BANKI KUU YA KENYA

CENTRAL BANK OF KENYA

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TENDER DOCUMENT

ANNUAL LICENSES, SUPPORT AND MAINTENANCE OF THE FLEET MANAGEMENT AND TRANSPORT REQUISITION SYSTEMS FOR CENTRAL BANK OF KENYA

TENDER REF. NO. CBK/043/2026-2027

TENDER CLOSING DATE: 12TH NOVEMBER 2026 AT 10.30 A.M.

C2: CBK - Official

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INVITATION TO TENDER (ITT) BY CENTRAL BANK OF KENYA

1. The **Central Bank of Kenya** invites sealed tenders for **Annual Licenses, Support and Maintenance of the Fleet Management and Transport Requisition Systems for Central Bank of Kenya. (Tender Reference No. CBK/043/2026-2027)**

2. A complete set of tender documents containing detailed information can be downloaded free of charge from the Central Bank of Kenya website: www.centralbank.go.ke or from the Government tenders portal: www.tenders.go.ke. All interested and eligible bidders should forward their emails and address to the **Email address: supplies@centralbank.go.ke**. to facilitate any further clarification or addendum.

3. Prices quoted should be net inclusive of all taxes and levies, must be in Kenya Shillings and shall remain valid for **140 days** from the closing date of the tender.

4. All Tenders must be accompanied by a **Tender Security** of **Kes.50,000.00** in the format provided in the tender document valid for **170 days** from the date of tender opening.

5. A pre-bid meeting will be held on **27th October 2026** at 10.00 a.m. virtually. Interested bidders intending to join the meeting online are requested to share their email addresses using Supplies@centralbank.go.ke and a link to the meeting will be shared.

6. Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the **Green Tender Box No. 3** at the main entrance, ground floor of **Central Bank of Kenya along Haile Selassie Avenue,** to be received on or before **12th November 2026 at 10.30 A.M**. Electronic Tenders ***will not*** **be permitted**.

7. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later in the **Senior Staff Canteen Room on 6th floor of CBK Building, Haile Selassie Avenue, Nairobi**. Tenders will be publicly opened in the presence of the Tenderers' designated representatives or anyone who chooses to attend. Bidders' representatives and other persons who choose to attend the tender opening session will be required to have personal identification documents (National ID/Passport).

8. Late tender will be rejected.

9. The addresses referred to above are:

A. Address for obtaining further information and for purchasing tender documents

Central Bank of Kenya
The Director, General Services Department
Central Bank of Kenya, Head Office in Nairobi on Haile Selassie Avenue,
P. O. Box 60000 – 00200, Nairobi
Tel. No. 020 2860000, E-mail address: **supplies@centralbank.go.ke**.

B. Address for Submission of Tenders.
Central Bank of Kenya, Head Office in Nairobi, Haile Selassie Avenue
Green Tender Box No. 3 at the main entrance, ground floor
P. O. Box 60000 – 00200, Nairobi

C. Address for Opening of Tenders.
Central Bank of Kenya, Head Office in Nairobi, Senior Staff canteen room on 6th floor

Deputy Director/Head of Procurement Division
General Services Department

PART 1 - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS (ITT)

Section I - Instructions to Tenderers

A. GENERAL

1. Scope of Tender

1.1 The Procuring Entity, as indicated **in the TDS**, issues this tendering document for the supply and installation of the Information System as specified in Section V, Procuring Entity's Requirements. The name, identification and number of lots (contracts) of this ITT are specified **in the TDS.**

2. Definitions

2.1 Unless otherwise stated, throughout this tendering document definitions and interpretations shall be as prescribed in Section VI, General Conditions of Contract.

2.3 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 the Procuring Entity) 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 the Procuring Entity. It excludes the Procuring Entity's official public holidays.

d) "Information System" shall carry the same meaning as "Information Technology".

3. Fraud and Corruption

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

3.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/ or civil sanctions may be imposed. To this effect, Tenderers 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. The Procuring Entity shall indicate in the TDS firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

3.4 Tenderers shall permit and shall cause their agents (whether declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

4 Eligible Tenderers

4.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 4.6, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter in to such an agreement supported by a Form of Intent. Public employees and their close relatives *(spouses, children, brothers, sisters and uncles and aunts)* are not eligible to participate in the tender. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the contract in accordance with the

Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS.**

4.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, 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 the Procuring Entity regarding this Tendering process; or
e. Any of its affiliates participates as a consultant in the preparation of the design or technical specifications of the Information System that are the subject of the Tender; or
f. Or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity as Project Manager for the Contract implementation; or
g. Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDSITT2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
h. Has a close business or family relationship with a professional staff of the Procuring Entity who: -
    i. Are directly or in directly involved in the preparation of the tendering document or specifications of the Contract, and/ or the Tender evaluation process of such Contract. or
    ii. Would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.

4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate as a Tenderer or as JV member in more than one Tender except for permitted alternative Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. However, this does not limit the participation of a Tenderer as subcontractor in another Tender or of a firm as a subcontractor in more than one Tender.

4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT4.9. 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 maybe. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub- consultants for any part of the Contract including related Services.

4.6 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded

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

4.8 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council 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.

4.9 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 the opportunity to register before signing the contract.

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

4.11 Pursuant to the eligibility requirements of ITT 4.11, a tenderer 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 than 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.

4.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort, or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek exemptions 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 the opportunity to seek such an 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

4.13 Tenderers shall be considered ineligible for procurement if they offer 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.

4.14 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

5 Eligible Goods and Services

5.1 The Information Systems to be supplied under the Contract may have their origin in any eligible country.

5.2 For the purposes of this tendering document, the term "Information System" means all:

i. the required information technologies, including all information processing and communications-related hardware, software, supplies, and consumable items that the Supplier is required to supply and install under the Contract, plus all associated documentation, and all other materials and goods to be supplied, installed, integrated, and made operational; and

ii. the related software development, transportation, insurance, installation, customization, integration, commissioning, training, technical support, maintenance, repair, and other services necessary for proper operation of the Information System to be provided by the selected Tenderer and as specified in the Contract.

5.3 For purposes of ITT 5.1 above, "origin" means the place where the goods and services making the Information System are produced in or supplied from. An Information System is deemed to be produced in a certain country when, in the territory of that country, through software development, manufacturing, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially

different in basic characteristics or in purpose or utility from its components.

5.4 Any 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 under this Act.

B. CONTENTS OF TENDERING DOCUMENT

6 Sections of Tendering Document

PART 1 - Tendering Procedures

Section I - Instructions to Tenderers (ITT)

Section II - Tender Data Sheet (TDS)

Section III - Evaluation and Qualification Criteria

Section IV - Tendering Forms

PART 2 - Procuring Entity's Requirements

Section V - Requirements of the Information Systems

Section VI – Procurement of Oracle Implementation Services - Technical Requirements

Section VII – Capacity to Implement and Support the Solution

Section VIII - Project Plan - Implementation Schedule

Section IX - Background and Informational Materials

PART 3 - Contract

Section X - General Conditions of Contract

Section XII - Special Conditions of Contract

Section XIII - Contract Forms

6.1 The Invitation to Tender Notice issued by the Procuring Entity is not part of this tendering document.

6.2 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

6.3 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 The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender 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 the Procuring Entity not later than the period specified in the **TDS** before the meeting.

8.3 Minutes of the pre-Tender meeting and the pre-arranged pre-tender visit of the site of the 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 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meeting and the pre-arranged pre-tender 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 the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 10 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

9 Clarification of Tender Documents

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

10 Amendment of Tendering Document

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

10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's 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, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.

C. PREPARATION OF TENDERS

11 Cost of Tendering

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

12 Language of Tender

12.1 The Tender, as well as all correspondence and documents relating to the tender exchanged by the Tenderer and the Procuring Entity, shall be written in the English language**.** Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages in 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 submitted by the Tenderer shall comprise the following:

a. **Form of Tender** prepared in accordance with ITT 14.
b. **Price Schedules** completed in accordance with ITT 14 and ITT 16.
c. **Tender Security or Tender-Securing Declaration** in accordance with ITT 22.
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 23.3.

f. **Eligibility of Information System:** documentary evidence established in accordance with ITT 16.1 that the Information System offered by the Tenderer in its Tender or in any alternative Tender, if permitted, are eligible.

g. **Tenderer's Eligibility:** documentary evidence in accordance with ITT 17 establishing the Tenderer's eligibility and qualifications to perform the contract if its Tender is accepted.

h. **Conformity:** documentary evidence established in accordance with ITT 18 that the Information System offered by the Tenderer conforms to the tendering document.

i. **Subcontractors:** list of subcontractors, in accordance with ITT 18.4.

j. **Intellectual Property**: a list of: Intellectual Property as defined in GCC Clause 15.

i) All Software included in the Tender, assigning each item to one of the software categories defined in GCC Clause1.1(C):

a. System, General Purpose, and Application Software; or

b. Standard and Custom Software.

iii. All Custom Materials, as defined in GCCClause1.1(c), included in the Tender.

All Materials not identified as Custom Materials shall be deemed Standard Materials, as defined in GCC Clause 1.1 (c); Re-assignments among the Software and Materials categories, if necessary, will be made during the implementation of the Contract according to GCC Clause 39 (Changes to the Information System); and

k. Any other document required **in the TDS.**

13.2 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members indicating at least the parts of the Information System to be executed by the respective members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the information System to be executed by the respective members.

13.1 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. The Tenderer shall serialize page so fall tender documents submitted.

14 Form of Tender and Price Schedules

14.1 The Tenderer shall complete the Form of Tender, including the appropriate Price Schedules, 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. The Tenderer shall chronologically serialize all pages of the tender documents submitted.

15 Alternative Tenders

15.1 The TDS indicates whether alternative Tenders are allowed. If they are allowed, the **TDS** will also indicate whether they are permitted in accordance with ITT 13.3 or invited in accordance with ITT 13.2 and/or ITT 13.4.

15.2 When alternatives to the Time Schedule 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.

15.1 Except as provided under ITT 15.4 below, Tenderers wishing to offer technical alternatives to the Procuring Entity's requirements as described in the tendering document must also provide: (i) a price at which they are prepared to offer an Information System meeting the Procuring Entity's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

15.4 When Tenderers are invited **in the TDS** to submit alternative technical solutions for specified parts of the system, such parts shall be described in Section V, Procuring Entity's Requirements. Technical alternatives that comply with the performance and technical criteria specified for the Information System shall be considered by the Procuring Entity on their own merits, pursuant to ITT 35.

16 Documents Establishing the Eligibility of the Information System

16.1 To establish the eligibility of the Information System in accordance with ITT 5, Tenderers shall complete the country-of-origin declarations in the Price Schedule Forms, included in Section IV, Tendering Forms.

17 Documents Establishing the Eligibility and Qualifications of the Tenderer

17..1 To establish its eligibility and qualifications to perform the Contracting accordance with Section III, Evaluation and Qualification Criteria, the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tendering Forms.

17.1 In the event that pre-qualification of potential Tenderers has been undertaken as stated **in the TDS**, only Tenders from pre-qualified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission.

17.2 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity to identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.

17.3 The purpose of the information described in ITT 15.1 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 the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

17.4 The Tenderer shall provide further documentary proof, information, or authorizations that the Procuring Entity may request in relation to ownership and control, 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.

17.5 All information provided by the tenderer pursuant to these requirements must be complete, current, and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current, and accurate as at the date of submission to the Procuring Entity.

17.6 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

17.7 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:

a. If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
b. If the contract has been awarded to that tenderer, the contract award will be set aside,
c. the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.

17.8 If a tenderer submits information pursuant to these requirements that is in complete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

18 Documents Establishing Conformity of the Information System

18.1 Pursuant to ITT 11.1(h), the Tenderer shall furnish, as part of its Tender documents establishing the conformity to the tendering documents of the Information System that the Tenderer proposes to design, supply and install under the Contract.

18.2 The documentary evidence of conformity of the Information System to the tendering documents including:

a) Preliminary Project Plan describing, among other things, the methods by which the Tenderer will carry out its overall management and coordination responsibilities if awarded the Contract, and the human and other resources the Tenderer proposes to use. The Preliminary Project Plan must also address any other topics **specified in the TDS**. In addition, the Preliminary Project Plan should state the Tenderer's assessment of what it expects the Procuring Entity and any other party involved in the implementation of the Information System to provide during implementation and how the Tenderer proposes to coordinate the activities of all involved parties.

b) Written confirmation that the Tenderer accepts responsibility for the successful integration and inter-operability of all components of the Information System as required by the tendering documents.

c) An item-by-item commentary on the Procuring Entity's Technical Requirements, demonstrating the substantial responsiveness of the Information System offered to those requirements. In demonstrating responsiveness, the Tenderer is encouraged to use the Technical Responsiveness Checklist (or Checklist Format) in the Sample Tendering Forms (Section IV). The commentary shall include explicit cross-references to the relevant pages in the supporting materials included in the tender. Whenever a discrepancy arises between the item-by-item commentary and any catalogs, technical specifications, or other preprinted materials submitted with the tender, the item-by-item commentary shall prevail;

d) Support material (e.g., product literature, white papers, narrative descriptions of technologies and/or technical approaches), as required and appropriate; and

e) Any separate and enforceable contract(s) for Recurrent Cost items which the TDS ITT 17.2 required Tenderers to tender.

18.3 Referencestobrandnamesormodelnumbersornationalorproprietarystandardsdesignatedbytheprocuring Entity in the tendering documents are intended to be descriptive and not restrictive. Except where explicitly prohibited in the **TDS** for specific items or standards, the Tenderer may substitute alternative brand /model names or standards in its tender, provided that it demonstrates to the Procuring Entity's satisfaction that the use of the substitute(s) will result in the Information System being able to perform substantially equivalent to or better than that specified in the Technical Requirements.

18.4 For major items of the Information System as listed by the Procuring Entity in Section III, Evaluation and Qualification Criteria, which the Tenderer intends to purchase or subcontract, the Tenderer shall give details of the name and nationality of the proposed subcontractors, including manufacturers, for each of those items. In addition, the Tenderer shall include in its Tender information establishing compliance with the requirements specified by the Procuring Entity for these items. Quoted rates and prices will be deemed to apply to whichever subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

18.5 The Tenderer shall be responsible for ensuring that any subcontractor proposed complies with the requirements of ITT 4, and that any goods or services to be provided by the subcontractor comply with the requirements of ITT 5 and ITT 16.1.

19 Tender Prices

19.1 All Goods and Services identified in the Supply and Installation Cost Sub-Tables in System Inventory Tables in Section VII, and all other Goods and Services proposed by the Tenderer to fulfill the requirements of the Information System, must be priced separately and summarized in the corresponding cost tables in the Sample Tendering Forms (Section IV), in accordance with the instructions provided in the tables and in the manner specified below.

19.2 **Unless otherwise specified in the TDS**, the Tenderer must also tender Recurrent Cost Items specified in the Technical Requirements, Recurrent Cost Sub-Table of the System Inventory Tables in Section VII (if any). These must be priced separately and summarized in the corresponding cost table sin the Sample Tendering Forms (Section IV), in accordance with the instructions provided in the tables and in the manner specified below:

a) **If specified in the TDS,** the Tenderer must also tender separate enforceable contracts for the Recurrent Cost Items not included in the main Contract.

b) prices for Recurrent Costs are all-inclusive of the costs of necessary Goods such as spare parts, software license renewals, labor, etc., needed for the continued and proper operation of the Information System and, if appropriate, of the Tenderer's own allowance for price increases.

c) prices for Recurrent Costs beyond the scope of warranty services to be incurred during the Warranty Period, defined in GCC Clause 29.4 and prices for Recurrent Costs to be incurred during the Post-Warranty Period, defined in SCC Clause 1.1. (e) (xiii), shall be quoted as Service prices on the Recurrent Cost Sub-Table in detail, and on the Recurrent Cost Summary Table in currency totals.

19.3 Unit prices must be quoted at a level of detail appropriate for calculation of any partial deliveries or partial payments under the contract, in accordance with the Implementation Schedule in Section VII), and with GCC and SCC Clause 12 – Terms of Payment. Tenderers may be required to provide a breakdown of any composite or lump-sum items included in the Cost Tables

19.4 The price of items that the Tenderer has left blank in the cost tables provided in the Sample Tender Forms (Section IV) shall be assumed to be included in the price of other items. Items omitted altogether from the cost tables shall be assumed to be omitted from the tender and, provided that the tender is substantially responsive, an adjustment to the tender price will be made during tender evaluation in accordance with ITT 31.3.

19.5 The prices for Goods components of the Information System are to be expressed and shall be defined and governed in accordance with the rules prescribed in the edition of incoterms **specified in the TDS,** as follows:

a) Goods supplied from outside Kenya:
Unless otherwise specified in the TDS, the prices shall be quoted on a CIP (named place of destination) basis, exclusive of all taxes, stamps, duties, levies, and fees imposed in Kenya. The named place of destination and special instructions for the contract of carriage are as specified in the SCC for GCC 1.1(e) (iii)**.** In quoting the price, the Tenderer shall be free to use transportation through carriers registered in any eligible countries. Similarly, the Tenderer may obtain insurance services from any eligible source country.

b) Locally supplied Goods: Unit prices of Goods offered from within Kenya, shall be quoted on an EXW (ex- factory, ex works, ex ware house or off- the-shelf, as applicable) basis, including all customs duties, levies, fees, sales and other taxes incurred until delivery of the Goods, but excluding all VATor sales and other taxes and duties/fees incurred for the Goods at the time of invoicing or sales transaction, if the Contract is awarded; and

c) Inland transportation.

