

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

Bidder 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 here by 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.....

**FORM TECH - 9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}**  
[The Bidder shall complete this Form in accordance with the instructions indicated]

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

Tender No.:.....[insert number of tendering process]

To:.....[insert complete name of Purchaser]

I/We, the undersigned, declare that:

- a) I / We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
- b) I /We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser or 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.
- c) I / We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer (s), upon the earlier of:
  - Our receipt of a copy of your notification of the name of the successful Tenderer;
  - or
  - Thirty days after the expiration of our Tender.
- d) 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

## **SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS**

**Vendor firms will be required to submit duly filled, signed and stamped standard forms listed below**

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided in Section 2.

FIN-1 Financial Proposal Submission

Form FIN-2 Summary of Costs

FIN-3 Breakdown of Remuneration

FIN-4 Reimbursable expenses

## FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM

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

..... {Location, Date}

To: ..... [Name and address of Procuring Entity]

Dear Sirs:

We, the undersigned, offer to provide the consulting services for..... [Insert title of assignment]

in accordance with your Request for Proposal dated..... [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of.....  
{Indicate the corresponding to the amount currency} {Insert amounts in words and figures}, including of all taxes in accordance with ITC24.2 in the Data Sheet. The estimated amount of local taxes is..... {Insert currency} {Insert amount in words and figures}.

{Please note that all amounts shall be the same as in Form FIN-2}.

Our Financial Proposal shall be valid and remain binding upon us, subject to the modifications resulting from Contract negotiations, for the period of time specified in the ITC12.1 Datasheet.

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

Commissions and gratuities paid or to be paid by us to an agent or any third party relating to preparation or submission of this Proposal and Contract execution, paid if we are awarded the Contract, are listed below:

Name and Address, Amount and Purpose of Commission of Agents, Currency or Gratuity

{If no payments are made or promised, add the following statement: "No commissions or gratuities have been or are to be paid by us to agents or any third party relating to this Proposal and Contract execution."}

We understand you are not bound to accept any Proposal you receive. We remain,  
Yours sincerely,

---

Signature..... (of Vendor's authorized representative) {In full and initials}:

Full name: ..... {insert full name of authorized representative} Title:

..... {insert title/ position of authorized representative}

Name of Vendor..... (company's name or JV's name): Capacity: .....

{insert the person's capacity to sign for the Vendor} Physical Address: .....  
{insert the authorized representative's address}

Phone: ..... {insert the authorized representative's phone and fax number, if applicable} Email: ..... {insert the authorized representative's email address}

{For a joint venture, either all members shall sign or only the lead member/vendor, in which case the power of attorney to sign on behalf of all members shall be attached}

## FORM FIN-2: SUMMARY OF COSTS

Item	Cost			
	{Vendor must state the proposed Costs in accordance with ITC 16.4 of the Data Sheet; delete columns which are not used}			
	{Insert Foreign Currency # 1}	{Insert Foreign Currency # 2, if used}	{Insert Foreign Currency # 3, if used}	{Insert Local Currency, if used and/or required (16.4 Data Sheet)}
Cost of the Financial Proposal				
Including:				
(1) Remuneration				
(2) Reimbursables				
Subtotal [Remuneration + Reimbursables]				
Taxes:				
{insert type of tax e.g., VAT or sales tax}				
{e.g., withholding tax on experts' remuneration}				
{insert type of tax}				
Total Taxes				
Total Cost of the Financial Proposal: {Should match the amount in Form FIN-1}				



## FORM FIN-3A: BREAKDOWN OF REMUNERATION

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for the calculation of the Contract's ceiling amount; to calculate applicable taxes at contract negotiations; and, if needed, to establish payments to the Vendor for possible additional services requested by the Procuring Entity. This Form shall not be used as a basis for payments under Lump-Sum contracts.

A. Remuneration								
No	Name	Position (as in TECH - 6)	Person-month Remuneration Rate	Time Input in Person/Month (from TECH -6)	{Currency # 1-as in FIN-2}	{Currency # 2-as in FIN-2}	{Currency # 3-as in FIN-2}	{Local Currencies as in FIN-2}
	Key E							
K - 1			[Home]					
			[Field]					
K - 2								
	Non-							
N - 1			[Home]					
N - 2			[Field]					
	Total Costs							

**FORM FIN 3B: VENDOR'S REPRESENTATIONS REGARDING COSTS AND CHARGES**

*{This Form FIN 3B shall be used for Time-Based contracts only. If Lump sum Contract is used, the Procuring Entity shall delete the FORMFIN-3B, FORM FIN-3C and FORM FIN-3D from the RFP before issuance to Vendors}*

Vendor: .....Country:

Assignment: .....Date:

We hereby confirm that:

- A. The basic fees indicated in the attached table are taken from the firm's pay roll records and reflect the current rates of the Experts listed which have not been raised other than within the normal annual pay increase policy as applied to all the Vendor's Experts;
- B. attached are true copies of the latest pay slips of the Experts listed;
- C. theaway-from-homeofficeallowancesindicatedbelowarethosethattheVendorhasagreedtopayforthis assignment to the Experts listed;
- D. the factors listed in the attached table for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and
- E. said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.

.....  
[Name of Vendor]

Signature of Authorized Representative

Name:

.....  
Title:

.....  
Date:

.....

**FORM 3C: FORM FOR VENDOR'S REPRESENTATIONS REGARDING COSTS AND CHARGES***{This Form FIN 3C shall be used for Time-Based contracts only}*

(Expressed in {insert name of currency\*})

Personnel		1	2	3	4	5	6	7	8
Name	Position	Basic Remuneration Rate per Working Month/Day/ Year	Social Charge s <sup>1</sup>	Overhead <sup>1</sup>	Subtotal	Profit <sup>2</sup>	Away from Home Office Allowance	Proposed Fixed Rate per Working Month/Day/ Hour	Proposed Fixed Rate per Working Month/Day/ Hour <sup>1</sup>
Home Office									
Procuring Entity's Country									

{\* If more than one currency is used, use additional table(s), one for each currency}

1. Expressed as percentage of 1

2. Expressed as percentage of 4

## FORM FIN 3D: BREAKDOWN OF REMUNERATION RATES [FOR TIME BASED CONTRACTS ONLY]

### a) Review of Remuneration Rates

- 4.1 The remuneration rates are made up of salary or abase fee, social costs, overheads, profit, and any premium or allowance that may be paid for assignments away from headquarters or a home office. Form FIN3 C can be used to provide a breakdown of rates.
- 4.2 The Form FIN 3C shall be completed and attached to the Financial Form-3. As agreed at the negotiations, breakdown sheets shall form part of the negotiated Contract and included in its Appendix D or C.
- 4.3 At the negotiations the firm shall be prepared to disclose its audited financial statements for the last three years, to substantiate its rates, and accept that its proposed rates and other financial matters are subject to scrutiny. The Procuring Entity is charged with the custody of government funds and is expected to exercise prudence in the expenditure of these funds.

### 5 Rate details are discussed below:

- 35 Salary is the gross regular cash salary or fee paid to the individual in the firm's home office. It shall not contain any premium for work away from headquarters or bonus, except where these are included bylaw or government regulations.
- 36 Bonuses are normally paid out of profits. To avoid double counting, any bonuses shall not normally be included in the "Salary" and should be shown separately. Where the Vendor's accounting system is such that the percentages of social costs and overheads are based on total revenue, including bonuses, those percentages shall be adjusted downward accordingly. Where national policy requires that 13 months' pay be given for 12 months' work, the profit element need not be adjusted downward. Any discussions on bonuses shall be supported by audited documentation, which shall be treated as confidential.
- 37 Social Charges are the costs of non-monetary benefits and may include, inter alia, social security (including pension, medical, and life insurance costs) and the cost of a paid sick and/or annual leave. In this regard, a paid leave during public holidays or an annual leave taken during an assignment if no Expert's replacement has been provided is not considered social charges.
- 38 Cost of Leave The principles of calculating the cost of total days leave per annum as a percentage of basic salary is normally calculated as follows:  
$$\text{Leave cost as percentage of salary} = \frac{\text{days leave} \times 100}{365 - w - ph - v - s}$$
  
Where w = weekends, ph = public holidays, v = vacation, and s = sick leave.  
Please note that leave can be considered as a social cost only if the Procuring Entity is not charged for the leave taken.
- 39 Overheads are the Vendor's business costs that are not directly related to the execution of the assignment and shall not be reimbursed as separate items under the Contract. Typical items are home office costs (non-billable time, time of senior Vendor's staff monitoring the project, rent of headquarters' office, support staff, research, staff training, marketing, etc.), the cost of Vendor's personnel not currently employed on revenue-earning projects, taxes on business activities, and business promotion costs. During negotiations, audited financial statements, certified as correct by an independent auditor and supporting the last three years' over heads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. The Procuring Entity does not accept an add-on margin for social charges, overhead expenses, etc. for Experts who are not permanent employees of the Vendor. In such case, the Vendor shall be entitled only to administrative costs and a fee on the monthly payments charged for sub-contracted Experts.
- 40 Profit is normally based on the sum of the Salary, Social costs, and Overheads. If any bonuses paid on a regular basis are listed, a corresponding reduction shall be made in the profit amount. Profit shall not be allowed on travel or any other

reimbursable expenses.

- 41 *Away from Home Office Allowance or Premium or Subsistence Allowances* Some Vendors pay allowances to Experts working away from headquarters or outside of the home office. Such allowances are calculated as a percentage of salary (or a fee) and shall not draw over heads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately.

## FORM FIN-4 BREAKDOWN OF REIMBURSABLE

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for calculation of the Contract ceiling amount, to calculate applicable taxes at contract negotiations and, if needed, to establish payments to the Vendor for possible additional services requested by the Procuring Entity. This form shall not be used as a basis for payments under Lump-Sum contracts. This form shall be filled for Time-Based Contracts to form the basis of contract negotiations.

B. Reimbursable Expenses_								
N o	Type of Reimbursable Expenses	Unit	Unit Cost	Quantity	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency # 3- as in FIN-2}	{Local Currency- as in FIN-2}
	{e.g., Per diem allowances**}	{Day}						
	{e.g., International flights}	{Ticket}						
	{e.g., In/out airport transportation}	{Trip}						
	{e.g., Communication costs between Insert place and Insert place}							
	{e.g., reproduction of							
	{e.g., Office rent}							
	.....							
	{Training of the Procuring Entity's personnel – if required in TOR}							
Total Costs								

Legend:

“Per diem allowance” is paid for each night the expert is required by the Contract to be away from his/her usual place of residence. Procuring Entity can set up a ceiling.



## **SECTION 5 TERMS OF REFERENCE**

### **TERMS OF REFERENCE (TOR) FOR THE DESIGN, SUPPLY, INSTALLATION, COMMISSIONING, MAINTENANCE AND SUPPORT OF A COMPREHENSIVE TECHNOLOGY PLATFORM FOR KENYA REVENUE (KRA)**

#### **Background**

The mandate of KRA is to assess, collect and account for all revenues in accordance with Kenya's laws and regulations. To achieve this, KRA operates multiple systems supporting tax administration, taxpayer services, compliance, analytics, corporate support, and integrations.

KRA seeks to be a proactive, data-driven, and service-oriented organization that makes compliance effortless, maximizes voluntary compliance, and operates with transparency and agility. To achieve this, the Authority requires a comprehensive technology platform (CTP) to effect its digital transformation strategies. KRA requires the CTP to be best in class, enterprise grade platform that will streamline operations, enhance collaboration, and leverage cutting-edge technologies that can adapt rapidly to organizational changes, support complex revenue operations, and integrate seamlessly internally and externally including with taxpayer eco-systems.

The goal of this procurement is to:

1. Rapidly modernize, align and enhance various systems to make them fit for future and API ready
2. Improve and expand the IT infrastructure to accommodate the expected increase in workload.
3. Provide Project and change management services to support KRA in implementing the CTP

#### **Implementation of the CTP will achieve the following:**

- 1) Elevate taxpayer experience by transitioning from reactive transactions to proactive, personalized digital services.
- 2) Enhance compliance and revenue assurance by Leveraging advanced analytics, automation, and integrated data to identify and address non-compliance more effectively
- 3) Optimize operational efficiency through automation of manual processes end-to-end, streamlining of workflows, and empowering staff with modern tools to significantly improve productivity and reduce operational costs
- 4) Data-driven decision making through unification of disparate data sources into a secure, accessible platform that provides a holistic view of taxpayer obligations and risks, supporting predictive analytics and evidence-based policy.

- 5) Provide a future-ready, secure foundation by implementing a modular, scalable, and secure architecture that ensures system resilience, facilitates easy integration, and allows for the continuous adoption of new technologies.

### **The scope of work**

Implementation of the Design, Supply, Installation, Commissioning, Maintenance and Support of a Comprehensive Technology Platform for Kenya Revenue (KRA) comprise of three (3) lots with categories/Initiatives/sub-initiatives as listed below;

### **MAPPING OF THE SERVICES REQUIRED PER LOT**

	<b>LOT 1: Design, Supply, Installation, Commissioning, Support &amp; Maintenance of Integrated Enterprise Infrastructure, Information Security And Revenue Management Platform for Kenya Revenue (KRA).</b>	<b>Detailed TOR/Schedule or Requirements/Specifications</b>
<b>S/No.</b>	<b>Category 1: Infrastructure Tools and Equipment (LOT 1)</b>	<b>Refer to the attached Zipped Folder named LOT 1</b>
i	Design, Supply, Implementation, Commissioning, Maintenance and Support for Smart Gates and Transit Surveillance Solution	Refer to the attached Zipped Folder named LOT 1
ii	Design, Supply, Implementation, Commissioning, Maintenance and Support for LANs & WANs in KRA Stations	Refer to the attached Zipped Folder named LOT 1
iii	Design, Supply, Implementation, Commissioning, Maintenance and Support of Storage, Servers, Cloud Platform upgrade and associated software licenses.	Refer to the attached Zipped Folder named LOT 1
iv	Design, Supply, implementation, configuration, commissioning maintenance and support for of comprehensive technology platform in-country private cloud for kenya revenue authority	Refer to the attached Zipped Folder named LOT 1
v	Design, Supply, Implementation, Commissioning, Maintenance and Support for Cisco IP Phones, License Subscriptions, Cisco Voice Gateway and IP Telephony Call Accounting and Reporting Solution	Refer to the attached Zipped Folder named LOT 1
vi	Design, Supply, Implementation, Commissioning, Maintenance and Support for Enterprise Back Up Solution	Refer to the attached Zipped Folder named LOT 1
vii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Power Back Up Solution	Refer to the attached Zipped Folder named LOT 1
viii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Upgrade of Data Center Facility Infrastructure	Refer to the attached Zipped Folder named LOT 1
ix	Design, Supply, Implementation, Commissioning, Maintenance and Support for	Refer to the attached Zipped Folder

	Core Network Infrastructure	named LOT 1
x	Design, Supply, Implementation, Commissioning, Maintenance and Support End User Devices	Refer to the attached Zipped Folder named LOT 1
xi	Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII)	Refer to the attached Zipped Folder named LOT 1
<b>S/No.</b>	<b>Category 2: Security and Enterprise Support Solution (LOT 1)</b>	<b>Refer to the attached Zipped Folder named LOT 1</b>
i	Design, Supply, Implementation, Commissioning, Maintenance and Support for Enterprise Document Management System	Refer to the attached Zipped Folder named LOT 1
ii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Corporate Case Management System	Refer to the attached Zipped Folder named LOT 1
iii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Mail Solution and Collaboration Platform	Refer to the attached Zipped Folder named LOT 1
iv	Design, Supply, Implementation, Commissioning, Maintenance and Support for End to End Monitoring Solution	Refer to the attached Zipped Folder named LOT 1
v	Design, Supply, Implementation, Commissioning, Maintenance and Support for Governance Risk & Compliance (GRC) Solution with Embedded Business Continuity Management and Enterprise Risk Management Solution	Refer to the attached Zipped Folder named LOT 1
vi	Design, Supply, Implementation, Commissioning, Maintenance and Support of an Enterprise Resource Planning (ERP)	Refer to the attached Zipped Folder named LOT 1
vii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Information Security Systems	Refer to the attached Zipped Folder named LOT 1
viii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Legal Services Management System	Refer to the attached Zipped Folder named LOT 1
ix	Design, Supply, Implementation, Commissioning, Maintenance and Support for Laboratory Information Management System	Refer to the attached Zipped Folder named LOT 1
x	Supply, Design, Implementation, Commissioning, Maintenance and Support Unified Portal and Customer Relationship Management System	Refer to the attached Zipped Folder named LOT 1
<b>S/No.</b>	<b>Category 3: Core Revenue Analysis and Administration Platforms (LOT 1)</b>	<b>Refer to the attached Zipped Folder named LOT 1</b>
i	Design, Supply, Implementation, Commissioning, Maintenance and Support for Image Analysis using Artificial Intelligence (AI)	Refer to the attached Zipped Folder named LOT 1

	and Machine Learning (ML)	
ii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Comprehensive Electronic Tax Invoicing System	Refer to the attached Zipped Folder named LOT 1
iii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Digital Shipment Solution	Refer to the attached Zipped Folder named LOT 1
iv	Design, Supply, Implementation, Commissioning, Maintenance and Support Domestic Taxes Administration System	Refer to the attached Zipped Folder named LOT 1
v	Design, Supply, Implementation, Commissioning, Maintenance and Support for Spartial Tax Intelligence System	Refer to the attached Zipped Folder named LOT 1
vi	Design, Supply, Implementation, Commissioning, Maintenance and Support for Custody Transfer Monitoring System	Refer to the attached Zipped Folder named LOT 1
vii	Design, Supply, Implementation, Commissioning, Maintenance and Support for a Data Analytics Centre of Excellence	Refer to the attached Zipped Folder named LOT 1
	<b>SUB TOTAL FOR CATEGORY 3 (LOT 1)</b>	
<b>S/No.</b>	<b>LOT 2: Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support, unmanned Aerial vehicle (UAV) - drones , and Marine Patrol Boats</b>	<b>Refer to the attached Zipped folder named LOT 2</b>
i	Design, Supply, Delivery, Installation, Testing, commissioning and maintenance of unmanned aerial vehicle (uav) - drones	Refer to the attached Zipped Folder named LOT 2
ii	Design, Supply, Delivery, Installation, Testing, Commissioning, Maintenance and Support of Marine Patrol Boats	Refer to the attached Zipped Folder named LOT 2
<b>S/No.</b>	<b>LOT 3 : Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority</b>	<b>Refer to the attached folder named LOT 3</b>
i	Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority	Refer to the attached folder named LOT 3

**Consortium Responsibility Matrix for the proposed Solution/Scope/Component/ Goods should be provided per LOT in the format below:**

<b>CONSORTIUM RESPONSIBILITY MATRIX (LOT 1 &amp;2)</b>						
<b>Initiatives (Solution/Scope Component/Goods)</b>	<b>Solution Scope Owner</b>	<b>OEM Bidder</b>	<b>Implementation Scope Owner</b>	<b>Level 1 Support Scope Owner</b>	<b>Level 2 Support Scope Owner</b>	<b>Level 3 Support Scope Owner</b>

### **Expected Outcomes**

The expected outcomes/Deliverables are provided under specific TOR/Requirements under each LOT.

### **DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN**

A description of the approach, methodology and work plan in responding to the terms of reference for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

The structure of your Technical Proposal:

1. Technical Approach and Methodology
2. Work Plan
3. Organization and Staffing; Provide organization structure, team composition and CV and certificates of the Key personnel.
4. In the case of a joint venture/consortium, a detailed responsibility matrix, as provided below, should be completed, indicating the responsibilities of each member in the joint venture/consortium. The responsibilities matrix should be aligned with the roles and responsibilities as captured in the Joint Venture/Consortium Agreement.
5. Write-up on the Overall Architecture and Modules of the solution as specified in Section 5-Terms of Reference.

