



**TENDER NO. KP1/9A.2/OT/055/ICT/22-23
FOR PROCUREMENT OF ORACLE ENTERPRISE
HARDWARE,SUPPORT AND MAINTENANCE(SUPPLY,
INSTALLATION, CONFIGURATION AND COMMISSIONING)**

APRIL 2024

**ALL TENDERERS ARE ADVISED TO READ CAREFULLY
THIS TENDER DOCUMENT IN ITS ENTIRETY BEFORE
MAKING ANY BID**

TENDER DOCUMENT FOR PROVISION OF MAINTENANCE SERVICES
(E-PROCUREMENT OPEN TENDER SYSTEM)

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ABBREVIATIONS

AO	Accounting officer
FY	Fiscal year
ICT	Information, Communications Technology
ITT	Instructions to Tenderers
JV	Joint Venture
NCB	National competitive tender
PE	Procuring Entity
PPADA	Public Procurement and Asset Disposal Act, 2015
PPRA	Public Procurement Regulatory Authority
R	Responsive
NR	Not-Responsive
RFQ	Request for Quotation
STD	Standard Tender Documents
TEC	Tender Evaluation Committee
TOR	Terms of reference

INVITATION TO TENDER

April 4, 2024

TENDER NO:

NAME: TENDER FOR PROCUREMENT OF ORACLE ENTERPRISE HARDWARE,SUPPORT AND MAINTENANCE(SUPPLY, INSTALLATION, CONFIGURATION AND COMMISSIONING)

1.1 Introduction.

The Kenya Power & Lighting Company Plc (KPLC) invites bids from eligible Tenderers for **TENDER FOR PROCUREMENT OF ORACLE ENTERPRISE HARDWARE,SUPPORT AND MAINTENANCE(SUPPLY, INSTALLATION, CONFIGURATION AND COMMISSIONING)**. Interested Eligible Tenderers may obtain further information from the General Manager- Supply Chain, The Kenya Power & Lighting Company Plc at Stima Plaza, 3rd Floor, Kolobot Road, P.O. Box 30099 – 00100 Nairobi, Kenya.

1.2 Obtaining tender documents.

1.2.1 Tender documents detailing the requirements may be obtained from the KPLC E-Procurement Portal - ***RFx No.1000002620***

1.2.2 Prospective bidders may also download the tender document from KPLC's website (www.kplc.co.ke) free of charge.

1.3 Submission of Tender documents

Completed Tenders are to be submitted in electronic format on the KPLC's E-procurement portal on the due date and time published on the portal. Tenderers are required to visit the portal from time to time for revised closing dates and addendums. The Tender is to be submitted **ONLINE** on or before the submission date and time indicated on the **KPLC tendering portal**.

1.4 Tender Closing Date and Time

Tender closing date and time is as specified in the KPLC's tendering portal.

1.5 Prices

Offered Price should be inclusive of all taxes, duties, levies and delivery costs to the premises (where applicable) of KPLC or other specified site must be in Kenya Shillings or a freely convertible currency in Kenya and shall remain valid for **One hundred and eighty (180) days** from the closing date of the tender. ***Please note that prices indicated on the KPLC tendering portal should be exclusive of VAT.***

1.6 Opening of submitted Tenders

Tenders will be opened promptly thereafter in the presence of the Tenderer's or their representatives who choose to attend at Auditorium , Stima Plaza Ground Floor . All health protocols during opening ***must*** be observed and ***only one representative*** will be allowed in opening venue.

1.7 Pre-bid Meeting

There will be NO pre-bid meeting

TENDER SUBMISSION CHECKLIST

Bidders are advised to clearly label their documents while uploading on the portal.

No.	Item	Tick Where Provided
1	Tender Security – Bank Guarantee or Letters of Credit (issued by Banks Licensed by the Central Bank of Kenya), Guarantee by a deposit taking Microfinance Institution, Sacco Society, the Youth Enterprise Development Fund or the Women Enterprise Fund.	
2	Declaration Form	
3	Duly completed Tender Form	
4	Copy of Company or Firm’s Registration Certificate	
5*	Copy of PIN Certificate	
6*	Copy of Valid Tax Compliance Certificate	
7	Confidential Business Questionnaire (CBQ)	
8*	Certificate of Confirmation of Directors and Shareholding (C.R.12) for registered companies and if not a registered company registration of business name for those trading as a sole proprietor or a registration of partnership deed registered under the Kenyan law or equivalent certification for foreign tenderers.	
9	Duly completed Schedule of Guaranteed Technical Particulars	
10	Manufacturer’s Authorization	
11	Names with full contact as well as physical addresses of previous customers of similar goods and reference letters from at least two (2) previous customers	
12	Statement on Deviations	
13	Price Schedule(s)	
14	Schedule of requirements duly filled indicating items offered	
15	Financial Statements. The audited financial statements required must be those that are reported within eighteen (18) calendar months of the date of the tender document. <i>(For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original).</i>	

***NOTES TO TENDERERS**

1. Valid Tax Compliance Certificate shall be one issued by the relevant tax authorities and valid for at least up to the tender closing date. All Kenyan registered Tenderers must provide a valid Tax Compliance Certificate.

2. All Kenyan registered Tenderers must provide the Personal Identification Number Certificate (PIN Certificate).

3. Foreign Tenderers must provide equivalent documents to Tax Compliance and PIN certificates from their country of origin OR statements certifying that the equivalent documentation is not issued in the Tenderer's country of origin. Such Statement(s) shall be original and issued by the Tax authorities in the Tenderer's country of origin.

PART 1 - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A. General

1. Scope of Tender

- 1.1 This tendering document is for the delivery of Maintenance Services, as specified in Section V, Procuring Entity's Requirements. The name, identification and number of lots (contracts) of this ITT procurement are specified in the **TDS**.

2. Definitions

2.1 Throughout this tendering document:

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

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

3. Fraud and Corruption

3.1 KPLC 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.

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

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

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

3.5 Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit KPLC 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 KPLC.

4. Eligible Tenderers

- 4.1 A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to ITT 4.6, or any combination of such entities in the form of an association or subcontracting arrangement or a Joint Venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a Form of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS**.
- 4.2 Public Officers of KPLC, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a) Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
 - b) Receives or has received any direct or indirect subsidy from another Tenderer; or
 - c) Has the same legal representative as another Tenderer; or
 - d) Has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of KPLC regarding this Tendering process; or
 - e) Or any of its affiliates participated as a consultant in the preparation of KPLC's Requirements (including Activities Schedules, Performance Specifications and Drawings) for the Maintenance services that are the subject of the Tender; or
 - f) Or any of its affiliates has been hired (or is proposed to be hired) by KPLC or Procuring Entity for the Contract implementation; or
 - g) Would be providing goods, works, or maintenance 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 KPLC or of the project implementing agency, who: (i) are directly or indirectly involved in the preparation of the tendering document or specifications of the contract, and/or the Tender evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to KPLC throughout the procurement process and execution of the Contract.
- 4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member, may participate as a sub-contractor in more than one Tender.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services.
- 4.6 A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya, shall be ineligible to be prequalified for, initially selected for, tender for, propose for, or be awarded a contract during such period of sanctioning. The list of debarred firms and individuals is available at the electronic address info@ppra.go.ke.
- 4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they: (i) are legally and financially autonomous; (ii) operate under commercial law; and (iii) are not under supervision of KPLC.
- 4.8 A Tenderer under suspension from tendering as the result of the operation of a Tender-Securing

Declaration or Proposal-Securing Declaration shall not be eligible to tender.

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

4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable KPLC determine if this condition is met shall be provided in for this purpose is provided in “SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9”.

4.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if it is registered in Kenya, has less 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 foreign tenderers if the individual member firms are registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

4.1 The Procuring Entity may require tenderers to be registered with certain authorities in Kenya. Such registration shall be defined in the **TDS**, but care must be taken to ensure such registration requirement does not discourage competition, nor exclude competent tenderers. Registration shall not be a condition for tender, but where a selected tenderer is not so registered, the tenderer shall be given opportunity to register before signature of contract.

4.2 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for 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

4.3 A Tenderer may be considered ineligible if he/she offers goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

5 Qualification of the Tenderer

5.1 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

5.2 In the event that prequalification of Tenderers has been undertaken as stated in ITT 18.4, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

B. Contents of Tendering Document

6 Sections of Tendering Document

6.1 The tendering document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITT 9.

PART 1: Tendering Procedures

- i) Section I-Instructions to Tenderers (ITT)
- ii) Section II-Tender Data Sheet (TDS)
- iii) Section III-Evaluation and Qualification Criteria

- iv) Section IV – Tendering Forms

PART 2: Procuring Entity's Requirements

v) Section V- Procuring Entity's Requirements

PART 3: Contract

vi) Section VI- General Conditions of Contract (GCC)

vii) Section VII- Special Conditions of Contract (SCC)

viii) Section VIII- Contract Forms

6.2 The Invitation to Tender (ITT) or the notice to prequalify Tenderers, as the case may be, issued by KPLC is not part of this tendering document.

6.3 Unless obtained directly from KPLC, KPLC 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 9. In case of any contradiction, documents obtained directly from KPLC shall prevail.

6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

7. Site Visit

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

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

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

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

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

8.4 KPLC shall also promptly publish anonymized (no names) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by KPLC exclusively through the issue of an Addendum pursuant to ITT 10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

9. Clarification of Tender Documents

9.1 A Tenderer requiring any clarification of the Tender Document shall contact KPLC in writing at KPLC's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-arranged pretender visit of the site of the works if provided for in accordance with ITT 8.4. KPLC will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. KPLC shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, KPLC shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, KPLC shall amend the Tender Documents appropriately following the procedure under ITT 10.

10. Amendment of Tendering Document

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

10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from KPLC in accordance with ITT 6.3. KPLC shall also promptly publish the addendum on KPLC's webpage in accordance with ITT 8.1.

10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, KPLC shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.

C. Preparation of Tenders

11. Cost of Tendering

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

12. Language of Tender

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

13. Documents Comprising the Tender

13.1 The Tender shall comprise the following:

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

13.2 In addition to the requirements under ITT 12.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The Tenderer shall chronologically serialize pages of all tender documents submitted. The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

14. Form of Tender and Activity Schedule

14.1 The Form of Tender and priced Activity Schedule shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested.

15. Alternative Tenders

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

16. Tender Prices and Discounts

- 16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Activity Schedule(s) shall conform to the requirements specified below.
- 16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).
- 16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, submitted by the Tenderer.
- 16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 13.1.
- 16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, Procuring Entity's Requirements. Items for which no rate or price is entered by the Tenderer will not be paid for by KPLC when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.
- 16.6 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.
- 16.7 If provided for in the TDS, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
- 16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.

17. Currencies of Tender and Payment

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

18. Documents Establishing Conformity of Services

- 18.1 To establish the conformity of the Maintenance services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, Procuring Entity's Requirements.
- 18.2 Standards for provision of the Maintenance services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to KPLC's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Procuring Entity's Requirements.

19. Documents Establishing the Eligibility and Qualifications of the Tenderer

- 19.1 Tenderers shall complete the Form of Tender and all the Tendering Forms included in Section IV to establish their eligibility in accordance with ITT 4.
- 19.2 The documentary evidence of the Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to KPLC's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 19.3 In the event that prequalification of Tenderers has been undertaken as stated in the **TDS**, only Tenders from prequalified Tenderers shall be considered for award of Contract. The prequalified Tenderers should submit with their Tenders any information updating their original prequalification applications or, alternatively, confirm in their Tenders that the originally submitted prequalification information remains essentially correct as of the date of Tender submission.
- 19.4 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 KPLC, a Service provider or group of service providers qualifies for a margin of preference. Further the information will enable KPLC 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 there by help to prevent any corrupt influence in relation to the procurement process or contract management.
- 19.5 The purpose of the information described in ITT 18.1 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 KPLC as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 19.6 The Tenderer shall provide further documentary proof, information or authorizations that KPLC may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.3. 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.
- 19.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to KPLC. 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 KPLC.
- 19.8 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if KPLC 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.
- 19.9 If information submitted by a tenderer pursuant to these requirements, or obtained by KPLC (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 person have committed any criminal offence.
- 19.10 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 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of KPLC 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.
- 19.11 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

20. Period of Validity of Tenders

- 20.1 Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by KPLC in accordance with ITT

23.1). A Tender valid for a shorter period shall be rejected by KPLC as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, KPLC 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 20, 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, except as provided in ITT 19.3.

21. Tender Security

21.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified in the **TDS**.

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

21.3 If a Tender Security is specified pursuant to ITT 20.1, from a reputable source, and an eligible country and shall be in any of the following forms at the Tenderer's option:

- i) cash;
- ii) a bank guarantee;
- iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
- iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,

21.4 If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by KPLC as non-responsive.

21.5 If a Tender Security is specified pursuant to ITT 20.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 46.

21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security. 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 decline to extent the tender validity period.

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

- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or
- b) if the successful Tenderer fails to:
 - i) sign the Contract in accordance with ITT 45; or
 - ii) furnish a performance security in accordance with ITT 46.

21.8 The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender security or Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 12.2.

21.9 If a Tender Security is not required in the **TDS**, pursuant to ITT 20.1, and

- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender; or
- b) if the successful Tenderer fails to:
 - i) sign the Contract in accordance with ITT 45; or

ii) furnish a performance security in accordance with ITT 46;

KPLC may, if provided for **in the TDS**, declare the Tenderer ineligible to be awarded a contract by KPLC for a period of time as stated **in the TDS**.