19.6 Unless otherwise stated in the **TDS,** inland transportation, insurance and related local costs incidental to the delivery of the Goods to the designated Project Sites must be quoted separately as a Service item in accordance with ITT 17.5, whether the Goods are to be supplied locally or from outside Kenya, except when these costs are already included in the price of the Goods, as is, e.g., the case, when ITT 17.5 (a) specifies CIP, and the named places of destination are the Project Sites.

19.7 The price of Services shall be separated into their local and foreign currency components and where appropriate, broken down into unit prices. Prices must include all taxes, duties, levies and fees whatsoever, except only VATor other indirect taxes, or stamp duties, that may be assessed and/ or apply in Kenyan /to the price of the Services invoiced to the Procuring Entity, if the Contract is awarded.

19.8 Unless otherwise specified in the **TDS**, the prices must include all costs incidental to the performance of the Services, as incurred by the Supplier, such as travel, subsistence, office support, communications, translation, printing of materials, etc. Costs incidental to the delivery of the Services but incurred by the Procuring Entity or its staff, or by third parties, must be included in the price only to the extent such obligations are made explicit in these tendering documents (as, e.g., a requirement for the Tenderer to include the travel and subsistence costs of trainees).

19.9 Unless otherwise specified in the **TDS,** prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not subject to increases on any account. Tenders submitted that are subject to price adjustment will be rejected.

20 Currencies of Tender and Payment

20.1 The currency(ies) of the Tender and currencies of payment shall be the same. The Tenderer shall quote in Kenya shillings the portion of the Tender price that corresponds to expenditures incurred in Kenya currency, unless otherwise specified **in the TDS**.

20.2 The Tenderer may express the Tender price in any currency. If the Tenderer wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than **two foreign currencies** in addition to Kenyan currency.

21 Period of Validity of Tenders

21.1 Tenders shall remain valid for the period specified **in the TDS** after the Tender submission deadline date prescribed by the Procuring Entity in accordance with ITT 23.1. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

21.2 exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 20.1, it shall also be extended for thirty days (30) beyond the deadline of the extended validity 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.

22 Tender Security

22.1 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**.

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

22.3 If a Tender Security is specified pursuant to ITT 20.1, the tender security shall be a demand guarantee in any of the following forms at the Tenderer's option:

a. cash.
b. a bank guarantee.
c. a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
d. a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,
e. any other form specified in the **TDS.**

If an unconditional guarantee is issued by a non-bank financial institution located outside Kenya, the issuing non-bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless the Procuring Entity has agreed in writing, prior to Tender submission, that a correspondent financial institution is not required.

22.4 In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section IV, Tendering Forms or in another substantially similar format approved by the Procuring Entity prior to Tender submission. I neither case, the form must include the complete name of the Tenderer. The Tender Security shall be valid for thirty days (30) beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 19.2.

22.5 If a Tender Security or a Tender-Securing Declaration is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.

22.6 The Tender Security shall be returned/release as promptly as possible

a) The procurement proceedings are terminated.
b) The procuring entity determines that none of the submitted tenders is responsive.
c) A bidder declines to extend the tender validity.
d) Once the successful Tenderer has signed the Contract and furnished the required Performance Security.

22.7 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 on the Form of Tender; or
b) if the successful Tenderer fails to**:**

i) sign the Contract in accordance with ITT 47; or
ii) furnish performance security in accordance with ITT 48.

22.8 Where the Tender-Securing Declaration is executed the Procuring Entity will recommend to the PPRA to debar the Tenderer from participating in public procurement as provided in the law.

22.9 The Tender Security or the Tender-Securing Declaration of a JV shall 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 the 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 11.2.

22.10 A tenderer shall not issue a tender security to guarantee itself.

23 Format and Signing of Tender

23.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE". In addition, the Tenderer shall submit copies of the Tender, in the number specified **in the TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

23.2 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.

23.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified **in the TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

23.4 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.

23.5 Any interlineations, 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

24 Submission, Sealing and Marking of Tenders

24.1 The Tenderer shall deliver the Tender in a single, sealed envelope (one (1) envelope process). Within the single envelope the Tenderer shall place the following separate, sealed envelopes:
a) In an envelope marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and
b) In an envelope marked "COPIES", all required copies of the Tender; and,
c) If alternative Tenders are permitted in accordance with ITT 13, and if relevant:
i) In an envelope marked "ORIGINAL – ALTERNATIVE TENDER", the alternative Tender; and
ii) in the envelope marked "COPIES – ALTERNATIVE TENDER" all required copies of the alternative Tender.

24.2 The inner envelopes shall:
a) Bear the name and address of the Tenderer.
b) Be addressed to the Procuring Entity/ Employer in accordance with ITT 23.1.
c) Bear the specific identification of this Tendering process specified in accordance with ITT 1.1; and
d) Bear a warning not to open before the time and date for Tender opening.

The outer envelopes shall:

e) Be addressed to the Procuring Entity/ Employer in accordance with ITT 23.1.

f) Bear the specific identification of this Tendering process specified in accordance with ITT 1.1; and bear a warning not to open before the time and date for Tender opening.

24.3 If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

25 Deadline for Submission of Tenders

25.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time indicated **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**.

25.2 The Procuring Entity may, at its discretion, extend this deadline for submission of Tenders by amending the tendering documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers will thereafter be subject to the deadline as extended.

26 Late Tenders

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

27 Withdrawal, Substitution, and Modification of Tenders

27.1 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 in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

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

b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT23.

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

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

28 Tender Opening

28.1 Except as in the cases specified in ITT 24 and ITT 25.2, the Procuring Entity shall conduct the Tender opening in public, in the presence of Tenderers' designated representatives who chooses to attend, and at the address, date and time specified **in the TDS**. 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**.

28.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Tender shall not be opened but returned to the Tenderer. 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.

28.3 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.

28.4 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. Only Tenders that are opened and read out at Tender opening shall be considered further.

28.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and the Tender Price(s), including any discounts and alternative Tenders, and indicating whether there is a modification; the presence or absence of a Tender Security or Tender-Securing Declaration; and any other details as the Procuring Entity may consider appropriate.

28.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further in the evaluation. The Form of Tender and the Price Schedules are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified **in the TDS**.

28.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1).

28.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:
a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification.
b) The Tender Price, per lot if applicable, includes any discounts.
c) Any alternative Tenders; and
d) The presence or absence of a Tender Security or a Tender-Securing Declaration.

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

E. Evaluation and Comparison of Tenders

29 Confidentiality

29.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the Notification of Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 42.

29.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.

29.3 Not with standing ITT 27.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

30 Clarification of Tenders

30.1 To assist in the examination, evaluation, and comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT32.

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

31 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 the information or documentation required in the tendering document.

32 Determination of Responsiveness

32.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11.

32.2 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 Support and Maintenance Services specified in the Contract; or
   ii) Limit in any substantial way, in consistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the proposed Contract; or
b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

32.3 The Procuring Entity shall examine the technical aspects of the Tender in particular, to confirm that all requirements of Section V, Procuring Entity's Requirements have been met without any material deviation, reservation, or omission.

32.4 To be considered for Contract award, Tenderers must have submitted Tenders:

a) for which detailed Tender evaluation using the same standards for compliance determination as listed in ITT 29 and ITT 30.3 confirms that the Tenders are commercially and technically responsive, and include the hardware, Software, related equipment, products, Materials, and other Goods and Services components of the Information System in substantially the full required quantities for the entire Information System or, if allowed in the TDS ITT 35.8, the individual Subsystem, lot or slice Tender on; and are deemed by the Procuring Entity as commercially and technically responsive; and
b) that offer Information Technologies that are proven to perform up to the standards promised in the tender by having successfully passed the performance, benchmark, and/or functionality tests the Procuring Entity may require, pursuant to ITT 39.3.

33 Non-material non-conformities

33.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any nonconformity in the Tender that does not constitute a material deviation, reservation, or omission.

33.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities 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.

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

34 Correction of Arithmetical Errors

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

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

a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
b) Any errors in the submitted tender a rising from a miscalculation of unit price, quantity, subtotal, and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail.

35 Conversion to Single Currency

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

36 Margin of Preference and Reservations

36.1 A margin of preference on local contractors may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/ threshold specified in the Regulations.

36.2 A margin of preference shall not be allowed unless it is specified in the **TDS**.

36.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 34.4.

36.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case maybe), and 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 in the **TDS** that only businesses or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

37 Evaluation of Tenders

37.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Best Evaluated Tender.

37.2 To evaluate a Tender, the Procuring Entity shall consider the following:

a) Price adjustment due to discounts offered in accordance with ITT 14.4.
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; and
d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

38 Preliminary Examination

38.1 The Procuring Entity will examine the tenders, to determine whether they have been properly signed, whether required sureties have been furnished, whether any computational errors have been made, whether required sure ties have been furnished and are substantially complete (e.g., not missing key parts of the tender or silent on excessively large portions of the Technical Requirements). In the case where a pre-qualification process was undertaken for the Contract (s) for which these tendering documents have been issued, the Procuring Entity will ensure that each tender is from a pre-qualified Tenderer and, in the case of a Joint Venture, that partners and structure of the Joint Venture are unchanged from those in the pre-qualification.

39 Technical Evaluation

39.1 The Procuring Entity will examine the information supplied by the Tenderers Pursuant to ITT 11 and ITT 16, and in response to other requirements in the Tendering document, considering the following factors:

a) Overall completeness and compliance with the Technical Requirements; and deviations from the Technical Requirements.
b) suitability of the Information System offered in relation to the conditions prevailing at the site; and the suitability of the implementation and other services proposed, as described in the Preliminary Project Plan included in the tender.
c) achievement of specified performance criteria by the Information System.
d) compliance with the time schedule called for by the Implementation Schedule and any alternative time schedules offered by Tenderers, as evidenced by a milestone schedule provided in the Preliminary Project Plan included in the tender.
e) type, quantity, quality, and long-term availability of maintenance services and of any critical consumable items necessary for the operation of the Information System.

f) any other relevant technical factors that the Procuring Entity deems necessary or prudent to take into consideration.
g) any proposed deviations in the tender to the contractual and technical provisions stipulated in the tendering documents.

39.2 The Procuring Entity's evaluation of tenders will consider technical factors, in addition to cost factors. The Technical Evaluation will be conducted following the Criteria specified in Section III, Evaluation and Qualification Criteria, which permits a comprehensive assessment of the technical merits of each Tender. All tenders that fail to pass this evaluation will be considered non-responsive and will not be evaluated further.

39.3 Where alternative technical solutions have been allowed in accordance with ITT 13, and offered by the Tenderer, the Procuring Entity will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

39.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

40 Financial/ Economic Evaluation

40.1 To evaluate a Tender, the Procuring Entity shall consider the following:
a) price adjustment due to unconditional discounts offered in accordance with ITT 26.8; excluding provisional sums and contingencies, if any, but including Day work items, were priced competitively.
b) Price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 31.3.
c) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITT 33; and
d) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.
If price adjustment is allowed in accordance with ITT 17.9, 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.

40.1 The Procuring Entity will evaluate and compare the Tenders that have been determined to be substantially responsive, pursuant to ITT 35.4. The evaluation will be performed assuming either that:
a) The Contract will be awarded to the Lowest Evaluated Tender for the entire Information System; or
b) if specified **in the TDS**, Contracts will be awarded to the Tenderers for each individual Subsystem, lot, or slice if so defined in the Technical Requirements whose Tenders result in the Lowest Evaluated Tender/ Tenders for the entire System.

In the latter case, discounts that are conditional on the award of more than one Subsystem, lot, or slice may be offered in Tenders. Such discounts will be considered in the evaluation of tenders as specified **in the TDS**.

41 Comparison of Tenders

41.1 The Procuring Entity shall compare all substantially responsive Tenders in accordance with ITT 35.6 to determine the lowest evaluated cost.

42 Abnormally Low Tenders and Abnormally High Tenders

42.1 An Abnormally Low Tender is one where the Tender price in combination with other constituent elements of the Tender appears unreasonably low to the extent that the Tender price raises material concerns as to the capability of the Tenderer to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.

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

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

Abnormally High Tenders

42.4 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 the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money, or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

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

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

b. If specifications, scope of work and/ or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

42.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

43 Unbalanced or Front-Loaded Tenders

43.1 If the Tender that is evaluated as the lowest evaluated cost is, in the Procuring Entity's opinion, seriously unbalanced or front loaded the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Tender prices with the scope of information systems, installations, proposed methodology, schedule and any other requirements of the tendering document.

43.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may: -

a) Accept the Tender; or
b) If appropriate, require that the total amount of the Performance Security be increased, at the expense of the Tenderer, to a level not exceeding twenty percent (20%) of the Contract Price; or
c) Reject the Tender.

44 Eligibility and Qualification of the Tenderer

44.1 The Procuring Entity shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

44.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 15.

44.3 Unless otherwise specified in the **TDS,** the Procuring Entity will NOT carry out tests at the time of post-qualification, to determine that the performance or functionality of the Information System offered meets those stated in the Technical Requirements. However, if so specified in the **TDS** the Procuring Entity may carry out such tests as detailed in the **TDS**.

44.4 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the next lowest evaluated cost or best evaluated Tender, as the case may be, to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

44.5 The capabilities of the manufacturers and subcontractors proposed by the Tenderer that is determined to have offered the Best Evaluated Tender for identified major items of supply or services will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a Form of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Tender will not be rejected, but the Tenderer will be required to substitute

an acceptable manufacturer or subcontractor without any change to the Tender price. Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.

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

45 Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders

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

F. AWARD OF CONTRACT

46 Award Criteria

46.1 Subject to ITT 40, the Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest/ best Evaluated Tender. The determination of the lowest/ Best Evaluated Tender will be made in accordance to one of the two options as defined in the **TDS**. The methodology options are:

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

a) When **rated criteria are used**: The Tenderer that meets the qualification criteria and whose Tender:
   i) Is substantially responsive; and
   ii) Is the Best Evaluated Tender (i.e., the Tender with the highest combined technical/ quality/ price score); or

b) When **rated criteria are not used**: The Tenderer that meets the qualification criteria and whose Tender has been determined to be:
   i) Most responsive to the tendering document; and
   ii) The lowest evaluated cost.

47 Procuring Entity's Right to Vary Quantities at Time of Award

47.1 The Procuring Entity reserves the right at the time of Contract award to increase or decrease, by the percentage (s) for items as indicated **in the TDS.**

48 Notice of Intention to enter into a Contract/ Notification of award

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

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

49 Standstill Period

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

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

50 Debriefing by the Procuring Entity

50.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

50.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

51 Letter of Award

51.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT44.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21days of the date of the letter.

52 Signing of Contract

52.1 Upon the expiry of the fourteen days of the Notification of Intention to enter in to contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

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

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

52.4 Notwithstanding ITT 47.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Procuring Entity, to Kenya, or to the use of the Information System to be supplied, where such export restrictions arise from trade regulations from a country supplying those Information System, the Tenderer shall not be bound by its Tender, provided that the Tenderer can demonstrate that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Tenderer in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Information System under the terms of the Contract.

53 Performance Security

53.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Tenderer shall furnish the performance security in accordance with the General Conditions, subject to ITT38.2 (b), using for that purpose the Performance Security Form included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a Performance Security shall have a correspondent financial institution located in Kenya.

53.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

54. Publication of Procurement Contract

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

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

55. Adjudicator

55.1. Unless **the TDS** states otherwise, the Procuring Entity proposes that the person named **in the TDS** be appointed as Adjudicator under the Contract to assume the role of informal Contract dispute mediator, as described in GCC Clause 43.1. In this case, a résumé of the named person is attached to the TDS. The proposed hourly fee for the Adjudicator is specified in the TDS. The expenses that would be considered reimbursable to the Adjudicator are also specified **in the TDS**. If a Tenderer does not accept the Adjudicator proposed by the Procuring Entity, it should state its non-acceptance in its Tender Form and make a counter proposal of an Adjudicator and an hourly fee, attaching résumé of the alternative. If the successful Tenderer and the Adjudicator nominated **in the TDS** happen to be from the same country, and this is not Kenya too, the Procuring Entity reserves the right to cancel the Adjudicator nominated **in the TDS** and propose a new one. If by the day the Contract is signed, the Procuring Entity and the successful Tenderer have not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed, at the request of either party, by the Appointing Authority specified in the SCC clause relating to GCC Clause 43.1.4, or if no Appointing Authority is specified there, the Contract will be implemented without an Adjudicator.

56. Procurement Related Complaints and Administrative Review

51.1The procedures for making a Procurement-related Complaint are as specified in the **TDS.**

51.2A request for administrative review shall be made in the form provided under contract forms.

