

REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS



County Hall
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PROCURING ENTITY: COUNTY ASSEMBLY OF MACHAKOS

DOCUMENT	SUPPLY AND DELIVERY OF SPORTS UNIFORM AND EQUIPMENT
CATEGORY	SUPPLY AND DELIVERY OF SPORTS UNIFORM AND EQUIPMENT
TENDER NUMBER	1501129-2023/2024
TENDER DESCRIPTION	SUPPLY AND DELIVERY OF SPORTS UNIFORM AND EQUIPMENT
PROCUREMENT METHOD	OPEN NATIONAL TENDER METHOD
APPROACH TO MARKET	OPEN ADVERTISEMENT
CONTRACT TYPE	FIXED PRICE CONTRACT
INVITATION DATE	31 ST MAY, 2024
SUBMISSION DATE	THURSDAY 13TH JUNE, 2024 AT 11:00AM
TARGET GROUP	WOMEN

TENDER NAME: SUPPLY AND DELIVERY OF SPORTS UNIFORM AND EQUIPMENT.

CLOSING DATE: THURSDAY 13TH JUNE, 2024 AT 11:00AM

INVITATION TO TENDER

PROCURING ENTITY: COUNTY ASSEMBLY OF MACHAKOS

CONTRACT NAME AND DESCRIPTION: SUPPLY AND DELIVERY OF SPORTS UNIFORM AND EQUIPMENT TENDER NO. 1501129-2023/2024

County Assembly Service Board of Machakos now invites tenders from eligible candidates for supply and delivery of Sports uniform and equipment.

A complete set of tender document No. **1501129-2023/2024** may be downloaded from the assembly website www.machakosassembly.go.ke or from the Public Procurement Information Portal (PIIP) – tenders.go.ke, free of charge

1. Prices quoted should be net, must be in Kenya Shillings and shall remain valid for 150 days from the date of closing the tender
2. Complete bid documents should be submitted through IFMIS supplier portal www.supplier.treasury.go.ke to be received on or before **THURSDAY 13TH JUNE, 2024 AT 11:00AM**
3. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
4. Late tenders will be rejected.
5. **BIDDERS CAN QUOTE FOR ONE, TWO, OR ALL THE LOTS**
6. **Attaching bid documents via external link such as Google drive, one drive or other website links other than IFMIS portal will lead to automatic disqualification.**
7. The addresses referred to above are:
 - A. Address for obtaining further information.
 - (1) County Assembly of Machakos
Postal Address 1168-90100, Machakos
County Hall, Along Mwatu wa Ngoma Road,
Machakos Town

Contact person: Clerk of County Assembly,

P.O Box 1168-90100, Machakos

- (2) E-mail address : assemblymks@gmail.com

B. Address for Submission of Tenders.

Complete tender documents in plain sealed envelopes, clearly marked the tender name and number and addressed to:

The Clerk, County Assembly of Machakos,

P.O Box 1168-90100,

Machakos.

Address for Opening of Tenders.

Boardroom 2B,

The County Assembly of Machakos,

County Hall, Along Mwatu wa Ngoma Road,

Machakos Town

DENIS MUTUI
Ag. CLERK OF COUNTY ASSEMBLY

PART 1 - TENDERING PROCEDURES

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 give 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 sub contract 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; orb 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 oranyofitsaffiliatesparticipatedasaconsultantinthepreparationoftheProcuringEntity'sRequirements (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 toconsulting 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 isunder 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 in directly 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 conflictsteeming 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 nota 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
- 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 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 sub contract 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.machakosassembly.com
- 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.

1. 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 in to 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 maybe 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 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 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 required 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 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 error 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:

- a. 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 provided by the Tenderer; or
- b. if the successful Tenderer fails to:
 - c. sign the Contract in accordance with ITT 46; or
 - d. 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:

- a. in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in ITT13; and
- b. in an envelope or package or container marked “COPIES”, all required copies of the Tender; and
- c. if alternative Tenders are permitted in accordance with ITT15, and if relevant:
 - i. in an envelope or package or container marked “ORIGINAL–ALTERNATIVE TENDER”, the alternative Tender; and
 - ii. 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 dead line 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 un opened 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 are cord 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 a rep resent 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 bedisclosed 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 non-material 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 non-material 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 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 regards 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 in to 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 award to all tenderers which shall contain, at a minimum, the following information:
- a) The name and address of the Tenderer submitting the successful tender;
 - b) The Contract price of the successful tender;
 - c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in(c) above already reveals the reason;
 - d) the expiry date of the Stand still Period; and
 - e) instructions on how to request a debriefing and/or submit a complaint during the 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 in to 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 Information System to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions here in shall prevail over those in ITT.

[Where an e-procurement system is used, modify the relevant parts of the TDS accordingly to reflect the e-procurement process].

[Instructions for completing the Tender Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITT].

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	<p>The Procuring Entity is: COUNTY ASSEMBLY OF MACHAKOS</p> <p>The reference TENDER NO.: 1501129-2023/2024</p> <p>The tender name: SUPPLY AND DELIVERY OF SPORTS UNIFORM EQUIPMENT.</p>
ITT 2.2	The Intended Completion Date is Two weeks from date of contract signing
ITT 4.1	Maximum number of members in the Joint Venture (JV) shall be: <i>[insert a number]</i> NOT APPLICABLE
B. Tendering Document	
ITT 8.2	The questions in writing, to reach the procuring entity not later than THREE WORKING DAYS BEFORE CLOSING DATE
ITT 8.4	Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works shall be published on the website N/A
ITT 9.1	<p>The Tenderer will submit any request for clarifications in writing at the Address 1168-90100 MACHAKOS to reach the Procuring Entity not later than THURSDAY 13TH JUNE, 2024</p> <p>The Procuring Entity shall publish its response at the website www.machakosassembly.com</p>
ITT 9.1	The Procuring Entity shall also promptly publish response at the website www.machakosassembly.com
C. Preparation of Tenders	
ITT 13.1 (i)	The Tenderer shall submit the following additional documents in its Tender: <i>N/A</i>
ITT 15.2	Other documents required are <i>N/A</i>
ITT 15.1	Alternative Tenders <i>shall not be</i> considered.
ITT 15.2	Alternative times for completion <i>N/A</i> .
ITT 16.7	<i>(i)</i> The prices quoted by the Tenderer <i>shall not</i> be subject to adjustment during the performance of the Contract.

ITT 20.1	The Tender validity period shall be 150 days.
ITT 22.1	N/A
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: A duly executed Power of Attorney issued by the Directors of the company to their representative signing the tender and witnessed by a legal representative.
D. Submission and Opening of Tenders	
ITT 24.1	<p>For Tender submission purposes only; Complete bid documents should be submitted through IFMIS supplier portal www.supplier.treasury.go.ke to be received on or before THURSDAY 13TH MAY, 2024 AT 11:00AM</p> <p>Tender documents will be opened immediately thereafter in presence of bidders or their representatives who choose to attend at the Assembly board room 2B.</p>
ITT 24.1	<p>The deadline for Tender submission is: Date: : THURSDAY 13TH JUNE, 2024 Time: <i>11:00 AM</i></p>
E. Evaluation, and Comparison of Tenders	
ITT32.1	The price quoted in the form of tender shall be final and shall not be amended or adjusted as provided under section 82 of the Public Procurement and Assets Disposal Act, 2015
ITT 34.1	Margin of Preference shall not apply and Additional evaluation factors shall NOT be applicable
ITT34.2	Reserved for WOMEN
ITT 49.1	The Adjudicator proposed by the Procuring Entity is County Attorney. The biographical data of the proposed Adjudicator is to be identified if need arises.

ITT 50.1

The procedures for making a Procurement-related Complaint are available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke.

If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:

For the attention: **DENIS MUTUI**

Title/position: **Ag. CLERK OF ASSEMBLY**

Procuring Entity: *COUNTY ASSEMBLY OF MACHAKOS*

Email address: assemblymks@gmail.com

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

1. Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
 - a) For construction turnover or financial data required for each year- Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year are to be converted) was originally established.
 - b) Value of single contract- Exchange rate prevailing on the date of the contract signature.
 - c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.
2. This Section contains all the criteria that the Procuring Entity shall use to evaluate Tenders and qualify Tenderers. No other factors, methods or criteria shall be used. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Report for Goods and Works** for evaluating Tenders.
3. Multiple Contracts; multiple contracts will be permitted in accordance with ITT35.6. Tenderers are evaluated on basis of Lots and the lowest evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.

OPTION 1

- i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.
- ii) If a tenderer wins more than one Lot, the tender will be awarded contracts for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the Lots. The tenderer will be awarded the combination of Lots for which the tenderer qualifies and the others will be considered for award to second lowest the tenderers.

OPTION 2

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combinations with the lowest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combinations provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

2. Evaluation and contract award Criteria

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

3. Preliminary examination for Determination of Responsiveness

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

PRELIMINARY EVALUATION CRITERIA

Tenderers are required to meet the following **MANDATORY REQUIREMENTS** which will be used during preliminary examination to determine responsiveness. All documents submitted may be checked for authenticity.

S/No	REQUIREMENT	RESPONSIVENESS (YES/NO)
1	Copy of Certificate of registration/incorporation.	
2	Copy of Valid Single Business permit	
3	Valid Tax compliance certificate	
4	Paginated tender document (including the attachments) in the format 1, 2, 3	
5	Copy of valid AGPO certificate for WOMEN	
6	Duly filled, signed and stamped:	
	a) Form of Tender.	
	b) Confidential Business Questionnaire	
	c) Certificate of Independent Tender Determination	
	d) Self-Declaration That the Person/ Tenderer Is Not Debarred in The Matter of The Public Procurement and Asset Disposal Act, 2015 (FORM SD1)	
	e) Self-Declaration That the Person/Tenderer Will Not Engage in Any Corrupt or Fraudulent Practice (FORM SD2)	
	f) Declaration and Commitment to the Code of Ethics.	
	Attaching bid documents via external link such as Google drive, one drive or other website links other than IFMIS portal will lead to automatic disqualification.	

R- Responsive

NR - Nonresponsive

N/B: AT THIS STAGE, THE TENDERER'S SUBMISSION WILL EITHER BE RESPONSIVE OR NON-RESPONSIVE. THE NON-RESPONSIVE SUBMISSIONS WILL BE ELIMINATED

FROM THE ENTIRE EVALUATION PROCESS AND WILL NOT BE CONSIDERED FURTHER

TECHNICAL EVALUATION CRITERIA:

a) **Qualification criteria:**

S/NO	CRITERIA	PASS/FAIL
Experience Evidence of experience in similar assignments for at least 3 occasions demonstrated by either LPOs, contracts or award/referee letters	Duly filled and signed form EXP-1 with verifiable attachments, i.e copies of LPO's/ contracts or award/referee letters)	
Financial Capability	Duly filled and signed form FIN-3 with verifiable attachments, i.e copies of bank statements for the last 6 months or letter of credit worthiness from a recognized bank	

NOTE: Technical responsiveness shall be based on pass or fail against all the above two (2) parameters. A bidder who will be responsive in all the two parameters shall be considered for financial evaluation.

