



WATER SERVICES REGULATORY BOARD

TENDER NAME:

LEASE OF OFFICE SPACE FOR WATER SERVICES REGULATORY BOARD  
(WASREB)

TENDER NO: WASREB/TND/001/2025-2026

DATE OF ADVERT: 28/4/2026

SUBMISSION DEADLINE: 11<sup>TH</sup> MAY, 2026 AT 11.00AM

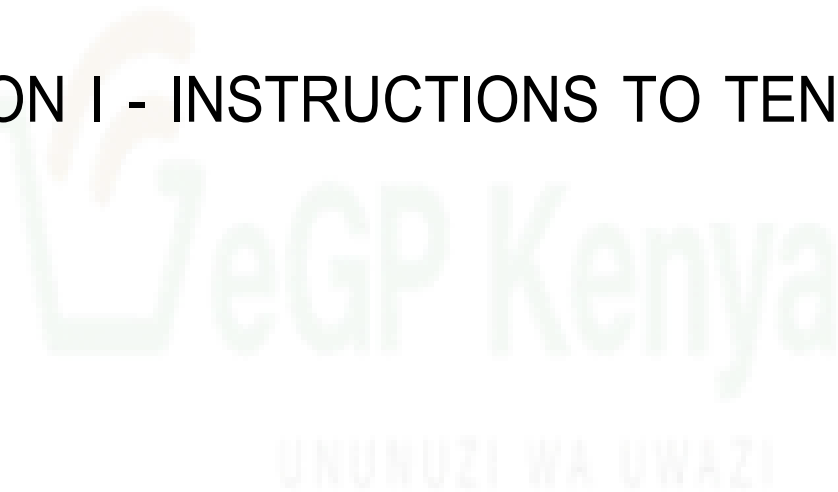
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# SECTION I - INSTRUCTIONS TO TENDERERS



## Instruction To Tenderers (ITT)

Detail

### SECTION I - INSTRUCTIONS TO TENDERERS

#### A. GENERAL PROVISIONS

##### 1. SCOPE OF TENDER AND DEFINITIONS

1.1 THE PROCURING ENTITY AS DEFINED IN THE APPENDIX TO CONDITIONS OF CONTRACT INVITES TENDERS FOR LEASING OF THE REAL ESTATE FACILITIES, PLANT/EQUIPMENT OR VEHICLES AND, IF APPLICABLE, ANY RELATED SERVICES INCIDENTAL THERETO, AS SPECIFIED IN SECTION V, SCHEDULE OF REQUIREMENTS. THE REFERENCE NUMBER AND DESCRIPTION OF THE TENDER AND NUMBER IDENTIFICATION OF LOTS (CONTRACTS) OF THIS TENDER DOCUMENT ARE SPECIFIED IN THE TDS

##### 1.2 THROUGHOUT THIS TENDER DOCUMENT:

- A) THE TERM "IN WRITING" MEANS COMMUNICATED IN WRITTEN FORM (E.G. BY MAIL, E-MAIL, FAX, INCLUDING IF SPECIFIED IN THE TDS, DISTRIBUTED OR RECEIVED THROUGH THE ELECTRONIC-PROCUREMENT SYSTEM USED BY THE PROCURING ENTITY) WITH PROOF OF RECEIPT;
- B) IF THE CONTEXT SO REQUIRES, "SINGULAR" MEANS "PLURAL" AND VICE VERSA;
- 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 OFFICIAL PUBLIC HOLIDAYS.

##### 1.3 USE OF ELECTRONIC PROCUREMENT SYSTEM

## 2. FRAUD AND CORRUPTION

2.1 THE PROCURING ENTITY REQUIRES COMPLIANCE WITH THE PROVISIONS OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015, 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.

2.2 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.

2.3 UNFAIR COMPETITIVE ADVANTAGE - FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS 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.

2.4 TENDERERS SHALL PERMIT AND SHALL CAUSE THEIR AGENTS (WHERE DECLARED OR NOT), SUBCONTRACTORS, SUB-CONSULTANTS, SERVICE PROVIDERS, SUPPLIERS, AND THEIR PERSONNEL, TO PERMIT THE PROCURING ENTITY TO INSPECT ALL ACCOUNTS, RECORDS AND OTHER DOCUMENTS RELATING TO ANY INITIAL SELECTION PROCESS, PREQUALIFICATION PROCESS, TENDER SUBMISSION, PROPOSAL SUBMISSION, AND CONTRACT PERFORMANCE (IN THE CASE OF AWARD), AND TO HAVE THEM AUDITED BY AUDITORS APPOINTED BY THE PROCURING ENTITY

## 3. ELIGIBLE TENDERERS

3.1 A TENDERER MAY BE A FIRM THAT IS A PRIVATE ENTITY, A STATE-OWNED ENTERPRISE 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 LETTER 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. A FIRM THAT IS A TENDERER (EITHER INDIVIDUALLY OR AS A JV MEMBER) MAY PARTICIPATE IN MORE THAN ONE TENDER, OFFERING DIFFERENT ITEMS THAT MEET THE REQUIREMENTS OF THE LEASE. A FIRM THAT IS NOT A TENDERER OR A JV MEMBER, MAY PARTICIPATE AS A SUBCONTRACTOR IN MORE THAN ONE TENDER. MEMBERS OF A JOINT VENTURE MAY NOT ALSO MAKE AN INDIVIDUAL TENDER, BE A SUBCONTRACTOR IN A SEPARATE TENDER OR BE PART OF ANOTHER JOINT VENTURE FOR THE PURPOSES OF THE SAME TENDER. THE MAXIMUM NUMBER OF JV MEMBERS TO BE ALLOWED SHALL BE SPECIFIED IN THE TDS.

3.2 PUBLIC OFFICERS OF THE PROCURING ENTITY, THEIR SPOUSES, CHILD, PARENT, BROTHERS OR SISTERS. CHILD, PARENT, BROTHER OR SISTER OF A SPOUSE, THEIR BUSINESS ASSOCIATES OR AGENTS AND FIRMS/ORGANIZATIONS IN WHICH THEY HAVE A SUBSTANTIAL OR CONTROLLING INTEREST SHALL NOT BE ELIGIBLE TO TENDER OR BE AWARDED A CONTRACT. PUBLIC OFFICERS ARE ALSO NOT ALLOWED TO PARTICIPATE IN ANY PROCUREMENT PROCEEDINGS.

3.3 A TENDERER SHALL NOT HAVE A CONFLICT OF INTEREST. ANY TENDERER FOUND TO HAVE A CONFLICT OF INTEREST SHALL BE DISQUALIFIED. A TENDERER MAY BE CONSIDERED TO HAVE A CONFLICT OF INTEREST FOR THE PURPOSE OF THIS TENDERING PROCESS, IF THE TENDERER:

A DIRECTLY OR INDIRECTLY CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER TENDERER; OR

B RECEIVES OR HAS RECEIVED ANY DIRECT OR INDIRECT SUBSIDY FROM ANOTHER TENDERER; OR

C HAS THE SAME LEGAL REPRESENTATIVE AS ANOTHER TENDERER; OR

D HAS A RELATIONSHIP WITH ANOTHER TENDERER, DIRECTLY OR THROUGH COMMON THIRD PARTIES, THAT PUTS IT IN A POSITION TO INFLUENCE THE TENDER OF ANOTHER TENDERER, OR INFLUENCE THE DECISIONS OF THE PROCURING ENTITY REGARDING THIS TENDERING PROCESS; OR

E OR ANY OF ITS AFFILIATES PARTICIPATED AS A CONSULTANT IN THE PREPARATION OF THE DESIGN OR TECHNICAL SPECIFICATIONS OF THE WORKS 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 LEASE ITEMS, WORKS, OR NON-CONSULTING SERVICES RESULTING FROM OR DIRECTLY RELATED TO CONSULTING SERVICES FOR THE PREPARATION OR IMPLEMENTATION OF THE PROJECT SPECIFIED IN THE TDS ITT 2.1 THAT IT PROVIDED OR WERE PROVIDED BY ANY AFFILIATE THAT DIRECTLY OR INDIRECTLY CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THAT FIRM; OR

H HAS A CLOSE BUSINESS OR FAMILY RELATIONSHIP WITH A PROFESSIONAL STAFF OF THE PROCURING ENTITY WHO:

(I) ARE DIRECTLY OR INDIRECTLY INVOLVED IN THE PREPARATION OF THE TENDERING DOCUMENT OR SPECIFICATIONS OF THE CONTRACT, AND/OR THE TENDER EVALUATION PROCESS OF SUCH CONTRACT; OR

(II) WOULD BE INVOLVED IN THE IMPLEMENTATION OR SUPERVISION OF SUCH CONTRACT UNLESS THE CONFLICT STEMMING FROM SUCH RELATIONSHIP P HAS BEEN RESOLVED IN A MANNER ACCEPTABLE TO THE PROCURING ENTITY THROUGHOUT THE TENDERING PROCESS AND EXECUTION OF THE CONTRACT.

3.4 A TENDERER SHALL NOT BE INVOLVED IN CORRUPT, COERCIVE, OBSTRUCTIVE, COLLUSIVE, OR FRAUDULENT PRACTICE. A TENDERER THAT IS PROVEN TO HAVE BEEN INVOLVED IN ANY OF THESE PRACTICES SHALL BE AUTOMATICALLY DISQUALIFIED AND WOULD NOT BE AWARDED A CONTRACT.

3.5 A FIRM THAT IS A TENDERER (EITHER INDIVIDUALLY OR AS A JV MEMBER) MAY PARTICIPATE IN MORE THAN ONE TENDER, OFFERING DIFFERENT ITEMS THAT MEET THE REQUIREMENTS OF THE LEASE. A FIRM THAT IS NOT A TENDERER OR A JV MEMBER, MAY PARTICIPATE AS A SUBCONTRACT OR IN MORE THAN ONE TENDER.

3.6 A TENDERER MAY HAVE THE NATIONALITY OF ANY COUNTRY, SUBJECT TO THE RESTRICTIONS PURSUANT TO ITT 4.9. A TENDERER SHALL BE DEEMED TO HAVE THE NATIONALITY OF A COUNTRY IF THE TENDERER IS CONSTITUTED, INCORPORATED OR REGISTERED IN AND OPERATES IN CONFORMITY WITH THE PROVISIONS OF THE LAWS OF THAT COUNTRY, AS EVIDENCED BY ITS ARTICLES OF INCORPORATION (OR EQUIVALENT DOCUMENTS OF CONSTITUTION OR ASSOCIATION) AND ITS REGISTRATION DOCUMENTS, AS THE CASE MAY BE. THIS CRITERION SHALL ALSO APPLY TO THE DETERMINATION OF THE NATIONALITY OF PROPOSED SUBCONTRACTORS OR SUB-CONSULTANTS FOR ANY PART OF THE CONTRACT INCLUDING RELATED SERVICES.

3.7 A TENDERER THAT HAS BEEN DEBARRED BY THE PPRA FROM PARTICIPATING IN PUBLIC PROCUREMENT SHALL BE INELIGIBLE TO BE PREQUALIFIED FOR A TENDER OR BE AWARDED A CONTRACT. THE LIST OF DEBARRED FIRMS AND INDIVIDUALS IS AVAILABLE FROM THE WEBSITE OF [PPRA WWW.PPRA.GO.KE](http://PPRA.WWW.PPRA.GO.KE).

3.8 TENDERERS THAT ARE STATE-OWNED ENTERPRISES OR INSTITUTIONS MAY BE ELIGIBLE TO COMPETE AND BE AWARDED A CONTRACT(S) ONLY IF THEY ARE:

- (I) A LEGAL PUBLIC ENTITY OF THE STATE GOVERNMENT AND/OR PUBLIC ADMINISTRATION;
- (II) FINANCIALLY AUTONOMOUS AND NOT RECEIVING ANY SIGNIFICANT SUBSIDIES OR BUDGET SUPPORT FROM ANY PUBLIC ENTITY OR GOVERNMENT, AND
- (III) OPERATING UNDER COMMERCIAL LAW AND VESTED WITH LEGAL RIGHTS AND LIABILITIES SIMILAR TO ANY COMMERCIAL ENTERPRISE TO ENABLE IT COMPETE WITH FIRMS IN THE PRIVATE SECTOR ON AN EQUAL BASIS.

3.8 TENDERERS THAT ARE STATE-OWNED ENTERPRISES OR INSTITUTIONS MAY BE ELIGIBLE TO COMPETE AND BE AWARDED A CONTRACT(S) ONLY IF THEY ARE:

- (I) A LEGAL PUBLIC ENTITY OF THE STATE GOVERNMENT AND/OR PUBLIC ADMINISTRATION;
- (II) (II) FINANCIALLY AUTONOMOUS AND NOT RECEIVING ANY SIGNIFICANT SUBSIDIES OR BUDGET SUPPORT FROM ANY PUBLIC ENTITY OR GOVERNMENT, AND
- (III) (III) OPERATING UNDER COMMERCIAL LAW AND VESTED WITH LEGAL RIGHTS AND LIABILITIES SIMILAR TO ANY COMMERCIAL ENTERPRISE TO ENABLE IT COMPETE WITH FIRMS IN THE PRIVATE SECTOR ON AN EQUAL BASIS

3.9 FIRMS AND INDIVIDUALS MAY BE INELIGIBLE IF THEIR COUNTRIES OF ORIGIN (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 LEASE ITEMS OR CONTRACTING FOR SUPPLY OF LEASE ITEMS OR SERVICES FROM THAT COUNTRY, OR ANY PAYMENTS TO ANY COUNTRY, PERSON, OR ENTITY IN THAT COUNTRY. A TENDERER SHALL PROVIDE SUCH DOCUMENTARY EVIDENCE OF ELIGIBILITY SATISFACTORY TO THE PROCURING ENTITY, AS THE PROCURING ENTITY SHALL REASONABLY REQUEST.

3.10 FOR PURPOSES OF GRANTING A MARGIN OF PREFERENCE, A TENDER IS CONSIDERED A NATIONAL TENDERER IF IT IS REGISTERED IN KENYA, HAS MORE THAN 51 PERCENT OWNERSHIP BY NATIONALS OF KENYA AND IF IT DOES NOT SUBCONTRACT FOREIGN CONTRACTORS MORE THAN 10 PERCENT OF THE CONTRACT PRICE, EXCLUDING PROVISIONAL SUMS. JVS ARE CONSIDERED AS NATIONAL TENDERERS AND ELIGIBLE FOR NATIONAL PREFERENCE ONLY IF THE INDIVIDUAL MEMBER FIRMS ARE REGISTERED IN KENYA OR HAVE MORE THAN 51PERCENT OWNERSHIP BY NATIONALS OF KENYA, AND THE JV SHALL BE REGISTERED IN KENYA. THE JV SHALL NOT SUBCONTRACT TO FOREIGN FIRMS MORE THAN10 PERCENT OF THE CONTRACT PRICE, EXCLUDING PROVISIONAL SUMS.

3.11 TENDERERS SHALL PROVIDE THE QUALIFICATION INFORMATION STATEMENT THAT THE TENDERER (INCLUDING ALL MEMBERS OF A JOINT VENTURE AND SUBCONTRACTORS) IS NOT ASSOCIATED, OR HAVE BEEN ASSOCIATED IN THE PAST, DIRECTLY OR INDIRECTLY, WITH A FIRM OR ANY OF ITS AFFILIATES WHICH HAVE BEEN ENGAGED BY THE PROCURING ENTITY TO PROVIDE CONSULTING SERVICES FOR THE PREPARATION OF THE DESIGN, SPECIFICATIONS, AND OTHER DOCUMENTS TO BE USED FOR THE PROCUREMENT OF THE LEASES UNDER THIS INVITATION FOR TENDERS.

3.12 THE COMPETITION ACT OF KENYA REQUIRES THAT FIRMS WISHING TO TENDER AS JOINT VENTURE UNDERTAKINGS WHICH MAY PREVENT, DISTORT OR LESSEN COMPETITION IN PROVISION OF SERVICES ARE PROHIBITED UNLESS THEY ARE EXEMPT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 25 OF THE COMPETITION ACT, 2010. JVS WILL BE REQUIRED TO SEEK FOR EXEMPTION FROM THE COMPETITION AUTHORITY. EXEMPTION SHALL NOT BE A CONDITION FOR TENDER, BUT IT SHALL BE A CONDITION OF CONTRACT AWARD AND SIGNATURE. A JV TENDERER SHALL BE GIVEN OPPORTUNITY TO SEEK SUCH EXEMPTION AS A CONDITION OF AWARD AND SIGNATURE OF CONTRACT. APPLICATION FOR EXEMPTION FROM THE COMPETITION AUTHORITY OF KENYA MAY BE ACCESSED FROM THE WEBSITE [WWW.CAK.GO.KE](http://WWW.CAK.GO.KE)

3.13 A KENYAN TENDERER SHALL ENSURE THEY HAVE FULFILLED THEIR TAX OBLIGATION ON KENYA.

#### 4. ELIGIBLE LEASE ITEMS AND RELATED SERVICES

4.1 ALL THE LEASE ITEMS AND RELATED SERVICES TO BE SUPPLIED UNDER THE CONTRACT AND FINANCED BY THE PROCURING ENTITY SHALL HAVE THEIR ORIGIN FROM ELIGIBLE COUNTRIES IN ACCORDANCE WITH ITT 3.8.

4.2 FOR PURPOSES OF THIS ITT, THE TERM “LEASE ITEMS” INCLUDES, LANDED PROPERTIES, BUILDINGS AND RELATED ACCOMMODATIONS, VESSELS (LAND, AIR AND SEA), VEHICLES, MACHINERY, PLANT AND EQUIPMENT, “RELATED SERVICES” INCLUDING SERVICES SUCH AS INSURANCE, INSTALLATION, TRAINING, AND MAINTENANCE.

4.3 THE TERM “ORIGIN” MEANS THE COUNTRY WHERE THE LEASE ITEMS HAVE BEEN SOURCED FROM, MANUFACTURED, PROCESSED, OR ASSEMBLED.

4.4 A LEASE ITEM MAY BE CONSIDERED INELIGIBLE IF HAS ITEMS, 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.

#### B. CONTENTS OF TENDERING DOCUMENT

## 5. SECTIONS OF TENDERING DOCUMENT

5.1 THE TENDERING DOCUMENT CONSIST 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 7.

### PART 1 TENDERING PROCEDURES

- I) SECTION I- INSTRUCTIONS TO TENDERERS (ITT)
- II) SECTION II - TENDERING DATA SHEET (TDS)
- III) SECTION III – EVALUATION AND QUALIFICATION CRITERIA
- IV) SECTION IV- TENDERING FORMS

### PART 2 SUPPLY REQUIREMENTS

- V) SECTION V - SCHEDULE OF 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

5.2 THE SPECIFIC PROCUREMENT NOTICE, INVITATION TO TENDERS NOTICE, ISSUED BY THE PROCURING ENTITY IS NOT PART OF THIS TENDERING DOCUMENT.

5.3 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.

5.4 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.

## 6. CLARIFICATION OF TENDERING DOCUMENT AND PRE-TENDER MEETING

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. THE PROCURING ENTITY WILL RESPOND IN WRITING TO ANY REQUEST FOR CLARIFICATION, PROVIDED THAT SUCH REQUEST IS RECEIVED PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS WITHIN A PERIOD SPECIFIED IN THE TDS. THE PROCURING ENTITY SHALL FORWARD COPIES OF ITS RESPONSE TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDERING DOCUMENT 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 WEB PAGE IDENTIFIED IN THE TDS AND STATE TENDER PORTAL. SHOULD THE CLARIFICATION RESULT IN CHANGES TO THE ESSENTIAL ELEMENTS OF THE TENDERING DOCUMENT, THE PROCURING ENTITY SHALL AMEND THE TENDERING DOCUMENT FOLLOWING THE PROCEDURE UNDER ITT 7.

## 7. AMENDMENT OF TENDERING DOCUMENT

7.1 AT ANY TIME PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS, THE PROCURING ENTITY MAY AMEND THE TENDERING DOCUMENT BY ISSUING ADDENDA.

7.2 ANY ADDENDUM ISSUED SHALL BE PART OF THE TENDERING DOCUMENT AND SHALL BE COMMUNICATED IN WRITING TO ALL WHO HAVE OBTAINED THE TENDER DOCUMENT FROM THE PROCURING ENTITY IN ACCORDANCE WITH INVITATION TO TENDER. THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH THE ADDENDUM ON THE PROCURING ENTITY'S WEBPAGE AND STATE TENDER PORTAL IN ACCORDANCE WITH ITT 7.1.

7.3 TO GIVE PROSPECTIVE TENDERERS REASONABLE TIME IN WHICH TO TAKE AN ADDENDUM INTO ACCOUNT IN PREPARING THEIR TENDERS, THE PROCURING ENTITY MAY, AT ITS DISCRETION, EXTEND THE DEADLINE FOR THE SUBMISSION OF TENDERS, PURSUANT TO ITT 22.2.

## C. PREPARATION OF TENDERS

## 8. COST OF TENDERING

8.1 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.

## 9. LANGUAGE OF TENDER

9.1 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 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.



## 10. DOCUMENTS COMPRISING THE TENDER

### 10.1 THE TENDER SHALL COMPRISE THE FOLLOWING:

- A FORM OF TENDER PREPARED IN ACCORDANCE WITH ITT 11;
- B PRICE SCHEDULES: COMPLETED IN ACCORDANCE WITH ITT 11 AND ITT 13;
- C TENDER SECURITY OR TENDER – SECURING DECLARATION, IN ACCORDANCE WITH ITT 18.1;
- D ALTERNATIVE TENDER: IF PERMISSIBLE, IN ACCORDANCE WITH ITT 12;
  
- E AUTHORIZATION: WRITTEN CONFIRMATION AUTHORIZING THE SIGNATORY OF THE TENDER TO COMMIT THE TENDERER, IN ACCORDANCE WITH ITT 29.3;
- F QUALIFICATIONS: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 16 ESTABLISHING THE TENDERER QUALIFICATIONS TO PERFORM THE CONTRACT IF ITS TENDER IS ACCEPTED;
- G TENDERER ELIGIBILITY: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 16 ESTABLISHING THE TENDERER ELIGIBILITY TO TENDER;
- H ELIGIBILITY OF LEASE ITEMS AND RELATED SERVICES: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 15, ESTABLISHING THE ELIGIBILITY OF THE LEASE ITEMS AND RELATED SERVICES TO BE SUPPLIED BY THE TENDERER;
- I CONFORMITY: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 15 AND 28, THAT THE LEASE ITEMS AND RELATED SERVICES CONFORM TO THE TENDERING DOCUMENT; AND
- J ANY OTHER DOCUMENT REQUIRED IN THE TDS.

10.2 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 LETTER 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.

10.3 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.

## 11. FORM OF TENDER AND PRICE SCHEDULES

11.1 THE FORM OF TENDER AND PRICE SCHEDULES 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 20.3. ALL BLANK SPACES SHALL BE FILLED IN WITH THE INFORMATION REQUESTED. THE TENDERER SHALL CHRONOLOGICALLY SERIALIZE PAGES OF ALL TENDER DOCUMENTS SUBMITTED.

11.2 EACH ITEM ON THE SCHEDULE OF REQUIREMENTS MUST BE PRICED SEPARATELY IN THE PRICE SCHEDULES AND FOR FULL QUANTITIES REQUIRED. ITEMS NOT PRICED FOR FULL QUANTITY ON THE SCHEDULE OF REQUIREMENTS WILL BE REJECTED. TENDERERS MAY QUOTE FOR ONE OR MORE OF THE ITEMS ON THE SCHEDULE OF REQUIREMENTS. TENDERS WILL BE EVALUATED AND AWARDED ON BASIS OF EACH ITEM.

11.3 WHERE TENDERS ARE BEING INVITED FOR INDIVIDUAL ITEMS/LOTS (CONTRACTS) OR FOR ANY COMBINATION OF LOTS (PACKAGES), TENDERERS WISHING TO OFFER DISCOUNTS FOR THE AWARD OF MORE THAN ONE CONTRACT SHALL SPECIFY SO IN THEIR TENDER THE PRICE REDUCTIONS APPLICABLE TO EACH ITEM OR ALTERNATIVELY, TO INDIVIDUAL ITEMS. DISCOUNTS SHALL BE SUBMITTED IN ACCORDANCE WITH ITT 13.1, PROVIDED THE TENDERS FOR ALL LOTS (CONTRACTS) ARE OPENED AT THE SAME TIME.

11.4 ALL DUTIES, TAXES, AND OTHER LEVIES PAYABLE BY THE CONTRACT OR UNDER THE CONTRACT, OR FOR ANY OTHER CAUSE, AS OF THE DATE 28 DAYS PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS, SHALL BE INCLUDED IN THE RATES AND PRICES AND THE TOTAL TENDER PRICE SUBMITTED BY THE TENDERER. **NOT APPLICABLE**

## 12. ALTERNATIVE TENDERS

12.1 UNLESS OTHERWISE SPECIFIED IN THE TDS, ALTERNATIVE TENDERS SHALL NOT BE CONSIDERED.

### 13. TENDER PRICES AND DISCOUNTS

13.1 THE PRICES AND DISCOUNTS QUOTED BY THE TENDERER IN THE FORM OF TENDER AND IN THE PRICE SCHEDULES SHALL CONFORM TO THE REQUIREMENTS SPECIFIED BELOW.

13.2 THE PRICE TO BE QUOTED IN THE FORM OF TENDER IN ACCORDANCE WITH ITT 13.1 SHALL BE THE TOTAL PRICE OF ALL THE ITEMS BUT THE ATTACHMENT OF THE SCHEDULE OF PRICES, EXCLUDING ANY DISCOUNTS OFFERED.

13.3 THE TENDERER SHALL QUOTE ANY DISCOUNTS AND INDICATE THE METHODOLOGY FOR THEIR APPLICATION IN THE PRICE SCHEDULE, IN ACCORDANCE WITH ITT 14.1. CONDITIONAL DISCOUNTS WILL BE REJECTED.

13.4 UNDER THE CONTRACT AND NOT SUBJECT TO VARIATION ON ANY ACCOUNT, UNLESS OTHERWISE SPECIFIED IN THE TDS. A TENDER SUBMITTED WITH AN ADJUSTABLE PRICE QUOTATION SHALL BE TREATED AS NON-RESPONSIVE AND SHALL BE REJECTED, PURSUANT TO ITT 29. HOWEVER, IF IN ACCORDANCE WITH THE TDS, PRICES QUOTED BY THE TENDERER SHALL BE SUBJECT TO ADJUSTMENT DURING THE LEASE UNDER THE CONTRACT, A TENDER SUBMITTED WITH A FIXED PRICE QUOTATION SHALL NOT BE REJECTED, BUT THE PRICE ADJUSTMENT SHALL BE TREATED AS ZERO.

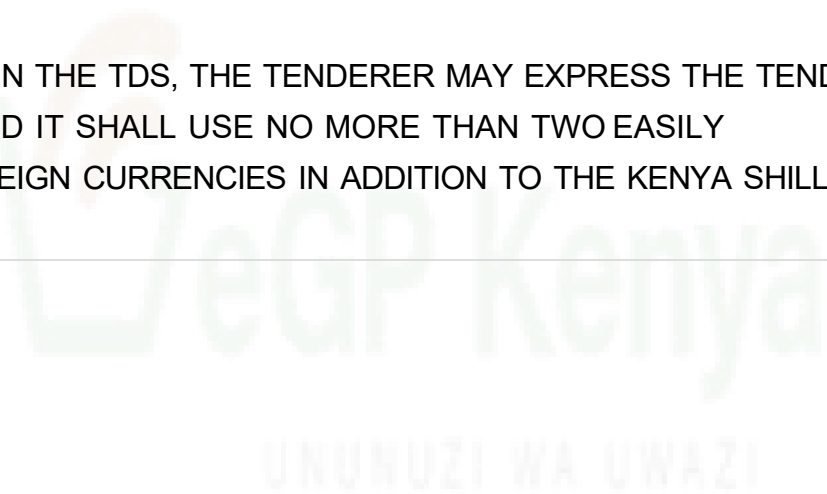
13.5 IF SO SPECIFIED IN ITT 1.1, TENDERS ARE BEING INVITED FOR INDIVIDUAL LOTS (CONTRACTS) OR FOR ANY COMBINATION OF LOTS (PACKAGES). PRICES QUOTED SHALL CORRESPOND TO 100 % OF THE ITEMS SPECIFIED FOR EACH LOT AND TO 100% OF THE QUANTITIES SPECIFIED FOR EACH ITEM OF A LOT. TENDERERS WISHING TO OFFER DISCOUNTS FOR THE AWARD OF MORE THAN ONE CONTRACT SHALL SPECIFY IN THEIR TENDER THE PRICE REDUCTIONS APPLICABLE TO EACH PACKAGE, OR ALTERNATIVELY, TO INDIVIDUAL CONTRACTS WITH IN THE PACKAGE. DISCOUNTS SHALL BE SUBMITTED IN ACCORDANCE WITH ITT 14.4 PROVIDED THE TENDERS FOR ALL LOTS (CONTRACTS) ARE OPENED AT THE SAME TIME.