SECTION II - TENDER DATA SHEET (TDS)

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

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	A. General
ITT 1.1	The reference number of the Invitation to Tender (ITT) is: **Tender No. CBK/043/2026-2027** The Procuring Entity is**: Central Bank of Kenya** The name of the ITT is: **Annual Licenses, Support and Maintenance of the Fleet Management and Transport Requisition Systems for Central Bank of Kenya.**
ITT 2.3 (a)	The name of the Project is: **Annual Licenses, Support and Maintenance of the Fleet Management and Transport Requisition Systems for Central Bank of Kenya. (Tender Reference No. CBK/043/2026-2027)** Electronic-procurement system shall be used to manage any aspects of the Procurement process: **Not Applicable**
ITT 3.3	The firms (if any) that provided consulting services for the contract being tendered for are _____**Not Applicable**_____
ITT 4.1	The maximum number of members in the Joint Venture (JV) where applicable shall be: - : **N/A**
ITT 4.9	The Procuring Entity requires tenderers to provide manufacturer's authorization form from the Original Equipment Manufacturer from OEM.
	B. Tendering Document
ITT 8.1	For **Tender submission purposes** only, the Procuring Entity's address is: **Central Bank of Kenya,** Head Office in Nairobi, Ground Floor, Haile Selassie Avenue, **Green Tender Box No. 3** at the main entrance, P. O. Box 60000 – 00200, Nairobi Attention: Head of Procurement Function/ Deputy Director, Procurement Division Physical Address, Nairobi, Haile Selassie Avenue, CBK Building, Ground Floor **The deadline for Tender submission is 12th November 2026 at 10:30am** Tenderers ***shall not*** have the option of submitting their Tenders electronically. The electronic Tendering submission procedures shall be ***N/A*** Requests for clarification should be received by the Procuring Entity no later than: **Four (4) days before tender closing/opening day/date.**
ITT 8.2	The tender has been published on www.centralbank.go.ke and www.tenders.go.ke _____
ITT 8.4	A pre-bid meeting will be held on 27th October 2026 at 10.00 a.m. virtually. Interested bidders intending to join the meeting online are requested to share their email addresses using Supplies@centralbank.go.ke and a link to the meeting will be shared.
ITT 9.1	The Procuring Entity shall publish its response at the website www.centralbank.go.ke and www.tenders.go.ke
	C. Preparation of Tenders
ITT 13.1 (k)	The Tenderer shall submit with its Tender the following additional documents: **As indicated in the evaluation criteria**
ITT 15.1	Alternative Tenders are not permitted.
ITT 15.2	Alternatives to the Time Schedule **shall not** be permitted. If alternatives to the Time Schedule are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria. **Not Applicable for this tender**
ITT 15.4	Alternative technical solutions shall be permitted for the following parts of the Information System: ____N/A___as further detailed in the Specification. If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria. **Not Applicable for this tender**

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 18.2 (a)	In addition to the topics described in ITT Clause 16.2 (a), the Preliminary Project Plan must address the following topics: [*modify as appropriate]:* (i) ***Project Organization and Management Sub-Plan, including management authorities, responsibilities, and contacts, as well as task, time and resource-bound schedules (in GANTT format).*** (ii) ***Implementation Sub-Plan.*** (iii) ***Training Sub-Plan.*** (iv) ***Testing and Quality Assurance Sub-Plan.*** (v) ***Warranty Defect Repair and Technical Support Service Sub-Plan***
ITT 19.2	The Tenderer *must* tender Recurrent Cost Items
ITT 19.5	The Incoterms edition is: ***2020***
ITT 19.5 (a)	Named place of destination is: __ **Central Bank of Kenya Head Office, Nairobi**
ITT 19.6	Named place of final destination (or Project site) is: As will be indicated in the contract
ITT 19.7	**TAX, DUTIES/ LEVIES** The price quoted must include all associated costs and taxes. 2. Capacity Building Levy. The tenderers are hereby notified of PPRA circular No. 01/2024 dated 30th August 2024 and Legal notice No. 206 of 6th November 2023 which introduces a Capacity Building Levy to be paid/borne by a supplier on all procurement contracts signed between the supplier and the procuring entity at a rate of 0.03% of the value of contract exclusive of applicable taxes. The procuring entity shall deduct and remit the levy to PPRA
ITT 19.9	The prices quoted by the Tenderer ***shall not be*** subject to adjustment during the performance of the Contract.
ITT 20.1	The Tenderer ***is*** required to quote in **Kenya Shillings (Kes.)**
ITT 21.1	The Tender validity period shall be **140 days.**
ITT 22.1	Provide original tender security of **KES50,000.00**issued by a financial institution approved and licensed by the Central Bank of Kenya valid for not less than **170 days** from the date of tender opening.
ITT 22.3 (v)	Other types of acceptable securities are _____**N/A**_____
ITT 23.1	In addition to the Original Tender, the number of copies required **is one**.
ITT 23.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of **Power of Attorney**
	D. Submission and Opening of Tenders
ITT 25.1	For **Tender submission purposes** only, the Procuring Entity's address is: **Central Bank of Kenya,** Head Office in Nairobi, Ground Floor, Haile Selassie Avenue, **Green Tender Box No. 3** at the main entrance, P. O. Box 60000 – 00200, Nairobi Attention: Head of Procurement Function/Deputy Director, Procurement Division Physical Address, Nairobi, Haile Selassie Avenue, CBK Building, Ground Floor **The deadline for Tender submission is 12th November 2026 at 10:30am** Tenderers ***shall not*** have the option of submitting their Tenders electronically.
ITT 25.1	Tenderers **do *not*** have the option of submitting their Tenders electronically. The Electronic Tendering submission procedures shall be: **Not Applicable to this tender**_____
ITT 28.1	The Tender opening shall take place at Central Bank of Kenya, Head Office in Nairobi, Haile Selassie Avenue, Senior Staff canteen room, 6th Floor CBK Building
ITT 28.6	The Form of Tender and Price Schedules shall be initialized by at least three (3) representatives of the Procuring Entity conducting Tender opening. Each Tender shall be initialed by all

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	representatives and shall be numbered, any modification to the unit or total price shall be initialed by the Representative of the Procuring Entity. The tender opening committee will prepare a tender opening register listing all the bids received and tender opening minutes
	E. Evaluation, and Comparison of Tenders
ITT 33.3	The adjustment shall be based on the ***average*** price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate.
ITT 35.1	The currency that shall be used for Tender evaluation and comparison purposes to convert (at the selling exchange rate) all Tender prices expressed in various currencies into a single currency is Kenya Shillings The source of exchange rate shall be ***the Central Bank in*** **Kenya** The date for the exchange rate shall be the date of tender opening.
ITT 36.4	The invitation to tender is extended to the following group that qualify for Reservations. **This is not applicable to this Tender**
ITT 39.5	The tender involves two lots or contracts, and tenderers are therefore allowed to bid for one or both lots (contracts). The preliminary evaluation criteria are the same for both lots while Compliance with the Technical Requirements and Evaluation on technical Qualifications evaluation criteria are separate for both. Bidders can win both or either of the two lots. **Not Applicable**
ITT 40.1	The Procuring Entity will evaluate and compare the Tenders that have been determined to be substantially responsive, pursuant to ITT 35.4. The evaluation will be performed assuming either that The Contract will be awarded to the Lowest Evaluated Tender.
ITT 44.3	As additional qualification measures, the Information System (or components/parts of it) offered by the Tenderer with the Best Evaluated Tender may be subjected to the following tests and performance benchmarks prior to Contract award such as demonstration tests, performance benchmarks, documentation reviews, reference site visits, etc., by the Tender Evaluation Committee.
ITT 50.1	On receipt of the Bank's Notification_letter, an unsuccessful tenderer may make a written request to the Bank for a debriefing on specific issues or concerns regarding their tender. The Bank shall provide the debriefing within five days of receipt of the request.
ITT 53.1	Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Tenderer shall furnish the Bank with a performance security of 5% of the value of the tender sum provided by a Commercial Bank operating in Kenya and Regulated by the Central Bank of Kenya.
ITT 54.1	Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract on www.tenders.go.ke . At the minimum, the notice shall contain the following information: a) Name and address of the Procuring Entity. b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used. c) The name of the successful Tenderer, the final total contract price, the contract duration. d) Dates of signature, commencement, and completion of contract. Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 56.1	The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA website info@ppra.go.ke **or** complaints@ppra.go.ke**.** If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to: For the attention: Director, General Services Department, Title/position: Director Procuring Entity: Central Bank of Kenya Email address: supplies@centralbank.go.ke In summary, a Procurement-related Complaint may challenge any of the following: 1. the terms of the Tendering Documents; and 2. the Procuring Entity's decision to award the contract.

SECTION III- EVALUATION AND QUALIFICATION CRITERIA

EVALUATION CRITERIA

The evaluation will be carried out through five stages as follows:

Stage 1: Preliminary examination (Compliance with Mandatory Requirements - MR)

Stage 2: Compliance with Technical Specifications

Stage 3: Technical Capacity to Deliver the Proposed Solution

Stage 4: Financial Evaluation

Recommendation of Award

Stage	Matrix	Criteria
Stage 1	Mandatory Business Requirements	Fully compliant
Stage 2	Technical Requirements/Specifications	Fully Compliant in the critical requirement areas
Stage 3	Evaluation of Technical capacity to Deliver the Proposed Solution	The Bidder must attain a minimum of 75% to proceed to the next Stage.
Stage 4	Financial Evaluation.	Inclusion of all items and costs of proposed solution.
Stage 5	Due Diligence:	Verification of the bidder's qualification and information submitted.
	Recommendations of Award	Recommendation of award to the lowest, most technically competent bidder who will have met all the requirements

Stage 1A: Preliminary examination (Compliance with Mandatory Requirements -MR)

The following mandatory requirements must be met notwithstanding other requirements in the documents:

No.	Requirements	COMPLIANCE (Yes/No)
MR1	Provide documentary evidence of the company's Certificate of Incorporation/ Business registration certificate (Legal structure)	
MR2	Provide a copy of the company's valid Certificate of Tax Compliance issued by Tax Authority, valid at least up to the tender closing date.	
MR3	Submit a completed company's profile using the confidential Business questionnaire using the format provided in this document	
MR4	Submit duly filled self-declaration forms as follows: i). On debarment from participating in Public Procurement (Form SD1) ii). That the person/tenderer will not engage in any corruption/fraudulent practices (Form SD2) iii). Declaration and Commitment to the Code of Ethics	
MR5	Submit a duly filled form of Tender with a validity period of at least **140 days** from the tender opening / closing date with the company's letterhead using the format provided in this document	

MR6	Provide original tender security of **KES50,000.00**issued by a financial institution approved and licensed by the Central Bank of Kenya valid for not less than **170 days** from the date of tender opening.	
MR 7	Provide copies of audited accounts for the company for the two consecutive accounting years. i.e.2024, 2025. signed by the Board of Directors and Auditors	

Bidders complying with all the above mandatory requirements will proceed to the second stage of Evaluation on compliance with the Technical Mandatory requirements

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Stage 2: Compliance to Technical Specifications

Tenderers meeting all the mandatory requirements shall have their bids checked against compliance with technical specifications indicated in Section "V" of this tender document. Bidders will be required to meet ALL technical specifications and be **FULLY COMPLIANT** to qualify to be progressed to the next stage [Technical Capacity to Deliver the Proposed Solution]. Supporting Evidence and Documentation are required to help understand and evaluate the bidder's response. All claimed capabilities must be in General Availability (GA) as of the Tender response date.

Stage 2 Progression Rule

A bidder shall be assessed as either **Compliant** or **Not Compliant** for each Technical Requirement Area.

To proceed to Stage 3, a bidder must be assessed as **Compliant** in each of the following critical requirement areas:

- Fleet Management Functionality;
- Telematics, Tracking and Driver Management;
- Transport Requisition and Workflow Management;
- GPS Device support capability; and
- System Access, Security, Supportability and availability.

A bidder assessed as **Not Compliant** in any of the above critical requirement areas shall not proceed to Stage 3.

For **Reporting, Dashboards and Management Information**, a bidder may still be assessed as **Compliant** where the proposed solution provides standard reporting and data export functionality and any identified gaps relate solely to report configuration, formatting or presentation and can be addressed using existing system functionality without software development, third-party solutions or additional licensing costs.

A bidder must be compliant in all critical requirement areas to proceed to Stage 3.

Stage 3: Technical Capacity to Deliver the Proposed Solution

At this stage, bidders will be required to demonstrate their capacity in terms of financial stability, project planning, professional experience and technical personnel for this assignment. Only bidders that successfully demonstrate their capacity to deliver support and maintenance of the proposed solution per the criteria outlined in the sections below, and attaining a minimum score of 75%, will proceed to the next stage, i.e., Stage 4 – Financial Evaluation. Those who fail to attain a minimum score of 75% in this evaluation will be disqualified from further evaluation.

The Bidder should provide detailed, well-articulated and supported feedback to allow the evaluation team to assess adequacy of the response.

The following table provides the categories outlined above and how the scores will be awarded for each attribute to assess the competence and capacity to deliver the complete solution as specified. A bidder shall be required to score 75% and above in this stage to qualify to progress to the next stage of evaluation. Those who fail to attain this score will be discontinued from further evaluation.

The Bidder should provide detailed and well-articulated feedback to allow the evaluation team to assess adequacy of the response.

Stage 3: Evaluation Of Technical Capacity to Deliver the Proposed Solution

No	Evaluation Attribute	Scoring Notes	Max Score / Scoring Criteria
T1	**TECHNICAL STAFF**		**Max 25 Marks**
	Evidence Required CVs, academic certificates, professional certificates, role descriptions and deployment responsibility matrix	The proposed team shall include, at a minimum, • Project Manager, • Application Support (lead or Engineer) • Business Analyst • Fleet Management (lead or Specialist) • Information Security (lead or Specialist) Only the resources nominated in the Bidder Competency table appearing below this technical evaluation **shall be considered for evaluation and scoring**.	**Scoring Criteria** All five key personnel positions identified in the Bidder Competency table are proposed and supported by the required evidence. **25 Marks** Four key personnel positions are proposed and supported by the required evidence. **20 Marks** Three key personnel positions are proposed and supported by the required evidence. **15 Marks** Fewer than three key personnel positions are proposed and supported by the required evidence. **0 Marks**
T2	**AUTHORISATION, PARTNERSHIP AND SUPPORT CAPABILITY**		**Max 20 marks**
	Evidence Required • Vendor authorisation. • Reseller certification. • Local support capability.	Evaluators must sight the relevant documentary evidence in bidders' responses	**Scoring Criteria** Authorization plus local implementation and support capability evidenced. **20 Marks** Authorization evidenced but local support capability not evidenced. **10 Marks** No authorization evidenced. **0 Marks**
T3	**SIMILAR ASSIGNMENTS AND PAST PERFORMANCE**		**Max 20 marks**
	Evidence required Evidence of successful ***support and maintenance contracts*** for similar solutions.	Only assignments supported by documentary evidence and completed within the last five (5) years from the tender closing date shall be considered. Contract copies to include extracts of the following pages: cover, contract duration or term, signature page. Reference letters shall be signed and issued on the client's letterhead ***with contract duration stipulated***.	**Scoring Criteria** 3 or more qualifying assignments. **20 Marks** 2 qualifying assignments. **15 Marks** 1 qualifying assignment. **5 Marks** No qualifying assignment. **0 Marks**
T4	**RELEVANT EXPERIENCE**		**Max 15 Marks**
	Evidence required Experience supporting fleet management, telematics	**Relevant Experience**: Only experience directly related to fleet management, telematics/GPS tracking and transport	**Scoring Criteria** Experience must demonstrate involvement in fleet management, telematics/GPS tracking and

	and workflow management systems	requisition or workflow solutions shall be considered.	transport requisition or workflow solutions. 8 years and above. **15 Marks** 6-7 years. **12 Marks** 4-5 years. **9 Marks** 2-3 years. **6 Marks** Less than 2 years. **0 Marks**
T5	**SUPPORT AND MAINTENANCE METHODOLOGY**		**Max 15 Marks**
	Required implementation elements • SLA framework. • Incident management procedures. • Maintenance approach. • Upgrade management approach. • Business continuity arrangements.	Bidder to provide all the required documentation.	**Scoring Criteria** Bidder has submitted all five documents. **15 Marks** Bidder has submitted four of the five required documents. **10 Marks** Bidder has submitted three of the five required documents. **5 Marks** Bidder has submitted fewer than three of the required documents or no adequate evidence provided. **0 Marks**
T6	**TRAINING, DOCUMENTATION AND SUPPORT**		**Max 5 Marks**
	Evidence required Training plan, user and administrator documentation, and SLA/support commitments		**Scoring Criteria** Training plan, documentation and support commitment provided. **5 Marks** One item missing. **3 Marks** Two or more items missing. **1 Mark** No adequate evidence. **0 Marks**

T1: Bidder Competency:

The bidder shall ensure that the personnel proposed in the table below are available for deployment during implementation. Any replacement shall be subject to the Bank's approval and shall be with personnel of equal or higher qualifications and experience.

Domain / Role	Provide Full Name	Expected Competency
Project Manager		Experience managing ICT/software implementation projects of similar scale and complexity
Application Support (lead or Engineer)		Experience in system configuration, deployment, integration support and technical troubleshooting
Business Analyst		Experience mapping business requirements, workflows, UAT and user adoption

Domain / Role	Provide Full Name	Expected Competency
Fleet Management (lead or Specialist)		Experience implementing or supporting fleet management software solutions, GPS tracking devices, vehicle tracking platforms etc
Information Security (lead or Specialist)		Experience in access control, data protection, audit logging, system security and secure deployment

The Bidders who obtain a score of **seventy-Five (75%)** and above in the Technical Capacity to Deliver will proceed to **Stage 4** (Financial Evaluation).