FINANCIAL EVALUATION

<u>FINANCIAL CRITERIA</u>	<u>PASS/FAIL</u>
<p>Duly filled and stamped Schedule of requirement. (Pass/Fail)</p> <p>Any inconsistency in pricing and arithmetic calculations in quantities, unit and total prices shall lead to automatic disqualification.</p> <p><u>AWARDING CRITERIA:</u></p> <p>The lowest evaluated bidder will be recommended for award.</p>	

SECTION IV - TENDERING FORMS

1. **FORM OF TENDER**

INSTRUCTIONS TO TENDERERS

- i) *The Tenderer must prepare this Form of Tender on stationery with its letter head 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 TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE, CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER, all attached to this Form of Tender*
- iv) *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*
 - *Tenderer's Eligibility-Confidential Business Questionnaire*
 - *Certificate of Independent Tender Determination*
 - *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 Instructions to Tenderers (ITT 8);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;
- c) **Tender-Securing Declaration:** We have not been debarred by the Authority based on execution of a Tender- Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 4.8;
- d) **Conformity:** We offer to provide design, supply and installation services in conformity with the tendering document of the following: *[insert a brief description of the IS Design, Supply and Installation Services]*;
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is:

[Option1, 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];

(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 ITT 19.1 (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS ITT 23.1 (as amended if applicable), and it shall remain binding upon us and may 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, and meet the requirements of ITT4.3, other than alternative Tenders submitted in accordance with ITT 13;
- 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 in eligible under Laws of Kenya or 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 4.7];*
- l) **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;
- m) **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
- n) **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.

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

- o) **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.
- p) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from www.pppra.go.ke during the procurement process and the execution of any resulting contract.
- q) We, the Tenderer, have fully completed and signed the following Forms as part of our Tender:
 - i) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
 - ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
 - iii) Self-Declaration of the Tenderer–to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
 - iv) Declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya. Further, we confirm that we have read and understood the full content and scope of fraud and corruption as in formed in “**Appendix1-Fraud and Corruption**” attached to the Form of 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 single business permit 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 controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract 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 involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

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 & Designation _____

(Signature)

(Date)

1) 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 tenders] in response to the request for tenders made by: _____ [Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

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

- i). I have read and I understand the contents of this Certificate;
- ii. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
- iii. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
- iv. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 - a) Has been requested to submit a Tender in response to this request for tenders;
 - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
- v. The Tenderer discloses that [check one of the following, as applicable]:
 - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - b) the Tenderer has entered 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;
- vi. In particular, without limiting the generality of paragraphs (5) (a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - a) prices;
 - b) methods, factors or formulas used to calculate prices;
 - c) the intention or decision to submit, or not to submit, a tender; or
 - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above;
- vii. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5) (b) above;
- viii. 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 _____ Sign _____

Date _____

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

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.

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

Bidder Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

I do 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.....

QUALIFICATION FORMS

Form ELI-1 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 <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</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 documents of registration of the legal entity named above, in accordance with ITT 4.4. <input type="checkbox"/> In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing: <ul style="list-style-type: none">• Legal and financial autonomy• Operation under commercial law• Establishing that the Tenderer is not under the supervision of the Procuring Entity <input type="checkbox"/> Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Name of Tenderer: _____

.....
(Signature)

.....
(Date)

.....
(Title)

Bidder Official Stamp

Form EXP – 1 – General Experience

Tenderer's Legal Name: _____ Date: _____ JV Member Legal Name:

_____ ITT No.: _____ Page _of

_____ pages

Starting Month / Year	Ending Month / Year	Years	Contract Identification	Role of Tenderer
_____	_____		Contract name: Brief Description of assignment performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the assignment performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the assignment performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the assignment performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the assignment performed by the Tenderer: Name of Procuring Entity: Address:	_____
_____	_____		Contract name: Brief Description of the assignment performed by the Tenderer: Name of Procuring Entity: Address:	_____

Name of Tenderer: _____

.....
(Signature)

.....
(Date)

(Title)

Bidder Official Stamp

9. FORM FIN – 1 FINANCIAL SITUATION



Historical Financial Performance

Tenderer's Legal Name: _____ Date: _____

JV Member Legal Name: _____ ITT No. _____

Page _____ of _____ pages

To be completed by the Tenderer and, if JV, by each member

Financial information in KES equivalent	Historic information for previous _____ years	
	Year 1	Year 2
Information from Balance Sheet		
Total Assets (TA)		
Total Liabilities (TL)		
Net Worth (NW)		
Current Assets (CA)		
Current Liabilities (CL)		
Information from Income Statement		
Total Revenue (TR)		
Profits Before Taxes (PBT)		

Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

- a) Must reflect the financial situation of the Tenderer or member to a JV, and not sister or parent companies.
- b) Historic financial statements must be complete, including all notes to the financial statements.
- c) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Name of Tenderer: _____

.....
(Signature)

.....
(Date)

.....
(Title)

Bidder Official Stamp

FORM F-3 FINANCIAL RESOURCES (VALID EVIDENCE MUST BE ATTACHED)

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

Source of financing	Amount (Kes. equivalent)
1.	
2.	
3.	
4.	

Name of Tenderer: _____

.....
(Signature)

.....
(Date)

.....
(Title)

Bidder Official Stamp

(iv) Subcontractor’s Agreement N/A

Note: This agreement should be written on the Form head of the Subcontractor and be signed by a person with the proper authority to sign documents that are binding on the Subcontractor.

Invitation for Tenders Title and No.: _____ [Procuring Entity insert: **ITT Title and Number**]

To: _____ [Procuring Entity insert: **Procuring Entity's Officer to receive the Subcontractor's Agreement**]

WHERE AS [insert: **Name of Subcontractor**], having head offices at _____ [insert: **address of Subcontractor**], have been informed by _____ [insert: **name of Tenderer or Joint Venture**] located at _____ [insert: **address of Tenderer or Joint Venture**] (here in after, the “Tenderer”) that it will submit a tender in which _____ [insert: **Name of Subcontractor**] will provide [insert: **items of supply or services provided by the Subcontractor**]. We hereby commit to provide the above-named items, in the instance that the Tenderer is awarded the Contract.

Name [insert: **Name of Officer**] in the capacity of _____ [insert: **Title of Officer**] Signed _____

_____ Duly authorized to sign the authorization for and on behalf of: _____ [insert: **Name of**

Subcontractor]

Dated this _____ [insert: **ordinal**] day of _____ [insert: **month**], _____ [insert: **year**].

[add Corporate Seal (where appropriate)]

(v) List of Proposed Subcontractors

	Item	Proposed Subcontractor	Place of Registration & Qualifications

FORM OF TENDER SECURITY-Option1–Demand 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 Invitation 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]* _____

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]* _____ (here in after called “the Applicant”) has submitted or will submit the Beneficiary its tender _____ (here in after called “the Tender”) for the execution of _____ under Request for Tenders No. _____ (“the ITT”).

Furthermore, we understand that, according to the Beneficiary's, Tenders must be supported by a Tender guarantee. At the request of the Applicant, we as Guarantor, here by 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 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 thereof provided by the Applicant; or
- b) having been notified of the acceptance of its Tender by the Beneficiary during the period of Tender validity or any extension thereof provided by the Applicant has failed to: (i) execute the Contract Agreement, if required, or (ii) furnish the performance security, in accordance with the Instructions to Tenderers (“ITT”) of the Beneficiary's tendering document.

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

Consequently, any demand for payment under this guarantee must be received by us at the office 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)]

FORM OF TENDER SECURITY - Option 2 - Tender Bond

BOND NO. _____

BY THIS BOND..... as Principal (here in after called “the Principal”), and _____, **authorized to transact business in** _____, as Surety (here in after called “the Surety”), are held and firmly bound unto _____ as Obligee (hereinafter called “the Procuring Entity”) in the sum of _____¹ (_____), 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.

WHEREAS 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]* _____ (here in after called the “Tender”). NOW, THEREFORE,

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

- a) 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 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 there to provide by the Applicant has failed to; (i) execute the Contract Agreement, or (ii) 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 here by 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 extended there to provide by the Principal.

IN TESTIMONY WHERE OF, the Principal and the Surety have caused these presents to be executed in their respective names this _____ day of _____ 20.

[Date]

[Signature of the Guarantor]

[Witness]

[Seal]

4) **APPENDIX 1 - FRAUD AND CORRUPTION**

(Appendix 1 shall not be modified)

1. Purpose

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, 2015 (the Act) and the Public Procurement and Asset Regulations, 2020 (the Regulations) and any other relevant Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

2. Requirements

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 1.1 above.

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

- i) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- ii) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- iii) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
- iv) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- v) 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 tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
- vi) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- vii) If a person contravenes sub section (1) with respect to a conflict of interest described in sub section (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

2. 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:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

- ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v) “obstructive practice” is:
 - 1) Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - 2) acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.

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

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal processor 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 of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Act and the Regulations, the Procuring Entity may recommend to PPRA for sanctioning and debarment of a firm or individual, as applicable under the Act and the Regulations;
- e) Requires that a clause be included in the tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other

appropriate authority appointed by Government of Kenya to inspect all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

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

¹ For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

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

individual's financial records and information, and making copies there of as relevant; accessing and examining any other documents ,data and information (whether in hard copy or electronic format) deemed relevant for the investigation/ audit, and making copies there of as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.



PART 2 – PROCURING ENTITY'S REQUIREMENTS

B. PRICE SCHEDULE FORM

SCHEDULE OF REQUIREMENTS AND PRICES (MUST be filled in totality)

LOT 1: SPORTS UNIFORMS

S/NO	ITEMS	SPECIFICATIONS	QTY	UNIT PRICE	TOTAL
1	Tracksuits	As per the sample provided or approved equivalent. Actual Measurements shall be taken by the successful bidder prior to delivery.	198pcs		
2	Polo T shirts	As per the sample provided or approved equivalent. Cotton material Branded # 016 Actual Measurements shall be taken by the successful bidder prior to delivery.	198 pcs		
3	Sport shoes	-As per the sample provided or approved equivalent. - Actual shoe sizes shall be taken by the successful bidder prior to delivery.	198 pairs		
4	Darts Polo T-shirts	-With one pocket on the left side. -Embroidered darts logo Plain Colour	10		
5	Darts shoes	Trainer shoe	10		
6	Tug of war men shorts	As per the sample provided or approved equivalent. -3/4 shorts -cotton material -Measurements to be taken.	10		
7	Tug of war men sweaters	As per the sample provided or approved equivalent. -Measurements of the sizes to be taken.	10 pcs		
8	Tag of war (military) boots	-Black leather boots -As per the sample provided or approved equivalent. -Shoe sizes to be taken.	10 pairs		
9	Tag of war Socks	Heavy material	10 pairs		
10	Athletics uniform men	Athletic short and vest branded No. 016	3		
11	Athletics/javelin uniform ladies	Athletic short and vest branded No. 016	1		
12	Sprint shoes	Nike spike shoes As per the sample provided or approved equivalent. Shoe sizes to be taken	2		
13	Football jersey	Red printed numbers	1 set of 18pc		
14	Football socks/stockings	Black	18pairs		