13.6 PRICES SHALL BE QUOTED AS SPECIFIED IN EACH PRICE SCHEDULE INCLUDED IN SECTION IV, TENDERING FORMS. THE DISAGGREGATION OF PRICE COMPONENTS IS REQUIRED SOLELY FOR THE PURPOSE OF FACILITATING THE COMPARISON OF TENDERS BY THE PROCURING ENTITY. THIS SHALL NOT IN ANY WAY LIMIT THE PROCURING ENTITY'S RIGHT TO CONTRACT ON ANY OF THE TERMS OFFERED. THE TENDERER MAY OBTAIN INSURANCE SERVICES FROM A COMPANY REGISTERED IN KENYA IN ACCORDANCE WITH ITT 3.6, ELIGIBLE TENDERS. THE TENDER SHALL INCLUDE RELATED SERVICES REQUIRED TO MAINTAIN THE LEASED ITEM AS SPECIFIED IN THE SCHEDULE OF REQUIREMENTS (INCLUSIVE OF ANY APPLICABLE TAXES).

#### 14. CURRENCIES OF TENDER AND PAYMENT

14.1 THE CURRENCY(IES) OF THE TENDER AND THE CURRENCY(IES) OF PAYMENTS SHALL BE THE SAME. THE TENDERER SHALL QUOTE IN KENYA SHILLINGS UNLESS OTHERWISE SPECIFIED IN THE TDS.

14.2 IF ALLOWED IN THE TDS, THE TENDERER MAY EXPRESS THE TENDER PRICE IN ANY CURRENCY, PROVIDED IT SHALL USE NO MORE THAN TWO EASILY CONVERTIBLE FOREIGN CURRENCIES IN ADDITION TO THE KENYA SHILLING.



15. DOCUMENTS ESTABLISHING THE ELIGIBILITY AND CONFORMITY OF THE LEASE ITEMS AND RELATED SERVICES.

15.1 TO ESTABLISH THE ELIGIBILITY OF THE LEASE ITEMS AND RELATED SERVICES IN ACCORDANCE WITH ITT 5, TENDERERS SHALL COMPLETE THE COUNTRY OF ORIGIN DECLARATIONS IN THE PRICE SCHEDULE FORMS, INCLUDED IN SECTION IV, TENDERING FORMS.

15.2 TO ESTABLISH THE CONFORMITY OF THE LEASE ITEMS AND RELATED SERVICES TO THE TENDERING DOCUMENT, THE TENDERER SHALL FURNISH AS PART OF ITS TENDER THE DOCUMENTARY EVIDENCE THAT THE LEASE ITEMS CONFORM TO THE TECHNICAL SPECIFICATIONS AND STANDARDS SPECIFIED IN SECTION VII, SCHEDULE OF REQUIREMENTS.

15.3 THE DOCUMENTARY EVIDENCE MAY BE IN THE FORM OF LITERATURE, DRAWINGS OR DATA, AND SHALL CONSIST OF A DETAILED ITEM BY ITEM DESCRIPTION OF THE ESSENTIAL TECHNICAL AND PERFORMANCE CHARACTERISTICS OF THE LEASE ITEMS AND RELATED SERVICES, DEMONSTRATING SUBSTANTIAL RESPONSIVENESS OF THE LEASE ITEMS AND RELATED SERVICES TO THE TECHNICAL SPECIFICATION, AND IF APPLICABLE, A STATEMENT OF DEVIATIONS AND EXCEPTIONS TO THE PROVISIONS OF THE SECTION V, SCHEDULE OF REQUIREMENTS.

15.4 WHERE APPLICABLE, THE TENDERER SHALL ALSO FURNISH A LIST GIVING FULL PARTICULARS, INCLUDING AVAILABLE SOURCES AND CURRENT PRICES OF SPARE PARTS, SPECIAL TOOLS, ETC., NECESSARY FOR THE PROPER AND CONTINUING FUNCTIONING OF THE LEASE ITEMS DURING THE PERIOD SPECIFIED IN THE TDS FOLLOWING COMMENCEMENT OF THE USE OF THE LEASE ITEMS BY THE PROCURING ENTITY.

15.5 STANDARDS FOR WORKMANSHIP, PROCESS, MATERIAL, AND EQUIPMENT, AS WELL AS REFERENCES TO BRAND NAMES OR CATALOGUE NUMBERS SPECIFIED BY THE PROCURING ENTITY IN THE SCHEDULE OF REQUIREMENTS, ARE INTENDED TO BE DESCRIPTIVE ONLY AND NOT RESTRICTIVE. THE TENDERER MAY OFFER OTHER STANDARDS OF QUALITY, BRAND NAMES, AND /OR CATALOGUE NUMBERS, 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 V, SCHEDULE OF REQUIREMENTS.

16. DOCUMENTS ESTABLISHING THE ELIGIBILITY AND QUALIFICATIONS OF THE TENDERER

16.1 TO ESTABLISH TENDERER ELIGIBILITY IN ACCORDANCE WITH ITT 4, TENDERERS SHALL COMPLETE THE FORM OF TENDER, INCLUDED IN SECTION IV, TENDERING FORMS.

16.2 THE DOCUMENTARY EVIDENCE OF THE TENDERER QUALIFICATIONS TO PERFORM THE CONTRACT IF ITS TENDER IS ACCEPTED SHALL ESTABLISH TO THE PROCURING ENTITY'S SATISFACTION:

(A) THAT, IF REQUIRED IN THE TDS, A TENDERER THAT DOES NOT OWN THE LEASE ITEMS IT OFFERS SHALL SUBMIT THE OWNER'S AUTHORIZATION USING THE FORM INCLUDED IN SECTION IV, TENDERING FORMS TO DEMONSTRATE THAT IT HAS BEEN DULY AUTHORIZED BY THE OWNER OF THE LEASE ITEMS.

(B) THAT, IF REQUIRED IN THE TDS, IN CASE OF A TENDERER NOT DOING BUSINESS WITHIN KENYA, THE TENDERER IS OR WILL BE (IF AWARDED THE CONTRACT) REPRESENTED BY AN AGENT IN THE COUNTRY EQUIPPED AND ABLE TO CARRY OUT THE RELATED SERVICES OF THE LEASED ITEMS AS OBLIGATIONS PRESCRIBED IN THE CONDITIONS OF CONTRACT AND/OR TECHNICAL SPECIFICATIONS; AND

(C) THE TENDERER MEETS EACH OF THE QUALIFICATION CRITERION SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

16.3 TENDERERS SHALL BE ASKED 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 PARTICULAR LESSOR OR GROUP OF LESSORS 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 PROCESS OR CONTRACT MANAGEMENT.

16.4 THE PURPOSE OF THE INFORMATION DESCRIBED IN ITT 16.3 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.

16.5 THE TENDERER SHALL PROVIDE FURTHER DOCUMENTARY PROOF, INFORMATION OR AUTHORIZATIONS THAT THE PROCURING ENTITY MAY REQUEST IN RELATION TO OWNERSHIP AND CONTROL WHICH IN FORMATION ON ANY CHANGES TO THE INFORMATION WHICH WAS PROVIDED BY THE TENDERER UNDER ITT 16.3. 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.

16.6 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.

16.7 IF A TENDERER FAILS TO SUBMIT THE INFORMATION REQUIRED BY THESE REQUIREMENTS, ITS TENDER 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.

16.8 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 ONGOING, 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.
- 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.

16.9 IF A TENDERER SUBMITS INFORMATION PURSUANT TO THESE REQUIREMENTS THAT IS INCOMPLETE, INACCURATE OR OUT-OF-DATE, OR ATTEMPTS TO OBSTRUCT THE VERIFICATION PROCESS, THEN THE CONSEQUENCES ITT 16.8 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 WHICH WAS NOT ATTRIBUTABLE TO THE INTENTIONAL ACT, NEGLIGENCE OR RECKLESSNESS OF THE TENDERER.

## 17. PERIOD OF VALIDITY OF TENDERS

17.1 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 (AS PRESCRIBED BY THE PROCURING ENTITY IN ACCORDANCE WITH ITT 22.1). A TENDER VALID FOR A SHORTER PERIOD SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.

17.2 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 ITT 19, 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.

## 18. TENDER SECURITY

18.1 THE TENDERER SHALL FURNISH AS PART OF ITS TENDER, EITHER A TENDER SECURITY OR A TENDER-SECURING DECLARATION OR AS SPECIFIED IN THE TDS, IN ORIGINAL FORM (PHYSICAL OR ELECTRONIC) AND, IN THE CASE OF A TENDER SECURITY, IN THE AMOUNT AND CURRENCY SPECIFIED IN THE TDS. IN THIS CASE A TENDER-SECURING DECLARATION OR A TENDER SECURITY SHALL BE FOR EACH ITEM. ALTERNATIVELY, A TENDERER MAY AGGREGATE ALL THE ITEMS TENDERED FOR AND PROVIDE ONE TENDER- SECURING DECLARATION OR A TENDER SECURITY IN THE REQUIRED AMOUNTS, AS THE CASE MAY BE.

18.2 A TENDER SECURING DECLARATION SHALL USE THE FORM INCLUDED IN SECTION IV, TENDERING FORMS.

18.3 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 19.1, THE TENDER SECURITY SHALL BE A DEMAND BANK GUARANTEE IN ANY OF THE FOLLOWING FORMS AT THE TENDERER 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;
- IV. LETTER OF CREDIT; OR
- V. A GUARANTEE BY DEPOSIT TAKING MICRO-FINANCE LICENSED BY THE CENTRAL BANK OF KENYA.

18.4 IF AN UNCONDITIONAL GUARANTEE IS ISSUED BY A NON-BANK FINANCIAL INSTITUTION LOCATED OUTSIDE KENYA, THE ISSUING NON-BANK FINANCIAL INSTITUTION SHALL HAVE A CORRESPONDENT FINANCIAL INSTITUTION LOCATED IN KENYA TO MAKE IT ENFORCEABLE UNLESS THE PROCURING ENTITY HAS AGREED IN WRITING, PRIOR TO TENDER SUBMISSION, THAT A CORRESPONDENT FINANCIAL INSTITUTION IS NOT REQUIRED. IN THE CASE OF A BANK GUARANTEE, THE TENDER SECURITY SHALL BE SUBMITTED EITHER USING THE TENDER SECURITY FORM INCLUDED IN SECTION IV, TENDERING FORMS, OR IN ANOTHER SUBSTANTIALLY SIMILAR FORMAT APPROVED BY THE PROCURING ENTITY PRIOR TO TENDER SUBMISSION. THE TENDER SECURITY SHALL BE VALID FOR THIRTY (30) DAYS BEYOND THE ORIGINAL VALIDITY PERIOD OF THE TENDER, OR BEYOND ANY PERIOD OF EXTENSION IF REQUESTED UNDER ITT 18.2.

18.5 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 19.1, ANY TENDER NOT ACCOMPANIED BY A SUBSTANTIALLY RESPONSIVE TENDER SECURITY SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.

18.6 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 19.1, THE TENDER SECURITY OF UNSUCCESSFUL TENDERERS SHALL BE RETURNED WITHIN 14 DAYS UPON THE SUCCESSFUL TENDERER SIGNING THE CONTRACT.

18.7 THE TENDER SECURITY OF THE SUCCESSFUL TENDERER SHALL BE RETURNED WITHIN 14 DAYS ONCE THE SUCCESSFUL TENDERER HAS SIGNED THE CONTRACT. THE PROCUREMENT ENTITY SHALL ALSO RETURN TENDER SECURITY TO THE TENDERERS WHERE;

- A. THE PROCUREMENT PROCEEDINGS ARE TERMINATED
- B. ALL TENDERS WERE DETERMINED NON-RESPONSIVE AND
- C. WHERE A BIDDER DECLINES TO EXTEND THE TENDER VALIDITY PERIOD.

18.8 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 THERETO PROVIDED BY THE TENDERER; OR
- B) IF THE SUCCESSFUL TENDERER FAILS TO:
  - I) SIGN THE CONTRACT IN ACCORDANCE WITH ITT 43;
  - II) TO FURNISH A PERFORMANCE SECURITY IN ACCORDANCE WITH OR
  - III) FURNISH OR MAKE AVAILABLE THE LEASED ITEMS.

18.9 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 LETTER OF INTENT REFERRED TO IN ITT 4.1 AND ITT 11.2.

18.10 WHERE THE TENDER-SECURING DECLARATION IS EXECUTED THE PROCURING ENTITY MAY DECLARE THE TENDERER INELIGIBLE TO BE AWARDED A CONTRACT BY THE PROCURING ENTITY FOR A PERIOD OF SIX (6) MONTHS AND REPORT THE MATTER TO THE AUTHORITY WITHIN 14 DAYS OF THE SUSPENSION.

18.11 A TENDERER SHALL NOT ISSUE A TENDER SECURITY TO GUARANTEE ITSELF.

## 19. FORMAT AND SIGNING OF TENDER

19.1 THE TENDERER SHALL PREPARE ONE ORIGINAL OF THE DOCUMENTS COMPRISING THE TENDER AS DESCRIBED IN ITT 11 AND CLEARLY MARK IT "ORIGINAL." ALTERNATIVE TENDERS, IF PERMITTED IN ACCORDANCE WITH ITT 13, SHALL BE CLEARLY MARKED "ALTERNATIVE." IN ADDITION, THE TENDERER SHALL SUBMIT COPIES OF THE TENDER, IN THE NUMBER SPECIFIED IN THE TDS AND CLEARLY MARK THEM "COPY." IN THE EVENT OF ANY DISCREPANCY BETWEEN THE ORIGINAL AND THE COPIES, THE ORIGINAL SHALL PREVAIL.

SUBMISSION OF COPIES OF THE TENDER SHALL NOT APPLY FOR ELECTRONIC PROCUREMENT SYSTEM.

19.2 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.

19.3 THE ORIGINAL AND ALL COPIES OF THE TENDER SHALL BE TYPED OR WRITTEN IN INDELIBLE INK AND SHALL BE SIGNED BY A PERSON DULY AUTHORIZED TO SIGN ON BEHALF OF THE TENDERER. 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.

19.4 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.

19.5 ANY INTER-LINEATION, ERASURES, OR OVER WRITING SHALL BE VALID ONLY IF THEY ARE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.

## D. SUBMISSION AND OPENING OF TENDERS

## 20. SEALING AND MARKING OF TENDERS

20.1 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 ITT 11; 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 ITT 13, 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.

20.2 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 THAT ARE MISPLACED OR OPENED PREMATURELY WILL NOT BE ACCEPTED.

THE PROVISIONS OF CLAUSE 20 SHALL NOT APPLY TO TENDERS SUBMITTED ELECTRONICALLY

## 21. DEADLINE FOR SUBMISSION OF TENDERS

21.1 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.

21.2 THE PROCURING ENTITY MAY, AT ITS DISCRETION, EXTEND THE DEADLINE FOR THE SUBMISSION OF TENDERS BY AMENDING THE TENDERING DOCUMENT IN ACCORDANCE WITH ITT 8, 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.

## 22. LATE TENDERS

22.1 THE PROCURING ENTITY SHALL NOT CONSIDER ANY TENDER THAT ARRIVES AFTER THE DEADLINE FOR SUBMISSION OF TENDERS, IN ACCORDANCE WITH ITT 22. ANY TENDER RECEIVED BY THE PROCURING ENTITY AFTER THE DEADLINE FOR SUBMISSION OF TENDERS SHALL BE DECLARED LATE, REJECTED, AND RETURNED UNOPENED TO THE TENDERER.

## 23. WITHDRAWAL, SUBSTITUTION, AND MODIFICATION OF TENDERS

23.1 A TENDERER MAY WITHDRAW, SUBSTITUTE, OR MODIFY ITS TENDER AFTER IT HAS BEEN SUBMITTED BY SENDING A WRITTEN NOTICE, DULY SIGNED BY AN AUTHORIZED REPRESENTATIVE, AND SHALL INCLUDE A COPY OF THE AUTHORIZATION (THE POWER OF ATTORNEY) IN ACCORDANCE WITH ITT 20.3, (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 20 AND 21 (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 22.

23.2 TENDERS REQUESTED TO BE WITHDRAWN IN ACCORDANCE WITH ITT 24.1 SHALL BE RETURNED UNOPENED TO THE TENDERERS.

23.3 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.

23.4 TENDERERS SHALL BE ALLOWED TO SUBMIT MODIFICATIONS TO BIDS OR PROPOSALS OR WITHDRAW PREVIOUSLY SUBMITTED BIDS OR PROPOSALS ELECTRONICALLY UP TO, BUT NOT AFTER, THE BID SUBMISSION DEADLINE.

## 24. TENDER OPENING

24.1 EXCEPT AS IN THE CASES SPECIFIED IN ITT 23 AND ITT 24.2, 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 CHOOSES TO ATTEND. ANY SPECIFIC ELECTRONIC TENDER OPENING PROCEDURES REQUIRED IF ELECTRONIC TENDERING IS PERMITTED IN ACCORDANCE WITH ITT 22.1, SHALL BE AS SPECIFIED IN THE TDS.

24.2 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.

24.3 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.

24.4 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.

24.5 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, IF REQUIRED; AND ANY OTHER DETAILS AS THE PROCURING ENTITY MAY CONSIDER APPROPRIATE.

24.6 ONLY TENDERS, ALTERNATIVE TENDERS AND DISCOUNTS THAT ARE OPENED AND READ OUT AT TENDER OPENING SHALL BE CONSIDERED FURTHER IN THE EVALUATION. THE FORM OF TENDER AND THE PRICE SCHEDULES ARE TO BE INITIALED BY REPRESENTATIVES OF THE PROCURING ENTITY ATTENDING TENDER OPENING IN THE MANNER SPECIFIED IN THE TDS.

24.7 THE PROCURING ENTITY SHALL NEITHER DISCUSS THE MERITS OF ANY TENDER NOR REJECT ANY TENDER (*EXCEPT FOR LATE TENDERS, IN ACCORDANCE WITH ITT 23.1*).

24.8 THE PROCURING ENTITY SHALL PREPARE A RECORD OF THE TENDER OPENING THAT SHALL INCLUDE, AS A MINIMUM:

- A THE NAME OF THE TENDERER AND WHETHER THERE IS A WITHDRAWAL, SUBSTITUTION, OR MODIFICATION;
- B THE TENDER PRICE, PER LOT (CONTRACT) IF APPLICABLE, INCLUDING ANY DISCOUNTS;
- 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.

24.9 THE TENDERERS' REPRESENTATIVES WHO ARE PRESENT SHALL BE REQUESTED TO SIGN THE RECORD. THE OMISSION OF A TENDERER SIGNATURE ON THE RECORD SHALL NOT INVALIDATE THE CONTENTS AND EFFECT OF THE RECORD. A COPY OF THE TENDER OPENING REGISTER SHALL BE ISSUED TO A TENDERER UPON REQUEST.

## E. EVALUATION AND COMPARISON OF TENDERS

## 25. CONFIDENTIALITY

25.1 INFORMATION RELATING TO THE EVALUATION OF TENDERS AND RECOMMENDATION OF CONTRACT AWARD, SHALL NOT BE DISCLOSED TO TENDERERS OR ANY OTHER PERSONS NOT OFFICIALLY CONCERNED WITH THE TENDERING PROCESS UNTIL THE INFORMATION ON INTENTION TO AWARD THE CONTRACT IS TRANSMITTED TO ALL TENDERERS IN ACCORDANCE WITH ITT 39.

25.2 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.

25.3 NOTWITHSTANDING ITT 26.2, FROM THE TIME OF TENDER OPENING TO THE TIME OF CONTRACT AWARD, IF ANY TENDERER WISHES TO CONTACT THE PROCURING ENTITY ON ANY MATTER RELATED TO THE TENDERING PROCESS, IT SHOULD DO SO IN WRITING.

## 26. CLARIFICATION OF TENDERS

26.1 TO ASSIST IN THE EXAMINATION, EVALUATION, COMPARISON OF THE TENDERS, AND QUALIFICATION OF THE TENDERERS, THE PROCURING ENTITY MAY, AT ITS DISCRETION, ASK ANY TENDERER FOR A CLARIFICATION OF ITS TENDER. 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 ITT 31.

26.2 IF A TENDERER DOES NOT PROVIDE CLARIFICATION OF ITS TENDER BY THE DATE AND TIME SET IN THE PROCURING ENTITY'S REQUEST FOR CLARIFICATION, ITS TENDER MAY BE REJECTED.

## 27. DEVIATIONS, RESERVATIONS AND OMISSIONS

27.1 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.



## 28. DETERMINATION OF RESPONSIVENESS

28.1 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 11.

28.2 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 LEASE ITEMS AND RELATED SERVICES SPECIFIED IN THE CONTRACT; OR

II. LIMIT IN ANY SUBSTANTIAL WAY, IN CONSISTENT WITH THE TENDERING DOCUMENT, THE PROCURING ENTITY'S RIGHTS OR THE TENDERER OBLIGATIONS UNDER THE CONTRACT; OR

B IF RECTIFIED, WOULD UNFAIRLY AFFECT THE COMPETITIVE POSITION OF OTHER TENDERERS PRESENTING SUBSTANTIALLY RESPONSIVE TENDERS.

28.3 THE PROCURING ENTITY SHALL EXAMINE THE TECHNICAL ASPECTS OF THE TENDER SUBMITTED IN ACCORDANCE WITH ITT 16 AND ITT 17, IN PARTICULAR, TO CONFIRM THAT ALL REQUIREMENTS OF SECTION V, SCHEDULE OF REQUIREMENTS HAVE BEEN MET WITHOUT ANY MATERIAL DEVIATION OR RESERVATION, OR OMISSION.

28.4 IF A TENDER IS NOT SUBSTANTIALLY RESPONSIVE TO THE REQUIREMENTS OF TENDERING DOCUMENT, IT SHALL BE REJECTED BY THE PROCURING ENTITY AND SHALL NOT SUBSEQUENTLY BE MADE RESPONSIVE BY CORRECTION OF THE MATERIAL DEVIATION, RESERVATION, OR OMISSION.

## 29. NON-CONFORMITIES, ERRORS AND OMISSIONS

29.1 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY MAY WAIVE ANY NON-CONFORMITIES IN THE TENDER.

29.2 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY MAY REQUEST THAT THE TENDERER SUBMIT THE NECESSARY INFORMATION OR DOCUMENTATION, WITHIN A REASONABLE PERIOD OF TIME, TO RECTIFY NONMATERIAL NON- CONFORMITIES OR OMISSIONS IN THE TENDER RELATED TO DOCUMENTATION REQUIREMENTS. SUCH OMISSION 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.

29.3 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY SHALL RECTIFY QUANTIFIABLE IMMATERIAL 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.



### 30. ARITHMETICAL ERRORS

30.1 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 ANYWAY BY ANY PERSON OR ENTITY.

30.2 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, UNLESS THE AMOUNT EXPRESSED IN WORDS IS RELATED TO AN ARITHMETIC ERROR, IN WHICH CASE THE AMOUNT IN FIGURES SHALL PREVAIL.

30.3 TENDERERS SHALL BE NOTIFIED OF ANY ERROR FOR CLARIFICATION

### 31. CONVERSION TO SINGLE CURRENCY

31.1 NO CONVERSION TO SINGLE CURRENCY IS EXPECTED SINCE ALL TENDERS WILL BE IN KENYA SHILLINGS.

### 32. MARGIN OF PREFERENCE AND RESERVATIONS

32.1 NO MARGIN OF PREFERENCE AND RESERVATIONS SHALL BE ALLOWED IN THIS TENDER.

### 33. EVALUATION OF TENDERS

33.1 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 MOST ADVANTAGEOUS 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 TECHNICAL REQUIREMENTS IN THE TENDER DOCUMENT;

B SUBSTANTIALLY RESPONSIVE TO SUSTAINABILITY REQUIREMENTS AS SPECIFIED IN ITT 4.4; AND

C THE TENDER WITH THE LOWEST EVALUATED PRICE.

33.2 TO EVALUATE A TENDER, THE PROCURING ENTITY SHALL CONSIDER THE FOLLOWING:

A PRICE ADJUSTMENT DUE TO UNCONDITIONAL DISCOUNTS OFFERED IN ACCORDANCE WITH ITT 13.4;

B PRICE ADJUSTMENT DUE TO QUANTIFIABLE IMMATERIAL NON-CONFORMITIES IN ACCORDANCE WITH ITT 30.3; AND

C THE ADDITIONAL EVALUATION FACTORS ARE SPECIFIED IN THE TDS AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

33.3 THE ESTIMATED EFFECT OF THE PRICE ADJUSTMENT PROVISIONS OF THE CONDITIONS OF CONTRACT, APPLIED OVER THE PERIOD OF THE LEASE CONTRACT, SHALL NOT BE CONSIDERED IN TENDER EVALUATION.

33.4 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.

33.5 THE PROCURING ENTITY'S EVALUATION OF A TENDER WILL INCLUDE AND CONSIDER:

A TAXES, WHICH WILL BE PAYABLE ON THE LEASE ITEMS IF A CONTRACT IS AWARDED TO THE TENDERER;

B ANY ALLOWANCE FOR PRICE ADJUSTMENT DURING THE PERIOD OF THE LEASE CONTRACT, IF PROVIDED IN THE TENDER.

33.6 THE PROCURING ENTITY'S EVALUATION OF A TENDER MAY REQUIRE THE CONSIDERATION OF OTHER FACTORS, IN ADDITION TO THE TENDER PRICE QUOTED IN ACCORDANCE WITH ITT 14. THESE FACTORS MAY BE RELATED TO THE CHARACTERISTICS, PERFORMANCE, AND TERMS AND CONDITIONS OF LEASE AND RELATED SERVICES. THE EFFECT OF THE FACTORS SELECTED, IF ANY, SHALL BE EXPRESSED IN MONETARY TERMS TO FACILITATE COMPARISON OF TENDERS, UNLESS OTHERWISE SPECIFIED IN THE TDS FROM AMONGST THOSE SET OUT IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA. THE ADDITIONAL CRITERIA AND METHODOLOGIES TO BE USED SHALL BE AS SPECIFIED IN ITT 33.2

#### 34. COMPARISON OF TENDERS

34.1 THE PROCURING ENTITY SHALL COMPARE THE EVALUATED COSTS OF ALL SUBSTANTIALLY RESPONSIVE TENDERS ESTABLISHED IN ACCORDANCE WITH ITT 34.2 TO DETERMINE THE TENDER THAT HAS THE LOWEST EVALUATED COST. THE COMPARISON SHALL BE ON THE BASIS OF TOTAL COST FOR ALL LEASE ITEMS, AND RELATED SERVICES, TOGETHER WITH PRICES FOR ANY REQUIRED INSTALLATION, TRAINING, COMMISSIONING AND OTHER SERVICES.

#### 35. ABNORMALLY LOW TENDERS AND ABNORMALLY HIGH

##### TENDERS ABNORMALLY LOW TENDERS

35.1 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.

35.2 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.

35.3 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

35.4 AN ABNORMALLY HIGH PRICE TENDER 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.

35.5 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 MAY BE.

35.6 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.

## 36. POST-QUALIFICATION OF THE TENDERER

36.1 THE PROCURING ENTITY SHALL DETERMINE, TO ITS SATISFACTION, WHETHER THE ELIGIBLE TENDERER THAT IS SELECTED AS HAVING SUBMITTED THE LOWEST EVALUATED COST AND SUBSTANTIALLY RESPONSIVE TENDER, MEETS THE QUALIFYING CRITERIA SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

36.2 THE DETERMINATION SHALL BE BASED UPON VERIFICATION OF THE DOCUMENTARY EVIDENCE OF THE TENDERER QUALIFICATIONS SUBMITTED PURSUANT TO ITT 17. THE DETERMINATION SHALL NOT TAKE INTO CONSIDERATION THE QUALIFICATIONS OF OTHER FIRMS SUCH AS THE TENDERER SUBSIDIARIES, PARENT ENTITIES, AFFILIATES, SUBCONTRACTORS (OTHER THAN SPECIALIZED SUBCONTRACTORS IF PERMITTED IN THE TENDERING DOCUMENT), OR ANY OTHER FIRM(S) DIFFERENT FROM THE TENDERER.