Stage 4: Financial Evaluation

Only bidders who successfully pass Stage 3: Technical Evaluation (Capacity to Deliver) shall proceed to the Financial Evaluation.

The Financial Evaluation shall be based on the bidder's completed Pricing Table under section Price schedule forms and shall consider all costs associated with the proposed solution:

The evaluated price shall be the **total cost of the solution** as determined from the pricing table submitted by the bidder. Arithmetic corrections, where applicable, shall be applied in accordance with the provisions of the tender document.

Recommendation of Award

The Tender that will be recommended for award of the contract will be the tender found to be the most competitive tender that meets the technical requirements and having the lowest financial bid.

SECTION IV - TENDERING FORMS

1. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

i) *The Tenderer must prepare this Form of Tender on stationery with its letter head clearly showing the Tenderer's complete name and business address.*

ii) *All italicized text is to help Tenderer in preparing this form.*

iii) *Tenderer must complete and sign* TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE, *CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER,* all *attached to this Form of Tender*

iv) *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*

- *Tenderer's Eligibility-Confidential Business Questionnaire*
- *Certificate of Independent Tender Determination*
- *Self-Declaration of the Tenderer*

Date of this Tender submission..... [*insert date (as day, month and year) of Tender submission*] **ITT No.:** ..... [*insert number of ITT process*]

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

To: ..... **[*insert complete name of Procuring Entity]***

a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with Instructions to Tenderers (ITT 8);

b) **Eligibility**: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;

c) **Tender-Securing Declaration:** We have not been debarred by the Authority based on execution of a Tender-Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 4.8;

d) **Conformity:** We offer to provide design, supply and installation services in conformity with the tendering document of the following: [*insert a brief description of the IS Design, Supply and Installation Services*];

e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is: *[Insert one of the options below as appropriate]*

[Option1, in case of one lot:] Total price is: [*insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies*];

Or

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

(f) **Discounts:** The discounts offered and the methodology for their application are:

i) The discounts offered are: [*Specify in detail each discount offered.*]

ii) The exact method of calculations to determine the net price after application of discounts is shown below: [*Specify in detail the method that shall be used to apply the discounts*].

g) **Tender Validity Period:** Our Tender shall be valid for the period of 140 days from the date fixed for the Tender submission deadline (specified in TDS ITT 23.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

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h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document.

i) **One Tender per Tenderer:** We are not submitting any other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member, and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 13.

j) **Suspension and Debarment**: We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not in eligible under Laws of Kenya or official regulations or pursuant to a decision of the United Nations Security Council.

k) **State-owned enterprise or institution**: [*select the appropriate option and delete the other*] [*We are not a state-owned enterprise or institution*]/ [*We are a state-owned enterprise or institution but meet the requirements of ITT 4.7*].

l) **Commissions, gratuities, and fees**: We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, 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 Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed.

n) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender, or any other Tender that you may receive; and

o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

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

p) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.

q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from ***www.pppra.go.ke*** during the procurement process and the execution of any resulting contract.

r) We, the Tenderer, have fully completed and signed the following Forms as part of our Tender:

i) Tenderer's Eligibility: Confidential Business Questionnaire – to establish we are not in any conflict to interest.

ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.

iii) Self-Declaration of the Tenderer–to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.

iv) Declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya. Further, we confirm that we have read and understood the full content and scope of fraud and corruption as in formed in **"Appendix1-Fraud and Corruption**" attached to the Form of Tender.

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

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

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

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

I. TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instructions to Tenderer

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

a) Tenderer's details

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

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General and Specific Details

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

Name in full_____Age_____

Nationality_____Country of Origin_____

Citizenship _____

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

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

(i) Private or public Company _____

(ii) State the nominal and issued capital of the Company.

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

(iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

If yes, provide details as follows.

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

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ii) Conflict of interest disclosure

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

f) Certification

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

Full Name_____

Title orDesignation_____

_____ _____

(Signature) *(Date)*

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II. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

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

i). I have read and I understand the contents of this Certificate.

ii). I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect.

iii). I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer.

iv). For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:

a) Has been requested to submit a Tender in response to this request for tenders.

b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience.

v). The Tenderer discloses that [check one of the following, as applicable]:

a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor.

b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements.

vi). In particular, without limiting the generality of paragraphs (5) (a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

a) prices.

b) methods, factors or formulas used to calculate prices.

c) the intention or decision to submit, or not to submit, a tender; or

d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above.

vii). In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5) (b) above.

viii). The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name_____

Title_____

Date_____

_____

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

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III. 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 here in above is true to the best of my knowledge, information, and belief.

…….	…….	……
(Title)	(Signature)	(Date)

Bidder Official Stamp

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FORM SD2

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

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

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

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

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

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

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

…….	…….	……
(Title)	(Signature)	(Date)

Bidder Official Stamp

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DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory….....…….

Sign…….....…….....

Position…….....…….....……

Office address…….....……. Telephone…….

E-mail…….....……

Name of the Firm/Company…….....….....

Date…….....…..

(Company Seal/ Rubber Stamp where applicable)

Witness

Name…….....

Sign…….....

Date…….....

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

2. Requirements

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

i) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive, or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding.

ii) And a person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence.

iii) Without limiting the generality of the subsection (1) and (2), the person shall be: -

a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or

b) if a contract has already been entered into with the person, the contract shall be voidable.

iv) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have.

v) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -

a) Shall not take part in the procurement proceedings.

b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

vi) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity.

vii) If a person contravenes sub section (1) with respect to a conflict of interest described in sub section (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated, and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

a) Defines broadly, for the purposes of the above provisions, the terms:

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

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ii) "Fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation.

iii) "Collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

iv) "Coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

v) "Obstructive practice" is:

1) Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

2) acts intended to materially impede the exercise of the PPRA's, or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.

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

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

c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question.

d) Pursuant to the Act and the Regulations, the Procuring Entity may recommend to PPRA for sanctioning and debarment of a firm or individual, as applicable under the Act and the Regulations.

e) Requires that a clause be included in the tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2]all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

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

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

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/ audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies there of as relevant; accessing and examining any other documents ,data and information (whether in hard copy or electronic format) deemed relevant for the investigation/ audit, and making copies there of as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

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PRICE SCHEDULE FORMS

Notes to Tenderers on working with the Price Schedules

1.1 General

The Price Schedules are divided into separate Schedules as follows:

a Grand Summary Cost Table

b Supply and Installation Cost Summary Table

c Recurrent Cost Summary Table

d Supply and Installation Cost Sub-Table (s)

e Recurrent Cost Sub-Tables (s)

f Country of Origin Code Table

[insert:]

1.2 The Schedules do not generally give a full description of the information technologies to be supplied, installed, and operationally accepted, or the Services to be performed under each item. However, it is assumed that Tenderers shall have read the Technical Requirements and other sections of these tendering documents to ascertain the full scope of the requirements associated with each item prior to filling in the rates and prices. The quoted rates and prices shall be deemed to cover the full scope of these Technical Requirements, as well as overhead and profit.

1.3 If Tenderers are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with the Instructions to Tenderers in the tendering documents prior to submitting their tender.

2. Pricing

2.1 Prices shall be filled in indelible ink, and any alterations necessary due to errors, etc., shall be initialed by the Tenderer. As specified in the Tender Data Sheet, prices shall be fixed and firm for the duration of the Contract.

2.2 Tender prices shall be quoted in the manner indicated and, in the currencies, specified in ITT 18.1 and ITT 18.2. Prices must correspond to items of the scope and quality defined in the Technical Requirements or elsewhere in these tendering documents.

2.3 The Tenderer must exercise great care in preparing its calculations, since there is no opportunity to correct errors once the deadline for submission of tenders has passed. A single error in specifying a unit price can therefore change a Tenderer's overall total tender price substantially, make the tender noncompetitive, or subject the Tenderer to possible loss. The Procuring Entity will correct any arithmetic error in accordance with the provisions of ITT 32.

2.4 Payments will be made to the Supplier in the currency or currencies indicated under each respective item. As specified in ITT18.2, no more than two foreign currencies may be used.

C2: CBK Official

A. PRICE SCHEDULE

No.	Item	*Year 1 cost (Kes)*	*Year 2 cost (Kes)*	*Year 3 Cost (Kes)*	*Total cost for 3 years*
1	Total cost of Fleet Management software *(In a separate spreadsheet, please provide the detailed breakdown of bill of materials for all Software)* *NB:* ***Licensing costs will be costed as Opex consumption and will be paid on yearly basis***				
2	Total cost of Transport Requisition software (In a separate spreadsheet, please provide the detailed breakdown of bill of materials for all Software) **NB: Licensing costs will be costed as Opex consumption and will be paid on yearly basis**				
3	24/7 Support, subscription & Maintenance – Fleet Management System ***NB: Support Costs will be costed on yearly basis and to be paid within the year of consumption.***				
4	24/7 Support, subscription & Maintenance – Fleet Management System ***NB: Support Costs will be costed on yearly basis and to be paid within the year of consumption.***				
5	Training services				
6	Recurrent expenditure and any other costs not captured with a detailed explanation				
	Sub-total 1-6 above				
	0.03% PPRA Capacity Building Levy on subtotal above				
	16% VAT on Subtotal above				
	GRAND TOTAL COST INCLUSIVE OF VAT AND PPRA LEVY (to be transferred to Form of tender)				

B Other recurring cost to be utilized on an as and when required basis

	Item Description	**Unit cost Inclusive of Taxes**
1	Additional user licence Costs (where applicable)	
2	Additional Vehicle Licence Costs (where applicable)	
3	GPS Devices Cost (extra or replacement device)	
4	Labour Cost (installation or removal of GPS device)	
5	Provision of Touch Key	

Name of Tenderer: _____

Signature_____ Date _____

C2: CBK Official

Recurrent Cost Summary Table

Costs MUST reflect prices and rates quoted in accordance with ITT 17 and ITT18.

Line-Item No.	**Subsystem / Item**	**Recurrent Cost Sub-Table No.**	*[insert:* ***Kenya shilling]*** ***Price***	*[insert:* ***Foreign Currency A]*** ***Price***	*[insert:* ***Foreign Currency B]*** ***Price***
	Subtotals (to Grand Summary Table)				

Note: Refer to the relevant Recurrent Cost Sub-Tables for the specific components that constitute the Sub system or line item in this summary table.

Name of Tenderer:_____

Date_____

Authorized Signature of Tenderer: _____

C2: CBK Official

3. Supply and Installation Cost Sub-Table *[insert identifying number]*

Line-item number: [*specify* ***relevant line-item number from the Supply and Installation Cost Summary Table*** *(e.g., 1.1)]*

Prices, rates, and subtotals MUST be quoted in accordance with ITT 17 and ITT18.

				Unit Prices / Rates					**Total Prices**			
				Supplied Locally	**Supplied from outside Kenya**				**Supplied Locally**	**Supplied from outside Kenya**		
Compo-nent No.	**Component Description**	**Country of Origin Code**	**Quan-tity**	*[insert:* ***local currency]***	*[insert:* ***local currency]***	*[insert:* ***foreign currency A]***	*[insert* ***foreign currency B]***		*[insert:* ***local currency]***	*[insert:* ***local currency]***	*[insert:* ***foreign currency A]***	*[insert:* ***foreign currency B]***
X.1	____	- -	- -	- -	- -	- -	- -					
Subtotals (to *[insert line* ***item]*** of Supply and Installation Cost Summary Table)												

Note: - - indicates not applicable

Name of Tenderer: _____

_____Date_____

Authorized Signature of Tenderer:

C2: CBK - Official

4. Recurrent Cost Sub-Table [*insert identifying number] –Warranty Period*

Lot number: [*if a multi-lot procurement, insert* ***lot number, otherwise*** *state "****single lot procurement"]*** Line-item number**: [***specify* ***relevant line-item number from the Recurrent Cost Summary Table–*** *(e.g., y.1)]* Currency: **[***specify:* ***the currency of the Recurrent Costs in which the costs expressed in this Sub-Table are expressed****]*

[As necessary for operation of the System, specify: ***the detailed components and quantities in the Sub-Table below for the line item specified above, modifying the sample components and sample table entries as needed.*** *Repeat the Sub-Table as needed to cover each and every line item in the Recurrent Cost Summary Table that requires elaboration.****]***

Costs MUST reflect prices and rates quoted in accordance with ITT 17 and ITT18.

		Maximum all-inclusive costs (for costs in *[insert currency]*)						
Component No.	**Component**	**Y1**	**Y2**	**Y3**	**Y4**	**...**	**Yn (Year 10)**	**Sub-total for *[insert currency]***
1.	Hardware Maintenance	Incl. in Warranty	Incl. in Warranty	Incl. in Warranty				
2.	Software Licenses & Updates	Incl. in Warranty						
2.1	System and General-Purpose Software	Incl. in Warranty						
2.2	Application, Standard and Custom Software	Incl. in Warranty						
3.	Technical Services							
3.1	Sr. technical lead							
3.2	Sr. network engineer							
3.3	Sr. Network administrator. etc.							
4.	Telecommunications costs, travel costs etc [to be detailed],							
5.	[Identify other recurrent costs as may apply]							
	Annual Subtotals:							- -
Cumulative Subtotal (to *[insert* ***currency]*** entry for *[insert* ***line item***] in the Recurrent Cost Summary Table)								

Name of Tenderer:_____Date_____

Authorized Signature of Tenderer: _____

5. Country of Origin Code Table

Country of Origin	Country Code	Country of Origin	Country Code	Country of Origin	Country Code

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40% RULE

Pursuant to ITT 4.11, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
A	Local Labor			
1				
2				
3				
4				
5				
B	Sub contracts from Local sources			
1				
2				
3				
4				
5				
C	Local materials			
1				
2				
3				
4				
5				
D	Use of Local Plant and Equipment			
1				
2				
3				
4				
5				
E	Add any other items			
1				
2				
3				
4				
5				
6				
	TOTAL COST LOCAL CONTENT		xxxxx	
	PERCENTAGE OF CONTRACT PRICE		xxxxxx	

2. Form ELI-1 Tenderer Information Form

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

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

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

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

1. Tenderer's Name [*insert Tenderer's legal name]*
2. In case of JV, legal name of each member: *[insert legal name of each member in JV]*
3. Tenderer's actual or intended country of registration: *[insert actual or intended country of registration]*
4. Tenderer's year of registration: *[insert Tenderer's year of registration]*
5. Tenderer's Address in country of registration: *[insert Tenderer's legal address in country of registration]*
6. Tenderer's Authorized Representative Information Name: *[insert Authorized Representative's name]* Address: *[insert Authorized Representative's Address]* Telephone/Fax numbers: *[insert Authorized Representative's telephone/fax numbers]* Email Address: *[insert Authorized Representative's email address]*
7. Attached are copies of original documents of *[check the box(es) of the attached original documents]* ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4. ☐ In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1. ☐ In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing: • Legal and financial autonomy • Operation under commercial law • Establishing that the Tenderer is not under the supervision of the Procuring Entity ☐ Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

3. Form ELI-1 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*]

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

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

alternative] Page_____of_____pages

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

4. Form CON–1 Historical Contract Non-Performance and Pending Litigation.

In case a pre-qualification process was conducted this form should be used only if the information submitted at the time of pre-qualification requires updating

Tenderer's Legal Name:_____Date:_____

JV member Legal Name: _____

ITT No.: _____

Age of_____pages

Non-Performing Contracts in accordance with Section III, Evaluation and Qualification Criteria			
Contract non-performance did not occur during the stipulated period, in accordance with Sub- Factor 2.2.1 of Section III, Evaluation Criteria			
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
No pending litigation in accordance with Sub-Factor 2.2.3 of Section III, Evaluation Criteria Pending litigation in accordance with Sub-Factor 2.2.3 of Section III, Evaluation Criteria, as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US$ equivalent)
_____	_____	Contract Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute:	_____

5. Form EXP - 1 Experience – General Experience

Tenderer's Legal Name:_____Date:_____

JV Member Legal Name:_____ITT No.: _____

Page_____of_____pages

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

*List calendar year for years with contracts with at least nine (9) months activity per year starting with the earliest year.

6. Form EXP – 2 Specific Experience

Tenderer's Legal Name: _____ Date: _____
JV Member Legal Name: _____ ITT No.: _____

Page _____ of _____ pages

Similar Contract Number: ___ of ___ required.	**Information**
Contract Identification	_____
Award date Completion date	_____ _____

Similar Contract Number: ___ of ___ required.	**Information**		
Role in Contract	☐ Prime Supplier	☐ Management Contractor	☐ Subcontractor
Total contract amount	_____		US$_____
If member in a JV or subcontractor, specify participation of total contract amount	_____%	_____	US$_____
Procuring Entity's Name:	_____		
Address: Telephone/fax number: E-mail:	_____ _____ _____ _____		

7. Form EXP – 2 (cont.) Specific Experience (cont.)

Tenderer's Legal Name: _____ Page _____ of _____ pages
JV Member Legal Name: _____

Similar Contract No. __ [insert specific number] of [total number of contracts] ___ required	**Information**
Description of the similarity in accordance with Sub-Factor 2.4.2 of Section III:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Key Activities	_____

8. Form CCC-1 Summary Sheet: Current Contract Commitments/ Work in Progress

Name of Tenderer or partner of a Joint Venture.