The bidder is required to provide the methodology/implementation approach they intend to apply for each specific TOR for each initiative/solution. expected outcomes/Deliverables are provided under specific TOR for each initiative/solution/Assignment applicable to each LOT.

### SUMMARY PRICE SCHEDULE FOR ALL THE THREE (3) LOTS

Bidders are required to use the summary price schedule applicable to their selected LOT.

<b>LOT 1: Design, Supply, Installation, Commissioning, Support &amp; Maintenance of an Integrated Enterprise Infrastructure, Information Security And Revenue Management Platform for Kenya Revenue (KRA).</b>		
<b>S/No.</b>	<b>Category 1: Infrastructure Tools and Equipment (LOT 1)</b>	<b>Total Cost Exclusive of All Applicable Taxes</b>
i	Design, Supply, Implementation, Commissioning, Maintenance and Support for Smart Gates and Transit Surveillance Solution	
ii	Design, Supply, Implementation, Commissioning, Maintenance and Support for LANs & WANs in KRA Stations	
iii	Design, Supply, Implementation, Commissioning, Maintenance and Support of Storage, Servers, Cloud Platform upgrade and associated software licenses.	
iv	Design, Supply, implementation, configuration, commissioning maintenance and support for of compressive technology platform in-country private cloud for Kenya Revenue Authority	
v	Design, Supply, Implementation, Commissioning, Maintenance and Support for Cisco IP Phones, License Subscriptions, Cisco Voice Gateway and IP Telephony Call Accounting and Reporting Solution	
vi	Design, Supply, Implementation, Commissioning, Maintenance and Support for Enterprise Back Up Solution	
vii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Power Back Up Solution	
viii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Upgrade of Data Center Facility Infrastructure	
ix	Design, Supply, Implementation, Commissioning, Maintenance and Support for Core Network Infrastructure	
x	Design, Supply, Implementation, Commissioning, Maintenance and Support End User Devices	
xi	Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII)	
	<b>SUB TOTAL FOR CATEGORY 1 (LOT 1) Exclusive of All Applicable Taxes</b>	
<b>S/No.</b>	<b>Category 2: Security and Enterprise Support Solution (LOT 1)</b>	<b>Total Cost Exclusive of All</b>



		<b>Applicable Taxes</b>
i	Design, Supply, Implementation, Commissioning, Maintenance and Support for Enterprise Document Management System	
ii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Corporate Case Management System	
iii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Mail Solution and Collaboration Platform	
iv	Design, Supply, Implementation, Commissioning, Maintenance and Support for End to End Monitoring Solution	
v	Design, Supply, Implementation, Commissioning, Maintenance and Support for Governance Risk & Compliance (GRC) Solution with Embedded Business Continuity Management and Enterprise Risk Management Solution	
vi	Design, Supply, Implementation, Commissioning, Maintenance and Support of an Enterprise Resource Planning (ERP)	
vii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Information Security Systems	
viii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Legal Services Management System	
ix	Design, Supply, Implementation, Commissioning, Maintenance and Support for Laboratory Information Management System	
x	Supply, Design, Implementation, Commissioning, Maintenance and Support Unified Portal and Customer Relationship Management System	
	<b>SUB TOTAL FOR CATEGORY 2 (LOT 1) Exclusive of All Applicable Taxes</b>	
<b>S/No.</b>	<b>Category 3: Core Revenue Analysis and Administration Platforms (LOT 1)</b>	<b>Total Cost Exclusive of All Applicable Taxes</b>
i	Design, Supply, Implementation, Commissioning, Maintenance and Support for Image Analysis using Artificial Intelligence (AI) and Machine Learning (ML)	
ii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Comprehensive Electronic Tax Invoicing System	
iii	Design, Supply, Implementation, Commissioning, Maintenance and Support for Digital Shipment Solution	
iv	Design, Supply, Implementation, Commissioning, Maintenance and Support Domestic Taxes Administration System	
v	Design, Supply, Implementation, Commissioning, Maintenance and Support for Spartial Tax Intelligence System	
vi	Design, Supply, Implementation, Commissioning, Maintenance and Support for Custody Transfer Monitoring System	
vii	Design, Supply, Implementation, Commissioning, Maintenance and Support for a Data Analytics Centre of Excellence	
	<b>SUB TOTAL FOR CATEGORY 3 (LOT 1)</b>	
<b>SUMMARY COST FOR LOT 1 Exclusive of All Applicable Taxes</b>		

	<b>Total Cost for LOT 1 Exclusive All Applicable Taxes</b>	
	<b>Applicable Taxes for LOT 1 (Category 1,2 &amp;3)</b>	
	<b>Total Cost for LOT 1 Inclusive of Applicable Taxes and Levies</b>	
<b>S/No.</b>	<b>LOT 2: Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII), unmanned Aerial vehicle (uav) - drones and Marine Patrol Boats</b>	<b>Total Cost Exclusive of All Applicable Taxes</b>
i	Design, Supply, Delivery, Installation, Testing, commissioning and maintenance of unmanned aerial vehicle (uav) - drones	
ii	Design, Supply, Delivery, Installation, Testing, Commissioning, Maintenance and Support of Marine Patrol Boats - PENDING	
	<b>TOTAL COST FOR LOT 2 exclusive All Applicable Taxes</b>	
	<b>Applicable Taxes for LOT 2</b>	
	<b>Total Cost for LOT 2 Inclusive of Applicable Taxes and Levies</b>	
<b>S/No.</b>	<b>LOT 3 : Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority</b>	<b>Total Cost Exclusive of All Applicable Taxes</b>
i	Provision of Consultancy Services for Project Management, Business Process Re-engineering, Change Management and Stakeholder Management for Kenya Revenue Authority	
	<b>TOTAL COST FOR LOT 3 exclusive All Applicable Taxes</b>	
	<b>Applicable Taxes for LOT 3</b>	
	<b>Total Cost for LOT 3 Inclusive of Applicable Taxes and Levies</b>	
	<b><i>N/B: COST BREAK DOWN TO BE PROVIDED FOR EACH TERMS OF REFERENCE (TOR). THE TOTAL COST INCLUSIVE ALL APPLICABLE TAXES PER TOR SHOULD BE CARRIED FORWARD TO THE COST SUMMARY</i></b>	

## COST SUMMARY

No	Description	Total cost inclusive of all applicable Taxes and Levies (Kshs.)
1.	<b>LOT 1:</b> Design, Supply, Installation, Commissioning, Support & Maintenance of Integrated Enterprise Infrastructure, Information Security And Revenue Management Platform for Kenya Revenue (KRA).	
2.	<b>LOT 2:</b> Design, Supply, Delivery,	

	Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII), unmanned Aerial vehicle (uav) - drones and Marine Patrol Boats.	
3.	<b>LOT 3 :</b> Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority	

**N/B**

The Total cost per LOT inclusive of all applicable taxes should be drawn from the cost breakdown per TOR as specified under each LOT. Bidders are advised to select the applicable LOT.

### **PROPOSED FUNDING AND SUSTAINABILITY FRAMEWORK**

Recovery of the total cost shall be performance based i.e. It shall be tied to the successful implementation of deliverables provided under each LOT per TOR/Schedule of Requirements where applicable.

The bidder should provide a detailed funding proposal detailing how they envision the full scope of the project outlined will be financed and supported throughout the period of the contract. The proposal should include a detailed sustainability framework proposed to support the sustainability of the project.

1. The funding and sustainability framework should detail the operating assumptions made in the development of the framework.
2. The funding and sustainability framework should detail the anticipated revenues generated through the proposed systems.
3. The funding and sustainability framework will detail the proposed capex funding and recovery framework on all fixed costs.
4. The funding and sustainability framework will provide a sensitivity analysis by considering a best case, most likely and worst-case scenarios validate the survivability of the sustainability framework even in the worst-case scenario.
5. The funding and sustainability framework will detail the project financing sources.
6. The funding and sustainability framework should detail any interventions needed from the government to support the proposed sustainability framework.

## **SECTION 6 DRAFT FORM OF CONTRACT**



### **AGREEMENT FOR THE DESIGN, SUPPLY, INSTALLATION, COMMISSIONING, MAINTENANCE AND SUPPORT OF A COMPREHENSIVE TECHNOLOGY PLATFORM FOR KENYA REVENUE (KRA)**

#### **SPECIALLY PERMITTED PROCUREMENT METHOD**

**CONTRACT NO: KRA/HQS/RFP/013/2025-2026**

- i. **LOT 1: Design, Supply, Installation, Commissioning, Support & Maintenance of Integrated Enterprise Infrastructure, Information Security and Revenue Management Platform for Kenya Revenue (KRA).**
- ii. **LOT 2: Design, Supply, Delivery, Installation, Commissioning, Maintenance and Support of Enhanced Non-Intrusive Inspection (NII), Unmanned Aerial Vehicle (UAV) – Drones and Marine Patrol Boats**
- iii. **LOT 3: Provision of Consultancy Services for Project Management, Business Process Re-Engineering, Change Management and Stakeholder Management for Kenya Revenue Authority**

**N/B: the applicable lot will be selected**

**BETWEEN**

**KENYA REVENUE AUTHORITY**

**AND**

**[       ]**

**DATE:**

**THIS CONTRACT AGREEMENT** is made on the .....**[insert: ordinal]** day of ..... **[insert: month]**, **[insert: year]**. BETWEEN (1) ..... **[insert: Name of Procuring Entity]**, a **[insert: description of type of legal entity, for example, an agency of the Department of.....]** of the Government of Kenya, or corporation incorporated under the laws of Kenya and having its principal place of business at **[insert: address of Procuring Entity]** (here in after called “the Procuring Entity”), and (2).....**[insert: name of Supplier]**, a corporation incorporated under the laws of **[insert: country of Supplier]** and having its principal place of business at **[insert: address of Supplier]** (here in after called “the Supplier”).

**WHEREAS** the Procuring Entity desires to engage the Supplier to supply, install, achieve Operational Acceptance of, and support the following Information System **[insert: brief description of the Information System]** (“the System”), and the Supplier has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement.

**NOW IT IS HERE BY AGREED** as follows:

#### **Article 1. Contract Documents**

- a. Contract Documents (Reference GCC Clause 1.1(a) (ii))  
The following documents shall constitute the Contract between the Procuring Entity and the Supplier, and each shall be read and construed as an integral part of the Contract:
  - This Contract Agreement and the Appendices attached to the Contract Agreement
  - Special Conditions of Contract
  - General Conditions of Contract
  - Technical Requirements (including Implementation Schedule)
  - The Supplier's tender and original Price Schedules
  - *[Add here: any other documents]*
- 1.2 *Order of Precedence (Reference GCC Clause 2)*  
In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 7 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.
- 1.3 *Definitions (Reference GCC Clause 1)*

Capitalized words and phrases used in this Contract Agreement shall have the same meanings as prescribed to them in the General Conditions of Contract.

## **Article 2. Contract Price and Terms of Payment**

2.1 Contract Price (Reference GCC Clause 1.1(a)(viii) and GCC Clause 11) The Procuring Entity here by agrees to pay to the Supplier the Contract Price in consideration of the performance by the Supplier of its obligations under the Contract.

The Contract Price shall be the aggregate of: [ ***insert: amount of foreign currency A in words***], [ ***insert: amount in figures***], plus [ ***insert: amount of foreign currency B in words***], [ ***insert: amount in figures***], plus [ ***insert: amount of foreign currency C in words***], [ ***insert: amount in figures***], [ ***insert: amount of local currency in words***], [ ***insert: amount in figures***], as specified in the Grand Summary Price Schedule.

The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the terms and conditions of the associated incoterms, and the taxes, duties and related levies if and as identified.

The payment terms for the Contract Price shall be as specified in the Grand Summary Price Schedule.

## **Article 3. Conditions Precedent and Effective Date for Determining Time for Operational Acceptance**

- Effective Date (Reference GCC Clause 1.1(e) (ix))

The time allowed for supply, installation, and achieving Operational Acceptance of the System shall be determined from the date when all of the following conditions have been fulfilled:

- i. This Contract Agreement has been duly executed for and on behalf of the Procuring Entity and the Supplier;
- ii. The Supplier has submitted to the Procuring Entity the performance security and the advance payment security, in accordance with GCC Clause 13.2 and GCC Clause 13.3;
- iii. The Procuring Entity has paid the Supplier the advance payment, in accordance with GCC Clause 12;
- iv. no court, tribunal of competent jurisdiction or any Governmental authority having enacted, issued, promulgated, enforced or entered any statute, law, ordinance, order, regulation or rule or entered, issued, made or rendered any award, decision, injunction, judgment, order, ruling, subpoena or verdict (whether temporary, preliminary or permanent) which has the effect of making the performance of this Contract illegal.



- v. The Parties shall as a condition precedent to the effectiveness of this Contract agree on all relevant technical warranties applicable to each component of the Works including any limitations or exclusions applicable thereto and further any assignments that may be required in respect thereof (the **Technical Warranties**). Upon such agreement, the Technical Warranties shall form part of the Contract and shall be binding on the Parties.
- vi. *[Add here: additional conditions precedent]* Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.
- o If the conditions listed under 3.1 are not fulfilled within [Two (2) months] from the date of this Contract Agreement (“**Signature Date**”), the parties shall discuss and agree on the Time for Achieving Operational Acceptance and/or other relevant conditions of the Contract.  
*[Add here procedures relating to satisfaction of conditions precedent]*

#### **Article 4. Appendixes**

The Appendixes listed below shall be deemed to form an integral part of this Contract Agreement.

Reference in the Contract to any Appendix shall mean the Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly.

#### **APPENDIXES**

- Appendix 1. Supplier's Representative
- Appendix 2. Adjudicator *[If there is no Adjudicator, state “not applicable”]*
- Appendix 3. List of Approved Subcontractors
- Appendix 4. Categories of Software
- Appendix 5. Custom Materials
- Appendix 6. Revised Price Schedules (if any)
- Appendix 7. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

**IN WITNESS WHEREOF** the Procuring Entity and the Supplier have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

**a. For and on behalf of the Procuring Entity**

Signed: in the capacity of *[insert: title or other appropriate designation]* in the presence of \_\_\_\_\_

**b. For and on behalf of the Supplier**

Signed: in the capacity of *[insert: title or other appropriate designation]* in the presence of \_\_\_\_\_

## GENERAL CONDITIONS OF CONTRACT

### A. CONTRACT AND INTERPRETATION

#### Definitions

1.1 In this Contract, the following terms shall be interpreted as indicated below.

#### a) **Contract Elements**

- i) “Contract” means the Contract Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein. The Contract Agreement and the Contract Documents shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.
- ii) “Contract Documents” means the documents specified in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments to these Documents).
- iii) “Contract Agreement” means the agreement entered into between the Procuring Entity and the Supplier using the form of Contract Agreement contained in the Sample Contractual Forms Section of the tender documents and any modifications to this form agreed to by the Procuring Entity and the Supplier. The date of the Contract Agreement shall be recorded in the signed form.
- iv) “GCC” means the General Conditions of Contract.
- v) “SCC” means the Special Conditions of Contract.
- vi) “Technical Requirements” means the Technical Requirements in Section VII of the tendering documents.
- vii) “Implementation Schedule” means the Implementation Schedule in Section VII of the tendering documents.
- viii) “Contract Price” means the price or prices defined in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- ix) “Procurement Regulations” refers to the Regulations issued under the Public Procurement and Asset Disposal Act (2015).
- x) “tendering documents” refers to the collection of documents issued by the Procuring Entity to instruct and inform potential suppliers of the processes for tendering, selection of the winning tender, and Contract formation, as well as the contractual conditions governing the relationship between the Procuring Entity and the Supplier. The General and Special Conditions of Contract, the Technical Requirements, and all other documents included in the tendering documents reflect the Procurement Regulations that the Procuring Entity is obligated to follow during procurement and administration of this Contract.

#### b) **Entities**

- i) “Procuring Entity” means the entity purchasing the Information System, as **specified in the SCC.**
- ii) “Project Manager” means the person **named as such in the SCC** or otherwise appointed by the Procuring Entity in the manner provided in GCC Clause 18.1 (Project Manager) to perform the duties delegated by the Procuring Entity.
- iii) “Supplier” means the firm or Joint Venture whose tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.
- iv) “Supplier's Representative” means any person nominated by the Supplier and named as such in the Contract Agreement or otherwise approved by the

Procuring Entity in the manner provided in GCC Clause 18.2 (Supplier's Representative) to perform the duties delegated by the Supplier.

- v) "Subcontractor" means any firm to whom any of the obligations of the Supplier, including preparation of any design or supply of any Information Technologies or other Goods or Services, is sub contracted directly or indirectly by the Supplier.
- vi) "Adjudicator" means the person named in Appendix 2 of the Contract Agreement, appointed by agreement between the Procuring Entity and the Supplier to make a decision on or to settle any Dispute between the Procuring Entity and the Supplier referred to him or her by the parties, pursuant to GCC Clause 43.1 (Adjudication).

**c) Scope**

"Information System," also called "the System," means all the Information Technologies, Materials, and other Goods to be supplied, installed, integrated, and made operational (exclusive of the Supplier's Equipment), together with the Services to be carried out by the Supplier under the Contract.

- i) "Subsystem" means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System.
- ii) "Information Technologies" means all information processing and communications-related hardware, Software, supplies, and consumable items that the Supplier is required to supply and install under the Contract.
- iii) "Goods" means all equipment, machinery, furnishings, Materials, and other tangible items that the Supplier is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Supplier's Equipment.
- iv) "Services" means all technical, logistical, management, and any other Services to be provided by the Supplier under the Contract to supply, install, customize, integrate, and make operational the System. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support.
- v) "The Project Plan" means the document to be developed by the Supplier and approved by the Procuring Entity, pursuant to GCC Clause 19, based on the requirements of the Contract and the Preliminary Project Plan included in the Supplier's tender. The "Agreed Project Plan" is the version of the Project Plan approved by the Procuring Entity, in accordance with GCC Clause 19.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
- vi) "Software" means that part of the System which are instructions that cause information processing Sub systems to perform in a specific manner or execute specific operations.
- vii) "System Software" means Software that provides the operating and management instructions for the underlying hardware and other

components, and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Systems Software. Such System Software includes, but is not restricted to, micro-code embedded in hardware (i.e., “firmware”), operating systems, communications, system and network management, and utility software.

- viii) “General-Purpose Software” means Software that supports general-purpose office and software development activities and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be General-Purpose Software. Such General- Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.
- ix) “Application Software” means Software formulated to perform specific business or technical functions and interface with the business or technical users of the System and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Application Software.
- x) “Standard Software” means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Standard Software.
- xi) “Custom Software” means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Custom Software.
- xii) “Source Code” means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).
- xiii) “Materials” means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Procuring Entity under the Contract.
- xiv) “Standard Materials” means all Materials not specified as Custom Materials.
- xv) “Custom Materials” means Materials developed by the Supplier at the Procuring Entity's expense under the Contract and identified as such in Appendix 5 of the Contract Agreement and such other Materials as the parties may agree in writing to be Custom Materials. Custom Materials includes Materials created from Standard Materials.
- xvi) “Intellectual Property Rights” means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extractor re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sub license, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter in to computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.

- xvii) “Supplier's Equipment” means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Supplier, but excluding the Information Technologies, or other items forming part of the System.