36.3 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 QUALIFICATIONS TO PERFORM SATISFACTORILY.

## 37. PROCURING ENTITY'S RIGHT TO ACCEPT ANY TENDER, AND TO REJECT ANY OR ALL TENDERS

37.1 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 TERMINATION, ALL TENDERERS SHALL BE NOTIFIED WITH REASONS AND TENDER SECURITIES SHALL BE RETURNED TO THE TENDERERS WITHIN 14 DAYS FROM THE DATE OF TERMINATION.

## F. AWARD OF CONTRACT

## 38. AWARD CRITERIA

38.1 THE PROCURING ENTITY SHALL AWARD THE CONTRACT TO THE SUCCESSFUL TENDERER WHOSE TENDER HAS BEEN DETERMINED TO BE THE LOWEST EVALUATED TENDER IN ACCORDANCE WITH THE CRITERIA SET OUT IN THE TENDER DOCUMENTS.

## 39. NOTICE OF INTENTION TO ENTER INTO A CONTRACT/NOTIFICATION OF AWARD

39.1 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 ALL THE REASON(S) THE TENDER OF THE UNSUCCESSFUL TENDERER TO WHOM THE LETTER IS ADDRESSED WAS UNSUCCESSFUL
- D) THE EXPIRY DATE OF THE STANDSTILL PERIOD; AND
- E) INSTRUCTIONS ON HOW TO REQUEST A DEBRIEFING DURING THE STANDSTILL PERIOD;

## 40. STANDSTILL PERIOD

40.1 THE CONTRACT SHALL NOT BE SIGNED EARLIER THAN THE EXPIRY OF A STANDSTILL PERIOD OF 14 DAYS TO ALLOW ANY

40.2 DISSATISFIED TENDER TO LODGE A COMPLAINT.

40.3 STANDSTILL PERIOD SHALL COMMENCE WHEN THE PROCURING ENTITY HAS TRANSMITTED TO EACH TENDERER THE NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT WITH THE SUCCESSFUL TENDERER.

#### 41. DEBRIEFING BY THE PROCURING ENTITY

41.1 ON RECEIPT OF THE PROCURING ENTITY'S NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT REFERRED TO IN ITT 39, 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.

41.2 DEBRIEFINGS OF UNSUCCESSFUL TENDERERS MAY BE DONE IN WRITING OR VERBALLY. WHERE DEBRIEFING IS VERBAL, IT SHOULD BE FOLLOWED UP IN WRITING THE TENDERER SHALL BEAR ITS OWN COSTS OF ATTENDING SUCH A DEBRIEFING MEETING.

#### 42. LETTER OF AWARD

42.1 PRIOR TO THE EXPIRY OF THE TENDER VALIDITY PERIOD AND UPON EXPIRY OF THE STANDSTILL PERIOD SPECIFIED IN ITT 40, 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 LETTER OF ACCEPTANCE OF THE OFFER, A DULY FILLED BENEFICIAL OWNERSHIP INFORMATION (BOI) FORM AND PERFORMANCE SECURITY (WHERE APPLICABLE) WITHIN 21 DAYS OF THE DATE OF THE LETTER.

#### 43. SIGNING OF CONTRACT

43.1 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.

43.2 WITHIN FOURTEEN (14) DAYS OF RECEIPT OF THE CONTRACT AGREEMENT, THE SUCCESSFUL TENDERER SHALL SIGN, DATE, AND RETURN IT TO THE PROCURING ENTITY.

43.3 THE WRITTEN CONTRACT SHALL BE ENTERED INTO WITHIN THE PERIOD SPECIFIED IN THE NOTIFICATION OF AWARD AND BEFORE EXPIRY OF THE TENDER VALIDITY PERIOD.

#### 44. PERFORMANCE SECURITY

44.1 WITHIN TWENTY-ONE (21) DAYS OF THE RECEIPT OF LETTER OF ACCEPTANCE FROM THE PROCURING ENTITY, THE SUCCESSFUL TENDERER, IF REQUIRED, SHALL FURNISH THE PERFORMANCE SECURITY IN ACCORDANCE WITH THE GCC 18, USING THE PERFORMANCE SECURITY FORM INCLUDED IN SECTION X, CONTRACT FORMS. 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 TO BE ACCEPTABLE BY 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.

44.2 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 MOST ADVANTAGEOUS TENDER.

44.3 PERFORMANCE SECURITY SHALL BE REQUIRED FOR CONTRACTS UNLESS OTHERWISE SPECIFIED IN THE TDS.

#### 45. PUBLICATION OF PROCUREMENT CONTRACT

45.1 WITHIN FOURTEEN DAYS AFTER SIGNING THE CONTRACT, THE PROCURING ENTITY SHALL PUBLISH AND PUBLICIZE THE AWARDED CONTRACT ON THE STATE TENDER PORTAL, ENTITY WEBSITE AND ITS NOTICE BOARDS. IN THE MANNER AND FORMAT PRESCRIBED BY 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; AND
- E) NAMES OF ALL TENDERERS THAT SUBMITTED TENDERS, AND THEIR TENDER PRICES AS READ OUT AT TENDER OPENING.

#### 46. PROCUREMENT RELATED COMPLAINT AND ADMINISTRATIVE REVIEW

THE PROCEDURES FOR MAKING A PROCUREMENT-RELATED COMPLAINT ARE AVAILABLE ON THE PPRA WEBSITE.

46.2 A REQUEST FOR ADMINISTRATIVE REVIEW SHALL BE MADE IN THE FORM FOR REVIEW PROVIDED UNDER CONTRACT FORMS.

## SECTION II -TENDERING DATA SHEET



## Tender Data Sheet (TDS)

|               | ITT Reference & TDS Detail  | Filled By | Tender Document                        |
|---------------|---|-----------|--|
| ITT Reference | <p>1. SCOPE OF TENDER AND DEFINITIONS</p> <p>1.1 THE PROCURING ENTITY AS DEFINED IN THE APPENDIX TO CONDITIONS OF CONTRACT INVITES TENDERS FOR LEASING OF THE REAL ESTATE FACILITIES, PLANT/EQUIPMENT OR VEHICLES AND, IF APPLICABLE, ANY RELATED SERVICES INCIDENTAL THERETO, AS SPECIFIED IN SECTION V, SCHEDULE OF REQUIREMENTS. THE REFERENCE NUMBER AND DESCRIPTION OF THE TENDER AND NUMBER IDENTIFICATION OF LOTS (CONTRACTS) OF THIS TENDER DOCUMENT ARE SPECIFIED IN THE TDS</p> | -         | -                                      |
| TDS Detail    | <p>THE NAME OF THE PROCURING ENTITY IS:</p> <p>.....</p>  |           | <p>WATER SERVICES REGULATORY BOARD</p> |
| TDS Detail    | <p>THE REFERENCE NUMBER OF THE TENDERS IS:</p>  |           | <p>WASREB/TND/001/2025-2026</p>        |

|               |   |   |   |
|---------------|---|---|---|
| TDS Detail    | THE DESCRIPTION OF THE CONTRACT IS:   |   | LEASE OF OFFICE SPACE FOR WATER SERVICES REGULATORY BOARD(WASREB) |
| TDS Detail    | THE NUMBER AND IDENTIFICATION OF LOTS (CONTRACTS) COMPRISING THIS INVITATION FOR TENDERS IS:  |   | WASREB/TND/001/2025-2026  |
| ITT Reference | 1.2 THROUGHOUT THIS TENDER DOCUMENT:<br>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; | - | -   |

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|                      |  |                     |            |
|----------------------|--|---------------------|------------|
| <p>ITT Reference</p> | <p>2. FRAUD AND CORRUPTION</p> <p>2.3 UNFAIR COMPETITIVE ADVANTAGE - FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS 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.</p> | <p>-</p>            | <p>-</p>   |
| <p>TDS Detail</p>    | <p>PROVIDE INFORMATION IN RESPECT OF THE FIRMS THAT MAY HAVE UNFAIR COMPETITIVE ADVANTAGE WITH REGARD TO ITT 2.3</p>   | <p>Manual Input</p> | <p>N/A</p> |

|                          |  |          |          |
|--------------------------|--|----------|----------|
| <p>ITT<br/>Reference</p> | <p>3. ELIGIBLE TENDERERS</p> <p>3.1 A TENDERER MAY BE A FIRM THAT IS A PRIVATE ENTITY, A STATE-OWNED ENTERPRISE 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 LETTER 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. A FIRM THAT IS A TENDERER (EITHER INDIVIDUALLY OR AS A JV MEMBER) MAY PARTICIPATE IN MORE THAN ONE TENDER, OFFERING DIFFERENT ITEMS THAT MEET THE REQUIREMENTS OF THE LEASE. A FIRM THAT IS NOT A TENDERER OR A JV MEMBER, MAY PARTICIPATE AS A SUBCONTRACTOR IN MORE THAN ONE TENDER. MEMBERS OF A JOINT VENTURE MAY NOT ALSO MAKE AN INDIVIDUAL TENDER, BE A SUBCONTRACTOR IN A SEPARATE TENDER OR BE PART OF ANOTHER JOINT VENTURE FOR THE PURPOSES OF THE SAME TENDER. THE MAXIMUM NUMBER OF JV MEMBERS TO BE ALLOWED SHALL BE SPECIFIED IN THE TDS.</p> | <p>-</p> | <p>-</p> |
|--------------------------|--|----------|----------|

|               |  |              |     |
|---------------|--|--------------|-----|
| TDS Detail    | MAXIMUM NUMBER OF MEMBERS ALLOWED IN THE JOINT VENTURE (JV) SHALL BE: <i>[INSERT A NUMBER]</i>   | Manual Input | N/A |
| ITT Reference | <p>6. CLARIFICATION OF TENDERING DOCUMENT AND PRE-TENDER MEETING</p> <p>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. THE PROCURING ENTITY WILL RESPOND IN WRITING TO ANY REQUEST FOR CLARIFICATION, PROVIDED THAT SUCH REQUEST IS RECEIVED PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS WITHIN A PERIOD SPECIFIED IN THE TDS. THE PROCURING ENTITY SHALL FORWARD COPIES OF ITS RESPONSE TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDERING DOCUMENT 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 WEB PAGE IDENTIFIED IN THE TDS AND STATE TENDER PORTAL. SHOULD THE CLARIFICATION RESULT IN CHANGES TO THE ESSENTIAL ELEMENTS OF THE TENDERING DOCUMENT, THE PROCURING ENTITY SHALL AMEND THE TENDERING DOCUMENT FOLLOWING THE PROCEDURE UNDER ITT 7.</p> | -            | -   |

|               |   |              |  |
|---------------|---|--------------|--|
| TDS Detail    | FOR CLARIFICATION OF TENDER PURPOSES ONLY,<br><br>WEB PAGE: [IN CASE USED, IDENTIFY THE WEBSITE WITH FREE ACCESS WHERE TENDERING PROCESS INFORMATION IS PUBLISHED]                      |              |  |
| ITT Reference | 10. DOCUMENTS COMPRISING THE TENDER<br><br>ANY OTHER DOCUMENT REQUIRED IN THE TDS.  | -            | -  |
| TDS Detail    | THE TENDERER SHALL SUBMIT THE FOLLOWING ADDITIONAL DOCUMENTS IN ITS TENDER: <i>[LIST ANY ADDITIONAL DOCUMENT NOT ALREADY LISTED IN ITT 11.1 THAT MUST BE SUBMITTED WITH THE TENDER]</i> | Manual Input | AS IN THE TECHNICAL REQUIREMENT              |
| ITT Reference | 12. ALTERNATIVE TENDERS<br><br>12.1 UNLESS OTHERWISE SPECIFIED IN THE TDS, ALTERNATIVE TENDERS SHALL NOT BE CONSIDERED.   | -            | -  |
| TDS Detail    | ALTERNATIVE TENDERS SHALL/SHALL NOT ( <i>SELECT ONE</i> ) BE CONSIDERED.  | Manual Input | ALTERNATIVE TENDERS SHALL NOT BE CONSIDERED. |

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|----------------------|---|---------------------|---|
| <p>ITT Reference</p> | <p>13. TENDER PRICES AND DISCOUNTS</p> <p>13.4 UNDER THE CONTRACT AND NOT SUBJECT TO VARIATION ON ANY ACCOUNT, UNLESS OTHERWISE SPECIFIED IN THE TDS. A TENDER SUBMITTED WITH AN ADJUSTABLE PRICE QUOTATION SHALL BE TREATED AS NON-RESPONSIVE AND SHALL BE REJECTED, PURSUANT TO ITT 29. HOWEVER, IF IN ACCORDANCE WITH THE TDS, PRICES QUOTED BY THE TENDERER SHALL BE SUBJECT TO ADJUSTMENT DURING THE LEASE UNDER THE CONTRACT, A TENDER SUBMITTED WITH A FIXED PRICE QUOTATION SHALL NOT BE REJECTED, BUT THE PRICE ADJUSTMENT SHALL BE TREATED AS ZERO.</p> | <p>-</p>            | <p>-</p>  |
| <p>TDS Detail</p>    | <p>PRICES QUOTED BY THE TENDERER SHALL BE FIXED/NOT FIXED (SELECT ONE) DURING.</p>  | <p>Manual Input</p> | <p>PRICES QUOTED BY THE TENDERER SHALL BE FIXED</p> |
| <p>ITT Reference</p> | <p>14. CURRENCIES OF TENDER AND PAYMENT</p> <p>14.1 THE CURRENCY(IES) OF THE TENDER AND THE CURRENCY(IES) OF PAYMENTS SHALL BE THE SAME. THE TENDERER SHALL QUOTE IN KENYA SHILLINGS UNLESS OTHERWISE SPECIFIED IN THE TDS.</p>   | <p>-</p>            | <p>-</p>  |

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| TDS Detail    | TENDERERS MAY OR MAY NOT (SELECT ONE) TENDER IN OTHER CURRENCIES WHICH ARE USED IN INTERNATIONAL TRADE  | Manual Input | ENDERERS MAY NOT TENDER IN OTHER CURRENCIES WHICH ARE USED IN INTERNATIONAL TRADE |
| ITT Reference | <p>15. DOCUMENTS ESTABLISHING THE ELIGIBILITY AND CONFORMITY OF THE LEASE ITEMS AND RELATED SERVICES.</p> <p>15.4 WHERE APPLICABLE, THE TENDERER SHALL ALSO FURNISH A LIST GIVING FULL PARTICULARS, INCLUDING AVAILABLE SOURCES AND CURRENT PRICES OF SPARE PARTS, SPECIAL TOOLS, ETC., NECESSARY FOR THE PROPER AND CONTINUING FUNCTIONING OF THE LEASE ITEMS DURING THE PERIOD SPECIFIED IN THE TDS FOLLOWING COMMENCEMENT OF THE USE OF THE LEASE ITEMS BY THE PROCURING ENTITY.</p> | -            | -   |
| TDS Detail    | PERIOD OF TIME THE LEASE ITEMS ARE EXPECTED TO BE FUNCTIONING ( <i>FOR THE PURPOSE OF SPARE PARTS</i> ): <i>[INSERT DURATION]</i>   | Manual Input | PERIOD OF TIME THE LEASE ITEMS ARE EXPECTED TO BE FUNCTIONING FOR 72 MONTHS.      |

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| <p>ITT Reference</p> | <p>16. DOCUMENTS ESTABLISHING THE ELIGIBILITY AND QUALIFICATIONS OF THE TENDERER</p> <p>16.2 THE DOCUMENTARY EVIDENCE OF THE TENDERER QUALIFICATIONS TO PERFORM THE CONTRACT IF ITS TENDER IS ACCEPTED SHALL ESTABLISH TO THE PROCURING ENTITY'S SATISFACTION:</p> <p>(A) THAT, IF REQUIRED IN THE TDS, A TENDERER THAT DOES NOT OWN THE LEASE ITEMS IT OFFERS SHALL SUBMIT THE OWNER'S AUTHORIZATION USING THE FORM INCLUDED IN SECTION IV, TENDERING FORMS TO DEMONSTRATE THAT IT HAS BEEN DULY AUTHORIZED BY THE OWNER OF THE LEASE ITEMS.</p> <p>(B) THAT, IF REQUIRED IN THE TDS, IN CASE OF A TENDERER NOT DOING BUSINESS WITHIN KENYA, THE TENDERER IS OR WILL BE (IF AWARDED THE CONTRACT) REPRESENTED BY AN AGENT IN THE COUNTRY EQUIPPED AND ABLE TO CARRY OUT THE RELATED SERVICES OF THE LEASED ITEMS AS OBLIGATIONS PRESCRIBED IN THE CONDITIONS OF CONTRACT AND/OR TECHNICAL SPECIFICATIONS; AND</p> | <p>-</p>            | <p>-</p>   |
| <p>TDS Detail</p>    | <p>OWNER'S AUTHORIZATION IS:<br/> ..... [INSERT "REQUIRED" OR "NOT REQUIRED"]</p> <p>RELATED SERVICES ARE:<br/> ..... [INSERT "REQUIRED" OR "NOT REQUIRED"]</p>  | <p>Manual Input</p> | <p>OWNER'S AUTHORIZATION IS: REQUIRED.</p> <p>RELATED SERVICES ARE: REQUIRED</p> |

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| <p>ITT Reference</p> | <p>17. PERIOD OF VALIDITY OF TENDERS</p> <p>17.1 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 (AS PRESCRIBED BY THE PROCURING ENTITY IN ACCORDANCE WITH ITT 22.1). A TENDER VALID FOR A SHORTER PERIOD SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.</p>  | <p>-</p>            | <p>-</p>       |
| <p>TDS Detail</p>    | <p>THE TENDER VALIDITY PERIOD SHALL BE 90 DAYS.</p>  | <p>Manual Input</p> | <p>90 days</p> |
| <p>ITT Reference</p> | <p>18. TENDER SECURITY/ NOT APPLICABLE</p> <p>18.1 THE TENDERER SHALL FURNISH AS PART OF ITS TENDER, EITHER A TENDER SECURITY OR A TENDER-SECURING DECLARATION OR AS SPECIFIED IN THE TDS, IN ORIGINAL FORM (PHYSICAL OR ELECTRONIC) AND, IN THE CASE OF A TENDER SECURITY, IN THE AMOUNT AND CURRENCY SPECIFIED IN THE TDS. IN THIS CASE A TENDER-SECURING DECLARATION OR A TENDER SECURITY SHALL BE FOR EACH ITEM. ALTERNATIVELY, A TENDERER MAY AGGREGATE ALL THE ITEMS TENDERED FOR AND PROVIDE ONE TENDER- SECURING DECLARATION OR A TENDER SECURITY IN THE REQUIRED AMOUNTS, AS THE CASE MAY BE.</p> | <p>-</p>            | <p>-</p>       |

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| TDS Detail | <p><i>[IF A TENDER SECURITY SHALL BE REQUIRED, A TENDER-SECURING DECLARATION SHALL NOT BE REQUIRED, AND VICE VERSA.]</i></p> <p>A TENDER SECURITY <i>[INSERT "SHALL BE" OR "SHALL NOT BE"]</i> REQUIRED.</p> | Manual Input | <b>A TENDER SECURITY SHALL NOT BE REQUIRED.</b> |
| TDS Detail | <p>THE TENDER SECURITY SHALL BE REQUIRED IN THE AMOUNT <i>SHALL NOT BE"]</i> REQUIRED<br/> .....</p>   |              | N/A   |



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| TDS Detail    | <p>AND THE CURRENCY OF THE TENDER SECURITY SHALL BE <b>SHALL NOT BE</b>] REQUIRED .....</p> <p><i>[IF A TENDER SECURITY IS REQUIRED, INSERT AMOUNT AND CURRENCY OF THE TENDER SECURITY. OTHERWISE INSERT “NOT APPLICABLE”.] [IN CASE OF LOTS, PLEASE INSERT AMOUNT AND CURRENCY OF THE TENDER SECURITY FOR EACH LOT]</i></p> <p><i>[NOTE: TENDER SECURITY IS REQUIRED FOR EACH LOT AS PER AMOUNTS INDICATED AGAINST EACH LOT. TENDERER HAVE THE OPTION OF SUBMITTING ONE TENDER SECURITY FOR ALL LOTS (FOR THE COMBINED TOTAL AMOUNT OF ALL LOTS) FOR WHICH TENDERS HAVE BEEN SUBMITTED, HOWEVER IF THE AMOUNT OF TENDER SECURITY IS LESS THAN THE TOTAL REQUIRED AMOUNT, THE PROCURING ENTITY WILL DETERMINE FOR WHICH LOT OR LOTS THE TENDER SECURITY AMOUNT SHALL BE APPLIED.]</i></p> |   |   |
| ITT Reference | <p>21. DEADLINE FOR SUBMISSION OF TENDERS</p> <p>21.1 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.</p>  | - | - |

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| TDS Detail | <p>FOR TENDER SUBMISSION PURPOSES ONLY, THE PROCURING ENTITY'S ADDRESS IS:</p> <p><i>[THIS ADDRESS MAY BE THE SAME AS OR DIFFERENT FROM THAT SPECIFIED UNDER PROVISION ITT 7.1 FOR CLARIFICATIONS]</i></p> <p>ATTENTION: <i>[CHIEF EXECUTIVE OFFICER [INSERT TITLE OF THE ACCOUNTING OFFICER]</i></p> | Manual Input | P.O BOX 41621                                 |
| TDS Detail | 2. POSTAL ADDRESS: <i>[INSERT ADDRESS]</i>  |              | 00100   |
| TDS Detail | 3. PHYSICAL ADDRESS: CITY, STREET, BUILDING NAME, FLOOR NUMBER AND ROOM NUMBER.   |              | 5TH FLOOR, SHA BUILDING, RAGATI ROAD, NAIROBI |
| TDS Detail | 4. TELEPHONE: <i>[INSERT TELEPHONE NUMBER, INCLUDING COUNTRY AND CITY CODES]</i>  | Manual Input | 0202733561 /0709482000                        |
| TDS Detail | ELECTRONIC MAIL ADDRESS: <i>[INSERT EMAIL ADDRESS, IF APPLICABLE]</i>   | N/A          | N/A   |

|            |  |  |                                |
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| TDS Detail | <p>THE DEADLINE FOR TENDER SUBMISSION IS:</p> <p>DATE:</p> <p><i>[NOTE: THE DATE AND TIME SHOULD BE THE SAME AS THOSE PROVIDED IN THE SPECIFIC PROCUREMENT NOTICE - REQUEST FOR TENDERS, UNLESS SUBSEQUENTLY AMENDED PURSUANT TO ITT 22.2.]</i></p> <p><i>TENDERERS HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY.</i></p> <p><i>[NOTE: THE FOLLOWING PROVISION SHOULD BE INCLUDED AND THE REQUIRED CORRESPONDING INFORMATION INSERTED ONLY IF TENDERERS HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY. OTHERWISE OMIT.]</i></p> |  | <p>11/05/2026<br/>11:00:am</p> |
|------------|--|--|--------------------------------|

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| <p>ITT Reference</p> | <p>24. TENDER OPENING</p> <p>24.1 EXCEPT AS IN THE CASES SPECIFIED IN ITT 23 AND ITT 24.2, <b>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 CHOOSES TO ATTEND. ANY SPECIFIC ELECTRONIC TENDER OPENING PROCEDURES REQUIRED IF ELECTRONIC TENDERING IS PERMITTED IN ACCORDANCE WITH ITT 22.1, SHALL BE AS SPECIFIED IN THE TDS.</b></p> | <p>-</p>            | <p>-</p>  |
| <p>TDS Detail</p>    | <p>THE TENDER OPENING SHALL TAKE PLACE AT:</p> <p>1. PHYSICAL ADDRESS: WASREB OFFICES AT SHA BUILDING 5<sup>TH</sup> FLOOR WING A , RAGATI ROAD I THE MAIN BOARDROOM.</p>   | <p>Manual Input</p> | <p>SHA HEADQUATER BUILDING 5TH FLOOR WING A</p> |

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| TDS Detail    | DATE: <i>[NOTE: THE FOLLOWING PROVISION SHOULD BE INCLUDED AND THE REQUIRED CORRESPONDING INFORMATION INSERTED ONLY IF TENDERERS HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY. OTHERWISE OMIT.]</i>   |   | 11/05/2026<br>11:00am |
| TDS Detail    | THE ELECTRONIC TENDER OPENING PROCEDURES SHALL BE: <i>[INSERT A DESCRIPTION OF THE ELECTRONIC TENDER OPENING PROCEDURES.] NOT APPLICABLE</i>  |   |                       |
| ITT Reference | 24.6 ONLY TENDERS, ALTERNATIVE TENDERS AND DISCOUNTS THAT ARE OPENED AND READ OUT AT TENDER OPENING SHALL BE CONSIDERED FURTHER IN THE EVALUATION. THE FORM OF TENDER AND THE PRICE SCHEDULES ARE TO BE INITIALED BY REPRESENTATIVES OF THE PROCURING ENTITY ATTENDING TENDER OPENING IN THE MANNER SPECIFIED IN THE TDS. | - | -                     |

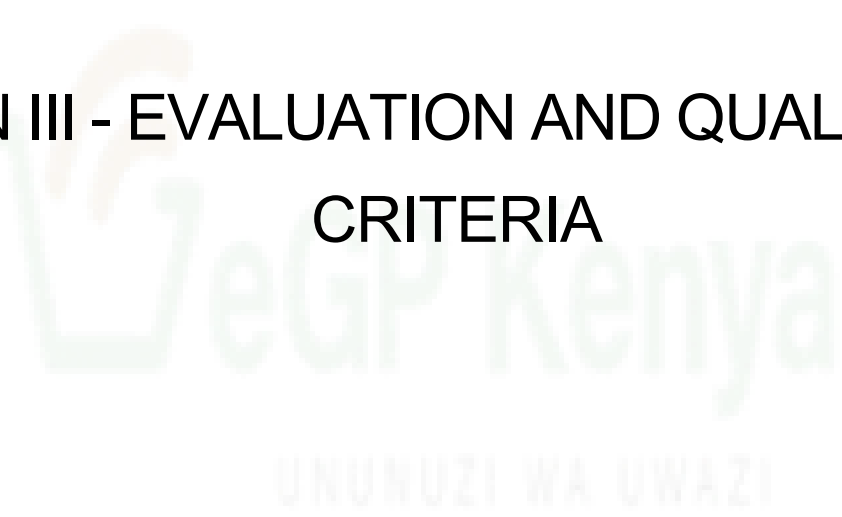
|               |  |              |           |
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| TDS Detail    | <p>THE FORM OF TENDER AND PRICE SCHEDULES SHALL BE INITIALED BY _____<i>[INSERT NUMBER]</i> REPRESENTATIVES OF THE PROCURING ENTITY CONDUCTING TENDER OPENING.</p> <p><i>[INSERT PROCEDURE: EXAMPLE: EACH TENDER SHALL BE INITIALED BY ALL REPRESENTATIVES AND SHALL BE NUMBERED, ANY MODIFICATION TO THE UNIT OR TOTAL PRICE SHALL BE INITIALED BY THE REPRESENTATIVE OF THE PROCURING ENTITY, ETC.]</i></p>          | Manual Input | THREE     |
| ITT Reference | <p>29. NON-CONFORMITIES, ERRORS AND OMISSIONS</p> <p>29.3 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY SHALL RECTIFY QUANTIFIABLE IMMATERIAL 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.</p> | -            | -         |
| TDS Detail    | <p>THE MANNER OF RECTIFY QUANTIFIABLE NONMATERIAL NONCONFORMITIES DESCRIBED BELOW:</p> <p>_____</p>  | Manual Input | SHALL NOT |

|                      |   |                     |                     |
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| <p>ITT Reference</p> | <p>33. EVALUATION OF TENDERS</p> <p>33.6 THE PROCURING ENTITY'S EVALUATION OF A TENDER MAY REQUIRE THE CONSIDERATION OF OTHER FACTORS, IN ADDITION TO THE TENDER PRICE QUOTED IN ACCORDANCE WITH ITT 14. THESE FACTORS MAY BE RELATED TO THE CHARACTERISTICS, PERFORMANCE, AND TERMS AND CONDITIONS OF LEASE AND RELATED SERVICES. THE EFFECT OF THE FACTORS SELECTED, IF ANY, SHALL BE EXPRESSED IN MONETARY TERMS TO FACILITATE COMPARISON OF TENDERS, UNLESS OTHERWISE SPECIFIED IN THE TDS FROM AMONGST THOSE SET OUT IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA. THE ADDITIONAL CRITERIA AND METHODOLOGIES TO BE USED SHALL BE AS SPECIFIED IN ITT 33.2</p> | <p>-</p>            | <p>-</p>            |
| <p>TDS Detail</p>    | <p>THE EFFECT OF THE FACTORS SELECTED, IF ANY, SHALL BE EXPRESSED IN <i>_[SPECIFY HOW TENDERERS ARE TO EXPRESS THE EFFECT OF THE FACTORS SELECTED IF NOT IN MONETARY TERMS TO FACILITATE COMPARISON OF TENDERS]</i></p>   | <p>Manual Input</p> | <p>AS SPECIFIED</p> |
| <p>ITT Reference</p> | <p>44. PERFORMANCE SECURITY <b>SHALL NOT BE</b> REQUIRED</p> <p>44.3 PERFORMANCE SECURITY SHALL BE REQUIRED FOR CONTRACTS UNLESS OTHERWISE SPECIFIED IN THE TDS.</p>  | <p>-</p>            | <p>-</p>            |

|            |   |              |     |
|------------|---|--------------|-----|
| TDS Detail | THE MAXIMUM PERCENTAGE BY WHICH QUANTITIES MAY BE INCREASED IS: <i>[/INSERT PERCENTAGE]</i> | Manual Input | N/A |
|------------|---|--------------|-----|



# SECTION III - EVALUATION AND QUALIFICATION CRITERIA



## Evaluation and Qualification Criteria

Detail

### SECTION III - EVALUATION AND QUALIFICATION CRITERIA

Evaluation Type :-



## 1. GENERAL PROVISION

### Evaluation Type :-

1.1 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 BUSINESS TURNOVER OR FINANCIAL DATA REQUIRED FOR EACH YEAR-EXCHANGE RATE PREVAILING ON THE LAST DAY OF THE RESPECTIVE CALENDAR YEAR (IN WHICH THE REPORT RELATES) 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.