Tenderers and each partner to a Joint Venture tender should provide information on their current commitments on all contracts that have been awarded, or for which a Form of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued

Name of contract	**Procuring Entity, contact address/tel./fax**	**Value of outstanding Information System (curre US$ equivalent)**	**Estimated completio date**	**Average monthly invoicin over last six months (US$/month)**
1.				
2.				
3.				

4.				
5.				
etc.				

9. Form FIN – 1 Financial Situation

Historical Financial Performance

Tenderer's Legal Name: _____Date: _____

JV Member Legal Name: _____ITT No._____

Page _____ of _____ pages

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

Financial information in US$ equivalent	Historic information for previous _____ (__) years (US$ equivalent in 000s)						
	Year 1	Year 2	Year 3	Year …	Year n	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

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

a) Must reflect the financial situation of the Tenderer or member to a JV, and not sister or parent companies.

b) Historic financial statements must be audited by a certified accountant.

c) Historic financial statements must be complete, including all notes to the financial statements.

d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

---

10. Form FIN –2 Average Annual Turnover

Tenderer's Legal Name: _____ Date: _____

JV Member Legal Name: _____ ITT No.: _____

Page _____ of _____ pages

Annual turnover data (applicable activities only)		
Year	Amount and Currency	US$ equivalent

	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Turnover	_____	_____

*Average annual turnover calculated as total certified payments received for work in progress or completed, divided by the number of years specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.2.

11. Form F-3 Financial Resources

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

Source of financing	**Amount (US$ equivalent)**
1.	
2.	
3.	
4.	

12. Personnel Capabilities

i) Key Personnel

Name of Tenderer or partner of a Joint Venture

Tenderers should provide the names and details of the suitably qualified Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

1.	**Title of position:** ...	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g., attach high level Gantt chart*]
2.	**Title of position: …**	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]

	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g., attach high level Gantt chart*]
3.	**Title of position:** ...	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g., attach high level Gantt chart*]
4.	**Title of position:**	
	Name of candidate	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g., attach high level Gantt chart*]
6...	**Title of position:**	
	Name of candidate	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g., attach high level Gantt chart*]

ii) Candidate Summary

Position		**Candidate** ☐ Prime ☐ Alternate
Candidate information	Name of candidate	Date of birth
	Professional qualifications	
Present employment	Name of Employer	
	Address of Employer	
	Telephone	Contact (manager / personnel officer)
	Fax	Email
	Job title of candidate	Years with present Employer

Summarize professional experience over the last twenty years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company/Project/ Position/Relevant technical and management experience

iii) **Technical**

Tenderer shall provide adequate information to demonstrate clearly that it has the technical capability to meet the requirements for the Information System. With this form, the Tenderer should summarize important certifications, proprietary methodologies, and/or specialized technologies that the Tenderer proposes to utilize in the execution of the Contract or Contracts.

(iv) Manufacturer's Authorization

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

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

To:_____[*Procuring Entity insert: **Procuring Entity's Officer to receive the Manufacture's Authorization**]*

WHEREAS *[insert: **Name of Manufacturer**]* who are official producers of_____*[insert: **items of supply by Manufacturer**]* and having production facilities at_____*[insert: **address of Manufacturer**]* do here by authorize_____*[insert: **name of Tenderer or Joint Venture**]* located at_____*[insert: **address of Tenderer or Joint Venture**]* (hereinafter, the "Tenderer") to submit a tender and subsequently negotiate and sign a Contract with you for resale of the following Products produced by us:

We hereby confirm that in case the tendering results in a Contract between you and the Tenderer, the above-listed products will come with our full standard warranty.

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

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

Dated this_____*[insert **ordinal**]* day of _____ [*insert **month**], [insert **year**]. [add Corporate Seal*

(where appropriate)]

(v) Subcontractor's Agreement

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

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

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

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

instance that the Tenderer is awarded the Contract.

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

Signed_____ Duly authorized to sign the authorization for and on

behalf of:_____*[insert: **Name of Subcontractor]***

Dated this_____*[insert **ordinal]*** day of_____[*insert **month]***, _____ *[insert **year]***.

[add Corporate Seal (where appropriate)]

v) List of Proposed Subcontractors

	Item	**Proposed Subcontractor**	**Place of Registration & Qualifications**

13. Intellectual Property Forms

Notes to Tenderers on working with the Intellectual Property Forms

In accordance with ITT 11.1(j), Tenderers must submit, as part of their tenders, lists of all the Software included in the tender assigned to one of the following categories: (A) System, General-Purpose, or Application Software; or (B) Standard or Custom Software. Tenderers must also submit a list of all Custom Materials. These categorizations are needed to support the Intellectual Property in the GCC and SCC.

i) Software List

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

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

ii) List of Custom Materials

Custom Materials

14. Conformance of Information System Materials

I) Format of the Technical Tender

In accordance with ITT 16.2, the documentary evidence of conformity of the Information System to the tendering documents includes (but is not restricted to):

a) The Tenderer's Preliminary Project Plan, including, but not restricted, to the topics specified in the TDS ITT 16.2. The Preliminary Project Plan should also state the Tenderer's assessment of the major responsibilities of the Procuring Entity and any other involved third parties in System supply and installation, as well as the Tenderer's proposed means for coordinating activities by each of the involved parties to avoid delays or interference.

b) A written confirmation by the Tenderer that, if awarded the Contract, it shall accept responsibility for successful integration and interoperability of all the proposed Information Technologies included in the System, as further specified in the Technical Requirements.

c) Item-by-Item Commentary on the Technical Requirements demonstrating the substantial responsiveness of the overall design of the System and the individual Information Technologies, Goods, and Services offered to those Technical Requirements.

In demonstrating the responsiveness of its tender, the Tenderer must use the Technical Responsiveness Checklist (Format). Failure to do so increases significantly the risk that the Tenderer's Technical Tender will be declared technically non-responsive. Among other things, the checklist should contain explicit cross-references to the relevant pages in supporting materials included the Tenderer's Technical Tender.

Note: The Technical Requirements are voiced as requirements of the *Supplier* and/or the *System*. The Tenderer's response must provide clear evidence for the evaluation team to assess the credibility of the response. A response of "yes" or "will do" is unlikely to convey the credibility of the response. The Tenderer should indicate *that*–and to the greatest extent practical–*how* the Tenderer would comply with the requirements if awarded the contract. Whenever the technical requirements relate to feature(s) of existing products (e.g., hardware or software), the features should be described, and the relevant product literature referenced. When the technical requirements relate to professional services (e.g., analysis, configuration, integration, training, etc.) some effort should be expended to describe how they would be rendered – not just a commitment to perform the [cut-and-paste] requirement. Whenever a technical requirement is for the Supplier to provide certifications (e.g., ISO9001), copies of these certifications must be included in the Technical Tender.

Note: The Manufacture's Authorizations (and any Subcontractor Agreements) are to be included in Attachment 2 (Tenderer Qualifications), in accordance with and ITT 15.

Note: As a matter of practice, the contract cannot be awarded to a Tenderer whose Technical Tender deviates (materially) from the Technical Requirements – *on any Technical Requirement*. Such deviations include omissions (e.g., non-responses) and responses that do not meet or exceed the requirement. Extreme care must be exercised in the preparation and presentation of the responses to all the Technical Requirements.

d) Supporting materials to underpin the Item-by-item Commentary on the Technical Requirements (e.g., product literature, white-papers, narrative descriptions of technical approaches to be employed, etc.). In the interest of timely tender evaluation and contract award, Tenderers are encouraged not to overload the supporting materials with documents that do not directly address the Procuring Entity's requirements.

e) Any separate and enforceable contract(s) for Recurrent Cost items which the TDSITT17.2 required Tenderers to tender.

Note: To facilitate tender evaluation and contract award, Tenderers encouraged to provide electronic copies of their Technical Tender–preferably in a format that the evaluation team can extract text from to facilitate the tender clarification process and to facilitate the preparation of the Tender Evaluation Report.

ii) Technical Responsiveness Checklist (Format)

Tech. Require. No. _	**Technical Requirement:** ***[insert: abbreviated description of Requirement]***
Tenderer's technical reasons supporting compliance:	
Tenderer's cross references to supporting information in Technical Tender:	

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

Beneficiary:_____

Request for Tenders No:

_____

Date:_____

TENDER GUARANTEE No.:_____

Guarantor: _____

1. We have been informed that_____(here 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 onor before that date.

_____

[signature(s)]

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

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

TENDER - SECURING DECLARATION FORM {r 46 and155(2)}

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

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

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

To: ..... *[insert complete name of Purchaser]* I/We, the undersigned, declare that:

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

PART 2 – CENTRAL BANK OF KENYA'S REQUIREMENTS

SECTION V - REQUIREMENTS OF THE INFORMATION SYSTEM

5.1 Background and Purpose

1. Background

The Bank operates a fleet of approximately **85 vehicles**, expected to remain stable at **80–85 vehicles over the next 3–5 years**.

Fleet operations are currently supported through:

- A Fleet Management and Telematics Solution supported by GPS tracking devices installed in vehicles.
- A Transport Requisition System used for transport request initiation, approval, allocation, scheduling and reporting.

These systems support critical fleet management, transport coordination, vehicle monitoring, maintenance management and operational reporting functions.

To ensure continuity of operations, system availability, software support, security, maintenance and ongoing access to product updates, the Bank intends to ***procure annual software licences*** together with ***technical support and maintenance services*** for the existing Fleet Management, Transport Requisition and Telematics Solution.

2. Objective

The objective of this assignment is to provide annual software licences, technical support and maintenance services for the existing Fleet Management, Transport Requisition and Telematics Solution in order to:

- Ensure uninterrupted availability of fleet management and transport requisition services.
- Maintain system performance, reliability and security.
- Provide timely technical support and incident resolution.
- Ensure continued compatibility with existing GPS tracking devices.
- Obtain software updates, patches and enhancements.
- Support efficient fleet operations, reporting and decision-making.
- Maintain compliance, auditability and operational controls.

2.1 Definitions and Interpretations

For purposes of this TOR:

Solution

Means the existing Fleet Management and Telematics Solution together with the Transport Requisition System, including associated licences, integrations, devices, documentation, support and maintenance services.

Real-time

Means vehicle location and event data is available within 60 seconds under normal operating conditions.

Near real-time

Means vehicle location and event data is available within 5 minutes under normal operating conditions.

Availability/Uptime

Means the percentage of time the production environment is accessible and operational excluding approved maintenance windows.

RTO (Recovery Time Objective)

means the targeted maximum duration to restore service following an outage.

RPO (Recovery Point Objective)

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means the targeted maximum tolerable period of data loss measured in time.

3. Scope of Services

The successful bidder shall provide annual software licences, support and maintenance services for the existing Fleet Management, Transport Requisition and Telematics Solution.

3.1 Fleet Management and Telematics

The service provider shall support and maintain functionality that enables:

- Vehicle asset management.
- Preventive maintenance scheduling.
- Repair and maintenance records management.
- Vehicle lifecycle and cost management.
- Real-time vehicle tracking.
- Trip monitoring and route history.
- Geofencing and exception alerts.
- Driver management and performance monitoring.
- Dashboards and management reporting.
- Compliance monitoring and audit trails.

3.2 Transport Requisition System

The service provider shall support and maintain functionality that enables:

- Creation and management of transport requests.
- Workflow approvals and notifications.
- Vehicle and driver allocation.
- Scheduling and dispatch management.
- Monitoring of request status.
- Operational and management reporting.
- Audit trails and workflow history.
- Total User licenses should not exceed 350 users

3.3 Integration Support

The service provider shall:

- Maintain or enhance existing integrations between fleet management and transport requisition functions.
- Ensure consistency and reliability of operational information across the systems.
- Resolve integration-related incidents and failures.
- Support future integration requirements where requested by the Bank.
- Advise the Bank on integration implications arising from software upgrades or updates.

3.4 External Integration Capability

The service provider shall demonstrate the capability to support future integration with third-party systems including:

- Fuel management systems.
- Directory services such as Active Directory.
- ERP systems.
- Email and notification systems.

This capability is required as a future support requirement and does not form part of the current scope..

3.5 GPS Device Support

The BANK currently operates approximately 75-80 GPS tracking devices.

The service provider shall:

- Support integration and communication between existing GPS devices and the telematics platform.
- Monitor device connectivity and data transmission.
- Provide troubleshooting and technical support for device-related issues.

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- Recommend replacement of devices only when devices become obsolete, unsupported or defective.
- Clearly identify any additional costs associated with replacement devices if required.

4. Service Levels and Support Requirements

The bidder shall provide:

- Remote support capability.
- Corrective maintenance.
- Preventive maintenance.
- Problem management services.
- Software patch management.
- Software upgrade support.

The bidder shall provide clearly defined Service Level Agreements (SLAs) indicating:

- Resolution times.
- Escalation procedures.
- Availability commitments.
- Reporting requirements.

5. System Requirements

5.1 Functional Requirements

The licensed solution shall continue to support:

- Vehicle and driver scheduling.
- Cost tracking and analysis.
- Driver management.
- Fleet maintenance management.
- Reporting and dashboards.
- Compliance monitoring.
- Audit trails.

5.2 Technical

The solution shall:

- Be web based.
- Support role-based access control.
- Provide secure authentication mechanisms.
- Support mobile accessibility where available.
- Support scalability for future growth.
- Maintain data integrity and security.

5.3 Architecture requirements

The solution shall provide:

- High availability.
- Backup and recovery capability.
- Defined RTO and RPO targets.
- Audit logging.
- Encryption in transit and at rest where applicable.
- Secure hosting arrangements.

6. Pricing Schedule

The bidder shall provide a fully itemized pricing schedule covering:

- Fleet Management Software Licence.
- Transport Requisition System Licence.
- Telematics Software Licence.
- Hosting or Cloud Subscription Services (where applicable).

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- Annual Support Services.
- Annual Maintenance Services.
- Software Updates and Upgrades.
- Additional User Licence Costs (where applicable).
- Additional Vehicle Licence Costs (where applicable).
- Any other recurring costs.

All costs shall be fully disclosed. No undisclosed costs shall be permitted after contract award.

7. Licensing Requirements

Bidders shall clearly specify:

- Licensing methodology.
- Per-user, per-vehicle, per-module or enterprise licensing structure.
- Licence limitations.
- Subscription renewal costs.
- Annual support and maintenance costs.
- Upgrade and update provisions.
- Scalability implications.
- Additional licensing costs, if any.

The licensing model must be transparent, scalable, and suitable for the BANK's operational needs.

8. Deliverables

The successful bidder shall provide the following deliverables:

8.1 Annual Software Licences

- Active licences for all subscribed modules.
- Vendor licence confirmation where applicable.

Acceptance Criteria:

- Licences activated and valid for the contract period.

8.2 Support Services

- Operational support or helpdesk.
- Escalation procedures.

Acceptance Criteria:

- Support services operational throughout the contract period.

8.3 Maintenance Services

- Preventive maintenance.
- Corrective maintenance.
- System monitoring.

Acceptance Criteria:

- System maintained in accordance with agreed SLA commitments.

8.4 **Software Updates and Upgrades**

- Security patches.
- Bug fixes.
- Product updates and enhancements.

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Acceptance Criteria:

- Updates successfully applied without disruption to operations.

8.5 Documentation

- Updated system documentation.
- User guides.
- System administration documentation.
- SLA documentation.

Acceptance Criteria:

- Documentation provided and maintained throughout the contract period.

8.6 **Service Reports**

- Monthly support reports.
- Incident reports.
- SLA performance reports.
- System availability reports.

Acceptance Criteria:

- Reports submitted within agreed reporting timelines..

9. **Contract Period**

The Bidder shall indicate:

- Licence validity period.
- Support and maintenance period.
- SLA commitments.
- Upgrade schedules.
- Reporting frequency.

No.	**Technical Requirement Area**	**Key Evaluation Considerations**	**Compliance Status** *(Compliant / Not Compliant)*
1	Fleet management functionality	Vehicle asset register, vehicle details, assignment records, maintenance scheduling, repair history, downtime tracking, cost tracking, lifecycle reporting and compliance records.	
2	Telematics and Tracking Capability	Real-time or near real-time tracking, trip history, route playback, geofencing, exception alerts, driver profiles, driver assignment history and driver behaviour monitoring.	
3	Transport Requisition Functionality	Request creation, approvals, vehicle and driver allocation, scheduling, dispatch, status tracking, workflow notifications and reporting.	
4	GPS Device Support Capability	Coordination between fleet management, telematics and transport requisition functions; reuse, configuration or	

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		replacement of existing GPS devices; transition approach; testing and continuity arrangements.	
5	Reporting and Dashboards	Standard reports, dashboards, export capability, configurable reporting, exception reporting and management information across fleet, telematics and transport requisition functions.	
6	Security, Availability and Supportability	Web-based access, role-based access control, secure authentication, mobile access where applicable, audit logging, data security, availability, backup and recovery, user support and post-go-live support arrangements.	