15	Football boots	Adidas mudial trainers or approved equivalent. Boot sizes to be taken. Shoe sizes to be provided	18 pairs		
16	Goal keeper kit	2 different colours(not red or blue)	2 Pairs		
17	Football Gloves	Tex pro gloves	1 Pair		
18	Sheen guards	Adidas or approved equivalent	18		
19	Football bibs	Orange colour Mid sizes	12 pcs		
20	Netball Sport shoe	-As per the sample provided or approved equivalent(Asics brand) -Shoe sizes to be taken.	14 pairs		
21	Badminton	Men short-yonex	5		
		Ladies skirt-yonex	5		
		Trainer Shoe-yonex Power 65*3	10 Pairs		
22	Netball uniform	Netball uniform with bips Sample to be provided.	14		
	Netball sports socks	Nike(white)	14 pairs		
23	Folksong	Yellow polo T-shirts cotton	43 pcs		
24	Table tennis	Ladies skirts-Liebherr	6		
	TT shorts	Liebherr	6		
	TT shoes	Butterfly	12		
25	Pool table Shoes	Trainer shoe (comfy or approved equivalent)	10		
26	Field events ladies	Shorts and vests(sample to be provided)	11		
27	Field events men	Shorts and vests (sample to be provided)	8		
	TOTAL				

LOT 2: SPORTS EQUIPMENT AND ASSOCIATED ITEMS

S/NO	DISCIPLINE	ITEMS	SPECIFICATIONS	QTY	UNIT PRICE	TOTAL
1	DARTS	Darts	95% plus steel tip 27g 2 sets 28g 2 sets 30g 1 set	5 sets		
		Dartboard cabinet		1		
		Dart carpet		1		
2	POOL TABLE	Pool cues-simulated butted 57	Jointed Sharp pointed-2 Broad pointed-1	3		

		Pool table	8 ball pool	1		
3	TABLE TENNIS	Bats	6-star butterfly	4		
		Rubber	Stiga aircoc astro	4		
		Net with clamp	Double fish	2		
		TT Balls	Joola 40+	4 packets		
4	FOOT BALL	Balls	Leather (PKC55)- Mikasa (Black-white) Sample provided	1		
5	NETBALL	Netball balls	Mikasa 3500 55-69 KPA/8-10psi	1		
6	BANDMINTON	Rackets	8)yonex GR 303 sana nehwal)	3		
		Shuttle cork	3 tubes of 6 pieces(yonex mavis 300)	3		
TOTAL						

LOT 3: CULTURAL ATTIRE AND EQUIPMENT.

S/N O	TEAM	ITEMS	SPECIFICATIONS	QTY	UNIT PRICE	TOTAL
1	Cultural dances	Kamba traditional lessos (Kamuti)	White Cotton material with a red stripe	6		
		Kamba traditional dress (Muvinde/kilicho) for ladies	Cotton material decorated with buttons	4		
		Canvas ladies shoes	Yellow -sundrop	28pairs		
		Men shoes	North star-Black	15		
		Traditional shorts for 3 men and 28 ladies	Cotton material Measurements to be taken	31		
		Skirts folk song	Cotton material Sample to be provided	4		
		Traditional caps	Red-sample to be provided	20		
		Hand ornaments	Sample to be provided	86		
		Itunge	Sample to be provided	10		
		Sea shells		86		
		Maleve		2		
	TOTAL					

GRAND TOTAL COST - _____

NB: BIDDERS CAN QUOTE FOR ONE, TWO, OR ALL THE LOTS



PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VI - General Conditions of Contract

General Conditions of Contract

A. CONTRACT AND INTERPRETATION

1. Definitions

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

a) Contract Elements

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

b) Entities

- i) "Procuring Entity" means the entity purchasing the Information System, as **specified in the SCC**.
- ii) "Project Manager" means the person **named as such in the SCC** or otherwise appointed by the Procuring Entity in the manner provided in GCC Clause 18.1 (Project Manager) to perform the duties delegated by the Procuring Entity.
- iii) "Supplier" means the firm or Joint Venture whose tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.
- iv) "Supplier's Representative" means any person nominated by the Supplier and named as such in the Contract Agreement or otherwise approved by the Procuring Entity in the manner provided in GCC Clause 18.2 (Supplier's Representative) to perform the duties delegated by the Supplier.
- v) "Subcontractor" means any firm to whom any of the obligations of the Supplier, including
- vi) preparation of any design or supply of any Information Technologies or other Goods or Services, is sub contracted directly or indirectly by the Supplier.
- vii) "Adjudicator" means the person named in Appendix 2 of the Contract Agreement, appointed by

agreement between the Procuring Entity and the Supplier to make a decision on or to settle any dispute between the Procuring Entity and the Supplier referred to him or her by the parties, pursuant to GCC Clause 43.1 (Adjudication).

c) Scope

- i) “Information System,” also called “the System,” means all the Information Technologies, Materials, and other Goods to be supplied, installed, integrated, and made operational (exclusive of the Supplier's Equipment), together with the Services to be carried out by the Supplier under the Contract.
- ii) “Subsystem” means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System.
- iii) “Information Technologies” means all information processing and communications-related hardware, Software, supplies, and consumable items that the Supplier is required to supply and install under the Contract.
- iv) “Goods” means all equipment, machinery, furnishings, Materials, and other tangible items that the Supplier is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Supplier's Equipment.
- v) “Services” means all technical, logistical, management, and any other Services to be provided by the Supplier under the Contract to supply, install, customize, integrate, and make operational the System. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support.
- vi) “The Project Plan” means the document to be developed by the Supplier and approved by the Procuring Entity, pursuant to GCC Clause 19, based on the requirements of the Contract and the Preliminary Project Plan included in the Supplier's tender. The “Agreed Project Plan” is the version of the Project Plan approved by the Procuring Entity, in accordance with GCC Clause 19.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
- vii) “Software” means that part of the System which are instructions that cause information processing Sub systems to perform in a specific manner or execute specific operations.
- viii) “System Software” means Software that provides the operating and management instructions for the underlying hardware and other components, and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Systems Software. Such System Software includes, but is not restricted to, micro-code embedded in hardware (i.e., “firmware”), operating systems, communications, system and network management, and utility software.
- ix) “General-Purpose Software” means Software that supports general-purpose office and software development activities and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be General-Purpose Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.
- x) “Application Software” means Software formulated to perform specific business or technical functions and interface with the business or technical users of the System and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Application Software.
- xi) “Standard Software” means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Standard Software.
- xii) “Custom Software” means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Custom Software.
- xiii) “Source Code” means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).

- xiv) “Materials” means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Procuring Entity under the Contract.
- xv) “Standard Materials” means all Materials not specified as Custom Materials.
- xvi) “Custom Materials” means Materials developed by the Supplier at the Procuring Entity's expense under the Contract and identified as such in Appendix 5 of the Contract Agreement and such other Materials as the parties may agree in writing to be Custom Materials. Custom Materials includes Materials created from Standard Materials.
- xvii) “Intellectual Property Rights” means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extractor re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sub license, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter in to computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.
- xviii) “Supplier's Equipment” means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Supplier, but excluding the Information Technologies, or other items forming part of the System.

d) **Activities**

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

e) **Place and Time**

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

- viii) “Effective Date” means the date of fulfillment of all conditions specified in Article 3 (Effective Date for Determining Time for Achieving Operational Acceptance) of the Contract Agreement, for the purpose of determining the Delivery, Installation, and Operational Acceptance dates for the System or Sub system(s).
- ix) “Contract Period” is the time period during which this Contract governs the relations and obligations of the Procuring Entity and Supplier in relation to the System, as **unless otherwise specified in the SCC**, the Contract shall continue in force until the Information System and all the Services have been provided, unless the Contract is terminated earlier in accordance with the terms set out in the Contract.
- x) “Defect Liability Period” (also referred to as the “Warranty Period”) means the period of validity of the warranties given by the Supplier commencing at date of the Operational Acceptance Certificate of the System or Sub system(s), during which the Supplier is responsible for defects with respect to the System (or the relevant Sub-system[s]) as provided in GCC Clause 29 (Defect Liability).
- xi) “The Coverage Period” means the Days of the Week and the hours of those Days during which maintenance, operational, and/ or technical support services (if any) must be available.
- xii) The Post-Warranty Services Period” means the number of years **defined in the SCC** (if any), following the expiration of the Warranty Period during which the Supplier may be obligated to provide Software licenses, maintenance, and/ or technical support services for the System, either under this Contractor under separate contract(s).

2. Contract Documents

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

3. Interpretation

1. Governing Language

- 1.1. All Contract Documents and related correspondence exchanged between Procuring Entity and Supplier shall be written in **the English Language** of these tendering documents, and the Contract shall be construed and interpreted in accordance with that language.
- 1.2. If any of the Contract Documents or related correspondence are prepared in a language other than the English Language under GCC Clause 3.1.1 above, the translation of such documents into the **English** language shall prevail in matters of interpretation. The originating party, with respect to such documents shall bear the costs and risks of such translation.

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

3. Headings

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

4. Persons

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

5. Incoterms

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

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

6. Entire Agreement

The Contract constitutes the entire agreement between the Procuring Entity and Supplier with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether

written or oral) of parties with respect to the subject matter of the Contract made prior to the date of Contract.

7. Amendment

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

8. Independent Supplier

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

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

9. Joint Venture

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

10. Non-waiver

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

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

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. Country of Origin

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

4. Notices

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

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

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

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

5. Governing Law

1. The Contract shall be governed by and interpreted in accordance with the laws of Kenya.
2. Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in Kenya when
 - a. As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - b. by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

2. Fraud and Corruption

1. The Procuring Entity requires compliance with the laws of Kenya on Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in its statutes.
2. The Procuring Entity requires the Suppliers to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

B. SUBJECT MATTER OF CONTRACT

2. Scope of the System

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

3. Time for Commencement and Operational Acceptance

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

4. Supplier's Responsibilities

- 4.1.** The Supplier shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of information technologies, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. In particular, the Supplier shall provide and employ only technical personnel who are skilled and experienced in the respective callings and supervisory staff who are competent to adequately supervise the work at hand.
- 4.2.** The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Procuring Entity and on the basis of information that the Supplier could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the Supplier relating to the System as at the date twenty-eight (28) days prior to tender submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.
- 4.3.** The Supplier shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed Project Plan (pursuant to GCC Clause 19.2) within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision-making may constitute grounds for termination pursuant to GCC Clause 41.2.
- 4.4.** The Supplier shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in Kenya that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Procuring Entity under GCC Clause 10.4 and that are necessary for the performance of the Contract.
- 4.5.** The Supplier shall comply with all laws in force in Kenya. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Supplier. The Supplier shall indemnify and hold harmless the Procuring Entity from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Sub contractors and their personnel, but without prejudice to GCC Clause 10.1. The Supplier shall not indemnify the Procuring Entity to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Procuring Entity.
- 4.6.** The Supplier shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor.
- 4.7.** Any Information Technologies or other Goods and Services that will be incorporated in or be required for the System and other supplies shall have their Origin, as defined in GCC Clause 3.12, in a country that shall be an Eligible Country, as defined in GCC Clause 1.1 (e) (iv).
- 4.8.** Pursuant to paragraph 2.2e. of Appendix B to the General Conditions the Supplier shall permit and shall cause its subcontractors and sub-consultants to permit, the PPRA and/or persons appointed by the PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Supplier's and its Sub contractors' and sub-consultants' attention is drawn to Sub-Clause 6.1 which provides, inter alia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the PPRA's prevailing sanctions procedures).