22. Format and Signing of Tender

- 22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 12, bound with the volume containing the Form of Tender, and clearly marked "Original." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS**, and clearly marked as "Copies." In the event of discrepancy between them, the original shall prevail.
- 22.2 Tenderers shall mark as "CONFIDENTIAL" information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 22.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. Submission and Opening of Tenders

23. Sealing and Marking of Tenders

- 23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to KPLC and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and
 - in an envelope or package or container marked "COPIES", all required copies of the Tender; and
 - if alternative Tenders are permitted in accordance with 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.
- 23.2 The inner envelopes or packages or containers shall:
- a) bear the name and address of KPLC.
 - b) bear the name and address of the Tenderer; and
 - c) bear the name and Reference number of the Tender.
- 23.3 If an envelope or package or container is not sealed and marked as required, KPLC will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will be rejected.

24. Deadline for Submission of Tenders

- 24 Tenders must be received by KPLC 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**.

- 25 KPLC may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 9, in which case all rights and obligations of KPLC and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

25. Late Tenders

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

26. Withdrawal, Substitution and Modification of Tenders

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

- 26.2 prepared and submitted in accordance with ITT 21 and ITT 22 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and

- 26.3 received by KPLC prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.

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

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

27. Tender Opening

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

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

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

- 27.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

- 27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as KPLC may consider appropriate.

- 27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Activity Schedule are to be initialed by representatives of KPLC attending Tender opening in the manner specified in the **TDS**.

27.7 KPLC shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1).

27.8 KPLC shall prepare a record of the Tender opening that shall include, as a minimum:

- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
- b) The Tender Price, per lot (contract) if applicable, including any discounts; and
- c) Any alternative Tenders;
- d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.

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

E. Evaluation and Comparison of Tenders

28. Confidentiality

28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.

22.2 Any effort by a Tenderer to influence KPLC in the evaluation or contract award decisions may result in the rejection of its Tender.

28.3 Notwithstanding ITT 27.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact KPLC on any matter related to the Tendering process, it should do so in writing.

29 Clarification of Tenders

29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, KPLC may, at KPLC's discretion, ask any Tenderer for clarification of its Tender including breakdowns of the prices in the Activity Schedule, and other information that KPLC may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by KPLC shall not be considered. KPLC'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 KPLC in the evaluation of the Tenders, in accordance with ITT 32.

29.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in KPLC's request for clarification, its Tender may be rejected.

30 Deviations, Reservations, and Omissions

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

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

31. Determination of Responsiveness

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

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

- a) If accepted, would:
 - i) Affect in any substantial way the scope, quality, or performance of the Maintenance services specified in the Contract; or
 - ii) Limit in any substantial way, inconsistent with the tendering document, KPLC's rights or the Tenderer's obligations under the Contract; or
- b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially

responsive Tenders.

- 31.2 KPLC shall examine the technical aspects of the Tender submitted in accordance with ITT 17 and ITT18, in particular, to confirm that all requirements of Section VII, Procuring Entity's Requirements have been met without any material deviation or reservation, or omission.
- 31.3 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by KPLC and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. Non-conformities, Errors and Omissions
- 31.4 Provided that a Tender is substantially responsive, KPLC may waive any non-conformities in the Tender.
- 31.5 Provided that a Tender is substantially responsive, KPLC may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non- conformities or omissions in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 31.6 Provided that a Tender is substantially responsive, KPLC shall rectify quantifiable non material non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS**.

32. Arithmetical Errors

- 32.1 Corrected tender prices shall not be used in the evaluation of tenders, comparison of tender prices.
- 32.2 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.
- 32.3 Provided that the Tender is substantially responsive, KPLC 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,

33. Conversion to Single Currency

- 33.1 For evaluation and comparison purposes, conversion of the currency (ies) of to a single currency preference shall not apply.

34. Margin of Preference

- 34.1 Margin of preference on local service providers may be allowed if it is deemed that the services require participation of foreign tenderers. If so allowed, it will be indicated in the **TDS**.
- 34.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and/or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to the specified group are eligible to tender as specified in the **TDS**. Otherwise if not so stated, the invitation will be open to all tenderers.

35. Evaluation of Tenders

- 35.1 KPLC 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, KPLC 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 tendering document; and
- b) The lowest evaluated cost.

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

- a) Price adjustment due to discounts offered in accordance with ITT 15.4;
- b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 33;
- c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 31.3;
- d) The additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.

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

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

36. Comparison of Tenders

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

37. Abnormally Low Tenders and Abnormally High

Tenders Abnormally Low Tenders

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.

37.2 In the event of identification of a potentially Abnormally Low Tender, the KPLC shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

37.3 After evaluation of the price analyses, in the event that KPLC determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, KPLC shall reject the Tender.

Abnormally High Tenders

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

37.5 In case of an abnormally high tenders, the Procurement Entity should (a) review the specifications, and conditions of tender, or correctness of the estimate or (b) possibility of a collusion, formation of cartels, or other form of fraudulent and corrupt activity in the tendering processor (c) perception of the firms on the credibility of the KPLC. KPLC shall treat abnormally low and high tenders in accordance with procedures provided for in this tender document

37.6 KPLC 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 KPLC shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

38. Unbalanced and/or Front-Loaded Tenders

- 38.1 If in KPLC's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, KPLC may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.
- 38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, KPLC may as appropriate:
- a) Accept the Tender; or
 - b) Require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price; or
 - c) agree on a payment mode that eliminates the inherent risk of KPLC paying too much for undelivered works; or
 - d) reject the Tender.

39. Qualification of the Tenderer

- 39.1 KPLC shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 39.1 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.
- 39.2 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 KPLC shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

40 KPLC's Right to Accept Any Tender, and to Reject Any or All Tenders

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

F. Award of Contract

41 Award Criteria

- 41.1 KPLC shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

42. Notice of Intention to enter into a Contract/Notification of award

- 42.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period KPLC shall issue a Notification of Intention to Enter in to a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:
- a) The name and address of the Tenderer submitting the successful tender;
 - b) The Contract price of the successful tender;
 - c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
 - d) the expiry date of the Stand still Period; and
 - e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

43. Standstill Period

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

43.2 Where a Standstill Period applies, it shall commence when KPLC has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

44. Debriefing by KPLC

44.1 On receipt of KPLC's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to KPLC for a debriefing on specific issues or concerns regarding their tender. KPLC shall provide the debriefing within five days of receipt of the request. .2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

45. Letter of Award

45.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, KPLC shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

46. Signing of Contract

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

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

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

47. Performance Security

47.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from KPLC, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 3.9, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to KPLC. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to KPLC. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless KPLC has agreed in writing that a correspondent financial institution is not required.

47.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event KPLC may award the Contract to the Tenderer offering the next Most Advantageous Tender.

48. Publication of Procurement Contract

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

- a) Name and address of KPLC;
- b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract price, the contract duration.
- d) Dates of signature, commencement and completion of contract;
- e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

49. Adjudicator

49.1 KPLC proposes the person named **in the TDS** to be appointed as Adjudicator under the Contract, at an hourly fee specified **in the TDS**, plus reimbursable expenses. If the Tenderer disagrees with the proposed Adjudicator, the Tenderer should so state in the Tender. If, in the Form of Acceptance, KPLC has not agreed

on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

50. Procurement Related Complaints and Administrative Review

50.1 The procedures for making a Procurement-related Complaint areas specified in the **TDS**.

50.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION II - TENDER DATA SHEET (TDS)

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

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

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

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT Reference	A. General
ITT 1.1	The reference number of the Invitation to Tenders (ITT) is The procuring entity is The Kenya Power And Lighting Co. PLC The name of the tender is TENDER FOR PROCUREMENT OF ORACLE ENTERPRISE HARDWARE,SUPPORT AND MAINTENANCE(SUPPLY, INSTALLATION, CONFIGURATION AND COMMISSIONING)
ITT 2.1 (a)	<i>(delete if not applicable)</i> Electronic – Procurement System KPLC shall use the following electronic-procurement system to manage this tendering process: SAP Tendering Portal on www.kplc.co.ke <i>(NB: Bidders are required to be registered via this link to be able to participate in this tender)</i> The electronic-procurement system shall be used to manage the following aspects of the tendering process: <i>(Issuing Tendering document, submission of Tenders, opening of Tenders)</i> Proof of receipt will be done via the bidder’s Submitted Response Number for RFX No.1000002620
3.4	The firms (if any) that provided consulting services for the contract being tendered for are none
ITT 4.1	Maximum number of members in the Joint Venture (JV) shall be: N/A
ITT 4.12	KPLC may require tenderers to be registered with _____ N/A
	B. Contents of Tendering Document
ITT 8.1	For <u>Clarification of Tender purposes</u> only, KPLC’s address is: <i>Attention: General Manager, Supply Chain & Logistics</i> <i>Postal Address: P.O. BOX 30099-00100,</i> <i>Physical Address CENTRAL OFFICE, STIMA PLAZA, KOLOBOT ROAD, PARKLANDS THIRD FLOOR, SUPPLY CHAIN</i> <i>Telephone: +254 -720-600070/1-5/; -711031904; -711031932 Cellular</i> <i>Electronic mail address: procurement@kplc.co.ke , JMutai@kplc.co.ke, Ewereobare@kplc.co.ke; and a copy to JMuigai@kplc.com</i> Requests for clarification should be received by KPLC no later than: 7 days. The inquiries must be received by KPLC at least 7 days before tender closing date <i>Web page: www.kplc.co.ke Web page: www.kplc.co.ke</i>
ITT 8.4	8.4 KPLC shall publish Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the website N/A

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 9.1	<p>(a) Address where to send enquiries is: <i>General Manager, Supply Chain & Logistics, The Kenya Power and Lighting Company PLC, Stima Plaza, 3rd Floor Kolobot Road, Parklands P.O Box 30099 - 00100 Nairobi, Kenya Telephone: +254-20-3201821 Electronic mail address: procurement@kplc.co.ke , JMutai@kplc.co.ke, Ewereobare@kplc.co.ke; and a copy to JMuigai@kplc.com to reach the KPLC not later than seven (7) days before tender closing date).</i></p> <p>(b) KPLC will publish its response at the website www.kplc.co.ke</p>
	C. Preparation of Tenders
ITT 13.1 (i)	The Tenderer shall submit the following additional documents in its Tender: <i>N/A</i>
ITT 15.1	Alternative Tenders <i>shall not be</i> considered.
ITT 15.2	Alternative times for <i>shall not be</i> permitted.
ITT 15.3	Alternative technical solutions shall NOT be permitted for the any part of the Services
ITT 19.3	Prequalification <i>“has not”been</i> undertaken.
ITT 20.1	The Tender validity period shall be 180 days.
ITT 21.1	<p>Tender-Securing Declaration shall not be required.</p> <p>Tender Security valid for 210 days shall be required in form of bank guarantee only. The amount and currency of the bid security shall be as follows:</p> <p>Tender Security shall be required, the amount and currency of the Tender Security shall be Kshs. 1,000,000.00</p> <p>The Original Tender Security should be kept in an envelope clearly labelled with the Tender number & name, and shall be deposited in the Tender Security Box on 3rd Floor Supply Chain at Stima Plaza, Kolobot Road, before the tender closing date and time.</p>
	D. Submission and Opening of Tenders
ITT 23.1	For <u>Tender submission purposes</u> only, KPLC The electronic-procurement system shall be used to manage the following aspects of the tendering process : SAP Tendering Portal on www.kplc.co.ke
ITT 24.1	<p>The deadline for Tender submission is:</p> <p>Tenders must be received by KPLC by the date and time specified in KPLC’s tendering portal in PDF form. procedures</p>
ITT 26.1	<p>The Tender opening shall take place at: The Auditorium , Stima Plaza Ground Floor and the mode of opening shall be Electronic-procurement system</p> <p>Physical Address: Nairobi, Central Office, Stima Plaza, Kolobot Road, Parklands, 3rd floor, Supply Chain</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 27.1	The electronic Tender opening procedures shall be: Public opening will be done through the KPLC tendering portal at Stima Plaza, Auditorium as specified in the KPLC Tendering Portal for submitted tenders only
ITT 27.6	The Form of Tender and priced Activity Schedule shall be initialed by ALL representatives of KPLC conducting Tender opening. <i>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 KPLC, etc.]</i>
E. Evaluation and Comparison of Tenders	
ITT 34.1	Margin of preference not allowed
ITT 34.2	This tender is for Local service providers for the service.
F. Award of Contract	
ITT 41.1	Award shall be to the lowest evaluated bidder per Lot. Bidders must quote for all items in a lot to qualify forward.
ITT 49.1	KPLC has not proposed for any adjudicator.
ITT 50.1	<p>The procedures for making a Procurement-related Complaint are available from the “Notification of Intention to Award - Paragraph 5” and from RA website www.ppra.go.ke.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>For the attention:</p> <p>Title/position: General Manager , Supply Chain & Logistics Procuring Entity: KPLC</p> <p>Email address: Procurement@kplc.co.ke</p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <p>(i) the terms of the Tender Documents; and (ii) KPLC’s decision to award the contract.</p>

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

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

- a) For construction turnover or financial data required for each Year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
- b) Value of single Contract-Exchange rate prevailing on the date of the contract signature.
- c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by KPLC.

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

Evaluation and contract award Criteria

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

2. Preliminary examination for Determination of Responsiveness

KPLC will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other requirements in the ITT, and that the tender is complete *in all* aspects in meeting the requirements of “*Part 2–Procuring Entity's Services Requirements*”, including checking for tenders with unacceptable errors, abnormally low tenders, abnormally high tenders and tenders that are front loaded. The Standard Tender Evaluation Report for Goods and Works for evaluating Tenders provides clear guidelines on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered irresponsive and will not be considered further.