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i) Implementation Schedule Table

*[Specify **desired installation and acceptance dates for all items in Schedule below, modifying the sample line items and sample table entries as needed.**]*

Line-Item No.	Subsystem / Item	Configuration Table No.	Site / Site Code	Delivery (Tenderer to specify in the Preliminary Project Plan)	Installation (weeks from Effective Date)	Acceptance (weeks from Effective Date)	Liquidated Damages Milestone
0	Project Plan	- -	- -		- -	W_	No
1	Subsystem 1	1	___		- -	- -	- -
:	etc.						
x	Operational Acceptance of the System as an integrated whole	- -	all sites		- -	W__	Yes
y	Recurrent Cost Items – Warranty Period	Y	- -				

Note: The System Inventory Table(s) for the specific items and components that constitute the Subsystems or item. Refer to the Site Table(s) below for details regarding the site and the site code.
- - indicates not applicable. "Indicates repetition of table entry above.

II). SITE TABLE(S)

[Specify: ***the detailed information regarding the site(s) at which the System is to be operated]***

Site Code	**Site**	**City / Town / Region**	**Primary Street Address**	**Drawing Reference No. (if any)**
HQ	Headquarters			
R1	Region 1			
R1.1	Region 1 Head Office			
R1.2	ABC Branch Office			
R1.3	DEF Branch Office			

III) TABLE OF HOLIDAYS AND OTHER NON – WORKING DAYS

[Specify: ***the days for each month for each year that are non-working days, due to Holidays or other business reasons (other than weekends).]***

Month	**20xy**	**20xy+1**	**20xy+2**	**....**			**...**	**20zz**
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

B. System Inventory Tables

Notes on preparing the System Inventory Tables

The System Inventory Tables detail:

a) for each Subsystem (Deliverable) indicated in the Implementation Schedule, the Information Technologies, Materials, and other Goods and Services that comprise the System to be supplied and/or performed by the Supplier;

b) the quantities of such Information Technologies, Materials, and other Goods and Services;

c) the sites and the location of each on a specific site (e.g., building, floor, room, department, etc.)

d) the cross references to the relevant section of the Technical Requirements where that item is described in greater detail.

The Procuring Entity should modify these tables, as required, to suit the particulars of the System (and Sub systems) to be supplied and installed. The sample text provided for various sections of the tables is illustrative only and should be modified or deleted as appropriate.

There are two sample formats given for the System Inventory Tables: one for the Supply and Installation cost items and the second for recurrent cost items needed (if any). The second version of the table permits the Procuring Entity to obtain price information about items that are needed during the Warranty Period.

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A. System Inventory Table (Supply and Installation Cost ITEMS) [*insert* ***identifying NUMBER]***

Line-item number: [*specify* ***relevant line-item number from the Implementation Schedule (e.g., 1.1)]***
[as necessary for the supply and installation of the System, specify: ***the detailed components and quantities in the System Inventory Table below for the line item specified above, modifying the sample components and sample table entries as needed.*** *Repeat the System Inventory Table as needed to cover each and every line item in the Implementation Schedule that requires elaboration.]*

Component No.	**Component**	**Relevant Technical Specifications No.**	**Additional Site Information (e.g., building, floor, department, etc.)**	**Quantity**
1.	Subsystem 1		- -	- -
1.1	_____			- -
:				
2.	Subsystem 2			- -
2.1	_____			- -
:				

Note: - - indicates not applicable. “Indicates repetition of table entry above.

B. SYSTEM INVENTORY TABLE (RECURRENT COST ITEMS) [*INSERT: IDENTIFYING NUMBER*]–

Line-item number: *[specify: **relevant line-item number from the Implementation Schedule (e.g., y.1)**]*

Component No.	**Component**	**Relevant Technical Specifications No.**	**Y1**	**Y2**	**Y3**
1.	Warranty Defect Repair		all items, all sites, included in the Supply and Install Price	all items, all sites, included in the Supply and Install Price	all items, all sites, included in the Supply and Install Price
2.	Software/Firmware Licenses and Updates:		all items, all sites, included in the Supply and Install Price	all items, all sites, included in the Supply and Install Price	all items, all sites, included in the Supply and Install Price
3.	Technical Services				
3.1	Sr. Systems Analyst		----days	----days	----days
3.2	Sr. Programmer		----days	----days	----days
3.3	Sr. Network Specialist, …. etc.		----days	----days	----days
	…				

Note: - indicates not applicable. “indicates repetition of table entry above.

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

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SECTION VI - GENERAL CONDITIONS OF CONTRACT

A. CONTRACT AND INTERPRETATION

1. Definitions

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

a) Contract Elements

i) "Contract" means the Contract Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein. The Contract Agreement andthe Contract Documents shall constitute the Contract, and the term "the Contract" shall in all suchdocuments be construed accordingly.

ii) "Contract Documents" means the documents specified in Article1.1(Contract Documents) of theContract Agreement (including any amendments to these Documents).

iii) "Contract Agreement" means the agreement entered into between the Procuring Entity and the Supplier using the form of Contract Agreement contained in the Sample Contractual Forms Section of the tender documents and any modifications to this form agreed to by the Procuring Entity and the Supplier. The date of the Contract Agreement shall be recorded in the signed form.

iv) "GCC" means the General Conditions of Contract.

v) "SCC" means the Special Conditions of Contract.

vi) "Technical Requirements" means the Technical Requirements in Section VII of the tendering documents.

vii) "Implementation Schedule" means the Implementation Schedule in Section VII of the tendering documents.

viii) "Contract Price" means the price or prices defined in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.

ix) "Procurement Regulations" refers to the Regulations issued under the Public Procurement and Asset Disposal Act (2015).

x) "Tendering documents" refers to the collection of documents issued by the Procuring Entity to instruct and inform potential suppliers of the processes for tendering, selection of the winning tender, and Contract formation, as well as the contractual conditions governing the relationship between the Procuring Entity and the Supplier. The General and Special Conditions of Contract, the Technical Requirements, and all other documents included in the tendering documents reflectthe Procurement Regulations that the Procuring Entity is obligated to follow during procurementand administration of this Contract.

b) Entities

i) "Procuring Entity" means the entity purchasing the Information System, as **specified in the SCC.**

ii) "Project Manager" means the person **named as such in the SCC** or otherwise appointed by the Procuring Entity in the manner provided in GCC Clause 18.1 (Project Manager) to perform the duties delegated by the Procuring Entity.

iii) "Supplier" means the firm or Joint Venture whose tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.

iv) "Supplier's Representative" means any person nominated by the Supplier and named as such in the Contract Agreement or otherwise approved by the Procuring Entity in the manner provided inGCC Clause18.2 (Supplier's Representative) to perform the duties delegated by the Supplier.

v) "Subcontractor" means any firm to whom any of the obligations of the Supplier, including preparation of any design or supply of any Information Technologies or other Goods or Services,

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is subcontracted directly or indirectly by the Supplier.

vi) "Adjudicator" means the person named in Appendix 2 of the Contract Agreement, appointed by agreement between the Procuring Entity and the Supplier to make a decision on or to settle any Dispute between the Procuring Entity and the Supplier referred to him or her by the parties, pursuant to GCC Clause 43.1 (Adjudication).

c) Scope

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

ii) "Subsystem" means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System.

iii) "Information Technologies" means all information processing and communications-related hardware, Software, supplies, and consumable items that the Supplier is required to supply and install under the Contract.

iv) "Goods" means all equipment, machinery, furnishings, Materials, and other tangible items that the Supplier is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Supplier's Equipment.

v) "Services" means all technical, logistical, management, and any other Services to be provided bythe Supplier under the Contract to supply, install, customize, integrate, and make operational the System. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, Pre- commissioning, Commissioning, maintenance, and technical support.

vi) "The Project Plan" means the document to be developed by the Supplier and approved by the Procuring Entity, pursuant to GCC Clause 19, based on the requirements of the Contract and the Preliminary Project Plan included in the Supplier's tender. The "Agreed Project Plan" is the version of the Project Plan approved by the Procuring Entity, in accordance with GCC Clause 19.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of theContract, including any amendments, shall prevail.

vii) "Software" means that part of the System which are instructions that cause information processingSub systems to perform in a specific manner or execute specific operations.

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

ix) "General-Purpose Software" means Software that supports general-purpose office and software development activities and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be General-Purpose Software. Such General- Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.

x) "Application Software" means Software formulated to perform specific business or technical functions and interface with the business or technical users of the System and is identified as suchin Appendix4 of the Contract Agreement and such other Software as the parties may agree in writing to be Application Software.

xi) "Standard Software" means Software identified as such in Appendix 4 of the Contract Agreementand such other Software as the parties may agree in writing to be Standard Software.

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xii) "Custom Software" means Software identified as such in Appendix 4 of the Contract Agreementand such other Software as the parties may agree in writing to be Custom Software.

xiii) "Source Code" means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).

xiv) "Materials" means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Procuring Entity under the Contract.

xv) "Standard Materials" means all Materials not specified as Custom Materials.

xvi) "Custom Materials" means Materials developed by the Supplier at the Procuring Entity's expenseunder the Contract and identified as such in Appendix 5 of the Contract Agreement and such otherMaterials as the parties may agree in writing to be Custom Materials. Custom Materials includesMaterials created from Standard Materials.

xvii) "Intellectual Property Rights" means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent,or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extractor re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sub license, transfer, rent,lease, transmit or provide access electronically, broadcast, display, enter in to computer memory,or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or toauthorize or assign others to do so.

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

d) Activities

i) "Delivery" means the transfer of the Goods from the Supplier to the Procuring Entity in accordance with the current edition Incoterms specified in the Contract.

ii) "Installation" means that the System or a Subsystem as specified in the Contract is ready forCommissioning as provided in GCC Clause 26 (Installation).

iii) "Pre-commissioning" means the testing, checking, and any other required activity that may be specified in the Technical Requirements that are to be carried out by the Supplier in preparation for Commissioning of the System as provided in GCC Clause 26 (Installation).

iv) "Commissioning" means operation of the System or any Subsystem by the Supplier following Installation, which operation is to be carried out by the Supplier as provided in GCC Clause27.1(Commissioning), for the purpose of carrying out Operational Acceptance Test (s).

v) "Operational Acceptance Tests" means the tests specified in the Technical Requirements and Agreed Project Plan to be carried out to ascertain whether the System, or a specified Sub system, is able to attain the functional and performance requirements specified in the Technical Requirements and Agreed Project Plan, in accordance with the provisions of GCC Clause 27.2 (Operational Acceptance Test).

vi) "Operational Acceptance" means the acceptance by the Procuring Entity of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Clause27.3(Operational Acceptance).

e) Place and Time

i) "Supplier's Country" is the country in which the Supplier is legally organized, as named in theContract Agreement.

ii) **Unless otherwise specified in the SCC** "Project Site (s)" means the place (s) in the Site Table inthe Technical Requirements Section for the supply and installation of the System.

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iii) "Eligible Country" means the countries and territories eligible for participation in procurements.

iv) "Day" means calendar day of the Gregorian Calendar.

v) "Week" means seven (7) consecutive Days, beginning the day of the week as is customary in Kenya.

vi) "Month" means calendar month of the Gregorian Calendar.

vii) "Year" means twelve (12) consecutive Months.

viii) "Effective Date" means the date of fulfillment of all conditions specified in Article 3 (Effective Date for Determining Time for Achieving Operational Acceptance) of the Contract Agreement, for the purpose of determining the Delivery, Installation, and Operational Acceptance dates for the System or Sub system(s).

ix) "Contract Period" is the time period during which this Contract governs the relations and obligations of the Procuring Entity and Supplier in relation to the System, as **unless otherwise specified in the SCC,** the Contract shall continue in force until the Information System and all the Services have been provided, unless the Contract is terminated earlier in accordance with theterms set out in the Contract**.**

x) "Defect Liability Period" (also referred to as the "Warranty Period") means the period of validityof the warranties given by the Supplier commencing at date of the Operational Acceptance Certificate of the System or Sub system(s), during which the Supplier is responsible for defects with respect to the System (or the relevant Sub-system[s]) as provided in GCC Clause 29 (DefectLiability).

xi) "The Coverage Period" means the Days of the Week and the hours of those Days during which maintenance, operational, and/ or technical support services (if any) must be available.

xii) The Post-Warranty Services Period" means the number of years **defined in the SCC** (if any), following the expiration of the Warranty Period during which the Supplier may be obligated to provide Software licenses, maintenance, and/ or technical support services for the System, underthis Contract or under separate contract(s).

2. Contract Documents

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

3. Interpretation

3.1 Governing Language

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

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

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

3.3 Headings

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

3.4 Persons

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

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3.5 Incoterms

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

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

3.6 Entire Agreement

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

3.7 Amendment

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

3.8 Independent Supplier

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

Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which theContract is performed. All employees, representatives, or Sub contractors engaged by the Supplier inconnection with the performance of the Contract shall be under the complete control of the Supplier and shallnot be deemed to be employees of the Procuring Entity, and nothing contained in the Contractor in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Sub contractors and the Procuring Entity.

3.9 Joint Venture

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

3.10 Non-waiver

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

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

3.11 Severability

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

3.12 Country of Origin

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

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characteristics or in purpose orutility from its components. The Origin of Goods and Services is distinct from the nationality of the Supplierand may be different.

4. Notices

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

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

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

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

4.1.4 Either party may change its postal, facsimile, electronic mail, or EDI addresses for receipt of such notices by ten
(10) days' notice to the other party in writing.

4.2 Notices shall be deemed to include any approvals, consents, instructions, orders, certificates, information andother communication to be given under the Contract.

4.3 Pursuant to GCC Clause 18, notices from/to the Procuring Entity are normally given by, or addressed to, the Project Manager, while notices from/to the Supplier are normally given by, or addressed to, the Supplier's Representative, or in its absence its deputy if any. If there is no appointed Project Manager or Supplier's Representative (or deputy), or if their related authority is limited by the SCC for GCC Clauses 18.1 or 18.2.2,or for any other reason, the Procuring Entity or Supplier may give and receive notices at their fall-back addresses. The address of the Project Manager and the fall-back address of the Procuring Entity are as **specifiedin the SCC** or as subsequently established/ amended. The address of the Supplier's Representative and the fallback address of the Supplier are as specified in Appendix 1 of the Contract Agreement or as subsequently established/amended.

5. Governing Law

5.1 The Contract shall be governed by and interpreted in accordance with the laws of Kenya.

5.2 Throughout the execution of the Contract, the Supplier shall comply with the import of goods and servicesprohibitions in Kenya when

a As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or

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

6 Fraud and Corruption

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

6.2 The Procuring Entity requires the Suppliers to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

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B. SUBJECT MATTER OF CONTRACT

7 Scope of the System

7.1 Unless otherwise expressly **limited in the SCC** or Technical Requirements, the Supplier's obligations cover the provision of all Information Technologies, Materials and other Goods as well as the performance of all Services required for the design, development, and implementation (including procurement, quality assurance,assembly, associated site preparation, Delivery, Pre-commissioning, Installation, Testing, and Commissioning) of the System, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the Contract and the Agreed Project Plan.

7.2 The Supplier shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and Materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Operational Acceptance of the System as if such work and/or items and Materials were expressly mentioned in the Contract.

7.3 The Supplier's obligations (if any) to provide Goods and Services as implied by the Recurrent Cost tables of the Supplier's tender, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), are as **specified in the SCC,** including the relevant terms, characteristics,and timings.

8 Time for Commencement and Operational Acceptance

8.1 The Supplier shall commence work on the System within the period **specified in the SCC,** and without prejudice to GCC Clause 28.2, the Supplier shall there after proceeding with the System in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed Project Plan.

8.2 The Supplier shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time forOperational Acceptance of such Sub system (s) is specified in the Contract) in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed Project Plan, or within such extended time to which the Supplier shall be entitled under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).

9 Supplier's Responsibilities

9.1 The Supplier shall conduct all activities with due care and diligence, in accordance with the Contract and withthe skill and care expected of a competent provider of information technologies, information systems, support,maintenance, training, and other related services, or in accordance with best industry practices. In particular, the Supplier shall provide and employ only technical personnel who are skilled and experienced in the irrespective callings and supervisory staff who are competent to adequately supervise the work at hand.

9.2 The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Procuring Entity and on the basis of information that the Supplier couldhave obtained from a visual inspection of the site (if access to the site was available) and of other data readilyavailable to the Supplier relating to the System as at the date twenty-eight (28) days prior to tender submission.The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.

9.3 The Supplier shall be responsible for timely provision of all resources, information, and decision making underits control that are necessary to reach a mutually Agreed Project Plan (pursuant to GCC Clause 19.2) within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision-making may constitute grounds for termination pursuant to GCC Clause 41.2.

9.4 The Supplier shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in Kenya that are necessary for the

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performance of theContract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permitsfor all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals, and/or licensesthat are not the responsibility of the Procuring Entity under GCC Clause 10.4 and that are necessary for the performance of the Contract.

9.5 The Supplier shall comply with all laws in force in Kenya. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Supplier. The Supplier shall indemnify and hold harmless the Procuring Entity from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature a rising or resulting from the violation of such laws by the Supplier or its personnel, including the Sub contractors and their personnel, but without prejudice to GCC Clause 10.1. The Supplier shall not indemnify the Procuring Entity to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Procuring Entity.

9.6 The Supplier shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor.

9.7 Any Information Technologies or other Goods and Services that will be incorporated in or be required for theSystem and other supplies shall have their Origin, as defined in GCC Clause 3.12, in a country that shall be anEligible Country, as defined in GCC Clause 1.1 (e) (iv).