**d) Activities**

- i) “Delivery” means the transfer of the Goods from the Supplier to the Procuring Entity in accordance with the current edition Incoterms specified in the Contract.
- ii) “Installation” means that the System or a Subsystem as specified in the Contract is ready for Commissioning as provided in GCC Clause 26 (Installation).
- iii) “Pre-commissioning” means the testing, checking, and any other required activity that may be specified in the Technical Requirements that are to be carried out by the Supplier in preparation for Commissioning of the System as provided in GCC Clause 26 (Installation).
- iv) “Commissioning” means operation of the System or any Subsystem by the Supplier following Installation, which operation is to be carried out by the Supplier as provided in GCC Clause 27.1 (Commissioning), for the purpose of carrying out Operational Acceptance Test (s).
- v) “Operational Acceptance Tests” means the tests specified in the Technical Requirements and Agreed Project Plan to be carried out to ascertain whether the System, or a specified Sub system, is able to attain the functional and performance requirements specified in the Technical Requirements and Agreed Project Plan, in accordance with the provisions of GCC Clause 27.2 (Operational Acceptance Test).
- vi) “Operational Acceptance” means the acceptance by the Procuring Entity of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Clause 27.3 (Operational Acceptance).

**e) Place and Time**

- i) “Supplier's Country” is the country in which the Supplier is legally organized, as named in the Contract Agreement.
- ii) **Unless otherwise specified in the SCC** “Project Site (s)” means the place (s) in the Site Table in the Technical Requirements Section for the supply and installation of the System.
- iii) “Eligible Country” means the countries and territories eligible for participation in procurements.
- iv) “Day” means calendar day of the Gregorian Calendar.
- v) “Week” means seven (7) consecutive Days, beginning the day of the week as is customary in Kenya.
- vi) “Month” means calendar month of the Gregorian Calendar.
- vii) “Year” means twelve (12) consecutive Months.
- viii) “Effective Date” means the date of fulfillment of all conditions specified in Article 3 (Effective Date for Determining Time for Achieving Operational Acceptance) of the Contract Agreement, for the purpose of

determining the Delivery, Installation, and Operational Acceptance dates for the System or Sub system(s).

- ix) “Contract Period” is the time period during which this Contract governs the relations and obligations of the Procuring Entity and Supplier in relation to the System, as **unless otherwise specified in the SCC**, the Contract shall continue in force until the Information System and all the Services have been provided, unless the Contract is terminated earlier in accordance with the terms set out in the Contract.
- x) “Defect Liability Period” (also referred to as the “Warranty Period”) means the period of validity of the warranties given by the Supplier commencing at date of the Operational Acceptance Certificate of the System or Sub system(s), during which the Supplier is responsible for defects with respect to the System (or the relevant Sub-system[s]) as provided in GCC Clause 29 (Defect Liability).
- xi) “The Coverage Period” means the Days of the Week and the hours of those Days during which maintenance, operational, and/ or technical support services (if any) must be available.
- xii) The Post-Warranty Services Period” means the number of years **defined in the SCC** (if any), following the expiration of the Warranty Period during which the Supplier may be obligated to provide Software licenses, maintenance, and/ or technical support services for the System, either under this Contractor under separate contract(s).

## **2. Contract Documents**

- 2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts of these documents) are intended to be correlative, complementary, and mutually explanatory. The Contract shall be read as a whole.

### **Interpretation**

#### **3.1 Governing Language**

- 3.1.1 All Contract Documents and related correspondence exchanged between Procuring Entity and Supplier shall be written in **the English Language** of these tendering documents, and the Contract shall be construed and interpreted in accordance with that language.

- 3.1.2 If any of the Contract Documents or related correspondence are prepared in a language other than the English Language under GCC Clause 3.1.1 above, the translation of such documents into the **English** language shall prevail in matters of interpretation. The originating party, with respect to such documents shall bear the costs and risks of such translation.

- 3.2 Singular and Plural The singular shall include the plural and the plural the singular, except where the context otherwise requires.

#### **3.3 Headings**

The headings and marginal notes in the GCC are included for ease of reference and shall neither constitute a part of the Contract nor affect its interpretation.



### **3.4 Persons**

Words importing persons or parties shall include firms, corporations, and government entities.

### **3.5 Incoterms**

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by the Incoterms.

Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

### **3.6 Entire Agreement**

The Contract constitutes the entire agreement between the Procuring Entity and Supplier with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect to the subject matter of the Contract made prior to the date of Contract.

### **3.7 Amendment**

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party to the Contract.

### **3.8 Independent Supplier**

The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties to the Contract.

Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Sub contractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Procuring Entity, and nothing contained in the Contractor in any sub contract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Sub contractors and the Procuring Entity.

### **3.9 Joint Venture**

If the Supplier is a Joint Venture of two or more firms, all such firms shall be jointly and severally bound to the Procuring Entity for the fulfillment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the Joint Venture. The composition or constitution of the Joint Venture shall not be altered without the prior consent of the Procuring Entity.

### **3.10 Non-waiver**



3.10.1 Subject to GCC Clause 3.10.2 below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.10.2 Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

### 3.11 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity, or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### 3.12 Country of Origin

"Origin" means the place where the Information Technologies, Materials, and other Goods for the System were produced or from which the Services are supplied. Goods are produced when, through manufacturing, processing, Software development, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The Origin of Goods and Services is distinct from the nationality of the Supplier and may be different.

## 3. Notices

5.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing and shall be sent, pursuant to GCC Clause 4.3 below, by personal delivery, air mail post, special courier, facsimile, electronic mail, or Electronic Data Interchange (EDI), with the following provisions.

5.1.1 Any notice sent by facsimile, electronic mail, or EDI shall be confirmed within two (2) days after dispatch by notice sent by air mail post or special courier, except as otherwise specified in the Contract.

5.1.2 Any notice sent by air mail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped, and conveyed to the postal authorities or courier service for transmission by air mail or special courier.

5.1.3 Any notice delivered personally or sent by facsimile, electronic mail, or EDI shall be deemed to have been delivered on the date of its dispatch.

- 5.1.4 Either party may change its postal, facsimile, electronic mail, or EDI addresses for receipt of such notices by ten (10) days' notice to the other party in writing.
- 5.2 Notices shall be deemed to include any approvals, consents, instructions, orders, certificates, information and other communication to be given under the Contract.
- 5.3 Pursuant to GCC Clause 18, notices from/to the Procuring Entity are normally given by, or addressed to, the Project Manager, while notices from/to the Supplier are normally given by, or addressed to, the Supplier's Representative, or in its absence its deputy if any. If there is no appointed Project Manager or Supplier's Representative (or deputy), or if their related authority is limited by the SCC for GCC Clauses 18.1 or 18.2.2, or for any other reason, the Procuring Entity or Supplier may give and receive notices at their fall back addresses. The address of the Project Manager and the fall back address of the Procuring Entity are as **specified in the SCC** or as subsequently established/ amended. The address of the Supplier's Representative and the fall back address of the Supplier are as specified in Appendix 1 of the Contract Agreement or as subsequently established/amended.

## **Governing Law**

- 5.1 The Contract shall be governed by and interpreted in accordance with the laws of Kenya.
- 5.2 Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in Kenya when
- a As a matter of law or official regulations, 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, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

## **Fraud and Corruption**

- 6.1 The Procuring Entity requires compliance with the laws of Kenya on Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in its statutes.
- 6.2 The Procuring Entity requires the Suppliers 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.

## B. SUBJECT MATTER OF CONTRACT

### Scope of the System

- 6.3 Unless otherwise expressly **limited in the SCC** or Technical Requirements, the Supplier's obligations cover the provision of Information Technologies, Materials and other Goods as well as the performance of all Services required for the design, development, and implementation (including procurement, quality assurance, assembly, associated site preparation, Delivery, Pre-commissioning, Installation, Testing, and Commissioning) of the System, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the Contract and the Agreed Project Plan.
- 6.4 The Supplier shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and Materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Operational Acceptance of the System as if such work and/or items and Materials were expressly mentioned in the Contract.
- 6.5 The Supplier's obligations (if any) to provide Goods and Services as implied by the Recurrent Cost tables of the Supplier's tender, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), areas **specified in the SCC**, including the relevant terms, characteristics, and timings.

### Time for Commencement and Operational Acceptance

- 6.6 The Supplier shall commence work on the System within the period **specified in the SCC**, and without prejudice to GCC Clause 28.2, the Supplier shall thereafter proceed with the System in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed Project Plan.
- 6.7 The Supplier shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time for Operational Acceptance of such Subsystem(s) is specified in the Contract) in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed Project Plan, or within such extended time to which the Supplier shall be entitled under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).

### Supplier's Responsibilities

- 6.8 The Supplier shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of information technologies, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. In particular, the Supplier shall provide and employ only technical personnel who are skilled and experienced in the respective callings

and supervisory staff who are competent to adequately supervise the work at hand.

- 6.9 The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Procuring Entity and on the basis of information that the Supplier could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the Supplier relating to the System as at the date twenty-eight (28) days prior to tender submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.
- 6.10 The Supplier shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed Project Plan (pursuant to GCC Clause 19.2) within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision-making may constitute grounds for termination pursuant to GCC Clause 41.2.
- 6.11 The Supplier shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in Kenya that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Procuring Entity under GCC Clause 10.4 and that are necessary for the performance of the Contract.
- 6.12 The Supplier shall comply with all laws in force in Kenya. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Supplier. The Supplier shall indemnify and hold harmless the Procuring Entity from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Sub contractors and their personnel, but without prejudice to GCC Clause 10.1. The Supplier shall not indemnify the Procuring Entity to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Procuring Entity.
- 6.13 The Supplier shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor.
- 6.14 Any Information Technologies or other Goods and Services that will be incorporated in or be required for the System and other supplies shall have their Origin, as defined in GCC Clause 3.12, in a country that shall be an Eligible Country, as defined in GCC Clause 1.1 (e) (iv).

- 6.15 Pursuant to paragraph 2.2e. of Appendix B to the General Conditions the Supplier shall permit and shall cause its subcontractors and sub-contractors 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 Supplier's and its Sub contractors' and sub-contractors' attention is drawn to Sub-Clause 6.1 which provides, inter alia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of in eligibility pursuant to the PPRA's prevailing sanctions procedures).
- 6.16 The Supplier shall conform to the sustainable procurement contractual provisions, if and as **specified in the SCC**.
- 6.17 **Unless otherwise specified in the SCC** the Supplier shall have no other Supplier responsibilities.

### **Procuring Entity's Responsibilities**

- 6.18 The Procuring Entity shall ensure the accuracy of all information and/or data to be supplied by the Procuring Entity to the Supplier, except when otherwise expressly stated in the Contract.
- 6.19 The Procuring Entity shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed Project Plan (pursuant to GCC Clause 19.2) within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision making may constitute grounds for Termination pursuant to GCC Clause 41.3.1(b).
- 6.20 The Procuring Entity shall be responsible for acquiring and providing legal and physical possession of the site and access to it, and for providing possession of and access to all other are as reasonably required for the proper execution of the Contract.
- 6.21 If requested by the Supplier, the Procuring Entity shall use its best endeavors to assist the Supplier in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities or public service undertakings that such authorities or under takings require the Supplier or Sub contractors or the personnel of the Supplier or Sub contractors, as the case may be, to obtain.
- 6.22 In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Supplier, as specified in the Technical Requirements, SCC, Agreed Project Plan, or other parts of the Contract, the Procuring Entity shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.

- 6.23 The Procuring Entity shall be responsible for timely provision of all resources, access, and information necessary for the Installation and Operational Acceptance of the System (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the Supplier. Delay by the Procuring Entity may result in an appropriate extension of the Time for Operational Acceptance, at the Supplier's discretion.
- 6.24 Unless otherwise specified in the Contractor agreed upon by the Procuring Entity and the Supplier, the Procuring Entity shall provide sufficient, properly qualified operating and technical personnel, as required by the Supplier to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and Operational Acceptance, at or before the time specified in the Implementation Schedule and the Agreed Project Plan.
- 6.25 The Procuring Entity will designate appropriate staff for the training courses to be given by the Supplier and shall make all appropriate logistical arrangements for such training as specified in the Technical Requirements, SCC, the Agreed Project Plan, or other parts of the Contract.
- 6.26 The Procuring Entity assumes primary responsibility for the Operational Acceptance Test (s) for the System, in accordance with GCC Clause 27.2, and shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in anyway the Supplier's responsibilities after the date of Operational Acceptance otherwise specified in the Contract.
- 6.27 The Procuring Entity is responsible for performing and safely storing timely and regular backups of its data and Software in accordance with accepted data management principles, except where such responsibility is clearly assigned to the Supplier elsewhere in the Contract.
- 6.28 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Procuring Entity, save those to be incurred by the Supplier with respect to the performance of the Operational Acceptance Test (s), in accordance with GCC Clause 27.2.
- 6.29 **Unless otherwise specified in the SCC** the Procuring Entity shall have no other Procuring Entity responsibilities.

**C. Payment  
Contract Price**

- 6.30 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- 6.31 Unless an adjustment clause is **provided for in the SCC**, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a



Change in the System pursuant to GCC Clause 39 or to other clauses in the Contract;

- 6.32 The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
- 6.33 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 Bill of Quantities or 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 price X 100*.

### Terms of Payment

- 6.34 The Supplier's request for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the System or Subsystem(s), Delivered, Pre-commissioned, Installed, and Operationally Accepted, and by documents submitted pursuant to GCC Clause 22.5 and upon fulfillment of other obligations stipulated in the Contract. The Contract Price shall be paid as **specified in the SCC**.
- 6.35 No payment made by the Procuring Entity herein shall be deemed to constitute acceptance by the Procuring Entity of the System or any Sub system (s).
- 6.36 Payments shall be made promptly by the Procuring Entity, but in no case later than (sixty (60) days after submission of a valid invoice and upon satisfactorily performance of the contractual obligations by the Supplier. In the event that the Procuring Entity fails to make any payment by its respective due date or within the period set forth in the Contract, the Procuring Entity shall pay to the Supplier interest on the amount of such delayed payment at the rate (s) **specified in the SCC** for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.
- 6.37 Payments shall be made in the currency (ies) specified in the Contract Agreement, pursuant to GCC Clause 11. For Goods and Services supplied locally, payments shall be made **as specified in the SCC**.
- 6.38 **Unless otherwise specified in the SCC**, payment of the foreign currency portion of the Contract Price for Goods supplied from outside Kenya shall be made to the Supplier through an irrevocable Form of credit opened by an authorized bank in the Supplier's Country and will be payable on presentation of the appropriate documents. It is agreed that the Form of credit will be subject to Article 10 of the latest revision of *Uniform Customs and Practice for Documentary Credits*, published by the International Chamber of Commerce, Paris.



## Securities

### Issuance of Securities

The Supplier shall provide the securities specified below in favor of the Procuring Entity at the times and in the amount, manner, and form specified below.

#### 6.39 Advance Payment Security

a) Unless otherwise specified in the SCC, the Supplier shall provide within twenty-eight (28) days of the notification of Contract award an Advance Payment Security in the amount and currency of the Advance Payment specified in SCC for GCC Clause 12.1 above and valid until the System is Operationally Accepted.

b) The security shall be in the form provided in the tendering documents or in another form acceptable to the Procuring Entity. The amount of the security shall be reduced in proportion to the value of the System executed by and paid to the Supplier from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Procuring Entity. **Unless otherwise specified in the SCC**, the reduction in value and expiration of the Advance Payment Security are calculated as follows:

$P \cdot a / (100 - a)$ , where “P” is the sum of all payments effected so far to the Supplier (excluding the Advance Payment), and “a” is the Advance Payment expressed as a percentage of the Contract Price pursuant to the SCC for GCC Clause 12.1. The security shall be returned to the Supplier immediately after its expiration.

#### 6.40 Performance Security

13.3.1 The Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a security for the due performance of the Contract in the amount and currency **specified in the SCC**.

13.3.2 The security shall be a bank guarantee in the form provided in the Sample Contractual Forms Section of the tendering documents, or it shall be in another form acceptable to the Procuring Entity.

13.3.3 The security shall automatically become null and void once all the obligations of the Supplier under the Contract have been fulfilled, including, but not limited to, any obligations during the Warranty Period and any extensions to the period. The security shall be returned to the Supplier no later than twenty-eight (28) days after its expiration.

13.3.4 Upon Operational Acceptance of the entire System, the security shall be reduced to the amount specified in the SCC, on the date of the Operational Acceptance, so that the reduced security would only cover the remaining warranty obligations of the Supplier.

## Taxes and Duties

6.41 For Goods or Services supplied from outside and inside Kenya, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other

such levies imposed outside Kenya and inside Kenya, and these duties or taxes shall be made part of the Contract Price in Article 2 of the Contract Agreement and the Price Schedule it refers to, in which case the duties and taxes will be the Supplier's responsibility.

- 6.42 For Goods or Services supplied locally, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods or Services to the Procuring Entity. The only exception are taxes or duties, such as value-added or sales tax or stamp duty as apply to, or are clearly identifiable, on the invoices and provided they apply in Kenya, and only if these taxes, levies and/or duties are also excluded from the Contract Price in Article 2 of the Contract Agreement and the Price Schedule it refers to.
- 6.43 If any tax exemptions, reductions, allowances, or privileges may be available to the Supplier in Kenya, the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.
- 6.44 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date twenty-eight (28) days prior to the date of tender submission in Kenya (also called "Tax" in this GCC Clause 14.4). If any Tax rates are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Supplier, its Sub contractors, or their employees in connection with performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.

#### **D. Intellectual Property Copyright**

- 6.45 The Intellectual Property Rights in all Standard Software and Standard Materials shall remain vested in the owner of such rights.
- 6.46 The Procuring Entity agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause16, except that additional copies of Standard Materials may be made by the Procuring Entity for use within the scope of the project of which the System is apart, in the event that the Supplier does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.
- 6.47 The Procuring Entity's contractual rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed, or otherwise transferred voluntarily except in accordance with the relevant license agreement or **unless otherwise specified in the SCC** to a legally constituted successor organization (e.g., a reorganization of a public entity formally authorized by the government or through a merger or acquisition of a private entity).

6.48 **Unless otherwise specified in the SCC**, the Intellectual Property Rights in all Custom Software and Custom Materials specified in Appendices 4 and 5 of the Contract Agreement (if any) shall, at the date of this Contractor on creation of the rights (if later than the date of this Contract), vest in the Procuring Entity. The Supplier shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Procuring Entity may consider necessary or desirable to perfect the right, title, and interest of the Procuring Entity in and to those rights. In respect of such Custom Software and Custom Materials, the Supplier shall ensure that the holder of am or alright in such an item does not assert it, and the Supplier shall, if requested to do so by the Procuring Entity and where permitted by applicable law, ensure that the holder of such a moral right waives it.

6.49 **Unless otherwise specified in the SCC**, escrow arrangements shall NOT be required.

### **Software License Agreements**

6.50 Except to the extent that the Intellectual Property Rights in the Software vest in the Procuring Entity, the Supplier here by grants to the Procuring Entity license to access and use the Software, including all inventions, designs, and marks embodied in the Software.

Such license to access and use the Software shall:

a) be:

- i. non-exclusive;
- ii. fully paid up and irrevocable (except that it shall terminate if the Contract terminates under GCC Clauses 41.1 or 41.3);
- iii. **unless otherwise specified in the SCC** valid throughout Kenya;
- iv. **unless otherwise specified in the SCC subject** to NO additional restrictions.

b) Permit the Software to be:

- i. used or copied for use on or with the computer(s) for which it was acquired (if specified in the Technical Requirements and/or the Supplier's tender), plus a backup computer(s) of the same or similar capacity, if the primary is (are) in operative, and during a reasonable transitional period when use is being transferred between primary and back up;
- ii. used or copied for use on or transferred to are placement computer (s), (and use on the original and replacement computer(s) may be simultaneous during a reasonable transitional period) provided that, if the Technical Requirements and/or the Supplier's tender specifies a class of computer to which the license is restricted, the replacement computer (s) is (are) within that class;
- iii. if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or back up computer (s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access;
- iv. reproduced for safe keeping or back up purposes;

- v. customized, adapted, or combined with other computer software for use by the Procuring Entity, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as a set forth in this Contract;
- vi. **unless otherwise specified in the SCC**, disclosed to, and reproduced for use by, support service suppliers and their sub-contractors, (and the Procuring Entity may sub-license such persons to use and copy for use the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as a set forth in this Contract; and
- vii. **unless otherwise specified in the SCC** disclosed to, and reproduced for use by, NO other parties.

