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## **KENYA LITERATURE BUREAU**

### **TENDER FOR PROVISION OF COURIER SERVICES**

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**TENDER NO: KLB/RT/13/2022 -23**

**CLOSING DATE: 30/11/2022**

**TIME: 10:00 AM**

**1) NAME AND CONTACT ADDRESSES OF PROCURING ENTITY**

**2) Name: KENYA LITERATURE BUREAU**

**3) Address: P.O.BOX 30022-00100 NAIROBI**

**Email address: [info@klb.co.ke](mailto:info@klb.co.ke) or [supplies@klb.co.ke](mailto:supplies@klb.co.ke)**

**4) Invitation to Tender (ITT) No: KLB/RT/13/2022-2023**

**5) Tender Name: PROVISION OF COURIER SERVICES**

**6) Tender Issue Date: 22<sup>TH</sup> NOVEMBER 2022**

**7) Tender Closing Date: 30<sup>TH</sup> NOVEMBER 2022**

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## **INVITATION TO TENDER**

### **PROCURING ENTITY – KENYA LITERATURE BUREAU**

#### **CONTRACT NAME AND DESCRIPTION: TENDER FOR PROVISION OF COURIER SERVICES.**

Kenya Literature Bureau invites sealed tenders for **Provision of Courier Services.**

1. Tendering will be conducted under open competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
2. Qualified and interested tenderers may obtain further information and inspect the Tender Documents from the office of Manager, Supply Chain at KLB Headquarters Office, located at South C Bellevue, Off Popo Road, KLB Road between 9.00am and 4.00pm during weekdays. (Download).
3. Tender documents may be obtained electronically from the Website [www.klb.co.ke](http://www.klb.co.ke) or [www.tenders.go.ke](http://www.tenders.go.ke). Tender documents obtained electronically will be free of charge.
4. Tender documents may be viewed and downloaded for free from the website [www.klb.co.ke](http://www.klb.co.ke) or [tenders.go.ke](http://tenders.go.ke). Tenderers who download the tender document must forward their particulars immediately to [supplies@klb.co.ke](mailto:supplies@klb.co.ke) to facilitate any further clarification or addendum.
5. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
6. Completed tenders are to be enclosed in plain sealed envelopes marked with tender name and tender reference number and be deposited in the Tender Box at KLB South C Office Ground Floor, located at South C Bellevue, Off Popo Road, KLB Road, or be addressed to;

**THE MANAGING DIRECTOR,  
KENYA LITERATURE BUREAU  
P.O. BOX 30022 – 00100  
NAIROBI, KENYA**

So as to be received on or before **30<sup>th</sup> November 2022**

7. Electronic Tenders will not be permitted
8. Tenders will be opened immediately after the deadline date and time specified above. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at KLB South C Office Ground Floor.
9. Late tenders will be rejected.

**MANAGING DIRECTOR**

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## **PART 1 - TENDERING PROCEDURES**

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## SECTION I -INSTRUCTIONS TO TENDERERS

### A. General

#### 1 Scope of Tender

- 1.1** This tendering document is for the delivery of Non-Consulting Services, as specified in Section V, Procuring Entity's Requirements. The name, identification and number of this tender are specified in the **TDS**.

#### 2 Throughout this tendering document:

##### 2.1 The terms:

- a) The term “in writing” means communicated in written form (e.g., by mail, e-mail, fax, including if specified **in the TDS**, distributed or received through the electronic- procurement system used by the Procuring Entity) with proof of receipt;
- b) if the contexts or esquires, “singular” means “plural” and vice versa; and
- c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes the Procuring Entity's official public holidays.

- 2.2** The successful Tenderer will be expected to complete the performance of the Services by the Intended Completion Date provided **in the TDS**.

#### 3 Fraud and Corruption

- 3.1** The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015 (the Act), Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.

- 3.2** The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.

- 3.3 Unfair Competitive Advantage** - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the **TDS** and make available to all the firms together with this tender document all Information that would in that respect gives such firm any unfair competitive advantage over competing firms.

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



## 4 Eligible Tenderers

- 4.1** A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to ITT 4.6, or any combination of such entities in the form of a Joint Venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a Form of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor or in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS**.
- 4.2** Public Officers, of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse in which they have a substantial or controlling interest shall not be eligible to tender or be awarded contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3** A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
  - b Receives or has received any direct or indirect subsidy from another Tenderer; or
  - c has the same legal representative as another Tenderer; or
  - d has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
  - e or any of its affiliates participated as a consultant in the preparation of the Procuring Entity's Requirements (including Activities Schedules, Performance Specifications and Drawings) for the Non-Consulting Services that are the subject of the Tender; or
  - f or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
  - g would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 2. 1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
  - h has a close business or family relationship with a professional staff of the Procuring Entity or of the project implementing agency, who:
    - i. are directly or indirectly involved in the preparation of the tendering document or specifications of the contract, and/or the Tender evaluation process of such contract; or
    - ii. Would be involved in the implementation or supervision of such contract unless the conflicts stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the procurement process and execution of the Contract.
- 4.4** A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member may participate as a sub-contractor in more than one Tender.
- 4.5** A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4 .9.
- 4.6** A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya shall be ineligible to be pre-qualified for, initially selected for, tender for, propose for, or be awarded a contract during such period of sanctioning. The list of debarred firms and individuals is available at the PPRA Website [www.ppra.go.ke](http://www.ppra.go.ke)
- 4.7** Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be

awarded a Contract(s) only if they can establish that they: (i) are legally and financially autonomous; (ii) operate under Commercial law; and (iii) are not under supervision of the Procuring Entity.

- 4.8 Firms and individuals may be ineligible if (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 take under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person or entity in that country.
- 4.9 A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub consultants for any part of the Contract including related Services.
- 4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity to determine if this condition is met shall be provided in for this purpose is be provided in “*SECTION III-EVALUATION AND QUALIFICATION CRITERIA, Item 9*”.
- 4.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 4.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke)
- 4.13 A Tenderer may be considered ineligible if he/she offers goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.
- 4.14 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate is sued by the Kenya Revenue Authority.

## **5 Qualification of the Tenderer**

- 5.1 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 5.2 In the event that pre-qualification of Tenderers has been undertaken as stated in ITT 18.3, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

## **B. Contents of Tendering Document**

### **6 Sections of Tendering Document**

- 6.1 The tendering document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITT 10.

## **PART 1: Tendering Procedures**

- i) Section I - Instructions to Tenderers (ITT)

- ii) Section II - Tender Data Sheet (TDS)
- iii) Section III - Evaluation and Qualification Criteria
- iv) Section IV - Tendering Forms

## **PART 2: Procuring Entity's Requirements**

- v) Section V-Procuring Entity's Requirements

## **PART 3: Contract**

- vi) Section VI - General Conditions of Contract (GCC)
- vii) Section VII - Special Conditions of Contract (SCC)
- viii) Section VIII - Contract Forms

- 6.2 The Invitation to Tender (ITT) notice or the notice to pre-qualify Tenderers, as the case may be, issued by the Procuring Entity is not part of this tendering document.
- 6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.
- 6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

## **7. Site Visit**

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

## **8 Pre-Tender Meeting**

- 8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.
- 8.3 Minutes of the pre-Tender meeting and the pre-arranged pre tender visit of the site of the service, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT6.3. Minutes shall not identify the source of the questions asked.
- 8.4 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the service at the web page identified **in the TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

## **9 Clarification of Tender Documents**

- 9.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS or raise its enquiries during the pre-Tender meeting and the pre- arranged pretender visit of the site of the Service if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The

Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the webpage identified in the **TDS**. Should the clarification result in changes to the essential elements of the

- 9.2 Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 8.4.

## **10 Amendment of Tender Documents**

- 10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.
- 10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.4.
- 10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.

## **C. Preparation of Tenders**

### **11 Cost of Tendering**

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

### **12 Language of Tender**

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

### **13 Documents Comprising the Tender**

- 13.1 The Tender shall comprise the following:
- a **Form of Tender** prepared in accordance with ITT 14;
  - b **Schedules:** priced Activity Schedule completed in accordance with ITT 14 and ITT 16;
  - c **Tender Security or Tender-Securing Declaration** in accordance with ITT 21.1;
  - d **Alternative Tender:** if permissible in accordance with ITT 15;
  - e **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;
  - f **Qualifications:** documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
  - g **Tenderer's Eligibility:** documentary evidence in accordance with ITT 19 establishing the Tenderer's eligibility to Tender;
  - h **Conformity:** documentary evidence in accordance with ITT 18, that the Services conform to the tendering document; and
  - i Any other document required in the **TDS**.

The Tenderer shall chronologically serialize pages of all tender documents submitted.

- 13.2 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint
- 10

Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.

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

#### **14 Form of Tender and Activity Schedule**

- 14.1 The Form of Tender and priced Activity Schedule shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 22.3. All blank spaces shall be filled in with the information requested.
- 14.2 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

#### **15 Alternative Tenders**

- 15.1 Unless otherwise indicated **in the TDS**, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the Best Evaluated Tender shall be considered by the Procuring Entity.
- 15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included **in the TDS** and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.
- 15.3 When specified **in the TDS**, Tenderers are reemitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified **in the TDS**, as will the method for their evaluating, and described in Section VII, Procuring Entity's Requirements.

#### **16. Tender Prices and Discounts**

- 16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Activity Schedule (s) shall conform to the requirements specified below.
- 16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).
- 16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, submitted by the Tenderer.
- 16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 16.1.
- 16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, Procuring Entity's Requirements. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.
- 16.6 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.
- 16.7 If provided for **in the TDS**, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and / or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
- 16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.



## **17 Currencies of Tender and Payment**

- 17.1 The currency of the Tender and the currency of payments shall be Kenya Shillings.