1.2 THIS SECTION CONTAINS THE CRITERIA THAT THE PROCURING ENTITY SHALL USE TO EVALUATE TENDER AND QUALIFY TENDERERS. NO OTHER FACTORS, METHODS OR CRITERIA SHALL BE USED OTHER THAN SPECIFIED IN THIS TENDER DOCUMENT. THE TENDERER SHALL PROVIDE ALL THE INFORMATION REQUESTED IN THE FORMS INCLUDED IN SECTION IV, TENDERING FORMS. THE PROCURING ENTITY SHOULD USE THE STANDARD TENDER EVALUATION REPORT FOR GOODS AND WORKS FOR EVALUATING TENDERS.

### 1.3 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 THAT:

- I. SUBSTANTIALLY MEETS THE QUALIFICATION CRITERIA,
- II. HAS BEEN DETERMINED TO BE SUBSTANTIALLY RESPONSIVE TO THE TENDER DOCUMENTS, AND
- III. IS DETERMINED TO HAVE THE LOWEST EVALUATED TENDER PRICE SHALL BE SELECTED FOR AWARD OF CONTRACT.

### Evaluation Type : -

## 2. PRELIMINARY EXAMINATION FOR DETERMINATION OF RESPONSIVENESS

Evaluation Type: **Mandatory Evaluation Requirement**

2.1 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. TENDERS THAT DO NOT PASS THE PRELIMINARY EXAMINATION WILL BE CONSIDERED NON- RESPONSIVE AND WILL NOT BE CONSIDERED FURTHER.

| S/NO. | ITEM DESCRIPTION   | Y<br>E<br>S<br>/<br>N<br>O |
|-------|--|----------------------------|
| 1.    | MUST SUBMIT A COPY OF CERTIFICATE OF INCORPORATION OR REGISTRATION FOR THE BIDDER (THE COMPANY SUBMITTING THE TENDER) OR COPY OF NATIONAL ID/LETTER OF ADMINISTRATION WHERE THE TENDERER IS INDIVIDUAL LANDLORD. |                            |
| 1.    | SUBMIT A COPY OF VALID TAX COMPLIANCE CERTIFICATE FROM KRA FOR THE BIDDER (THE COMPANY/ INDIVIDUAL SUBMITTING THE TENDER).   |                            |
| 1.    | MUST SUBMIT A PROOF OF OWNERSHIP OF THE PREMISES I.E. COPIES OF TITLE COPIES OF TITLE DOCUMENTS/LEASE IN COMPANY / CORPORATE NAME OR INDIVIDUAL NAME.  |                            |
| 1.    | MUST SUBMIT PROOF OF RELATIONSHIP BETWEEN THE PRINCIPAL (BUILDING OWNERS) AND AGENT (ESTATE AGENT) I. E. VALID SIGNED AGREEMENT DOCUMENT FOR AGENCY (FOR ESTATE AGENT ONLY).                                     |                            |
| 1.    | MUST SUBMIT COPY OF CERTIFICATE OF REGISTRATION WITH ESTATE AGENTS REGISTRATION BOARD (FOR ESTATE AGENTS ONLY).  |                            |
| 1.    | MUST SUBMIT COPY OF VALID PRACTICING LICENSE AS REAL ESTATE AGENTS WITH THE RELEVANT BODY FOR AT LEAST TWO (2) DIRECTORS/TOP MANAGEMENT (FOR ESTATE AGENTS ONLY).  |                            |
| 1.    | PROVIDE EVIDENCE OF BUILDING OCCUPATION PERMIT   |                            |
| 1.    | DECLARATION STATING THAT THE BIDDER HAS NOT BEEN DEBARRED BY PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA).   |                            |
| 1.    | SUBMIT A SIGNED DECLARATION STATEMENT THAT THE BIDDER WILL NOT BE INVOLVED IN CORRUPT OR FRAUDULENT PRACTICES.   |                            |
| 1.    | DULY, FILLED, SIGNED AND STAMPED CONFIDENTIAL BUSINESS QUESTIONNAIRE. WHERE SIGNATORY IS DIFFERENT FROM THE OWNER(S) ATTACH DULY EXECUTED POWER OF ATTORNEY  |                            |
| 1.    | DULY, FILLED, SIGNED AND STAMPED FORM OF TENDER IN THE FORMAT PROVIDED.  |                            |
| 1.    | SUBMIT AUDITED ACCOUNTS FOR THE LAST THREE 3 YEARS.  |                            |

|    |   |
|----|---|
| 1. | SUBMIT A DULY FILLED AND SIGNED, AND STAMPED PRICE SCHEDULE IN THE FORMAT PROVIDED  |
| 1. | PROVIDE A DULY FILLED AND SIGNED DSD1 FORM (SELF-DECLARATION THAT THE PERSON IS NOT DEBARRED) IN THE PRESCRIBED FORMAT  |
| 1. | PRESENTATION OF DOCUMENTS MUST BE OF UTMOST CLARITY AND EASY TO READ.   |
|    | 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 |

**Evaluation Type : -**

**2.2. EVALUATION OF TECHNICAL ASPECTS OF THE TENDER**

THE PROCURING ENTITY SHALL EVALUATE THE TECHNICAL ASPECTS OF THE TENDER TO DETERMINE COMPLIANCE WITH THE PROCURING ENTITY'S REQUIREMENTS UNDER SECTION V 'SCHEDULE OF REQUIREMENT' AND WHETHER THE TENDERS ARE SUBSTANTIALLY RESPONSIVE TO THE TECHNICAL SPECIFICATIONS AND OTHER REQUIREMENTS. TENDERS THAT DO NOT PASS THE TECHNICAL EXAMINATION WILL BE DEEMED TO BE NON-RESPONSIVE AND WILL NOT BE CONSIDERED FURTHER.

**TECHNICAL SPECIFICATIONS**

THESE SPECIFICATIONS DESCRIBE THE BASIC REQUIREMENTS FOR THE PROPOSED OFFICE SPACE. TENDERERS ARE REQUESTED TO SUBMIT WITH THEIR OFFERS; - THE DETAILED SPECIFICATIONS, DRAWINGS, CATALOGUES ETC. FOR THE OFFICE SPACE.

THE TENDERERS ARE REQUESTED TO PRESENT INFORMATION ALONG WITH THEIR OFFERS AS FOLLOWS:

1. **SHORTEST POSSIBLE OCCUPANCY PERIOD**
2. **INFORMATION ON FIT OUT WORKS MANUAL**
3. **INFORMATION ON PROPER MAINTENANCE OF THE BUILDING**

| S/<br>N<br>O<br>. | DESCRIPTION | ATTRIBUTES   |
|-------------------|-------------|--|
| 1.                | LOCATION    | <ul style="list-style-type: none"> <li>• THE BUILDING SHOULD BE LOCATED IN ANY OF THE FOLLOWING SPECIFIED AREAS; KILIMANI, WESTLANDS AND UPPERHILL AREAS.</li> <li>• ACCESSIBLE BY PUBLIC MEANS AND PREFERABLY FRONTING PUBLIC ROAD.</li> <li>• RADIUS OF NOT MORE THAN 5KM FROM NAIROBI CBD.</li> <li>• NEIGHBOURHOOD ENVIRONMENT BE CONDUCIVE FOR OFFICE ENVIRONMENT.</li> </ul> |



|                                 |   |
|---------------------------------|---|
| <p>2. BUILDING REQUIREMENTS</p> | <p>1. COMPLIANT WITH ALL RELEVANT BY-LAWS AND STATUTES(THE BIDDER TO SPECIFY)</p> <ul style="list-style-type: none"> <li>• BUILDING OCCUPATION CERTIFICATE</li> <li>• UNIVERSAL ACCESS; RAMPS, LIFTS AND SIGNAGE FOR PWDS COMPLYING WITH SECTION 22 (1) OF THE PERSONS'S WITH DISABILITY ACT (ACT NO. 14 OF 2003) AND ALL OTHER LAWS, REGULATIONS AND INDUSTRY STANDARDS RELATING TO THE ACCESSIBILITY OF PREMISES BY PWD'S</li> <li>• VENTILATION AND LIGHTING</li> <li>• FIRE-FIGHTING AND SAFETY; WELL-MAINTAINED INBUILT SELF-DETECTION SYSTEM.</li> <li>• GENDER BASED WASHROOMS, FRIENDLY AND SUFFICIENT WASHROOMS FOR PWDS</li> <li>• CERTIFIED GREEN BUILDING WILL BE AN ADDED ADVANTAGE</li> </ul> <p>1. LETTABLE AREA OF APPROXIMATELY 15,000 – 20,000 SQUARE FEET</p> <p>2. PREFERABLY CONSECUTIVE FLOORS.</p> <p>3. AVAILABLE FLOORS/WINGS MUST GUARANTEE EXCLUSIVE TENANCY</p> <p>4. READY FOR IMMEDIATE OCCUPATION</p> <p>5. A MINIMUM OF 40 NO. PARKING BAYS (THE BIDDER TO SPECIFY THE PARKING ALLOCATION CRITERIA)</p> <p>6. AVAILABILITY/PROVISION FOR INSTALLATION OF KITCHENETTE</p> <p>7. CONNECTED TO MAINS ELECTRICITY, SOLAR PV WILL BE AN ADDED ADVANTAGE</p> <p>8. POWER BACKUP GENERATOR CAPABLE OF ADEQUATELY SUPPORTING THE BUILDING ELECTRICAL AND BUILDING SERVICES SYSTEMS (THE BIDDER TO SPECIFY KVA)</p> <p>9. CONNECTED TO MAINS WATER SUPPLY OR BOREHOLE AND ADEQUATE RESERVOIR (THE BIDDER TO SPECIFY CAPACITY)</p> <p>10. CONNECTED TO MAINS SEWER SYSTEM</p> <p>11. HEADROOM SHOULD BE MINIMUM OF 2.5 METERS BETWEEN OFFICE FLOOR TO CEILING FLOOR.</p> <p>12. INTERNET; THE BUILDING SHOULD BE FITTED WITH REQUISITE ICT INFRASTRUCTURE TO SUPPORT INTERNET.</p> <p>13. AT LEAST TWO (2) HIGH SPEED LIFTS/ELEVATORS WITH A CAPACITY OF APPROXIMATELY 10 PAX EACH THAT CAN SERVE ALL FLOORS.</p> <p>14. SECURITY AND SAFETY REQUIREMENTS;</p> <p>15. CCTV 24 HOUR'S SURVEILLANCE SERVICES FOR THE BUILDING BOTH INTERNAL AND EXTERNAL COMMON AREAS INCLUDING AT STRATEGIC POINTS WITHIN THE PERIMETER FENCE.</p> <p>16. PROVISION OF DAY AND NIGHT SECURITY SERVICES TO ALL COMMON AREAS (IF MULTI – TENANCY OCCUPATION)</p> <p>17. MUST HAVE PERIMETER WALL AND CONTROLLED ACCESS POINT(S).</p> <p>18. EVIDENCE OF PRUDENT PROPERTY MANAGEMENT ACTIVITIES THAT IS;</p> <ul style="list-style-type: none"> <li>• WELL MANAGED COMMON AREAS</li> <li>• SECURITY AND SECURITY FEATURES</li> <li>• GARBAGE COLLECTION</li> <li>• FUNCTIONAL LIFTS AND OTHER EQUIPMENT ETC.</li> </ul> <p>A REGISTERED GOVERNMENT VALUER SHALL SUBJECT THE PREMISES TO A RENTAL ASSESSMENT</p> |
| <p>3. OWNERSHIP DETAILS</p>     | <p>1. COPY OF TITLE</p> <p>2. ID OF THE VENDOR OR INCORPORATION CERTIFICATE</p> <p>3.</p>   |

|   |                              |   |
|---|------------------------------|---|
| 4   | LEASE AGREEMENT REQUIREMENTS | ATTACH A TENTATIVE LETTER OF OFFER/HEAD OF TERMS. |
| 5. ANY OTHER INFORMATION THE BIDDER IS WILLING TO SHARE WITH THE PROCURING ENTITY FOR COMPETITIVE ADVANTAGE |                              |   |

**Evaluation Type : Technical Form**

**2.3 FINANCIAL EVALUATION**

UPON COMPLETION OF THE TECHNICAL EVALUATION, THE PROCURING ENTITY SHALL, IN CONSISTENT WITH THE PROVISIONS SET OUT UNDER ITT 29.3, ITT 33.2, ITT 33.3, AND ITT 34 CONDUCT THE FINANCIAL EVALUATION AND COMPARISON OF TENDERS TO DETERMINE THE EVALUATED PRICE OF EACH TENDER, AS OUTLINED BELOW.

THE EVALUATED PRICE FOR EACH BID SHALL BE DETERMINED BY TAKING INTO CONSIDERATION:

- (A) THE BID PRICE IN THE TENDER FORM;
- (B) ANY MINOR DEVIATION FROM THE REQUIREMENTS ACCEPTED BY A PROCURING ENTITY;
- (C) WHERE APPLICABLE, CONVERTING ALL TENDERS TO THE SAME CURRENCY, USING THE CENTRAL BANK OF KENYA EXCHANGE RATE PREVAILING AT THE TENDER OPENING DATE; AND

**Evaluation Type: -**

**3. PRICE EVALUATION FOR EACH ITEM:**

**Evaluation Type:-**

IN ADDITION TO THE CRITERIA LISTED IN ITT 34.2 (A)–(D) THE FOLLOWING CRITERIA SHALL APPLY:

- A) ANY ADDITIONAL EVALUATION FACTORS AS PER ITT 33.2 (E) SPECIFIED AS FOLLOWS: (*SPECIFY*)

**Evaluation Type: -**

- B) DEVIATION IN PAYMENT SCHEDULE

**Evaluation Type: -**

#### 4. MULTIPLE CONTRACTS (ITT 34.4)

##### Evaluation Type :-

MULTIPLE CONTRACTS WILL BE PERMITTED IN ACCORDANCE WITH ITT 34.4. 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 TENDERER WILL BE AWARDED CONTRACTS FOR ALL WON LOTS, PROVIDED THE TENDERER MEETS THE AGGREGATE ELIGIBILITY AND QUALIFICATION CRITERIA FOR ALL THE LOTS. A TENDERER WILL BE AWARDED THE COMBINATION OF LOTS FOR WHICH THE TENDERER QUALIFIES AND THE OTHER LOTS WILL BE CONSIDERED FOR AWARD TO SECOND LOWEST EVALUATED TENDERERS.

##### OPTION 2

THE PROCURING ENTITY WILL CONSIDER ALL POSSIBLE COMBINATIONS OF WON LOTS [CONTRACT(S)] AND DETERMINE THE COMBINATIONS WITH THE LOWEST TOTAL EVALUATED PRICE. TENDERS WILL THEN BE AWARDED TO THE TENDERER(S) IN THE COMBINATIONS PROVIDED THE TENDERER MEETS THE AGGREGATE ELIGIBILITY AND QUALIFICATION CRITERIA FOR ALL THE WON LOTS. THE PROCURING ENTITY SHALL FIRST AWARD THE LOT OR COMBINATION OF LOTS OF THE HIGHEST VALUE AND PROCEED SYSTEMATICALLY TO AWARD THE LOT OR COMBINATION OF LOTS OF THE LOWEST VALUE.

A TENDERER WILL BE AWARDED THE COMBINATION OF LOTS FOR WHICH THE TENDERER QUALIFIES AND THE OTHER LOTS WILL BE CONSIDERED FOR AWARD TO THE SECOND LOWEST TENDERERS.

##### Evaluation Type :-

## 5. ALTERNATIVE TENDERS (ITT 12.1)

### Evaluation Type :-

“A TENDERER MAY SUBMIT AN ALTERNATIVE TENDER ONLY WITH A TENDER FOR THE BASE CASE. THE PROCURING ENTITY SHALL ONLY CONSIDER THE ALTERNATIVE TENDERS OFFERED BY THE TENDERER WHOSE TENDER FOR THE BASE CASE WAS DETERMINED TO BE THE LOWEST EVALUATED TENDER.”

OR

“A TENDERER MAY SUBMIT AN ALTERNATIVE TENDER WITH OR WITHOUT A TENDER FOR THE BASE CASE. THE PROCURING ENTITY SHALL CONSIDER TENDERS OFFERED FOR ALTERNATIVES AS SPECIFIED IN THE TECHNICAL SPECIFICATIONS OF SECTION V, SCHEDULE OF REQUIREMENTS. ALL TENDERS RECEIVED, FOR THE BASE CASE, AS WELL AS ALTERNATIVE TENDERS MEETING THE SPECIFIED REQUIREMENTS, SHALL BE EVALUATED ON THEIR OWN MERITS IN ACCORDANCE WITH THE SAME PROCEDURES, AS SPECIFIED IN THE ITT 33 TO DETERMINE THE LOWEST EVALUATED TENDER.”

### Evaluation Type : -

## 6. POST-QUALIFICATION (ITT 35)

### Evaluation Type :-

6.1 AFTER DETERMINING THE SUBSTANTIALLY RESPONSIVE TENDER WHICH OFFERS THE LOWEST-EVALUATED COST IN ACCORDANCE WITH ITT 33, AND, IF APPLICABLE, THE ASSESSMENT OF ANY ABNORMALLY LOW OR HIGH TENDER (IN ACCORDANCE WITH ITT 35) THE PROCURING ENTITY SHALL CARRY OUT THE POST-QUALIFICATION OF THE TENDERER IN ACCORDANCE WITH ITT 36, USING ONLY THE REQUIREMENTS SPECIFIED. REQUIREMENTS NOT INCLUDED IN THE TEXT BELOW SHALL NOT BE USED IN THE EVALUATION OF THE TENDERER QUALIFICATIONS.

### 6.2 FOR LEASE OF INFRASTRUCTURAL FACILITIES (REAL ESTATE)

MAKE A PHYSICAL CHECK TO ENSURE THAT EACH LISTED ITEM IS MET. DETERMINE IF THE FACILITY IS ACCEPTABLE OR NOT ACCEPTABLE.

**Evaluation Type : -**

6.3 FOR LEASE OF PLANT/EQUIPMENT, VEHICLES (MOVABLE ASSETS)

- I) CONFIRM THE OFFERED ITEMS MEET THE SPECIFICATIONS, AND THE CAPACITY, AGE ETC.
- II) CONFIRM THEIR AVAILABILITY, ETC.
- III) FINANCIAL CAPABILITY - THE TENDERER SHALL FURNISH DOCUMENTARY EVIDENCE THAT IT MEETS THE FOLLOWING FINANCIAL REQUIREMENT(S): [LIST THE REQUIREMENT(S) INCLUDING PERIOD]
- IV) DOCUMENTARY EVIDENCE- THE TENDERER SHALL FURNISH DOCUMENTARY EVIDENCE TO DEMONSTRATE THAT THE LEASE ITEMS IT OFFERS MEET THE FOLLOWING USAGE REQUIREMENT: [LIST THE REQUIREMENT(S)]

[MAKE A PHYSICAL CHECK TO ENSURE THAT EACH LISTED ITEM IS MET. DETERMINE IF THE FACILITY IS ACCEPTABLE OR NOT ACCEPTABLE.]

**Evaluation Type : -**

6.4 AFTER DETERMINING THE SUBSTANTIALLY RESPONSIVE TENDER WHICH OFFERS THE LOWEST-EVALUATED PRICE MEETS THE REQUIREMENTS IN ITEMS 6.2 AND 6.3 ABOVE, THE PROCURING ENTITY SHALL CARRY OUT THE POST-QUALIFICATION USING THE FOLLOWING CRITERIA:

- A) HISTORY OF NON-PERFORMING LEASE CONTRACTS:  
TENDERER, SUPPLIER OR/ AND MANUFACTURER AND EACH MEMBER OF JV IN CASE THE TENDERER IS A JV, SHALL DEMONSTRATE THAT NON-PERFORMANCE OF A CONTRACT DID NOT OCCUR BECAUSE OF THE DEFAULT OF THE TENDERER, OR THE MEMBER OF A JV IN THE LAST 5 YEARS. THE REQUIRED INFORMATION SHALL BE FURNISHED IN THE APPROPRIATE FORM.

**Evaluation Type : -**

**B) PENDING LITIGATION**

FINANCIAL POSITION AND PROSPECTIVE LONG-TERM PROFITABILITY OF THE SINGLE TENDERER, AND IN THE CASE THE TENDERER IS A JV, OF EACH MEMBER OF THE JV, SHALL REMAIN SOUND ACCORDING TO CRITERIA ESTABLISHED WITH RESPECT TO FINANCIAL CAPABILITY UNDER PARAGRAPH (A) ABOVE IF ALL PENDING LITIGATION WILL BE RESOLVED AGAINST THE TENDERER. TENDERER SHALL PROVIDE INFORMATION ON PENDING LITIGATIONS IN THE APPROPRIATE FORM.

**Evaluation Type : -**



# MANDATORY EVALUATION REQUIREMENTS



## Mandatory Evaluation Requirement

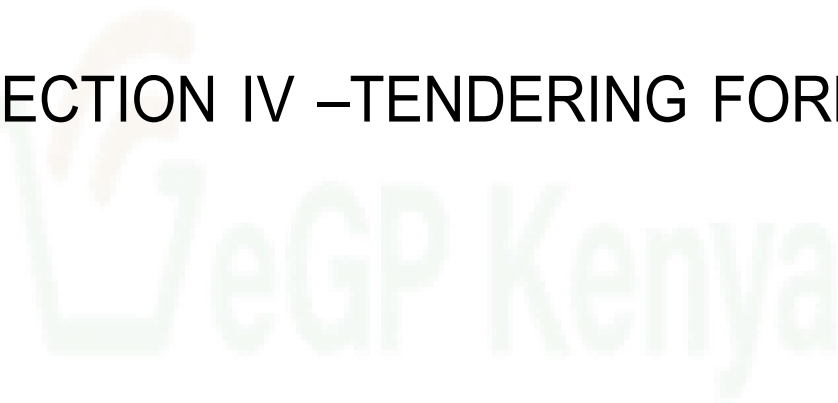
| Evaluation Requirement   | YES/NO |
|--|--------|
| SELF DECLARATION- SD1 AND SD2 FORM   |        |
| MUST SUBMIT A COPY OF CERTIFICATE OF INCORPORATION OR REGISTRATION FOR THE BIDDER OR COPY OF NATIONAL ID/LETTER OF ADMINISTRATION WHERE THE TENDERER IS INDIVIDUAL LANDLORD. |        |
| SUBMIT A COPY OF VALID TAX COMPLIANCE CERTIFICATE FROM KRA FOR THE BIDDER (THE COMPANY/ INDIVIDUAL SUBMITTING THE TENDER).   |        |
| MUST SUBMIT A PROOF OF OWNERSHIP OF THE PREMISES I.E. COPIES OF TITLE COPIES OF TITLE DOCUMENTS/LEASE IN COMPANY / CORPORATE NAME OR INDIVIDUAL NAME.                        |        |
| MUST SUBMIT PROOF OF RELATIONSHIP BETWEEN THE PRINCIPAL (BUILDING OWNERS) AND AGENT (ESTATE AGENT) I.E. VALID SIGNED AGREEMENT DOCUMENT FOR AGENCY (FOR ESTATE AGENT ONLY).  |        |
| MUST SUBMIT COPY OF CERTIFICATE OF REGISTRATION WITH ESTATE AGENTS REGISTRATION BOARD (FOR ESTATE AGENTS ONLY).  |        |

|  |  |
|--|--|
| <p>MUST SUBMIT COPY OF VALID PRACTICING LICENSE AS REAL ESTATE AGENTS WITH THE RELEVANT BODY FOR AT LEAST TWO (2) DIRECTORS/TOP MANAGEMENT (FOR ESTATE AGENTS ONLY).</p> |  |
| <p>PROVIDE EVIDENCE OF BUILDING OCCUPATION PERMIT</p>  |  |
| <p>DECLARATION STATING THAT THE BIDDER HAS NOT BEEN <b>DEBARRED BY PUBLIC</b> PROCUREMENT REGULATORY AUTHORITY (PPRA).</p>   |  |
| <p>SUBMIT A SIGNED DECLARATION STATEMENT THAT THE BIDDER WILL NOT BE INVOLVED IN CORRUPT OR FRAUDULENT PRACTICES.</p>  |  |
| <p>DULY, FILLED, SIGNED AND STAMPED CONFIDENTIAL BUSINESS QUESTIONNAIRE. WHERE SIGNATORY IS DIFFERENT FROM THE OWNER(S) ATTACH DULY EXECUTED POWER OF ATTORNEY</p>       |  |
| <p>DULY, FILLED, SIGNED AND STAMPED FORM OF TENDER IN THE FORMAT PROVIDED.</p>   |  |
| <p>SUBMIT AUDITED ACCOUNTS FOR THE LAST <b>THREE 3 YEARS.</b></p>  |  |
| <p>SUBMIT A DULY FILLED AND SIGNED, AND STAMPED PRICE SCHEDULE IN THE FORMAT PROVIDED</p>  |  |
| <p>PROVIDE A DULY FILLED AND SIGNED SD1 FORM (SELF-DECLARATION THAT THE PERSON IS NOT DEBARRED) IN THE PRESCRIBED FORMAT</p>   |  |

|  |  |
|--|--|
| <p>THE TENDER SHALL BE VALID FOR A PERIOD OF <b>NINETY (90)</b> DAYS FROM THE DATE OF THE TENDER OPENING</p> |  |
| <p>THE DOCUMENTS SUBMITTED MUST BE OF UTMOST CLARITY AND EASY TO READ.</p>                                   |  |
| <p>AT THIS STAGE, THE TENDERER'S SUBMISSION WILL EITHER BE RESPONSIVE OR NON-RESPONSIVE</p>                  |  |



## SECTION IV –TENDERING FORMS



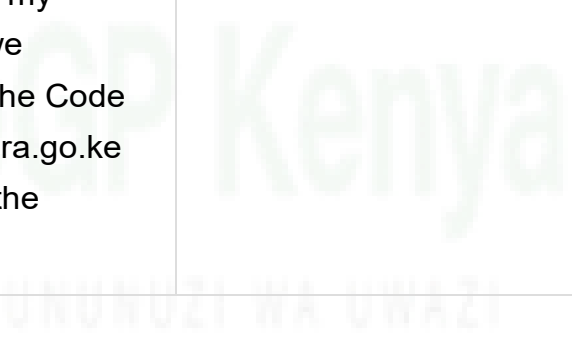
UNUNUZI WA UWAZI

## TENDERER'S DECLARATIONS: FORM OF TENDER

Technical Evaluation Process:

| Table Header: -   |                   |
|---|-------------------|
| TENDERER DECLARATION  | Supplier response |
| a) No reservations: We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);   |                   |
| b) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;   |                   |
| c) Tender/Proposal-Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration. Or Proposal-Securing Declaration in Kenya in accordance with ITT 3.6;  |                   |
| d) Conformity: We offer to supply in conformity with the Tendering document and in accordance with the Delivery Schedules specified in the Schedule of Requirements.  |                   |
| e) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period; |                   |

|   |  |
|---|--|
| <p>f)</p>   |  |
| <p>g) One Tender per tenderer: We are not submitting any other Tender(s) as an individual tenderer, and we are not participating in any other Tender(s) as a Joint Venture member, or as a subcontractor, and meet the requirements of ITT 3.5, other than alternative Tenders submitted in accordance with ITT 12.3;</p>   |  |
| <p>h) Suspension and Debarment: We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension by the procuring entity or a debarment imposed by the Public Procurement Regulatory Authority. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of International organizations to which Kenya is a member;</p> |  |
| <p>i) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Award, shall not constitute a binding contract between us, until a formal contract is prepared and executed;</p>   |  |

|   |  |
|---|--|
| <p>j) Procuring Entity 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;</p>  |  |
| <p>k) 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. Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in “Appendix 1- Fraud and Corruption” .</p>   |  |
| <p>l) Code of Ethical Conduct: We have read and understood the contents of the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code and we commit to abide by the provisions of the Code of Ethics copy available from <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> during the procurement process and the execution of any resulting contract;</p> |  |

m) Anti-competitive and 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. We have arrived at the Tender independently without consultation, communication, agreement or arrangement with, any competitor on but not limited to prices; methods, factors or formulas used to calculate prices; the intention or decision to submit, or not to submit, a tender; or the submission of a tender which does not meet the specifications of the request for Tenders except as disclosed in the Tenderer's Eligibility - Confidential Business Questionnaire. Further, we confirm that 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 above.;

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

o) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:

|   |  |
|---|--|
| i) Tenderer's Eligibility & Confidential Business Questionnaire |  |
| ii) Self-Declaration of the Tenderer (FORM SD 1 & SD 2)         |  |
|   |  |



## OPTION 1:TENDER PRICE: (ONE LOT) : FORM OF TENDER

Technical Evaluation Process : No

Table Header : THE TOTAL PRICE OF OUR TENDER, INCLUDING ANY DISCOUNTS OFFERED IS:

| TOTAL PRICE (IN FIGURES) | TOTAL PRICE (IN WORDS) | CURRENCY |
|--------------------------|------------------------|----------|
|                          |                        |          |

Table Footer : -

| Sr no. | Formula   |
|--------|---|
| 1      | TOTAL PRICE (IN WORDS)=TOTAL PRICE (IN FIGURES) |



## OPTION 2 : TENDER TOTAL PRICE OF MULTIPLE LOT : FORM OF TENDER

Technical Evaluation Process : No

Table Header : TENDER PRICE (OPTION 2) -IN CASE OF MULTIPLE LOTS:

| LOT NO/DESCRIPTION | TOTAL PRICE OF EACH (IN FIGURES) | TOTAL PRICE (IN WORDS) | CURRENCY |
|--------------------|----------------------------------|------------------------|----------|
|                    |                                  |                        |          |

Table Footer : -

| Sr no. | Formula   |
|--------|---|
| 1      | TOTAL PRICE (IN WORDS)=TOTAL PRICE OF EACH (IN FIGURES) |



## COMMISSIONS, GRATUITIES AND FEES : FORM OF TENDER

Technical Evaluation Process : No

Table Header : WE HAVE PAID, OR WILL PAY THE FOLLOWING COMMISSIONS, GRATUITIES, OR FEES WITH RESPECT TO THE TENDERING PROCESS OR IMPLEMENTATION OF THE CONTRACT.

| NAME OF RECIPIENT | ADDRESS | REASON(S) | AMOUNT |
|-------------------|---------|-----------|--------|
|                   |         |           |        |

Table Footer : IF NONE HAS BEEN PAID OR IS TO BE PAID, INDICATE "NONE".