6.51 The Supplier has the right to audit the Standard Software to verify compliance with the above license agreements.

**Unless otherwise specified in the SCC**, the Procuring Entity will make available to the Supplier, within seven (7) days of a written request, accurate and up-to-date records of the number and location of copies, the number of authorized users, or any other relevant data required to demonstrate use of the Standard Software as per the license agreement. If and only if, expressly agreed in writing between the Procuring Entity and the Supplier, Procuring Entity will allow, under a pre-specified agreed procedure, the execution of embedded software functions under Supplier's control, and unencumbered transmission of resulting information on software usage.

### **Confidential Information**

6.52 **Unless otherwise specified in the SCC**, the "Receiving Party" (either the Procuring Entity or the Supplier) shall keep confidential and shall not, without the written consent of the other party to this Contract ("the Disclosing Party"), divulge to any third party any documents, data, or other information of a confidential nature ("Confidential Information") connected with this Contract, and furnished directly or indirectly by the Disclosing Party prior to or during performance, or following termination, of this Contract.

6.53 For the purposes of GCC Clause 17.1, the Supplier is also deemed to be the Receiving Party of Confidential Information generated by the Supplier itself in the course of the performance of its obligations under the Contract and relating to the businesses, finances, suppliers, employees, or other contacts of the Procuring Entity or the Procuring Entity's use of the System.

6.54 Notwithstanding GCC Clauses 17.1 and 17.2:

- a) the Supplier may furnish to its Subcontractor Confidential Information of the Procuring Entity to the extent reasonably required for the Subcontractor to perform its work under the Contract; and
- b) the Procuring Entity may furnish Confidential Information of the Supplier: (i) to its support service suppliers and their subcontractors to the extent reasonably required for them to perform their work under their support service contracts; and (ii) to its affiliates and subsidiaries, in which event the

Receiving Party shall ensure that the person to whom it furnishes Confidential Information of the Disclosing Party is aware of and a tenderer by the Receiving Party's obligations under this GCC Clause 17 as if that person were party to the Contract in place of the Receiving Party.

- 6.55 The Procuring Entity shall not, without the Supplier's prior written consent, use any Confidential Information received from the Supplier for any purpose other than the operation, maintenance and further development of the System. Similarly, the Supplier shall not, without the Procuring Entity's prior written consent, use any Confidential Information received from the Procuring Entity for any purpose other than those that are required for the performance of the Contract.
- 6.56 The obligation of a party under GCC Clauses 17.1 through 17.4 above, however, shall not apply to that information which:
- a) Now or hereafter enters the public domain through no fault of the Receiving Party;
  - b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party;
  - c) otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.
- 6.57 The above provisions of this GCC Clause 17 shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the System or any part thereof.
- 6.58 **Unless otherwise specified in the SCC**, the provisions of this GCC Clause 17 shall survive the termination, for whatever reason, of the Contract for three (3) years.

**E. Supply, Installation, Testing, Commissioning, and Acceptance of the System Representatives**  
**Project Manager**

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Procuring Entity shall appoint and notify the Supplier in writing of the name of the Project Manager. The Procuring Entity may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Supplier without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the Supplier. **Unless otherwise specified in the SCC** (if any), the Project Manager shall have the authority to represent the Procuring Entity on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Procuring Entity pursuant to GCC Clause 4.

## 6.59 Supplier's Representative

18.2.1 If the Supplier's Representative is not named in the Contract, then with in fourteen (14) days of the Effective Date, the Supplier shall appoint the Supplier's Representative and shall request the Procuring Entity in writing to approve the person so appointed. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as a description of any other System or non-System responsibilities the nominee would retain while performing the duties of the Supplier's Representative. If the Procuring Entity does not object to the appointment within fourteen (14) days, the Supplier's Representative shall be deemed to have been approved. If the Procuring Entity objects to the appointment within fourteen (14) days giving the reason therefor, then the Supplier shall appoint a replacement within fourteen (14) days of such objection in accordance with this GCC Clause 18.2.1.

18.2.2 **Unless otherwise specified in the SCC** (if any), the Supplier's Representative shall have the authority to represent the Supplier on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Supplier pursuant to GCC Clause 4.

18.2.3 The Supplier shall not revoke the appointment of the Supplier's Representative without the Procuring Entity's prior written consent, which shall not be unreasonably withheld. If the Procuring Entity consents to such an action, the Supplier shall appoint another person of equal or superior qualifications as the Supplier's Representative, pursuant to the procedure set out in GCC Clause 18.2.1.

18.2.4 The Supplier's Representative and staff are obliged to work closely with the Procuring Entity's Project Manager and staff, act within their own authority, and a tenderer by directives issued by the Procuring Entity that are consistent with the terms of the Contract. The Supplier's Representative is responsible for managing the activities of its personnel and any subcontracted personnel.

18.2.5 The Supplier's Representative may, subject to the approval of the Procuring Entity (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Supplier's Representative and shall specify the powers, functions, and authorities there by delegated or revoked. No such delegation or revocation shall take effect unless and until the notice of it has been delivered.

18.2.6 Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause 18.2.5 shall be deemed to be an act or exercise by the Supplier's Representative.

## 18.3 Objections and Removals

18.3.1 The Procuring Entity may by notice to the Supplier object to any representative or person employed by the Supplier in the execution of the



Contract who, in the reasonable opinion of the Procuring Entity, may have behaved inappropriately, be incompetent, or be negligent. The Procuring Entity shall provide evidence of the same, where upon the Supplier shall remove such person from work on the System.

- 18.3.2 If any representative or person employed by the Supplier is removed in accordance with GCC Clause 18.3.1, the Supplier shall, where required, promptly appoint a replacement.

## **7 Project Plan**

- 7.1 In close cooperation with the Procuring Entity and based on the Preliminary Project Plan included in the Supplier's tender, the Supplier shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as **specified in the SCC** and/ or Technical Requirements.
- 7.2 **Unless otherwise specified in the SCC**, within thirty (30) days from the Effective Date of the Contract, the Supplier shall present a Project Plan to the Procuring Entity. The Procuring Entity shall, within fourteen (14) days of receipt of the Project Plan, notify the Supplier of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Technical Requirements and/or the SCC (in this Clause 19.2 called “non-conformities” below). The Supplier shall, within five (5) days of receipt of such notification, correct the Project Plan and resubmit to the Procuring Entity. The Procuring Entity shall, within five (5) days of resubmission of the Project Plan, notify the Supplier of any remaining non-conformities. This procedure shall be repeated as necessary until the Project Plan is free from non-conformities. When the Project Plan is free from non-conformities, the Procuring Entity shall provide confirmation in writing to the Supplier. This approved Project Plan (“the Agreed Project Plan”) shall be contractually binding on the Procuring Entity and the Supplier.
- 7.3 If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clauses 39 and 40.
- 7.4 The Supplier shall undertake to supply, install, test, and commission the System in accordance with the Agreed Project Plan and the Contract.
- 7.5 **Unless otherwise specified in the SCC**, the Supplier shall submit to the Procuring Entity Monthly Progress Reports summarizing:
- i) Results accomplished during the prior period;
  - ii) cumulative deviations to date from schedule of progress milestones as specified in the Agreed Project Plan;
  - iii) corrective actions to be taken to return to planned schedule of progress; proposed revisions to planned schedule;
  - iv) other issues and outstanding problems; proposed actions to be taken;



- v) resources that the Supplier expects to be provided by the Procuring Entity and/ or actions to be taken by the Procuring Entity in the next reporting period;
- vi) other issues or potential problems the Supplier foresees that could impact on project progress and/or effectiveness.

7.6 The Supplier shall submit to the Procuring Entity other (periodic) reports **as specified in the SCC.**

## **8 Sub-contracting**

- 8.1 Appendix 3 (List of Approved Subcontractors) to the Contract Agreement specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Procuring Entity. If no Subcontractors are listed for an item, the Supplier shall prepare a list of Subcontractors it considers qualified and wishes to be added to the list for such items. The Supplier may from time to time propose additions to or deletions from any such list. The Supplier shall submit any such list or any modification to the list to the Procuring Entity for its approval insufficient time so as not to impede the progress of work on the System. The Procuring Entity shall not withhold such approval unreasonably. Such approval by the Procuring Entity of a Subcontractor (s) shall not relieve the Supplier from any of its obligations, duties, or responsibilities under the Contract.
- 8.2 The Supplier may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Clause 20.1. If the Supplier wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek the Procuring Entity's prior approval under GCC Clause 20.3.
- 8.3 For items for which pre-approved Subcontractor lists have not been specified in Appendix 3 to the Contract Agreement, the Supplier may employ such Subcontractors as it may select, provided: (i) the Supplier notifies the Procuring Entity in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Subcontractor; and (ii) by the end of this period either the Procuring Entity has granted its approval in writing or fails to respond. The Supplier shall not engage any Subcontractor to which the Procuring Entity has objected in writing prior to the end of the notice period. The absence of a written objection by the Procuring Entity during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits the deemed approval of the Procuring Entity of Subcontractors not listed in the Contract Agreement, nothing in this Clause, however, shall limit the rights and obligations of either the Procuring Entity or Supplier as they are specified in GCC Clauses 20.1 and 20.2, or in Appendix 3 of the Contract Agreement.

## **Design and Engineering**

- 8.4 Technical Specifications and Drawings

- 21.1.1 The Supplier shall execute the basic and detailed design and the implementation activities necessary for successful installation of the System in compliance with the provisions of the Contractor, where not so specified, in accordance with good industry practice.

The Supplier shall be responsible for any discrepancies, errors or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Supplier by or on behalf of the Procuring Entity.

- 21.1.2 The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Project Manager.

21.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of tender submission shall apply. During Contract execution, any changes in such codes and standards shall be applied after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 39.3.

21.3 Approval/ Review of Controlling Technical Documents by the Project Manager

- 21.3.2 **Unless otherwise specified in the SCC**, there will NO Controlling Technical Documents required. However, **if the SCC specifies** Controlling Technical Documents, the Supplier shall prepare and furnish such documents for the Project Manager's approval or review.

Any part of the System covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval of these documents.

GCC Clauses 21.3.2 through 21.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

- 21.3.3 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Clause 21.3.1, the Project Manager shall either return one copy of the document to the Supplier with its approval endorsed on the document or shall notify the Supplier in writing of its disapproval of the document and the reasons for disapproval and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the fourteen (14) days, then the document shall be deemed to have been approved by the Project Manager.

- 21.3.4 The Project Manager shall not disapprove any document except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good industry practice.
- 21.3.5 If the Project Manager disapproves the document, the Supplier shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Clause 21.3.2. If the Project Manager approves the document subject to modification(s), the Supplier shall make the required modification(s), and the document shall then be deemed to have been approved, subject to GCC Clause 21.3.5. The procedure set out in GCC Clauses 21.3.2 through 21.3.4 shall be repeated, as appropriate, until the Project Manager approves such documents.
- 21.3.6 If any dispute occurs between the Procuring Entity and the Supplier in connection with or arising out of the disapproval by the Project Manager of any document and/ or any modification (s) to a document that cannot be settled between the parties within a reasonable period, then, in case the Contract Agreement includes and names an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance with GCC Clause 43.1 (Adjudication). If such dispute is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Supplier shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the Supplier's view on the dispute and if the Procuring Entity has not given notice under GCC Clause 43.1.2, then the Supplier shall be reimbursed by the Procuring Entity for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Achieving Operational Acceptance shall be extended accordingly.
- 21.3.7 The Project Manager's approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Supplier by or on behalf of the Procuring Entity.
- 21.3.8 The Supplier shall not depart from any approved document unless the Supplier has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this GCC Clause 21.3. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 39 (Changes to the System) shall apply to such request.

## **Procurement, Delivery, and Transport**

- 8.5 Subject to related Procuring Entity's responsibilities pursuant to GCC Clauses 10 and 14, the Supplier shall manufacture or procure and transport all the

Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.

8.6 Delivery of the Information Technologies, Materials, and other Goods shall be made by the Supplier in accordance with the Technical Requirements.

8.7 Early or partial deliveries require the explicit written consent of the Procuring Entity; which consent shall not be unreasonably withheld.

## 8.8 Packaging and Transportation

22.4.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Procuring Entity's instructions to the Supplier.

22.4.2 The Supplier will bear responsibility for and cost of transport to the Project Sites in accordance with the terms and conditions used in the specification of prices in the Price Schedules, including the terms and conditions of the associated Inco terms.

22.4.3 **Unless otherwise specified in the SCC**, the Supplier shall be free to use transportation through carriers registered in any eligible country and to obtain insurance from any eligible source country.

**Unless otherwise specified in the SCC**, the Supplier will provide the Procuring Entity with shipping and other documents, as specified below:

22.4.4 For Goods supplied from outside Kenya: Upon shipment, the Supplier shall notify the Procuring Entity and the insurance company contracted by the Supplier to provide cargo insurance by cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Supplier shall promptly send the following documents to the Procuring Entity by mail or courier, as appropriate, with a copy to the cargo insurance company:

- a Two copies of the Supplier's invoice showing the description of the Goods, quantity, unit price, and total amount;
- b usual transportation documents;
- c insurance certificate;
- d certificate (s) of origin; and
- e estimated time and point of arrival in Kenya and at the site.

25.5.2 For Goods supplied locally (i.e., from within Kenya): Upon shipment, the Supplier shall notify the Procuring Entity by cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Supplier shall promptly send the following documents to the Procuring Entity by mail or courier, as appropriate:

- a Two copies of the Supplier's invoice showing the Goods' description, quantity, unit price, and total amount;
- b Delivery note, railway receipt, or truck receipt;
- c certificate of insurance;
- d certificate (s) of origin; and

- e estimated time of arrival at the site.

## 25.6 Customs Clearance

- a) The Procuring Entity will bear responsibility for, and cost of, customs clearance into Kenya in accordance with the particular Incoterm(s) used for Goods supplied from outside Kenya in the Price Schedules referred to by Article 2 of the Contract Agreement.
- b) At the request of the Procuring Entity, the Supplier will make available a representative or agent during the process of customs clearance in Kenya for goods supplied from outside Kenya. In the event of delays in customs clearance that are not the fault of the Supplier:
  - i) the Supplier shall be entitled to an extension in the Time for Achieving Operational Acceptance, pursuant to GCC Clause 40;
  - ii) the Contract Price shall be adjusted to compensate the Supplier for any additional storage charges that the Supplier may incur as a result of the delay.

## 9 Product Upgrades

- 9.1 At any point during performance of the Contract, should technological advances be introduced by the Supplier for Information Technologies originally offered by the Supplier in its tender and still to be delivered, the Supplier shall be obligated to offer to the Procuring Entity the latest versions of the available Information Technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause 39 (Changes to the System).
- 9.2 At any point during performance of the Contract, for Information Technologies still to be delivered, the Supplier will also pass on to the Procuring Entity any cost reductions and additional and/ or improved support and facilities that it offers to other clients of the Supplier in Kenya, pursuant to GCC Clause 39 (Changes to the System).
- 9.3 During performance of the Contract, the Supplier shall offer to the Procuring Entity all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in Kenya, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the Supplier in the Recurrent Costs tables in its tender.
- 9.4 **Unless otherwise specified in the SCC**, during the Warranty Period, the Supplier will provide at no additional cost to the Procuring Entity all new versions, releases, and updates for all Standard Software that are used in the System, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in Kenya, and no later than twelve (12) months after they are released in the country of origin of the Software.
- 9.5 The Procuring Entity shall introduce all new versions, releases or updates of the Software within eighteen (18) months of receipt of a production-ready copy of

the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the Supplier shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the Supplier stop supporting or maintaining a version or release of the Software less than twenty-four (24) months after the Procuring Entity receives a production-ready copy of a subsequent version, release, or update. The Procuring Entity shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the twenty-four-month-long stop date.

### **Implementation, Installation, and Other Services**

- 9.6 The Supplier shall provide all Services specified in the Contract and Agreed Project Plan in accordance with the highest standards of professional competence and integrity.
- 9.7 Prices charged by the Supplier for Services, if not included in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Supplier in the Recurrent Cost Schedules of its Tender) and shall not exceed the prevailing rates charged by the Supplier to other Procuring Entity's in Kenya for similar services.

### **Inspections and Tests**

- 9.8 The Procuring Entity or its representative shall have the right to inspect and/or test any components of the System, as specified in the Technical Requirements, to confirm their good working order and/ or conformity to the Contract at the point of delivery and/ or at the Project Site.
- 9.9 The Procuring Entity or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Procuring Entity shall bear all costs and expenses incurred in connection with such attendance, including but not limited to all inspection agent fees, travel, and related expenses.
- 9.10 Should the inspected or tested components fail to conform to the Contract, the Procuring Entity may reject the component (s), and the Supplier shall either replace the rejected component (s), or make alterations as necessary so that it meets the Contract requirements free of cost to the Procuring Entity.
- 9.11 The Project Manager may require the Supplier to carry out any inspection and/or test not specified in the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such inspection and/ or test shall be added to the Contract Price. Further, if such inspection and/ or test impedes the progress of work on the System and/or the Supplier's performance of its other obligations under the Contract, due allowance will be



made in respect of the Time for Achieving Operational Acceptance and the other obligations so affected.

- 9.12 If any dispute shall arise between the parties in connection with or caused by an inspection and/ or with regard to any component to be incorporated in the System that cannot be settled amicably between the parties within a reasonable period of time, either party may invoke the process pursuant to GCC Clause 43 (Settlement of Disputes), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract Agreement.

### **Installation of the System**

- 9.13 As soon as the System, or any Subsystem, has, in the opinion of the Supplier, been delivered, Pre- commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with the Technical Requirements, the SCC and the Agreed Project Plan, the Supplier shall so notify the Procuring Entity in writing.
- 9.14 The Project Manager shall, within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 26.1, either issue an Installation Certificate in the form specified in the Sample Contractual Forms Section in the tendering documents, stating that the System, or major component or Subsystem (if Acceptance by major component or Sub system is specified pursuant to the SCC for GCC Clause 27.2.1), has achieved Installation by the date of the Supplier's notice under GCC Clause 26.1, or notify the Supplier in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/ or deficiencies that the Project Manager has notified the Supplier of. The Supplier shall then promptly carry out retesting of the System or Sub system and, when in the Supplier's opinion the System or Sub system is ready for Commissioning and Operational Acceptance Testing, notify the Procuring Entity in writing, in accordance with GCC Clause 26.1. The procedure set out in this GCC Clause shall be repeated, as necessary, until an Installation Certificate is issued.
- 9.15 If the Project Manager fails to issue the Installation Certificate and fails to inform the Supplier of any defects and/or deficiencies within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 26.1, or if the Procuring Entity puts the System or a Subsystem in to production operation, then the System (or Subsystem) shall be deemed to have achieved successful Installation as of the date of the Supplier's notice or repeated notice, or when the Procuring Entity put the System in to production operation, as the case may be.

### **Commissioning and Operational Acceptance**

- 9.16 Commissioning
- 27.1.1 Commissioning of the System (or Subsystem if specified pursuant to the SCC for GCC Clause 27.2.1) shall be commenced by the Supplier:
- a) immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 26.2; or



- b) as otherwise specified in the Technical Requirement or the Agreed Project Plan; or
- c) immediately after Installation is deemed to have occurred, under GCC Clause 26.3.