9.8 Pursuant to paragraph 2.2e. of Appendix B to the General Conditions the Supplier shall permit and shall causeits subcontractors and sub-consultants to permit, the PPRA and/or persons appointed by the PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Supplier's and its Sub contractors' and sub-consultants' attention is drawn to Sub-Clause 6.1 which provides, inter alia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the PPRA's prevailing sanctions procedures).

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

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

10 Procuring Entity's Responsibilities

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

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

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

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

10.5 In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Supplier, as specified in the Technical Requirements, SCC,

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Agreed ProjectPlan, or other parts of the Contract, the Procuring Entity shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.

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

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

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

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

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

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

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

C. Payment

11 Contract Price

11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.

11.2 Unless an adjustment clause is **provided for in the SCC,** the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the System pursuant to GCC Clause 39 or to otherclauses in the Contract.

11.3 The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price,which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

11.4 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificatesand variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out duringtender evaluation is worked out as follows: *(corrected tender price–tender price)/ tender price X 100.*

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12 Terms of Payment

12.1 The Supplier's request for payment shall be made to the Procuring Entity in writing, accompanied by an invoicedescribing, as appropriate, the System or Subsystem(s), Delivered, Pre-commissioned, Installed, and Operationally Accepted, and by documents submitted pursuant to GCC Clause 22.5 and upon fulfillment of other obligations stipulated in the Contract. The Contract Price shall be paid as **specified in the SCC.**

12.2 No payment made by the Procuring Entity herein shall be deemed to constitute acceptance by the Procuring Entity of the System or any Sub system (s).

12.3 Payments shall be made promptly by the Procuring Entity, but in no case later than (sixty (60) days after submission of a valid invoice and upon satisfactorily performance of the contractual obligations by the Supplier. In the event that the Procuring Entity fails to make any payment by its respective due date or withinthe period set forth in the Contract, the Procuring Entity shall pay to the Supplier interest on the amount of such delayed payment at the rate (s) **specified in the SCC** for the period of delay until payment has been madein full, whether before or after judgment or arbitration award.

12.4 Payments shall be made in the currency (ies) specified in the Contract Agreement, pursuant to GCC Clause 11.For Goods and Services supplied locally, payments shall be made **as specified in the SCC.**

12.5 **Unless otherwise specified in the SCC,** payment of the foreign currency portion of the Contract Price for Goods supplied from outside Kenya shall be made to the Supplier through an irrevocable Form of credit opened by an authorized bank in the Supplier's Country and will be payable on presentation of the appropriatedocuments. It is agreed that the Form of credit will be subject to Article10 of the latest revision of *Uniform Customs and Practice for Documentary Credits*, published by the International Chamber of Commerce, Paris.

13 Securities

13.1 Issuance of Securities

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

13.2 Advance Payment Security

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

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

P*a/(100-a), where “P” is the sum of all payments effected so far to the Supplier (excluding the Advance Payment), and “a” is the Advance Payment expressed as a percentage of the Contract Price pursuant to the SCC for GCC Clause12.1.

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

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13.3 Performance Security

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

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

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

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

14 Taxes and Duties

14.1 For Goods or Services supplied from outside and inside Kenya, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside Kenya and inside Kenya, and theseduties or taxes shall be made part of the Contract Price in Article 2 of the Contract Agreement and the Price Schedule it refers to, in which case the duties and taxes will be the Supplier's responsibility.

14.2 For Goods or Services supplied locally, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods or Services to the Procuring Entity. The only exception are taxes or duties, such as value-added or sales tax or stamp duty as apply to, or are clearly identifiable, on the invoices and provided they apply in Kenya, and only if these taxes, levies and/or duties arealso excluded from the Contract Price in Article 2 of the Contract Agreement and the Price Schedule it refersto.

14.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Supplier in Kenya, the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date twenty-eight (28) days prior to the date of tender submission in Kenya (also called "Tax" in this GCCClause 14.4). If any Tax rates are increased or decreased, a new Tax is introduced, an existing Tax is abolished,or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Supplier, its Sub contractors, or their employees in connectionwith performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.

D. Intellectual Property

15 Copyright

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

15.2 The Procuring Entity agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause16, except that additional copies of Standard Materials may be madeby the Procuring Entity for use within the scope of the project of which the System is apart, in the event that the Supplier does not deliver copies within thirty (30) days from

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receipt of a request for such Standard Materials.

15.3 The Procuring Entity's contractual rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed, or otherwise transferred voluntarily except in accordance with the relevant license agreement or **unless otherwise specified in the SCC** to a legally constituted successor organization (e.g., a reorganization of a public entity formally authorized by the government or through a merger or acquisition of a private entity)**.**

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

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

16 Software License Agreements

16.1 Except to the extent that the Intellectual Property Rights in the Software vest in the Procuring Entity, the Supplier here by, subject to the terms, conditions and limitations issued by the manufacturer of the software, grants to the Procuring Entity license to access and use the Software, including all inventions,designs, and marks embodied in the Software.

i. Such license to access and use the Software shall:

a) Permit the Software to be:

i. used or copied for use on or with the computer (s) for which it was acquired (if specified in the Technical Requirements and/or the Supplier's tender), plus a backup computer (s) of the same or similar capacity, if the primary is (are) in operative, and during a reasonable transitional period when use is being transferred betweenprimary and back up.

ii. used or copied for use on or transferred to are placement computer (s), (and use on the original and replacementcomputer(s) may be simultaneous during a reasonable transitional period) provided that, if the Technical Requirements and/or the Supplier's tender specifies a class of computer to which the license is restricted, the replacement computer (s) is (are) within that class.

iii. if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or back up computer (s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access.

iv. reproduced for safe keeping or back up purposes.

v. customized, adapted, or combined with other computer software for use by the Procuring Entity, provided thatderivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as a reset forth in this Contract.

vi. **unless otherwise specified in the SCC,** disclosed to, and reproduced for use by, support service suppliers and their sub-contractors, (and the Procuring Entity may sub-license such persons to use and copy for use the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as a reset forth in this Contract; and

vii. **unless otherwise specified in the SCC** disclosed to, and reproduced for use by, NO other parties.

16.2 The Supplier has the right to audit the Standard Software to verify compliance with the above license agreements.
Unless otherwise specified in the SCC, the Procuring Entity will make available to the Supplier, within seven(7) days of a written request, accurate and up-to-date records of the number and location of copies,

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the number of authorized users, or any other relevant data required to demonstrate use of the Standard Software as per thelicense agreement. If and only if, expressly agreed in writing between the Procuring Entity and the Supplier, Procuring Entity will allow, under a pre-specified agreed procedure, the execution of embedded software functions under Supplier's control, and unencumbered transmission of resulting information on software usage.

17 Confidential Information

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

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

17.3 Notwithstanding GCC Clauses 17.1 and 17.2:

a) the Supplier may furnish to its Subcontractor Confidential Information of the Procuring Entity to the extent reasonably required for the Subcontractor to perform its work under the Contract; and

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

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

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

a) Now or hereafter enters the public domain through no fault of the Receiving Party.

b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party.

c) otherwise lawfully becomes available to the Receiving Party from a third party that has no obligationof confidentiality.

17.6 The above provisions of this GCC Clause17 shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the System or anypart thereof.

17.7 **Unless otherwise specified in the SCC**, the provisions of this GCC Clause17 shall survive the termination, frwhatever reason, of the Contract for Four (4) years.

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

18 Representatives

18.1 Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, theProcuring Entity shall appoint and notify the Supplier in writing of the name of the Project Manager. The Procuring Entity may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Supplier without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the Supplier. **Unless otherwise specified in the SCC** (if any), the Project Manager shall have the authority to represent the Procuring Entity on all day-to-day matters relating to the System or arising from the Contract and shall normally be the person giving or receiving notices on behalf of the Procuring Entity pursuant to GCC Clause4.

18.2 Supplier's Representative

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

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

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

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

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

18.2.6 Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause18.2.5shall be deemed to be an act or exercise by the Supplier's Representative.

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18.3 Objections and Removals

18.3.1 The Procuring Entity may by notice to the Supplier object to any representative or person employed by the Supplier in the execution of the Contract who, in the reasonable opinion of the Procuring Entity, may have behaved inappropriately, be incompetent, or be negligent. The Procuring Entity shall provide evidence of thesame, where upon the Supplier shall remove such person from work on the System.

18.3.2 If any representative or person employed by the Supplier is removed in accordance with GCC Clause18.3.1,the Supplier shall, where required, promptly appoint a replacement.

19 Project Plan

19.1 In close cooperation with the Procuring Entity and based on the Preliminary Project Plan included in the Supplier's tender, the Supplier shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as **specified in the SCC** and/ or Technical Requirements. **Unless otherwise specified in the SCC**, within thirty (30) days from the Effective Date of the Contract, the Supplier shall present a Project Plan to the Procuring Entity. The Procuring Entity shall, within fourteen (14) days of receipt of the Project Plan, notify the Supplier of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Technical Requirements and/or the SCC (in this Clause 19.2 called"non-conformities" below). The Supplier shall, within five (5) days of receipt of such notification, correct theProject Plan and resubmit to the Procuring Entity. The Procuring Entity shall, within five (5) days of resubmission of the Project Plan, notify the Supplier of any remaining non-conformities. This procedure shallbe repeated as necessary until the Project Plan is free from non-conformities. When the Project Plan is free from non-conformities, the Procuring Entity shall provide confirmation in writing to the Supplier. This approved Project Plan ("the Agreed Project Plan") shall be contractually binding on the Procuring Entity andthe Supplier.

19.2 If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clauses 39and 40.

19.3 The Supplier shall undertake to supply, install, test, and commission the System in accordance with the AgreedProject Plan and the Contract.

19.4 **Unless otherwise specified in the SCC**, the Supplier shall submit to the Procuring Entity Monthly ProgressReports summarizing:

i) Results accomplished during the prior period.

ii) cumulative deviations to date from schedule of progress milestones as specified in the Agreed Project Plan.

iii) corrective actions to be taken to return to planned schedule of progress; proposed revisions to planned schedule.

iv) other issues and outstanding problems; proposed actions to be taken.

v) resources that the Supplier expects to be provided by the Procuring Entity and/ or actions to be takenby the Procuring Entity in the next reporting period.

vi) other issues or potential problems the Supplier foresees that could impact on project progress and/or effectiveness.

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

20 Sub-contracting

20.1 Appendix 3 (List of Approved Subcontractors) to the Contract Agreement specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the

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Procuring Entity. If no Subcontractors are listed for an item, the Supplier shall prepare a list of Subcontractors it considers qualified and wishes to be added to the list for such items. The Supplier may from time to time propose additions to or deletions from any such list. The Supplier shall submit any such list or any modification to the list to the Procuring Entity for its approval insufficient time so as not to impede the progress of work onthe System. The Procuring Entity shall not withhold such approval unreasonably. Such approval by the Procuring Entity of a Subcontractor (s) shall not relieve the Supplier from any of its obligations, duties, or responsibilities under the Contract.

20.2 The Supplier may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Clause 20.1. If the Supplier wishes to employ a Subcontractor not solisted, or subcontract an item not so listed, it must seek the Procuring Entity's prior approval under GCC Clause 20.3.

20.3 For items for which pre-approved Subcontractor lists have not been specified in Appendix 3 to the ContractAgreement, the Supplier may employ such Subcontractors as it may select, provided:

(i) the Supplier notifies theProcuring Entity in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Subcontractor; and

(ii) by the end of this period either the Procuring Entity has granted its approval in writing or fails to respond. The Supplier shall not engage any Subcontract to which the Procuring Entity has objected in writing prior to the end of the notice period. The absence of a written objection by the ProcuringEntity during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits the deemed approval of the Procuring Entity of Subcontractors not listedin the Contract Agreement, nothing in this Clause, however, shall limit the rights and obligations of either the Procuring Entity or Supplier as they are specified in GCC Clauses 20.1 and 20.2, or in Appendix3 of theContract Agreement.

21 Design and Engineering

21.1 Technical Specifications and Drawings

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

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

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

21.2 Codes and Standards

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

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

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

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

GCC Clauses 21.3.2 through 21.3.7 shall apply to those documents requiring the Project Manager's

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approval,but not to those furnished to the Project Manager for its review only.

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

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

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

21.3.6 If any dispute occurs between the Procuring Entity and the Supplier in connection with or arising out of thedisapproval by the Project Manager of any document and/ or any modification (s) to a document that cannotbe settled between the parties within a reasonable period, then, in case the Contract Agreement includes andnames an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance withGCC Clause 43.1 (Adjudication). If such dispute is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Supplier shallproceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the Supplier's view on the dispute and if the Procuring Entity has not given notice underGCC Clause 43.1.2, then the Supplier shall be reimbursed by the Procuring Entity for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connectionwith the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Achieving Operational Acceptance shall be extended accordingly. The Project Manager's approval, with or without modification of the document furnished by the Supplier, shallnot relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager orinaccurate information furnished in writing to the Supplier by or on behalf of the Procuring Entity.

21.3.7 The Supplier shall not depart from any approved document unless the Supplier has first submitted to the ProjectManager an amended document and obtained the Project Manager's approval of the document, pursuant to theprovisions of this GCC Clause 21.3. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 39 (Changes to the System) shall apply to such request.

22 Procurement, Delivery, and Transport

22.1 Subject to related Procuring Entity's responsibilities pursuant to GCC Clauses 10 and 14, the Supplier shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.

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

22.3 Early or partial deliveries require the explicit written consent of the Procuring Entity, which consent shall notbe unreasonably withheld.

22.4 Packaging and Transportation

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

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

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

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

22.4.4 For Goods supplied from outside Kenya:

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

a Two copies of the Supplier's invoice showing the description of the Goods, quantity, unit price, and totalamount.

b usual transportation documents.

c insurance certificate.

d certificate (s) of origin; and

e estimated time and point of arrival in Kenya and at the site.

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

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

a Two copies of the Supplier's invoice showing the Goods' description, quantity, unit price, and total amount.

b. Delivery note, railway receipt, or truck receipt.

c. certificate of insurance.

d. certificate (s) of origin; and

e. estimated time of arrival at the site.

22.4.6 Customs Clearance

a) The Procuring Entity will bear responsibility for, and cost of, customs clearance into Kenya in accordance with the particular Incoterm(s) used for Goods supplied from outside Kenya in the Price Schedules referred to by Article2 of the Contract Agreement.

b) At the request of the Procuring Entity, the Supplier will make available a representative or agent during the process of customs clearance in Kenya for goods supplied from outside Kenya. In the event of delays in customs clearance that are not the fault of the Supplier:

i) the Supplier shall be entitled to an extension in the Time for Achieving Operational Acceptance, pursuant to GCC Clause40.

ii) the Contract Price shall be adjusted to compensate the Supplier for any additional storagecharges that the Supplier may incur as a result of the delay.

23 Product Upgrades

23.1 At any point during performance of the Contract, should technological advances be introduced by the Supplier for Information Technologies originally offered by the Supplier in its tender and still to be delivered, the Supplier shall be obligated to offer to the Procuring Entity the latest versions of the available InformationTechnologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause39 (Changes to the System).

23.2 At any point during performance of the Contract, for Information Technologies still to be delivered, the Supplier will also pass on to the Procuring Entity any cost reductions and additional and/ or improved supportand facilities that it offers to other clients of the Supplier in Kenya, pursuant to GCC Clause39 (Changes to the System).

23.3 During performance of the Contract, the Supplier shall offer to the Procuring Entity all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services,within thirty (30) days of their availability from the Supplier to other clients of the Supplier in Kenya, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the Supplier in the Recurrent Costs tables in

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its tender.

23.4 **Unless otherwise specified in the SCC,** during the Warranty Period, the Supplier will provide at no additional cost to the Procuring Entity all new versions, releases, and updates for all Standard Software thatare used in the System, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in Kenya, and no later than twelve (12) months after they are released in the country of origin of the Software.

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

24 Implementation, Installation, and Other Services

24.1 The Supplier shall provide all Services specified in the Contract and Agreed Project Plan in accordance withthe highest standards of professional competence and integrity.

24.2 Prices charged by the Supplier for Services, if not included in the Contract, shall be agreed upon in advanceby the parties (including, but not restricted to, any prices submitted by the Supplier in the Recurrent Cost Schedules of its Tender) and shall not exceed the prevailing rates charged by the Supplier to other ProcuringEntity's in Kenya for similar services.

25 Inspections and Tests

25.1 The Procuring Entity or its representative shall have the right to inspect and/or test any components of the System, as specified in the Technical Requirements, to confirm their good working order and/ or conformityto the Contract at the point of delivery and/ or at the Project Site.

25.2 The Procuring Entity or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Procuring Entity shall bear all costs and expenses incurred in connection withsuch attendance, including but not limited to all inspection agent fees, travel, and related expenses.

25.3 Should the inspected or tested components fail to conform to the Contract, the Procuring Entity may reject the component (s), and the Supplier shall either replace the rejected component (s) or make alterations as necessary so that it meets the Contract requirements free of cost to the Procuring Entity.

25.4 The Project Manager may require the Supplier to carry out any inspection and/or test not specified in the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such inspection and/ or test shall be added to the Contract Price. Further, if such inspection and/ or test impedes the progress of work on the System and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Achieving Operational Acceptance and theother obligations so affected.