## STATE OWNED ENTERPRISE OR INSTITUTION : FORM OF TENDER

Technical Evaluation Process : No

| Table Header : SELECT THE APPROPRIATE OPTION                                |                     |
|---|---------------------|
| STATEMENT   | TENDERER'S RESPONSE |
| WE ARE NOT STATE OWNED ENTERPRISE OR INSTITUTION                            |                     |
| WE ARE STATE- OWNED ENTERPRISE BUT MEET THE REQUIREMENTS OF ITT 3.1 AND 3.8 |                     |
| Table Footer : -  |                     |



## SIGN OFF : FORM OF TENDER

### Technical Evaluation Process :

Table Header : IN THE CASE OF THE TENDER SUBMITTED BY A JOINT VENTURE SPECIFY THE NAME OF THE JOINT VENTURE AS TENDERER. PERSON SIGNING THE TENDER SHALL HAVE THE POWER OF ATTORNEY GIVEN BY THE TENDERER. THE POWER OF ATTORNEY SHALL BE ATTACHED WITH THE TENDER SCHEDULES.

| STATEMENT  | TENDERER'S RESPONSE | NAME | TITLE OR DESIGNATION | DATE |
|--|---------------------|------|----------------------|------|
| WE CONFIRM THAT INFORMATION PROVIDED ABOVE IS CORRECT AND WE UNDERSTAND THAT GIVING FALSE INFORMATION WILL LEAD TO DISQUALIFICATION OF OUR TENDER. |                     |      |                      |      |

Table Footer : -

SCHEDULE OF REQUIREMENT : SCHEDULE OF REQUIREMENTS

Technical Evaluation Process : No

Table Header : -

| LEASE ITEM NO | DESCRIPTION OF LEASE ITEM AND RELATED SERVICES.                    | QUANTITY | LOCATION OF USE | DURATION OF LEASE (IN MONTHS) | FULL DESCRIPTION OF THE ITEM                                       | SUPPLIER |
|---------------|--|----------|-----------------|-------------------------------|--|----------|
| 1             | LEASE OF OFFICE SPACE FOR WATER SERVICES REGULATORY BOARD (WASREB) | 1        | NAIROBI         | 72                            | LEASE OF OFFICE SPACE FOR WATER SERVICES REGULATORY BOARD (WASREB) |          |

Table Footer : -



**TENDERER'S DETAILS: TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS  
QUESTIONNAIRE FORM- FORM CON 1**

Technical Evaluation Process : No

| Table Header : -       |  |  |  |   |
|------------------------|--|--|--|---|
| TENDERER'S/ JV<br>NAME | IN CASE OF JV,<br>LEGAL NAME OF<br>EACH MEMBER | TENDERER'S / JV<br>MEMBER'S<br>ACTUAL OR<br>INTENDED<br>COUNTRY OF<br>REGISTRATION | TENDERER'S / JV<br>MEMBER'S YEAR<br>OF<br>REGISTRATION | TENDERER'S / JV<br>MEMBER'S<br>LEGAL ADDRESS<br>IN COUNTRY OF<br>REGISTRATION |
|                        |  |  |  |   |
| Table Footer : -       |  |  |  |   |



TENDERER'S/JV MEMBER'S AUTHORIZED REPRESENTATIVE INFORMATION :  
TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM-  
FORM CON 1

Technical Evaluation Process : No

| Table Header : - |         |              |       |
|------------------|---------|--------------|-------|
| NAME             | ADDRESS | TELEPHONE NO | EMAIL |
|                  |         |              |       |
| Table Footer : - |         |              |       |



**ATTACHED COPIES OF ORIGINAL DOCUMENTS : TENDERER'S ELIGIBILITY &  
CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM- FORM CON 1**

Technical Evaluation Process : No

| Table Header : TENDERER'S ARE REQUIRED TO ATTACH COPIES OF THE FOLLOWING DOCUMENTS:   |          |
|---|----------|
| STATEMENT   | RESPONSE |
| FOR KENYAN TENDERERS A CURRENT TAX COMPLIANCE CERTIFICATE OR TAX EXEMPTION CERTIFICATE ISSUED BY THE KENYA REVENUE AUTHORITY IN ACCORDANCE WITH ITT 3.13  |          |
| 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 3.6  |          |
| IN CASE OF JV, LETTER OF INTENT TO FORM JV OR JV AGREEMENT, IN ACCORDANCE WITH ITT 3.1  |          |
| IN CASE OF STATE-OWNED ENTERPRISE OR INSTITUTION, IN ACCORDANCE WITH ITT 3.1 DOCUMENTS ESTABLISHING: (I) LEGAL AND FINANCIAL AUTONOMY (II) OPERATION UNDER COMMERCIAL LAW (III) ESTABLISHING THAT THE TENDERER IS NOT UNDER THE SUPERVISION OF THE PROCURING ENTITY |          |
| INCLUDED ARE THE ORGANIZATIONAL CHART AND A LIST OF BOARD OF DIRECTORS  |          |
| Table Footer : -  |          |

A. SOLE PROPRIETOR DETAILS. : TENDERER'S ELIGIBILITY & CONFIDENTIAL  
BUSINESS QUESTIONNAIRE FORM- FORM CON 1

Technical Evaluation Process : No

| Table Header : GENERAL AND SPECIFIC DETAILS: |     |             |                   |             |
|--|-----|-------------|-------------------|-------------|
| NAME IN FULL                                 | AGE | NATIONALITY | COUNTRY OF ORIGIN | CITIZENSHIP |
|  |     |             |                   |             |

Table Footer : -



B) PARTNERSHIP DETAILS: TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS  
QUESTIONNAIRE FORM- FORM CON 1

Technical Evaluation Process : No

| Table Header : -  |             |             |                         |
|-------------------|-------------|-------------|-------------------------|
| NAMES OF PARTNERS | NATIONALITY | CITIZENSHIP | PERCENTAGE SHARES OWNED |
|                   |             |             |                         |
| Table Footer : -  |             |             |                         |



C) REGISTERED COMPANY DETAILS : TENDERER'S ELIGIBILITY & CONFIDENTIAL  
BUSINESS QUESTIONNAIRE FORM- FORM CON 1

Technical Evaluation Process : No

| Table Header : -          |  |  |
|---------------------------|--|--|
| PRIVATE OR PUBLIC COMPANY | STATE THE NOMINAL CAPITAL<br>KENYA SHILLINGS<br>EQUIVALENT | STATE ISSUED CAPITAL KENYA<br>SHILLINGS (EQUIVALENT) |
|                           | 0  | 0  |
| Table Footer : -          |  |  |



D) GIVE DETAILS OF DIRECTORS AS FOLLOWS. : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM- FORM CON 1

Technical Evaluation Process : No

| Table Header : - |             |             |                         |
|------------------|-------------|-------------|-------------------------|
| NAME OF DIRECTOR | NATIONALITY | CITIZENSHIP | PERCENTAGE SHARES OWNED |
|                  |             |             |                         |
| Table Footer : - |             |             |                         |



DISCLOSURE OF INTEREST- INTEREST OF THE FIRM IN THE PROCURING ENTITY. :  
TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM-  
FORM CON 1

Technical Evaluation Process : No

| Table Header :   |                     |
|--|---------------------|
| STATEMENT  | TENDERER'S RESPONSE |
| (I) IS THERE ANY PERSON(S) IN (NAME OF PROCURING ENTITY) WHO HAS ANY INTEREST OR RELATIONSHIP IN THIS FIRM |                     |
| Table Footer : IF YES, PROVIDE DETAILS AS FOLLOWS.   |                     |



RELATIONS IOF THE FIRM IN THE PROCUREMENT ENTITY : TENDERER'S  
ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM- FORM CON 1

Technical Evaluation Process : No

| Table Header : - |  |   |
|------------------|--|---|
| NAME OF PERSON   | DESIGNATION IN THE<br>PROCURING ENTITY | INTEREST OR RELATIONSHIP<br>WITH TENDERER |
|                  |  |   |
| Table Footer : - |  |   |



**CONFLICT OF INTEREST DISCLOSURE : TENDERER'S ELIGIBILITY & CONFIDENTIAL  
BUSINESS QUESTIONNAIRE FORM- FORM CON 1**

Technical Evaluation Process :

| Table Header : -  |                      |  |
|---|----------------------|--|
| TYPE OF CONFLICT  | DISCLOSURE YES OR NO | IF YES PROVIDE DETAILS OF THE RELATIONSHIP WITH TENDERER |
| TENDERER IS DIRECTLY OR INDIRECTLY CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER TENDERER.  |                      |  |
| TENDERER RECEIVES OR HAS RECEIVED ANY DIRECT OR INDIRECT SUBSIDY FROM ANOTHER TENDERER  |                      |  |
| TENDERER HAS THE SAME LEGAL REPRESENTATIVE AS ANOTHER TENDERER  |                      |  |
| TENDERER 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 TENDER. |                      |  |

|  |  |  |
|--|--|--|
| <p>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.</p>                         |  |  |
| <p>TENDERER HAS A CLOSE BUSINESS OR FAMILY RELATIONSHIP WITH A STAFF OF THE PROCURING ENTITY.</p>  |  |  |
| <p>HAS THE CONFLICT STEMMING FROM SUCH RELATIONSHIP STATED IN ITEM 6 ABOVE BEEN RESOLVED IN A MANNER ACCEPTABLE TO THE PROCURING ENTITY THROUGHOUT THE TENDERING PROCESS AND EXECUTION OF THE CONTRACT</p> |  |  |



THE TENDERER HAS ENTERED INTO CONSULTATIONS, COMMUNICATIONS, AGREEMENTS OR ARRANGEMENTS WITH ONE OR MORE COMPETITORS REGARDING THIS REQUEST FOR TENDERS AND THE TENDERER DISCLOSES, COMPLETE DETAILS THEREOF, INCLUDING THE NAMES OF THE COMPETITORS AND THE NATURE OF, AND REASONS FOR, SUCH CONSULTATION COMMUNICATIONS, AGREEMENTS OR ARRANGEMENTS.

Table Footer : -



# CONFIRMATION AND CERTIFICATION : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM- FORM CON 1

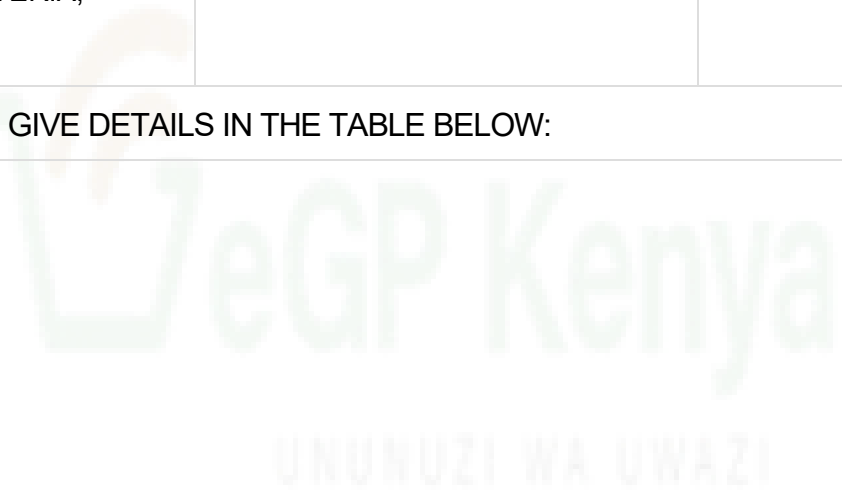
Technical Evaluation Process : No

| Table Header : WE CONFIRM THAT INFORMATION PROVIDED ABOVE IS CORRECT AND WE UNDERSTAND THAT GIVING FALSE INFORMATION WILL LEAD TO DISQUALIFICATION OF OUR TENDER. |                     |      |                      |      |
|---|---------------------|------|----------------------|------|
| STATEMENT   | TENDERER'S RESPONSE | NAME | TITLE OR DESIGNATION | DATE |
| WE CONFIRM THAT INFORMATION PROVIDED ABOVE IS CORRECT AND WE UNDERSTAND THAT GIVING FALSE INFORMATION WILL LEAD TO DISQUALIFICATION OF OUR TENDER.                |                     |      |                      |      |
| Table Footer : -  |                     |      |                      |      |

NON-PERFORMED CONTRACTS IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

| Table Header : -  |      |                     |
|---|------|---------------------|
| STATEMENT   | YEAR | TENDERER'S RESPONSE |
| CONTRACT NON-PERFORMANCE OCCURED DURING THE PERIODEVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR 6.4 |      |                     |
| Table Footer : IF YES, GIVE DETAILS IN THE TABLE BELOW:   |      |                     |



DETAILS OF NON PERFORMED CONTRACTS : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -

| JV MEMBER NAME | YEAR | NON-PERFORMED PORTION OF CONTRACT | CONTRACT NAME | CONTRACT NUMBER | NAME OF PROCURING ENTITY | REASONS FOR NON-PERFORMANCE | TOTAL CONTRACT AMOUNT (KES) |
|----------------|------|-----------------------------------|---------------|-----------------|--------------------------|-----------------------------|-----------------------------|
|                |      |                                   |               |                 |                          |                             |                             |

Table Footer : -



PENDING LITIGATION, IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

| Table Header : -  |      |                     |
|---|------|---------------------|
| STATEMENT   | YEAR | TENDERER'S RESPONSE |
| IS THERE ANY PENDING LITIGATION IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR 6.5 |      |                     |
| Table Footer : IF YES, GIVE DETAILS IN THE TABLE BELOW:   |      |                     |



DETAILS OF PENDING LITIGATION : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -

| JV MEMBER NAME | YEAR OF DISPUTE | TOTAL CONTRACT AMOUNT (KES) | AMOUNT IN DISPUTE (KES) | CONTRACT NAME | CONTRACT NUMBER | NAME OF PROCURING ENTITY | MATTER IN DISPUTE | PARTY WHO INITIATED THE DISPUTE | STATUS OF DISPUTE |
|----------------|-----------------|-----------------------------|-------------------------|---------------|-----------------|--------------------------|-------------------|---------------------------------|-------------------|
|                |                 |                             |                         |               |                 |                          |                   |                                 |                   |

Table Footer : -



LITIGATION HISTORY IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

| Table Header : -   |                     |
|--|---------------------|
| STATEMENT  | TENDERER'S RESPONSE |
| THERE IS LITIGATION HISTORY IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR 6.6. |                     |
| Table Footer : IF YES, GIVE DETAILS IN THE TABLE BELOW:  |                     |



DETAILS OF LITIGATION HISTORY : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -

| JV MEMBER NAME | YEAR OF LITIGATION AWARD | OUTCOME AS PERCENTAGE OF NET WORTH | CONTRACT NAME AND NUMBER | CONTRACT NUMBER | NAME OF PROCURING ENTITY | MATTER IN DISPUTE | PARTY WHO INITIATED THE DISPUTE | REASON(S) FOR LITIGATION AND AWARD DECISION (INDICATE MAIN REASON(S)) | AMOUNT |
|----------------|--------------------------|------------------------------------|--------------------------|-----------------|--------------------------|-------------------|---------------------------------|---|--------|
|                |                          |                                    |                          |                 |                          |                   |                                 |   |        |

Table Footer : -



# TECHNICAL EVALUATION CRITERIA : TECHNICAL EVALUATION FORM

Technical Evaluation Process : Yes

Table Header : -

| S. NO. | ITEM DESCRIPTION   | WEIGHTED SCORE | SUPPLIERS RESPONSE |
|--------|--|----------------|--------------------|
| 1      | LOCATION ACCESSIBLE BY PUBLIC MEANS AND PREFERABLY FRONTING A PUBLIC ROAD                              | 6              |                    |
| 2      | LOCATION RADIUS OF NOT MORE THAN 5KM FROM THE NAIROBI CBD  | 8              |                    |
| 3      | LOCATION NEIGHBOURHOOD ENVIRONMENT BE CONDUCIVE FOR OFFICE ENVIRONMENT.                                | 6              |                    |
| 4      | BUILDING REQUIREMENT; COMPLIANT WITH ALL RELEVANT BY-LAWS AND STATUTES BUILDING OCCUPATION CERTIFICATE | 4              |                    |

|    |   |    |  |
|----|---|----|--|
| 5  | <p>1. BUILDING REQUIREMENT; APPROXIMATE LETTABLE AREA IN SQUARE FEET BETWEEN 15,000 – 20,000 . PREFERABLY ON THE SAME FLOOR OR CONSECUTIVE FLOORS.</p> <p>WHRE APPLICABLE, WINGS MUST GUARANTEE EXCLUSIVE TENANCY</p> | 20 |  |
| 6  | BUILDING REQUIREMENT:READY FOR IMMEDIATE OCCUPATION   | 10 |  |
| 7  | A MINIMUM OF 40NO. PARKING BAYS   | 6  |  |
| 8  | SEPARATE WASHROOMS FOR EITHER GENDER PER FLOOR AND OR WING  | 5  |  |
| 9  | KITCHENETTE OR PROVISION FOR INSTALLATION OF ONE  | 4  |  |
| 10 | CONTROLLED ENTRANCE AND EXIT  | 3  |  |

|    |  |   |  |
|----|--|---|--|
| 11 | CONNECTED TO MAINS ELECTRICITY AND POWER BACKUP GENERATOR CAPABLE OF ADEQUATELY SUPPORTING THE BUILDING ELECTRICAL AND BUILDING SERVICES SYSTEMS (THE BIDDER TO SPECIFY.....KVA) | 3 |  |
| 12 | ADEQUATE LIFT /ELEVATOR FACILITIES FOR ALL FLOORS(THE BIDDER TO SPECIFY NO....., CAPACITY AND SPEED)   | 3 |  |
| 13 | CONNECTED TO MAINS WATER SUPPLY OR BOREHOLE AND ADEQUATE RESERVOIR (THE BIDDER TO SPECIFY CAPACITY)  | 4 |  |
| 14 | AVAILABILITY OF STRUCTURED CABLING OR PROVISIONS   | 3 |  |

|    |  |   |  |
|----|--|---|--|
| 15 | CCTV SURVEILLANCE SYSTEM IN THE COMMON AREAS AND 24HR. MANNED SECURITY   | 4 |  |
| 16 | PROVISION FOR PEOPLE WITH DISABILITIES (PWD) FACILITIES (RAMPS, LIFTS, DESIGNATED PARKING BAYS AND CUSTOMISED WASHROOMS) | 3 |  |
| 17 | TENTATIVE LETTER OF OFFER  | 3 |  |
| 18 | CERTIFIED GREEN BUILDING   | 3 |  |
| 19 | ANY OTHER RELEVANT INFORMATION SHARED FOR COMPETITIVE ADVANTAGE  | 2 |  |

Table Footer : -

LIST OF LEASE ITEMS AND PRICES : PRICE SCHEDULE

| 1. LEASE ITEM NO | 2. DESCRIPTION OF LEASE ITEM AND RELATED SERVICES. | 3. LOCATION OF USE | 4. QUANTITY | 5. DURATION OF LEASE (IN MONTHS) | 6. UNIT PRICE PER MONTH (KSH) | 7. TOTAL PRICE FOR WHOLE LEASE PERIOD | 8. CAPACITY BUILDING LEVY AT 0.03 PER CENT | 9. APPLICABLE TAXES | 10. TOTAL TENDER SUM (COL. 7+COL. 8+COL.9) | 11. ITEM DESCRIPTION            | 12. UNIT OF ISSUE |
|------------------|--|--------------------|-------------|----------------------------------|-------------------------------|---------------------------------------|--|---------------------|--|---------------------------------|-------------------|
| 1                | RENT FOR OFFICE SPACE                              | NAIROBI            | 1           | 72                               |                               |                                       |  |                     |  | RENT FOR OFFICE SPACE           | EACH              |
| 2                | SERVICE CHARGE FOR OFFICE SPACE                    | NAIROBI            | 1           | 72                               |                               |                                       |  |                     |  | SERVICE CHARGE FOR OFFICE SPACE | EACH              |
| 3                | PARKING FEES                                       | NAIROBI            | 1           | 72                               |                               |                                       |  |                     |  | PARKING FEES                    | EACH              |

| Sr no. | Formula  |
|--------|--|
| 1      | 7. TOTAL PRICE FOR WHOLE LEASE PERIOD =4. QUANTITY *5. DURATION OF LEASE (IN MONTHS)*6. UNIT PRICE PER MONTH (KSH)                             |
| 2      | 8. CAPACITY BUILDING LEVY AT 0.03 PER CENT=7. TOTAL PRICE FOR WHOLE LEASE PERIOD *0.0003   |
| 3      | 10. TOTAL TENDER SUM (COL.7+COL.8+COL.9)=7. TOTAL PRICE FOR WHOLE LEASE PERIOD +8. CAPACITY BUILDING LEVY AT 0.03 PER CENT+9. APPLICABLE TAXES |

|   |  |
|---|--|
| 4 | 10. TOTAL TENDER SUM (COL.7+COL.8+COL.9)=TOTAL(10. TOTAL TENDER SUM (COL.7+COL.8+COL.9)) |
|---|--|

NAME OF TENDERER (INSERT COMPLETE NAME OF TENDERER).....