## **18 Documents Establishing Conformity of Services**

- 18.1 To establish the conformity of the Non-Consulting Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, Procuring Entity's Requirements.
- 18.2 Standards for provision of the Non-Consulting Services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Procuring Entity's Requirements.
- 18.3 Tender to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a Service provider or group of service providers, qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement processor contract management.
- 18.4 The purpose of the information described in ITT 18.3 above, overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 18.4 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT18.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 18.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 18.7 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 18.8 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still on going, the tenderer will be disqualified from the procurement process,
  - ii) if the contract has been awarded to that tenderer, the contract award will be set aside, pending the outcome of (iii),
  - iii) The tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 18.9 If a tenderer submits information pursuant to these requirements that is in complete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 18.9 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine err or which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## **19 Documents Establishing the Eligibility and Qualifications of the Tenderer**

- 19.1 To establish Tenderer's their eligibility in accordance with ITT4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 19.2 The documentary evidence of the Tenderer's qualification stopper form the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 19.3 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed methodology, work plan and schedule.
- 19.4 In the event that pre-qualification of Tenderers has been undertaken, only Tenders from prequalified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission.
- 19.5 If pre-qualification has not taken place before Tendering, the qualification criteria for the Tenderers are specified- in Section III, Evaluation and Qualification Criteria.

## **20 Period of Validity of Tenders**

- 20.1 Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by the Procuring Entity in accordance with ITT 24.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT20, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

## **21 Tender Security**

- 21.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**.
- 21.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 21.3 If a Tender Security is specified pursuant to ITT 21.1, from a reputable source, and an eligible country and shall be in any of the following forms at the Tenderer's option:
- i) cash;
  - ii) a bank guarantee;
  - iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
  - iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,
- 21.4 If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.
- 21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 46. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.
- 21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.

- 21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereof to provide by the Tenderer; or
  - if the successful Tenderer fails to:
    - sign the Contract in accordance with ITT 46; or
    - Furnish a performance security in accordance with ITT 47.
- 21.8 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debar the Tenderer from participating in public procurement as provided in the law.
- 21.9 The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender security or Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 13.2.
- 21.10 A tenderer shall not issue a tender security to guarantee itself.

## **22 Format and Signing of Tender**

- 22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13, bound with the volume containing the Form of Tender, and clearly marked "Original." "In addition, the Tenderer shall submit copies of the Tender, in the number specified in the TDS, and clearly marked as "Copies." "In the event of discrepancy between them, the original shall prevail.
- 22.2 Tenderers shall mark as "CONFIDENTIAL" information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 22.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

## **D. Submission and Opening of Tenders**

### **23 Sealing and Marking of Tenders**

- 23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender 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 Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT13; and
  - in an envelope or package or container marked "COPIES", all required copies of the Tender; and
  - if alternative Tenders are permitted in accordance with ITT15, and if relevant:
    - in an envelope or package or container marked "ORIGINAL-ALTERNATIVE TENDER", the alternative Tender; and
    - in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all



required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) Bear the name and address of the Procuring Entity.
- b) Bear the name and address of the Tenderer; and
- c) Bear the name and Reference number of the Tender.

23.2 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 Tender. Tenders misplaced or opened prematurely will not be accepted.

## **24 Deadline for Submission of Tenders**

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

24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **25 Late Tenders**

25.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 24. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## **26 Withdrawal, Substitution and Modification of Tenders**

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by a n authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a) Prepared and submitted in accordance with ITT 21 and ITT 22 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
- b) Received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.

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

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

## **27 Tender Opening**

27.1 Except as in the cases specified in ITT 23 and ITT 25.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1 shall be as specified **in the TDS**.

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

- 27.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 27.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.
- 27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Activity Schedule are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified in the TDS.
- 27.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT25.1).
- 27.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:
- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
  - b) The Tender Price, per lot (contract) if applicable, including any discounts; and
  - c) any alternative Tenders;
  - d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
  - e) Number of pages of each tender document submitted
- 27.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be distributed to Tenderer upon request.

## **E. Evaluation and Comparison of Tenders**

### **28 Confidentiality**

- 28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 42.
- 28.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.
- 28.3 Notwithstanding ITT 28.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

### **29 Clarification of Tenders**

- 29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the Procuring Entity may, at the Procuring Entity's discretion, ask any tenderer for clarification of its Tender including break downs of the prices in the Activity Schedule, and other information that the Procuring Entity may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT32.
- 29.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

### **30 Deviations, Reservations, and Omissions**

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

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

### **31 Determination of Responsiveness**

31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.

31.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- a) If accepted, would:
  - i. affect in any substantial way the scope, quality, or performance of the Non-Consulting Services specified in the Contract; or
  - ii. limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
- b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

31.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 18 and ITT 19, in particular, to confirm that all requirements of Section VII, Procuring Entity's Requirements have been met without any material deviation or reservation, or omission.

31.4 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

31.5 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformity in the Tender.

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

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

### **32 Arithmetical Errors**

32.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

32.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:

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

- c) If there is a discrepancy between words and figures, the amount in words shall prevail

32.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.

### **33 Conversion to Single Currency**

33.1 For evaluation and comparison purposes, the currency (ies) of the Tender shall be converted into a single currency **as specified in the TDS**.

### **34 Margin of Preference and Reservations**

34.1 Margin of preference on local service providers may be allowed if it is deemed that the services require participation of foreign tenderers. If so allowed, it will be indicated in the **TDS**.

34.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and /or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to the specified group are eligible to tender as specified in the **TDS**. Otherwise, if not so stated, the invitation will be open to all tenderers.

### **35 Evaluation of Tenders**

35.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Best Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- a) Substantially responsive to the tendering document; and
- b) The lowest evaluated cost.

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

- a) Price adjustment due to discounts offered in accordance with ITT 16.4;
- b) price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3;
- c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 33; and
- d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

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

35.5. The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

### **36 Comparison of Tenders**

36.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

### **37 Abnormally Low Tenders and Abnormally High**

#### **Tenders Abnormally Low Tenders**

- 37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regard to the Tenderer's ability to perform the Contract for the offered Tender Price.
- 37.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.
- 37.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### **Abnormally High Tenders**

- 37.4 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that 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 Tenderers is compromised.
- 37.5 In case of an abnormally high 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 Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:
- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
  - ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case maybe.
- 37.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

### **38 Unbalanced and/or Front-Loaded Tenders**

- 38.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.
- 38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:
- a) Accept the Tender; or
  - b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding 10% of the Contract Price; or
  - c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
  - d) Reject the Tender.

### **39 Qualification of the Tenderer**

- 39.1 The Procuring Entity shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's



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

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

#### **40 Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders**

- 40.1 The Procuring Entity reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to Contract Award, without there by incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

### **F. Award of Contract**

#### **43 Award Criteria**

- 43.1 The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

#### **42 Notice of Intention to enter into a Contract**

- 42.1 Upon award of the contract and prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of a ward to all tenderers which shall contain, at a minimum, the following information:

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

#### **43 Stand still Period**

- 43.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.
- 43.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

#### **44 Debriefing by the Procuring Entity**

- 44.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 42, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.
- 44.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

#### **45 Letter of Award**

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 43.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

#### **46 Signing of Contract**

- 46.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.
- 46.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.
- 46.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period

#### **47 Performance Security**

- 47.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 3.9, using for that purpose the Performance Security Form included in Section VIII, Contract Forms, or another Form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.
- 47.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

#### **48 Publication of Procurement Contract**

- 48.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:
  - a) Name and address of the Procuring Entity;
  - b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;
  - c) The name of the successful Tenderer, the final total contract price, the contract duration.
  - d) Dates of signature, commencement and completion of contract;
  - e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

#### **49 Adjudicator**

- 49.1 The Procuring Entity proposes the person named **in the TDS** to be appointed as adjudicator or under the Contract, at an hourly fee specified in **the TDS**, plus reimbursable expenses. If the Tenderer disagrees with this Tender, the Tenderer should so state in the Tender. If, in the Form of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

#### **50 Procurement Related Complaints and Administrative Review**

- 50.1 The procedures for making a Procurement-related Complaint are as specified in the **TDS**.
- 50.2 A request for administrative review shall be made in the form provided under contract forms.

## SECTION II - TENDER DATA SHEET (TDS)

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

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<b>A. General</b>
<b>ITT 1.1</b>	<p>The reference number of the Request for Tenders (ITT) is: <b>KLB/T/13/2022-23</b></p> <p>The Procuring Entity is: <b>KENYA LITERATURE BUREAU</b></p> <p>The name of the ITT is: <b>Tender for Provision of Courier Services</b></p> <p>The number and identification of lots (contracts) comprising this ITT is: <b>Schedules</b></p>
<b>ITT 2.1(a)</b>	<p><b>Electronic –Procurement System</b></p> <p>Kenya Literature Bureau <b>shall not</b> use electronic procurement system tomanage this Tendering process</p>
<b>ITT 2.2</b>	The Intended Completion Date is <i>After lapse of contract period</i>
<b>ITT 3.3</b>	Information that any unfair competitive advantage over competing firms is : <b>N/A</b>
<b>ITT 3.4</b>	The firms that provided consulting services: <b>N/A</b>
<b>ITT 4.1</b>	<p>Maximum number of members in the Joint Venture (JV) shall be: <b>none</b></p> <p>In the case of Bids submitted by an existing or intended Joint Venture Consortium Agreement/Association (JVCA), provide an undertaking signed by all parties;</p> <p>i) stating that all parties shall be jointly and severally liable, state the lead in the JV Agreement and <b>responsibilities/roles of each party</b>.</p> <p>(ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JVCA during the bidding process and, in the event the JVCA is awarded the Contract, during contract execution.”</p>
	<b>B. Contents of Tendering Document</b>



ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 8.2	The questions in writing, to reach the Procuring Entity not later than <b>five(5) days</b> before the tender closing date.
ITT 9.1	<p>The Tenderer will submit any request for clarifications in writing to: -</p> <p style="text-align: center;">Assistant Supply Chain Manager Kenya Literature Bureau South C, Bellevue Off Popo Road, KLB Road P.O. BOX 30022 – 00100 NAIROBI, KENYA</p> <p>E-mail: <a href="mailto:supplies@klb.co.ke">supplies@klb.co.ke</a> copy to: -</p> <p style="text-align: center;">Managing Director KENYA LITERATURE BUREAU, P.O Box 30022-00100, Nairobi-Kenya</p> <p>E-mail: <a href="mailto:info@klb.co.ke">info@klb.co.ke</a> NB: To reach KLB not later than five days before the tender closing date.</p> <p>KLB will respond in writing (e-mail in PDF format) to any request received at least <b>five (5) days</b> prior to the deadline for the submission of tender's.</p> <p>KLB shall publish its response for any enquiries/clarifications/questions/amendments relating to this tender at KLB website: <a href="http://www.klb.co.ke">www.klb.co.ke</a> &amp; PPIP Portal <a href="http://www.tenders.go.ke">www.tenders.go.ke</a> and tenderers are advised to be checking this websites from time to time.</p> <p style="text-align: right;">-</p> <p>KLB shall promptly publish response at the website : <a href="http://www.klb.co.ke">www.klb.co.ke</a> &amp; PPIP Portal <a href="http://www.tenders.go.ke">www.tenders.go.ke</a> where applicable</p>
	<b>C. Preparation of Tenders</b>
ITT 13.1 (i)	<p>The Tenderer shall submit the following additional documents in its Tender: <i>[list any additional document not already listed in ITT 13.1 that must be submitted with the Tender]</i></p> <hr/> <p>Other documents required are N/A</p> <hr/>
ITT 15.1	Alternative Tenders “ <b>shall not be</b> ” considered.
ITT 15.2	Alternative times for completion “ <b>shall not be</b> ” permitted.
ITT 15.3	Alternative technical solutions shall be permitted for the following parts of the Services: N/A
ITT 16.7	The prices quoted by the Tenderer “ <b>shall not</b> ” be subject to adjustment during the performance of the Contract.
ITT 20.1	The Tender validity period shall be <b>120 Days after tender opening</b>
ITT 21.1	<p>A Tender Security “<b>shall be</b>” required, the amount and currency of the Tender Security shall be <b>NA</b> from a recognized financial institution <b>NA</b> after tender opening.</p> <p>A Tender-Securing Declaration “<b>shall not be</b>” required.</p>

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 21.3 (a)	The Contract price shall be adjusted by 25% where applicable.
ITT 22.1	In addition to the original of the Tender, the number of copies is: <b>one (1)</b> duly initiated, paginated and well bound ( <b>perfect/spiral binding is recommended</b> ). The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer.
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: <b>A Power of Attorney in Company's letterhead nominating a person to transact on behalf of the company duly signed by the Company's Director and witnessed by an advocate (Provide)</b>
	<b>D. Submission and Opening of Tenders</b>
ITT 24.1	<p>For tender submission purposes only, the address to be used shall as follows;</p> <p style="text-align: center;"><b>Managing Director Kenya Literature Bureau–South C, KLB Road, off Popo Road P.O Box 30022-00100, NAIROBI</b></p> <p>Electronic submissions are <b>NOT</b> allowed</p>
ITT 24.1	<p><b>The deadline for Tender submission is:</b>  Date: <b>30<sup>th</sup> November 2022</b>  Time: <b>10.00 AM</b></p> <p style="text-align: center;"><b>Tender Box on Ground Floor Kenya Literature Bureau–South C, KLB Road, off Popo Road P.O Box 30022-00100 NAIROBI</b></p> <p>Tenderers <b><i>“shall not”</i></b> submit their Tenders electronically.</p>
ITT 27.1	<p>The Tender opening shall take place on <b>30<sup>th</sup> November 2022 at 10.00 AM at the address below;</b></p> <p style="text-align: center;"><b>Ground Floor Kenya Literature Bureau–South C, KLB Road, off Popo Road P.O Box 30022-00100, NAIROBI</b></p>
ITT 27.1	Tenderers <b><i>“shall not”</i></b> submit their Tenders electronically.
ITT 27.6	The Form of Tender and priced Activity Schedule shall be initialed by <b>at least three (3) representatives</b> of KLB Tender Opening Committee

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>E. Evaluation and Comparison of Tenders</b>	
ITT 31.7	comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified as follows: The adjustment shall be based on the <b>“average”</b> price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate.
ITT 33.1	<p>The currency that shall be used for Tender evaluation and comparison purposes only to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is <b>Kenya Shillings</b></p> <p>The source of exchange rate shall be: <b>The Central bank of Kenya</b> (mean rate)</p> <p>The date for the exchange rate shall be: <i>Tenders closing date</i></p>
ITT 34.1	Margin of preference <b>not</b> allowed
ITT 34.2	The invitation to tender is extended to the following group that qualify for Reservations : N/A
ITT 35.2 (d)	Additional evaluation factors shall be N/A
ITT 35.4	Tenderers shall not be <u>allowed</u> to quote separate prices for different lots (contracts) and the methodology to determine the lowest tenderer is specified in Section III, Evaluation and Qualification Criteria.
<b>F. Award of Contract</b>	
ITT 49.1	The Adjudicator proposed by the Procuring Entity is <b>N/A</b> . The hourly fee for this proposed Adjudicator shall be <b>N/A</b> . The biographical data of the proposed Adjudicator is as follows: <b>N/A</b> .
ITT 50.1	<p>The procedures for making a Procurement-related Complaint are available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a>.</p> <p>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 style="text-align: center;"><b>Managing Director</b>  <b>Kenya Literature Bureau–South C, KLB Road, off Popo Road</b>  <b>P.O Box 30022-00100, NAIROBI</b>  Email address: <a href="mailto:info@klb.co.ke">info@klb.co.ke</a></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ul style="list-style-type: none"> <li>(i) the terms of the Tender Documents; and</li> <li>(ii) the Procuring Entity’s decision to award the contract.</li> </ul>

## **SECTION III – EVALUATION AND QUALIFICATION CRITERIA**

### **Evaluation and comparison of Tenders:**

The following evaluation criteria shall be applied notwithstanding any other requirement in the tender documents.

1. Mandatory Evaluation Requirements/Criteria
2. Technical Evaluation Requirements/Criteria
3. Financial Evaluation Requirements/Criteria

<b>Preliminary/Mandatory Evaluation Requirements/Criteria</b>	
<b>No.</b>	<b>Requirement</b>
1.	Dully filled, Signed & Stamped <b>Form of Tender</b> in the format provided.
2.	Dully filled, Signed & Stamped Price Schedules.
3.	A copy of Certificate of Incorporation/ Registration in Kenya
4.	A copy of Tax compliance certificate valid at the time of opening. The validity of the Tax certificate shall be confirmed from KRA Tax Checker.
5.	A copy of Certificate of Confirmation of Directors and Shareholding (CR12) for limited companies or ID card for Sole Proprietorships.
6.	A copy of Valid Business Permit
7.	A copy of current license from the Communications Authority of Kenya for provision of courier services
8.	Duly filled, Signed and Stamped <b>Certificate of Independent Tender Determination</b> in the format provided – Section IV.
9.	Duly filled, Signed and Stamped Self Declaration Form (FORM <b>SD1</b> ) That The Person/Tenderer Is Not Debarred In The Matter Of The Public Procurement And Asset Disposal ACT 2015 in the format provided. <i>In the case of JV, all parties in the JVCA must individually meet this requirement</i> - Section IV.
10.	Duly filled, Signed and Stamped Self Declaration Form (FORM <b>SD2</b> ) That The Person/Tenderer Will Not Engage In Any Corrupt Or Fraudulent Practice in the format provided. <i>In case of a JV, all parties in the JVCA must individually meet this requirement</i> - Section IV.
11.	Duly filled, Signed and Stamped Declaration and Commitment to The <b>Code of Ethics</b> in the format provided. <i>In case of a JV, all parties in the JVCA must individually meet this requirement.</i>
12.	Duly filled, Signed and Stamped Tenderer Information Form in the format provided.
13.	Duly filled, Signed and Stamped Tenderer's Eligibility - Confidential Business Questionnaire Form in the format provided – Section IV.
14.	Duly filled, Signed and Stamped Tenderer's JV Members Information Form in the format provided. <i>This is applicable to parties in JV agreement only.</i>

**NB:** Tenderers who will not meet the above requirements will be declared non-responsive and their bids will not be evaluated further. Please note that the authenticity of the above documents provided may be verified with the issuing/relevant authority and any forgery or false presentation in any one of the above shall lead to automatic disqualification and render the tenderers bid non-responsive. Note that you may be required to produce original Certificates for ease of verification.

KLB reserves the right to carryout independent investigations to verify the accuracy of information provided without notifying the tenderer.

### **2.2 Technical Evaluation:**

<b>No.</b>	<b>Description of Criteria.</b>	<b>Requirements</b>	<b>YES/NO</b>
<b>1.</b>	<b>Physical Facilities and Operational</b>		
A	Evidence of physical address, attach copies of title, valid lease or rental agreement.	Attach authentic copy of title/lease agreement for the office.	
B	Proof of fleet capacity of vehicles (owned or leased) dedicated to courier operations.	A. Ownership Option: Provide at least two (2) Logbooks for vehicles. B. Lease option: Provide proof of lease for at least 2 vehicles.	

<b>2</b>	<b>Company Profile</b>		
<b>A</b>	Number of years that the firm has been providing courier services:  -More than 5 years	Avail copy of certificate of registration/incorporation	
<b>B</b>	Bidder to attach proof of having current and previous clients	Attach authentic referee letters from two major clients.	
<b>C</b>	Bidder to provide commitment for compensation	Attach policy regarding compensation for , undelivered , lost or damaged consignments	
<b>3</b>	<b>Personnel Competency</b>		
	Provide valid evidence of availability and appropriate qualification of key personnel  <b>Account Manager</b>  Graduate level preferably logistics or related field	<b>Account Manager</b>  Attach CV , academic certificates and appointment letters.	