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

4.10. **Unless otherwise specified in the SCC** the Supplier shall have no other Supplier responsibilities.

5. **Procuring Entity's Responsibilities**

5.1. The Procuring Entity shall ensure the accuracy of all information and/or data to be supplied by the Procuring Entity to the Supplier, except when otherwise expressly stated in the Contract.

5.2. The Procuring Entity shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed Project Plan (pursuant to GCC Clause 19.2) within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision making may constitute grounds for Termination pursuant to GCC Clause 41.3.1(b).

5.3. The Procuring Entity shall be responsible for acquiring and providing legal and physical possession of the site and access to it, and for providing possession of and access to all other are as reasonably required for the proper execution of the Contract.

5.4. If requested by the Supplier, the Procuring Entity shall use its best endeavors to assist the Supplier in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities or public service undertakings that such authorities or under takings require the Supplier or Sub contractors or the personnel of the Supplier or Sub contractors, as the case may be, to obtain.

5.5. In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Supplier, as specified in the Technical Requirements, SCC, Agreed Project Plan, or other parts of the Contract, the Procuring Entity shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.

5.6. The Procuring Entity shall be responsible for timely provision of all resources, access, and information necessary for the Installation and Operational Acceptance of the System (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the Supplier. Delay by the Procuring Entity may result in an appropriate extension of the Time for Operational Acceptance, at the Supplier's discretion.

5.7. Unless otherwise specified in the Contractor agreed upon by the Procuring Entity and the Supplier, the Procuring Entity shall provide sufficient, properly qualified operating and technical personnel, as required by the Supplier to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and Operational Acceptance, at or before the time specified in the Implementation Schedule and the Agreed Project Plan.

5.8. The Procuring Entity will designate appropriate staff for the training courses to be given by the Supplier and shall make all appropriate logistical arrangements for such training as specified in the Technical Requirements, SCC, the Agreed Project Plan, or other parts of the Contract.

5.9. The Procuring Entity assumes primary responsibility for the Operational Acceptance Test (s) for the System, in accordance with GCC Clause 27.2, and shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in anyway the Supplier's responsibilities after the date of Operational Acceptance otherwise specified in the Contract.

5.10. The Procuring Entity is responsible for performing and safely storing timely and regular backups of its data and Software in accordance with accepted data management principles, except where such responsibility is clearly assigned to the Supplier elsewhere in the Contract.

5.11. All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Procuring Entity, save those to be incurred by the Supplier with respect to the performance of the Operational Acceptance Test (s), in accordance with GCC Clause 27.2.

5.12. **Unless otherwise specified in the SCC** the Procuring Entity shall have no other Procuring Entity responsibilities.

C. Payment

6. Contract Price

- 6.1. The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- 6.2. Unless an adjustment clause is **provided for in the SCC**, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the System pursuant to GCC Clause 39 or to other clauses in the Contract;
- 6.3. The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
- 6.4. Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$.

7. Terms of Payment

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

8. Securities

8.1. Issuance of Securities

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

8.2. Advance Payment Security

- a) Unless otherwise specified in the SCC, the Supplier shall provide within twenty-eight (28) days of the notification of Contract award an Advance Payment Security in the amount and currency of the Advance Payment specified in SCC for GCC Clause 12.1 above and valid until the System is Operationally Accepted.
- b) The security shall be in the form provided in the tendering documents or in another form acceptable to the Procuring Entity. The amount of the security shall be reduced in proportion to the value of the System

executed by and paid to the Supplier from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Procuring Entity. **Unless otherwise specified in the SCC**, the reduction in value and expiration of the Advance Payment Security are calculated as follows:

$P*a/(100-a)$, where “P” is the sum of all payments effected so far to the Supplier (excluding the Advance Payment), and “a” is the Advance Payment expressed as a percentage of the Contract Price pursuant to the SCC for GCC Clause 12.1.

The security shall be returned to the Supplier immediately after its expiration.

8.3. Performance Security

1. The Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a security for the due performance of the Contract in the amount and currency **specified in the SCC**.
2. The security shall be a bank guarantee in the form provided in the Sample Contractual Forms Section of the tendering documents, or it shall be in another form acceptable to the Procuring Entity.
3. The security shall automatically become null and void once all the obligations of the Supplier under the Contract have been fulfilled, including, but not limited to, any obligations during the Warranty Period and any extensions to the period. The security shall be returned to the Supplier no later than twenty-eight (28) days after its expiration.
4. Upon Operational Acceptance of the entire System, the security shall be reduced to the amount specified in the SCC, on the date of the Operational Acceptance, so that the reduced security would only cover the remaining warranty obligations of the Supplier.

9. Taxes and Duties

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

D. Intellectual Property

10. Copyright

- 10.1. The Intellectual Property Rights in all Standard Software and Standard Materials shall remain vested in the owner of such rights.

- 10.2.** The Procuring Entity agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 16, except that additional copies of Standard Materials may be made by the Procuring Entity for use within the scope of the project of which the System is apart, in the event that the Supplier does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.
- 10.3.** The Procuring Entity's contractual rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed, or otherwise transferred voluntarily except in accordance with the relevant license agreement or **unless otherwise specified in the SCC** to a legally constituted successor organization (e.g., a reorganization of a public entity formally authorized by the government or through a merger or acquisition of a private entity).
- 10.4. Unless otherwise specified in the SCC,** the Intellectual Property Rights in all Custom Software and Custom Materials specified in Appendices 4 and 5 of the Contract Agreement (if any) shall, at the date of this Contractor on creation of the rights (if later than the date of this Contract), vest in the Procuring Entity. The Supplier shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Procuring Entity may consider necessary or desirable to perfect the right, title, and interest of the Procuring Entity in and to those rights. In respect of such Custom Software and Custom Materials, the Supplier shall ensure that the holder of any or all right in such an item does not assert it, and the Supplier shall, if requested to do so by the Procuring Entity and where permitted by applicable law, ensure that the holder of such a moral right waives it.
- 10.5. Unless otherwise specified in the SCC,** escrow arrangements shall NOT be required.

11. Software License Agreements

- 11.1.** Except to the extent that the Intellectual Property Rights in the Software vest in the Procuring Entity, the Supplier hereby grants to the Procuring Entity license to access and use the Software, including all inventions, designs, and marks embodied in the Software.

Such license to access and use the Software shall:

- a) be:
- i. non-exclusive;
 - ii. fully paid up and irrevocable (except that it shall terminate if the Contract terminates under GCC Clauses 41.1 or 41.3);
 - iii. **unless otherwise specified in the SCC** valid throughout Kenya;
 - iv. **unless otherwise specified in the SCC subject** to NO additional restrictions.
- b) Permit the Software to be:
- i. used or copied for use on or with the computer(s) for which it was acquired (if specified in the Technical Requirements and/or the Supplier's tender), plus a backup computer(s) of the same or similar capacity, if the primary is (are) in operative, and during a reasonable transitional period when use is being transferred between primary and back up;
 - ii. used or copied for use on or transferred to are placement computer (s), (and use on the original and replacement computer(s) may be simultaneous during a reasonable transitional period) provided that, if the Technical Requirements and/or the Supplier's tender specifies a class of computer to which the license is restricted, the replacement computer (s) is (are) within that class;
 - iii. if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or back up computer (s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access;
 - iv. reproduced for safe keeping or back up purposes;
 - v. customized, adapted, or combined with other computer software for use by the Procuring Entity, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as a set forth in this Contract;
 - vi. **unless otherwise specified in the SCC,** disclosed to, and reproduced for use by, support service suppliers and their sub-contractors, (and the Procuring Entity may sub-license such persons to use and copy for use the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as a set forth in this Contract; and
 - vii. **unless otherwise specified in the SCC** disclosed to, and reproduced for use by, NO other parties.

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

12. Confidential Information

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

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

12.3. Notwithstanding GCC Clauses 17.1 and 17.2:

- a) the Supplier may furnish to its Subcontractor Confidential Information of the Procuring Entity to the extent reasonably required for the Subcontractor to perform its work under the Contract; and
- b) the Procuring Entity may furnish Confidential Information of the Supplier: (i) to its support service suppliers and their subcontractors to the extent reasonably required for them to perform their work under their support service contracts; and (ii) to its affiliates and subsidiaries, in which event the Receiving Party shall ensure that the person to whom it furnishes Confidential Information of the Disclosing Party is aware of and a tenderer by the Receiving Party's obligations under this GCC Clause 17 as if that person were party to the Contract in place of the Receiving Party.

12.4. The Procuring Entity shall not, without the Supplier's prior written consent, use any Confidential Information received from the Supplier for any purpose other than the operation, maintenance and further development of the System. Similarly, the Supplier shall not, without the Procuring Entity's prior written consent, use any Confidential Information received from the Procuring Entity for any purpose other than those that are required for the performance of the Contract.

12.5. The obligation of a party under GCC Clauses 17.1 through 17.4 above, however, shall not apply to that information which:

- a) Now or hereafter enters the public domain through no fault of the Receiving Party;
- b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party;
- c) otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.

12.6. The above provisions of this GCC Clause 17 shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the System or any part thereof.

12.7. Unless otherwise specified in the SCC, the provisions of this GCC Clause 17 shall survive the termination, for whatever reason, of the Contract for three (3) years.

E. Supply, Installation, Testing, Commissioning, and Acceptance of the System

13. Representatives

13.1. Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Procuring Entity shall appoint and notify the Supplier in writing of the name of the Project Manager. The

Procuring Entity may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Supplier without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the Supplier. **Unless otherwise specified in the SCC** (if any), the Project Manager shall have the authority to represent the Procuring Entity on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Procuring Entity pursuant to GCC Clause4.

13.2. Supplier's Representative

1. If the Supplier's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Supplier shall appoint the Supplier's Representative and shall request the Procuring Entity in writing to approve the person so appointed. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as a description of any other System or non-System responsibilities the nominee would retain while performing the duties of the Supplier's Representative. If the Procuring Entity does not object to the appointment within fourteen (14) days, the Supplier's Representative shall be deemed to have been approved. If the Procuring Entity objects to the appointment within fourteen (14) days giving the reason therefor, then the Supplier shall appoint a replacement within fourteen (14) days of such objection in accordance with this GCC Clause 18.2.1.
2. **Unless otherwise specified in the SCC** (if any), the Supplier's Representative shall have the authority to represent the Supplier on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Supplier pursuant to GCC Clause4.
3. The Supplier shall not revoke the appointment of the Supplier's Representative without the Procuring Entity's prior written consent, which shall not be unreasonably withheld. If the Procuring Entity consents to such an action, the Supplier shall appoint another person of equal or superior qualifications as the Supplier's Representative, pursuant to the procedure set out in GCC Clause 18.2.1.
4. The Supplier's Representative and staff are obliged to work closely with the Procuring Entity's Project Manager and staff, act within their own authority, and a tenderer by directives issued by the Procuring Entity that are consistent with the terms of the Contract. The Supplier's Representative is responsible for managing the activities of its personnel and any subcontracted personnel.
5. The Supplier's Representative may, subject to the approval of the Procuring Entity (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Supplier's Representative and shall specify the powers, functions, and authorities there by delegated or revoked. No such delegation or revocation shall take effect unless and until the notice of it has been delivered.
6. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause18.2.5shall be deemed to be an act or exercise by the Supplier's Representative.