3. Tender Evaluation (ITT 35) Price evaluation: in addition to the criteria listed in ITT

35.2 (a)–(d)

Evaluation of duly submitted tenders will be conducted along the following stages: -

3.1 Part 1 - Preliminary Evaluation

Under Paragraph 3.28 of the ITT. These are mandatory requirements. This shall include confirmation of the following: -

3.1.1 *Submission of Tender Security - Checking its validity, whether it is Original; whether it is sufficient; whether it is authentic; whether it is issued as required in the tender document; whether it is strictly in the format required in accordance with the sample Tender Security Form(s).*

3.1.2 *Submission of **the following** forms duly completed, signed and stamped;*

- a. *Form of tender*
- b. *Certificate of Independent Tender Determination*
- c. *Self-Declaration of the Tenderer as hereunder;*
 - **Form SD1**
 - **Form SD2.**
- d. *Declaration and Commitment to The Code of Ethics*
- e. *Tenderer's Eligibility -Confidential Business Questionnaire*
- f. *Form EL1 1.1 - Tenderer Information Sheet*

3.1.2 *Submission and considering the following: -*

3.1.2.1 *For Local Tenderers*

- a) *Company or Firm's Registration Certificate*
- b) *PIN Certificate.*
- c) *Valid Tax Compliance Certificate.*

3.1.4 *That the Tender is valid for the period required.*

3.1.5 *Submission and considering the Certificate of Confirmation of Directors (CR12) which should not be more than 12 months from the date of opening*

3.1.6 *Submission of Commentary of Compliance to the Details of Service*

3.1.7 *Submission of current and valid compliance certificate for Application Service Provider (ASP) from Communication Authority of Kenya or equivalent certification for foreign tenderers issued by the country of origin-Not Applicable*

3.1.8 *Submission of at least Four (4) Reference letters/LPO from clients of Oracle Sparc system support service confirming satisfactory referencing bidders*

3.1.9 *Power of Attorney authorizing the signatory of the Tender to commit the Tenderer in accordance with the Tender requirements. Proof of authorization shall be furnished in the form of power of attorney which shall accompany the tender if the signatory to the tender is not a director of the company (provide name and attach proof of citizenship of the signatory to the tender).*

3.1.10 *Submission of audited financial statements that are reported within eighteen (18) calendar months of the date of tender document as well as the auditor's ICPAK Practicing license. For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to The date of the tender document. The copies should be Certified by the Bank issuing the statements. The Certification should be original.*

3.1.11 *Record of unsatisfactory or default in performance obligations in any contract shall be considered. This shall include any Tenderer with unresolved case(s) in its performance obligations for more than two (2) months in any contract. NB: Tenderers with over 50% outstanding performance on previous KPLC Contracts will not proceed for further evaluation.*

3.1.12 *Notwithstanding the above, considering any outstanding orders/Supplier Performance Review Scheme (SPRS) where applicable and the performance capacity indicated by the Tenderer.*

Tenders will proceed to the Technical Evaluation Stage only if they qualify in compliance with Part 1 above, Preliminary Evaluation.I.

3.2 Part II – Technical Evaluation and Comparison of Tenders.

3.2.1 *Evaluation of the following technical information against Tender Requirements and Specifications:- :*

- a) *Submitted with the Tender –*
 - i. *Principal or Manufacturer's Authorization*
 - ii. *Commentary of Compliance to the Details of Service (SDS)*
- iii. *Considering audited financial statements are those that are reported within eighteen (18) calendar months of the date of the tender document and confirming the auditors practicing license number for local bidders or equivalent for foreign bidders. Checking the validity of ICPAK practicing license registration.*

3.2.2 *Detailed Evaluation*

3.2.2.1 *Tenderers shall be expected to indicate full compliance to Detailed Technical Requirements as follows;*

	<i>Criterion</i>	<i>Minimum Requirements</i>	<i>Tenderer's Offer (Yes or No)</i>
1.	<i>Oracle Corporation Certified Field Delivery Partner in Kenya</i>	The vendor must be an Oracle certified <i>Field Delivery Partner</i> with authorization to do business in Govt and Public sector and is authorized to operate locally → <i>Attach copies of Public Sector Addendum, Field Delivery Partner authorization and Partner Certificate.</i>	
2.	<i>Installed and /Or Support base of Oracle Engineered Systems</i>	The vendor must have supplied, installed, commissioned or supported Oracle Engineered systems in Kenya. → <i>Attach recommendation letters/LPO for the Oracle Engineered Systems projects from at least One (1) customer in Kenya</i>	
3	<i>Experience in Supporting Oracle Software in High Availability (HA) environments with RAC</i>	The vendor must have supported Oracle Databases, and Real Application Cluster (RAC) within Kenya → <i>Attach References/Recommendation letters with LPO from at least one (1) customer in Kenya</i>	
4.	<i>Oracle Certification of vendor's technical staff. CVs of resources, their valid National ID/Foreigner certificate issued by Republic of Kenya</i>	Training on Oracle engineered systems (Attach Forms (PER-1 & PER-2) (a) The vendor must have a minimum of two (2) engineers in Kenya certified for Oracle engineered systems → <i>Attach copies of relevant Oracle certification.</i>	
		(b) The vendor must have minimum of two (2) Engineers in Kenya having Oracle Database 11g/12c or higher OCP certification. → <i>Attach copies of the certifications.</i>	
		(c) The vendor must have a minimum of two engineers certified for Oracle Linux or Solaris 11 certification → <i>Attach copies of Oracle Linux or Solaris certifications</i>	

Tenders will proceed to the Financial Evaluation Stage only if they qualify in compliance with Part 1 and II above, Preliminary Evaluation and Technical Evaluation Stage.

3.3 Part III – Financial Evaluation

Criteria Under Paragraph 3.31 of the ITT. These are mandatory requirements.

3.3.1 This will include the following: -

- a) *Confirmation of and considering Price Schedule duly completed and signed.*
- b) *Checking that the bidder has quoted in Kenya shillings.*
- c) *Checking that the Tenderer has quoted prices based on Delivery Duty Paid (DDP) terms,*
- d) *Conducting a financial comparison*
- e) *Taking into account the cost of any deviation(s) from the tender requirements,*
- f) *Considering information submitted in the Confidential Business Questionnaire against other information in the bid including: -*
 - i) *Declared maximum value of business*
 - ii) *Shareholding and citizenship for preferences where applicable.*

3.3.2 Confirming that the Supplier's offered Terms of Payment meets KPLC's requirements.

3.4 **Each Lot will be evaluated separately and the Successful Tenderer shall be the one with the lowest evaluated price for the specific Lot.**

***NOTES: -**

1. For purposes of evaluation, the exchange rate to be used for currency conversion shall be the selling exchange rate prevailing on the date of tender closing provided by the Central Bank of Kenya. (Visit the Central Bank of Kenya website).
2. Total tender value means the Tenderer's total tender price inclusive of Value Added Tax (V.A.T) for the services it offers to provide.

SECTION IV - TENDERING FORMS

Form of Tender Tenderer Information Form Tenderer JV Members Information Form

Price Schedule: Goods Manufactured Outside Kenya, to be Imported Price Schedule:

Goods Manufactured Outside Kenya, already imported Price Schedule: Goods

Manufactured in Kenya Price and Completion Schedule – Related Services Form of

Tender Security – Demand Guarantee Form of Tender Security (Tender Bond)

Form of Tender-Securing Declaration Manufacturer's Authorization Form

FORM OF TENDER

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

Invitation for Tender No.: _____ *[insert identification]*

Tender Name: _____ *[insert Tender Name]*

To: The Kenya Power & Lighting Company Plc,
Stima Plaza,
Kolobot Road, Parklands,
P.O Box 30099 – 00100,
Nairobi, Kenya.

- 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 the following Goods: *[insert a brief description of the Goods and Related Services]*;
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is:
Option 1, in case of one lot: Total price is: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*;
or
Option 2, in case of multiple lots: (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]*; and (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]*;
- f) **Discounts:** The discounts offered and the methodology for their application are:
 - i) The discounts offered are: *[Specify in detail each discount offered.]*
 - ii) The exact method of calculations to determine the net price after application of discounts are shown below: *[Specify in detail the method that shall be used to apply the discounts]*;
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 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;
- h) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- i) **One Tender per tenderer:** We are not submitting any other Tender(s) as an individual tenderer, and we are not participating in any other Tender(s) as a Joint Venture member, or as a subcontractor, and meet the requirements of ITT 3.9, other than alternative Tenders submitted in accordance with ITT 12;

- j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Procuring Entity. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 3.7];*
- l) **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount

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

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **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; and
- o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- p) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from _____ (*specify website*) during the procurement process and the execution of any resulting contract.
- q) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent tender Determination” attached below.
- r) **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.
- s) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:
 - a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest;
 - b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers;
 - c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption; and
 - d) Declaration and Commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption

as informed in “Appendix 1- Fraud and Corruption” attached to the Form of Tender.

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

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

.....
.....*[insert complete name of person duly authorized to sign the Tender]

Title of the person signing the Tender:*[insert complete title of the person signing the Tender] **Signature of the person named above:**

..... [insert signature of person whose name and capacity are shown above]

Date signed

[insert date of signing] [insert month], [insert year]

*: 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.

INSTRUCTIONS TO TENDERERS

- i. All italicized text is to help the Tenderer in preparing this form.*
- ii. The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a mandatory requirement.*
- iii. Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION FORMS OF THE TENDERER as listed under (s) below.*

CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the _____

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

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

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

Name; _____

Title; _____

Signature; _____

Date; _____

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

SELF-DECLARATION FORMS

FORM SD1

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

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

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

..... (Title)

..... (Signature)

..... (Date)

Bidder Official Stamp

FORM SD2

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

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

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

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

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

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

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

.....
(Title)

.....
(Signature)

(Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized
signatory.....

Sign.....
..

Position.....
..

Office

address.....Telephone.....

Email.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name

Sign.....

Date.....

...

APPENDIX 1- FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

- 1.1 The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

2. Requirements

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.
- 2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:
 - 1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
 - 2) A person referred to under subsection (1) who contravenes the provisions of that subsection commits an offence;
 - 3) Without limiting the generality of the subsection (1) and (2), the person shall be—
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
 - 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
 - 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement:-
 - a) shall not take part in the procurement proceedings;
 - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
 - 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
 - 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.
- 2.3 In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
 - a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or

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

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

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

- c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

TENDERER INFORMATION FORM

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

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

Tender Name and Identification:..... *[Insert identification]*

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

Page _____ of _____ pages

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> For Kenyan Tenderers a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.4. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing: (i) Legal and financial autonomy (ii) Operation under commercial law (iii) Establishing that the tenderer is not under the supervision of the Procuring Entity
2. Included are the organizational chart and a list of Board of Directors

TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

a) Instruction to Tenderer

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

A. Tenderer's details

ITEM	DESCRIPTION
1	Name of the Procuring Entity
2	Name of the Tenderer
3	Full Address and Contact Details of the Tenderer. 1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
4	Reference Number of the Tender
5	Date and Time of Tender Opening
6	Current Trade License No and Expiring date
7	Maximum value of business which the Tenderer handles.
8	

General and Specific Details

b) Sole Proprietor, provide the following details.

Name in full _____

Age _____ Nationality _____

Country of Origin _____ Citizenship _____

c) Partnership, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) Registered Company, provide the following details.

i) Private or public Company _____

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

Nominal Kenya Shillings (Equivalent)

Issued Kenya Shillings (Equivalent)

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

If yes, provide details as follows.

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

(ii) Conflict of interest disclosure

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

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

(f) Certification

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

Full Name _____

Title or Designation _____

(Signature)

(Date)

TENDERER'S JV MEMBERS INFORMATION FORM

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

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

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

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

PRICE SCHEDULE FORM

Tender No: KP1/9A.2/OT/055/ICT/22-23

Tender Name: SUPPLY, INSTALLATION, CONFIGURATION AND COMMISSIONING OF ORACLE ENTERPRISE HARDWARE.