**NOTE**

- Tenderer **MUST** meet all the technical requirements to be eligible for financial evaluation.
- Any inconsistencies noted in any of the above requirements shall lead to automatic disqualification. Note that you may be required to produce original Certificates for ease of verification

**2.3 Financial Evaluation Requirements/Criteria:**

This will be based on compliance to the following criteria by tenderers;

- i. Checking completeness of financial bids (All items in the price schedule must be quoted for completeness). Incomplete price schedule shall lead to disqualification.
- ii. No correction of arithmetic errors - The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.
- iii. **The lowest evaluated tender inclusive of all taxes shall be recommended for award.**

## SECTION IV - TENDERING FORMS

### 1 **FORM OF TENDER**

#### ***INSTRUCTIONS TO TENDERERS***

- i) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.*
- ii) *All italicized text is to help Tenderer in preparing this form.*
- iii) *Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.*
- iv) *The Form of Tenders shall include the following Forms duly completed and signed by the Tenderer.*
  - a) *Tenderer's Eligibility-Confidential Business Questionnaire*
  - b) *Certificate of Independent Tender Determination*
  - c) *Self-Declaration of the Tenderer*

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

**ITT No.:** \_\_\_\_\_ [insert number of ITT process]

**Alternative No.:** \_\_\_\_\_ [insert identification No if this is a Tender for an alternative] To: \_\_\_\_\_ [insert complete name of Procuring Entity]

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with ITT9;
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT4;
- c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT21;
- d) **Conformity:** We offer to provide the Non-Consulting Services in conformity with the tendering document of the following: [insert a brief description of the Non-Consulting Services];
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item(f) below is: [Insert one of the options below as appropriate]

Option 1, in case of one lot: Total price is: [insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];  
Or

Option 2, in case of multiple lots: (a) Total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and (b) Total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];

- f) **Discounts:** The discounts offered and the methodology for their application are:
  - i) The discounts offered are: [Specify in detail each discount offered.];
  - ii) The exact method of calculations to determine the net price after application of discounts is shown below: [Specify in detail the method that shall be used to apply the discounts];
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 19.1 (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS 23.1 (as amended if applicable)), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- i) **One Tender Per Tenderer:** We are not submitting any other Tender(s) as an individual Tenderer, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT4.3, other than alternative Tenders submitted in accordance with ITT14;
- j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under Kenya's official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other]* *[We are not a state-owned enterprise or institution]* / *[We are a state-owned enterprise or institution but meet the requirements of ITT 4.6];*
- l) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, r gratuity].*

Name of Recipient	Address	Reason	Amount

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

- a) *[Delete if not appropriate, or amend to suit]* We confirm that we understand the provisions relating to Standstill Period as described in this tendering document and the Procurement Regulations.
- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- p) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent tender Determination" attached below.
- q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from \_\_\_\_\_ *(specify website)* during the procurement process and the execution of any resulting contract.
- r) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
- Tenderer's Eligibility; Confidential Business Questionnaire—to establish we are not in any conflict to interest.
  - Certificate of Independent Tender Determination—to declare that we completed the tender without colluding with other tenderers.
  - Self-Declaration of the Tenderer—to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.



- iv) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

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

**Name of the Tenderer .....** *\*[insert complete name of person signing the Tender]*

**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]*

**Title 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 signed.....** *[insert date of signing]* **day of.....** *[insert month], [insert year]*

## 2 TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

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

#### a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of state which stock exchange	

### General and Specific Details

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

Name in full \_\_\_\_\_ Age \_\_\_\_\_  
 Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_  
 Citizenship \_\_\_\_\_

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

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				



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

- i) Private or public Company \_\_\_\_\_
- ii) State the nominal and issued capital of the Company-  
 Nominal Kenya Shillings (Equivalent) .....  
 Issued Kenya Shillings (Equivalent) .....
- iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

**e) DISCLOSURE OF INTEREST-Interest of the Firm in the Procuring Entity.**

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

If yes, provide details as follows.

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

**ii) Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	involved in the implementation or supervision of the Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract?		

**f) Certification**

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name\_\_\_\_\_

Title or Designation\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

### 3 CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

I certify, on behalf of \_\_\_\_\_ [Name of Tenderer] that:

1. 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;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) Has been requested to submit a Tender in response to this request for tenders;
  - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
  - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) the Tenderer has entered 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;
6. In particular, without limiting the generality of paragraphs(5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a) prices;
  - b) methods, factors or formulas used to calculate prices;
  - c) the intention or decision to submit, or not to submit, a tender; or
  - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;
8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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

#### 4. SELF-DECLARATION FORMS

##### FORM SD1

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

I, ....., of Post Office Box ..... being a resident of.....  
..... in the Republic of ..... do hereby make a statement as  
follows:-

1. THAT I am the Company Secretary/ Chief Executive/ Managing Director /Principal Officer/Director of .....  
..... (*insert name of the Company*) who is a Bidder in respect of **Tender**  
**No.** ..... for..... (*insert tender title/description*) for  
..... (*insert name of the Procuring entity*) and duly authorized and competent to make this  
statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in  
procurement proceeding under Part IV of the Act.
3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder Official Stamp



## FORM SD2

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

I, .....of P. O. Box.....being a resident of .....  
..... in the Republic of..... do hereby make a statement as follows:-

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

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

Bidder's Official Stamp

## 5. 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 and my responsibilities under the Code.

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

Name of Authorized signatory.....

Sign.....

Position.....

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

E-mail.....

Name of the Firm/Company.....

Date.....

**(Company Seal/ Rubber Stamp where applicable)**

Witness

Name.....

Sign.....

Date.....

## ii) **APPENDIX1-FRAUDANDCORRUPTION**

*(Appendix 1 shall not be modified)*

### **1. Purpose**

- 1.1 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.

### **2. Requirements**

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1above.
- 2.2 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:
- 1) 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;
  - 2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
  - 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
    - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
    - b) if a contract has already been entered into with the person, the contract shall be voidable;
  - 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
3. 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: -
- a) Shall not take part in the procurement proceedings;
  - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - c) Shall not be a subcontractor for the tender to whom was awarded contract, or a member of the group of tenders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
4. 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;
- 4.1 If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the a warding officer. etc.

In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
  - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

- ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v) “obstructive practice” is:
  - a) 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
  - b) 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.
  - c) 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.
  - c) Rejects a proposal for 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-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
  - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Act and Regulations;
  - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<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
  - f) 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.

## 6. TENDERER INFORMATION FORM

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

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

ITT No. .... *[insert number of Tendering process]*

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

1. Tenderer's Name..... *[insert Tenderer's legal name]*
2. In case of JV, legal name of each member..... *[insert legal name of each member in JV]*
3. Tenderer's actual or intended country of registration: ..... *[insert actual or intended country of registration]*
4. Tenderer's year of registration: ..... *[insert Tenderer's year of registration]*
5. Tenderer's Address in country of registration..... *[insert Tenderer's legal address in country of registration]*
6. Tenderer's Authorized Representative Information  
Name ..... *[insert Authorized Representative's name]*  
Address..... *[insert Authorized Representative's Address]*  
Telephone ..... *[insert Authorized Representative's telephone/fax numbers]*  
Email Address: ..... *[insert Authorized Representative's email address]*
7. Attached are copies of original documents of ..... *[check the box(es) of the attached original documents]*  
☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4.  
☐ In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1.  
In case of state-owned enterprise or institution, in accordance with ITT4.6 documents establishing:  
i) Legal and financial autonomy  
ii) Operation under commercial law  
iii) Establishing that the Tenderer is not under the supervision of the agency of the Procuring Entity  
☐ A current tax clearance certificate or tax exemption certificate in case of Kenyan tenderers issued by the Kenya Revenue Authority in accordance with ITT 4.14.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership (Attach **Organizational Chart**)

## OTHER FORMS

### 3. **TENDERER'S JV MEMBERS INFORMATION FORM**

*[The Tenderers shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the Tenderer and for each member of a Joint Venture]].*

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

ITT No. .... *[insert number of Tendering process]*

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

1. Tenderer's Name: <i>[insert Tenderer's legal name]</i>
2. Tenderer's JV Member's name: <i>[insert JV's Member legal name]</i>
3. Tenderer's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4. Tenderer's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5. Tenderer's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6. Tenderer's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 4.4. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

**7. FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]**

**Beneficiary:**\_\_\_\_\_

**Request for Tenders No:**

\_\_\_\_\_  
**Date:**\_\_\_\_\_

**TENDER GUARANTEE No.:**\_\_\_\_\_

**Guarantor:** \_\_\_\_\_

1. We have been informed that \_\_\_\_\_(here in after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here in after called" the Tender") for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_(\_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
  - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above onor before that date.

\_\_\_\_\_  
*[signature(s)]*

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



## FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: \_\_\_\_\_

1. Whereas ..... [*Name of the tenderer*] (hereinafter called “the tenderer”) has submitted its tender dated ..... [*Date of submission of tender*] for the ..... [*Name and/or description of the tender*] (hereinafter called “the Tender”) for the execution of\_\_under Request for Tenders No.\_\_\_\_\_(“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE ..... of ..... [**Name of Insurance Company**] having our registered office at ..... (hereinafter called “the Guarantor”), are bound unto ..... [*Name of Procuring Entity*] (hereinafter called “the Procuring Entity”) in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this \_\_\_\_day of \_\_\_\_\_20\_\_.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
  - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
  - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the Procuring Entity's Tendering document.

then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Signature of the Guarantor]

\_\_\_\_\_  
[Witness]

\_\_\_\_\_  
[Seal]

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

## TENDER-SECURING DECLARATION FORM

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

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

*Tender*

*Submission]*

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

To: ..... *[insert complete name of*

*Purchaser]* I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I / we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation (s) under the bid conditions, because we – (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or(ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
  - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
  - b) thirty days after the expiration of our Tender.
4. I / We understand that if I am / we are / in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: .....