2. Objections and Removals

- 2.1. The Procuring Entity may by notice to the Supplier object to any representative or person employed by the Supplier in the execution of the Contract who, in the reasonable opinion of the Procuring Entity, may have behaved inappropriately, be incompetent, or be negligent. The Procuring Entity shall provide evidence of the same, where upon the Supplier shall remove such person from work on the System.
- 2.2. If any representative or person employed by the Supplier is removed in accordance with GCC Clause18.3.1, the Supplier shall, where required, promptly appoint a replacement.

14. Project Plan

- 14.1. In close cooperation with the Procuring Entity and based on the Preliminary Project Plan included in the Supplier's tender, the Supplier shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as **specified in the SCC** and/ or Technical Requirements.

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

15. Sub-contracting

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

20.1 and 20.2, or in Appendix 3 of the Contract Agreement.

16. Design and Engineering

16.1. Technical Specifications and Drawings

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

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

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

2. Codes and Standards

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

3. Approval/ Review of Controlling Technical Documents by the Project Manager

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

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

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

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

3.3. The Project Manager shall not disapprove any document except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good industry practice.

3.4. If the Project Manager disapproves the document, the Supplier shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Clause 21.3.2. If the Project Manager approves the document subject to modification(s), the Supplier shall make the required modification(s), and the document shall then be deemed to have been approved, subject to GCC Clause 21.3.5. The procedure set out in GCC Clauses 21.3.2 through 21.3.4 shall be repeated, as appropriate, until the Project Manager approves such documents.

3.5. If any dispute occurs between the Procuring Entity and the Supplier in connection with or arising out of the disapproval by the Project Manager of any document and/ or any modification (s) to a document that cannot be settled between the parties within a reasonable period, then, in case the Contract Agreement includes and names an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance with GCC Clause 43.1 (Adjudication). If such dispute is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Supplier shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the Supplier's view on the dispute and if the Procuring Entity has not given notice under GCC Clause 43.1.2, then the Supplier shall be reimbursed by the Procuring Entity for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Achieving Operational Acceptance shall be extended accordingly.

- 3.6. The Project Manager's approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Supplier by or on behalf of the Procuring Entity.
- 3.7. The Supplier shall not depart from any approved document unless the Supplier has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this GCC Clause 21.3. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 39 (Changes to the System) shall apply to such request.

17. Procurement, Delivery, and Transport

- 17.1. Subject to related Procuring Entity's responsibilities pursuant to GCC Clauses 10 and 14, the Supplier shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.
- 17.2. Delivery of the Information Technologies, Materials, and other Goods shall be made by the Supplier in accordance with the Technical Requirements.
- 17.3. Early or partial deliveries require the explicit written consent of the Procuring Entity; which consent shall not be unreasonably withheld.
- 17.4. Packaging and Transportation
 1. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Procuring Entity's instructions to the Supplier.
 2. The Supplier will bear responsibility for and cost of transport to the Project Sites in accordance with the terms and conditions used in the specification of prices in the Price Schedules, including the terms and conditions of the associated Inco terms.
 3. **Unless otherwise specified in the SCC**, the Supplier shall be free to use transportation through carriers registered in any eligible country and to obtain insurance from any eligible source country.

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

4. For Goods supplied from outside Kenya:

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

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

2. For Goods supplied locally (i.e., from within Kenya):

Upon shipment, the Supplier shall notify the Procuring Entity by cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Supplier shall promptly send the following documents to the Procuring Entity by mail or courier, as appropriate:

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

2. Customs Clearance

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

18. Product Upgrades

- 18.1.** At any point during performance of the Contract, should technological advances be introduced by the Supplier for Information Technologies originally offered by the Supplier in its tender and still to be delivered, the Supplier shall be obligated to offer to the Procuring Entity the latest versions of the available Information Technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause 39 (Changes to the System).
- 18.2.** At any point during performance of the Contract, for Information Technologies still to be delivered, the Supplier will also pass on to the Procuring Entity any cost reductions and additional and/ or improved support and facilities that it offers to other clients of the Supplier in Kenya, pursuant to GCC Clause 39 (Changes to the System).
- 18.3.** During performance of the Contract, the Supplier shall offer to the Procuring Entity all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in Kenya, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the Supplier in the Recurrent Costs tables in its tender.
- 18.4.** **Unless otherwise specified in the SCC**, during the Warranty Period, the Supplier will provide at no additional cost to the Procuring Entity all new versions, releases, and updates for all Standard Software that are used in the System, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in Kenya, and no later than twelve (12) months after they are released in the country of origin of the Software.
- 18.5.** The Procuring Entity shall introduce all new versions, releases or updates of the Software within eighteen (18) months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the Supplier shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the Supplier stop supporting or maintaining a version or release of the Software less than twenty-four (24) months after the Procuring Entity receives a production-ready copy of a subsequent version, release, or update. The Procuring Entity shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the twenty-four-month-long stop date.

19. Implementation, Installation, and Other Services

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

20. Inspections and Tests

- 20.1.** The Procuring Entity or its representative shall have the right to inspect and/or test any components of the System, as specified in the Technical Requirements, to confirm their good working order and/ or conformity to the Contract at the point of delivery and/ or at the Project Site.
- 20.2.** The Procuring Entity or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Procuring Entity shall bear all costs and expenses incurred in connection with such attendance, including but not limited to all inspection agent fees, travel, and related expenses.
- 20.3.** Should the inspected or tested components fail to conform to the Contract, the Procuring Entity may reject the component (s), and the Supplier shall either replace the rejected component (s), or make alterations as necessary so that it meets the Contract requirements free of cost to the Procuring Entity.
- 20.4.** The Project Manager may require the Supplier to carry out any inspection and/or test not specified in the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such inspection and/ or test shall be added to the Contract Price. Further, if such inspection and/ or test impedes the progress of work on the System and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Achieving Operational Acceptance and the other obligations so affected.
- 20.5.** If any dispute shall arise between the parties in connection with or caused by an inspection and/ or with regard to any component to be incorporated in the System that cannot be settled amicably between the parties within a reasonable period of time, either party may invoke the process pursuant to GCC Clause 43 (Settlement of Disputes), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract Agreement.

21. Installation of the System

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

22. Commissioning and Operational Acceptance

22.1. Commissioning

1. Commissioning of the System (or Subsystem if specified pursuant to the SCC for GCC Clause 27.2.1) shall be commenced by the Supplier:
 - a) immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 26.2; or
 - b) as otherwise specified in the Technical Requirement or the Agreed Project Plan; or
 - c) immediately after Installation is deemed to have occurred, under GCC Clause 26.3.
2. The Procuring Entity shall supply the operating and technical personnel and all materials and information reasonably required to enable the Supplier to carry out its obligations with respect to Commissioning. Production use of the System or Subsystem(s) shall not commence prior to the start of formal Operational Acceptance Testing.
2. Operational Acceptance Tests
 - 2.1. The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Procuring Entity (in accordance with GCC Clause 10.9), but shall be conducted with the full cooperation of the Supplier during Commissioning of the System (or major components or Subsystem[s]), to ascertain whether the System (or major component or Subsystem[s]) conforms to the Technical Requirements and meets the standard of performance quoted in the Supplier's tender, including, but not restricted to, the functional and technical performance requirements. **Unless otherwise specified in the SCC**, the Operational Acceptance Tests during Commissioning will be conducted as specified in the Technical Requirements and/ or the Agreed Project Plan. At the Procuring Entity's discretion, Operational Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after Operational Acceptance of the System.
 - 2.2. If for reasons attributable to the Procuring Entity, the Operational Acceptance Test of the System (or Subsystem[s] or major components, pursuant to the SCC for GCC Clause 27.2.1) cannot be successfully completed within ninety (90) days from the date of Installation or any other period agreed upon in writing by the Procuring Entity and the Supplier, the Supplier shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects of the Technical Specifications, SCC and/ or the Agreed Project Plan, and GCC Clause 28.2 and 28.3 shall not apply.
3. Operational Acceptance
 - 3.1. Subject to GCC Clause 27.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when
 - a. the Operational Acceptance Tests, as specified in the Technical Requirements, and/or SCC and/or the Agreed Project Plan have been successfully completed; or
 - b. the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Procuring Entity within the period from the date of Installation or any other agreed-upon period as specified in GCC Clause 27.2.2 above; or
 - c. the Procuring Entity has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the Supplier shall notify the Procuring Entity and document such use.
 - 3.2. At any time after any of the events set out in GCC Clause 27.3.1 have occurred, the Supplier may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate.
 - 3.3. After consultation with the Procuring Entity, and within fourteen (14) days after receipt of the Supplier's notice, the Project Manager shall:
 - a. Issue an Operational Acceptance Certificate; or
 - b. Notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
 - c. Issue the Operational Acceptance Certificate, if the situation covered by GCC Clause 27.3.1 (b) arises.

- 3.4. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Project Manager has notified the Supplier of. Once such remedies have been made by the Supplier, the Supplier shall notify the Procuring Entity, and the Procuring Entity, with the full cooperation of the Supplier, shall use all reasonable endeavors to promptly carry out retesting of the System or Sub system. Upon the successful conclusion of the Operational Acceptance Tests, the Supplier shall notify the Procuring Entity of its request for Operational Acceptance Certification, in accordance with GCC Clause 27.3.3. The Procuring Entity shall then issue to the Supplier the Operational Acceptance Certification in accordance with GCC Clause 27.3.3 (a), or shall notify the Supplier of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Clause 27.3.4 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.
- 3.5. If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Clause 27.2, the neither:
- a. The Procuring Entity may consider terminating the Contract, pursuant to GCC Clause 41.2.2; or
 - b. If the failure to achieve Operational Acceptance within the specified time period is a result of the failure of the Procuring Entity to fulfill its obligations under the Contract, then the Supplier shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract, and GCC Clauses 30.3 and 30.4 shall not apply.
- 3.6. If within fourteen (14) days after receipt of the Supplier's notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Supplier in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the System or Subsystem shall be deemed to have been accepted as of the date of the Supplier's said notice.

4. Partial Acceptance

- 4.1. If so specified in the SCC for GCC Clause 27.2.1, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem (s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate (s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Clause 27.4.2.
- 4.2. The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 27.4.1 shall not relieve the Supplier of its obligation to obtain an Operational Acceptance Certificate for the System as an integrated whole (if so specified in the SCC for GCC Clauses 12.1 and 27.2.1) once all major components and Subsystems have been supplied, installed, tested, and commissioned.
- 4.3. In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an Operational Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The Supplier shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Procuring Entity or Supplier.