LOT1

Hardware,

No	Description	QTY (Pc)	Country of Origin	Part Number	Unit Price DDP VAT Excl. (Kshs)	Sub-total DDP VAT Excl. (Kshs)
1.	M8-8 Servers	2				
2.	ZS9-2 Storage	2				
3.	Exadata x10M	2				
4.	Switches	2				
Total Cost Hardware cost						
Total Premier Support Cost (1Year)						
	Oracle Installation, Migration & Upgrade Services			B86700 B76416 B61304 B74194 B61307 B61974		
	HW Environment - Installation			B76417		
	• Exadata-X10 x2			B65858		
	• Spark-M8 x2			B65863		
	• ZFS Storage x2			B76417		
	DB Environment – Migration & Upgrade x15			B80777 B76417 B76416		
	Annual enhanced support services			B86701		
	• Engineered Systems (Exadata/Supercluster) (1x Full Coverage; 1x Critical Reactive)			B86713 B76416		
	• Databases (1x Full Coverage; 1x Critical Reactive)			B76417		
	1. EDU Oracle Database Event Learning Subscription – Oracle Database 19c: RAC Administration Workshop			B94454		
	2. EDU Oracle Database Event Learning Subscription – Oracle Exadata Database Machine: Implementation and Administration (Both trainings in a LAB Environment)			B94454		
TOTALS						

LOT2

Renewal of existing Software licences including 1 year support

Contract Number	CSI Number	Item Name	No of Licences	Back Support	Reinstatement Fees	Go Forward	Total Support Fees (VAT Inclusive)
9158580	20490108	Oracle Real Application Clusters - Processor Perpetual	32				
9158580	20490108	Oracle GoldenGate - Processor Perpetual	32				
9158580	20496553	Exadata Storage Server Software - Disk Drive	48				

		Perpetual				
9158580	20490108	Oracle Database Enterprise Edition - Processor Perpetual	32			
9158580	20490108	Oracle Diagnostics Pack - Processor Perpetual	32			
9158580	20490108	Oracle Partitioning - Processor Perpetual	32			
9158580	20490108	Oracle Tuning Pack - Processor Perpetual	32			
9158580	21191609	Oracle WebLogic Server Enterprise Edition - Processor Perpetual	10			
5032981	16887620	Oracle Database Enterprise Edition - Processor Perpetual	4			
5250666	18187258	Exadata Storage Server Software - Disk Drive Perpetual	36			
5250666	18953782	Exadata Storage Server Software - Disk Drive Perpetual	120			
5250666	18953042	Oracle Partitioning - Processor Perpetual	48			
5250666	18953042	Oracle Diagnostics Pack - Processor Perpetual	48			
5250666	18953042	Oracle Real Application Clusters - Processor Perpetual	36			
5250666	18953042	Oracle Active Data Guard - Processor Perpetual	36			
5250666	18953042	Oracle Database Enterprise Edition - Processor Perpetual	32			
5250666	18953042	Oracle Tuning Pack - Processor Perpetual	48			
5250666	18187346	Oracle Database Enterprise Edition - Processor Perpetual	12			
5250666	18187346	Oracle Real Application Clusters - Processor Perpetual	12			
5250666	18187346	Oracle Active Data Guard - Processor Perpetual	12			
14994445		Oracle WebLogic Server Enterprise Edition - Processor Perpetual	10			
Total Super Cluster Support						

LOT3

Purchase of new Software Licences

	Item Name	No of Licences	Unit Price VAT Inclusive	Total Price VAT Inclusive
1	Oracle Database Enterprise Edition – Processor Perpetual	15		
2	Oracle Diagnostics Pack - Processor Perpetual	15		
3	Oracle Tuning Pack - Processor Perpetual	15		
4	Oracle Real Application Cluster - Processor Perpetual	15		
5	Weblogic Server Enterprise Edition	10		
6	Oracle Partitioning - Processor Perpetual	15		
7	Exadata Storage Server Software - Disk Drive Perpetual	32		

LOT4

Super Cluster M8-8 Hardware support

	CSI Number	Description		Unit Price VAT Inclusive	Total Price VAT Inclusive
1	21740403	Jumper cable start up kit: ten 1-meter with C13 plugs, ten 2-meter with C13 plugs, two 1-meter with C19 plugs, and two 2-meter with C19 plugs	2		
2	21740375	PDU assembly: 3-phase 33 kVA, IEC309 5pin 16 A plug, 16/20 A	4		
3	21740389	Oracle Rack Cabinet 1242	1		
4	21740389	Oracle Rack Cabinet 1242	1		
5	21740389	ASSY,CABINET 42U-1200 (600), STD RETMA W/DOORS	1		
6	21740389	ASSY,CABINET 42U-1200 (600), STD RETMA W/DOORS	1		
7	21740380	Oracle Server X7-2L: 2 RU base chassis with motherboard, twelve 3.5-inch drive slots disk cage, 2 PSUs, slide rail kit, and cable management arm	1		
8	21740380	Oracle Server X7-2L: 2 RU base chassis with motherboard, twelve 3.5-inch drive slots disk cage, 2 PSUs, slide rail kit, and cable management arm	1		
9	21740380	Processor clip (for factory installation)	2		
10	21740380	Processor clip (for factory installation)	2		
11	21740380	One 10 TB 7200 rpm 3.5-inch SAS-3 HDD with coral bracket (for factory installation)	2		
12	21740380	One 10 TB 7200 rpm 3.5-inch SAS-3 HDD with coral bracket (for factory installation)	2		
13	21740380	SAS cable for 2U (for factory installation)	1		

1 4	21740380	SAS cable for 2U (for factory installation)	1		
1 5	21740380	Tall heat sink (for factory installation)	2		
1 6	21740380	Tall heat sink (for factory installation)	2		
1 7	21740380	PCIe filler panel (for factory installation)	5		
1 8	21740380	PCIe filler panel (for factory installation)	5		
1 9	21740380	One 480 GB M.2 SATA SSD with riser card for 2U (for factory installation)	2		
2 0	21740380	One 480 GB M.2 SATA SSD with riser card for 2U (for factory installation)	2		
2 1	21740380	Oracle Quad Port 10GBase-T Adapter (for factory installation)	1		
2 2	21740380	Oracle Quad Port 10GBase-T Adapter (for factory installation)	1		
2 3	21740380	One 16 GB DDR4-2666 registered DIMM (for factory installation)	8		
2 4	21740380	One 16 GB DDR4-2666 registered DIMM (for factory installation)	8		
2 5	21740380	Power cord: Sun Rack 2 jumper, 2 meters, C14RA plug, C13 connector, 13 A (for factory installation)	2		
2 6	21740380	Power cord: Sun Rack 2 jumper, 2 meters, C14RA plug, C13 connector, 13 A (for factory installation)	2		
2 7	21740380	QSFP to QSFP passive copper cable: 5 meters (for factory installation)	4		
2 8	21740380	QSFP to QSFP passive copper cable: 5 meters (for factory installation)	4		
2 9	21740380	Oracle Storage Dual Port 16 Gb or 32 Gb Fibre Channel PCIe HBA with 2 transceivers, Emulex (for factory installation)	1		
3 0	21740380	Oracle Storage Dual Port 16 Gb or 32 Gb Fibre Channel PCIe HBA with 2 transceivers, Emulex (for factory installation)	1		
3 1	21740380	1 Intel Xeon Gold 6128 6-core 3.4 GHz processor (for factory installation)	2		
3 2	21740380	1 Intel Xeon Gold 6128 6-core 3.4 GHz processor (for factory installation)	2		
3 3	21740380	Oracle Dual Port QDR InfiniBand Adapter M3 (for factory installation)	2		
3 4	21740380	Oracle Dual Port QDR InfiniBand Adapter M3 (for factory installation)	2		
3 5	21740380	Oracle Storage 12 Gb SAS PCIe HBA, internal (for factory installation)	2		
3 6	21740380	Oracle Storage 12 Gb SAS PCIe HBA, internal (for factory installation)	2		
3 7	21740380	Oracle Server X7-2L: model family	1		
3 8	21740380	Oracle Server X7-2L: model family	1		
3 9	21740378	Oracle Advanced Support Gateway Server X6-2	1		
4 0	21740387	Single Jumper cable: 2 meters, C13 plug	2		
4 1	21740371	Oracle SuperCluster M8: one M8-8 chassis with 6 processors included, configured with 2 physical domains and 3 processors in each physical domain (for factory installation)	1		
4 2	21740371	M8-8 SERVER,6xCMIOU,6TB,CX3,10G,SC M8	1		
4 3	21740371	Oracle SuperCluster M8 High Capacity (HC) Elastic Base Rack	1		
4 4	21740371	SWITCH,CISCO NEXUS 93108TC-EX (1GB),PORT-SIDE EXHAUST	1		
4 5	21740371	ASSY,ZS5-ES SERVER (768GB, 2x18C CPU, 2x 3.2TB SAS3-BC), SC M7/M8	1		
4 6	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
4 7	21740371	ASSY,DISK SHELF,STORAGE DE3-24C (20x 8TB, 4x 200GB-BC), SC M7/M8	1		
4 8	21740371	ASSY,CABINET 42U-1200 (600), STD RETMA W/DOORS	1		
4 9	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
5 0	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
5 1	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
5 2	21740371	ASSY,ZS5-ES SERVER (768GB, 2x18C CPU, 2x 3.2TB SAS3-BC), SC M7/M8	1		
5 3	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
5 4	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		

5	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
5	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
6	21740371	Oracle SuperCluster M8 InfiniBand Switch (for factory installation)	1		
7	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
8	21740371	Oracle SuperCluster M8 Storage Server HC (for factory installation)	1		
9	21740371	Oracle SuperCluster M8 Storage Server HC (for factory installation)	1		
0	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
1	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
2	21740371	Oracle SuperCluster M8 Storage Server HC (for factory installation)	1		
3	21740371	Oracle SuperCluster M8: model family	1		
4	21740388	Single Jumper cable: 2 meters, C13 plug	2		
5	21740379	Oracle Advanced Support Gateway Server X6-2	1		
6	21740371	Oracle SuperCluster M8: one M8-8 chassis with 6 processors included, configured with 2 physical domains and 3 processors in each physical domain (for factory installation)	1		
6	21740371	M8-8 SERVER,6xCMIOU,6TB,CX3,10G,SC M8	1		
7	21740371	Oracle SuperCluster M8 Storage Server HC (for factory installation)	1		
8	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
9	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
0	21740371	Oracle SuperCluster M8 Storage Server HC (for factory installation)	1		
1	21740371	Oracle SuperCluster M8 InfiniBand Switch (for factory installation)	1		
2	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
3	21740371	Oracle SuperCluster M8 High Capacity (HC) Elastic Base Rack	1		
4	21740371	SWITCH,CISCO NEXUS 93108TC-EX (1GB),PORT-SIDE EXHAUST	1		
5	21740371	ASSY,ZS5-ES SERVER (768GB, 2x18C CPU, 2x 3.2TB SAS3-BC), SC M7/M8	1		
6	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
7	21740371	ASSY,DISK SHELF,STORAGE DE3-24C (20x 8TB, 4x 200GB-BC), SC M7/M8	1		
8	21740371	ASSY,CABINET 42U-1200 (600), STD RETMA W/DOORS	1		
9	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
0	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
1	21740371	X7-2L,2U HIGH CAPACITY SERVER,ED X7-2	1		
2	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
3	21740371	ASSY,ZS5-ES SERVER (768GB, 2x18C CPU, 2x 3.2TB SAS3-BC), SC M7/M8	1		
4	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
5	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
6	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
7	21740371	ASSY,IB-SW,NM2-36P MANAGED,W/NEW KONTRON	1		
8	21740371	Oracle SuperCluster M8: model family	1		
8	21740381	FC cable: plenum 10 meters, duplex, LC-LC, 9/125	8		
9	21740384	FC cable: riser, 5 meters, duplex, LC-LC, 50/125	50		
0	21740380	Oracle Server X7-2L: model family	1		
1	21740380	Oracle Server X7-2L: model family	1		
2	21740378	ASSY, ORACLE ADVANCED SUPPORT GATEWAY 1U SERVER (X6-2)	1		
3	21740371	Oracle SuperCluster M8: model family	1		
4	21740379	ASSY, ORACLE ADVANCED SUPPORT GATEWAY 1U SERVER (X6-2)	1		

5				
9	21740371	Oracle SuperCluster M8: model family	1	
6				
Total Supercluster M8-8 Servers Hardware				

Super Cluster T5-8 Hardware support

CONTRACT NO. 14152379 – HARDWARE – SUPERCLUSTER T5-8				
Item Name	CSI Number	Quantity	Unit Price VAT Excl.	Total Price VAT Inclusive
Oracle SuperCluster T5-8: model family	20496464	1		
Oracle SuperCluster T5-8: 42U base cabinet (for factory installation)	20496464	1		
RACK 42U-1200 W/HEAVY DUTY PAL	20496464	1		
Oracle SuperCluster T5-8 HC Half Rack	20496464	1		
X5-2L,2U,HIGH CAPACITY SERVER (w/8TB HDs),EXADATA	20496464	1		
ASSY,ZS3-ES, 256GB,2x8C CPU,Base	20496464	1		
SUNDC SWITCH IB-36P MANAGED,LF	20496464	1		
SWITCH,ENET,WS-C4948E-F-S,CISCO CATALYST,BACK TO FRONT COOLING	20496464	1		
ASSY,T5-8,HALF,2x 3.6G PMs,1TB,8x 1.2TB SAS3,CX3,SFP+PCIe,SC T5-8	20496464	1		
ASSY,DISK SHELF,STORAGE DE2-24C (20x 8TB, 4x 200GB)	20496464	1		
SUNDC SWITCH IB-36P MANAGED,LF	20496464	1		
SUNDC SWITCH IB-36P MANAGED,LF	20496464	1		
ASSY,T5-8,HALF,2x 3.6G PMs,1TB,8x 1.2TB SAS3,CX3,SFP+PCIe,SC T5-8	20496464	1		
ASSY,ZS3-ES, 256GB,2x8C CPU,Base	20496464	1		
X5-2L,2U,HIGH CAPACITY SERVER (w/8TB HDs),EXADATA	20496464	1		
X5-2L,2U,HIGH CAPACITY SERVER (w/8TB HDs),EXADATA	20496464	1		
X5-2L,2U,HIGH CAPACITY SERVER (w/8TB HDs),EXADATA	20496464	1		
Pwrcord,Jumper,2.5m,C13,13A,C14	20492521	2		
Oracle Advanced Support Gateway Server X5-2	20492521	1		
ASSY,ORACLE X5-2 ADVANCED SUPPORT GATEWAY 1U SERVER	20492521	1		
StorageTek 8 Gb Fibre Channel PCIe x8 HBA: dual port, Qlogic	20492521	8		
Oracle SuperCluster T5-8: model family	20496464	1		