27.1.2 The Procuring Entity shall supply the operating and technical personnel and all materials and information reasonably required to enable the Supplier to carry out its obligations with respect to Commissioning. Production use of the System or Subsystem(s) shall not commence prior to the start of formal Operational Acceptance Testing.

## 27.2 Operational Acceptance Tests

27.2.1 The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Procuring Entity (in accordance with GCC Clause 10.9), but shall be conducted with the full cooperation of the Supplier during Commissioning of the System (or major components or Subsystem[s]), to ascertain whether the System (or major component or Subsystem[s]) conforms to the Technical Requirements and meets the standard of performance quoted in the Supplier's tender, including, but not restricted to, the functional and technical performance requirements. **Unless otherwise specified in the SCC**, the Operational Acceptance Tests during Commissioning will be conducted as specified in the Technical Requirements and/ or the Agreed Project Plan. At the Procuring Entity's discretion, Operational Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after Operational Acceptance of the System.

27.2.2 If for reasons attributable to the Procuring Entity, the Operational Acceptance Test of the System (or Subsystem[s] or major components, pursuant to the SCC for GCC Clause 27.2.1) cannot be successfully completed within ninety (90) days from the date of Installation or any other period agreed upon in writing by the Procuring Entity and the Supplier, the Supplier shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects of the Technical Specifications, SCC and/ or the Agreed Project Plan, and GCC Clause 28.2 and 28.3 shall not apply.

## 27.3 Operational Acceptance

27.3.1 Subject to GCC Clause 27.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when

- a) the Operational Acceptance Tests, as specified in the Technical Requirements, and/or SCC and/or the Agreed Project Plan have been successfully completed; or
- b) the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Procuring Entity within the period from the date of Installation or any other agreed-upon period as specified in GCC Clause 27.2.2 above; or
- c) the Procuring Entity has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the Supplier shall notify the Procuring Entity and document such use.

27.3.2 At any time after any of the events set out in GCC Clause 27.3.1 have occurred, the Supplier may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate.

27.3.3 After consultation with the Procuring Entity, and within fourteen (14) days after receipt of the Supplier's notice, the Project Manager shall:

- a Issue an Operational Acceptance Certificate; or
- b Notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
- c Issue the Operational Acceptance Certificate, if the situation covered by GCC Clause 27.3.1 (b) arises.

27.3.4 The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Project Manager has notified the Supplier of. Once such remedies have been made by the Supplier, the Supplier shall notify the Procuring Entity, and the Procuring Entity, with the full cooperation of the Supplier, shall use all reasonable endeavors to promptly carry out retesting of the System or Sub system. Upon the successful conclusion of the Operational Acceptance Tests, the Supplier shall notify the Procuring Entity of its request for Operational Acceptance Certification, in accordance with GCC Clause 27.3.3. The Procuring Entity shall then issue to the Supplier the Operational Acceptance Certification in accordance with GCC Clause 27.3.3 (a), or shall notify the Supplier of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Clause 27.3.4 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.

27.3.5 If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Clause 27.2, the neither:

- a The Procuring Entity may consider terminating the Contract, pursuant to GCC Clause 41.2.2; or
- b If the failure to achieve Operational Acceptance within the specified time period is a result of the failure of the Procuring Entity to fulfill its obligations under the Contract, then the Supplier shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract, and GCC Clauses 30.3 and 30.4 shall not apply.

27.3.6 If within fourteen (14) days after receipt of the Supplier's notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Supplier in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the System or Subsystem shall be deemed to have been accepted as of the date of the Supplier's said notice.

#### 27.4 Partial Acceptance

27.4.1 If so specified in the SCC for GCC Clause 27.2.1, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem (s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the

Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate (s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Clause 27.4.2.

27.4.2 The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 27.4.1 shall not relieve the Supplier of its obligation to obtain an Operational Acceptance Certificate for the System as an integrated whole (if so specified in the SCC for GCC Clauses 12.1 and 27.2.1) once all major components and Subsystems have been supplied, installed, tested, and commissioned.

27.4.3 In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an Operational Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The Supplier shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Procuring Entity or Supplier.

## **F. Guarantees and Liabilities**

### **Operational Acceptance Time Guarantee**

9.17 The Supplier guarantees that it shall complete the supply, Installation, Commissioning, and achieve Operational Acceptance of the System (or Subsystems, pursuant to the SCC for GCC Clause 27.2.1) within the time periods specified in the Implementation Schedule and/or the Agreed Project Plan pursuant to GCC Clause 8.2, or within such extended time to which the Supplier shall be entitled under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).

9.18 **Unless otherwise specified in the SCC**, if the Supplier fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the SCC for GCC Clause 27.2.1) within the time for achieving Operational Acceptance specified in the Implementation Schedule or the Agreed Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance), the Supplier shall pay to the Procuring Entity liquidated damages at the rate of one half of one percent per week as a percentage of the Contract Price (exclusive of Recurrent Costs if any), or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount often (10) percent of the Contract Price (exclusive of Recurrent Costs if any). Once the Maximum is reached, the Procuring Entity may consider termination of the Contract, pursuant to GCC Clause 41.2.2.

9.19 **Unless otherwise specified in the SCC**, liquidated damages payable under GCC Clause 28.2 shall apply only to the failure to achieve Operational

Acceptance of the System (and Subsystems) as specified in the Implementation Schedule and/or Agreed Project Plan. This Clause 28.3 shall not limit, however, any other rights or remedies the Procuring Entity may have under the Contract for other delays.

- 9.20 If liquidated damages are claimed by the Procuring Entity for the System (or Subsystem), the Supplier shall have no further liability whatsoever to the Procuring Entity in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the Supplier from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

### **Defect Liability**

- 9.21 The Supplier warrants that the System, including all Information Technologies, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship that prevent the System and/or any of its components from fulfilling the Technical Requirements or that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems. **Unless otherwise specified in the SCC**, there will be NO exceptions and/or limitations to this warranty with respect to Software (or categories of Software). Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.
- 9.22 The Supplier also warrants that the Information Technologies, Materials, and other Goods supplied under the Contract are new, unused, and incorporate all recent improvements in design that materially affect the System's or Subsystem's ability to fulfill the Technical Requirements.
- 9.23 **Unless otherwise specified in the SCC**, the Supplier warrants that : (i) all Goods components to be incorporated into the System form part of the Supplier's and/or Subcontractor's current product lines, and (ii) they have been previously released to the market.
- 9.24 **Unless otherwise specified in the SCC**, the Warranty Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for thirty-six (36) months.
- 9.25 If during the Warranty Period any defect as described in GCC Clause 29.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the Supplier, the Supplier shall promptly, in consultation and agreement with the Procuring Entity regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Supplier shall, at its discretion, determine) such defect as well as any damage to the System caused by such defect. Any defective Information Technologies

or other Goods that have been replaced by the Supplier shall remain the property of the Supplier.

- 9.26 The Supplier shall not be responsible for the repair, replacement, or making good of any defect, or of any damage to the System arising out of or resulting from any of the following causes:
- a) Improper operation or maintenance of the System by the Procuring Entity;
  - b) Normal wear and tear;
  - c) use of the System with items not supplied by the Supplier, unless otherwise identified in the Technical Requirements, or approved by the Supplier; or
  - d) modifications made to the System by the Procuring Entity, or a third party, not approved by the Supplier.

9.27 The Supplier's obligations under this GCC Clause 29 shall not apply to:

- a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or
- b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Procuring Entity or any matters for which the Supplier has disclaimed responsibility, in accordance with GCC Clause 21.1.2.

9.28 The Procuring Entity shall give the Supplier a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence. The Procuring Entity shall afford all reasonable opportunity for the Supplier to inspect any such defect. The Procuring Entity shall afford the Supplier all necessary access to the System and the site to enable the Supplier to perform its obligations under this GCC Clause 29.

9.29 The Supplier may, with the consent of the Procuring Entity, remove from the site any Information Technologies and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Procuring Entity may give the Supplier notice requiring that tests of the defective part be made by the Supplier immediately upon completion of such remedial work, where upon the Supplier shall carry out such tests.

If such part fails the tests, the Supplier shall carry out further repair, replacement, or making good (as the case maybe) until that part of the System passes such tests. The tests shall be agreed upon by the Procuring Entity and the Supplier.

9.30 **Unless otherwise specified in the SCC**, the response times and repair/replacement times for Warranty Defect Repair are specified in the Technical Requirements. Nevertheless, if the Supplier fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within two weeks the Procuring Entity may, following notice to the



Supplier, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Procuring Entity in connection with such work shall be paid to the Procuring Entity by the Supplier or may be deducted by the Procuring Entity from any monies due the Supplier or claimed under the Performance Security.

- 9.31 If the System or Subsystem cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the System shall be extended by a period equal to the period during which the System or Subsystem could not be used by the Procuring Entity because of such defect and/or making good of such defect.
- 9.32 Items substituted for defective parts of the System during the Warranty Period shall be covered by the Defect Liability Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater. For reasons of information security, the Procuring Entity may choose to retain physical possession of any replaced defective information storage devices.
- 9.33 At the request of the Procuring Entity and without prejudice to any other rights and remedies that the Procuring Entity may have against the Supplier under the Contract, the Supplier will offer all possible assistance to the Procuring Entity to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Goods included in the System, including without limitation assignment or transfer in favor of the Procuring Entity of the benefit of any warranties given by such producers or licensors to the Supplier.

### **Functional Guarantees**

- 9.34 The Supplier guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Procuring Entity's requirements set forth in the Technical Requirements and it conforms to all other aspects of the Contract. The Supplier acknowledges that GCC Clause 27 regarding Commissioning and Operational Acceptance govern show technical conformance of the System to the Contract requirements will be determined.
- 9.35 If, for reasons attributable to the Supplier, the System does not conform to the Technical Requirements or does not conform to all other aspects of the Contract, the Supplier shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Technical Requirements and meet all functional and performance standards. The Supplier shall notify the Procuring Entity upon completion of the necessary changes, modifications, and/or additions and shall request the Procuring Entity to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.
- 9.36 If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Procuring Entity may consider termination of the Contract, pursuant to GCC Clause 41.2.2, and forfeiture of the Supplier's Performance Security in

accordance with GCC Clause 13.3 in compensation for the extra costs and delays likely to result from this failure.

### **Intellectual Property Rights Warranty**

9.37 The Supplier here by represents and warrants that:

- a) The System as supplied, installed, tested, and accepted;
- b) Use of the System in accordance with the Contract; and
- c) Copying of the Software and Materials provided to the Procuring Entity in accordance with the Contract do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfer so frights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Procuring Entity to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Supplier shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the System.

### **Intellectual Property Rights Indemnity**

9.38 The Supplier shall indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that the Procuring Entity or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of:

- a) Installation of the System by the Supplier or the use of the System, including the Materials, in the country where the site is located;
- b) copying of the Software and Materials provided by the Supplier in accordance with the Agreement; and
- c) sale of the products produced by the System in any country, except to the extent that such losses, liabilities, and costs a rise as a result of the Procuring Entity's breach of GCC Clause 32.2.

9.39 Such indemnity shall not cover any use of the System, including the Materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the System, or any products of the System produced there by in association or combination with any other goods or services not supplied by the Supplier, where the infringement arises because of such association or combination and not because of use of the System in its own right.

9.40 Such indemnities shall also not apply if any claim of infringement:

- a) Is asserted by apparent, subsidiary, or affiliate of the Procuring Entity's organization;



- b) Is a direct result of a design mandated by the Procuring Entity's Technical Requirements and the possibility of such infringement was duly noted in the Supplier's Tender; or
- c) Results from the alteration of the System, including the Materials, by the Procuring Entity or any persons other than the Supplier or a person authorized by the Supplier.

9.41 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Clause 32.1, the Procuring Entity shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Procuring Entity within the twenty-eight (28) days, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

9.42 The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the Supplier in connection with this Contract by the Procuring Entity or any persons (other than the Supplier) contracted by the Procuring Entity, except to the extent that such losses, liabilities, and costs arise as a result of the Supplier's breach of GCC Clause 32.8.

9.43 Such indemnity shall not cover

- a) any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract;
- b) any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Procuring Entity or any other person contracted by the Procuring Entity, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.

9.44 Such indemnities shall also not apply:

- a) If any claim of infringement is asserted by apparent, subsidiary, or affiliate of the Supplier's organization;
- b) to the extent that any claim of infringement is caused by the alteration, by the Supplier, or any persons contracted by the Supplier, of the design, data, drawing, specification, or other documents or materials provided to the Supplier by the Procuring Entity or any persons contracted by the Procuring Entity.

9.45 If any proceedings are brought or any claim is made against the Supplier arising out of the matters referred to in GCC Clause 32.5, the Supplier shall promptly give the Procuring Entity notice of such proceedings or claims, and the Procuring Entity may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Procuring Entity fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Procuring Entity has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Procuring Entity's request, afford all available assistance to the Procuring Entity in conducting such proceedings or claim and shall be reimbursed by the Procuring Entity for all reasonable expenses incurred in so doing.

### **Limitation of Liability**

9.46 Provided the following does not exclude or limit any liabilities of either party in ways not permitted by applicable law:

- a) the Supplier shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring Entity; and
- b) the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Supplier to indemnify the Procuring Entity with respect to intellectual property rights infringement.

### **G. Risk Distribution** **Transfer of Ownership**

- 9.47 With the exception of Software and Materials, the ownership of the Information Technologies and other Goods shall be transferred to the Procuring Entity at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Contract Agreement.
- 9.48 Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 15 (Copyright) and any elaboration in the Technical Requirements.

- 9.49 Ownership of the Supplier's Equipment used by the Supplier and its Subcontractors in connection with the Contract shall remain with the Supplier or its Subcontractors.

### **Care of the System**

- 9.50 The Procuring Entity shall be come responsible for the care and custody of the System or Subsystems upon their Delivery. The Procuring Entity shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause from the date of Delivery until the date of Operational Acceptance of the System or Subsystems, pursuant to GCC Clause 27 (Commissioning and Operational Acceptance), except such loss or damage arising from acts or omissions of the Supplier, its employees, or subcontractors.
- 9.51 If any loss or damage occurs to the System or any part of the System by reason of:
- a) (in so far as they relate to the country where the Project Site is located) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, in so far as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 37;
  - b) Any use not in accordance with the Contract, by the Procuring Entity or any third party;
  - c) Any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Procuring Entity, or any such matter for which the Supplier has disclaimed responsibility in accordance with GCC Clause 21.1.2, the Procuring Entity shall pay to the Supplier all sums payable in respect of the System or Subsystems that have achieved Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If the Procuring Entity requests the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Supplier shall make good the same at the cost of the Procuring Entity in accordance with GCC Clause 39. If the Procuring Entity does not request the Supplier in writing to make good any loss or damage to the System there by occasioned, the Procuring Entity shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the System there by lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, the Procuring Entity shall terminate the Contract pursuant to GCC Clause 41.1.
- 9.52 The Procuring Entity shall be liable for any loss of or damage to any Supplier's Equipment which the Procuring Entity has authorized to locate within the Procuring Entity's premises for use in fulfillment of Supplier's obligations under the Contract, except where such loss or damage arises from acts or omissions of the Supplier, its employees, or subcontractors.

## **Loss of or Damage to Property; Accident or Injury to Workers; Indemnification**

- 9.53 The Supplier and each and every Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in Kenya.
- 9.54 Subject to GCC Clause 36.3, the Supplier shall indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Procuring Entity or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property (other than the System, whether accepted or not) arising in connection with the supply, installation, testing, and Commissioning of the System and by reason of the negligence of the Supplier or its Subcontractors, or their employees, officers or agents, except any injury, death, or property damage caused by the negligence of the Procuring Entity, its contractors, employees, officers, or agents.
- 9.55 If any proceedings are brought or any claim is made against the Procuring Entity that might subject the Supplier to liability under GCC Clause 36.2, the Procuring Entity shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Procuring Entity within the twenty-eight (28) day period, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 9.56 The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the Procuring Entity, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 37 (Insurances), provided that such fire, explosion, or other perils were not caused by any act or failure of the Supplier.
- 9.57 If any proceedings are brought or any claim is made against the Supplier that might subject the Procuring Entity to liability under GCC Clause 36.4, the Supplier shall promptly give the Procuring Entity notice of such proceedings

or claims, and the Procuring Entity may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Procuring Entity fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Procuring Entity has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Procuring Entity's request, afford all available assistance to the Procuring Entity in conducting such proceedings or claim and shall be reimbursed by the Procuring Entity for all reasonable expenses incurred in so doing.

- 9.58 The party entitled to the benefit of an indemnity under this GCC Clause 36 shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

## Insurances

- 9.59 The Supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the Procuring Entity, who should not unreasonably withhold such approval.

- a) Cargo Insurance During Transport as applicable, 110 percent of the price of the Information Technologies and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site.
- b) Installation "All Risks" Insurance as applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under "all risks" insurance policies of this type by reputable insurers) occurring prior to Operational Acceptance of the System.
- c) Third-Party Liability Insurance On terms as **specified in the SCC**, covering bodily injury or death suffered by third parties (including the Procuring Entity's personnel) and loss of or damage to property (including the Procuring Entity's property and any Subsystems that have been accepted by the Procuring Entity) occurring in connection with the supply and installation of the Information System.
- d) Automobile Liability Insurance In accordance with the statutory requirements prevailing in Kenya, covering use of all vehicles used by the Supplier or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

**e) Other Insurance (if any), as specified in the SCC.**

- 9.60 The Procuring Entity shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1, except for the Third-Party Liability, and the Supplier's Subcontractors shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1 except for Cargo Insurance During Transport. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 9.61 The Supplier shall deliver to the Procuring Entity certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.
- 9.62 The Supplier shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Supplier.
- 9.63 If the Supplier fails to take out and/or maintain in effect the insurance referred to in GCC Clause 37.1, the Procuring Entity may take out and maintain in effect any such insurance and may from time to time deduct from any amount due to the Supplier under the Contract any premium that the Procuring Entity shall have paid to the insurer or may otherwise recover such amount as a debt due from the Supplier.
- 9.64 Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clause 37, and all monies payable by any insurers shall be paid to the Supplier. The Procuring Entity shall give to the Supplier all such reasonable assistance as may be required by the Supplier in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Procuring Entity's interest is involved, the Supplier shall not give any release or make any compromise with the insurer without the prior written consent of the Procuring Entity. With respect to insurance claims in which the Supplier's interest is involved, the Procuring Entity shall not give any release or make any compromise with the insurer without the prior written consent of the Supplier.

**Force Majeure**

- 9.65 "Force Majeure" shall mean any event beyond the reasonable control of the Procuring Entity or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:
- a) war, hostilities, or war like operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
  - b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;



- c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or defacto authority or ruler, or any other act or failure to act of any local state or national government authority;
  - d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
  - e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
  - f) failure, by the Supplier, to obtain the necessary export permit (s) from the governments of the Country(s) of Origin of the Information Technologies or other Goods, or Supplier's Equipment provided that the Supplier has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of the System and all of its components for receipt of the necessary export permits.
- 9.66 If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.
- 9.67 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Achieving Operational Acceptance shall be extended in accordance with GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).
- 9.68 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Clause 38.6.
- 9.69 No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:
- a) Constitute a default or breach of the Contract;
  - b) (subject to GCC Clauses 35.2, 38.3, and 38.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance, if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- 9.70 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the time period covered by the Contract, the



parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.

- 9.71 In the event of termination pursuant to GCC Clause 38.6, the rights and obligations of the Procuring Entity and the Supplier shall be as specified in GCC Clauses 41.1.2 and 41.1.3.
- 9.72 Notwithstanding GCC Clause 38.5, Force Majeure shall not apply to any obligation of the Procuring Entity to make payments to the Supplier under this Contract.