F. Guarantees and Liabilities

23. Operational Acceptance Time Guarantee

- 23.1. The Supplier guarantees that it shall complete the supply, Installation, Commissioning, and achieve Operational Acceptance of the System (or Subsystems, pursuant to the SCC for GCC Clause 27.2.1) within the time periods specified in the Implementation Schedule and/or the Agreed Project Plan pursuant to GCC Clause 8.2, or within such extended time to which the Supplier shall be entitled under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).
- 23.2. **Unless otherwise specified in the SCC**, if the Supplier fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the SCC for GCC Clause 27.2.1) within the time for achieving Operational Acceptance specified in the Implementation Schedule or the Agreed Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance), the Supplier shall pay to the

Procuring Entity liquidated damages at the rate of one half of one percent per week as a percentage of the Contract Price (exclusive of Recurrent Costs if any), or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount often (10) percent of the Contract Price (exclusive of Recurrent Costs if any). Once the Maximum is reached, the Procuring Entity may consider termination of the Contract, pursuant to GCC Clause 41.2.2.

- 23.3.** Unless otherwise specified in the SCC, liquidated damages payable under GCC Clause 28.2 shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule and/or Agreed Project Plan. This Clause 28.3 shall not limit, however, any other rights or remedies the Procuring Entity may have under the Contract for other delays.
- 23.4.** If liquidated damages are claimed by the Procuring Entity for the System (or Subsystem), the Supplier shall have no further liability whatsoever to the Procuring Entity in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the Supplier from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

24. Defect Liability

- 24.1.** The Supplier warrants that the System, including all Information Technologies, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship that prevent the System and/or any of its components from fulfilling the Technical Requirements or that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems. **Unless otherwise specified in the SCC**, there will be NO exceptions and/or limitations to this warranty with respect to Software (or categories of Software). Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.
- 24.2.** The Supplier also warrants that the Information Technologies, Materials, and other Goods supplied under the Contract are new, unused, and incorporate all recent improvements in design that materially affect the System's or Subsystem's ability to fulfill the Technical Requirements.
- 24.3.** **Unless otherwise specified in the SCC**, the Supplier warrants that : (i) all Goods components to be incorporated into the System form part of the Supplier's and/or Subcontractor's current product lines, and (ii) they have been previously released to the market.
- 24.4.** **Unless otherwise specified in the SCC**, the Warranty Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for thirty-six (36) months.
- 24.5.** If during the Warranty Period any defect as described in GCC Clause 29.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the Supplier, the Supplier shall promptly, in consultation and agreement with the Procuring Entity regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Supplier shall, at its discretion, determine) such defect as well as any damage to the System caused by such defect. Any defective Information Technologies or other Goods that have been replaced by the Supplier shall remain the property of the Supplier.
- 24.6.** The Supplier shall not be responsible for the repair, replacement, or making good of any defect, or of any damage to the System arising out of or resulting from any of the following causes:
- a) Improper operation or maintenance of the System by the Procuring Entity;
 - b) Normal wear and tear;
 - c) use of the System with items not supplied by the Supplier, unless otherwise identified in the Technical Requirements, or approved by the Supplier; or
 - d) modifications made to the System by the Procuring Entity, or a third party, not approved by the Supplier.
- 24.7.** The Supplier's obligations under this GCC Clause 29 shall not apply to:
- a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or

- b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Procuring Entity or any matters for which the Supplier has disclaimed responsibility, in accordance with GCC Clause 21.1.2.

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

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

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

24.10. **Unless otherwise specified in the SCC**, the response times and repair/replacement times for Warranty Defect Repair are specified in the Technical Requirements. Nevertheless, if the Supplier fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within two weeks the Procuring Entity may, following notice to the Supplier, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Procuring Entity in connection with such work shall be paid to the Procuring Entity by the Supplier or may be deducted by the Procuring Entity from any monies due the Supplier or claimed under the Performance Security.

24.11. If the System or Subsystem cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the System shall be extended by a period equal to the period during which the System or Subsystem could not be used by the Procuring Entity because of such defect and/or making good of such defect.

24.12. Items substituted for defective parts of the System during the Warranty Period shall be covered by the Defect Liability Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater. For reasons of information security, the Procuring Entity may choose to retain physical possession of any replaced defective information storage devices.

24.13. At the request of the Procuring Entity and without prejudice to any other rights and remedies that the Procuring Entity may have against the Supplier under the Contract, the Supplier will offer all possible assistance to the Procuring Entity to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Goods included in the System, including without limitation assignment or transfer in favor of the Procuring Entity of the benefit of any warranties given by such producers or licensors to the Supplier.

25. Functional Guarantees

25.1. The Supplier guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Procuring Entity's requirements set forth in the Technical Requirements and it conforms to all other aspects of the Contract. The Supplier acknowledges that GCC Clause 27 regarding Commissioning and Operational Acceptance govern show technical conformance of the System to the Contract requirements will be determined.

25.2. If, for reasons attributable to the Supplier, the System does not conform to the Technical Requirements or does not conform to all other aspects of the Contract, the Supplier shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Technical Requirements and meet all functional and performance standards. The Supplier shall notify the Procuring Entity upon completion of the necessary changes, modifications, and/or additions and shall request the Procuring Entity to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.

25.3. If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Procuring Entity may consider termination of the Contract, pursuant to GCC Clause 41.2.2, and forfeiture of the Supplier's Performance Security in accordance with GCC Clause 13.3 in compensation for the extra costs and delays likely to result from this failure.

26. Intellectual Property Rights Warranty

26.1. The Supplier here by represents and warrants that:

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

27. Intellectual Property Rights Indemnity

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

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

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

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

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

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

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

27.5. The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or

Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the Supplier in connection with this Contract by the Procuring Entity or any persons (other than the Supplier) contracted by the Procuring Entity, except to the extent that such losses, liabilities, and costs arise as a result of the Supplier's breach of GCC Clause 32.8.

27.6. Such indemnity shall not cover

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

27.7. Such indemnities shall also not apply:

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

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

28. Limitation of Liability

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

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

G. Risk Distribution

29. Transfer of Ownership

29.1. With the exception of Software and Materials, the ownership of the Information Technologies and other Goods shall be transferred to the Procuring Entity at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Contract Agreement.

29.2. Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 15 (Copyright) and any elaboration in the Technical Requirements.

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

30. Care of the System

30.1. The Procuring Entity shall be come responsible for the care and custody of the System or Subsystems upon their Delivery. The Procuring Entity shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause from the date of Delivery until the date of Operational Acceptance of the System or Subsystems, pursuant to GCC Clause 27 (Commissioning and Operational Acceptance), except such loss or damage arising from acts or omissions of the Supplier, its employees, or subcontractors.

30.2. If any loss or damage occurs to the System or any part of the System by reason of:

- a) (in so far as they relate to the country where the Project Site is located) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, in so far as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 37;
- b) Any use not in accordance with the Contract, by the Procuring Entity or any third party;
- c) Any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Procuring Entity, or any such matter for which the Supplier has disclaimed responsibility in accordance with GCC Clause 21.1.2, the Procuring Entity shall pay to the Supplier all sums payable in respect of the System or Subsystems that have achieved Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If the Procuring Entity requests the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Supplier shall make good the same at the cost of the Procuring Entity in accordance with GCC Clause 39. If the Procuring Entity does not request the Supplier in writing to make good any loss or damage to the System there by occasioned, the Procuring Entity shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the System there by lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, the Procuring Entity shall terminate the Contract pursuant to GCC Clause 41.1.

30.3. The Procuring Entity shall be liable for any loss of or damage to any Supplier's Equipment which the Procuring Entity has authorized to locate within the Procuring Entity's premises for use in fulfillment of Supplier's obligations under the Contract, except where such loss or damage arises from acts or omissions of the Supplier, its employees, or subcontractors.

31. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

31.1. The Supplier and each and every Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in Kenya.

31.2. Subject to GCC Clause 36.3, the Supplier shall indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Procuring Entity or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property (other than the System, whether accepted or not) arising in connection with the supply, installation, testing, and Commissioning of the System and by reason of the negligence of the Supplier or its Subcontractors, or their employees, officers or agents, except any injury, death, or property damage caused by the negligence of the Procuring Entity, its contractors, employees, officers, or agents.

31.3. If any proceedings are brought or any claim is made against the Procuring Entity that might subject the Supplier to liability under GCC Clause 36.2, the Procuring Entity shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Procuring Entity within the twenty-eight (28) day period, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

- 31.4. The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the Procuring Entity, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 37 (Insurances), provided that such fire, explosion, or other perils were not caused by any act or failure of the Supplier.
- 31.5. If any proceedings are brought or any claim is made against the Supplier that might subject the Procuring Entity to liability under GCC Clause 36.4, the Supplier shall promptly give the Procuring Entity notice of such proceedings or claims, and the Procuring Entity may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Procuring Entity fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Procuring Entity has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Procuring Entity's request, afford all available assistance to the Procuring Entity in conducting such proceedings or claim and shall be reimbursed by the Procuring Entity for all reasonable expenses incurred in so doing.
- 31.6. The party entitled to the benefit of an indemnity under this GCC Clause 36 shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

32. Insurances

- 32.1. The Supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the Procuring Entity, who should not unreasonably withhold such approval.
- a) **Cargo Insurance During Transport**
as applicable, 110 percent of the price of the Information Technologies and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site.
 - b) **Installation "All Risks" Insurance**
as applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under "all risks" insurance policies of this type by reputable insurers) occurring prior to Operational Acceptance of the System.
 - c) **Third-Party Liability Insurance**
On terms as **specified in the SCC**, covering bodily injury or death suffered by third parties (including the Procuring Entity's personnel) and loss of or damage to property (including the Procuring Entity's property and any Subsystems that have been accepted by the Procuring Entity) occurring in connection with the supply and installation of the Information System.
 - d) **Automobile Liability Insurance**
In accordance with the statutory requirements prevailing in Kenya, covering use of all vehicles used by the Supplier or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.
 - e) **Other Insurance (if any), as specified in the SCC.**
- 32.2. The Procuring Entity shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1, except for the Third-Party Liability, and the Supplier's Subcontractors shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1 except for Cargo Insurance During Transport. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 32.3. The Supplier shall deliver to the Procuring Entity certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.

- 32.4.** The Supplier shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Supplier.
- 32.5.** If the Supplier fails to take out and/or maintain in effect the insurance referred to in GCC Clause 37.1, the Procuring Entity may take out and maintain in effect any such insurance and may from time to time deduct from any amount due to the Supplier under the Contract any premium that the Procuring Entity shall have paid to the insurer or may otherwise recover such amount as a debt due from the Supplier.
- 32.6.** Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clause 37, and all monies payable by any insurers shall be paid to the Supplier. The Procuring Entity shall give to the Supplier all such reasonable assistance as may be required by the Supplier in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Procuring Entity's interest is involved, the Supplier shall not give any release or make any compromise with the insurer without the prior written consent of the Procuring Entity. With respect to insurance claims in which the Supplier's interest is involved, the Procuring Entity shall not give any release or make any compromise with the insurer without the prior written consent of the Supplier.

33. Force Majeure

- 33.1.** "Force Majeure" shall mean any event beyond the reasonable control of the Procuring Entity or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:
- a) war, hostilities, or war like operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
 - b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;
 - c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler, or any other act or failure to act of any local state or national government authority;
 - d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
 - e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
 - f) failure, by the Supplier, to obtain the necessary export permit (s) from the governments of the Country(s) of Origin of the Information Technologies or other Goods, or Supplier's Equipment provided that the Supplier has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of the System and all of its components for receipt of the necessary export permits.
- 33.2.** If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.
- 33.3.** The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Achieving Operational Acceptance shall be extended in accordance with GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).