Total Super Cluster T5 - 8

CONTRACT NO. 6460447 – HARDWARE – SUPERCLUSTER T5-8				
Item Name	CSI Number	Quantity	Unit Price VAT Excl.	Total Price VAT Inclusive
SUNDC SWITCH IB-36P MANAGED,LF	19307556	1		
SUNDC SWITCH IB-36P MANAGED,LF	19307556	1		
SUNDC SWITCH IB-36P MANAGED,LF	19307556	1		
ASSY,T5-8,HALF,2x 3.6G PMs,1TB,8x 900G SAS,CX2,SFP+PCIe,SC T5-8	19307556	1		
ASSY,T5-8,HALF,2x 3.6G PMs,1TB,8x 900G SAS,CX2,SFP+PCIe,SC T5-8	19307556	1		
Oracle SuperCluster T5-8: model family	19307556	1		
SWITCH,ENET,WS-C4948E-F-S,CISCO CATALYST,BACK TO FRONT COOLING	19307556	1		
Oracle SuperCluster T5-8: model family	19307556	1		
Oracle Advanced Support Gateway Server X3-2	19305698	1		
Oracle SuperCluster T5-8 HP Half Rack	19305698	1		
Power cord: Sun Rack jumper, 2.5 meters, C14RA plug, C13 connector, 13 A (for factory installation)	19305698	2		
Oracle SuperCluster T5-8: 42U base cabinet (for factory installation)	19305698	1		
ASSY,ORACLE ADVANCED SUPPORT GATEWAY 1U SERVER (X3-2)	19307556	1		
ASSY,ZS3-ES,256GB,2x8C CPU,Base	19307556	1		
ASSY,ZS3-ES,256GB,2x8C CPU,Base	19307556	1		
ASSY,DISK SHELF,STORAGE DE2-24C (20x 4TB HDS)	19307556	1		
X4-2L,2U,HIGH PERFORMANCE SERVER,EXADATA X4	19307556	1		
X4-2L,2U,HIGH PERFORMANCE SERVER,EXADATA X4	19307556	1		
X4-2L,2U,HIGH PERFORMANCE SERVER,EXADATA X4	19307556	1		
X4-2L,2U,HIGH PERFORMANCE SERVER,EXADATA X4	19307556	1		
RACK 42U-1200 W/HEAVY DUTY PAL	19307556	1		

Total Super Cluster T5-8

NB: (*Tenderer must indicate the currency of the offer price*)

Name of Tenderer

Name and Designation of authorised person signing the Tender

Signature of authorised person signing the Tender

Stamp of Tenderer and date

NB: Price schedule is to be printed on supplier's letterhead

FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]- (Applicable)

Beneficiary: _____ **Request for Tenders**
No: _____ **Date:** _____ **TENDER GUARANTEE**
No.: _____
Guarantor: _____

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

This guarantee is valid until theday of.....20.....

EITHER

SEALED with the)
COMMON SEAL)

of the said **BANK**)
 thisday)

_____)
BANK SEAL

of20....)
)
in the presence of: -)
_____)
)
and in the presence of: -)
_____)

OR

SIGNED by the **DULY AUTHORISED REPRESENTATIVE(S)/ ATTORNEY(S)** of the **BANK**

Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

Signature(s) of the duly authorised person(s)

NOTES TO TENDERERS AND BANKS

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*
2. *KPLC at its discretion will be able to establish the authenticity of the Tender Security with the issuing Organization.*
3. *The issuing bank should address its response or communication regarding the bond to KPLC at the following e-mail address – “guarantees@kplc.co.ke”*
2. *The Tender validity period is one eighty (180) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore, the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

[signature(s)]

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

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee] –Not Applicable

TENDER GUARANTEE No.: _____

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

Sealed with the Common Seal of the said Guarantor this ___ day of _____ 20 __.

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

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

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

[Date]

[Signature of the Guarantor]

[Witness]

[Seal]

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

FORM OF TENDER-SECURING DECLARATION

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

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

Tender No.:..... *[Insert number of tendering process]*

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

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

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

Signed:.....
....

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

Name:
.....

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

[Insert date of signing].

Seal or stamp.

MANUFACTURER’S AUTHORIZATION FORM (Applicable)

[The tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The tenderer shall include it in its Tender, if so indicated in the TDS.]

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

ITT No.:.....*[insert number of*

ITT process] Alternative No.:.....*[insert identification No*

if this is a Tender for an alternative]

To: *[Insert complete name of*

Procuring Entity] WHEREAS

We..... *[insert complete name of Manufacturer]*, who are official manufacturers of.....*[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of tenderer]* to submit a Tender the purpose of which is to provide the following Goods, manufactured by us..... *[insert name and or brief description of the Goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

Signed:..... *[Insert signature(s) of authorized representative(s) of the Manufacturer]*

Name:.....*[Insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title:..... *[Insert title]*

Dated on __day of _____, _____ *[insert date of signing]*

MANUFACTURER’S WARRANTY FORM (Applicable)

To Be Submitted On Manufacturer’s Letterhead)

To:

The Kenya Power & Lighting Company Limited, Stima
Plaza, Kolobot Road, Parklands, P.O Box 30099 – 00100,
Nairobi, Kenya.

RE: MANUFACTURER’S WARRANTY FOR GOODS REQUIRED UNDER TENDER NO

**..... TO BE SUPPLIED BY(indicate your name or
the supplier you have authorized)**

WE HEREBY WARRANT THAT:

- a) The goods to be supplied under the contract are new, unused, of the most recent or current specification and incorporate all recent improvements in design and materials unless provided otherwise in the Tender.
- b) The goods in the Tenderer’s bid have no defect arising from manufacture, materials or workmanship or from any act or omission of the Tenderer that may develop under normal use of the goods under the conditions obtaining in Kenya.

The Warranty will remain valid for **1 years** after the goods, or any portion thereof as the case may be, have been delivered to the destination indicated in the contract.

DATED THIS..... DAY OF.....20.....

Signature of duly authorised person for and on behalf of the Manufacturer.

Name and Capacity of duly authorised person signing on behalf of the Manufacturer

NOTES TO TENDERERS AND MANUFACTURERS

1. Only a competent person in the service of the Manufacturer should sign this letter of authority.
2. Provide full contact details including physical address, e-mail, telephone numbers and the website on the Warranty.

PART 2: SUPPLY REQUIREMENTS

SECTION V - SCHEDULE OF REQUIREMENTS

Notes for Preparing the Schedule of Requirements

The Schedule of Requirements shall be included in the Tendering document by the Procuring Entity, and shall cover, at a minimum, a description of the goods and services to be supplied and the delivery schedule.

The objective of the Schedule of Requirements is to provide sufficient information to enable tenderers to prepare their Tenders efficiently and accurately, in particular, the Price Schedule, for which a form is provided in Section IV. In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis in the event of quantity variation at the time of award of contract pursuant to ITT 42.1.

The date or period for delivery should be carefully specified, taking into account (a) the implications of delivery terms stipulated in the Instructions to tenderers pursuant to the *Incoterms* rules that “delivery” takes place when goods are delivered **to the final place of delivery**, and (b) the date prescribed herein from which the Procuring Entity's delivery obligations start (i.e., notice of award, contract signature, opening or confirmation of the letter of credit).

List of Goods and Delivery Schedule

Tender No:

Tender Name:

Item	Description of Goods	Qty (Pc)	Final Destination as specified in TDS	Delivery (as per Incoterms) Date			Tenderer's offered Delivery date [to be provided by the tenderer]	Country of origin
				Incoterms	Earliest Delivery Date	Latest Delivery Date		
1.	Supply, Installation, configuration and commissioning Hardware	2	Stima Plaza, 5 th Floor	DDP	3-6 Months			

List of Related Services and Completion Schedule (Guaranteed Lead Time (GLT))

No.	Description	Qty (Pc)	Final Destination as specified in TDS	Guaranteed Lead Time (GLT)		
				Incoterms DDP	KPLC Projected total Delivery Period	Tenderer's offered Total Delivery Period [to be provided by the tenderer]
1.	Supply, Installation, configuration and commissioning of Oracle Enterprise Hardware	2	Stima Plaza, 5 th Floor	DDP	3-6 Months	

Technical Specifications

1.1 The purpose of the Technical Specifications (TS), is to define the technical characteristics of the Goods and Related Services required by the Procuring Entity. The Procuring Entity shall prepare the detailed TS consider that:

- i) The TS constitute the benchmarks against which the Procuring Entity will verify the technical responsiveness of Tenders and subsequently evaluate the Tenders. Therefore, well-defined TS will facilitate preparation of responsive Tenders by tenderers, as well as examination, evaluation, and comparison of the Tenders by the Procuring Entity.
- ii) The TS shall require that all goods and materials to be incorporated in the goods be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the contract.
- iii) The TS shall make use of best practices. Samples of specifications from successful similar procurements in the same country or sector may provide a sound basis for drafting the TS.
- iv) The PPRA encourages the use of metric units.
- v) Standardizing technical specifications may be advantageous, depending on the complexity of the goods and the repetitiveness of the type of procurement. Technical Specifications should be broad enough to avoid restrictions on workmanship, materials, and equipment commonly used in manufacturing similar kinds of goods.
- vi) Standards for equipment, materials, and workmanship specified in the Tendering document shall not be restrictive. Recognized international standards should be specified as much as possible. Reference to brand names, catalogue numbers, or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or substantially equivalent.” When other particular standards or codes of practice are referred to in the TS, whether from the Procuring Entity's or from other eligible countries, a statement should follow other authoritative standards that ensure at least a substantially equal quality, then the standards mentioned in the TS will also be acceptable.
- vii) Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable the words “or at least equivalent” shall always follow such references.
- viii) Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:
 - a) Standards of materials and workmanship required for the production and manufacturing of the Goods.
 - b) Any sustainable procurement technical requirements shall be clearly specified.

1.2 To encourage tenderers' innovation in addressing sustainable procurement requirements, as long as the Tender evaluation criteria specify the mechanism for monetary adjustments for the purpose of Tender comparisons, tenderers may be invited to offer Goods that exceeds the specified minimum sustainable procurement requirements.

- i) Detailed tests required (type and number).
- ii) Other additional work and/or Related Services required to achieve full delivery/completion.
- iii) Detailed activities to be performed by the Supplier, and participation of the Procuring Entity thereon.
- iv) List of detailed functional guarantees covered by the Warranty and the specification of the liquidated damages to be applied in the event that such guarantees are not met.

- 1.3 The TS shall specify all essential technical and performance characteristics and requirements, including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the Procuring Entity shall include an additional ad-hoc Tendering form (to be an Attachment to the Letter of Tender), where the tenderer shall provide detailed information on such technical performance characteristics in respect to the corresponding acceptable or guaranteed values.
- 1.4 When the Procuring Entity requests that the tenderer provides in its Tender a part or all of the Technical Specifications, technical schedules, or other technical information, the Procuring Entity shall specify in detail the nature and extent of the required information and the manner in which it has to be presented by the tenderer in its Tender.
- 1.5 If a summary of the Technical Specifications(TS) has to be provided, the Procuring Entity shall insert information in the table below. The tenderer shall prepare a similar table to justify compliance with the requirements.

DETAILED TECHNICAL SPECIFICATIONS (DTS)

The Detailed Technical Specifications of the required Oracle Enterprise hardware are as shown below.

The successful tenderer will be required to supply Oracle Enterprise hardware that meet the requirements listed in the table below.

The successful tenderer will be initially required to work closely with Kenya Power ICT teams to ensure that the devices are tested for quality.

SERVERS SPECIFICATIONS

M8-8 Servers- Qty 2

No	Item	Minimum Requirement	COMPLIANCE (Y/N)	Bidders Response
1.	Brand and Model	SPARC M8-8 Servers		
2.	Processors	8 Socket per server (4 Sockets Populated) Total of 128 M8 CPU Cores required per Server 4 x CMIOUS Per SERVER 4 x SPARC M8 32-core 5.0 GHz Dual Domain Chassis (2 PDOMS)"		
3.	Memory	Total amount of RAM required is 4TB per server using 128GB DIMMS DDR4-2400		
4.	System Architecture	Accepted architectures are Oracle SPARC V9		
5.	INTERFACES (Per Physical server)	Network: sixteen 10 GbE short wave transceivers and 16 x OM4 LC-LC Cables 80ft.		
5.	Mass Storage and Media (Per Physical server)	4 x NVMe Flash Accelerators per M8-8 Server		
	Power Supplies (Per Physical server)	6 hot-swappable AC 3,000 W redundant power supplies Voltage 200 to 240 VAC, frequency 50/60 Hz The Power rating of the servers should be compatible with Ethiopian Power Standard Non-Disruptive serviceability: Hot swappable redundant fans"		
	Key Ras Features (Per Physical server)	Hot-plug disk drives Redundant, hot-swappable power supplies and fans Environmental monitoring Extended ECC, error correction, and parity checking. DIMM sparing enabled with fully populated memory slots, increasing system reliability and uptime Easy component replacement		

		Integrated dual disk controllers with RAID 0, 1, and 1E/10 or better Fault Management Architecture.		
	Operating System	The servers should support Commercial UNIX operating systems, Oracle Solaris The Servers should be certified with proposed commercial UNIX system Any additional license and support cost related to the OS should be included in the price quotation		
	Virtualization	Must be built-in, no-cost VM Server technology		
	Included Installation Kits	Complete Tool-less rack mounting slide rail kit Cable management Industry standard Power cables for each power supply Form Factor should be rack mountable.		
	Warranty and Support	One year Warranty and all implementation done by Oracle CSS		

ZS9-2 Storage – Qty 2

No	Item	Minimum Requirement	COMPLIANCE (Y/N)	Bidders Response
1.	Storage Type	Array should be racked system - High End		
2.	Controller Specification	4x 32-core 2.6 GHz Intel® Xeon® processors 4TB CACHE		
3.	Supported protocols	The storage array should support Block Protocols (Fiber channel, iscsi) and NAS Protocols Multiprotocol Support for SAN		
4.	Connectivity	16 x 10/25GbE Short Wave Transceivers with Required Cables		
5.	Size per shelf (QTY 2 Needed)	SSD option: Two (2) Shelf with 20 x 7.68 TB 2.5-inch SAS SSD with marlin bracket		
6.	Software	Replication, Cloning, snapshot software included		
7.	Form factor	<ul style="list-style-type: none"> All components shall be rack Mountable Mounting kits with accessories, cable management, mounting tools. 		
8.	Warranty and support	<ul style="list-style-type: none"> One year Warranty and all implementation to be done by Oracle CSS Minimum One year Manufacturer direct support 		
	Accessories	All Peripherals, Ports and cards should be factory installed and		

	tested.		
	<ul style="list-style-type: none"> All Required Cables including power cables, data cables, and other specialized connectors should be included. 		