## **H. Change in Contract Elements**

### **10 Changes to the System**

#### **10.1 Introducing a Change**

- 39.1.1 Subject to GCC Clauses 39.2.5 and 39.2.7, the Procuring Entity shall have the right to propose, and subsequently require, the Project Manager to order the Supplier from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in, or from the System (interchangeably called “Change”), provided that such Change falls within the general scope of the System, does not constitute unrelated work, and is technically practicable, taking into account both the state of advancement of the System and the technical compatibility of the Change envisaged with the nature of the System as originally specified in the Contract.
- 39.1.2 A Change may involve, but is not restricted to, the substitution of updated Information Technologies and related Services in accordance with GCC Clause 23 (Product Upgrades).
- 39.1.3 The Supplier may from time to time during its performance of the Contract propose to the Procuring Entity (with a copy to the Project Manager) any Change that the Supplier considers necessary or desirable to improve the quality or efficiency of the System. The Procuring Entity may at its discretion approve or reject any Change proposed by the Supplier.
- 39.1.4 Notwithstanding GCC Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Supplier in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Achieving Operational Acceptance.
- 39.1.5 The procedure on how to proceed with and execute Changes is specified in GCC Clauses 39.2 and 39.3, and further details and sample forms are provided in the Sample Contractual Forms Section in the tendering documents.
- 39.1.6 Moreover, the Procuring Entity and Supplier will agree, during development of the Project Plan, to a date prior to the scheduled date for Operational Acceptance, after which the Technical Requirements for the System shall be “frozen.” Any Change initiated after this time will be dealt with after Operational Acceptance.
- 39.2 Changes Originating from Procuring Entity

- 39.2.3 If the Procuring Entity proposes a Change pursuant to GCC Clauses 39.1.1, it shall send to the Supplier a "Request for Change Proposal," requiring the Supplier to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:
- a Brief description of the Change;
  - b Impact on the Time for Achieving Operational Acceptance;
  - c Detailed estimated cost of the Change;
  - d Effect on Functional Guarantees (if any);
  - e Effect on any other provisions of the Contract.
- 39.2.4 Prior to preparing and submitting the "Change Proposal," the Supplier shall submit to the Project Manager a "Change Estimate Proposal," which shall be an estimate of the cost of preparing the Change Proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Supplier's Change Estimate Proposal, the Procuring Entity shall do one of the following:
- a accept the Supplier's estimate with instructions to the Supplier to proceed with the preparation of the Change Proposal;
  - b advise the Supplier of any part of its Change Estimate Proposal that is unacceptable and request the Supplier to review its estimate;
  - c advise the Supplier that the Procuring Entity does not intend to proceed with the Change.
- 39.2.5 Upon receipt of the Procuring Entity's instruction to proceed under GCC Clause 39.2.2 (a), the Supplier shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Clause 39.2.1. The Supplier, at its discretion, may specify a validity period for the Change Proposal, after which if the Procuring Entity and Supplier has not reached agreement in accordance with GCC Clause 39.2.6, then GCC Clause 39.2.7 shall apply.
- 39.2.6 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the nature of the Change is such that the Contract rates and prices are inequitable, the parties to the Contract shall agree on other specific rates to be used for valuing the Change.
- 39.2.7 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate impact of compliance with the Request for Change Proposal and with all other Change Orders that have already become binding upon the Supplier under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen (15) percent, the Supplier may give a written notice of objection to this Request for Change Proposal prior to furnishing the Change Proposal. If the Procuring Entity accepts the Supplier's objection, the Procuring Entity shall withdraw the proposed Change and shall notify the Supplier in writing of its acceptance.

The Supplier's failure to so object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested Changes or Change Orders, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Supplier represents.

39.2.8 Upon receipt of the Change Proposal, the Procuring Entity and the Supplier shall mutually agree upon all matters contained in the Change Proposal. Within fourteen (14) days after such agreement, the Procuring Entity shall, if it intends to proceed with the Change, issue the Supplier a Change Order. If the Procuring Entity is unable to reach a decision within fourteen (14) days, it shall notify the Supplier with details of when the Supplier can expect a decision. If the Procuring Entity decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Supplier accordingly. Under such circumstances, the Supplier shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Supplier in its Change Estimate Proposal submitted in accordance with GCC Clause 39.2.2.

If the Procuring Entity and the Supplier cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Achieving Operational Acceptance, or any other matters identified in the Change Proposal, the Change will not be implemented. However, this provision does not limit the rights of either party under GCC Clause 6 (Settlement of Disputes).

### 39.3 Changes Originating from Supplier

If the Supplier proposes a Change pursuant to GCC Clause 39.1.2, the Supplier shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Clause 39.2.1. Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Clauses 39.2.6 and 39.2.7. However, should the Procuring Entity choose not to proceed or the Procuring Entity and the Supplier cannot come to agreement on the change during any validity period that the Supplier may specify in its Application for Change Proposal, the Supplier shall not be entitled to recover the costs of preparing the Application for Change Proposal, unless subject to an agreement between the Procuring Entity and the Supplier to the contrary.

39.4 Value engineering. The Supplier may prepare, at its own cost, a value engineering proposal at any time during the performance of the Contract.

39.2.1 The value engineering proposal shall, at a minimum, include the following;

- (a) The proposed change (s), and a description of the difference to the existing Contract requirements;
- (b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
- (c) a description of any effect(s) of the change on performance/functionality.

39.2.2 The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:

- a) accelerates the delivery period; or
- b) reduces the Contract Price or the life cycle costs to the Procuring Entity; or
- c) improves the quality, efficiency, safety or sustainability of the systems; or
- d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the systems.

39.2.3 If the value engineering proposal is approved by the Procuring Entity and results in:

- a) a reduction of the Contract Price; the amount to be paid to the Supplier shall be the percentage specified in the **SCC** of the reduction in the Contract Price; or
- b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Supplier shall be the full increase in the Contract Price.

### **Extension of Time for Achieving Operational Acceptance**

10.2 The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- a) Any Change in the System as provided in GCC Clause 39 (Change in the Information System);
- b) Any occurrence of Force Majeure as provided in GCC Clause 38 (Force Majeure);
- c) Default of the Procuring Entity; or
- d) Any other matter specifically mentioned in the Contract; by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Supplier.

10.3 Except where otherwise specifically provided in the Contract, the Supplier shall submit to the Project Manager a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Procuring Entity and the Supplier shall agree upon the period of such extension. In the event that the Supplier does not accept the Procuring Entity's estimate of a fair and reasonable time extension, the Supplier shall be entitled to refer the matter to the provisions for the Settlement of Disputes pursuant to GCC Clause 43.

10.4 The Supplier shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

## Termination

### 10.5 Termination for Procuring Entity's Convenience

41.1.1 The Procuring Entity may at any time terminate the Contract for any reason by giving the Supplier a notice of termination that refers to this GCC Clause 41.1.

41.1.2 Upon receipt of the notice of termination under GCC Clause 41.1.1, the Supplier shall either as soon as reasonably practical or upon the date specified in the notice of termination

- a) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- b) terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to GCC Clause (d) (ii) below;
- c) Remove all Supplier's Equipment from the site, repatriate the Supplier's and its Sub contractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
- d) In addition, the Supplier, subject to the payment specified in GCC Clause 41.1.3, shall
  - i) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination;
  - ii) to the extent legally possible, assign to the Procuring Entity all right, title, and benefit of the Supplier to the System, or Subsystem, as at the date of termination, and, as may be required by the Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors;
  - iii) deliver to the Procuring Entity all nonproprietary drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

41.1.2 In the event of termination of the Contract under GCC Clause 41.1.1, the Procuring Entity shall pay to the Supplier the following amounts:

- a) The Contract Price, properly attributable to the parts of the System executed by the Supplier as of the date of termination;
- b) The costs reasonably incurred by the Supplier in the removal of the Supplier's Equipment from the site and in the repatriation of the Supplier's and its Subcontractors' personnel;
- c) any amount to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- d) costs incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 41.1.2(a); and
- e) the cost of satisfying all other obligations, commitments, and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GCC Clauses 41.1.3 (a) through (d) above.

## 41.2 Termination for Supplier's Default

41.2.1 The Procuring Entity, without prejudice to any other rights or remedies it may possess, may terminate the Contract forth within the following circumstances by giving a notice of termination and its reasons there for to the Supplier, referring to this GCC Clause 41.2:

- a) If the Supplier becomes bankrupt or in solvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its under taking or assets, or if the Supplier takes or suffers any other analogous action in consequence of debt;
- b) If the Supplier assigns or transfers the Contractor any right or interest, there in in violation of the provision of GCC Clause 42 (Assignment); or
- c) If the Supplier, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a. of the Appendix to the GCC, in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract.

### 41.2.2 If the Supplier:

- a) Has abandoned or repudiated the Contract;
- b) Has without valid reason failed to commence work on the System promptly;
- c) Persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
- d) Refuses or is unable to provide sufficient Materials, Services, or labor to execute and complete the System in the manner specified in the Agreed Project Plan furnished under GCC Clause 19 at rates of progress that give reasonable assurance to the Procuring Entity that the Supplier can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended; then the Procuring Entity may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same with in fourteen (14) days of its receipt of such notice, then the Procuring Entity may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GCC Clause 41.2.

41.2.3 Upon receipt of the notice of termination under GCC Clauses 41.2.1 or 41.2.2, the Supplier shall, either immediately or upon such date as is specified in the notice of termination:

- e) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that



- part of the System already executed or any work required to leave the site in a clean and safe condition;
- f) terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to GCC Clause (d) below;
- g) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination;
- h) to the extent legally possible, assign to the Procuring Entity all right, title and benefit of the Supplier to the System or Subsystems as at the date of termination, and, as may be required by the Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors;
- i) deliver to the Procuring Entity all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the System.

41.2.4 The Procuring Entity may enter upon the site, expel the Supplier, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Procuring Entity thinks appropriate, the Procuring Entity shall give notice to the Supplier that such Supplier's Equipment will be returned to the Supplier at or near the site and shall return such Supplier's Equipment to the Supplier in accordance with such notice. The Supplier shall thereafter without delay and at its cost remove or arrange removal of the same from the site.

41.2.5 Subject to GCC Clause 41.2.6, the Supplier shall be entitled to be paid the Contract Price attributable to the portion of the System executed as at the date of termination and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to GCC Clause 41.2.3 (a). Any sums due the Procuring Entity from the Supplier accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier under this Contract.

41.2.6 If the Procuring Entity completes the System, the cost of completing the System by the Procuring Entity shall be determined. If the sum that the Supplier is entitled to be paid, pursuant to GCC Clause 41.2.5, plus the reasonable costs incurred by the Procuring Entity in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess. If such excess is greater than the sums due the Supplier under GCC Clause 41.2.5, the Supplier shall pay the balance to the Procuring Entity, and if such excess is less than the sums due the Supplier under GCC Clause 41.2.5, the Procuring Entity shall pay the balance to the Supplier. The Procuring Entity and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

#### 41.3 Termination by Supplier

##### 41.3.1 If:

- a) the Procuring Entity has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause **pursuant to the SCC**, or commits a substantial breach of the Contract, the Supplier may give a notice to the Procuring Entity that requires payment of such sum, with interest on this sum as stipulated in GCC Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Procuring

Entity to remedy the same, as the case may be. If the Procuring Entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Supplier's notice; or

- b) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Procuring Entity, including but not limited to the Procuring Entity's failure to provide possession of or access to the site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the System; then the Supplier may give a notice to the Procuring Entity of such events, and if the Procuring Entity has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Supplier is still unable to carry out any of its obligations under the Contract for any reason attributable to the Procuring Entity within twenty-eight (28) days of the said notice, the Supplier may by a further notice to the Procuring Entity referring to this GCC Clause 41.3.1, forth with terminate the Contract.

41.3.2 The Supplier may terminate the Contract immediately by giving a notice to the Procuring Entity to that effect, referring to this GCC Clause 41.3.2, if the Procuring Entity becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Procuring Entity takes or suffers any other analogous action in consequence of debt.

41.3.3 If the Contract is terminated under GCC Clauses 41.3.1 or 41.3.2, then the Supplier shall immediately:

- c) Cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
  - d) Terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to Clause 41.3.3
- (d) (ii);
- e) remove all Supplier's Equipment from the site and repatriate the Supplier's and its Subcontractor's personnel from the site.
  - f) In addition, the Supplier, subject to the payment specified in GCC Clause 41.3.4, shall:
    - i) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination;
    - ii) to the extent legally possible, assign to the Procuring Entity all right, title, and benefit of the Supplier to the System, or Subsystems, as of the date of termination, and, as may be required by the Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors;
    - iii) to the extent legally possible, deliver to the Procuring Entity all drawings, specifications, and other documents prepared by the

Supplier or its Subcontractors as of the date of termination in connection with the System.

41.3.4 If the Contract is terminated under GCC Clauses 41.3.1 or 41.3.2, the Procuring Entity shall pay to the Supplier all payments specified in GCC Clause 41.1.3 and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Supplier arising out of, in connection with, or in consequence of such termination.

41.3.5 Termination by the Supplier pursuant to this GCC Clause 41.3 is without prejudice to any other rights or remedies of the Supplier that may be exercised in lieu of or in addition to rights conferred by GCC Clause 41.3.

41.4 In this GCC Clause 41, the expression “portion of the System executed” shall include all work executed, Services provided, and all Information Technologies, or other Goods acquired (or subject to a legally binding

Obligation to purchase) by the Supplier and used or intended to be used for the purpose of the System, up to and including the date of termination.

**41.5** In this GCC Clause 41, in calculating any monies due from the Procuring Entity to the Supplier, account shall be taken of any sum previously paid by the Procuring Entity to the Supplier under the Contract, including any advance payment paid **pursuant to the SCC**.

## **11 Assignment**

42.1 Neither the Procuring Entity nor the Supplier shall, without the express prior written consent of the other, assign to any third party the Contractor any part thereof, or any right, benefit, obligation, or interest there in or there under, except that the Supplier shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

## **I. Settlement of Disputes**

### **Settlement of Disputes**

#### **Adjudication**

43.1.1 If any dispute of any kind what so ever shall arise between the Procuring Entity and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the System (whether during the progress of implementation or after its achieving Operational Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute **by mutual consultation**. If the parties fail to resolve such a dispute by mutual consultation within fourteen (14) days after one party has notified the other in writing of the dispute, then, if the Contract Agreement in Appendix 2 includes and names an Adjudicator, the dispute shall, within another fourteen (14) days, be referred in writing by either party to the

Adjudicator, with a copy to the other party. If there is no Adjudicator specified in the Contract Agreement, the mutual consultation period stated above shall last twenty-eight (28) days (instead of fourteen), upon expiry of which either party may move to the notification of arbitration pursuant to GCC Clause 43.2.1.

- 43.1.2 The Adjudicator shall give his or her decision in writing to both parties within twenty-eight (28) days of the dispute being referred to the Adjudicator. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Procuring Entity or the Supplier within fifty-six (56) days of such reference, the decision shall become final and binding upon the Procuring Entity and the Supplier. Any decision that has become final and binding shall be implemented by the parties forth with.
- 43.1.3 The Adjudicator shall be paid an hourly fee at the rate specified in the Contract Agreement plus reasonable expenditures incurred in the execution of duties as Adjudicator, and these costs shall be divided equally between the Procuring Entity and the Supplier.
- 43.1.4 Should the Adjudicator resign or die, or should the Procuring Entity and the Supplier agree that the Adjudicator is not fulfilling his or her functions in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Procuring Entity and the Supplier. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be appointed at the request of either party by the Appointing Authority **specified in the SCC**, or, if no Appointing Authority is **specified in SCC**, the Contract shall, from this point onward and until the parties may otherwise agree on an Adjudicator or an Appointing Authority, be implemented as if there is no Adjudicator.

## 43.2 Arbitration

### 43.2.1 If

- a) the Procuring Entity or the Supplier is dissatisfied with the Adjudicator's decision and acts before this decision has become final and binding pursuant to GCC Clause 43.1.2, or
- b) the Adjudicator fails to give a decision within the allotted time from referral of the dispute pursuant to GCC Clause 43.1.2, and the Procuring Entity or the Supplier acts within the following fourteen (14) days, or
- c) in the absence of an Adjudicator from the Contract Agreement, the mutual consultation pursuant to GCC Clause 43.1.1 expires without resolution of the dispute and the Procuring Entity or the Supplier acts within the following fourteen (14) days, then either the Procuring Entity or the Supplier may act to give notice to the other party, with a copy for information to the Adjudicator in case an Adjudicator had been involved, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

- 43.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Clause 43.2.1, shall be finally settled

by arbitration. Arbitration may be commenced prior to or after Installation of the Information System.

43.2.3 Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC**.

- 43.3 Notwithstanding any reference to the Adjudicator or arbitration in this clause,
- The parties shall continue to perform their respective obligations under the Contract unless they otherwise agree;
  - The Procuring Entity shall pay the Supplier any monies due the Supplier.

## SECTION VII - SPECIAL CONDITIONS OF CONTRACT

### Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions of the SCC shall prevail over those in the General Conditions of Contract. For the purposes of clarity, any referenced GCC clause numbers are indicated in the left column of the SCC.

Specific SCC provisions have not been included. SCC provisions will be included after negotiations with the Bidder.

### Contract and Interpretation

#### c) Definitions (GCC Clause1)

GCC (i)	1.1 (b)	The Procuring Entity is: <b><i>[ insert: complete legal name of the Procuring Entity ].</i></b>
GCC (ii)	1.1 (b)	The Project Manager is: <b><i>[ insert: name and/or the official title of Project Manager].</i></b> GCC
GCC (ix)	1.1 (e)	..... months from the Operational Acceptance date. <b><i>[Note: The GCC default specifies the Contract Period as when all the Supplier's obligations are completed. If there is a reason to set a hard-and-fast calendar date for the Contract Period to end, then specify here]</i></b>
GCC (xii)	1.1 (e)	The Post-Warranty Works Period is <b><i>[insert: number of months]</i></b> starting with the completion of the Warranty Period.