- 33.4.** The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Clause 38.6.
- 33.5.** No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:
- a) Constitute a default or breach of the Contract;
 - b) (subject to GCC Clauses 35.2, 38.3, and 38.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance, if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- 33.6.** If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.
- 33.7.** In the event of termination pursuant to GCC Clause 38.6, the rights and obligations of the Procuring Entity and the Supplier shall be as specified in GCC Clauses 41.1.2 and 41.1.3.
- 33.8.** Notwithstanding GCC Clause 38.5, Force Majeure shall not apply to any obligation of the Procuring Entity to make payments to the Supplier under this Contract.

H. Change in Contract Elements

34. Changes to the System

34.1. Introducing a Change

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

2. Changes Originating from Procuring Entity

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

The Supplier's failure to so object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested Changes or Change Orders, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Supplier represents.
- 2.6. Upon receipt of the Change Proposal, the Procuring Entity and the Supplier shall mutually agree upon all matters contained in the Change Proposal. Within fourteen (14) days after such agreement, the Procuring Entity shall, if it intends to proceed with the Change, issue the Supplier a Change Order. If the Procuring Entity is unable to reach a decision within fourteen (14) days, it shall notify the Supplier with details of when the Supplier can expect a decision. If the Procuring Entity decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Supplier accordingly. Under such circumstances, the Supplier shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Supplier in its Change Estimate Proposal submitted in accordance with GCC Clause 39.2.2.
- 2.7. If the Procuring Entity and the Supplier cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Achieving Operational Acceptance, or any other matters identified in the Change Proposal, the Change will not be implemented. However, this provision does not limit the rights of either party under GCC Clause 6 (Settlement of Disputes).

3. Changes Originating from Supplier

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

4. Value engineering. The Supplier may prepare, at its own cost, a value engineering proposal at any time during the performance of the Contract.
 - 1.1. The value engineering proposal shall, at a minimum, include the following;
 - (a) The proposed change (s), and a description of the difference to the existing Contract requirements;
 - (b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
 - (c) a description of any effect(s) of the change on performance/ functionality.
 - 1.2. The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:
 - a) accelerates the delivery period; or
 - b) reduces the Contract Price or the life cycle costs to the Procuring Entity; or
 - c) improves the quality, efficiency, safety or sustainability of the systems; or
 - d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the systems.
 - 1.3. If the value engineering proposal is approved by the Procuring Entity and results in:
 - a) a reduction of the Contract Price; the amount to be paid to the Supplier shall be the percentage specified in the SCC of the reduction in the Contract Price; or
 - b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in
 - (a) to (d) above, the amount to be paid to the Supplier shall be the full increase in the Contract Price.

35. Extension of Time for Achieving Operational Acceptance

- 35.1. The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:
 - a) Any Change in the System as provided in GCC Clause 39 (Change in the Information System);
 - b) Any occurrence of Force Majeure as provided in GCC Clause 38 (Force Majeure);
 - c) Default of the Procuring Entity; or
 - d) Any other matter specifically mentioned in the Contract; by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Supplier.
- 35.2. Except where otherwise specifically provided in the Contract, the Supplier shall submit to the Project Manager a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Procuring Entity and the Supplier shall agree upon the period of such extension. In the event that the Supplier does not accept the Procuring Entity's estimate of a fair and reasonable time extension, the Supplier shall be entitled to refer the matter to the provisions for the Settlement of Disputes pursuant to GCC Clause 43.
- 35.3. The Supplier shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

36. Termination

36.1. Termination for Procuring Entity's Convenience

1. The Procuring Entity may at any time terminate the Contract for any reason by giving the Supplier a notice of termination that refers to this GCC Clause 41.1.
- 41.1.2 Upon receipt of the notice of termination under GCC Clause 41.1.1, the Supplier shall either as soon as reasonably practical or upon the date specified in the notice of termination
- a) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
 - b) terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to GCC Clause (d) (ii) below;
 - c) Remove all Supplier's Equipment from the site, repatriate the Supplier's and its Sub contractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
 - d) In addition, the Supplier, subject to the payment specified in GCC Clause 41.1.3, shall
 - i) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination;
 - ii) to the extent legally possible, assign to the Procuring Entity all right, title, and benefit of the Supplier to the System, or Subsystem, as at the date of termination, and, as may be required by the Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors;
 - iii) deliver to the Procuring Entity all nonproprietary drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.
- 41.1.3 In the event of termination of the Contract under GCC Clause 41.1.1, the Procuring Entity shall pay to the Supplier the following amounts:
- a) The Contract Price, properly attributable to the parts of the System executed by the Supplier as of the date of termination;
 - b) The costs reasonably incurred by the Supplier in the removal of the Supplier's Equipment from the site and in the repatriation of the Supplier's and its Subcontractors 'personnel;
 - c) any amount to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
 - d) costs incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 41.1.2(a); and
 - e) the cost of satisfying all other obligations, commitments, and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GCC Clauses 41.1.3 (a) through (d) above.
2. Termination for Supplier's Default
- 41.2.1 The Procuring Entity, without prejudice to any other rights or remedies it may possess, may terminate the Contract forth within the following circumstances by giving a notice of termination and its reasons there for to the Supplier, referring to this GCC Clause 41.2:
- a) If the Supplier becomes bankrupt or in solvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its under taking or assets, or if the Supplier takes or suffers any other analogous action in consequence of debt;
 - b) If the Supplier assigns or transfers the Contractor any right or interest, there in in violation of the provision of GCC Clause 42 (Assignment); or
 - c) If the Supplier, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a. of the Appendix to the GCC, in competing for or in executing the Contract, including but

Not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract.

41.2.2 If the Supplier:

- d) Has abandoned or repudiated the Contract;
 - e) Has without valid reason failed to commence work on the System promptly;
 - f) Persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
 - g) Refuses or is unable to provide sufficient Materials, Services, or labor to execute and complete the System in the manner specified in the Agreed Project Plan furnished under GCC Clause 19 at rates of progress that give reasonable assurance to the Procuring Entity that the Supplier can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended; then the Procuring Entity may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Procuring Entity may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GCC Clause 41.2.
3. Upon receipt of the notice of termination under GCC Clauses 41.2.1 or 41.2.2, the Supplier shall, either immediately or upon such date as is specified in the notice of termination:
- h) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that part of the System already executed or any work required to leave the site in a clean and safe condition;
 - i) terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to GCC Clause (d) below;
 - j) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination;
 - k) to the extent legally possible, assign to the Procuring Entity all right, title and benefit of the Supplier to the System or Subsystems as at the date of termination, and, as may be required by the Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors;
 - l) deliver to the Procuring Entity all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the System.
4. The Procuring Entity may enter upon the site, expel the Supplier, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Procuring Entity thinks appropriate, the Procuring Entity shall give notice to the Supplier that such Supplier's Equipment will be returned to the Supplier at or near the site and shall return such Supplier's Equipment to the Supplier in accordance with such notice. The Supplier shall thereafter without delay and at its cost remove or arrange removal of the same from the site.
5. Subject to GCC Clause 41.2.6, the Supplier shall be entitled to be paid the Contract Price attributable to the portion of the System executed as at the date of termination and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to GCC Clause 41.2.3 (a). Any sums due the Procuring Entity from the Supplier accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier under this Contract.
6. If the Procuring Entity completes the System, the cost of completing the System by the Procuring Entity shall be determined. If the sum that the Supplier is entitled to be paid, pursuant to GCC Clause 41.2.5, plus the reasonable costs incurred by the Procuring Entity in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess. If such excess is greater than the sums due the Supplier under GCC Clause 41.2.5, the Supplier shall pay the balance to the Procuring Entity, and if such excess is less than the sums due the Supplier under GCC Clause 41.2.5, the Procuring Entity shall pay the balance to the Supplier. The Procuring Entity and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

2. Termination by Supplier

1. If:

- a) the Procuring Entity has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause **pursuant to the SCC**, or commits a substantial breach of the Contract, the Supplier may give a notice to the Procuring Entity that requires payment of such sum, with interest on this sum as stipulated in GCC Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Procuring Entity to remedy the same, as the case may be. If the Procuring Entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Supplier's notice; or
- b) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Procuring Entity, including but not limited to the Procuring Entity's failure to provide possession of or access to the site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the System; then the Supplier may give a notice to the Procuring Entity of such events, and if the Procuring Entity has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Supplier is still unable to carry out any of its obligations under the Contract for any reason attributable to the Procuring Entity within twenty-eight (28) days of the said notice, the Supplier may by a further notice to the Procuring Entity referring to this GCC Clause 41.3.1, forth with terminate the Contract.

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

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

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

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

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

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

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

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

37. Assignment

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

I. Settlement of Disputes

38. Settlement of Disputes

38.1. Adjudication

1. If any dispute of any kind what so ever shall arise between the Procuring Entity and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the System (whether during the progress of implementation or after its achieving Operational Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute **by mutual consultation**. If the parties fail to resolve such a dispute by mutual consultation within fourteen (14) days after one party has notified the other in writing of the dispute, then, if the Contract Agreement in Appendix2 includes and names an Adjudicator, the dispute shall, within another fourteen (14) days, be referred in writing by either party to the Adjudicator, with a copy to the other party. If there is no Adjudicator specified in the Contract Agreement, the mutual consultation period stated above shall last twenty-eight (28) days (instead of fourteen), upon expiry of which either party may move to the notification of arbitration pursuant to GCC Clause43.2.1.
2. The Adjudicator shall give his or her decision in writing to both parties within twenty-eight (28) days of the dispute being referred to the Adjudicator. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Procuring Entity or the Supplier within fifty-six (56) days of such reference, the decision shall become final and binding upon the Procuring Entity and the Supplier. Any decision that has become final and binding shall be implemented by the parties forth with.
3. The Adjudicator shall be paid an hourly fee at the rate specified in the Contract Agreement plus reasonable expenditures incurred in the execution of duties as Adjudicator, and these costs shall be divided equally between the Procuring Entity and the Supplier.
4. Should the Adjudicator resign or die, or should the Procuring Entity and the Supplier agree that the Adjudicator is not fulfilling his or her functions in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Procuring Entity and the Supplier. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be appointed at the request of either party by the Appointing Authority **specified in the SCC**, or, if no Appointing Authority is **specified in SCC**, the Contract shall, from this point onward and until the parties may otherwise agree on an Adjudicator or an Appointing Authority, be implemented as if there is no Adjudicator.

43.2 Arbitration

- 43.2.1 If
 - a) the Procuring Entity or the Supplier is dissatisfied with the Adjudicator's decision and acts before this decision has become final and binding pursuant to GCC Clause 43.1.2, or
 - b) the Adjudicator fails to give a decision within the allotted time from referral of the dispute pursuant to GCC Clause 43.1.2, and the Procuring Entity or the Supplier acts within the following fourteen (14) days, or
 - c) in the absence of an Adjudicator from the Contract Agreement, the mutual consultation pursuant to GCC Clause 43.1.1 expires without resolution of the dispute and the Procuring Entity or the Supplier acts within the following fourteen (14) days, then either the Procuring Entity or the Supplier may act to give notice to the other party, with a copy for information to the Adjudicator incase an Adjudicator had

been involved, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

2. Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Clause 43.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after Installation of the Information System.
3. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC.**
2. Notwithstanding any reference to the Adjudicator or arbitration in this clause,
 - a) The parties shall continue to perform their respective obligations under the Contract unless they otherwise agree;
 - b) The Procuring Entity shall pay the Supplier any monies due the Supplier.