Exadata x10M – Qty 2

No	Item	Minimum Requirement	COMPLIANCE (Y/N)	Bidders Response
1	Database Servers per Exadata	<p>Exadata Database Machine X10M-2 Database Server each containing:</p> <ul style="list-style-type: none"> (2) AMD® EPYC Genoa 9J14 96-core 2.6 GHz processors 2.25 TB - (24) 96 GB DDR5-4800 DIMMs Upgradeable to 3 TB using PTO memory upgrade options (2) 3.84 TB v2 NVMe SSD (Hot swappable) (1) Dual-port 200 GbE PCIe Gen5 x16 Ethernet adapter (running at 100Gb/s) For connections to Leaf switches (3) Dual-port 25 GbE SFP28 CX6 PCIe4.0x8 Ethernet adapters per Database Node Up to (3) Additional Customer Networking Options (1) Built-in RJ45 Host Management port (NET0) Port is copper 10/100/1000Base-T Ethernet (1) Built-in RJ45 Net Management port (NET MGT) Port is copper 1000Base-T Ethernet (1) Built-in RJ45 Serial Management port (SER MGT) The serial management port does not support network connections (2) Redundant (A271) 1400 W hot-swappable power supplies 		
2	Intelligent Storage Server - High Capacity per Exadata	<p>5 x Exadata Storage Server x10M-2 High Capacity each containing:</p> <ul style="list-style-type: none"> (2) AMD® EPYC Genoa 9334 32-core 2.7 GHz processor 1.5 TB DDR5 Memory (total) (24) 64 GB DDR5-4800 RDIMMs 256 GB DDR5 Memory (System Memory) 1.25 TB XRMEM (Memory Acceleration) (12) 22 TB 7200 rpm 3.5-inch SAS-3 HDDs (1) Internal 12GB PCIe 16-port Gen4 x8 HBA (NVMe) (4) 6.8 TB v4 NVMe PCIe 4.0 Flash cards (1) Dual-port 200 GbE PCIe Gen5 x16 Ethernet adapter (running at 100Gb/s) RDMA Network Fabric Adapter For connections to Leaf switches (2) 480 GB M.2 NVMe SSD (1) Built-in RJ45 Host Management port 		

		<p>(NET0) Port is copper 10/100/1000Base-T Ethernet (1) Built-in RJ45 Net Management port (NET MGT) Port is copper 1000Base-T Ethernet (1) Built-in RJ45 Serial Management port (SER MGT) The serial management port does not support network connections (2) Redundant (A271) 1400 W hot-swappable power supplies</p>		
3	Performance Metrics Per Exadata X10M-2	<p>5,600,000 Read IOPS for 8k Reads 4,000,000 Write IOPS for 8k Writes 225GB/s Scan GB per Second</p>		
	Switches (Qty 2)	<p>2 x RDMA over Converged Ethernet (RoCE) Network Fabric 1U form factor (36) 10/25/40/100 Gbps QSFP28 ports Redundant power and cooling</p>		
	10GbE SFP+ for Client Access	<p>Oracle 10GbE Dual Rate SFP+ Short Range (SR) Transceivers required for all the NICs</p> <p>Two Dual Port 10/25Gbps NICs for Client access. Include all required copper and optical cables</p>		
	10GbE SFP+ for Backup Traffic	<p>Two Dual Port 10/25Gbps NICs for Client access. Include all required copper and optical cables</p>		
	Rack	<p>42 RU 19-Inch manufacturer branded rack</p>		
	Software	<p>Operating System for the database servers</p>		
	Warranty and Implementation	<p>One year Warranty All other required software included 1.All Implementation is to be done by Oracle CSS</p>		

Switches- Qty 2

ITEM NO.	MINIMUM REQUIREMENTS	TENDERER REQUIREMENT	COMPLIANCE (YES/NO)	REMARKS
1	10GbE SFP+ for Client Access	Oracle 10GbE Dual Rate SFP+ Short Range (SR) Transceivers required for all the NICs Two Dual Port 10/25Gbps NICs for Client access. Include all required copper and optical cables		
2	10GbE SFP+ for Backup Traffic	Two Dual Port 10/25Gbps NICs for Client access. Include all required copper and optical cables		
3	Rack	42 RU 19-Inch manufacturer branded rack		
4	Software	Operating System for the database servers		
5	Implimentation	One year Warranty All other required software included All Implementation is to be done by Oracle CSS		

SPECIFIC DETAILS OF SERVICE (SDS)

The Specific Details of Service are as provided below.

a) Details of Services for Supercluster M8-8 and T5-8 Servers

	<i>The Details of Service Specifications</i>	<i>Bidder's Remarks</i>
i.	<i>Preventive Maintenance of Supercluster M8-8 and T5-8 Servers</i> The vendor will carry out <i>preventive maintenance</i> of the <i>Supercluster</i> servers on quarterly basis	
ii.	<i>Curative/Remedial Maintenance</i> On-site support may be requested from time to time to resolve any Supercluster servers and Oracle DB issues. The vendor is expected to respond to such calls within the shortest time possible as will be specified in SLA	
iii.	<i>Software Patches and Bug Fixes for Oracle M8-8 Hardware</i> Whenever a bug is detected in the Oracle Super Cluster hardware the vendor shall provide and apply the necessary software patches and bug fix bundles.	
iv.	<i>Support and upgrade of Hardware</i> The vendor will provide support and hardware upgrade when deemed necessary.	

b) Service Level Agreement (SLA)

The bidder will provide a detailed SLA covering the above details of service

PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VI - GENERAL CONDITIONS OF CONTRACT

1. Definitions

In the Conditions of Contract (“these Conditions”), which include Special Conditions, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

- a) “Contract” means the Contract Agreement entered into between the Procuring Entity and the Supplier, 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 Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- d) “Day” means calendar day.
- e) “Completion” means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- f) “GCC” means the General Conditions of Contract.
- g) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Procuring Entity under the Contract.
- h) “Procuring Entity” means the Procuring Entity purchasing the Goods and Related Services, as **specified in the SCC**.
- i) “Related Services” means the services incidental to the supply of the goods, such as insurance, delivery, installation, commissioning, training and initial maintenance and other such obligations of the Supplier under the Contract.
- j) “SCC” means the Special Conditions of Contract.
- k) “Subcontractor” means any person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- l) “Supplier” means the person, private or government entity, or a combination of the above, whose Tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.
- m) “**Base Date**” means a date 30 day prior to the submission of tenders.
- n) “**Laws**” means all national legislation, statutes, ordinances, and regulations and by-laws of any legally constituted public authority.
- o) “**Letter of Acceptance**” means the letter of formal acceptance, signed by the contractor. Procuring Entity, including any annexed memoranda comprising agreements between and signed by both Parties.
- p) “**Procuring Entity**” means the Entity named in the Special Conditions of Contract.

2. Interpretation

2.1. If the context so requires it, singular means plural and vice versa.

2.2 Incoterms

- a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms **specified in the SCC**.
- b) The terms EXW and CIP and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.

3. Contract Documents

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) the Contract Agreement,
- b) the Letter of Acceptance,
- c) the General Conditions of Contract
- d) Special Conditions of Contract
- e) the Form of Tender,
- f) the Specifications and Schedules of the Drawings (if any), and
- g) the Schedules of Requirements, Price Schedule and any other documents forming part of the Contract.

4. Fraud and Corruption

- 3.1 The supplier shall comply with anti-corruption laws and guidelines and the prevailing sanctions, policies and procedures as set forth in the Laws of Kenya.
- 3.2 The Supplier shall disclose any commissions, gratuity or fees that may have been paid or are to be paid to agents or any other person with respect to the Tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

4.1 Entire Agreement

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

4.2 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.

4.3 Non-waiver

- a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, 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.

4.4 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 Supplier 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 and certified translation of the relevant passages in the **English Language**, in which case, for purposes of interpretation of the Contract, the English language is translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

6. Joint Venture, Consortium or Association

6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfilment of the provisions of the Contract and shall designate one member of the joint venture, consortium, or association 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 written consent of the Procuring Entity.

7. Eligibility

7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Sub-contractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

7.2 All Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

7.3 The Tenderer, if a Kenyan firm, must submit with its tender a valid tax compliance certificate from the Kenya Revenue Authority.

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**. The term "in writing" means communicated in written form with proof of receipt.

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.

9.2 Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in Kenya:

- a) where, as a matter of law, compliance or official regulations, Kenya prohibits commercial relations with that country or any import of goods from that country or any payments to any country, person, or entity in that country ; or

- b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity.

10. Settlement of Disputes

- 101 The Procuring Entity and the Supplier shall make every effort to resolve amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 102 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier 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 Goods under the Contract.

102 Arbitration proceedings shall be conducted as follows:

- 1021 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 10.1 shall be finally settled by arbitration.
- 1022 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within thirty days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 1023 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 1024 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any due payments.
- 1025 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for the dispute given in its notice of a claim or dispute.
- 1026 Arbitration may be commenced prior to or after delivery of the goods. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the delivery of goods.
- 1027 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

103 Arbitration Proceedings

- 1031 Arbitration proceedings with national suppliers will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person or persons to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
- i) Kenya National Chamber of Commerce
 - ii) Chartered Institute of Arbitrators (Kenya Branch)
 - iii) The Law Society of Kenya
- 1032 The institution written to first by the aggrieved party shall take precedence over all other institutions.

1033 Alternative Arbitration Proceedings

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

104 Arbitration with Foreign Suppliers

1041 Arbitration with foreign suppliers shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

1042 The place of arbitration shall be a location specified in the **SCC**; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

105 Alternative Arbitration Proceedings

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

106 Failure to Comply with Arbitrator's Decision

1061 The award of such Arbitrator shall be final and binding upon the parties.

10.6.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

107 Contract operations continue

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 Supplier any monies due the Supplier.

11. Inspections and Audit by the Procuring Entity

11.1 The Supplier shall keep, and shall cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Goods in such form and details as will clearly identify relevant time, changes and costs.

11.2 Pursuant to paragraph 2.2 of Instruction to Tenderers, the Supplier shall permit and shall cause its subcontractors 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 Supplier's and its Subcontractors' attention is drawn to Sub- Clause 3.1 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.

12. Scope of Supply

12.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

13. Delivery and Documents

13.1 Subject to GCC Sub-Clause 33.1, the delivery of the Goods and completion of the Related Services shall be in accordance with the List of Goods and Delivery Schedule specified in the Supply Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the **SCC**.

14. Supplier's Responsibilities

- 14.1 The Supplier shall supply all the Goods 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 Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the **SCC**.
- 15.2 Where the contract price is different from the corrected tender price, in order to ensure the supplier is not paid less or more relative to the contract price (*which would be the tender price*), any partial payment valuation based on rates in the schedule of prices in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$.

16. Terms of Payment

- 16.1 The Supplier shall request for payment by submitting invoice(s), delivery note(s) and any other relevant documents as specified in the **SCC** to the Procuring Entity.
- 16.2 Payments shall be made promptly by the Procuring Entity, but not later than thirty (30) days after submission of an invoice by the Supplier, and after the Procuring Entity has accepted it.
- 16.3 Where a Procuring Entity rejects Goods and Related Services, in part or wholly, the procuring Entity shall promptly inform the Supplier to collect, replace or rectify as appropriate and give reasons for rejection. The Supplier shall submit a fresh invoice, delivery note and any other relevant documents as specified in the **SCC**.
- 16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed.
- 16.5 In the event that the Procuring Entity fails to pay the Supplier any payment by its due date or within the period set forth in the **SCC**, the Procuring Entity may pay to the Supplier 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 Supplier shall be entirely responsible for all taxes, duties, license fees, and other such levies incurred to deliver the Goods and Related Services to the Procuring Entity at the final delivery point.
- 17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Kenya, the Supplier shall inform the Procuring Entity and the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

18. Performance Security

- 18.1 If required as specified in the **SCC**, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the 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 Supplier's failure to complete its obligations under the Contract.
- 18.3 As specified in **the SCC**, the Performance Security, if required, shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Procuring Entity; and shall be in one of the formats stipulated by the Procuring Entity in **the SCC**, or in another format acceptable to the Procuring Entity.

18.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Supplier not later than thirty (30) days following the date of Completion of the Supplier'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 Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Procuring Entity directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

20. Confidential Information

20.1 The Procuring Entity and the Supplier 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 Supplier may furnish to its Sub-Supplier such documents, data, and other information it receives from the Procuring Entity to the extent required for the Sub Supplier to perform its work under the Contract, in which event the Supplier shall obtain from such Sub Supplier undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.