SIGNED BY THE TENDERER [*SIGNATURE OF PERSON SIGNING THE TENDER*]\_\_\_\_\_ DATED\_\_\_\_\_



## SECTION V – SCHEDULE OF REQUIREMENTS



# Schedule of Requirements Contents

## 1. Form



**SCHEDULE OF REQUIREMENTS (FULL  
DESCRIPTIONS OF LEASE ITEMS, RELATED  
SERVICES AND PRICES)**

SCHEDULE OF REQUIREMENTS (FULL DESCRIPTIONS OF LEASE ITEMS, RELATED SERVICES AND PRICES) : SCHEDULE OF REQUIREMENTS (FULL DESCRIPTIONS OF LEASE ITEMS, RELATED SERVICES AND PRICES)

| Table Header : - |   |          |                 |                               |                                 |
|------------------|---|----------|-----------------|-------------------------------|---------------------------------|
| LEASE ITEM NO.   | DESCRIPTION OF LEASE ITEM AND RELATED SERVICES. | QUANTITY | LOCATION OF USE | DURATION OF LEASE (IN MONTHS) | FULL DESCRIPTION OF THE ITEM    |
| 1                | RENT FOR OFFICE SPACE                           | 1        | NAIROBI         | 72                            | RENT FOR OFFICE SPACE           |
| 2                | SERVICE CHARGE FOR OFFICE SPACE                 | 1        | NAIROBI         | 72                            | SERVICE CHARGE FOR OFFICE SPACE |
| 3                | PARKING FEES                                    | 1        | NAIROBI         | 72                            | PARKING FEES                    |
| Table Footer : - |   |          |                 |                               |                                 |

## TECHNICAL EVALUATION CRITERIA : TECHNICAL EVALUATION FORM

Table Header : -

| S. NO. | ITEM DESCRIPTION  | WEIGHTED SCORE | SUPPLIERS RESPONSE |
|--------|---|----------------|--------------------|
| 1      | LOCATION ACCESSIBLE BY PUBLIC MEANS AND PREFERABLY FRONTING A PUBLIC ROAD   | 6              |                    |
| 2      | LOCATION RADIUS OF NOT MORE THAN 5KM FROM THE NAIROBI CBD   | 8              |                    |
| 3      | LOCATION NEIGHBOURHOOD ENVIRONMENT BE CONDUCIVE FOR OFFICE ENVIRONMENT.   | 6              |                    |
| 4      | BUILDING REQUIREMENT; COMPLIANT WITH ALL RELEVANT BY-LAWS AND STATUTES APPROVED BUILDING PLAN BUILDING OCCUPATION CERTIFICATE | 4              |                    |

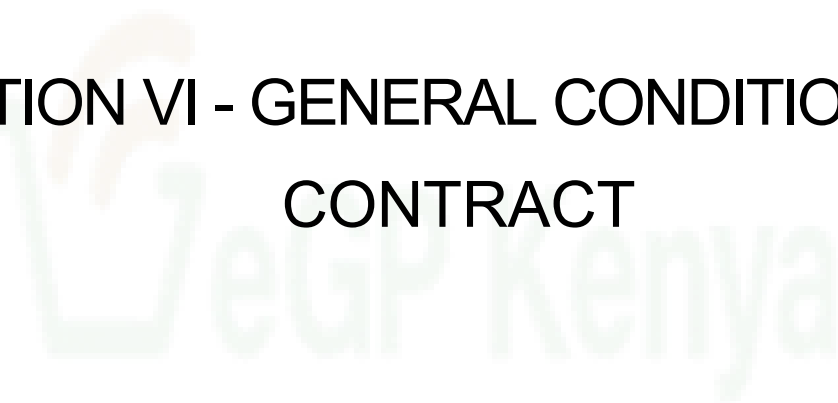
|    |   |    |  |
|----|---|----|--|
| 5  | BUILDING REQUIREMENT;<br>APPROXIMATE LETTABLE AREA IN SQUARE FEET BETWEEN 15,000 – 20,000 MUST BE ON THE SAME FLOOR OR CONSECUTIVE FLOORS | 20 |  |
| 6  | BUILDING REQUIREMENT;<br>READY FOR IMMEDIATE OCCUPATION   | 10 |  |
| 7  | A MINIMUM OF 40NO. PARKING BAYS   | 6  |  |
| 8  | SEPARATE WASHROOMS FOR EITHER GENDER PER FLOOR AND OR WING  | 5  |  |
| 9  | KITCHENETTE OR PROVISION FOR INSTALLATION OF ONE  | 4  |  |
| 10 | CONTROLLED ENTRANCE AND EXIT  | 3  |  |

|    |  |   |  |
|----|--|---|--|
| 11 | CONNECTED TO MAINS ELECTRICITY AND POWER BACKUP GENERATOR CAPABLE OF ADEQUATELY SUPPORTING THE BUILDING ELECTRICAL AND BUILDING SERVICES SYSTEMS (THE BIDDER TO SPECIFY.....KVA) | 3 |  |
| 12 | ADEQUATE LIFT /ELEVATOR FACILITIES FOR ALL FLOORS(THE BIDDER TO SPECIFY NO....., CAPACITY AND SPEED)   | 3 |  |
| 13 | CONNECTED TO MAINS WATER SUPPLY OR BOREHOLE AND ADEQUATE RESERVOIR (THE BIDDER TO SPECIFY CAPACITY)  | 4 |  |
| 14 | AVAILABILITY OF STRUCTURED CABLING OR PROVISIONS   | 3 |  |

|    |  |   |  |
|----|--|---|--|
| 15 | CCTV SURVEILLANCE SYSTEM IN THE COMMON AREAS AND 24HR. MANNED SECURITY   | 4 |  |
| 16 | PROVISION FOR PEOPLE WITH DISABILITIES (PWD) FACILITIES (RAMPS, LIFTS, DESIGNATED PARKING BAYS AND CUSTOMISED WASHROOMS) | 3 |  |
| 17 | TENTATIVE LETTER OF OFFER  | 3 |  |
| 18 | CERTIFIED GREEN BUILDING   | 3 |  |
| 19 | ANY OTHER RELEVANT INFORMATION SHARED FOR COMPETITIVE ADVANTAGE  | 2 |  |

Table Footer : -

# SECTION VI - GENERAL CONDITIONS OF CONTRACT



UNUNUZI WA UWAZI

## General Conditions of Contract (GCC)

Detail

### SECTION VI - GENERAL CONDITIONS OF CONTRACT

#### 1. DEFINITIONS

1.1 THE FOLLOWING WORDS AND EXPRESSIONS SHALL HAVE THE MEANINGS HEREBY ASSIGNED TO THEM:

- A) "CONTRACT" MEANS THE CONTRACT AGREEMENT ENTERED INTO BETWEEN THE PROCURING ENTITY AND THE LESSOR, TOGETHER WITH THE CONTRACT DOCUMENTS REFERRED TO THEREIN, INCLUDING ALL ATTACHMENTS, APPENDICES, AND ALL DOCUMENTS INCORPORATED BY REFERENCE THEREIN.
- B) "CONTRACT DOCUMENTS" MEANS THE DOCUMENTS LISTED IN THE CONTRACT AGREEMENT, INCLUDING ANY AMENDMENTS THERETO.
- C) "CONTRACT PRICE" MEANS THE PRICE PAYABLE TO THE LESSOR AS SPECIFIED IN THE CONTRACT AGREEMENT, SUBJECT TO SUCH ADDITIONS AND ADJUSTMENTS THERE TO OR DEDUCTIONS THERE FROM, AS MAY BE MADE PURSUANT TO THE CONTRACT.
- D) "COMPLETION" MEANS THE FULFILLMENT OF THE RELATED SERVICES BY THE LESSOR IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH IN THE CONTRACT.
- E) "DAY" MEANS CALENDAR DAY.
- F) "GCC" MEANS THE GENERAL CONDITIONS OF CONTRACT.
- G) "LEASE ITEMS" MEANS ALL OF THE INFRASTRUCTURAL FACILITIES, PLANT/EQUIPMENT VEHICLES OR SUCH OTHER PHYSICAL ITEMS THE LESSOR IS REQUIRED TO LEASE TO THE PROCURING ENTITY UNDER THE CONTRACT.
- H) "IN WRITING" MEANS COMMUNICATED IN WRITTEN FORM WITH PROOF OF DISPATCH
- I) "LAWS" MEANS ALL NATIONAL LEGISLATION, STATUTES, ORDINANCES, AND REGULATIONS AND BY-LAWS OF ANY LEGALLY CONSTITUTED PUBLIC AUTHORITY.
- J) "LAWS" MEANS ALL NATIONAL LEGISLATION, STATUTES, ORDINANCES, AND REGULATIONS AND BY-LAWS OF ANY LEGALLY CONSTITUTED PUBLIC AUTHORITY.
- K. "PROCURING ENTITY" MEANS THE PROCURING ENTITY PURCHASING THE LEASE ITEMS AND RELATED SERVICES, AS SPECIFIED IN THE SCC.

L) "RELATED SERVICES" MEANS THE SERVICES INCIDENTAL TO THE SUPPLY OF THE LEASE ITEMS, SUCH AS INSURANCE, INSTALLATION, TRAINING AND INITIAL MAINTENANCE AND OTHER SUCH OBLIGATIONS OF THE LESSOR UNDER THE CONTRACT.

SCC" MEANS THE SPECIAL CONDITIONS OF CONTRACT.

N) "SUBCONTRACTOR" MEANS ANY PERSON, PRIVATE OR GOVERNMENT ENTITY, OR A COMBINATION OF THE ABOVE, TO WHOM ANY PART OF THE LEASE ITEMS TO BE SUPPLIED OR EXECUTION OF ANY PART OF THE RELATED SERVICES IS SUBCONTRACTED BY THE LESSOR.

O) "LESSOR" MEANS THE PERSON, PRIVATE OR GOVERNMENT ENTITY, OR A COMBINATION OF THE ABOVE, WHOSE TENDER FOR THE LEASE CONTRACT HAS BEEN ACCEPTED BY THE PROCURING ENTITY AND IS NAMED AS SUCH IN THE CONTRACT AGREEMENT.

P) "LESSEE" MEANS THE PROCURING ENTITY WHOSE HAS ACCEPTED THE TENDER FOR THE LEASE CONTRACT AND IS NAMED AS SUCH IN THE CONTRACT AGREEMENT AS "PROCURING ENTITY".

## 2. CONTRACT DOCUMENTS

2.1 SUBJECT TO THE ORDER OF PRECEDENCE SET FORTH IN THE CONTRACT AGREEMENT, ALL DOCUMENTS FORMING THE CONTRACT (AND ALL PARTS THEREOF) ARE INTENDED TO BE CORRELATIVE, COMPLEMENTARY, AND MUTUALLY EXPLANATORY. THE CONTRACT AGREEMENT SHALL BE READ AS A WHOLE. THE DOCUMENTS FORMING THE CONTRACT SHALL BE INTERPRETED IN THE FOLLOWING ORDER OF PRIORITY:

- A) CONTRACT AGREEMENT;
- B) LETTER OF AWARD
- C) SPECIAL CONDITIONS OF CONTRACT;
- D) GENERAL CONDITIONS OF CONTRACT;
- E) FORM OF TENDER;
- F) LETTER OF ACCEPTANCE;
- G) SPECIFICATIONS AND SCHEDULES OF THE DRAWINGS (IF ANY);
- H) SCHEDULES OF REQUIREMENTS;
- I) PRICE SCHEDULE; AND
- J) ANY OTHER DOCUMENTS FORMING PART OF THE CONTRACT

### 3. FRAUD AND CORRUPTION

3.1 THE GOVERNMENT OF KENYA REQUIRES COMPLIANCE WITH ANTI-CORRUPTION LAWS AND GUIDELINES AND ITS PREVAILING SANCTIONS POLICIES AND PROCEDURES AS SET FORTH IN LAWS OF KENYA.

3.2 THE PROCURING ENTITY REQUIRES THE LESSOR 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 IMPLEMENTATION 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.



#### 4. INTERPRETATION

4.1 IF THE CONTEXT SO REQUIRES IT, SINGULAR MEANS PLURAL AND VICE VERSA.

4.2 ENTIRE AGREEMENT- THE CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PROCURING ENTITY AND THE LESSER. AND SUPERSEDES ALL COMMUNICATIONS, NEGOTIATIONS AND AGREEMENTS (WHETHER WRITTEN OR ORAL) OF THE PARTIES WITH RESPECT THERETO MADE PRIOR TO THE DATE OF CONTRACT.

#### 4.3 AMENDMENT

NO AMENDMENT OR OTHER VARIATION OF THE CONTRACT SHALL BE VALID UNLESS IT IS IN WRITING, IS DATED, EXPRESSLY REFERS TO THE CONTRACT, AND IS SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF EACH PARTY THERETO.

#### 4.4 NON-WAIVER

A NO RELAXATION, FORBEARANCE, DELAY, OR INDULGENCE BY EITHER PARTY IN ENFORCING ANY OF THE TERMS AND CONDITIONS OF THE CONTRACT OR THE GRANTING OF TIME BY EITHER PARTY TO THE OTHER SHALL PREJUDICE, AFFECT, OR RESTRICT THE RIGHTS OF THAT PARTY UNDER THE CONTRACT, NEITHER SHALL ANY WAIVER BY EITHER PARTY OF ANY BREACH OF CONTRACT OPERATE AS WAIVER OF ANY SUBSEQUENT OR CONTINUING BREACH OF CONTRACT.

B ANY WAIVER OF A PARTY'S RIGHTS, POWERS, OR REMEDIES UNDER THE CONTRACT MUST BE IN WRITING, DATED, AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE PARTY GRANTING SUCH WAIVER, AND MUST SPECIFY THE RIGHT AND THE EXTENT TO WHICH IT IS BEING WAIVED

#### 4.5 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.

## 5. LANGUAGE

5.1 THE CONTRACT AS WELL AS ALL CORRESPONDENCE AND DOCUMENTS RELATING TO THE CONTRACT EXCHANGED BY THE LESSOR AND THE PROCURING ENTITY, SHALL BE WRITTEN IN THE ENGLISH LANGUAGE. SUPPORTING DOCUMENTS AND PRINTED LITERATURE THAT ARE PART OF THE CONTRACT MAY BE IN ANOTHER LANGUAGE PROVIDED THEY ARE ACCOMPANIED BY AN ACCURATE TRANSLATION OF THE RELEVANT PASSAGES IN THE ENGLISH LANGUAGE, IN WHICH CASE, FOR PURPOSES OF INTERPRETATION OF THE CONTRACT, THIS TRANSLATION SHALL GOVERN.

5.2 THE LESSOR SHALL BEAR ALL COSTS OF TRANSLATION TO THE GOVERNING LANGUAGE AND ALL RISKS OF THE ACCURACY OF SUCH TRANSLATION, FOR DOCUMENTS PROVIDED BY THE LESSOR.

## 6. JOINT VENTURE, CONSORTIUM OR ASSOCIATION

6.1 IF THE LESSOR IS A JOINT VENTURE, CONSORTIUM, OR ASSOCIATION, ALL OF THE PARTIES SHALL BE JOINTLY AND SEVERALLY LIABLE TO THE PROCURING ENTITY FOR THE FULFILLMENT OF THE PROVISIONS OF THE CONTRACT AND SHALL DESIGNATE ONE PARTY TO ACT AS A LEADER WITH AUTHORITY TO BIND THE JOINT VENTURE, CONSORTIUM, OR ASSOCIATION. THE COMPOSITION OR THE CONSTITUTION OF THE JOINT VENTURE, CONSORTIUM, OR ASSOCIATION SHALL NOT BE ALTERED WITHOUT THE PRIOR CONSENT OF THE PROCURING ENTITY.

## 7. ELIGIBILITY

7.1 THE LESSOR AND ITS SUBCONTRACTORS SHALL HAVE THE NATIONALITY OF AN ELIGIBLE COUNTRY. A LESSOR OR SUB-LESSOR SHALL BE DEEMED TO HAVE THE NATIONALITY OF A COUNTRY IF IT IS A CITIZEN OR CONSTITUTED, INCORPORATED, OR REGISTERED, AND OPERATES INCONFORMITY WITH THE PROVISIONS OF THE LAWS OF THAT COUNTRY.

## 8. NOTICES

8.1 ANY NOTICE GIVEN BY ONE PARTY TO THE OTHER PURSUANT TO THE CONTRACT SHALL BE IN WRITING TO THE ADDRESS SPECIFIED IN THE SCC.

8.2 A NOTICE SHALL BE EFFECTIVE WHEN DELIVERED OR ON THE NOTICE'S EFFECTIVE DATE, WHICHEVER IS LATER.

## 9. GOVERNING LAW

9.1 THE CONTRACT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF KENYA.

THROUGHOUT THE EXECUTION OF THE CONTRACT, THE LESSOR SHALL COMPLY WITH THE IMPORT OF LEASE ITEMS AND SERVICES PROHIBITIONS IN KENYA:

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 LEASE ITEMS FROM THAT COUNTRY OR ANY PAYMENTS TO ANY COUNTRY, PERSON, OR ENTITY IN THAT COUNTRY.

## 10. SETTLEMENT OF DISPUTES

10.1 THE PROCURING ENTITY AND THE LESSOR SHALL MAKE EVERY EFFORT TO RESOLVE AMICABLY BY DIRECT INFORMAL NEGOTIATION ANY DISAGREEMENT OR DISPUTE ARISING BETWEEN THEM UNDER OR IN CONNECTION WITH THE CONTRACT.

10.2 IF, AFTER TWENTY-EIGHT (28) DAYS, THE PARTIES HAVE FAILED TO RESOLVE THEIR DISPUTE OR DIFFERENCE BY SUCH MUTUAL CONSULTATION, THEN NEITHER THE PROCURING ENTITY OR THE LESSOR MAY GIVE NOTICE TO THE OTHER PARTY OF ITS INTENTION TO COMMENCE ARBITRATION, AS HEREINAFTER PROVIDED, AS TO THE MATTER IN DISPUTE, AND NO ARBITRATION IN RESPECT OF THIS MATTER MAY BE COMMENCED UNLESS SUCH NOTICE IS GIVEN. ANY DISPUTE OR DIFFERENCE IN RESPECT OF WHICH A NOTICE OF INTENTION TO COMMENCE ARBITRATION HAS BEEN GIVEN IN ACCORDANCE WITH THIS CLAUSE SHALL BE FINALLY SETTLED BY ARBITRATION. ARBITRATION MAY BE COMMENCED PRIOR TO OR AFTER DELIVERY OF THE LEASE ITEMS UNDER THE CONTRACT. ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF PROCEDURE SPECIFIED IN THE SCC.

## 11. INSPECTIONS AND AUDIT BY THE PROCURING ENTITY

11.1 THE LESSOR SHALL KEEP, AND SHALL MAKE ALL REASONABLE EFFORTS TO CAUSE ITS SUBCONTRACTORS TO KEEP, ACCURATE AND SYSTEMATIC ACCOUNTS AND RECORDS IN RESPECT OF THE LEASE ITEMS IN SUCH FORM AND DETAILS AS WILL CLEARLY IDENTIFY RELEVANT TIME CHANGES AND COSTS.

11.2 THE LESSOR SHALL PERMIT AND SHALL CAUSE ITS SUBCONTRACTORS AND SUB CONSULTANTS TO PERMIT, THE PROCURING ENTITY AND/OR PERSONS APPOINTED BY THE PROCURING ENTITY OR BY OTHER STATUTORY BODIES OF THE GOVERNMENT 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 PROCURING ENTITY. THE LESSOR'S AND ITS SUBCONTRACTORS' AND SUB CONSULTANTS' ATTENTION IS DRAWN TO SUB-CLAUSE 3.1 OF APPENDIX 1 OF THIS TENDER DOCUMENT WHICH PROVIDES, INTER ALIA, THAT ACTS INTENDED TO MATERIALLY IMPEDE THE EXERCISE OF THE PROCURING ENTITY'S INSPECTION AND AUDIT RIGHTS CONSTITUTE A PROHIBITED PRACTICE SUBJECT TO CONTRACT TERMINATION, AS WELL AS TO A DETERMINATION OF INELIGIBILITY.

- 10.3 NOTWITHSTANDING ANY REFERENCE TO ARBITRATION HEREIN,
- A THE PARTIES SHALL CONTINUE TO PERFORM THEIR RESPECTIVE OBLIGATIONS UNDER THE CONTRACT UNLESS THEY OTHERWISE AGREE; AND
  - B THE PROCURING ENTITY SHALL PAY THE LESSOR ANY MONIES DUE THE LESSOR.

## 12. SCOPE OF LEASE SUPPLY

12.1 THE LEASE ITEMS AND RELATED SERVICES TO BE SUPPLIED SHALL BE AS SPECIFIED IN THE SCHEDULE OF REQUIREMENTS.

## 13. DELIVERY AND DOCUMENTS

13.1 DELIVERY OF THE LEASE ITEMS AND COMPLETION OF THE RELATED SERVICES SHALL BE IN ACCORDANCE WITH THE DELIVERY AND COMPLETION SCHEDULE SPECIFIED IN THE SCHEDULE OF REQUIREMENTS. THE DETAILS OF LEASE AND OTHER DOCUMENTS TO BE FURNISHED BY THE LESSOR ARE SPECIFIED IN THE SCC.

## 14. LESSOR'S RESPONSIBILITIES

14.1 THE LESSOR SHALL SUPPLY THE LEASE ITEMS AND RELATED SERVICES INCLUDED IN THE SCOPE OF SUPPLY IN ACCORDANCE WITH GCC CLAUSE 12, AND THE DELIVERY AND COMPLETION SCHEDULE, AS PER GCC CLAUSE 13.

## 15. CONTRACT PRICE

15.1 PRICES CHARGED BY THE LESSOR FOR THE LEASE ITEMS SUPPLIED AND THE RELATED SERVICES PERFORMED UNDER THE CONTRACT SHALL NOT VARY FROM THE PRICES QUOTED BY THE LESSOR IN ITS TENDER, WITH THE EXCEPTION OF ANY PRICE ADJUSTMENTS AUTHORIZED IN THE SCC.

## 16. TERMS OF PAYMENT

16.1 THE CONTRACT PRICE, INCLUDING ANY ADVANCE PAYMENTS, IF APPLICABLE, SHALL BE PAID AS SPECIFIED BELOW AND IN THE SCC. THE CURRENCIES IN WHICH PAYMENTS SHALL BE MADE TO THE LESSOR UNDER THIS CONTRACT SHALL BE THOSE IN WHICH THE TENDER PRICE IS EXPRESSED.

16.2 THE PROCURING ENTITY SHALL PAY TO LESSOR THE ADVANCE PAYMENT STATED IN THE SCC UPON OR BEFORE TAKING POSSESSION OF THE PROPERTY. THEREAFTER, THE PROCURING ENTITY SHALL PAY THE LESSOR THE SUM OF STATED IN THE SCC ON OR BEFORE THE DAY OF EACH MONTH AS STATED IN THE SCC UNTIL THE EXPIRATION OF THIS LEASE.

16.3 IF THE PROCURING ENTITY FAILS TO PAY ALL AMOUNTS DUE WITHIN THE NUMBER OF DAYS SPECIFIED IN THE SCC OF THEIR DUE DATES, THEN THE LESSOR MAY TERMINATE THE CONTRACT UNDER THIS LEASE AND TAKE BACK POSSESSION AND CONTROL OF THE LEASE ITEM (S). IN THE EVENT OF TERMINATION FOR NON-PAYMENT, THE PROCURING ENTITY SHALL REMAIN LIABLE FOR THE BALANCE DUE UNDER THIS LEASE.

16.4 IF THE PROCURING ENTITY FAILS TO MAKE A PAYMENT ON OR BEFORE ITS DUE DATE, A LATE FEE OF AN AMOUNT SPECIFIED IN THE SCC SHALL BE DUE AND PAYABLE IMMEDIATELY TO LESSOR.

16.5 IN THE EVENT THAT THE PROCURING ENTITY FAILS TO PAY THE LESSOR ANY PAYMENT BY ITS DUE DATE OR WITHIN THE PERIOD SET FORTH IN THE SCC, THE PROCURING ENTITY SHALL PAY TO THE LESSOR INTEREST ON THE AMOUNT OF SUCH DELAYED PAYMENT AT THE RATE SHOWN IN THE SCC, FOR THE PERIOD OF DELAY UNTIL PAYMENT HAS BEEN MADE IN FULL, WHETHER BEFORE OR AFTER JUDGMENT OR ARBITRATION AWARD.

## 17. TAXES AND DUTIES

17.1 THE LESSOR SHALL BE RESPONSIBLE FOR PAYING ALL TAXES LEVIED IN KENYA.

## **18. PERFORMANCE SECURITY N/A**

18.1 IF REQUIRED AS SPECIFIED IN THE SCC, THE LESSOR SHALL, WITHIN TWENTY-ONE (21) DAYS OF THE LETTER OF AWARD, PROVIDE A PERFORMANCE SECURITY FOR THE PERFORMANCE OF CONTRACT IN THE AMOUNT SPECIFIED IN THE SCC.

18.2 THE PROCEEDS OF THE PERFORMANCE SECURITY SHALL BE PAYABLE TO THE PROCURING ENTITY AS COMPENSATION FOR ANY LOSS RESULTING FROM THE LESSOR'S FAILURE TO COMPLETE ITS OBLIGATIONS UNDER THE CONTRACT.

18.3 THE PERFORMANCE SECURITY, IF REQUIRED, SHALL BE DENOMINATED IN KENYA SHILLINGS; AND SHALL BE IN THE FORM A DEMAND GUARANTEE IN THE FORMAT STATED IN THE TENDER DOCUMENT.

18.4 THE PERFORMANCE SECURITY SHALL BE DISCHARGED BY THE PROCURING ENTITY AND RETURNED TO THE LESSOR NOT LATER THAN TWENTY-EIGHT (28) DAYS FOLLOWING THE DATE OF COMPLETION OF THE LESSOR'S PERFORMANCE OBLIGATIONS UNDER THE CONTRACT, INCLUDING ANY WARRANTY OBLIGATIONS, UNLESS SPECIFIED OTHERWISE IN THE SCC.

## **19. COPYRIGHT**

19.1 THE COPYRIGHT IN ALL DRAWINGS, DOCUMENTS, AND OTHER MATERIALS CONTAINING DATA AND INFORMATION FURNISHED TO THE PROCURING ENTITY BY THE LESSOR HEREIN SHALL REMAIN VESTED IN THE LESSOR, OR, IF THEY ARE FURNISHED TO THE PROCURING ENTITY DIRECTLY OR THROUGH THE LESSOR BY ANY THIRD PARTY, INCLUDING LESSORS OF MATERIALS, THE COPYRIGHT IN SUCH MATERIALS SHALL REMAIN VESTED IN SUCH THIRD PARTY

## **20. CONFIDENTIAL INFORMATION**

20.1 THE PROCURING ENTITY AND THE LESSOR SHALL KEEP CONFIDENTIAL AND SHALL NOT, WITHOUT THE WRITTEN CONSENT OF THE OTHER PARTY HERETO, DIVULGE TO ANY THIRD PARTY ANY DOCUMENTS, DATA, OR OTHER INFORMATION FURNISHED DIRECTLY OR INDIRECTLY BY THE OTHER PARTY HERETO IN CONNECTION WITH THE CONTRACT, WHETHER SUCH INFORMATION HAS BEEN FURNISHED PRIOR TO, DURING OR FOLLOWING COMPLETION OR TERMINATION OF THE CONTRACT. NOTWITHSTANDING THE ABOVE, THE LESSOR MAY FURNISH TO ITS SUB-LESSOR SUCH DOCUMENTS, DATA, AND OTHER INFORMATION IT RECEIVES FROM THE PROCURING ENTITY TO THE EXTENT REQUIRED FOR THE SUB LESSOR TO PERFORM ITS WORK UNDER THE CONTRACT, IN WHICH EVENT THE LESSOR SHALL OBTAIN FROM SUCH SUB LESSOR AN UNDERTAKING OF CONFIDENTIALITY SIMILAR TO THAT IMPOSED ON THE LESSOR UNDER GCC CLAUSE 20.

20.2 THE PROCURING ENTITY SHALL NOT USE SUCH DOCUMENTS, DATA, AND OTHER INFORMATION RECEIVED FROM THE LESSOR FOR ANY PURPOSES UNRELATED TO THE CONTRACT. SIMILARLY, THE LESSOR SHALL NOT USE SUCH DOCUMENTS, DATA, AND OTHER INFORMATION RECEIVED FROM THE PROCURING ENTITY FOR ANY PURPOSE OTHER THAN THE PERFORMANCE OF THE CONTRACT.

20.3 THE OBLIGATION OF A PARTY UNDER GCC SUB-CLAUSES 20.1 AND 20.2 ABOVE, HOWEVER, SHALL NOT APPLY TO INFORMATION THAT:

A THE PROCURING ENTITY OR THE LESSOR NEED TO SHARE WITH OTHER ARMS OF GOVERNMENT OR OTHER BODIES PARTICIPATING IN THE FINANCING OF THE CONTRACT; SUCH PARTIES SHALL BE DISCLOSED IN THE SCC;

B NOW OR HEREAFTER ENTERS THE PUBLIC DOMAIN THROUGH NO FAULT OF THAT PARTY;

C CAN BE PROVEN TO HAVE BEEN POSSESSED BY THAT PARTY AT THE TIME OF DISCLOSURE AND WHICH WAS NOT PREVIOUSLY OBTAINED, DIRECTLY OR INDIRECTLY, FROM THE OTHER PARTY; OR

D OTHERWISE LAWFULLY BECOMES AVAILABLE TO THAT PARTY FROM A THIRD PARTY THAT HAS NO OBLIGATION OF CONFIDENTIALITY.

20.4 THE ABOVE PROVISIONS OF GCC CLAUSE 20 SHALL NOT IN ANY WAY MODIFY ANY UNDERTAKING OF CONFIDENTIALITY GIVEN BY EITHER OF THE PARTIES HERE TO PRIOR TO THE DATE OF THE CONTRACT IN RESPECT OF THE SUPPLY OR ANY PART THEREOF.

20.5 THE PROVISIONS OF GCC CLAUSE 20 SHALL SURVIVE COMPLETION OR TERMINATION, FOR WHATEVER REASON, OF THE CONTRACT

## 21. SUBCONTRACTING

21.1 THE LESSOR SHALL NOTIFY THE PROCURING ENTITY IN WRITING OF ALL SUBCONTRACTS AWARDED UNDER THE CONTRACT IF NOT ALREADY SPECIFIED IN THE TENDER. SUCH NOTIFICATION, IN THE ORIGINAL TENDER OR LATER SHALL NOT RELIEVE THE LESSOR FROM ANY OF ITS OBLIGATIONS, DUTIES, RESPONSIBILITIES, OR LIABILITY UNDER THE CONTRACT.

21.2 SUBCONTRACTS SHALL COMPLY WITH THE PROVISIONS OF GCC CLAUSES 3 AND 7.

## 22. SPECIFICATIONS AND STANDARDS

### 22.1 TECHNICAL SPECIFICATIONS AND DRAWINGS

A) THE LEASE ITEMS AND RELATED SERVICES SUPPLIED UNDER THIS CONTRACT SHALL CONFORM TO THE TECHNICAL SPECIFICATIONS AND STANDARDS MENTIONED IN SECTION VI, SCHEDULE OF REQUIREMENTS AND, WHEN NO APPLICABLE STANDARD IS MENTIONED, THE STANDARD SHALL BE EQUIVALENT OR SUPERIOR TO THE OFFICIAL STANDARDS WHOSE APPLICATION IS APPROPRIATE TO THE LEASE ITEMS' COUNTRY OF ORIGIN.

B) THE LESSOR SHALL BE ENTITLED TO DISCLAIM RESPONSIBILITY FOR ANY DESIGN, DATA, DRAWING, SPECIFICATION OR OTHER DOCUMENT, OR ANY MODIFICATION THEREOF PROVIDED OR DESIGNED BY OR ON BEHALF OF THE PROCURING ENTITY, BY GIVING A NOTICE OF SUCH DISCLAIMER TO THE PROCURING ENTITY.