#### d) Notices (GCC Clause 4)

GCC 4.3		Address of the Project Manager: <b><i>[ as appropriate, insert: personal delivery, postal, email, and/or EDI addresses.]</i></b> Fallback address of the Procuring Entity: <b><i>[ as appropriate, insert: personal delivery, postal, facsimile, email, and/or EDI addresses.]</i></b> <b><i>[Note: If the Procuring Entity wishes to use Electronic Data Interchange (EDI) to communicate with the Supplier, it should specify the standards and protocols (for example ANSI A1 or ISO EDIFACT). The details may then be revised at Contract finalization. If so, add the following text.]</i></b>
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	For Electronic Data Interchange (EDI) the Procuring Entity and Supplier will use the following standards, protocols, addresses, and procedures: <b><i>[ insert: standards, protocols, addresses; also describe: any relevant procedures]</i></b>
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## B. Subject Matter of Contract

### e) Scope of the System (GCC Clause 7)

GCC 7.3	<p>The Supplier's obligations under the Contract will include the following recurrent cost items, as identified in the Recurrent Cost tables in the Supplier's Tender:</p> <p><b><i>[specify: the recurrent cost items/services that are included in the Contract; also provide cross reference to the place in the Technical Requirements where each item/service is specified in detail.]</i></b></p> <p><i>[Note: The requirements in terms of recurrent cost items should be defined here, reflected in the Recurrent Cost Table for the Warranty period, and elaborated in the Technical Requirements. See also notes to SCC Clause 29.4 regarding services that are not typically included in commercial warranties.</i></p> <p><i>If the Procuring Entity expects that wear and tear on System components will necessitate routine replacement of such components, and if Procuring Entity technical staff will perform these repair and replacement tasks, the Procuring Entity may wish to consider adding the following clause to the SCC that obligates the Supplier to stock and/or provide certain spare parts.]</i></p> <p>The Supplier agrees to supply spare parts required for the operation and maintenance of the System, as stated below, for <b><i>[ insert: number of years]</i></b> years beginning with Operational Acceptance. Moreover, the price of such spare parts shall be those specified in the spare parts price schedule submitted by the Supplier as part of its Tender. These prices shall include the purchase price for such spare parts and other costs and expenses (including the Supplier's fees) relating to the supply of spare parts.</p> <p><b><i>[list the spare parts needs, or reference the line items in the Spare Parts Price Schedule in the Supplier's Tender, if the Supplier is the source of the identity of the spares, i.e., reflecting its own understanding of its own technologies.]</i></b></p> <p><b><i>[Note: The need to ensure the availability of spare parts sources, above and beyond those the Supplier would routinely and implicitly need to perform under its defect liability and/or maintenance responsibilities, generally is not a major issue for the Information Technologies available in the market today. A System is likely to become obsolete long before it begins to develop physical defects.]</i></b></p>
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### Time for Commencement and Operational Acceptance (GCC Clause 8)

GCC 8.1	The Supplier shall commence work on the System within: [ <b>insert: number of days</b> ] days from the Effective Date of the Contract.
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### Supplier's Responsibilities (GCC Clause 9)

#### C. PAYMENT

#### f) Contract Price (GCC Clause 11)

GCC 11.2	<p>Adjustments to the Contract Price shall be as follows: [ <b>state: “not applicable” or specify: the items, adjustment formula or formulas, and the relevant price indices</b>].</p> <p>[<b>Note:</b> Price adjustment is not generally associated with Information System procurements. Price adjustment may be appropriate when: (i) performance of the Contract is expected to last more than eighteen months; (ii) the cost of an important input, such as labor, is subject to inflation (or deflation); and (iii) meaningful price indices are readily available and well accepted. Thus, for example, if the Contract provides a substantial number of recurrent cost items following Operational Acceptance, would the inclusion of an SCC to permit adjustment be appropriate. In such cases, adjustment should be limited to those items only and use appropriate indices that accurately mirror the relevant price trends.]</p>
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### Terms of Payment (GCC Clause 12)

GCC 12.1	Subject to the provisions of GCC Clause 12 (Terms of Payment), the Procuring Entity shall pay the Contract Price to the Supplier according to the categories and in the manner specified in Appendix 11 (Price Schedule and Payment Terms).
GCC 12.3	The Procuring Entity shall pay to the Supplier interest on the delayed payments at a rate of: [ <b>insert: “%” per annum</b> ].
GCC 12.4	The Supplier will invoice the Procuring Entity in the currency used in the Contract Agreement and the Price Schedules it refers to, for Goods and Works supplied locally, and the conversion between this currency and Kenya shillings for payment purposes - in case the two currencies are different - will be made as of the actual payment date using the exchange rate found in [ <b>insert: source of exchange rate</b> ].

### D. Intellectual Property

#### Copyright (GCC Clause 15)

GCC 15.3	<b>There are no Special Conditions of Contract applicable to GCC Clause 15.3</b>
GCC 15.4	<b>There are no Special Conditions of Contract applicable to GCC Clause</b>
GCC 15.5	<b>There are no Special Conditions of Contract applicable to GCC Clause</b>

**g) Software License Agreements (GCC Clause 16)**

GCC 16.1 (a) (iv)	<b><i>There are no Special Conditions of Contract applicable to GCC Clause 16.1 (a) (iv)</i></b>
GCC 16.1 (b) (vi)	<b><i>There are no Special Conditions of Contract applicable to GCC Clause 16.1 (b) (vi)</i></b>
GCC 16.1 (b) (vii)	<b><i>There are no Special Conditions of Contract applicable to GCC Clause 16.1 (b) (vii)</i></b>
GCC 16.2	<b><i>There are no Special Conditions of Contract applicable to GCC Clause 16.2</i></b>

**Confidential Information (GCC Clause 17)**

GCC 17.1	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 17.1</i></b></p> <p><i>[Note: The Procuring Entity may wish to give members of its business group or related agencies, for example, access to certain specific types of technical and / or financial information it obtains or develops with respect to the Supplier and its Information Technologies. The SCC covering such an exemption should define the individuals covered and generally provide that the Procuring Entity will ensure that such parties are aware of and will adhere by the Procuring Entity's obligations under GCC Clause 17 as if such party were a party to the Contract in place of the Procuring Entity.</i></p> <p><b><i>if necessary and appropriate, specify: persons, topics, and conditions for which the confidentiality clause does not apply.]</i></b></p>
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**E. Supply, Installation, Testing, Commissioning, and Acceptance of the System**

**h) Representatives (GCC Clause 18)**

GCC 18.1	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 18.1</i></b></p> <p><b><i>[Note: If appropriate specify additional powers or limitations.]</i></b></p> <p>The Procuring Entity's Project Manager shall have the following additional powers and / or limitations to his or her authority to represent the Procuring Entity in matters relating to the Contract <b><i>[ state necessary and appropriate clauses].</i></b></p>
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GCC 18.2.2	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 18.2.2</i></b></p> <p><b><i>[Note: If appropriate specify additional powers or limitations.]</i></b>  The Supplier's Representative shall have the following additional powers and / or limitations to his or her authority to represent the Supplier in matters relating to the Contract <b><i>[ state necessary and appropriate clauses]</i></b>.</p> <p><b><i>[Note: Any additional powers or limitations of the Supplier's Representative will, of necessity, be subject to discussions at Contract finalization and the SCC amended accordingly.]</i></b></p>
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**Project Plan (GCC Clause 19)**

GCC 19.1	<p>Chapters in the Project Plan shall address the following subject:</p> <ul style="list-style-type: none"> <li><b><i>(a) Project Organization and Management Sub-Plan, including management authorities, responsibilities, and contacts, as well as task, time and resource-bound schedules (in GANTT format);</i></b></li> <li><b><i>(b) Implementation Sub-Plan;</i></b></li> <li><b><i>(c) Training Sub-Plan;</i></b></li> <li><b><i>(d) Testing and Quality Assurance Sub-Plan;</i></b></li> <li><b><i>(e) Warranty Defect Repair and Technical Support Service Sub-Plan</i></b></li> </ul> <p><b><i>Further details regarding the required contents of each of the above chapters are contained in the Technical Requirements, (insert: reference)].</i></b></p>
GCC 19.6	<p><b><i>The Supplier shall submit to the Procuring Entity:</i></b></p> <ul style="list-style-type: none"> <li><b><i>(i) monthly inspection and quality assurance reports</i></b></li> <li><b><i>(ii) monthly training participants test results</i></b></li> <li><b><i>(iii) monthly log of service calls and problem resolutions</i></b></li> </ul>

**i) Design and Engineering (GCC Clause 21)**

GCC 21.3.1	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 21.3.1.</i></b></p> <p><b><i>[Note: If necessary and appropriate, specify the Controlling Technical Documents (i.e., document that must be approved by the Procuring Entity's Project Manager before any relevant downstream work can be undertaken by the Supplier).]</i></b></p> <p><b><i>[The Supplier shall prepare and furnish to the Project Manager the following documents for which the Supplier must obtain the Project Manager's approval before proceeding with work on the System or any Subsystem covered by the documents. [ state "none" or specify, for example:</i></b></p> <ul style="list-style-type: none"> <li><b><i>(*) detailed site surveys;</i></b></li> <li><b><i>(*) final Subsystem configurations;</i></b></li> <li><b><i>(*) etc.</i></b></li> </ul>
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**j) Product Upgrades (GCC Clause 23)**

GCC 23.4	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 23.4.</i></b></p> <p><i>[Note: Mandating that all new versions, releases, and updates of Standard Software will be passed on for free during the Warranty Period is a comprehensive requirement, the benefits of which must be balanced against the perceived costs in the mind of the successful Tenderer at the time of tender submission. To require the Supplier to provide for free only new releases and updates, but agreeing that it would be reimbursed for the supply of complete new versions might be more cost-effective.</i></p> <p><i>For example, this may be particularly appropriate when the Procuring Entity would not benefit from costs of migrating its business applications to an entirely new version of the underlying database system if such a version came out during a three Warranty Period. Another approach may be to shorten the time period during which updates, etc., would have to be supplied for free, for example, to only the first year of the Warranty Period; or alternatively, a narrower set of Standard Software could be covered.]</i></p>
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**k) Inspections and Tests (GCC Clause 25)**

GCC 25	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 25.</i></b></p> <p><i>[Note: Procuring Entity's may wish to consider employing qualified inspectors to inspect and certify the Information Technologies, Materials, and other Goods prior to shipment. This can minimize the number of cases where the Procuring Entity receives shipped goods that do not conform to the Technical Requirements and shorten the repair or replacement time.]</i></p>
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**l) Commissioning and Operational Acceptance (GCC Clause 27)**

GCC 27.2.1	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 27.2.1.</i></b></p> <p><i>[Note: Few aspects of Information Technology procurement are more critical to the successful implementation of a System than the specification of Operational Acceptance Tests. It is imperative that the Procuring Entity prepare the specification for these tests as carefully as the overall specification of the System itself. The description should be sufficiently comprehensive, unambiguous, and verifiable to result in proper operation of the System with minimal confusion or controversy between the Procuring Entity and its management, the Supplier, and any users.</i></p> <p><i>In addition, where the Contract covers the Installation and acceptance testing of a number of Subsystems, the nature of the acceptance tests required for each Subsystem, and for the final tests to be carried out on the entire System once all Subsystems have been completed, needs to be clearly specified here and/or in the Technical Requirements and which party bears responsibility for correcting</i></p>
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	<i>any defects discovered during the final tests of the entire System needs to be identified.]</i>
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## **F. Guarantees and Liabilities**

### **m) Operational Acceptance Time Guarantee (GCC Clause 28)**

GCC 28.2	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 28.2.</i></b></p> <p><i>[Note: Typical percentages are, respectively, one half of one percent (0.5%) per week and ten percent (10%) of the total. In some instances, the Procuring Entity may wish to consider specifying liquidated damages on a daily basis. If so, specify this in the SCC].</i></p>
GCC 28.3	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 28.3.</i></b></p> <p><i>[Note: Establishing more milestones for liquidated damages may provide a somewhat greater degree of control and assurances regarding the pace of the implementation of the System. However, this will come at a price of increased complexity of Contract management and increased perceptions of financial risks on the part of Tenderers. This most likely will lead to higher tender prices.</i></p> <p><i>In most cases, Operational Acceptance should be the most appropriate financial control for ensuring the timeliness of implementation, since it captures the impact of earlier delays and is, in the final analysis, the milestone that truly matters. Whatever milestones are selected, it is critical that the Implementation Schedule precisely specify what Subsystems or other components are covered and when the milestone is set. These, of course, can be refined and revised through the Agreed Project Plan.]</i></p>

### **n) Defect Liability (GCC Clause 29)**

GCC 29.1	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 29.1.</i></b></p> <p><i>[Note: Software is never completely error or “bug” free. Thus, the Procuring Entity may wish to refine or to limit the Supplier’s warranty obligations. Properly done, this can reduce Tenderer’s perceptions of financial risk and help lower tender prices. However, the Procuring Entity should balance the potential savings against the risks to reliable and effective operation of the System and the related costs to the Procuring Entity. These tradeoffs are very specific to the type of the System and its uses. These tradeoffs are also changing very rapidly with technological development. The Procuring Entity should consult experts in the relevant areas for an up-to-date assessment of the risks and the most appropriate text to express any such exceptions and limitations.]</i></p>
GCC 29.4	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 29.4.</i></b></p> <p><b><i>[Note:</i></b> When defining the Warranty period, Procuring Entity should be careful to recognize that services such as resident</p>



	<i>engineer support, new software releases and end-user help desk support are not typically included in commercial warranties and should be priced separately in the Recurrent Cost Table].</i>
GCC 29.10	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 29.10</i></b></p> <p><b><i>[Note:Typically, the Procuring Entity should develop a set of response times for different degrees of seriousness of the defects and/or categories of IT and/or specific Subsystems. The most appropriate and economical set of response times are highly dependent on the specific System, its use, and the relevant conditions in Kenya.</i></b></p> <p><b><i>The GCC specifies that the Supplier must commence work on warranty defects within a maximum of two weeks; else the Procuring Entity may contract-in such services at the Supplier's expense. The Procuring Entity may wish to shorten or lengthen this period in the SCC. The time specified must strike a reasonable balance between the response time the typical qualified Supplier can physically achieve and the importance of maintaining continued System operation. If too short a time period is specified, Suppliers will need to protect themselves by adding a contingency to their tender prices.]</i></b></p>

**o) Functional Guarantees (GCC Clause 30)**

GCC 30	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 30.</i></b></p> <p><b><i>[Note:In the event that Information Systems and Technologies would have to conform to other calendar system(s), here would be the place to specify related requirements in addition to, or in variation of, the requirements in GCC clause 30.2.]</i></b></p>
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**G. Risk Distribution**

**p) Insurances (GCC Clause 37)**

GCC 37.1 (c)	<p><b><i>The Supplier shall obtain Third-Party Liability Insurance in the amount of [ insert: monetary value] with deductible limits of no more than [ insert: monetary value]. The insured Parties shall be [ list insured parties]. The Insurance shall cover the period from [ insert: beginning date, relative to the Effective Date of the Contract] until [ insert: expiration date, relative to the Effective Date of the Contract or its completion ].</i></b></p>
GCC 37.1 (e)	<p><b><i>There are no Special Conditions of Contract applicable to GCC Clause 37.1 (e).</i></b></p> <p><b><i>[Note:Many countries have statutory requirements for various insurances. These should be reviewed with the Procuring Entity's legal department.</i></b></p> <p><b><i>For example:</i></b></p> <p><b><i>The Supplier shall obtain Worker's Compensation Insurance in accordance with the statutory requirements of [ insert: Kenya]. Specifically: [ insert: requirements]. The Insurance shall cover</i></b></p>



	<p>the period from [insert: <b>beginning date, relative to the Effective Date of the Contract</b>] until [insert: <b>expiration date, relative to the Effective Date of the Contract or its completion</b>].</p> <p>The Supplier shall obtain Employer's Liability Insurance in accordance with the statutory requirements of [insert: <b>Kenya</b>]. Specifically: [insert: <b>requirements</b>]. The Insurance shall cover the period from [insert: <b>beginning date, relative to the Effective Date of the Contract</b>] until [insert: <b>expiration date, relative to the Effective Date of Contract or its completion</b>].</p>
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## H. CHANGE IN CONTRACT ELEMENTS

### q) Changes to the System (GCC Clause 39)

GCC 39.4.3	<p><b>Value Engineering</b></p> <p>If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Supplier shall be ____% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price.</p>
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## I. Settlement of Disputes

### r) Settlement of Disputes (GCC Clause 43)

GCC 43.1.4	<p>The Appointing Authority for the Adjudicator is: [insert: <b>the name of an impartial international technical organization in the information technology sector, or, if no Adjudicator is used in this Contract Agreement or no organization has been identified and agreed to serve as Appointing Authority for the Adjudicator, state "not applicable."</b>].</p>
GCC 43.2.3	<p>If the Supplier is from outside Kenya arbitration proceedings shall be conducted in accordance with the rules of arbitration of [select one of the following: <b>UNCITRAL / the International Chamber of Commerce (ICC) / the Arbitration Institute of the Stockholm Chamber of Commerce / the London Court of International Arbitration</b>]. These rules, in the version in force at the time of the request for arbitration, will be deemed to form part of this Contract.</p> <p>If the Supplier is a national of Kenya, any dispute between the Procuring Entity and a Supplier arising in connection with the present Contract shall be referred to arbitration in accordance with the laws of Kenya.</p>

## SECTION VIII - CONTRACT FORMS

Notes to the Procuring Entity on preparing the Contract Forms.

*Installation and Operational Acceptance Certificates:* Recommended formats for these certificates are included in this SPD. Unless the Procuring Entity has good

reason to require procedures that differ from those recommended, or to require different wording in the certificates, the procedures and forms shall be included unchanged. If the Procuring Entity wishes to amend the recommended procedures and/ or certificates, it may do so before release of the tendering document to potential Tenderers.

*Change Order Procedures and Forms:* Similar to the Installation and Operational Acceptance Certificates, the Change Estimate Proposal, Estimate Acceptance, Change Proposal, Change Order, and related Forms should be included in the tendering document unaltered. If the Procuring Entity wishes to amend the recommended procedures and/ or certificates, it may do so before release of the tendering document.

### **Notes to Tenderers on working with the Sample Contractual Forms**

The following forms are to be completed and submitted by the successful Tenderer following notification of award: (i) Contract Agreement, with all Appendices; (ii) Performance Security; and (iii) Advance Payment Security.

*Contract Agreement:* In addition to specifying the parties and the Contract Price, the Contract Agreement is where the: (i) Supplier Representative; (ii) if applicable, agreed Adjudicator and his/her compensation; and (iii) the List of Approved Subcontractors are specified. In addition, modifications to the successful Tenderer's Tender Price Schedules are attached to the Agreement. These contain corrections and adjustments to the Supplier's tender prices to correct errors, adjust the Contract Price to reflect - if applicable - any extensions to tender validity beyond the last day of original tender validity plus 56 days, etc.

12.1- The Procuring Entity and Supplier will use the following additional forms during Contract implementation to formalize or certify important Contract events: (i) the Installation and Operational Acceptance Certificates; and (ii) the various Change Order forms. These and the procedures for their use during performance of the Contract are included in the tendering documents for the information of Tenderers.

## **Appendices**

### **e) Appendix 1. Supplier's Representative**

In accordance with GCC Clause 1.1 (b) (iv), the Supplier's Representative is:

Name: .....[ *insert: name and provide title and address further below, or state "to be nominated within fourteen (14) days of the Effective Date"*]

Title: .....[ *if appropriate, insert: title*]

In accordance with GCC Clause 4.3, the Supplier's addresses for notices under the Contract are:

Address of the Supplier's Representative: .....[ ***as appropriate, insert: personal delivery, postal, cable, facsimile, electronic mail, and/or EDI addresses.***] Fallback address of the Supplier: .....[ ***as appropriate, insert: personal delivery, postal, cable, facsimile, electronic mail, and/or EDI addresses.***]

## f) Appendix 2. Adjudicator

In accordance with GCC Clause 1.1 (b) (vi), the agreed-upon Adjudicator is: Name:  
..... **[insert: name]** Title:  
..... **[insert: title]** Address:  
..... **[insert: postal address]** Telephone:  
..... **[insert: telephone]** in accordance with  
GCC Clause 43.1.3, the agreed-upon fees and reimbursable expenses are: Hourly  
Fees: ..... **[insert: hourly fees]**  
Reimbursable Expenses: ..... **[list:  
reimbursables]**

Pursuant to GCC Clause 43.1.4, if at the time of Contract signing, agreement has not been reached between the Procuring Entity and the Supplier, an Adjudicator will be appointed by the Appointing Authority named in the SCC.

### **g) Appendix 3. List of Approved Subcontractors**

The Procuring Entity has approved use of the following Subcontractors nominated by the Supplier for carrying out the item or component of the System indicated. Where more than one Subcontractor is listed, the Supplier is free to choose between them, but it must notify the Procuring Entity of its choice sufficiently in advance of the time when the subcontracted work needs to commence to give the Procuring Entity reasonable time for review. In accordance with GCC Clause 20.1, the Supplier is free to submit proposals for Subcontractors for additional items from time to time. No subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Procuring Entity and their names have been added to this list of Approved Subcontractors, subject to GCC Clause 20.3.