20.2 The Procuring Entity shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier 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 Supplier 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 hereto 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 Supplier 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 Supplier 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 Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section V, 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 Goods' country of origin.
- b) The Supplier 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 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified **in the SCC**, and in any other instructions ordered by the Procuring Entity.

24. Insurance

- 24.1 Unless otherwise specified in the **SCC**, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.

25. Transportation and Incidental Services

- 25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.
- 25.2 The Supplier 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 Goods;
 - b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
 - c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
 - d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
 - e) training of the Procuring Entity's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.
- 25.3 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services

26. Inspections and Tests

- 26.1** The Supplier shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' 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 Supplier 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 travelling and board and lodging expenses.
- 26.4 Whenever the Supplier 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 Supplier 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 Supplier 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 Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier'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 Supplier'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 Supplier shall provide the Procuring Entity with a report of the results of any such test and/or inspection.
- 26.7 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods 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 Supplier agrees that neither the execution of a test and/or inspection of the Goods 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 Supplier from any warranties or other obligations under the Contract.

27. Liquidated Damages

- 27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods 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 Goods 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 Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free

from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

- 283 Unless otherwise specified in the **SCC**, the warranty shall remain valid for **twelve (12) months** after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 284 The Procuring Entity shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 285 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Procuring Entity.
- 286 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Procuring Entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

29. Patent Indemnity

- 29.1 The Supplier 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 Goods by the Supplier or the use of the Goods in the country where the Site is located; and
 - b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods 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 Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 292 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 Supplier a notice thereof, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 293 If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.
- 294 The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 295 The Procuring Entity shall indemnify and hold harmless the Supplier 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 Supplier 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 Supplier shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring Entity, and

b) the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier 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 30 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 Supplier 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 Supplier 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 Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. 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 Supplier 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 Supplier 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 Supplier 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 Goods 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 Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier'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 Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Procuring Entity's change order.

333 Prices to be charged by the Supplier 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 Supplier for similar services.

334 **Value Engineering:** The Supplier 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.

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

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

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

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

337 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

34. Extensions of Time

34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier 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 Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier'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 Supplier in the performance of its Delivery and Completion obligations shall render the Supplier 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 Supplier, may terminate the Contract in whole or in part:

- i) if the Supplier fails to deliver any or all of the Goods 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 Supplier fails to perform any other obligation under the Contract; or
 - iii) if the Supplier, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix to the GCC, 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, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Supplier 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 Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, 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.

35.2 Termination for Convenience.

- a) The Procuring Entity, by notice sent to the Supplier, 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 Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, 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 Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

36. Assignment

36.1 Neither the Procuring Entity nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

37. Export Restriction

37.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Procuring Entity, to Kenya, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier 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 export of the products/goods, 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

The following Special Conditions of Contract (SCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 1.1(h)	The Procuring Entity is: <i>Kenya Power and Lighting Company Plc</i>
GCC 2.2 (a)	The terms of contract shall strictly Delivered Duty Paid (DDP) . The meaning of the trade terms shall be as prescribed by Incoterms.
GCC 2.2 (b)	The version edition of Incoterms shall be <i>INCOTERMS 2021</i>
GCC 3	The following additional documents shall form part of this contract: <ul style="list-style-type: none"> (a) Technical Specifications (b) Letter of Award dated (c) Price Schedule (d) Technical Drawings (e) Delivery Schedule (f) Manufacturer's Warranty (g) Manufacturer's Authorization (where applicable) (h) Beneficial Ownership Form
GCC 8.1	For notices , the Procuring Entity's address shall be: Attention: General Manager, Supply Chain & Logistics, The Kenya Power and Lighting Company PLC, Stima Plaza, 3 rd Floor P.O Box 30099 - 00100 Nairobi, Kenya Telephone: +254-20-3201821 Electronic mail address: <i>procurement@kplc.co.ke</i>
GCC 10.4	The place of arbitration shall be NAIROBI, KENYA
GCC 13.1	<ol style="list-style-type: none"> 1) Delivery of the goods shall be made by the Supplier to the place and in accordance with the terms specified by KPLC in its Schedule of Requirements. 2) The Supplier shall notify KPLC of the full details of the delivered goods by delivering together with the goods a full set of the following documents:- <ol style="list-style-type: none"> a) Supplier's invoice showing the goods description, quantity, unit price and total price b) Delivery note for every consignment originating from the party contracted by KPLC. The Delivery Note should be serialized, dated and contain the number of the Purchase Order c) Copy of the Certificate of Conformity (CoC) and/or Manufacturer's warranty certificate (where applicable) d) Packing list-identifying contents of each package which list should include casing number, full description of the items and the quantities in each package. 3) It is the responsibility of the Supplier to ensure that the delivery documents are received by KPLC at the designated delivery point at the time of delivery. 4) Any late or non-submission of the delivery documents shall be treated as part of non-performance on the part of the Supplier and KPLC shall be entitled to call up the Performance Security. <p>The Supplier should notify KPLC in writing of its intention to deliver goods fourteen (14) days prior to delivery, and a further confirmation two (2) working days before actual delivery</p>

	to the designated delivery point.
GCC 15.1	The prices charged for the Goods supplied and the related Services performed “ <i>shall not,</i> ” be adjustable during the period of the contract.
GCC 16.1	<ol style="list-style-type: none"> 1) Payments shall be made promptly by KPLC thirty (30) days after delivery and submission of an invoice together with other required and related documents and after KPLC has accepted them or as otherwise prescribed in the contract. 2) KPLC shall inform the Supplier to collect, replace or rectify as appropriate where goods have been rejected and give reasons for rejection. The Supplier shall submit fresh invoice, delivery note and any other relevant documents on replacement or rectification of rejected goods. 3) Payment shall primarily be through KPLC’s cheque or Real Time Gross Settlement (RTGS). 4) Suppliers must ensure that they submit the following: <ol style="list-style-type: none"> a) invoice containing the Bank’s Name and Branch, b) Name/Title of Bank account, c) Bank account number d) SWIFT CODE. e) A letter signed by the authorized signatory of the bank account of the Tenderer confirming details (a) to (d) above. This letter must contain the name of that authorized signatory and a Board Resolution that is sealed.
GCC 17	The terms shall be strictly on Delivered and Duty Paid (DDP)
GCC 18	<ol style="list-style-type: none"> 1. Where applicable, a copy of a valid Performance Security, stamped, certified as authentic by KPLC, shall form part of the documents to be presented to KPLC before any payment is made. Within fourteen (14) days of the date of the notification of contract award, the Supplier shall furnish to KPLC the Performance Security which shall be in the form of an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document. 2. The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya. 3. The Performance Security shall be the sum of ten percent (10%) of the contract price. It shall be in the currency of the contract price. 4. Failure of the Supplier to furnish the Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPLC may notify the next lowest evaluated Tenderer that its Tender has been accepted. 5. The proceeds of the Performance Security shall be payable to KPLC as compensation for any loss resulting from the Supplier’s failure to comply with its obligations in accordance with the contract without KPLC being required to demonstrate the loss it has suffered. 6. The Performance Security shall be valid for a minimum of sixty (60) days after satisfactory delivery. 7. KPLC shall seek authentication of the Performance Security from the issuing bank. 8. Subject to the provisions of this contract, the Performance Security will be discharged by KPLC and returned to the Supplier not earlier than sixty (60) days following the date of completion of the Supplier’s obligations under the contract, including any warranty obligations, under the contract.
GCC 22	1. The goods supplied under this contract shall conform to the technical specifications and standards given in Section V, Schedule of requirements and, when no standards is mentioned,

	<p>the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.</p> <p>2. 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.</p>
GCC 23.2	<p>a) The Supplier shall provide such packaging of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract.</p> <p>b) The method of packaging, labeling and marking shall comply strictly with such special requirements as shall be specified and attached to the Tender and particular Order.</p> <p>c) The labelling, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract.</p> <p>d) The Goods shall be packed in good condition suitable for sea/air/road/rail dispatch. Hazard in transit to the final destination shall include rough handling and storage in tropical conditions.</p> <p>e) The Supplier shall enclose a packing list in each package and all documents relating to the Order shall show the Stores Code Number detailed against the items.</p> <p>f) The Supplier shall ensure that all cases or packages shall be marked (painted) with bright pink bands five (5) inches in width so as to form a diagonal cross on every face. All bundles and pieces must bear a conspicuous bright pink colour mark to ensure identification in any position in which they may appear on un-loading.</p> <p>g) The Supplier shall ensure that all lettering shall be no less than seven decimals five centimeters (7.5cm) or three inches (3") high.</p>
GCC 24.1	<p>a)The Supplier shall (except in respect to losses, injuries or damage resulting from any act or neglect of KPLC) indemnify and keep indemnified KPLC against all losses and claims for injuries or damage to any person or property whatsoever which may arise out of or in consequence of the contract and against all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.</p>
GCC 25.1	<p>a)Responsibility for transportation of the Goods shall be as specified in the Incoterms.</p> <p>b)The Consignee shall be the supplier or supplier's agent whose responsibilities shall include payment of all Customs taxes, duties and levies, clearance of the Goods, and delivery to KPLC stores. For avoidance of doubt, this includes Value Added Tax (VAT), Railway Development Levy (RDL) and Import Duties.</p>

GCC 26

- a) KPLC or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the contract specifications. KPLC shall notify the Supplier in writing in a timely manner, of the identity of any representative(s) retained for these purposes.
- b) Prior to the manufacture or production of the goods on order, KPLC reserves the right to inspect the manufacturing or production facility and the quality management system. The manufacturer or producer shall meet the cost of routine inspection while KPLC shall meet the travel costs and accommodation of its nominated officers inspecting and witnessing tests.
- c) It is the responsibility of the Supplier to confirm if this right is to be exercised. Such visit and or inspection shall in no way prejudice KPLC's rights and privileges.
- d) Upon completion of manufacturing or production process, KPLC reserves the right to send two of its nominated officers to inspect the goods on order at the place of manufacture where inspection and acceptance tests as per tender specifications shall be carried out in their presence. Tests shall be done in accordance with the test standard(s) given in the Technical Specification of the goods on order.
- e) The manufacturer or producer shall meet the cost of tests as per tender specifications while KPLC shall meet the travel costs and accommodation of nominated officers inspecting and witnessing the tests.
- f) The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of production, manufacture, delivery and or at the goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KPLC. In all cases, the equipment used for tests must be validly calibrated by the national standards body and a copy (ies) of the calibration certificate(s) must be submitted with the test report(s).
- g) Complete test report(s) for all the goods as per Tender Specifications shall be submitted to KPLC for approval before packaging and shipment. No material or goods shall be shipped or delivered without written approval from KPLC.
- h) Should any inspected or tested goods fail to conform to the specifications, KPLC shall reject the goods, and the Supplier shall either replace the rejected goods or make alterations necessary to meet specification requirements free of cost to KPLC. The period for replacement or alterations together with delivery to KPLC shall be fourteen (14) days or as may otherwise be specified in the Notice of Rejection.
- i) The Supplier shall collect the rejected goods within fourteen (14) days from the date of notification of rejection. If the rejected goods are not collected within this period, KPLC, may (without being responsible for any loss or damage) sell any such rejected goods, holding the proceeds less all costs incurred to the credit of the Supplier.
- j) KPLC's right to inspect, test and where necessary, reject the goods after their arrival shall in no way be limited or waived by reason of the goods having previously been inspected, tested and passed by KPLC or its representative(s) prior to the goods delivery.
- k) For the avoidance of doubt, any acknowledgement by KPLC on the Supplier's or subcontractor's document shall not be conclusive proof or evidence of satisfactory delivery without duly authorized approval by KPLC.
- l) Nothing in clause 9 shall in any way release the Supplier from any warranty or other obligations under this Contract.
- m) Upon completion of manufacturing or production process it shall be mandatory for Supplier to notify in writing the date and time when KPLC nominated officers may conduct Factory Acceptance Test (FAT) by giving reasonable notice.

<p>GCC 28</p>	<ol style="list-style-type: none"> 1. The Warranty will remain valid for twelve (12) months period after the Goods have been delivered and accepted. 2. KPLC shall give notice to the Supplier stating the nature of any defects together with all available evidence thereof, promptly following the discovery thereof and shall afford all reasonable opportunity for the Supplier to inspect such defects. 3. Upon receipt of such notice, the Supplier shall, within the period specified expeditiously repair or replace the defective Goods or parts thereof, at no cost to KPLC. 4. If having been notified, the Supplier fails to remedy the defect within the period specified, the Procuring Entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the KPLC may have against the Supplier under the Contract.
<p>GCC 34</p>	<ol style="list-style-type: none"> 1) Variation of a contract shall only be considered after twelve months from the date of signing the contract.

SECTION VIII - CONTRACT FORMS

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful tenderer after contract award.

FORM No. 1: NOTIFICATION OF INTENTION TO AWARD

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

--

FORMAT

1. For the attention of Tenderer's Authorized Representative

i) Name: _____ [insert Authorized Representative's name]

ii) Address: _____ [insert Authorized Representative's Address]

iii) Telephone: _____ [insert Authorized Representative's telephone/fax numbers]

iv) Email Address: _____ [insert Authorized Representative's email address]

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

2. Date of transmission: _____ [email] on [date] _____ (local time)

This Notification is sent by _____ (Name and designation) _____

3. Notification of Intention to Award

i) Employer: _____ [insert the name of the Employer]

ii) Project: _____ [insert name of project]

iii) Contract title: _____ [insert the name of the contract]

iv) Country: _____ [insert country where ITT is issued]

v) ITT No: _____ [insert ITT reference number from Procurement Plan]

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

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

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

a) The successful tenderer

i) Name of successful Tender _____

ii) Address of the successful Tender _____

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

b) Other Tenderers

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

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

(Note a) State NE if not evaluated

5. How to request a debriefing

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

6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [insert date] (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
 - I) Attention: _____ [insert full name of person, if applicable]
 - ii) Title/position: _____ [insert title/position]
 - iii) Agency: _____ [insert name of Employer]
 - iv) Email address: _____ [insert email address]

- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.
- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website www.ppra.go.ke or email complaints@ppra.go.ke.