Capacity / title (director or partner or sole proprietor, etc.) .....

Name: .....

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

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

Seal or stamp

## 1. The Specifications and Priced Activity Schedules

Origin	Region	Rates Kshs. VAT inclusive
NAIROBI (SOUTH C)	NAIROBI CBD	
	3 tonnes truck hired per day	
	5 tonnes truck hired per day	
	8 tonnes truck hired per day	
	MOMBASA	
	KISUMU	
	NAKURU	
	ELDORET	
	KERICHO	
	BOMET	
	KAKAMEGA	
	BUNGOMA	
	BUSIA	
	KISII	
	SIAYA	
	NYERI	
	MERU	
	EMBU	
	KITALE	
	GARISSA	
	KAPSABET	
	MARSABIT	
	THIKA	
	NAROK	
	MACHAKOS	



## **2. Method Statement**

[Procuring Entity shall provide main features of the expected method of carrying out the contract, including indicating the material, personnel and equipment in puts].

### **3. Work Plan**

[Procuring Entity shall provide main features of the work plan that the Tenderer should provide in the tender for carrying out the contract, from beginning to the end].

#### **4. Other Time Schedule**

*(to be used by Tenderer when alternative Time for Completion is invited in ITT14.2)*



## 2 FORM OF CONTRACT

[Form head paper of the Procuring

Entity] **LUMP SUM**

### REMUNERATION

This CONTRACT (herein after called the “Contract”) is made the [day] day of the month of [month], [year], between, on the one hand, [name of Procuring Entity] (herein after called the “Procuring Entity”) and, on the other hand, [name of Service Provider] (hereinafter called the “Service Provider”).

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

### WHEREAS

- a) The Procuring Entity has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the “Services”);
- b) the Service Provider, having represented to the Procuring Entity that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of ..... ;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
  - a) The Form of Acceptance;
  - b) The Service Provider's Tender
  - c) The Special Conditions of Contract;
  - d) The General Conditions of Contract;
  - e) The Specifications;
  - f) The Priced Activity Schedule; and
  - g) The following Appendices: [**Note:** If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]

Appendix A: Description of the Services

Appendix B: Schedule of Payments

Appendix C: Subcontractors

Appendix D: Breakdown of Contract

Price

Appendix E: Services and Facilities Provided by the Procuring Entity

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

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

For and on behalf of \_\_\_\_\_ [name of Procuring Entity]

\_\_\_\_\_  
[Authorized Representative]

For and on behalf of [name of Service Provider]

\_\_\_\_\_  
*[Authorized Representative]*

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

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

.....*[name of member]*

.....*[Authorized Representative]*

..... *[name of member]*

.....*[Authorized Representative]*

#### **4 FORM OF TENDER SECURITY (Bank Guarantee)** *[The bank shall fill in this*

*Bank Guarantee Form in accordance with the instructions indicated.] [Guarantor Form*

*head or SWIFT identifier code]*

**Beneficiary:** .....*[Procuring Entity to insert its name and address]*

**ITT No.** .....*[Procuring Entity to insert reference number for the Request for Tenders]*

**Alternative No** ..... *[Insert identification No if this is a Tender for an alternative]* **Date:** .....*[Insert date of issue]*

**TENDER GUARANTEE No.** .....*[Insert guarantee reference number]*

**Guarantor**.....*[Insert name and address of place of issue, unless indicated in the Form head]*

We have been informed that \_\_\_\_\_*[insert name of the Tenderer, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members there of]* (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (hereinafter called "the Tender") for the execution of \_\_\_\_\_*under Request for Tenders No.* \_\_\_\_\_*("The ITT").*

Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_*(\_\_\_\_\_)* upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- (a) Has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Form of Tender ("the Tender Validity Period"), or any extension there to provide by the Applicant; or
- (b) Having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to sign the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Tenderers ("ITT") of the Beneficiary's tendering document.

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

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

\_\_\_\_\_  
*[Signature(s)]*

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

## 5 FORM OF TENDER SECURITY (TENDER BOND) *[The Surety shall fill*

*in this Tender Bond Form in accordance with the instructions indicated.]* BOND NO.\_\_\_\_

BY THIS BOND *[name of Tenderer]* as Principal (herein after called “the Principal”), and *[name, legal title, and address of surety]*, **authorized to transact business in Kenya**, as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[name of Procuring Entity]* as Obligee (hereinafter called “the Procuring Entity”) in the sum of *[amount of Bond][amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHERE AS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the supply of *[name of Contract]* (herein after called the “Tender”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- c) Has withdrawn its Tender during the period of Tender validity set forth in the Principal's Form of Tender (“the Tender Validity Period”), or any extension there to provided by the Principal; or
- d) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension there to provide by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to Tenderers (“ITT”) of the Procuring Entity's tendering document.

then the Surety undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Tender Validity Period set forth in the Principal's Form of Tender or any extension thereto provided by the Principal.

IN TESTIMONY WHERE OF, the Principal and the Surety have caused these presents to be executed in the irrespctive names this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Principal: \_\_\_\_\_  
Corporate Seal (where  
appropriate)

Surety: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

(Printed name and title)

(Printed name and title)

## 6 FORM OF TENDER-SECURING DECLARATION

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

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

ITT No. .... *[number of Tendering process]*

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

To:..... *[complete name of Procuring Entity]* We, the undersigned, declare

that: We understand that, according to your conditions, Tenders must be supported by a Tender-Securing

Declaration.

We accept that we will automatically be suspended from being eligible for Tendering or submitting proposals in any contract with the Procuring Entity for the period of time of *[number of months or years]* starting on *[date]*, if we are in breach four obligation(s) under the Tender conditions, because we:

- a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- b) having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity, (i) fail to sign the Contract agreement; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITT.

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

Name of the Tenderer\* \_\_\_\_\_

Name of the person duly authorized to sign the Tender on behalf of the Tenderer\*\* \_\_\_\_\_

Title of the person signing the Tender \_\_\_\_\_

Signature of the person named above \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\*: In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer

\*\*: Person signing the Tender shall have the power of attorney given by the Tenderer attached to the Tender

**[Note:** *In case of a Joint Venture, the Tender-Securing Declaration must be in the name of all members to the Joint Venture that submits the Tender.*

## **PART II – PROCURING ENTITY'S REQUIREMENTS**

## **SECTION V - ACTIVITY SCHEDULE**

### **TECHNICAL SPECIFICATIONS/ SERVICE REQUIREMENTS**

#### **1. Service Requirements/Scope of service**

The successful Bidder will be expected to undertake or demonstrate the following:-

1. KLB shall from time to time as agreed with the service provider offer consignment of books to be transported to specified parts of the country.
2. The Transporter must have and maintain adequate and secure storage area for temporary storage when required.
3. The transporter shall submit to KLB evidence of adequate insurance cover and professional indemnity cover in case of losses.
4. The transporter must submit to KLB reports of service maintenance for its fleet with supportive evidence.
5. Only vehicles with covered body (not canvas) and lockable door shall be allowed for the transport service.
6. The interior of vehicles must remain clean and dry at all times while consignments are on transit.
7. The Transporter must be willing to deliver full consignments door to door-there shall be no partial deliveries.
8. The Transporter must inform KLB within 24hours of any failed deliveries.
9. The Transporter must demonstrate ability and willingness to handle consignments with utmost care to avoid damages and/or pilferage.
10. The Transporter must ensure that drivers and loaders are well groomed and can communicate in English and/or Kiswahili. They must handle KLB clients with respect at all times.
11. Loading of consignment shall be done as from 2.00pm for upcountry orders.
12. Offloading of consignment at the destination point shall be the responsibility of the Transporter.
13. Waybills- The transporter must submit PODs immediately after deliveries to KLB clients not later than 24hours.



## SCOPE OF SERVICES

### COURIER RATES FOR THE FOLLOWING REGIONS.

FROM	DESTINATION	RATES
NAIROBI (SOUTH C)	NAIROBI CBD	
	3 tonnes truck hired per day	
	5 tonnes truck hired per day	
	8 tonnes truck hired per day	
	MOMBASA	
	KISUMU	
	NAKURU	
	ELDORET	
	KERICHO	
	BOMET	
	KAKAMEGA	
	BUNGOMA	
	BUSIA	
	KISII	
	SIAYA	
	NYERI	
	MERU	
	EMBU	
	KITALE	
	GARISSA	
	KAPSABET	
	MARSABIT	
	THIKA	
	NAROK	
	MACHAKOS	

### SPECIAL INSTRUCTIONS

- 1) The contractor/service Provider shall be expected to familiarize themselves with the prevailing KLB safety procedures. KLB Safety, Health & Environment department will provide onboarding briefing and guidelines standard for all KLB contractors.
- 2) The contractor/Service provider shall be expected to familiarize themselves with KLB Environmental Management Plan and Environment Policy. KLB Safety, Health & Environment department will provide onboarding briefing and guidelines standard for all KLB contractors.

## **PART III – CONDITIONS OF CONTRACT AND CONTRACT FORMS**

## **SECTION VI - GENERAL CONDITIONS OF CONTRACT**

### **A. General**

#### **Provisions Definitions**

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- b) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the Procuring Entity
- c) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- d) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- e) “Day works” means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- f) “Procuring Entity” means the Procuring Entity or party who employs the Service Provider
- g) “Foreign Currency” means any currency other than the currency of Kenya;
- h) “GCC” means these General Conditions of Contract;
- i) “Government” means the Government of Kenya;
- j) “Local Currency” means Kenya shilling;
- k) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the Procuring Entity under this Contract;
- l) “Party” means the Procuring Entity or the Service Provider, as the case maybe, and “Parties” means both of them;
- m) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part there of;
- n) “Service Provider” is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- o) “Service Provider's Tender” means the completed Tendering Document submitted by the Service Provider to the Procuring Entity
- p) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- q) “Specifications” means the specifications of the service included in the Tendering Document submitted by the Service Provider to the Procuring Entity
- r) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.
- s) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4.
- t) “Public Procurement Regulatory Authority (PPRA)” shall mean the Government Agency responsible for oversight of public procurement.
- u) “Project Manager” shall the person appointed by the Procuring Entity to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointed from time to time by the Procuring Entity and notified to the Contractor.