***[ specify: item, approved Subcontractors, and their place of registration that the Supplier proposed in the corresponding attachment to its tender and that the Procuring Entity approves that the Supplier engage during the performance of the Contract. Add additional pages as necessary.]***

<b>Item</b>	<b>Approved Subcontractors</b>	<b>Place of Registration</b>

**h)Appendix 4. Categories of Software**

The following table assigns each item of Software supplied and installed under the Contract to one of the three categories: (i) System Software, (ii) General-Purpose Software, or (iii) Application Software; and to one of the two categories: (i) Standard Software or (ii) Custom Software.

Software Item	(Select one per item)			(Select one per item)	
	System Software	General-Purpose Software	Application Software	Standard Software	Custom Software

### i) Appendix 5. Custom Materials

The follow table specifies the Custom Materials the Supplier will provide under the Contract.

Custom Materials



## **j) Appendix 6. Revised Price Schedules**

The attached Revised Price Schedules (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the Price Schedules contained in the Supplier's Tender. These Revised Price Schedules reflect any corrections or adjustments to the Supplier's tender price, pursuant to the tender documents.

#### **k) Appendix 7. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments**

The attached Contract amendments (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the relevant clauses in the GCC, SCC, Technical Requirements, or other parts of this Contract as defined in GCC Clause 1.1 (a) (ii).

l) **Appendix 8. Installation and Acceptance Certificates** *(insert format)*

• **Installation Certificate**

Date: ..... ***[insert: date]***  
ITT: ..... ***[insert: title and number of ITT]***  
Contract: ..... ***[insert: name and number of Contract]***  
To: ..... ***[insert: name and address of Supplier]***

Dear Sir or Madam:

Pursuant to GCC Clause 26 (Installation of the System) of the Contract entered into between yourselves and the..... ***[insert: name of Procuring Entity]*** (hereinafter the “Procuring Entity”) dated..... ***[insert: date of Contract]***, relating to the.....***[insert: brief description of the Information System]***, we hereby notify you that the System (or a Subsystem or major component thereof) was deemed to have been correctly installed on the date specified below.

1. Description of the System (or relevant Subsystem or major component: ..... ***[insert: description]***
2. Date of Installation: ..... ***[insert: date]***

Notwithstanding the above, you are required to complete the outstanding items listed in the attachment to this certificate as soon as practicable. This Form shall not relieve you of your obligation to achieve Operational Acceptance of the System in accordance with the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Procuring Entity

Signed: .....  
Date: .....  
in the capacity of: .....  
***[State: “Project Manager” or state the title of a higher-level authority in the Procuring Entity's organization]***

m) **Appendix 9. Operational Acceptance Certificate**

Date: .....[insert: date]  
ITT: .....[insert: title and number of ITT]  
Contract: .....[insert: name of System or Subsystem and number of Contract]  
To: .....[insert: name and address of Supplier]

Dear Sir or Madam:

Pursuant to GCC Clause 27 (Commissioning and Operational Acceptance) of the Contract entered into between yourselves and the.....**[insert: name of Procuring Entity]** (hereinafter the “Procuring Entity”) dated..... **[ insert: date of Contract]**, relating to the.....**[insert: brief description of the Information System]**, we hereby notify you the System (or the Subsystem or major component identified below) successfully completed the Operational Acceptance Tests specified in the Contract. In accordance with the terms of the Contract, the Procuring Entity here by takes over the System (or the Subsystem or major component identified below), together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

**28** Description of the System (or Subsystem or major component):  
.....**[insert: description]**

**29** Date of Operational Acceptance: .....**[insert: date]**

This Form shall not relieve you of your remaining performance obligations under the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Procuring Entity

Signed: .....

Date: .....

in the capacity of: .....**[state: “Project Manager” or higher-level authority in the Procuring Entity's organization]**

## **n)Appendix 10. Change Order Procedures and Forms**

Date: .....[ insert: date]

ITT: .....[ insert: title and number of ITT]

Contract: .....[ insert: name or System or Subsystem and number of Contract]

### **General**

This section provides samples of procedures and forms for carrying out changes to the System during the performance of the Contract in accordance with GCC Clause 39 (Changes to the System) of the Contract.

### **Change Order Log**

The Supplier shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Change Orders authorized or pending. Changes shall be entered regularly in the Change Order Log to ensure that the log is kept up-to-date. The Supplier shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Procuring Entity.

### **References to Changes**

- a) Request for Change Proposals (including Application for Change Proposals) shall be serially numbered CR-nnn.
- b) Change Estimate Proposals shall be numbered CN-nnn.
- c) Estimate Acceptances shall be numbered CA-nnn.
- d) Change Proposals shall be numbered CP-nnn.
- e) Change Orders shall be numbered CO-nnn. On all forms, the numbering shall be determined by the original CR-nnn.

### **Annexes**

- 10.1 Request for Change Proposal Form
- 10.2 Change Estimate Proposal Form
- 10.3 Estimate Acceptance Form
- 10.4 Change Proposal Form
- 10.5 Change Order Form
- 10.6 Application for Change Proposal For

## Request for Change Proposal Form

(Procuring Entity's Form head)

Date: .....[insert: date]

ITT: .....[insert: title and number of ITT]

Contract: .....[insert: name of System or Subsystem or number of Contract]

To: .....[insert: name of Supplier and address]

Attention: .....[insert: name and title]

Dear Sir or Madam:

With reference to the above-referenced Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within [ **insert: number** ] days of the date of this Form.

- a) Title of Change: [ **insert: title** ]
  - b) Request for Change No./Rev.: [ **insert: number** ]
  - c) Originator of Change: [ **select Procuring Entity / Supplier (by Application for Change Proposal), and add: name of originator** ]
  - d) Brief Description of Change: [ **insert: description** ]
  - e) System (or Subsystem or major component affected by requested Change): [ **insert: description** ]
  - f) Technical documents and/ or drawings for the request of Change:  
Document or Drawing No. Description
  - g) Detailed conditions or special requirements of the requested Change: [ **insert: description** ]
  - h) Procedures to be followed:
    - Your Change Proposal will have to show what effect the requested Change will have on the Contract Price.
    - Your Change Proposal shall explain the time it will take to complete the requested Change and the impact, if any, it will have on the date when Operational Acceptance of the entire System agreed in the Contract.
    - If you believe implementation of the requested Change will have a negative impact on the quality, operability, or integrity of the System, please provide a detailed explanation, including other approaches that might achieve the same impact as the requested Change.
    - You should also indicate what impact the Change will have on the number and mix of staff needed by the Supplier to perform the Contract.
    - You shall not proceed with the execution of work related to the requested Change until we have accepted and confirmed the impact it will have on the Contract Price and the Implementation Schedule in writing.
- B. As next step, please respond using the Change Estimate Proposal form, indicating how much it will cost you to prepare a concrete Change Proposal that will describe the proposed approach for implementing the Change, all its elements, and will also address the points in paragraph 8 above pursuant to



GCC Clause 39.2.1. Your Change Estimate Proposal should contain a first approximation of the proposed approach, and implications for schedule and cost, of the Change.

For and on behalf of the Procuring Entity

Signed: .....

Date: .....

in the capacity of: .....[ **state: “Project Manager” or higher-level authority in the Procuring Entity's organization**]

## Change Estimate Proposal Form

(Supplier's Form head)

Date: .....[insert: date]

ITT: .....[insert: title and number of ITT]

Contract: .....[insert: name of System or Subsystem and number of Contract]

To: .....[insert: name of Procuring Entity and address]

Attention: ..... [insert: name and title]

Dear Sir or Madam:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change in accordance with GCC Clause 39.2.1 of the Contract. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Clause 39.2.2, is required before we proceed to prepare the actual Change Proposal including a detailed estimate of the cost of implementing the Change itself.

1. Title of Change: .....[insert: title]

2. Request for Change No./Rev.: .....[insert: number]

- a) Brief Description of Change (including proposed implementation approach): .....[insert: description]
- b) Schedule Impact of Change (initial estimate): .....[insert: description]
- c) Initial Cost Estimate for Implementing the Change: .....[insert: initial cost estimate]
- d) Cost for Preparation of Change Proposal: .....[insert: cost in the currencies of the Contract], as detailed below in the breakdown of prices, rates, and quantities.

For            and            on            behalf            of            the            Supplier  
Signed:.....

Date: .....

in the capacity of: .....[state: "Supplier's Representative" or other higher-level authority in the Supplier's organization]

## Estimate Acceptance Form

(Procuring Entity's Form head) Date: .....[insert: date]

ITT.....[insert: title and number of ITT]

Contract: .....[insert: name of System or Subsystem and number of Contract]

To: .....[insert: name of Supplier and address] Attention: .....[insert: name and title] Dear Sir or Madam:

We hereby accept your Change Estimate and agree that you should proceed with the preparation of a formal Change Proposal.

- a) Title of Change: [insert: title]
- b) Request for Change No./ Rev.: [insert: request number /revision]
- c) Change Estimate Proposal No./ Rev.: [insert: proposal number/ revision]
- d) Estimate Acceptance No./ Rev.: [insert: estimate number/ revision]
- e) Brief Description of Change: [insert: description]
- f) Other Terms and Conditions:

In the event that we decide not to order the Change referenced above, you shall be entitled to compensation for the cost of preparing the Change Proposal up to the amount estimated for this purpose in the Change Estimate Proposal, in accordance with GCC Clause 39 of the General Conditions of Contract.

For and on behalf of the Procuring Entity

Signed: .....

Date: .....

in the capacity of: .....[state: "Project Manager" or higher-level authority in the Procuring Entity's organization]

## Change Proposal Form

(Supplier's Form head)

Date: .....[insert: date]

ITT: .....[insert: title and number of ITT]

Contract: .....[insert: name of System or Subsystem and number of Contract]

To: .....[insert: name of Procuring Entity and address]

Attention: .....[insert: name and title]

Dear Sir or Madam:

In response to your Request for Change Proposal No. [insert: number], we hereby submit our proposal as follows:

- a) Title of Change: [insert: name]
- b) Change Proposal No./ Rev.: [insert: proposal number /revision]
- c) Origin at or of Change: [select: Procuring Entity /Supplier; and add: name]
- d) Brief Description of Change: [insert: description]
- e) Reasons for Change: [insert: reason]
- f) The System Subsystem, major component, or equipment that will be affected by the requested Change: [insert: description]
- g) Technical documents and/ or drawings for the requested Change:  
Document or Drawing No. Description
- h) Estimate of the increase/ decrease to the Contract Price resulting from the proposed Change: [insert: amount in currencies of Contract], as detailed below in the breakdown of prices, rates, and quantities. Total lump sum cost of the Change:
- i) Cost to prepare this Change Proposal (i. e., the amount payable if the Change is not accepted, limited as provided by GCC Clause 39.2.6):
- j) Additional Time for Achieving Operational Acceptance required due to the Change: [insert: amount in days/ weeks]
- k) Effect on the Functional Guarantees: [insert: description]
- l) Effect on the other terms and conditions of the Contract: [insert: description]
- m) Validity of this Proposal: for a period of .....[insert: number] days after receipt of this Proposal by the Procuring Entity
- n) Procedures to be followed:
  - You are requested to notify us of your acceptance, comments, or rejection of this detailed Change Proposal within.....[insert: number] days from your receipt of this Proposal.
  - The amount of any increase and / or decrease shall be taken into account in the adjustment of the Contract Price.

For and on behalf of the Supplier

Signed: .....

Date: .....

in the capacity of: ..... [state: "Supplier's Representative" or other higher-level authority in the Supplier's organization]

## Change Order Form

(Procuring Entity's Form head)

Date:

.....[insert

**t: date]**

ITT: .....[insert: title and number of ITT]

Contract: .....[insert: name of System or Subsystem and  
**number of Contract]**

To: .....[insert: name of Supplier and address]

Attention: .....[insert: name and title]

Dear Sir or Madam:

We hereby approve the Change Order for the work specified in Change Proposal No. **[insert: number]**, and agree to adjust the Contract Price, Time for Completion, and/ or other conditions of the Contract in accordance with GCC Clause 39 of the Contract.

**3** Title of Change: **[insert: name]**

**4** Request for Change No./ Rev.: **[insert: request number/ revision]**

**5** Change Order No./ Rev.: **[insert: order number/ revision]**

**6** Origin at or of Change: **[select: Procuring Entity / Supplier; and add: name]**

**7** Authorized Price for the Change: Ref. No.: **[insert: number]** Date: **[insert: date]**

**[ insert: amount in foreign currency A] plus [ insert: amount in foreign currency B] plus [ insert: amount in foreign currency C] plus [ insert: amount in local currency]**

**8** Adjustment of Time for Achieving Operational Acceptance: **[insert: amount and description of adjustment]**

**9** Other effects, if any: **[state: “none” or insert description]**

For and on behalf of the

Procuring Entity

Signed:

.....

....

Date: .....

in the capacity of: .....[state: “Project Manager” or higher-level  
**authority in the Procuring Entity's organization]**

For and on behalf of the

Supplier

Signed: .....

Date: .....

in the capacity of: .....[ state “Supplier's Representative” or higher-level  
**authority in the Supplier's organization]**

## Application for Change Proposal Form

(Supplier's Form head)

Date:

.....[insert:  
date]

ITT: .....[insert: title and number of ITT]

Contract: .....[ insert: name of System or Subsystem and number of Contract]

To: .....[insert: name of Procuring Entity and address]

Attention: .....[insert: name and title]

Dear Sir or Madam:

We hereby propose that the below-mentioned work be treated as a Change to the System.

1. Title of Change: .....[insert: name]
2. Application for Change Proposal No./ Rev.: .....[insert: number/ revision]  
dated: [insert: date]
3. Brief Description of Change: .....[insert: description]
4. Reasons for Change: .....[insert: description]
5. Order of Magnitude Estimation: .....[insert: amount in currencies of the Contract]
6. Schedule Impact of Change: .....[insert: description]
7. Effect on Functional Guarantees, if any: .....[insert: description]
8. Appendix: .....[insert: titles (if any); otherwise state "none"]

For and on behalf of the Supplier

Signed: .....

Date: .....

in the capacity of: .....[state: "Supplier's Representative" or higher-level authority in the Supplier's organization]



## **Appendix 11. Price Schedule and Payment Terms (Including Termination Payment Calculations)**

### **SECTION 10. NOTIFICATION FORMS**

#### **NOTIFICATION OF INTENTION TO AWARD**

Procuring Entity: \_\_\_\_\_ *[insert the name of the Entity]* Contract title: \_\_\_\_\_ *[insert the name of the contract]* RFP No: \_\_\_\_\_ *[insert RF Preference number]*

This Notification of Intention to Award (Notification) notifies you of our decision to enter into a contract with you based on your Technical and Financial Proposals dated [ ] and subject to successful conclusion of negotiations on the draft contract. With, the transmission of this Notification, the negotiation process may commence in accordance with the provisions of the RFP.

The successful Bidder

Name:	<i>[insert name of successful Bidder]</i>
Address:	<i>[insert address of the successful Bidder]</i>

## LETTER OF AWARD

Subject: *Notification of Award Contract No.....*

This is to notify you that your Proposal dated \_\_\_\_\_ *[insert date]* for *[name of the assignment]* as negotiated with you for the contract amount of \_\_\_\_\_ *[Insert amount in numbers and words and name of currency]* is here by accepted.

You are requested to:(i) sign and return the draft negotiated Contract attached here with within fourteen (14) days from the date of receipt of this notification; and (ii) furnish the additional information on beneficial ownership in accordance with the Request of Proposals.

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Procuring Entity: \_\_\_\_\_

***Attachment:*** *Draft Negotiated Contract*

**BENEFICIAL OWNERSHIP DISCLOSURE FORM**  
**(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)**

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

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns*

Tender Reference No.: \_\_\_\_\_ [insert identification no] Name of the Tender Title/Description: \_\_\_\_\_ [insert name of the assignment] to: \_\_\_\_\_ [insert complete name of Procuring Entity]  
 In response to the requirement in your notification of award dated \_\_\_\_\_ [insert date of notification of award] to furnish additional information on beneficial ownership: [select one option as applicable and delete the options that are not applicable]  
 ii) We hereby provide the following beneficial ownership information.

**Details of beneficial ownership**

	Details of all Beneficial Owners	% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
1.	Full Name		Directly-- ----- % of shares	Directly..... .....% of voting rights	4 Having the right to appoint a majority of the board of directors or an equivalent governing body of the Tenderer: Yes
	National identity card number or Passport number		Indirectly---- -----% of shares	Indirectly---- -----% of voting rights	iv) Exercises significant influence or control over the Company body of the Company (tenderer)
	Personal Identification Number (where applicable)				

Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)	
Nationality				-----No----- 5 Is this right held directly or indirectly?:  Direct..... .....  Indirect..... .....	Yes -----No--- -- v) Is this influence or control exercised directly or indirectly?  Direct..... ..  Indirect..... ...	
Date of birth [dd/mm/yyyy]						
Postal address						
Residential address						
Telephone number						
Email address						
Occupation or profession						
2.	Full Name		Directly-- ----- % of shares	Directly..... .....% of voting rights  Indirectly---- -----% of voting rights	3 Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No----- 4 Is this right held directly or indirectly?:  Direct.....	ii) Exercises significant influence or control over the Company body of the Company (tenderer) Yes -----No--- --- iii) Is this influence or control exercised directly or indirectly?
	National identity card number or Passport number					
	Personal Identification Number (where applicable)		Indirectly ----- % of shares			
	Nationality(ies)					
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential					

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
	address				.....	Direct.....
	Telephone number					..
	Email address				Indirect.....	
	Occupation or profession				.....	Indirect.....
						...
<b>3.</b>						
<b>e.</b>						
<b>t.</b>						
<b>c</b>						

iii) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

iv) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

- holds at least ten percent of the issued shares in the company either directly or indirectly;
- exercises at least ten percent of the voting rights in the company either directly or indirectly;
- holds a right, directly or indirectly, to appoint or remove a director of the company; or
- exercises significant influence or control, directly or indirectly, over the company.

- v) What is stated to herein above is true to the best of my knowledge, information and belief.

Name of the Tenderer: .....\*[insert complete name of the Tenderer]  
 Name of the person duly authorized to sign the Tender on behalf of the Tenderer: \*\*  
 [insert complete name of person duly authorized to sign the Tender]  
 Designation of the person signing the Tender: ..... [insert complete title of the person signing the Tender]  
 Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]  
 Date this ..... [insert date of signing] day of..... [Insert month], [insert year]

### Bidder Official Stamp

Request for Proposal Reference No.:\_\_\_\_\_ [insert identification no] Name of the Assignment:\_\_\_\_\_ [insert name of the assignment] to:\_\_\_[insert complete name of Procuring Entity]  
 In response to your notification of award dated\_\_\_\_\_ [insert date of notification of award] to furnish additional information on beneficial ownership: [select one option as applicable and delete the options that are not applicable]  
 vi) We here by provide the following beneficial ownership information.

#### **Details of beneficial ownership**

<b>Identity of Beneficial Owner</b>	<b>Directly or indirectly holding 25% or more of the shares (Yes / No)</b>	<b>Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)</b>	<b>Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Bidder (Yes / No)</b>
[include full name (last, middle, first), nationality, country of residence]			

OR

- (i) We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder.

OR

- (ii) We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Bidder shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.

*Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder]*"

*Name of the Bidder: .....\*[insert complete name of the Bidder]\_\_\_\_\_*

*Name of the person duly authorized to sign the Proposal on behalf of the Bidder: \*\* [insert complete name of person duly authorized to sign the Proposal]*

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

*Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]*

*Date signed ..... [insert date of signing] day of..... [Insert month], [insert year]*

---

*\*In the case of the Proposal submitted by a Joint Venture specify the name of the Joint Venture as Bidder. In the event that the Bidder is a Joint venture, each reference to "Bidder" in the Beneficial Ownership Disclosure Form (including this Introduction there to) shall be read to refer to the joint venture member.*

*\*\*Person signing the Proposal shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Proposal Schedules.*