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

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

7. Standstill Period

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

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

On behalf of the Employer:

Signature:

Name: _____

Title/position: _____

Telephone: _____

_____ **Email:** _____

FORM NO. 2 - REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....**APPLICANT**

AND

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

Request for review of the decision of the..... (Name of the Procuring Entity ofdated the...day of20.....in the matter of Tender No.....of20..... for(Tender description).

REQUEST FOR REVIEW

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

- 1.
- 2.

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

- 1.
- 2.

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

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

SIGNED

Board Secretary

FORM NO. 3 LETTER OF AWARD

[Use letter head paper of the Procuring Entity]

_____ *[Date]*

To: _____ *[name and address of the Supplier]*

Subject: Notification of Award Contract No.

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

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

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract Agreement

FORM NO. 4 - CONTRACT AGREEMENT

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

THIS AGREEMENT made the _____ *[insert: number]* day of _____ *[insert: month]*, *[insert: year]*. BETWEEN (1) _____ *[insert complete name of Procuring Entity]* and having its principal place of business at *[insert: address of Procuring Entity]* (hereinafter called "Procuring Entity"), of the one part; and (2) _____ *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert: country of Supplier]* and having its principal place of business at _____ *[insert: address of Supplier]* (hereinafter called "the Supplier"), of the other part.

1. WHEREAS the Procuring Entity invited Tenders for certain Goods and ancillary services, viz., _____ *[insert brief description of Goods and Services]* and has accepted a Tender by the Supplier for the supply of those Goods and Services, the Procuring Entity and the Supplier agree as follows:

- i) In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
- ii) The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
 - a) the Letter of Acceptance
 - b) the Letter of Tender
 - c) the Addenda Nos. _____ (if any)
 - d) Special Conditions of Contract
 - e) General Conditions of Contract
 - f) the Specification (including Schedule of Requirements and Technical Specifications)
 - g) the completed Schedules (including Price Schedules)
 - h) any other document listed in GCC as forming part of the Contract
- iii) In consideration of the payments to be made by the Procuring Entity to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Procuring Entity to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

2. The Procuring Entity hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

3. IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya on the day, month and year indicated above.

For and on behalf of the Procuring Entity

Signed: _____ *[insert signature]*

in the capacity of _____ *[insert title or other appropriate designation]* In the presence of _____

_____ *[insert identification of official witness]* **For and on behalf of the Supplier**

Signed: _____ *[insert signature of authorized representative(s) of the Supplier]* in the capacity of _____

_____ *[insert title or other appropriate designation]* in the presence of _____

_____ *[insert identification of official witness]*

FORM NO. 5 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee] –(Applicable)

[Guarantor letterhead]

Beneficiary: _____ *[insert name and Address of Employer]*

Date: _____ *[Insert date of issue]*

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

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

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

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

FORM No. 6 - PERFORMANCE SECURITY [Option 2– Performance Bond]- (Not Applicable)

[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: _____ *[insert name and Address of*

Employer] Date: _____ *[Insert date of issue]*

PERFORMANCE BOND No.: _____

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

1. By this Bond _____ as Principal (hereinafter called “the Contractor”) and _____] as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____] as Obligee (hereinafter called “the Employer”) in the amount of _____ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Employer dated the ____ day of , 20_____, for _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
 - 1) complete the Contract in accordance with its terms and conditions; or
 - 2) obtain a tender or tenders from qualified tenderers for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or
 - 3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day _____ of _____ 20_____.

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

SIGNED ON _____ on behalf of _____

By _ in the capacity of _____

In the presence of _____

**FORM NO. 7 - ADVANCE PAYMENT SECURITY [Demand Bank
Guarantee]**

[Guarantor letterhead]

Beneficiary: _____ [Insert
name and Address of Employer]

Date: _____ [Insert date of issue]

ADVANCE PAYMENT GUARANTEE No.: _____ [Insert guarantee reference
number]

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

1. We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum _____ (in words____) is to be made against an advance payment guarantee.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (in words _____) ¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

(a) has used the advance payment for purposes other than the costs of mobilization in respect of the goods; or
(b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number _____ at -----.

5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the ___ day of _____, 2____, ² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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

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

¹The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.

² Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

FORM NO. 8 BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form (“Form”) is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.

Tender Reference No.: _____ [insert identification no] Name of the Tender Title/Description: _____ [insert name of the assignment] to: _____ [insert complete name of Procuring Entity]

In response to the requirement in your notification of award dated [insert date of notification of award] to furnish additional information on beneficial ownership: _____ [select one option as applicable and delete the options that are not applicable]

I) We here by provide the following beneficial ownership information.

Details of Beneficial ownership

	Details of all Beneficial Owners	% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
1.	Full Name:	Directly----- - ----- % of shares	Directly.....% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ----No---- 2. Is this right held directly or indirectly?: Direct..... ... Indirect..... ...	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No---- 2. Is this influence or control exercised directly or indirectly? Direct..... Indirect.....
	National identity card number or Passport number:	Indirectly--- - ----- % of shares	Indirectly----- --- % of voting rights		
	Personal Identification Number (where applicable);				
	Nationality:				
	Date of birth [dd/mm/yyyy]				
	Postal address				
	Residential address				

	Telephone number				
	Email address				
	Occupation or profession				
	Details of all Beneficial Owners	% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
2.	Full Name;	Directly----- - ----- % of shares	Directly.....% of voting rights	1. Having the right to appoint a majority of the board of directors or an equivalent governing body of the Tenderer: Yes ----No---- 2. Is this right held directly or indirectly?: Direct..... ... Indirect..... ...	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No---- 2. Is this influence or control exercised directly or indirectly? Direct..... Indirect.....
	National identity card number or Passport number;		Indirectly----- --- % of voting rights		
	Personal Identification Number (where applicable)	Indirectly--- - ----- % of shares			
	Nationality(ies):				
	Date of birth [dd/mm/yyyy]				
	Postal address;				
	Residential address;				
	Telephone number;				
	Email address;				
	Occupation or profession;				
3. e.t .c					

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020. (Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

IV) holds at least ten percent of the issued shares in the company either directly or indirectly;

(a) exercises at least ten percent of the voting rights in the company either directly or indirectly;

(b) holds a right, directly or indirectly, to appoint or remove a director of the company; or

(c) exercises significant influence or control, directly or indirectly, over the company.

V) What is stated to herein above is true to the best of my knowledge, information and belief.

VI) I _____ of ID/Passport No. _____ of Postal/Physical Address

_____ on behalf of _____ Ltd/Plc hereby authorize and

consent to The Kenya Power & and Lighting Company PLC, publishing information with regards to the beneficial ownership

to of _____ Ltd/Plc in its books of accounts, Website and/or otherwise as it will deem fit.

Name of the Tenderer:.....(*complete Name of the tenderer*)

Name of the person duly authorized to sign the Tender on behalf of the Tenderer:..... [*insert complete name of person duly authorized to sign the Tender*]

Designation of the person signing the Tender.....[*insert complete title of the person signing the Tender*]

Signature of the person named above [*insert signature of person whose name and capacity are shown above*]

Date this [*insert date of signing*] day of [*Insert month*], [*insert year*]

Bidder Official Stamp.....

FORM NO. 9 - SUBCONTRACTORS

(INFORMATION TO BE PROVIDED BY THE TENDERER)

As per the requirements of Clause 21 of General Conditions of Contract, following is a list of subcontractors and the portions of the Work to be subcontracted:

No.	Subcontractor	Address	Brief Description of the Works to be Subcontracted	% works subcontracted

FORM NO. 10 - PREVIOUS EXPERIENCE WITH SIMILAR WORK

(INFORMATION TO BE PROVIDED BY THE TENDERER)

As required by Clause 15.5 of the Instructions To Tenderers, following is a list of work that the Tenderer has previously performed which is similar to that described in the Request for Proposal:

No.	Description	Customer Name & Contacts	Date of Supply

FORM NO. 11 - SUPPLIER EVALUATION FORM

(This form is for information only and not to be filled in by any bidder. It is for official use by KPLC to evaluate performance of Suppliers during the contract period)

Name of Firm.....Date.....

Category of Product/Service (e.g. Conductors)

Period of evaluation.....

1. COST OF SERVICE/PRODUCT	Rating guidelines				Supplier Score	Procurement Score	User Score	Comments	Totals
	Did the vendor assist in or advice on ways of reducing the costs?	YES: 4	PARTIAL LY:2	NO : 0					10
	How closely did your final costs correspond to your expectation at the beginning of the project/tender?	YES: 2	PARTIAL LY:1	NO : 0					10.00 %
	Did the company stick to the agreed transaction/contract rates?	YES: 4	PARTIAL LY:2	NO : 0					
									Totals
2.ON TIME DELIVERY OF PRODUCT OR SERVICE	Did the vendor perform work in compliance with contract terms and agreements?	YES: 6	PARTIAL LY:3	NO : 0					10
	Was the vendor prompt and effective in correction of situations and conditions?	YES: 2	PARTIAL LY:1	NO : 0					10.00 %
	Are you able to track service level agreements and determine duration of incidents from the vendor?	YES: 2	PARTIAL LY:1	NO : 0					
3. FLEXIBILITY TO RESPOND TO UNEXPECTED DEMAND OF SERVICE	Rating guidelines								Totals
	Was the vendor willing to change their product/service on special needs?	YES: 6	PARTIAL LY:3	NO : 0					6
									6.00 %
4. QUALITY	Rating guidelines								Totals
	When	NO:6	PARTIAL	YE					14

1. COST OF SERVICE/PRODUCT	Rating guidelines				Supplier Score	Procurement Score	User Score	Comments	Totals
	performing their duties, was there - rework or returns caused by non-conformance to quality?		LY:3	S:0					
	Was the quality of service delivered equal to KPLC minimum requirements?	YES: 8	PARTIAL LY:4	NO :0					14.00 %
5. RESPONSIVENESS	Rating guidelines								Totals
	Was the vendor well responsive to information requests, issues, or problems that arose in the course of service?	YES: 2	PARTIAL LY:1	NO :0					14
	Was the vendor open to feedback on low quality of service levels and willing to act on this?	YES: 6	PARTIAL LY:3	NO :0					14.00 %
	Is it easy to reach staff members of suppliers in case of a request or query? (are communication channels clear?)	YES: 6	PARTIAL LY:3	NO :0					
6. CUSTOMER SUPPORT	Rating guidelines								Totals
	Did the vendor offer effective customer support?	YES: 10	PARTIAL LY:4	NO :0					18
	In case of reported problems/issues, were there follow ups by the vendor to ensure the problem is fully resolved during support?	YES: 8	PARTIAL LY:4	NO :0					18.00 %
7.	Rating guidelines								Totals

1. COST OF SERVICE/PRODUCT	Rating guidelines				Supplier Score	Procurement Score	User Score	Comments	Totals
COMMUNICATION SKILLS									
	Are you satisfied with the attitude, courtesy, and professionalism of this vendor's staff? Written or spoken?	YES: 2	PARTIAL LY:1	NO : 0					6
	Are the vendor's staff well equipped and skilled in handling requests / issues? Are you rotated too much among staff on an issue?	YES: 4	PARTIAL LY:2	NO : 0					6.00 %
8. DOCUMENTATION AND ACCOUNTING	Rating guidelines								Totals
	Are you satisfied with how the Vendor presents documentation (invoices & licenses etc) when required to do so, to necessitate finalization of contract renewals and payments?	YES: 6	PARTIAL LY:3	NO : 0					10
	Was problem documentation (incident reports) presented promptly by the vendor and was it complete?	YES: 4	PARTIAL LY:2	NO : 0					10.00 %
9. VALUE ADD	Rating guidelines								Totals
	Did the vendor go over and above in optimizing service delivery process for effective services delivery?	YES: 6	PARTIAL LY:3	NO : 0					12
	Did the vendor	YES:	PARTIAL	NO					12.00

1. COST OF SERVICE/PRODUCT	Rating guidelines				Supplier Score	Procurement Score	User Score	Comments	Totals
	go over and above and offer training or knowledge to assist with better systems support?	6	LY:3	: 0					%
									Totals Score :
Totals									100.0
Maximum Score							100.0		100.00%
VENDOR'S TOTAL SCORE									
VENDOR'S PERCENTAGE SCORE									
ISSUES FOR FOLLOW UP -									
Evaluation Done by:	Name	Department					Date		
Checked/Validated by									

Score in Percentage %

PERFORMANCE LEVEL DEFINATION;

- ≥75% - KP1 GREEN
- 50% - KP2 AMBER
- 25% - KP3 YELLOW
- ≥25% - KP4 RED

RATING: 75% - V Good, 50% - Good, 25% - Fair, Below 25% - Poor

RECOMMENDATION

		Status	Tick as appropriate
1	Grant supplier preferred status	KP1	
2	Work with supplier or develop and improve supplier	KP2 & KP3	
3	Abandon / switch suppliers	KP4	

Name:.....Sign:.....Date:.....-.....

Name:.....Sign:.....Date:.....

Name:.....Sign:.....Date:.....