- v) "Notice of Dissatisfaction" means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

## **1.2 Applicable Law**

The Contract shall be interpreted in accordance with the laws of Kenya.

## **1.3 Provision and Standard of Service**

The Security Company shall provide services of high standards in the performance of this Agreement and poor performance shall be grounds for summary termination of the Agreement without any notice at the sole discretion of KLB;

The successful Security Company shall submit Certificates of Good Conduct for all guards that may be deployed. The Service provider should have staff identity cards for its respective deployed staff members.

Frequent and inexcusable delays by the Security Company in the timely performance of its obligations hereunder shall give rise to sanctions and imposition of liquidated damages by KLB.

If at any time during the performance of this Agreement the Security Company encounters conditions affecting timely provision of services, the Security Company shall immediately and without any delay notify KLB in writing of the condition, its cause and duration and possible solution thereto and as soon as practicable KLB shall evaluate the condition and may, at its sole discretion, waive the Security Company's obligations without the risk of sanctions impositions of liquidated damages and or the summary termination of this Agreement without any notice.

If at any time during the performance of this Agreement the Security Company encounters conditions affecting timely provision of services, the Security Company shall immediately and without any delay reinstate their Service within six hours failure to which they shall be liable for Summary Termination pursuant to summary termination clause.

## **1.4 Language**

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

## **1.5 Notices**

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

## **1.6 Location**

The Services shall be performed at such locations as specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

## **1.7 Authorized Representatives**

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Service Provider may be taken or executed by the officials **specified in the SCC**.

## **1.8 Inspection and Audit by the PPRA**

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Service Provider shall permit and shall cause its subcontract or sand sub-consultants to permit, PPRA and/or persons appointed by 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 PPRA. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which

provides, inter alia, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

## **1.9 Taxes**

**1.9.1** "Taxes" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected, or withheld pursuant to any regulation having the force of law and "Taxation" shall be construed accordingly.

### **1.9.2 Local Taxation**

Nothing in the Contract shall relieve the service provider and/or his Sub-Contractors from their responsibility to pay any taxes, statutory contributions and levies that may be levied on them in Kenya in respect of the Contract. The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes.

**1.9.3** The service provider shall be deemed to be familiar with the tax laws in the procuring entity's Country and satisfied themselves with the requirements for all taxes, statutory contributions and duties to which they may be subjected during the term of the Contract.

**1.9.4** In instances where discussions are held between the procuring entity and the service provider regarding tax matters, this shall not be deemed to constitute competent advice and hence does not absolve the security service provider of their responsibility in relation to due diligence on the tax issue as per 1.9.2 above. Tax Deduction

#### **Tax deduction**

**1.9.5** If the procuring entity is required to make a tax deduction by Law, then the deduction shall be made from payments due to the service provider and paid directly to the Kenya Revenue Authority. The procuring entity shall upon remitting the tax to Kenya Revenue Authority furnish the Contractor with the relevant tax deduction certificates.

**1.9.6** Where the service provider is paid directly by the Financiers and the procuring entity is not able to deduct tax, then the service provider will be required to pay the tax deduction to Kenya Revenue Authority in the name of the procuring entity and furnish the procuring entity with an original receipt thereof as evidence of such payment. In absence of the said evidence, the procuring entity will not process any subsequent payments to the service provider.

### **1.9.7 Tax Indemnity**

The service provider shall indemnify and hold the procuring entity harmless from and against any and all liabilities, which the procuring entity may incur for any reason of failure by the service provider to comply with any tax laws arising from the execution of the Contract whether during the term of the Contract or after its expiry.

**1.9.8** The service provider warrants to pay the procuring entity (within fourteen (14) days of demand by the procuring entity), an amount equal to the loss, liability or cost which the procuring entity determines has been (directly or indirectly) suffered by the procuring entity for or on account of the service provider's Tax liability arising from the Contract.

**1.9.9** Where the amount in 1.9.8 above remains unpaid after the end of the fourteen (14) days moratorium, the procuring entity shall be entitled to compensation for financing charges.

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

### **2.1 Effectiveness of Contract**

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date

as maybe **stated in the SCC.**

## **2.2 Commencement of Services**

### **2.2.1 Program**

Before commencement of the Services, the Service Provider shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.

### 2.2.2 Starting Date

The Service Provider shall start carrying out the Services immediately after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.

### 2.3 Intended Completion Date

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

### 2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

#### 2.4.1 Value Engineering

The Service Provider may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. 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, if applicable) 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.

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 lifecycle costs to the Procuring Entity; or
- c) improves the quality, efficiency, safety or sustainability of the services; or
- d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.

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 Service Provider 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 lifecycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Service Provider shall be the full increase in the Contract Price.

### 2.5 Force Majeure

#### 2.5.1 Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

#### 2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.



### **2.5.3 Extension of Time**

Any period with in which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

### **2.5.4 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to be paid under the terms of this Contract for services properly delivered prior to the event of Force majeure ,

## **2.6 Termination**

### **2.6.1 By the Procuring Entity**

The Procuring Entity may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs(a)through (d) of this Sub-Clause 2.6.1:

- a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;
- b) if the Service Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph2.2a. of Attachment1 to the GCC, in competing for or in executing the Contract

### **2.6.2 By the Service Provider**

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- a) If the Procuring Entity fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

### **2.6.3 Payment up on Termination**

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Procuring Entity shall make the following payments to the Service Provider:

- a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

## **2.7 Summary Termination**

KLB may without prejudice to any other remedy accruing to it terminate the contract summarily by giving forty eight hour notice:-

- i) Where it is established that the Security Company or its guards thereof colluded with a third party in the case of a theft or breach of security in the Employers Premises;
- ii) Where it is established that the guards of the Security Company carried out a theft or breached security in the Employers Premises;
- iii) Where it is established that the Security Company have continuously failed to prevent theft or security breach in the employers Premises including the Employers staff quarters where applicable;
- iv) Where the Security Company fails to manage its affairs hence occasion its guards to carry out an industrial action and therefore putting the security of the Employers premises, staff or property in jeopardy.
- v) Where for reason of omission or commission of the Security Company the security of the Employers premises, staff or property is in jeopardy.
- vi) Where it is established that the Security Company in dealing with its employees fails to comply with the Minimum wages as prescribed by the Ministry of Labour from time to time.
- vii) Guards must be paid by the third day of the month.
- viii) Evidence that guards are not properly kitted i.e. lack of uniform and any other uniform item i.e. boots.
- ix) Guards who lack Police clearance certificate from Kenya Police-Directorate of criminal investigation.
- x) Guards must be able to avail their original National ID cards when demanded by KLB within 24hrs.
- xi) Failure to carry out practical remedy on weak points observed by KLB and submitted in writing.

On termination of this Agreement howsoever terminated the Security Company shall be permitted to remove all its equipment sign plates, instruments and guard dogs which may have been placed by the Security Company upon the Premises.

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

#### **3.1 General**

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or third parties.

#### **3.2 Conflict of Interests**

##### **3.2.1 Service Provider Not to Benefit from Commissions and Discounts.**

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contractor the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contractor to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

##### **3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project**

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project

resulting from or closely related to the Services.

### **3.2.3 Prohibition of Conflicting Activities**

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees' inactive duty or on any type of leave, to perform any activity under this Contract;
- c) After the termination of this Contract, such other activities as may be **specified in the SCC**.

### **3.3 Confidentiality**

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

- 3.4 The Service Provider** (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Sub contractors', as the case may be)own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid.

### **3.5 Service Provider's Actions Requiring Procuring Entity's Prior Approval**

The Service Provider shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:

- a) Entering into a subcontract for the performance of any part of the Services,
- b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- c) changing the Program of activities; and
- d) Any other action that may be **specified in the SCC**.

### **3.6 Reporting Obligations**

The Service Provider shall submit to the Procuring Entity the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

### **3.7 Documents Prepared by the Service Provider to Be the Property of the Procuring Entity**

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Procuring Entity, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

### **3.8 Liquidated Damages**

If the service provider fails to deliver of the Service within the period (s) specified in the contract, KLB shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed Service up to a maximum deduction of 10%. After this the tenderer may consider termination of the contract.

#### **3.8.1 Lack of performance penalty**

If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

### **3.9 Performance Security**

The Service Provider shall provide the Performance Security to the Procuring Entity no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Procuring Entity and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

### **3.10 Fraud and Corruption**

The Procuring Entity requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Procuring Entity requires the Service Provider 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.

### **3.11 Sustainable Procurement**

The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the **SCC**.

## **4 Insurance**

### **4.1 General requirements of insurance policies**

Service Provider shall procure and maintain the following insurance policies:

- a) Work Injury Benefit Policy;
- b) Group Personal Accident Policy;
- c) Employers Liability Policy; and
- d) Contractual Liability Cover with a minimum liability of Kenya Shillings Fifty Million (KES. 5,000,000/=) per event and Kenya Shillings Fifty Million (KES. 5,000,000/=) per year.**
- e) Insurance cover against property being guarded by the Service Provider.

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

### **5.1 Description of Personnel**

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Procuring Entity.

### **5.2 Removal and/or Replacement of Personnel**

- a) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the Procuring Entity finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.
- c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## **6 Obligations of the Procuring Entity**

### **6.1 Change in the Applicable Law**

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2(a) or (b), as the case may be.

### **6.2 Services and Facilities**

The Procuring Entity shall make available to the Service Provider the Services and Facilities listed under Appendix F.