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract

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

A. Contract and Interpretation

1. Definitions (GCC Clause 1)

GCC 1.1 (b) (i)	The Procuring Entity is: <i>County Assembly of Machakos</i>
GCC 1.1 (e) (ix)	<i>There are no Special Conditions associated with GCC 1.1 (e) (x).</i>

2. Notices (GCC Clause 4)

GCC 4.3	<p>Address of the Project Manager: N/A</p> <p>Fallback address of the Procuring Entity: Attention: <i>Clerk of the County Assembly</i> Institution: <i>County assembly of Machakos</i> Street Address: <i>Along Mwatu wa Ngoma road</i> Town: <i>Machakos</i> Postal Address: <i>1168</i> Postal Code: 90100 Country: Kenya Electronic mail address: assemblymks@gmail.com</p> <p>For Electronic Data Interchange (EDI) the Procuring Entity and Supplier will use the following standards, protocols, addresses, and procedures: <i>N/A</i></p>
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B. Subject Matter of Contract

3. Scope of the System (GCC Clause 7)

4. Time for Commencement and Operational Acceptance (GCC Clause 8)

GCC 8.1	The Supplier shall commence delivery: <i>immediately upon signing the contract.</i>
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C. PAYMENT

5. Contract Price (GCC Clause 11)

GCC 11.2	Adjustments to the Contract Price shall be as follows: <i>not applicable</i>
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7. Terms of Payment (GCC Clause 12)

GCC 12.1	Full payment shall be made within 60 days upon successful, supply and delivery of the equipment. There shall be NO advance payment.
GCC 12.4	The Supplier will invoice the Procuring Entity in the currency used In Kenya Shillings

8. Securities (GCC Clause 13)

GCC 13.3.1	The Performance Security shall be denominated in Kenya Shillings for an amount equal to 10% of the Contract Price, excluding any Recurrent Costs. N/A
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D. Intellectual Property

9. Copyright (GCC Clause 15)

GCC 15.3	<i>There are no special conditions applicable</i>
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10. Confidential Information (GCC Clause 17)

GCC 17.1	<i>There are no Special Conditions of Contract applicable to GCC Clause 17.1</i>
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11. Representatives (GCC Clause 18)

GCC 18.1	<i>There are no Special Conditions of Contract applicable to GCC Clause 18.1</i>
GCC 18.2.2	<i>There are no Special Conditions of Contract applicable to GCC Clause 18.2.2</i>

13. Design and Engineering (GCC Clause 21)

GCC 21.3.2	<i>There are no Special Conditions of Contract applicable to GCC Clause 21.3.2.</i>
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14. Product Upgrades (GCC Clause 23)

GCC 23.4	<i>There are no Special Conditions of Contract applicable to GCC Clause 23.4.</i>
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15. Inspections and Tests (GCC Clause 25)

GCC 25	<i>There are no Special Conditions of Contract applicable to GCC Clause 25.</i>
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16. Commissioning and Operational Acceptance (GCC Clause 27)

GCC 27.2.1	<i>There are no Special Conditions of Contract applicable to GCC Clause 27.2.1.</i>

F. Guarantees and Liabilities

17. Operational Acceptance Time Guarantee (GCC Clause 28)

GCC 28.2	<i>There are no Special Conditions of Contract applicable to GCC Clause 28.2.</i>
GCC 28.3	<i>There are no Special Conditions of Contract applicable to GCC Clause 28.3.</i>

18. Defect Liability (GCC Clause 29)

GCC 29.1	<i>There are no Special Conditions of Contract applicable to GCC Clause 29.1.</i>
GCC 29.4	<i>There are no Special Conditions of Contract applicable to GCC Clause 29.4.</i>
GCC 29.10	<i>There are no Special Conditions of Contract applicable to GCC Clause 29.10</i>

19. Functional Guarantees (GCC Clause 30)

GCC 30	<i>There are no Special Conditions of Contract applicable to GCC Clause 30.</i>
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H. Change in Contract Elements

20. Changes to the System (GCC Clause 39)

GCC 39.4.3	<i>There are no Special Conditions of Contract applicable to GCC Clause 39.</i>
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I. Settlement of Disputes

21. Settlement of Disputes (GCC Clause 43)

GCC 43.1.4	The Appointing Authority for the Adjudicator is: <i>the Office of the County Attorney or the office of the Attorney General</i>
GCC 43.2.3	Any dispute between the Procuring Entity and a Supplier arising in connection with the present Contract shall be referred to arbitration in accordance with the laws of Kenya.

SECTION VIII - CONTRACT FORMS

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 Tenderer Information Form]

1) For the attention of Tenderer's Authorized Representative Name [insert Authorized Representative's name]

Address [insert Authorized Representative's Address]

Telephone/Fax numbers [insert Authorized Representative's telephone/fax numbers]

Email Address [insert Authorized Representative's email address]

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

DATE OF TRANSMISSION: This Notification is sent by: [email/fax] on [date] (local time)

Notification of Intention to Award

[Procuring Entity] [insert the name of the Procuring Entity]

Project [insert name of project]

Contract title [insert the name of the contract]

Country [insert country where ITT is issued]

ITT No [insert ITT reference number from Procurement Plan]

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

- a) Request a debriefing in relation to the evaluation of your Tender, and/ or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

i) The successful Tenderer

Name:	[insert name of successful Tenderer]
Address:	[insert address of the successful Tenderer]
Contract price:	[insert contract price of the successful Tenderer]
Total combined score:	[insert the total combined score of the successful Tenderer]

2) *Reason/s why your Tender was unsuccessful [Delete if the combined score already reveals the reason]*

[INSTRUCTIONS; State the reason/s why this Tenderer's Tender was unsuccessful. Do NOT include: (a) a point by point comparison with another Tenderer's Tender or (b) information that is marked confidential by the Tenderer in its Tender.]

3) *How to request a debriefing*

DEADLINE: The deadline to request a debriefing expires at midnight on [insert date] (local time).

You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

Attention: [insert full name of person, if applicable] **Title/position:** _____ [insert title/position]

Agency: [insert name of Procuring Entity] **Email address:** _____ [insert email address] **Fax number:** _____ [insert fax number] *delete if not used*

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

4) *How to make a complaint*

DEADLINE: The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, [insert date] (local time).

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

Attention: [insert full name of person, if applicable] **Title/position:** _____ [insert title/position]

Agency: [insert name of Procuring Entity] **Email address:** _____ [insert email address]

At this point in the procurement process, 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. Further information:

For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website info@ppra.go.ke or complaints@ppra.go.ke.

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this procurement, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the deadline stated above.
4. You must include, in your complaint, all of the information required by the Procurement Regulations (as described in Annex III).

5) Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on [insert date] (local time).

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens we will notify you of the extension.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Procuring Entity:

Signature: _____ **Name:**
Title/position: _____ **Telephone:**
_____ **Email:**

2. REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

..... **APPLICANT (Review Board)**

AND

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

Request for review of the decision of the..... (Name of the Procuring Entity ofdated the...day of20.....in the matter of Tender No.....of20..... 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/orders that:

- 1.
- 2.

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

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board onday of20.....

SIGNED

Board Secretary

3. Notification of Award-Form of Acceptance

_____) _____

To: _____

This is to notify you that your Tender dated _____ for execution of the _____ for the Contract Price in the aggregate of _____, as corrected and modified in accordance with the Instructions to Tenderers is here by accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section X, - Contract Forms, of the Tendering Document.

Authorized Signature: _____ Name and
Title of Signatory: _____ Name of
Agency: _____

Attachment: Contract Agreement

4. Contract Agreement

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

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

NOW IT IS HERE BY AGREED as follows:

Article 1. Contract Documents

2. Contract Documents (Reference GCC Clause 1.1(a) (ii))

The following documents shall constitute the Contract between the Procuring Entity and the Supplier, and each shall be read and construed as an integral part of the Contract:

- a) This Contract Agreement and the Appendices attached to the Contract Agreement
- b) Special Conditions of Contract
- c) General Conditions of Contract
- d) Technical Requirements (including Implementation Schedule)
- e) The Supplier's tender and original Price Schedules
- f) [Add here: any other documents]

1.2 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 7 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.

1.3 Definitions (Reference GCC Clause 1)

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

Article 2.

Contract Price and Terms of Payment

- ##### 2.1 Contract Price (Reference GCC Clause 1.1(a)(viii) and GCC Clause 11)
- The Procuring Entity here by agrees to pay to the Supplier the Contract Price in consideration of the performance by the Supplier of its obligations under the Contract. The Contract Price shall be the aggregate of: [insert: amount of foreign currency A in words], [insert: amount in figures], plus [insert: amount of foreign currency B in words], [insert: amount in figures], plus [insert: amount of foreign currency C in words], [insert: amount in figures], [insert: amount of local currency in words], [insert: amount in figures], as specified in the Grand Summary Price Schedule.

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

Article 3.

Effective Date for Determining Time for Operational Acceptance

- ##### 1. Effective Date (Reference GCC Clause 1.1(e) (ix))

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

- a) This Contract Agreement has been duly executed for and on behalf of the Procuring Entity and the Supplier;
- b) The Supplier has submitted to the Procuring Entity the performance security and the advance payment security, in accordance with GCC Clause 13.2 and GCC Clause 13.3;

- c) The Procuring Entity has paid the Supplier the advance payment, in accordance with GCC Clause 12; Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.
- 2. If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract Agreement because of reasons not attributable to the Supplier, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Achieving Operational Acceptance and/or other relevant conditions of the Contract.

Article 4.

Appendixes

- 1. The Appendixes listed below shall be deemed to form an integral part of this Contract Agreement.
- 2. Reference in the Contract to any Appendix shall mean the Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly.

APPENDIXES

Appendix 1. Supplier's Representative

Appendix 2. Adjudicator [*If there is no Adjudicator, state "not applicable"*]

Appendix 3. List of Approved Subcontractors

Appendix 4. Categories of Software

Appendix 5. Custom Materials

Appendix 6. Revised Price Schedules (if any)

Appendix 7. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

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

i) For and on behalf of the Procuring Entity

Signed:

in the capacity of [*insert: title or other appropriate designation*]

in the presence of _____

ii) For and on behalf of the Supplier

Signed:

in the capacity of [*insert: title or other appropriate designation*]

in the presence of _____

a) Appendix 7. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

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

Installation and Acceptance Certificates (*insert format*)

Installation Certificate

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

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

Contract: *[insert: name and number of Contract]*

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

Dear Sir or Madam:

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

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

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

For and on behalf of the Procuring Entity

Signed:

Date:

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

1. Operational Acceptance Certificate

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

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

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

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

Dear Sir or Madam:

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

- 1. Description of the System (or Subsystem or major component):[insert: description]
- 2. Date of Operational Acceptance:.....[insert: date]

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

For and on behalf of the Procuring Entity

Signed:

Date:

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