C) WHEREVER REFERENCES ARE MADE IN THE CONTRACT TO CODES AND STANDARDS IN ACCORDANCE WITH WHICH IT SHALL BE EXECUTED, THE EDITION OR THE REVISED VERSION OF SUCH CODES AND STANDARDS SHALL BE THOSE SPECIFIED IN THE SCHEDULE OF REQUIREMENTS. DURING CONTRACT EXECUTION, ANY CHANGES IN ANY SUCH CODES AND STANDARDS SHALL BE APPLIED ONLY AFTER APPROVAL BY THE PROCURING ENTITY AND SHALL BE TREATED IN ACCORDANCE WITH GCC CLAUSE 33.

## 23. PACKING AND DOCUMENTS

23.1 NO PACKING SERVICES AND DOCUMENTS ARE NEEDED, AND IF ANY, THEY ARE SPECIFIED IN THE SCC, AND IN ANY OTHER INSTRUCTIONS ORDERED BY THE PROCURING ENTITY.

## 24. INSURANCE

24.1 THE LEASE ITEMS SUPPLIED UNDER THE CONTRACT SHALL BE FULLY INSURED BY THE LESSOR WITH AN INSURANCE COMPANY REGISTERED IN KENYA. AGAINST LOSS OR DAMAGE INCIDENTAL TO USE, TRANSPORTATION, STORAGE, AND DELIVERY, IN A MANNER SPECIFIED IN THE SCC.

## 25. TRANSPORTATION AND INCIDENTAL SERVICES

25.1 THE LESSOR MAY BE REQUIRED TO PROVIDE ANY OR ALL OF THE FOLLOWING SERVICES, INCLUDING ADDITIONAL SERVICES, IF ANY, SPECIFIED IN SCC:

- A PERFORMANCE OR SUPERVISION OF ON-SITE ASSEMBLY AND/OR START-UP OF THE SUPPLIED LEASE ITEMS;
- B FURNISHING OF TOOLS REQUIRED FOR ASSEMBLY AND/OR MAINTENANCE OF THE SUPPLIED LEASE ITEMS;
- C FURNISHING OF A DETAILED OPERATIONS AND MAINTENANCE MANUAL FOR EACH APPROPRIATE UNIT OF THE SUPPLIED LEASE ITEMS;
- D PERFORMANCE OR SUPERVISION OR MAINTENANCE AND/OR REPAIR OF THE SUPPLIED LEASE ITEMS, FOR A PERIOD OF TIME AGREED BY THE PARTIES, PROVIDED THAT THIS SERVICE SHALL NOT RELIEVE THE LESSOR OF ANY WARRANTY OBLIGATIONS UNDER THIS CONTRACT; AND
- E TRAINING OF THE PROCURING ENTITY'S PERSONNEL, AT THE LESSOR'S PLANT AND/OR ON-SITE, IN ASSEMBLY, START-UP, OPERATION, MAINTENANCE, AND/OR REPAIR OF THE SUPPLIED LEASE ITEMS.

25.2 PRICES CHARGED BY THE LESSOR FOR INCIDENTAL SERVICES, IF NOT INCLUDED IN THE CONTRACT PRICE FOR THE LEASE ITEMS, SHALL BE AGREED UPON IN ADVANCE BY THE PARTIES AND SHALL NOT EXCEED THE PREVAILING RATES CHARGED TO OTHER PARTIES BY THE LESSOR FOR SIMILAR SERVICES.

## 26. INSPECTIONS AND TESTS

26.1 THE LESSOR SHALL AT ITS OWN EXPENSE AND AT NO COST TO THE PROCURING ENTITY CARRY OUT ALL SUCH TESTS AND/OR INSPECTIONS OF THE LEASE ITEMS AND RELATED SERVICES AS ARE SPECIFIED IN THE SCC.

26.2 THE INSPECTIONS AND TESTS MAY BE CONDUCTED ON THE PREMISES OF THE LESSOR OR ITS SUBCONTRACTOR, AT POINT OF DELIVERY, AND/OR AT THE LEASE ITEMS' FINAL DESTINATION, OR IN ANOTHER PLACE IN KENYA AS SPECIFIED IN THE SCC. SUBJECT TO GCC SUB-CLAUSE 26.3, IF CONDUCTED ON THE PREMISES OF THE LESSOR OR ITS SUBCONTRACTOR, ALL REASONABLE FACILITIES AND ASSISTANCE, INCLUDING ACCESS TO DRAWINGS AND PRODUCTION DATA, SHALL BE FURNISHED TO THE INSPECTORS AT NO CHARGE TO THE PROCURING ENTITY.

26.3 THE PROCURING ENTITY OR ITS DESIGNATED REPRESENTATIVE SHALL BE ENTITLED TO ATTEND THE TESTS AND/OR INSPECTIONS REFERRED TO IN GCC SUB-CLAUSE 26.2, PROVIDED THAT THE PROCURING ENTITY BEAR ALL OF ITS OWN COSTS AND EXPENSES INCURRED IN CONNECTION WITH SUCH ATTENDANCE INCLUDING, BUT NOT LIMITED TO, ALL TRAVELING AND BOARD AND LODGING EXPENSES.

26.4 WHENEVER THE LESSOR IS READY TO CARRY OUT ANY SUCH TEST AND INSPECTION, IT SHALL GIVE A REASONABLE ADVANCE NOTICE, INCLUDING THE PLACE AND TIME, TO THE PROCURING ENTITY. THE LESSOR SHALL OBTAIN FROM ANY RELEVANT THIRD PARTY OR MANUFACTURER ANY NECESSARY PERMISSION OR CONSENT TO ENABLE THE PROCURING ENTITY OR ITS DESIGNATED REPRESENTATIVE TO ATTEND THE TEST AND/OR INSPECTION.

26.5 THE PROCURING ENTITY MAY REQUIRE THE LESSOR TO CARRY OUT ANY TEST AND/OR INSPECTION NOT REQUIRED BY THE CONTRACT BUT DEEMED NECESSARY TO VERIFY THAT THE CHARACTERISTICS AND PERFORMANCE OF THE LEASE ITEMS COMPLY WITH THE TECHNICAL SPECIFICATION CODES AND STANDARDS UNDER THE CONTRACT, PROVIDED THAT THE LESSOR'S REASONABLE COSTS AND EXPENSES INCURRED IN THE CARRYING OUT OF SUCH TEST AND/OR INSPECTION SHALL BE ADDED TO THE CONTRACT PRICE. FURTHER, IF SUCH TEST AND/OR INSPECTION IMPEDES THE PROGRESS OF MANUFACTURING AND/OR THE LESSOR'S PERFORMANCE OF ITS OTHER OBLIGATIONS UNDER THE CONTRACT, DUE ALLOWANCE WILL BE MADE IN RESPECT OF THE DELIVERY DATES AND COMPLETION DATES AND THE OTHER OBLIGATIONS SO AFFECTED.

26.6 THE LESSOR SHALL PROVIDE THE PROCURING ENTITY WITH ARE PORT OF THE RESULTS OF ANY SUCH TEST AND/OR INSPECTION.

26.7 THE PROCURING ENTITY MAY REJECT ANY LEASE ITEMS OR ANY PART THEREOF THAT FAIL TO PASS ANY TEST AND/OR INSPECTION OR DO NOT CONFORM TO THE SPECIFICATIONS. THE LESSOR SHALL EITHER RECTIFY OR REPLACE SUCH REJECTED LEASE ITEMS OR PARTS THEREOF OR MAKE ALTERATIONS NECESSARY TO MEET THE SPECIFICATIONS AT NO COST TO THE PROCURING ENTITY, AND SHALL REPEAT THE TEST AND/OR INSPECTION, AT NO COST TO THE PROCURING ENTITY, UPON GIVING A NOTICE PURSUANT TO GCC SUB-CLAUSE 26.4.

26.8 THE LESSOR AGREES THAT NEITHER THE EXECUTION OF A TEST AND/OR INSPECTION OF THE LEASE ITEMS OR ANY PART THEREOF, NOR THE ATTENDANCE BY THE PROCURING ENTITY OR ITS REPRESENTATIVE, NOR THE ISSUE OF ANY REPORT PURSUANT TO GCC SUB- CLAUSE 26.6, SHALL RELEASE THE LESSOR FROM ANY WARRANTIES OR OTHER OBLIGATIONS UNDER THE CONTRACT.

## 27. LIQUIDATED DAMAGES

27.1 EXCEPT AS PROVIDED UNDER GCC CLAUSE 32, IF THE LESSOR FAILS TO DELIVER ANY OR ALL OF THE LEASE ITEMS BY THE DATE(S) OF DELIVERY OR PERFORM THE RELATED SERVICES WITHIN THE PERIOD SPECIFIED IN THE CONTRACT, THE PROCURING ENTITY MAY WITHOUT PREJUDICE TO ALL ITS OTHER REMEDIES UNDER THE CONTRACT, DEDUCT FROM THE CONTRACT PRICE, AS LIQUIDATED DAMAGES, A SUM EQUIVALENT TO THE PERCENTAGE SPECIFIED IN THE SCC OF THE DELIVERED PRICE OF THE DELAYED LEASE ITEMS OR UNPERFORMED SERVICES FOR EACH WEEK OR PART THEREOF OF DELAY UNTIL ACTUAL DELIVERY OR PERFORMANCE, UP TO A MAXIMUM DEDUCTION OF THE PERCENTAGE SPECIFIED IN THOSE SCC. ONCE THE MAXIMUM IS REACHED, THE PROCURING ENTITY MAY TERMINATE THE CONTRACT PURSUANT TO GCC CLAUSE 35.

## 28. WARRANTY

28.1 THE LESSOR WARRANTS THAT ALL THE LEASE ITEMS ARE IN CONFORMITY WITH THE SPECIFICATIONS OF THE LEASE ITEMS AND ARE IN GOOD CONDITION FOR USE UNDER THE LEASE AGREEMENT.

28.2 THE PROCURING ENTITY WILL BE ENTITLED TO REFUSE ACCEPTANCE OF ANY LEASE ITEMS NOT MEETING THE WARRANTY UNDER ITT 28.1 AND DEMAND FOR REPLACEMENTS.

## 29. PATENT INDEMNITY

29.1 THE LESSOR SHALL, SUBJECT TO THE PROCURING ENTITY'S COMPLIANCE WITH GCC SUB-CLAUSE 29.2, INDEMNIFY AND HOLD HARMLESS THE PROCURING ENTITY AND ITS EMPLOYEES AND OFFICERS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY NATURE, INCLUDING ATTORNEY'S FEES AND EXPENSES, WHICH THE PROCURING ENTITY MAY SUFFER AS A RESULT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, UTILITY MODEL, REGISTERED DESIGN, TRADEMARK, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT REGISTERED OR OTHERWISE EXISTING AT THE DATE OF THE CONTRACT BY REASON OF:

A THE INSTALLATION OF THE LEASE ITEMS BY THE LESSOR OR THE USE OF THE LEASE ITEMS IN THE COUNTRY WHERE THE SITE IS LOCATED; AND

B THE SALE IN ANY COUNTRY OF THE PRODUCTS PRODUCED BY THE LEASE ITEMS.

SUCH INDEMNITY SHALL NOT COVER ANY USE OF THE LEASE ITEMS OR ANY PART THEREOF OTHER THAN FOR THE PURPOSE INDICATED BY OR TO BE REASONABLY INFERRED FROM THE CONTRACT, NEITHER ANY INFRINGEMENT RESULTING FROM THE USE OF THE LEASE ITEMS OR ANY PART THEREOF, OR ANY PRODUCTS PRODUCED THEREBY IN ASSOCIATION OR COMBINATION WITH ANY OTHER EQUIPMENT, PLANT, OR MATERIALS NOT SUPPLIED BY THE LESSOR, PURSUANT TO THE CONTRACT.

29.2 IF ANY PROCEEDINGS ARE BROUGHT OR ANY CLAIM IS MADE AGAINST THE PROCURING ENTITY ARISING OUT OF THE MATTERS REFERRED TO IN GCC SUB-CLAUSE 29.1, THE PROCURING ENTITY SHALL PROMPTLY GIVE THE LESSOR A NOTICE THEREOF, AND THE LESSOR 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.

29.3 IF THE LESSOR 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.

29.4 THE PROCURING ENTITY SHALL, AT THE LESSOR'S REQUEST, AFFORD ALL AVAILABLE ASSISTANCE TO THE LESSOR IN CONDUCTING SUCH PROCEEDINGS OR CLAIM, AND SHALL BE REIMBURSED BY THE LESSOR FOR ALL REASONABLE EXPENSES INCURRED IN SO DOING.

29.5 THE PROCURING ENTITY SHALL INDEMNIFY AND HOLD HARMLESS THE LESSOR AND ITS EMPLOYEES, OFFICERS, AND SUBCONTRACTORS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY NATURE, INCLUDING ATTORNEY'S FEES AND EXPENSES, WHICH THE LESSOR MAY SUFFER AS A RESULT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, UTILITY MODEL, REGISTERED DESIGN, TRADEMARK, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT REGISTERED OR OTHERWISE EXISTING AT THE DATE OF THE CONTRACT ARISING OUT OF OR IN CONNECTION WITH ANY DESIGN, DATA, DRAWING, SPECIFICATION, OR OTHER DOCUMENTS OR MATERIALS PROVIDED OR DESIGNED BY OR ON BEHALF OF THE PROCURING ENTITY.

### 30. LIMITATION OF LIABILITY

30.1 EXCEPT IN CASES OF CRIMINAL NEGLIGENCE OR WILLFUL MISCONDUCT,

A THE LESSOR 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 LESSOR TO PAY LIQUIDATED DAMAGES TO THE PROCURING ENTITY, AND

B THE AGGREGATE LIABILITY OF THE LESSOR TO THE PROCURING ENTITY, WHETHER UNDER THE CONTRACT, IN TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL CONTRACT PRICE, PROVIDED THAT THIS LIMITATION SHALL NOT APPLY TO THE COST OF REPAIRING OR REPLACING DEFECTIVE EQUIPMENT, OR TO ANY OBLIGATION OF THE LESSOR TO INDEMNIFY THE PROCURING ENTITY WITH RESPECT TO PATENT INFRINGEMENT.

## 31. CHANGE IN LAWS AND REGULATIONS

31.1 UNLESS OTHERWISE SPECIFIED IN THE CONTRACT, IF AFTER THE DATE OF 28 DAYS PRIOR TO DATE OF TENDER SUBMISSION, ANY LAW, REGULATION, ORDINANCE, ORDER OR BYLAW HAVING THE FORCE OF LAW IS ENACTED, PROMULGATED, ABROGATED, OR CHANGED IN KENYA (WHICH SHALL BE DEEMED TO INCLUDE ANY CHANGE IN INTERPRETATION OR APPLICATION BY THE COMPETENT AUTHORITIES) THAT SUBSEQUENTLY AFFECTS THE DELIVERY DATE AND/OR THE CONTRACT PRICE, THEN SUCH DELIVERY DATE AND/OR CONTRACT PRICE SHALL BE CORRESPONDINGLY INCREASED OR DECREASED, TO THE EXTENT THAT THE LESSOR HAS THEREBY BEEN AFFECTED IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THE CONTRACT. NOTWITHSTANDING THE FOREGOING, SUCH ADDITIONAL OR REDUCED COST SHALL NOT BE SEPARATELY PAID OR CREDITED IF THE SAME HAS ALREADY BEEN ACCOUNTED FOR IN THE PRICE ADJUSTMENT PROVISIONS WHERE APPLICABLE, IN ACCORDANCE WITH GCC CLAUSE 15.

## 32. FORCE MAJEURE

32.1 THE LESSOR SHALL NOT BE LIABLE FOR FORFEITURE OF ITS PERFORMANCE SECURITY, LIQUIDATED DAMAGES, OR TERMINATION FOR DEFAULT IF AND TO THE EXTENT THAT ITS DELAY IN PERFORMANCE OR OTHER FAILURE TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT IS THE RESULT OF AN EVENT OF FORCE MAJEURE.

32.2 FOR PURPOSES OF THIS CLAUSE, "FORCE MAJEURE" MEANS AN EVENT OR SITUATION BEYOND THE CONTROL OF THE LESSOR THAT IS NOT FORESEEABLE, IS UNAVOIDABLE, AND ITS ORIGIN IS NOT DUE TO NEGLIGENCE OR LACK OF CARE ON THE PART OF THE LESSOR. SUCH EVENTS MAY INCLUDE, BUT NOT BE LIMITED TO, ACTS OF THE PROCURING ENTITY IN ITS SOVEREIGN CAPACITY, WARS OR REVOLUTIONS, FIRES, FLOODS, EPIDEMICS, QUARANTINE RESTRICTIONS, AND FREIGHT EMBARGOES.

32.3 IF A FORCE MAJEURE SITUATION ARISES, THE LESSOR SHALL PROMPTLY NOTIFY THE PROCURING ENTITY IN WRITING OF SUCH CONDITION AND THE CAUSE THEREOF. UNLESS OTHERWISE DIRECTED BY THE PROCURING ENTITY IN WRITING, THE LESSOR SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT AS FAR AS IS REASONABLY PRACTICAL, AND SHALL SEEK ALL REASONABLE ALTERNATIVE MEANS FOR PERFORMANCE NOT PREVENTED BY THE FORCE MAJEURE EVENT.

### 33. CHANGE ORDERS AND CONTRACT AMENDMENTS

33.1 THE PROCURING ENTITY MAY AT ANY TIME ORDER THE LESSOR THROUGH NOTICE IN ACCORDANCE GCC CLAUSE 8, TO MAKE CHANGES WITHIN THE GENERAL SCOPE OF THE CONTRACT IN ANY ONE OR MORE OF THE FOLLOWING:

- A DRAWINGS, DESIGNS, OR SPECIFICATIONS, WHERE LEASE ITEMS TO BE FURNISHED UNDER THE CONTRACT ARE TO BE SPECIFICALLY MANUFACTURED FOR THE PROCURING ENTITY;
- B THE METHOD OF SHIPMENT OR PACKING;
- C THE PLACE OF DELIVERY; AND
- D THE RELATED SERVICES TO BE PROVIDED BY THE LESSOR.

33.2 IF ANY SUCH CHANGE CAUSES AN INCREASE OR DECREASE IN THE COST OF, OR THE TIME REQUIRED FOR, THE LESSOR'S PERFORMANCE OF ANY PROVISIONS UNDER THE CONTRACT, AN EQUITABLE ADJUSTMENT SHALL BE MADE IN THE CONTRACT PRICE OR IN THE DELIVERY /COMPLETION SCHEDULE, OR BOTH, AND THE CONTRACT SHALL ACCORDINGLY BE AMENDED. ANY CLAIMS BY THE LESSOR FOR ADJUSTMENT UNDER THIS CLAUSE MUST BE ASSERTED WITHIN TWENTY-EIGHT (28) DAYS FROM THE DATE OF THE LESSOR'S RECEIPT OF THE PROCURING ENTITY'S CHANGE ORDER.

33.3 PRICES TO BE CHARGED BY THE LESSOR FOR ANY RELATED SERVICES THAT MIGHT BE NEEDED BUT WHICH WERE NOT INCLUDED IN THE CONTRACT SHALL BE AGREED UPON IN ADVANCE BY THE PARTIES AND SHALL NOT EXCEED THE PREVAILING RATES CHARGED TO OTHER PARTIES BY THE LESSOR FOR SIMILAR SERVICES.

33.4 VALUE ENGINEERING: THE LESSOR MAY PREPARE, AT ITS OWN COST, A VALUE ENGINEERING PROPOSAL AT ANY TIME DURING THE PERFORMANCE OF THE CONTRACT. THE VALUE ENGINEERING PROPOSAL SHALL, AT A MINIMUM, INCLUDE THE FOLLOWING;

- A THE PROPOSED CHANGE(S), AND A DESCRIPTION OF THE DIFFERENCE TO THE EXISTING CONTRACT REQUIREMENTS;
- B A FULL COST/BENEFIT ANALYSIS OF THE PROPOSED CHANGE(S) INCLUDING A DESCRIPTION AND ESTIMATE OF COSTS (INCLUDING LIFE CYCLE COSTS) 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.

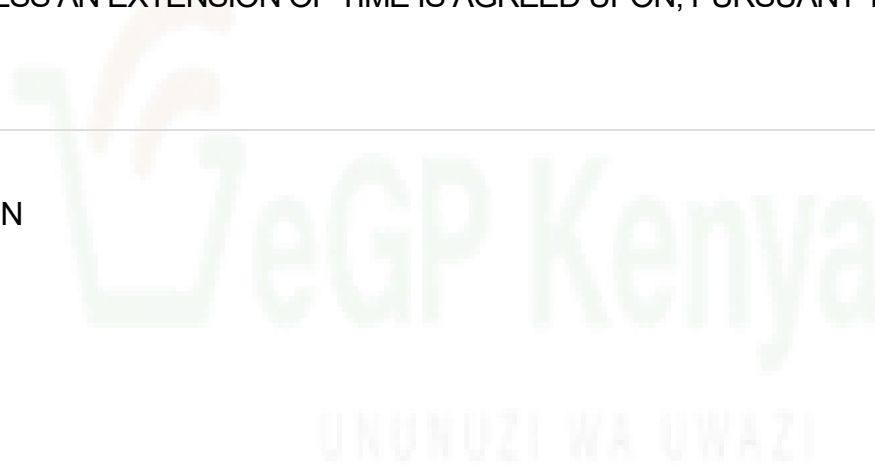


## 34. EXTENSIONS OF TIME

34.1 IF AT ANY TIME DURING PERFORMANCE OF THE CONTRACT, THE LESSOR OR ITS SUBCONTRACTORS SHOULD ENCOUNTER CONDITIONS IMPEDING TIMELY DELIVERY OF THE LEASE ITEMS OR COMPLETION OF RELATED SERVICES PURSUANT TO GCC CLAUSE 13, THE LESSOR SHALL PROMPTLY NOTIFY THE PROCURING ENTITY IN WRITING OF THE DELAY, ITS LIKELY DURATION, AND ITS CAUSE. AS SOON AS PRACTICABLE AFTER RECEIPT OF THE LESSOR'S NOTICE, THE PROCURING ENTITY SHALL EVALUATE THE SITUATION AND MAY AT ITS DISCRETION EXTEND THE LESSOR'S TIME FOR PERFORMANCE, IN WHICH CASE THE EXTENSION SHALL BE RATIFIED BY THE PARTIES BY AMENDMENT OF THE CONTRACT.

34.2 EXCEPT IN CASE OF FORCE MAJEURE, AS PROVIDED UNDER GCC CLAUSE 32, A DELAY BY THE LESSOR IN THE PERFORMANCE OF ITS DELIVERY AND COMPLETION OBLIGATIONS SHALL RENDER THE LESSOR LIABLE TO THE IMPOSITION OF LIQUIDATED DAMAGES PURSUANT TO GCC CLAUSE 26, UNLESS AN EXTENSION OF TIME IS AGREED UPON, PURSUANT TO GCC SUB-CLAUSE 34.1.

## 35. TERMINATION



### 35.1 TERMINATION FOR DEFAULT

A THE PROCURING ENTITY, WITHOUT PREJUDICE TO ANY OTHER REMEDY FOR BREACH OF CONTRACT, BY WRITTEN NOTICE OF DEFAULT SENT TO THE LESSOR, MAY TERMINATE THE CONTRACT IN WHOLE OR IN PART:

- I. IF THE LESSOR FAILS TO DELIVER ANY OR ALL OF THE LEASE ITEMS WITHIN THE PERIOD SPECIFIED IN THE CONTRACT, OR WITHIN ANY EXTENSION THEREOF GRANTED BY THE PROCURING ENTITY PURSUANT TO GCC CLAUSE 34;
- II. IF THE LESSOR FAILS TO PERFORM ANY OTHER OBLIGATION UNDER THE CONTRACT; OR
- III. IF THE LESSOR, IN THE JUDGMENT OF THE PROCURING ENTITY HAS ENGAGED IN FRAUD AND CORRUPTION, AS DEFINED IN CLAUSE 4 OF THE GCC AND APPENDIX 1, IN COMPETING FOR OR IN EXECUTING THE CONTRACT.

B IN THE EVENT THE PROCURING ENTITY TERMINATES THE CONTRACT IN WHOLE OR IN PART, PURSUANT TO GCC CLAUSE 35.1(A), THE PROCURING ENTITY MAY PROCURE, UPON SUCH TERMS AND IN SUCH MANNER AS IT DEEMS APPROPRIATE, LEASE ITEMS OR RELATED SERVICES SIMILAR TO THOSE UNDELIVERED OR NOT PERFORMED, AND THE LESSOR SHALL BE LIABLE TO THE PROCURING ENTITY FOR ANY ADDITIONAL COSTS FOR SUCH SIMILAR LEASE ITEMS OR RELATED SERVICES. HOWEVER, THE LESSOR SHALL CONTINUE PERFORMANCE OF THE CONTRACT TO THE EXTENT NOT TERMINATED.

### 35.2 TERMINATION FOR INSOLVENCY.

THE PROCURING ENTITY MAY AT ANY TIME TERMINATE THE CONTRACT BY GIVING NOTICE TO THE LESSOR IF THE LESSOR BECOMES BANKRUPT OR OTHERWISE INSOLVENT. IN SUCH EVENT, TERMINATION WILL BE WITHOUT COMPENSATION TO THE LESSOR, PROVIDED THAT SUCH TERMINATION WILL NOT PREJUDICE OR AFFECT ANY RIGHT OF ACTION OR REMEDY THAT HAS ACCRUED OR WILL ACCRUE THEREAFTER TO THE PROCURING ENTITY.

### 35.3 TERMINATION FOR CONVENIENCE.

- A) THE PROCURING ENTITY, BY NOTICE SENT TO THE LESSOR, MAY TERMINATE THE CONTRACT, IN WHOLE OR IN PART, AT ANY TIME FOR ITS CONVENIENCE. THE NOTICE OF TERMINATION SHALL SPECIFY THAT TERMINATION IS FOR THE PROCURING ENTITY'S CONVENIENCE, THE EXTENT TO WHICH PERFORMANCE OF THE LESSOR UNDER THE CONTRACT IS TERMINATED, AND THE DATE UPON WHICH SUCH TERMINATION BECOMES EFFECTIVE.
- B) THE LEASE ITEMS THAT ARE COMPLETE AND READY FOR SHIPMENT WITHIN TWENTY-EIGHT (28) DAYS AFTER THE LESSOR'S RECEIPT OF NOTICE OF TERMINATION SHALL BE ACCEPTED BY THE PROCURING ENTITY AT THE CONTRACT TERMS AND PRICES. FOR THE REMAINING LEASE ITEMS, THE PROCURING ENTITY MAY ELECT:
- I) TO HAVE ANY PORTION COMPLETED AND DELIVERED AT THE CONTRACT TERMS AND PRICES; AND/OR
  - II) TO CANCEL THE REMAINDER AND PAY TO THE LESSOR AN AGREED AMOUNT FOR PARTIALLY COMPLETED LEASE ITEMS AND RELATED SERVICES AND FOR MATERIALS AND PARTS PREVIOUSLY PROCURED BY THE LESSOR.

### 36. ASSIGNMENT

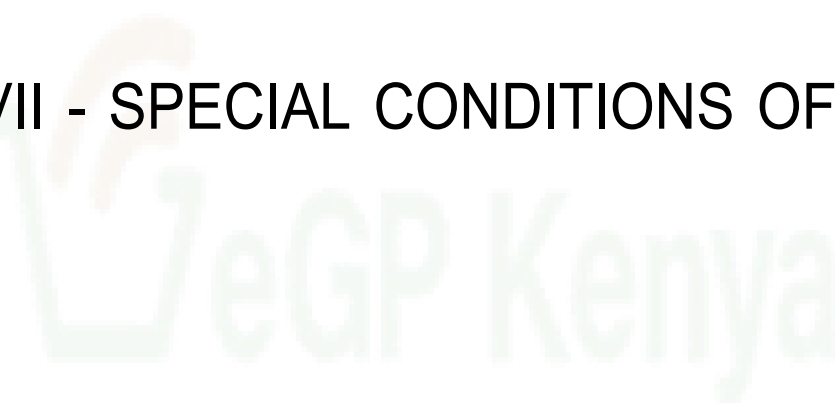
36.1 NEITHER THE PROCURING ENTITY NOR THE LESSOR SHALL ASSIGN, IN WHOLE OR IN PART, THEIR OBLIGATIONS UNDER THIS CONTRACT, EXCEPT WITH PRIOR WRITTEN CONSENT OF THE OTHER PARTY.