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

### **7.1 Contract Price**

- a) The price payable is **set forth in the SCC**.
- b) Price may be payable in foreign currency, if so, allowed in this document.

## **7.2 Interest on Delayed Payments**

Interest on delayed payments shall not be applicable under this contract.

## **8 Service Level Agreement**

Service Level Agreement (SLA) will be signed with the winning bidder upon mutual agreement.

## **9 Limitation of Liability**

To the fullest extent permitted by law, KLB, its officers, directors, employees, agents, and sub-contractors, shall not be liable for any claims, losses, costs, or damages of whatsoever nature and howsoever arising to the Service Provider, and anyone claiming by, through, or under the Service Provider, resulting from or in any way related to this Contract from any cause or causes, including but not limited to any direct, indirect, general, special, punitive, incidental or consequential damages, loss of income or profit, loss of or damage to property, claims of third parties or other losses of any kind or character.

## **10 Non-Waiver**

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, neither shall any waiver by either party of any breach of Contract operate as a waiver of any subsequent or continuing breach of Contract.

Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, 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.

## **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.

## **12 Settlement of disputes**

If any question, dispute or claim arises out of or in connection with this contract, including any question regarding its existence, validity, performance or termination (a dispute) which either party has notified to the other senior management personnel of each party shall meet and diligently attempt in good faith to resolve the dispute for a period of sixty (60) days following one party's written request to the other party for such a meeting.

## B. SPECIAL CONDITIONS OF CONTRACT

### SECTION VII - SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1	<p><b>The Parties to the Contract are:</b></p> <p>The Procuring Entity is <b><i>KENYA LITERATURE BUREAU</i></b></p> <p>The contract name is <i>Provision of Security and Guard Services</i></p>
1.4	<p>For <b><u>notices</u></b>, the Procuring Entity's address shall be:</p> <p><b>The Managing Director, Kenya Literature Bureau (KLB) South C Bellevue Off Popo Road, Tel: 0711318188 P.O. Box 30022-00100 Nairobi, Kenya</b></p> <p>Any notice given under the Agreement shall be in writing and may be served:</p> <ul style="list-style-type: none"> <li>i. personally;</li> <li>ii. by registered or recorded delivery mail;</li> <li>iii. by e-mail, telex or facsimile transmission (the latter confirmed by telex or post); or</li> <li>iv. by any other means which any party specifies by notice to the others.</li> </ul> <p>Notice shall be deemed to have been served:</p> <ul style="list-style-type: none"> <li>i. if it was served in person, at the time of service;</li> <li>ii. if it was served by post, 72 hours after it was posted; and</li> </ul> <p>If it was served by e-mail, at the time of transmission.</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity:</p> <p><b>The Managing Director, Kenya Literature Bureau (KLB) KLB House, South C Bellevue Off Popo Road, Tel: 0711318188 P.O. Box 30022-00100 Nairobi, Kenya</b></p> <p>For the security services Provider: _____</p> <p><i>[Name, Postal Address, Email, Telephone Number]</i></p>
2.1	<p>The date on which this Contract shall come into effect is <i>Immediately after signing the contract</i></p>
2.2	<p>The Commencement date and duration of the contract shall be:</p> <p>Commencement date is the date the contract becomes effective.</p> <p>Completion or Expiry Date - After completion of assignment</p> <p>Duration of the contract is two (2) years contract.</p>
2.5	<p><b>Force Majeure</b> For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.</p>



Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p><b>Effects of Force Majeure</b> If a Party is prevented from or delayed in performing an obligation in this Contract by reason of Force Majeure, the affected Party shall:</p> <ul style="list-style-type: none"> <li>a) Be relieved from the consequences of its failure to perform that obligation on a day-to-day basis;</li> <li>b) Promptly notify the other party of the occurrence of the Force Majeure as soon as the reasonably practicable and the extent to which the Force Majeure suspends the Party's obligation under the Contract; and</li> <li>c) Shall use all reasonable endeavors to overcome the consequences of the Force Majeure event and resume performance of its obligations as soon as possible after the Force Majeure condition ceases.</li> </ul> <p><b>Force Majeure Termination</b> If the event of Force Majeure continues beyond a period of thirty (30) days, the parties shall meet in good faith to consult, if no such solution is found, either party shall be entitled to terminate the Contract through a written notice of at least seven (7) days.</p> <p><b>Payments During Force Majeure</b> During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service provider shall be entitled to be paid under the terms of this Contract, for services delivered during such period for the purposes of the delivery properly delivered as at the time of the occurrence of the force majeure event.</p>
2.5.2	<p><b>No Breach of Contract</b> - The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event</p> <ul style="list-style-type: none"> <li>- Has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract</li> <li>- Has informed the other Party as soon as possible about the occurrence of such an event.</li> </ul>
2.5.3	<p><b>Extension of Time</b> Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.</p>
2.5.4	<p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <ol style="list-style-type: none"> <li>1. KLB payment terms are within sixty (60) days upon receipt of certified invoices and delivery notes confirming that the invoiced goods/items have been delivered and is in accordance with the contract by the supplier.</li> <li>2. Advance Payment is not applicable.</li> <li>3. Payment shall be made through KLBs cheque or telegraphic transfer of the contract.</li> <li>4. No interest on delayed payments.</li> <li>5. Lumpsum payment not applicable</li> </ol>
2.6	<p><b>Termination for Default</b> KLB may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Service Provider, terminate this Contract in whole or in part:</p> <ul style="list-style-type: none"> <li>a) If the Service Provider fails to deliver the Goods and Services within the period(s) specified in the Contract, or within any extension thereof granted by</li> </ul>



Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>the KLB;</p> <ul style="list-style-type: none"> <li>b) If the Goods and Services delivered by the Service Provider do not conform to the Standards specified in the Contract;</li> <li>c) If the Service Provider fails to perform any other obligation(s) under the Contract;</li> <li>d) If the Service Provider, in the judgment of <ul style="list-style-type: none"> <li>a) the KLB has engaged in corrupt or fraudulent practices in competing for or in executing the Contract;</li> <li>b) If the Service Provider becomes insolvent or bankrupt; KLB may at any time terminate this Agreement by giving written notice to the Service Provider if the Service Provider becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Service Provider, provided that such termination will not produce or affect any right of action or remedy which has accrued or will accrue thereafter to KLB;</li> </ul> </li> </ul> <p>In the event that the KLB terminates the Contract in whole or in part, it may procure, upon such terms and in such manner, as it deems appropriate, Goods and Services similar to those undelivered, and the Service Provider shall be liable to the KLB for any excess costs incurred.</p> <p><b>Termination by Notice</b>  Either party, at its sole discretion, may at any time by written notice terminate the Contract by giving no less than Thirty (30) days' notice in writing.</p> <p><b>Termination for Convenience</b>  KLB by a thirty (30) day sent to the Tenderer may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the KLB's convenience, the extent to which performance of the Tenderer of the contract is terminated and the date on which such termination becomes effective.</p> <p>For the remaining part of the contract after termination the KLB may elect to cancel the supply and pay to the Tenderer the amount for partially delivered goods.</p> <p><b>Termination by Mutual Consent</b>  By mutual written agreement, the Purchaser and the Tenderer may agree to terminate the contract. The agreement shall provide that the termination is by mutual agreement, the extent to which the contract is terminated and the effects of such termination on each party's obligations.</p> <p><b>Termination by Insolvency</b>  If the Tenderer becomes insolvent or bankrupt; the Purchaser may at any time terminate this Agreement by giving written notice to the Tenderer. In this event, termination will be without compensation to the Service provider, provided that such termination will not produce or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.</p> <p>On termination of this Agreement, howsoever terminated, the Contractor shall be permitted to remove all its equipment which may have been placed by the Contractor upon the employer's premises.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
3.8	If the service provider fails to deliver of the Service within the period (s) specified in the contract, KLB shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed Service up to a maximum deduction of 10%. After this the tenderer may consider termination of the contract.
6.1	For the purpose of determining the remuneration due for additional Services or reduction of services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.
12	<p><b>Settlement of disputes</b></p> <p>If any question, dispute or claim arises out of or in connection with this contract, including any question regarding its existence, validity, performance or termination ( a dispute) which either party has notified to the other senior management personnel of each party shall meet and diligently attempt in good faith to resolve the dispute for a period of sixty (60) days following one party’s written request to the other party for such a meeting.</p>
9	<p><b>Limitation of Liability</b></p> <p>To the fullest extent permitted by law, KLB, its officers, directors, employees, agents, and sub-contractors, shall not be liable for any claims, losses, costs, or damages of whatsoever nature and howsoever arising to the Service Provider, and anyone claiming by, through, or under the Service Provider, resulting from or in any way related to this Contract from any cause or causes, including but not limited to any direct, indirect, general, special, punitive, incidental or consequential damages, loss of income or profit, loss of or damage to property, claims of third parties or other losses of any kind or character.</p>
10	<p><b>Non-Waiver</b></p> <p>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, neither shall any waiver by either party of any breach of Contract operate as a waiver of any subsequent or continuing breach of Contract.</p> <p>Any waiver of a party’s rights, powers, or remedies under the Contract must be in writing, 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.</p>
11	<p><b>Severability</b></p> <p>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.</p>
3.9	The Performance Security shall be in the amount of 10% of the Contract Price in the form of a <b>bank guarantee</b> issued by a Kenyan bank valid for 30 days after completion of the assignment.
1.9	<p><b>1.1 Taxes</b></p> <p>1.1.1 <b>"Taxes"</b> means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected, or withheld pursuant to any</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>regulation having the force of law and "Taxation" shall be construed accordingly.</p> <p><b>1.1.2 Local Taxation</b></p> <p>Nothing in the Contract shall relieve the service provider and/or his Sub-Contractors from their responsibility to pay any taxes, statutory contributions and levies that may be levied on them in Kenya in respect of the Contract. The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes.</p> <p>1.1.3 The service provider shall be deemed to be familiar with the tax laws in the procuring entity's Country and satisfied themselves with the requirements for all taxes, statutory contributions and duties to which they may be subjected during the term of the Contract.</p> <p>1.1.4 In instances where discussions are held between the procuring entity and the service provider regarding tax matters, this shall not be deemed to constitute competent advice and hence does not absolve the security service provider of their responsibility in relation to due diligence on the tax issue as per 1.9.2 above. Tax Deduction</p> <p><b>Tax deduction</b></p> <p>1.1.5 If the procuring entity is required to make a tax deduction by Law, then the deduction shall be made from payments due to the service provider and paid directly to the Kenya Revenue Authority. The procuring entity shall upon remitting the tax to Kenya Revenue Authority furnish the Contractor with the relevant tax deduction certificates.</p> <p>1.1.6 Where the service provider is paid directly by the Financiers and the procuring entity is not able to deduct tax, then the service provider will be required to pay the tax deduction to Kenya Revenue Authority in the name of the procuring entity and furnish the procuring entity with an original receipt thereof as evidence of such payment. In absence of the said evidence, the procuring entity will not process any subsequent payments to the service provider.</p> <p><b>1.1.7 Tax Indemnity</b></p> <p>The service provider shall indemnify and hold the procuring entity harmless from and against any and all liabilities, which the procuring entity may incur for any reason of failure by the service provider to comply with any tax laws arising from the execution of the Contract whether during the term of the Contract or after its expiry.</p> <p>1.1.8 The service provider warrants to pay the procuring entity (within fourteen (14) days of demand by the procuring entity), an amount equal to the loss, liability or cost which the procuring entity determines has been (directly or indirectly) suffered by the procuring entity for or on account of the service provider's Tax liability arising from the Contract.</p> <p>1.1.9 Where the amount in 1.9.8 above remains unpaid after the end of the fourteen (14) days moratorium, the procuring entity shall be entitled to</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	compensation for financing charges

## **APPENDIX TO THE CONTRACT**

The Appendix to the contract shall be an **Insurance Policy** that shall provide a description of the Services, compensation procedure and all the contingencies that shall lead to the compensation claim. The Policy is an industry form (the norm) but would be negotiated before signature to ensure all parties concerns are taken into account. No provision or Clause in the Insurance Policy shall negate any Condition of Contract.

## FORM No 1: NOTIFICATION OF INTENTION TO AWARD

This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

---

### **FORMAT**

1. For the attention of Tenderer's Authorized Representative

I) Name: \_\_\_\_\_ *[insert Authorized Representative's name]*

ii) Address: \_\_\_\_\_ *[insert Authorized Representative's Address]*

iii) Telephone: \_\_\_\_\_ *[insert Authorized Representative's telephone/fax numbers]*

iv) Email Address: \_\_\_\_\_ *[insert Authorized Representative's email address]*

*[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]*

2. Date of transmission: \_\_\_\_\_ *[email]* on *[date]* \_\_\_\_\_ (local time)

This Notification is sent by \_\_\_\_\_ *(Name and designation)*

3. Notification of Intention to Award

I) Employer: \_\_\_\_\_ *[insert the name of the Employer]*

ii) Project: \_\_\_\_\_ *[insert name of project]*

iii) Contract title: \_\_\_\_\_ *[insert the name of the contract]*

iv) Country: \_\_\_\_\_ *[insert country where ITT is issued]*

v) ITT No: \_\_\_\_\_ *[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

4. Request a debriefing in relation to the evaluation of your tender

Submit a Procurement-related Complaint in relation to the decision to award the contract.

a) The successful tenderer

i) Name of successful Tender \_\_\_\_\_

ii) Address of the successful Tender \_\_\_\_\_

iii) Contract price of the successful Tender Kenya Shillings \_\_\_\_\_ (in words \_\_\_\_\_)

b) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

S/No	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why Not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

- a) DEADLINE: The deadline to request a debriefing expires at midnight on *[insert date]* (local time).
- b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
  - i) Attention: \_\_\_\_\_ *[insert full name of person, if applicable]*
  - ii) Title/position: \_\_\_\_\_ *[insert title/position]*
  - ii) Agency: \_\_\_\_\_ *[insert name of Employer]*
  - iii) Email address: \_\_\_\_\_ *[insert email address]*
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
- e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - i) Attention: \_\_\_\_\_ *[insert full name of person, if applicable]*
  - ii) Title/position: \_\_\_\_\_ *[insert title/position]*
  - iii) Agency: \_\_\_\_\_ *[insert name of Employer]*
  - iv) Email address: \_\_\_\_\_ *[insert email address]*
- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within

the Standstill Period and received by us before the Standstill Period ends.

- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website [www.ppra.go.ke](http://www.ppra.go.ke) or email [complaints@ppra.go.ke](mailto:complaints@ppra.go.ke).



You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
- i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process and is the recipient of a Notification of Intention to Award.
- ii) The complaint can only challenge the decision to award the contract.
- iii) You must submit the complaint within the period stated above.
- iv) You must include, in your complaint, all of the information required to support your complaint.

**7. Standstill Period**

- i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Employer:

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

## FORM NO 2: NOTIFICATION OF AWARD - LETTER OF ACCEPTANCE

*[letterhead paper of the Employer]*

\_\_\_\_\_ *[date]*

To \_\_\_\_\_ *[name and address of the Contractor]*

This is to notify you that your Tender dated \_\_\_\_\_ *[date]* for execution of the \_\_\_\_\_ *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount \_\_\_\_\_ *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by \_\_\_\_\_ *(name of Employer)*.

You are requested to furnish the Performance Security within 30 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Attachment: *Contract Agreement*: \_\_\_\_\_

NOTIFICATION OF AWARD - LETTER OF ACCEPTANCE

*[use letterhead paper of the Procuring Entity]*

\_\_\_\_\_ *[date]*

To: \_\_\_\_\_ *[name and address of the Supplier]*

Subject: \_\_\_\_\_ **Notification of Award Contract No.** . . . . .

This is to notify you that your Tender dated \_\_\_\_\_ *[insert date]* for execution of the \_\_\_\_\_ *[insert name of the contract and identification number, as given in the SCC]* for the Accepted Contract Amount of \_\_\_\_\_ *[insert amount in numbers and words and name of currency]*, as corrected and modified in accordance with the Instructions to tenderers is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 30 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section X, Contract Forms, of the Tendering document.

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

***Attachment: Contract Agreement***

## FORM NO 3 - CONTRACT AGREEMENT

*[The successful tenderer shall fill in this form in accordance with the instructions indicated]*

THIS AGREEMENT made the \_\_\_\_\_ *[insert number]* day of \_\_\_\_\_ *[insert month]*, *[insert: year]*. BETWEEN (1) \_\_\_\_\_ *[insert complete name of Procuring Entity]* and having its principal place of business at *[insert: address of Procuring Entity]* (hereinafter called "Procuring Entity"), of the one part; 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]* (hereinafter called "the Supplier"), of the other part.

1. WHEREAS the Procuring Entity invited Tenders for certain Goods and ancillary services, viz., \_\_\_\_\_ *[insert brief description of Goods and Services]* and has accepted a Tender by the Supplier for the supply of those Goods and Services, the Procuring Entity and the Supplier agree as follows:
  - i) In this Agreement words and expressions shall have the same meanings as are \_\_\_\_\_ respectively assigned to them in the Contract documents referred to.
  - ii) The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
    - a) the Letter of Acceptance
    - b) the Letter of Tender
    - c) the Addenda Nos. \_\_\_\_\_ (If any)
    - d) Special Conditions of Contract
    - e) General Conditions of Contract
    - f) the Specification (including Schedule of Requirements and Technical Specifications)
    - g) the completed Schedules (including Price Schedules)
    - h) any other document listed in GCC as forming part of the Contract
  - iii) In consideration of the payments to be made by the Procuring Entity to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Procuring Entity to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
2. The Procuring Entity hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
3. IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya on the day, month and year indicated above.

### **For and on behalf of the Procuring Entity**

Signed: \_\_\_\_\_ *[insert signature]*

in the capacity of \_\_\_\_\_ *[insert title or other appropriate*

*designation]* In the presence of *[insert identification of official witness]*\_\_

### **For and on behalf of the Supplier**

Signed: \_\_\_\_\_ *[insert signature of authorized representative(s) of the*

*Supplier]* in the capacity of \_\_\_\_\_ *[insert title or other appropriate*

*designation]* in the presence of \_\_\_\_\_ *[insert identification of official witness]*

*[Guarantor letterhead]*

**Beneficiary:** \_\_\_\_\_ *[insert name and Address of*

Employer] **Date:** \_\_\_\_\_ *[Insert date of issue]*

**Guarantor:** \_\_\_\_\_ *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with (name of Employer) \_\_\_\_\_ (the Employer as the Beneficiary), for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (in words ),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the .... Day of ....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

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*[Name of Authorized Official, signature(s) and seals/stamps]*

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

**FORM NO. 5 - REQUEST FOR REVIEW**

**FORM FOR REVIEW (r.203(1))**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

**BETWEEN**

**..... APPLICANT**

**AND**

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

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

**REQUEST FOR REVIEW**

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

- 1.
- 2.

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

- 1.
- 2.

SIGNED .....(Applicant) Dated on.....day of ...../...20.....

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FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of .....20.....

**SIGNED**

**Board Secretary**

## BENEFICIAL OWNERSHIP DISCLOSURE FORM

### **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. 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 or controls the Tenderer by meeting one or more of the following conditions:*

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or in directly 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 Tenderer.*

Tender 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]

I) 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 Tenderer (Yes / No)</b>
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

OR

*ii) 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 Tenderer.*

OR

*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 Tenderer 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 Tenderer]”*

*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]*

*Title 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 signed ..... [insert date of signing] day of..... [Insert month], [insert year]*