## 37. IMPORT RESTRICTIONS

37.1 NOTWITHSTANDING ANY OBLIGATION UNDER THE CONTRACT TO COMPLETE ALL IMPORT FORMALITIES, ANY IMPORT RESTRICTIONS ATTRIBUTABLE TO THE PROCURING ENTITY, TO KENYA, OR TO THE USE OF THE PRODUCTS/LEASE ITEMS, SYSTEMS OR SERVICES TO BE SUPPLIED, WHICH ARISE FROM TRADE REGULATIONS FROM A COUNTRY SUPPLYING THOSE PRODUCTS/LEASE ITEMS, SYSTEMS OR SERVICES, AND WHICH SUBSTANTIALLY IMPEDE THE LESSOR FROM MEETING ITS OBLIGATIONS UNDER THE CONTRACT, SHALL RELEASE THE LESSOR FROM THE OBLIGATION TO PROVIDE DELIVERIES OR SERVICES, ALWAYS PROVIDED, HOWEVER, THAT THE LESSOR CAN DEMONSTRATE TO THE SATISFACTION OF THE PROCURING ENTITY THAT IT HAS COMPLETED ALL FORMALITIES IN A TIMELY MANNER, INCLUDING APPLYING FOR PERMITS, AUTHORIZATIONS AND LICENSES NECESSARY FOR THE IMPORT OF THE PRODUCTS/LEASE ITEMS, SYSTEMS OR SERVICES UNDER THE TERMS OF THE CONTRACT. TERMINATION OF THE CONTRACT ON THIS BASIS SHALL BE FOR THE PROCURING ENTITY'S CONVENIENCE PURSUANT TO SUB-CLAUSE 35.3.



## SECTION VII - SPECIAL CONDITIONS OF CONTRACT



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## Special Conditions of Contract (SCC)

|               | GCC Reference & SCC Detail  | Filled By | Value to be Populated in Tender Document  |
|---------------|---|-----------|---|
| GCC Reference | <p>1. DEFINITIONS</p> <p>K. PROCURING ENTITY” MEANS THE PROCURING ENTITY PURCHASING THE LEASE ITEMS AND RELATED SERVICES, AS SPECIFIED IN THE SCC.</p>    | -         | -   |
| SCC Detail    | THE PROCURING ENTITY IS: [INSERT COMPLETE LEGAL NAME OF THE PROCURING ENTITY]   |           | WATER SERVICES REGULATORY BOARD   |
| SCC Detail    | THE FINAL DESTINATION(S) IS/ARE:  |           | <b>DROP THE TENDER DOCUMENT IN THE TENDER BOX LOCATED ON THE 5<sup>TH</sup> FLOOR SHA BUILDING, WING A RAGATI ROAD, NAIROBI</b> |
| GCC Reference | <p>8. NOTICES</p> <p>8.1 ANY NOTICE GIVEN BY ONE PARTY TO THE OTHER PURSUANT TO THE CONTRACT SHALL BE IN WRITING TO THE ADDRESS SPECIFIED IN THE SCC.</p> | -         | -   |

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| <p>SCC Detail</p> | <p>FOR NOTICES, THE PROCURING ENTITY'S ADDRESS SHALL BE:</p> <p>ATTENTION: <i>[ INSERT FULL NAME OF PERSON, IF APPLICABLE ]</i></p>                                 | <p>Manual Input</p> | <p>WATERSERVICES REGULATORY BOARD P.O BOX 4 1621 A<br/>TT. CHIEF EXECUTIVE OFFICER</p>   |
| <p>SCC Detail</p> | <p>POSTAL ADDRESS (FULL POSTAL ADDRESS)</p>   | <p>Manual Input</p> | <p>00100</p>   |
| <p>SCC Detail</p> | <p>PHYSICAL ADDRESS (FULL LOCATION ADDRESS- <i>INSERT CITY, STREET NAME, BUILDING NAMED FLOOR NUMBER, ROOM NUMBER</i>)</p>  | <p>Manual Input</p> | <p>5TH FLOOR, SHA BUILDING RAGATI ROAD, NAIROBI</p>  |
| <p>SCC Detail</p> | <p>TELEPHONE: <i>[INCLUDE TELEPHONE NUMBER, INCLUDING COUNTRY AND CITY CODES]</i></p> <p>ELECTRONIC MAIL ADDRESS: <i>[INSERT E-MAIL ADDRESS, IF APPLICABLE]</i></p> | <p>Manual Input</p> | <p>EMAIL: <a href="mailto:INFO@WASREB.GO.KE">INFO@WASREB.GO.KE</a> OR <a href="mailto:PROCUREMENTS@WASREB.GO.KE">PROCUREMENTS@WASREB.GO.KE</a> TEL: 0709482000</p> |

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| <p>GCC Reference</p> | <p>10. SETTLEMENT OF DISPUTES</p> <p>10.2 IF, AFTER TWENTY-EIGHT (28) DAYS, THE PARTIES HAVE FAILED TO RESOLVE THEIR DISPUTE OR DIFFERENCE BY SUCH MUTUAL CONSULTATION, THE NEITHER THE PROCURING ENTITY OR THE LESSOR MAY GIVE NOTICE TO THE OTHER PARTY OF ITS INTENTION TO COMMENCE ARBITRATION, AS HEREINAFTER PROVIDED, AS TO THE MATTER IN DISPUTE, AND NO ARBITRATION IN RESPECT OF THIS MATTER MAY BE COMMENCED UNLESS SUCH NOTICE IS GIVEN. ANY DISPUTE OR DIFFERENCE IN RESPECT OF WHICH A NOTICE OF INTENTION TO COMMENCE ARBITRATION HAS BEEN GIVEN IN ACCORDANCE WITH THIS CLAUSE SHALL BE FINALLY SETTLED BY ARBITRATION. ARBITRATION MAY BE COMMENCED PRIOR TO OR AFTER DELIVERY OF THE LEASE ITEMS UNDER THE CONTRACT. ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF PROCEDURE SPECIFIED IN THE SCC.</p> | <p>-</p>            | <p>-</p>          |
| <p>SCC Detail</p>    | <p>THE RULES OF PROCEDURE FOR ARBITRATION PROCEEDINGS PURSUANT TO GCC CLAUSE 10.2 SHALL BE AS FOLLOWS:</p>  | <p>Manual Input</p> | <p>KENYAN LAW</p> |

[THE TENDERING DOCUMENT SHOULD CONTAIN ONE CLAUSE TO BE RETAINED IN THE EVENT OF A CONTRACT WITH A FOREIGN LESSOR AND ONE CLAUSE TO BE RETAINED IN THE EVENT OF A CONTRACT WITH A LESSOR WHO IS A NATIONAL OF KENYA. AT THE TIME OF FINALIZING THE CONTRACT, THE RESPECTIVE APPLICABLE CLAUSE SHOULD BE RETAINED IN THE CONTRACT. THE FOLLOWING EXPLANATORY NOTE SHOULD THEREFORE BE INSERTED AS A HEADER TO GCC 10.2 IN THE TENDERING DOCUMENT.

“CLAUSE 10.2 (A) SHALL BE RETAINED IN THE CASE OF A CONTRACT WITH A FOREIGN LESSOR AND CLAUSE 10.2 (B) SHALL BE RETAINED IN THE CASE OF A CONTRACT WITH A NATIONAL OF KENYA”]

(A) CONTRACT WITH FOREIGN LESSOR:  
[FOR CONTRACTS ENTERED INTO WITH FOREIGN LESSORS, INTERNATIONAL COMMERCIAL ARBITRATION MAY HAVE PRACTICAL ADVANTAGES OVER OTHER DISPUTE SETTLEMENT METHODS. AMONG THE RULES TO GOVERN THE ARBITRATION PROCEEDINGS, THE PROCURING ENTITY MAY WISH TO CONSIDER THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) ARBITRATION RULES OF 1976, THE RULES OF CONCILIATION AND ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE (ICC), THE RULES OF THE LONDON COURT OF INTERNATIONAL ARBITRATION OR THE RULES OF ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE.]

(I) IF THE PROCURING ENTITY CHOOSES THE UNCITRAL ARBITRATION RULES, THE FOLLOWING SAMPLE CLAUSE SHOULD BE INSERTED:

GCC 10.2 (A)—ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS CONTRACT, OR BREACH, TERMINATION OR INVALIDITY THEREOF, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE UNCITRAL ARBITRATION RULES AS AT PRESENT IN FORCE.

(II) IF THE PROCURING ENTITY CHOOSES THE RULES OF ICC, THE FOLLOWING SAMPLE CLAUSE SHOULD BE INSERTED:

GCC 10.2 (A)—ALL DISPUTES ARISING IN CONNECTION WITH THE PRESENT CONTRACT SHALL BE FINALLY SETTLED UNDER THE RULES OF CONCILIATION AND ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE BY ONE OR MORE ARBITRATORS APPOINTED IN ACCORDANCE WITH SAID RULES.

(III) IF THE PROCURING ENTITY CHOOSES THE RULES OF ARBITRATION INSTITUTE OF STOCKHOLM CHAMBER OF COMMERCE, THE FOLLOWING SAMPLE CLAUSE SHOULD BE INSERTED:

GCC 10.2 (A)—ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR THE BREACH TERMINATION OR INVALIDITY THEREOF, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE RULES OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE.

(IV) IF THE PROCURING ENTITY CHOOSES THE RULES OF THE LONDON COURT OF INTERNATIONAL ARBITRATION, THE FOLLOWING CLAUSE SHOULD BE INSERTED:

GCC 10.2 (A)—ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, INCLUDING ANY QUESTION REGARDING ITS EXISTENCE, VALIDITY OR TERMINATION SHALL BE REFERRED TO AND FINALLY RESOLVED BY ARBITRATION UNDER THE RULES OF THE LONDON COURT OF INTERNATIONAL ARBITRATION, WHICH RULES ARE DEEMED TO BE INCORPORATED BY REFERENCE TO THIS CLAUSE.

(B) CONTRACTS WITH LESSOR WHO IS A NATIONAL OF KENYA:

IN THE CASE OF A DISPUTE BETWEEN THE PROCURING ENTITY AND A LESSOR WHO IS A NATIONAL OF KENYA, THE DISPUTE SHALL BE REFERRED TO ARBITRATION IN ACCORDANCE WITH THE LAWS OF KENYA.

GCC  
Reference

13. DELIVERY AND DOCUMENTS

13.1 DELIVERY OF THE LEASE ITEMS AND COMPLETION OF THE RELATED SERVICES SHALL BE IN ACCORDANCE WITH THE DELIVERY AND COMPLETION SCHEDULE SPECIFIED IN THE SCHEDULE OF REQUIREMENTS. THE DETAILS OF LEASE AND OTHER DOCUMENTS TO BE FURNISHED BY THE LESSOR ARE SPECIFIED IN THE SCC.

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| <p>SCC Detail</p>    | <p>DETAILS OF SHIPPING AND OTHER DOCUMENTS TO BE FURNISHED BY THE LESSOR ARE <i>[INSERT THE REQUIRED DOCUMENTS, SUCH AS A NEGOTIABLE BILL OF LADING, A NON-NEGOTIABLE SEA WAY BILL, AN AIRWAY BILL, A RAILWAY CONSIGNMENT NOTE, A ROAD CONSIGNMENT NOTE, INSURANCE CERTIFICATE, MANUFACTURER'S OR LESSOR'S WARRANTY CERTIFICATE, INSPECTION CERTIFICATE ISSUED BY NOMINATED INSPECTION AGENCY, LESSOR'S FACTORY SHIPPING DETAILS ETC.]</i></p> <p>THE ABOVE DOCUMENTS SHALL BE RECEIVED BY THE PROCURING ENTITY BEFORE ARRIVAL OF THE LEASE ITEMS AND, IF NOT RECEIVED, THE LESSOR WILL BE RESPONSIBLE FOR ANY CONSEQUENT EXPENSES.</p> | <p>Manual Input</p> | <p>N/A</p> |
| <p>GCC Reference</p> | <p>15. CONTRACT PRICE</p> <p>15.1 PRICES CHARGED BY THE LESSOR FOR THE LEASE ITEMS SUPPLIED AND THE RELATED SERVICES PERFORMED UNDER THE CONTRACT SHALL NOT VARY FROM THE PRICES QUOTED BY THE LESSOR IN ITS TENDER, WITH THE EXCEPTION OF ANY PRICE ADJUSTMENTS AUTHORIZED IN THE SCC.</p>   | <p>-</p>            | <p>-</p>   |

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| <p>SCC Detail</p>    | <p>THE PRICES CHARGED FOR THE LEASE ITEMS SUPPLIED AND THE RELATED SERVICES PERFORMED <i>[INSERT “SHALL” OR “SHALL NOT,” AS APPROPRIATE]</i> BE ADJUSTABLE.</p> <p>IF PRICES ARE ADJUSTABLE, THE FOLLOWING METHOD SHALL BE USED TO CALCULATE THE PRICE ADJUSTMENT <i>[SEE ATTACHMENT TO THESE SCC FOR A SAMPLE PRICE ADJUSTMENT FORMULA]</i></p>        | <p>Manual Input</p> | <p>THE PRICES CHARGED FOR THE LEASE ITEMS SUPPLIED AND THE RELATED SERVICES PERFORMED <i>SHALL NOT BE</i> ADJUSTABLE.</p> |
| <p>GCC Reference</p> | <p>16. TERMS OF PAYMENT</p> <p>16.2 THE PROCURING ENTITY SHALL PAY TO LESSOR THE ADVANCE PAYMENT STATED IN THE SCC UPON OR BEFORE TAKING POSSESSION OF THE PROPERTY. THEREAFTER, THE PROCURING ENTITY SHALL PAY THE LESSOR THE SUM OF STATED IN THE SCC ON OR BEFORE THE DAY OF EACH MONTH AS STATED IN THE SCC UNTIL THE EXPIRATION OF THIS LEASE.</p> | <p>-</p>            | <p>-</p>  |
| <p>SCC Detail</p>    | <p>THE ADVANCE PAYMENT SHALL BE _____</p> <p>THE MONTHLY PAYMENTS SHALL BE _____ AND SHALL BE PAID ON OR BEFORE _____ DAY OF EACH MONTH UNTIL THE EXPIRATION OF THIS LEASE.</p>   | <p>Manual Input</p> | <p>AS AGREED</p>  |

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| GCC Reference | 16.3 IF THE PROCURING ENTITY FAILS TO PAY ALL AMOUNTS DUE WITHIN THE NUMBER OF DAYS SPECIFIED IN THE SCC OF THEIR DUE DATES, THEN THE LESSOR MAY TERMINATE THE CONTRACT UNDER THIS LEASE AND TAKE BACK POSSESSION AND CONTROL OF THE LEASE ITEM(S). IN THE EVENT OF TERMINATION FOR NON-PAYMENT, THE PROCURING ENTITY SHALL REMAIN LIABLE FOR THE BALANCE DUE UNDER THIS LEASE. | -            | -         |
| SCC Detail    | THE LATE FEE OF _____ SHALL BE DUE AND PAYABLE IMMEDIATELY TO THE LESSOR.   | Manual Input | AS AGREED |
| GCC Reference | 16.4 IF THE PROCURING ENTITY FAILS TO MAKE A PAYMENT ON OR BEFORE ITS DUE DATE, A LATE FEE OF AN AMOUNT SPECIFIED IN THE SCC SHALL BE DUE AND PAYABLE IMMEDIATELY TO LESSOR.  | -            | -         |
| SCC Detail    | THE LATE FEE OF _____ SHALL BE DUE AND PAYABLE IMMEDIATELY TO THE LESSOR.   | Manual Input | AS AGREED |

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| <p>GCC Reference</p> | <p>16.5 IN THE EVENT THAT THE PROCURING ENTITY FAILS TO PAY THE LESSOR ANY PAYMENT BY ITS DUE DATE OR WITHIN THE PERIOD SET FORTH IN THE SCC, THE PROCURING ENTITY SHALL PAY TO THE LESSOR INTEREST ON THE AMOUNT OF SUCH DELAYED PAYMENT AT THE RATE SHOWN IN THE SCC, FOR THE PERIOD OF DELAY UNTIL PAYMENT HAS BEEN MADE IN FULL, WHETHER BEFORE OR AFTER JUDGMENT OR ARBITRATION AWARD.</p> | <p>-</p>            | <p>-</p>         |
| <p>SCC Detail</p>    | <p>THE PAYMENT-DELAY PERIOD AFTER WHICH THE PROCURING ENTITY MAY PAY INTEREST TO THE LESSOR SHALL BE [INSERT NUMBER] DAYS.</p> <p>THE INTEREST RATE THAT SHALL BE APPLIED IS [INSERT NUMBER] %</p>  | <p>Manual Input</p> | <p>AS AGREED</p> |
| <p>GCC Reference</p> | <p>18. PERFORMANCE SECURITY</p> <p>18.1 IF REQUIRED AS SPECIFIED IN THE SCC, THE LESSOR SHALL, WITHIN TWENTY-ONE (21) DAYS OF THE LETTER OF AWARD, PROVIDE A PERFORMANCE SECURITY FOR THE PERFORMANCE OF THE CONTRACT IN THE AMOUNT SPECIFIED IN THE SCC.</p>   | <p>-</p>            | <p>-</p>         |

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| <p>SCC Detail</p>    | <p>A PERFORMANCE SECURITY [ INSERT “SHALL” OR “SHALL NOT” BE REQUIRED]</p> <p>[IF A PERFORMANCE SECURITY IS REQUIRED, INSERT “THE AMOUNT OF THE PERFORMANCE SECURITY SHALL BE: [INSERT AMOUNT]</p> <p>[THE AMOUNT OF THE PERFORMANCE SECURITY IS USUALLY EXPRESSED AS A PERCENTAGE OF THE CONTRACT PRICE. THE PERCENTAGE VARIES ACCORDING TO THE PROCURING ENTITY’S PERCEIVED RISK AND IMPACT OF NON-PERFORMANCE BY THE LESSOR. A 10% PERCENTAGE IS USED UNDER NORMAL CIRCUMSTANCES]</p> | <p>Manual Input</p> | <p>A PERFORMANCE SECURITY SHALL NOT BE REQUIRED</p> |
| <p>GCC Reference</p> | <p>18.4 THE PERFORMANCE SECURITY SHALL BE DISCHARGED BY THE PROCURING ENTITY AND RETURNED TO THE LESSOR NOT LATER THAN TWENTY-EIGHT (28) DAYS FOLLOWING THE DATE OF COMPLETION OF THE LESSOR'S PERFORMANCE OBLIGATIONS UNDER THE CONTRACT, INCLUDING ANY WARRANTY OBLIGATIONS, UNLESS SPECIFIED OTHERWISE IN THE SCC.</p>  | <p>-</p>            | <p>-</p>  |

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| <p>SCC Detail</p>    | <p>IF REQUIRED, THE PERFORMANCE SECURITY SHALL BE IN THE FORM OF: <i>[INSERT “A DEMAND GUARANTEE” ]</i></p> <p>IF REQUIRED, THE PERFORMANCE SECURITY SHALL BE DENOMINATED IN <i>[INSERT “A FREELY CONVERTIBLE CURRENCY ACCEPTABLE TO THE PROCURING ENTITY” OR “THE CURRENCIES OF PAYMENT OF THE CONTRACT, IN ACCORDANCE WITH THEIR PORTIONS OF THE CONTRACT PRICE”]</i></p> | <p>Manual Input</p> | <p>N/A</p> |
| <p>GCC Reference</p> | <p>20. CONFIDENTIAL INFORMATION</p> <p>20.3 THE OBLIGATION OF A PARTY UNDER GCC SUB-CLAUSES 20.1 AND 20.2 ABOVE, HOWEVER, SHALL NOT APPLY TO INFORMATION THAT:</p> <p>A THE PROCURING ENTITY OR THE LESSOR NEED TO SHARE WITH OTHER ARMS OF GOVERNMENT OR OTHER BODIES PARTICIPATING IN THE FINANCING OF THE CONTRACT; SUCH PARTIES SHALL BE DISCLOSED IN THE SCC;</p>      | <p>-</p>            | <p>-</p>   |
| <p>SCC Detail</p>    | <p>OTHER ARMS OF GOVERNMENT OR OTHER BODIES PARTICIPATING IN THE FINANCING OF THE CONTRACT ARE <i>__[LIST THE PARTIES]</i></p>  | <p>Manual Input</p> | <p>N/A</p> |

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| <p>GCC Reference</p> | <p>23. PACKING AND DOCUMENTS</p> <p>23.1 NO PARKING SERVICES AND DOCUMENTS ARE NEEDED, AND IF ANY, THEY ARE SPECIFIED IN THE SCC, AND IN ANY OTHER INSTRUCTIONS ORDERED BY THE PROCURING ENTITY.</p>  | <p>-</p>            | <p>-</p>   |
| <p>SCC Detail</p>    | <p>THE PACKING, MARKING AND DOCUMENTATION WITHIN AND OUTSIDE THE PACKAGES SHALL BE: <i>[INSERT IN DETAIL THE TYPE OF PACKING REQUIRED, THE MARKINGS IN THE PACKING AND ALL DOCUMENTATION REQUIRED]</i></p>  | <p>Manual Input</p> | <p>N/A</p> |
| <p>GCC Reference</p> | <p>24. INSURANCE</p> <p>24.1 THE LEASE ITEMS SUPPLIED UNDER THE CONTRACT SHALL BE FULLY INSURED BY THE LESSOR WITH AN INSURANCE COMPANY REGISTERED IN KENYA. AGAINST LOSS OR DAMAGE INCIDENTAL TO USE, TRANSPORTATION, STORAGE, AND DELIVERY, IN A MANNER SPECIFIED IN THE SCC.</p> | <p>-</p>            | <p>-</p>   |
| <p>SCC Detail</p>    | <p>THE INSURANCE COVERAGE SHALL BE AS SPECIFIED IN THE INCOTERMS. IF NOT IN ACCORDANCE WITH INCOTERMS, INSURANCE SHALL BE AS FOLLOWS: <i>[INSERT SPECIFIC INSURANCE PROVISIONS AGREED UPON, INCLUDING COVERAGE, CURRENCY AND AMOUNT]</i></p>  | <p>Manual Input</p> | <p>N/A</p> |

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| <p>GCC Reference</p> | <p>25. TRANSPORTATION AND INCIDENTAL SERVICES</p> <p>25.1 THE LESSOR MAY BE REQUIRED TO PROVIDE ANY OR ALL OF THE FOLLOWING SERVICES, INCLUDING ADDITIONAL SERVICES, IF ANY, SPECIFIED IN SCC:</p>   | <p>-</p>            | <p>-</p>   |
| <p>SCC Detail</p>    | <p>RESPONSIBILITY FOR TRANSPORTATION OF THE LEASE ITEMS SHALL BE .....</p> <p><i>[INSERT "THE LESSOR IS REQUIRED UNDER THE CONTRACT TO TRANSPORT THE LEASE ITEMS TO A SPECIFIED PLACE OF FINAL DESTINATION WITHIN KENYA, DEFINED AS THE PROJECT SITE, TRANSPORT TO SUCH PLACE OF DESTINATION IN KENYA, INCLUDING INSURANCE AND STORAGE, AS SHALL BE SPECIFIED IN THE CONTRACT, SHALL BE ARRANGED BY THE LESSOR, AND RELATED COSTS SHALL BE INCLUDED IN THE CONTRACT PRICE"; OR ANY OTHER AGREED UPON TRADE TERMS (SPECIFY THE RESPECTIVE RESPONSIBILITIES OF THE PROCURING ENTITY AND THE LESSOR)]</i></p> | <p>Manual Input</p> | <p>N/A</p> |

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| SCC Detail    | <p>INCIDENTAL SERVICES TO BE PROVIDED ARE:</p> <p><i>[SELECTED SERVICES COVERED UNDER GCC CLAUSE 25.2 AND/OR OTHER SHOULD BE SPECIFIED WITH THE DESIRED FEATURES. THE PRICE QUOTED IN THE TENDER PRICE OR AGREED WITH THE SELECTED LESSOR SHALL BE INCLUDED IN THE CONTRACT PRICE.]</i></p> | Manual Input | N/A                 |
| GCC Reference | <p>26. INSPECTIONS AND TESTS</p> <p>26.1 THE LESSOR SHALL AT ITS OWN EXPENSE AND AT NO COST TO THE PROCURING ENTITY CARRY OUT ALL SUCH TESTS AND/OR INSPECTIONS OF THE LEASE ITEMS AND RELATED SERVICES AS ARE SPECIFIED IN THE SCC.</p>  | -            | -                   |
| SCC Detail    | <p>THE INSPECTIONS AND TESTS SHALL BE:</p> <p><i>[INSERT NATURE, FREQUENCY, PROCEDURES FOR CARRYING OUT THE INSPECTIONS AND TESTS]</i></p>  | Manual Input | BUILDING INSPECTION |

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| <p>GCC Reference</p> | <p>26.2 THE INSPECTIONS AND TESTS MAY BE CONDUCTED ON THE PREMISES OF THE LESSOR OR ITS SUBCONTRACTOR, AT POINT OF DELIVERY, AND/OR AT THE LEASE ITEMS' FINAL DESTINATION, OR IN ANOTHER PLACE IN KENYA AS SPECIFIED IN THE SCC. SUBJECT TO GCC SUB-CLAUSE 26.3, IF CONDUCTED ON THE PREMISES OF THE LESSOR OR ITS SUBCONTRACTOR, ALL REASONABLE FACILITIES AND ASSISTANCE, INCLUDING ACCESS TO DRAWINGS AND PRODUCTION DATA, SHALL BE FURNISHED TO THE INSPECTORS AT NO CHARGE TO THE PROCURING ENTITY.</p> | <p>-</p>            | <p>-</p>                     |
| <p>SCC Detail</p>    | <p>THE INSPECTIONS AND TESTS SHALL BE CONDUCTED AT:</p> <p><i>[INSERT NAME(S) OF LOCATION(S)]</i></p>  | <p>Manual Input</p> | <p>BUILDING TO BE LEASED</p> |



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| <p>GCC Reference</p> | <p>27. LIQUIDATED DAMAGES</p> <p>27.1 EXCEPT AS PROVIDED UNDER GCC CLAUSE 32, IF THE LESSOR FAILS TO DELIVER ANY OR ALL OF THE LEASE ITEMS BY THE DATE (S) OF DELIVERY OR PERFORM THE RELATED SERVICES WITHIN THE PERIOD SPECIFIED IN THE CONTRACT, THE PROCURING ENTITY MAY WITHOUT PREJUDICE TO ALL ITS OTHER REMEDIES UNDER THE CONTRACT, DEDUCT FROM THE CONTRACT PRICE, AS LIQUIDATED DAMAGES, A SUM EQUIVALENT TO THE PERCENTAGE SPECIFIED IN THE SCC OF THE DELIVERED PRICE OF THE DELAYED LEASE ITEMS OR UNPERFORMED SERVICES FOR EACH WEEK OR PART THEREOF OF DELAY UNTIL ACTUAL DELIVERY OR PERFORMANCE, UP TO A MAXIMUM DEDUCTION OF THE PERCENTAGE SPECIFIED IN THOSE SCC. ONCE THE MAXIMUM IS REACHED, THE PROCURING ENTITY MAY TERMINATE THE CONTRACT PURSUANT TO GCC CLAUSE 35.</p> | <p>-</p>            | <p>-</p>   |
| <p>SCC Detail</p>    | <p>THE LIQUIDATED DAMAGE SHALL BE:</p> <p><i>[INSERT NUMBER]</i> % PER WEEK</p> <p>THE MAXIMUM AMOUNT OF LIQUIDATED DAMAGES SHALL BE:</p> <p><i>[INSERT NUMBER]</i> % OF THE CONTRACT PRICE</p>  | <p>Manual Input</p> | <p>N/A</p> |

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| <p>GCC Reference</p> | <p>33. CHANGE ORDERS AND CONTRACT AMENDMENTS</p> <p>33.6 IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY AND RESULTS IN:</p> <p>A A REDUCTION OF THE CONTRACT PRICE; THE AMOUNT TO BE PAID TO THE LESSOR SHALL BE THE PERCENTAGE SPECIFIED IN THE SCC OF THE REDUCTION IN THE CONTRACT PRICE; OR</p> | <p>-</p>            | <p>-</p>            |
| <p>SCC Detail</p>    | <p>IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY THE AMOUNT TO BE PAID TO THE LESSOR SHALL BE __%</p> <p><i>(INSERT APPROPRIATE PERCENTAGE. THE PERCENTAGE IS NORMALLY UP TO 50%) OF THE REDUCTION IN THE CONTRACT PRICE.</i></p>  | <p>Manual Input</p> | <p>AS SPECIFIED</p> |