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

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26 Installation of the System

26.1 As soon as the System, or any Subsystem, has, in the opinion of the Supplier, been delivered, pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance withthe Technical Requirements, the SCC and the Agreed Project Plan, the Supplier shall so notify the ProcuringEntity in writing.

26.2 The Project Manager shall, within fourteen (14) days after receipt of the Supplier's notice under GCC Clause26.1, either issue an Installation Certificate in the form specified in the Sample Contractual Forms Section inthe tendering documents, stating that the System, or major component or Subsystem (if Acceptance by majorcomponent or Sub system is specified pursuant to the SCC for GCC Clause27.2.1), has achieved Installationby the date of the Supplier's notice under GCC Clause 26.1, or notify the Supplier in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/ or deficiencies that the Project Manager has notified the Supplier of. The Supplier shall then promptly carryout retesting of the System or Sub system and, when in the Supplier's opinion the System or Sub system is ready for Commissioning and Operational Acceptance Testing, notify the Procuring Entity in writing, in accordance with GCC Clause 26.1. The procedure set outin this GCC Clause shall be repeated, as necessary, until an Installation Certificate is issued.

26.3 If the Project Manager fails to issue the Installation Certificate and fails to inform the Supplier of any defectsand/or deficiencies within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 26.1,orif the Procuring Entity puts the System or a Subsystem in to production operation, then the System (or Subsystem) shall be deemed to have achieved successful Installation as of the date of the Supplier's notice or repeated notice, or when the Procuring Entity put the System in to production operation, as the case maybe.

27 Commissioning and Operational Acceptance

27.1 Commissioning

27.1.1 Commissioning of the System (or Subsystem if specified pursuant to the SCC for GCC Clause 27.2.1) shallbe commenced by the Supplier:

a) immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 26.2; or

b) as otherwise specified in the Technical Requirement or the Agreed Project Plan; or

c) immediately after Installation is deemed to have occurred, under GCC Clause 26.3.

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

27.2 Operational Acceptance Tests

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

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releases, and Goods that are added or field-modified after Operational Acceptance of the System.

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

27.3 Operational Acceptance

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

a the Operational Acceptance Tests, as specified in the Technical Requirements, and/or SCC and/or the Agreed Project Plan have been successfully completed; or

b the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Procuring Entity within the period from the date of Installation or any other agreed-upon period as specified in GCC Clause 27.2.2 above; or

c the Procuring Entity has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the Supplier shall notify the Procuring Entity and document such use.

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

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

a Issue an Operational Acceptance Certificate; or

b Notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or

c Issue the Operational Acceptance Certificate if the situation covered by GCC Clause 27.3.1 (b) arises.

27.3.4 The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or otherreasons for the failure of the Operational Acceptance Test that the Project Manager has notified the Supplier of. Once such remedies have been made by the Supplier, the Supplier shall notify the Procuring Entity, and the Procuring Entity, with the full cooperation of the Supplier, shall use all reasonable endeavors to promptlycarry out retesting of the System or Sub system. Upon the successful conclusion of the Operational AcceptanceTests, the Supplier shall notify the Procuring Entity of its request for Operational Acceptance Certification, in accordance with GCC Clause 27.3.3. The Procuring Entity shall then issue to the Supplier the Operational Acceptance Certification in accordance with GCC Clause 27.3.3 (a), or shall notify the Supplier of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set outin this GCC Clause27.3.4 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.

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

a The Procuring Entity may consider terminating the Contract, pursuant to GCC Clause41.2.2; or

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

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

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27.4 Partial Acceptance

27.4.1 If so specified in the SCC for GCC Clause 27.2.1, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem (s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate (s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Clause 27.4.2.

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

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

F. Guarantees and Liabilities

28 Operational Acceptance Time Guarantee

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

28.2 **Unless otherwise specified in the SCC**, if the Supplier fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the SCC for GCC Clause 27.2.1) within the time for achieving Operational Acceptance specified in the Implementation Schedule or the Agreed Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance), the Supplier shall pay to the Procuring Entity liquidated damages at the rate of one half of one percent per week as a percentage of the Contract Price (exclusive of Recurrent Costs if any), or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no eventexceed the amount often (10) percent of the Contract Price (exclusive of Recurrent Costs if any). Once the Maximum is reached, the Procuring Entity may consider termination of the Contract, pursuant to GCC Clause41.2.2.

28.3 **Unless otherwise specified in the SCC,** liquidated damages payable under GCC Clause 28.2 shall apply onlyto the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule and/or Agreed Project Plan. This Clause 28.3 shall not limit, however, any other rights or remedies the Procuring Entity may have under the Contract for other delays.

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

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29 Defect Liability

29.1 The Supplier warrants that the System, including all Information Technologies, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship that prevent the System and/or any of its components from fulfilling the Technical Requirementsor that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems. **Unless otherwise specified in the SCC**, there will be NO exceptions and/or limitations to this warranty withrespect to Software (or categories of Software). Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.

29.2 The Supplier also warrants that the Information Technologies, Materials, and other Goods supplied under theContract are new, unused, and in corporate all recent improvements in design that materially affect the System'sor Subsystem's ability to fulfill the Technical Requirements.

29.3 **Unless otherwise specified in the SCC,** the Supplier warrants that :(i) all Goods components to be incorporated into the System form part of the Supplier's and/or Subcontractor's current product lines, and (ii) they have been previously released to the market.

29.4 **Unless otherwise specified in the SCC**, the Warranty Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate OperationalAcceptance is provided for in the Contract) and shall extend for thirty-six (36) months.

29.5 If during the Warranty Period any defect as described in GCC Clause 29.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of theServices provided by the Supplier, the Supplier shall promptly, in consultation and agreement with the Procuring Entity regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Supplier shall, at its discretion, determine) such defect as well as any damage tothe System caused by such defect. Any defective Information Technologies or other Goods that have been replaced by the Supplier shall remain the property of the Supplier.

29.6 The Supplier shall not be responsible for the repair, replacement, or making good of any defect, or of anydamage to the System arising out of or resulting from any of the following causes:

a) Improper operation or maintenance of the System by the Procuring Entity.
b) Normal wear and tear.
c) use of the System with items not supplied by the Supplier, unless otherwise identified in the Technical Requirements, or approved by the Supplier; or
d) modifications made to the System by the Procuring Entity, or a third party, not approved by the Supplier.

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

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

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

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

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

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

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

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

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

30 Functional Guarantees

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

30.2 If, for reasons attributable to the Supplier, the System does not conform to the Technical Requirements or does not conform to all other aspects of the Contract, the Supplier shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Technical Requirements and meet all functional and performance standards. The Supplier shall notify the Procuring Entity upon completion of the necessary changes, modifications, and/or additions and shall request the Procuring Entity to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance. If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Procuring Entity may consider termination of the Contract, pursuant to GCC Clause 41.2.2, and forfeiture of the Supplier's Performance Security in accordance with GCC Clause 13.3 in compensation for the extra costs and delays likely to resultfrom this failure.

31 Intellectual Property Rights Warranty

31.1 The Supplier here by represents and warrants that:

a) The System as supplied, installed, tested, and accepted.

b) Use of the System in accordance with the Contract; and

c) Use of the Software and Materials provided to the Procuring Entity in accordance with the Contractdo not and will not infringe any Intellectual Property Rights held by any third party and that it has all

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necessary rights or at its sole expense shall have secured in writing all transfer so frights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Procuring Entity to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Supplier shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the System.

32 Intellectual Property Rights Indemnity

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

a) Installation of the System by the Supplier or the use of the System, including the Materials, in the country where the site is located.

b) copying of the Software and Materials provided by the Supplier in accordance with the Agreement; and

c) sale of the products produced by the System in any country, except to the extent that such losses, liabilities, and costs arise as a result of the Procuring Entity's breach of GCC Clause 32.2.

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

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

a) Is asserted by a parent, subsidiary, or affiliate of the Procuring Entity's organization.

b) Is a direct result of a design mandated by the Procuring Entity's Technical Requirements and the possibility of such infringement was duly noted in the Supplier's Tender; or

c) Results from the alteration of the System, including the Materials, by the Procuring Entity or anypersons other than the Supplier or a person authorized by the Supplier.

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

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

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

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32.6 Such indemnity shall not cover

a) any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract.

b) any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Procuring Entity or any other person contracted by the Procuring Entity, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.

32.7 Such indemnities shall also not apply:

a) If any claim of infringement is asserted by apparent, subsidiary, or affiliate of the Supplier's organization.

b) to the extent that any claim of infringement is caused by the alteration, by the Supplier, or any persons contracted by the Supplier, of the design, data, drawing, specification, or other documents or materials provided to the Supplier by the Procuring Entity, or any persons contracted by the Procuring Entity.

32.8 If any proceedings are brought or any claim is made against the Supplier arising out of the matters referred toin GCC Clause 32.5, the Supplier shall promptly give the Procuring Entity notice of such proceedings or claims, and the Procuring Entity may at its own expense and in the Supplier's, name conduct such proceedingsor claim and any negotiations for the settlement of any such proceedings or claim. If the Procuring Entity failsto notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Procuring Entity has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall makeno admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Procuring Entity's request, afford all available assistance to the Procuring Entity in conducting such proceedings or claim and shall be reimbursed by the Procuring Entity for all reasonable expenses incurred in so doing.

33 Limitation of Liability

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

a) the Supplier shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring Entity; and

b) the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Supplier to indemnify the Procuring Entity with respect to intellectual property rights infringement.

G. Risk Distribution

34 Transfer of Ownership

34.1 With the exception of Software and Materials, the ownership of Information Technologies and other Goodsshall be transferred to the Procuring Entity at the time of Delivery or otherwise under terms that may be agreedupon and specified in the Contract Agreement.

34.2 Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 15 (Copyright) and any elaboration in the Technical Requirements. Ownership of the Supplier's Equipment used by the Supplier and its Subcontractors in connection with the Contract shall remain with the Supplier or its Subcontractors.

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35 Care of the System

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

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

a) (in so far as they relate to the country where the Project Site is located) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, in so far as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 37;

b) Any use not in accordance with the Contract, by the Procuring Entity or any third party.

c) Any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Procuring Entity, or any such matter for which the Supplier has disclaimed responsibility in accordance with GCC Clause 21.1.2, the Procuring Entity shall pay to the Supplier all sums payable in respect of the System or Subsystems that have achieved Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If the Procuring Entity requests the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Supplier shall make good the same at the cost of the Procuring Entity in accordance with GCC Clause 39. If the Procuring Entity does not request the Supplier in writing to make good any loss or damage to the System there by occasioned, the Procuring Entity shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the System there by lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, the Procuring Entity shall terminate the Contract pursuant to GCC Clause 41.1.

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

36 Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

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

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

36.3 If any proceedings are brought or any claim is made against the Procuring Entity that might subject the Supplierto liability under GCC Clause 36.2, the Procuring Entity shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the sameon its own behalf. Unless the Supplier has so failed to notify the

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Procuring Entity within the twenty-eight (28) day period, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonableexpenses incurred in so doing. The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred indefending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors maysuffer as a result of the death or personal injury of any person or loss of or damage to property of the ProcuringEntity, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 37 (Insurances), provided that such fire, explosion, or other perils were not caused by any act or failure of the Supplier.

36.4 If any proceedings are brought or any claim is made against the Supplier that might subject the Procuring Entity to liability under GCC Clause 36.4, the Supplier shall promptly give the Procuring Entity notice of such proceedings or claims, and the Procuring Entity may at its own expense and in the Supplier's, name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Procuring Entity fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Procuring Entity has so failed to notify the Supplier within the twenty-eight (28) days,the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim.The Supplier shall, at the Procuring Entity's request, provide all available assistance to the Procuring Entity inconducting such proceedings or claim and shall be reimbursed by the Procuring Entity for all reasonable expenses incurred in so doing.

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

37 Insurances

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

a) Cargo Insurance During Transport

as applicable, 110 percent of the price of the Information Technologies and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site.

b) Installation "All Risks" Insurance

as applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under "all risks" insurance policies of this type by reputable insurers) occurring prior to Operational Acceptance of the System.

c) Third-Party Liability Insurance

On terms as **specified in the SCC,** covering bodily injury or death suffered by third parties (including the Procuring Entity's personnel) and loss of or damage to property (including the Procuring Entity's property and any Subsystems that have been accepted by the Procuring Entity) occurring in connection with the supply and installation of the Information System.

d) Automobile Liability Insurance

In accordance with the statutory requirements prevailing in Kenya, covering use of all vehicles used by the Supplier or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

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

37.2 The Procuring Entity shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1, except for the Third-Party Liability, and the Supplier's Subcontractors shall benamed as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1 exceptfor Cargo Insurance During Transport. All insurer's rights of subrogation against such co-insured for losses orclaims arising out of the performance of the Contract shall be waived under such policies.

37.3 The Supplier shall deliver to the Procuring Entity certificates of insurance (or copies of the insurance policies)as evidence that the required policies are in full force and effect. The Supplier shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Supplier.

37.4 If the Supplier fails to take out and/or maintain in effect the insurance referred to in GCC Clause 37.1, the Procuring Entity may takeout and maintain in effect any such insurance and may from time to time deduct from any amount due to the Supplier under the Contract any premium that the Procuring Entity shall have paidto the insurer or may otherwise recover such amount as a debt due from the Supplier.

37.5 Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clause 37, and all monies payable by any insurers shallbe paid to the Supplier. The Procuring Entity shall give to the Supplier all such reasonable assistance as may be required by the Supplier in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Procuring Entity's interest is involved, the Supplier shall not give any releaseor make any compromise with the insurer without the prior written consent of the Procuring Entity. With respect to insurance claims in which the Supplier's interest is involved, the Procuring Entity shall not give anyrelease or make any compromise with the insurer without the prior written consent of the Supplier.

38 Force Majeure

38.1 "Force Majeure" shall mean any event beyond the reasonable control of the Procuring Entity or of the Supplier,as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:

a) war, hostilities, or war like operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war.

b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts.

c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or dejure or defacto authority or ruler, or any other act or failure to act of any local state or national government authority.

d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague.

e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster.

f) failure, by the Supplier, to obtain the necessary export permit (s) from the governments of the Country(s) of Origin of the Information Technologies or other Goods, or Supplier's Equipment provided that the Supplier has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of the System and all of its components for receipt of the necessary export permits.

38.2 If either party is prevented, hindered, or delayed from or in performing any of its obligations under the

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Contractby an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.

38.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Achieving Operational Acceptance shall be extended in accordance with GCC Clause 40 (Extension of Time for AchievingOperational Acceptance).

38.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Clause 38.6.

38.5 No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:

a) Constitute a default or breach of the Contract.

b) (Subject to GCC Clauses 35.2, 38.3, and 38.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance, if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.

38.6 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of morethan sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of oneor more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.

38.7 In the event of termination pursuant to GCC Clause 38.6, the rights and obligations of the Procuring Entity and the Supplier shall be as specified in GCC Clauses 41.1.2 and 41.1.3.

38.8 Notwithstanding GCC Clause 38.5, Force Majeure shall not apply to any obligation of the Procuring Entity tomake payments to the Supplier under this Contract.

H. Change in Contract Elements

39 Changes to the System

39.1 Introducing a Change

39.1.1 Subject to GCC Clauses 39.2.5 and 39.2.7, the Procuring Entity shall have the right to propose, and subsequently require, the Project Manager to order the Supplier from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in, or from the System (interchangeably called “Change”), provided that such Change falls within the general scope of the System, does not constitute unrelated work, and is technically practicable, taking into account both the state of advancement of the System and the technical compatibility of the Change envisaged with the nature of the System as originally specified in the Contract.

39.1.2 A Change may involve, but is not restricted to, the substitution of updated Information Technologies and related Services in accordance with GCC Clause 23 (Product Upgrades).

39.1.3 The Supplier may from time to time during its performance of the Contract propose to the Procuring Entity (with a copy to the Project Manager) any Change that the Supplier considers necessary or desirable to improvethe quality or efficiency of the System. The Procuring Entity may at its discretion approve or reject any Changeproposed by the Supplier.

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39.1.4 Notwithstanding GCC Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Supplier in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Achieving Operational Acceptance.

39.1.5 The procedure on how to proceed with and execute Changes is specified in GCC Clauses 39.2 and 39.3, and further details and sample forms are provided in the Sample Contractual Forms Section in the tendering documents.

39.1.6 Moreover, the Procuring Entity and Supplier will agree, during development of the Project Plan, to a date priorto the scheduled date for Operational Acceptance, after which the Technical Requirements for the System shallbe "frozen." Any Change initiated after this time will be dealt with after Operational Acceptance.

39.2 Changes Originating from Procuring Entity

39.2.4 If the Procuring Entity proposes a Change pursuant to GCC Clauses 39.1.1, it shall send to the Supplier a "Request for Change Proposal," requiring the Supplier to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

a Brief description of the Change.

b Impact on the Time for Achieving Operational Acceptance.

c Detailed estimated cost of the Change.

d Effect on Functional Guarantees (if any)

e Effect on any other provisions of the Contract.

39.2.5 Prior to preparing and submitting the "Change Proposal," the Supplier shall submit to the Project Manager a "Change Estimate Proposal," which shall be an estimate of the cost of preparing the Change Proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Supplier's Change Estimate Proposal, the Procuring Entity shall do one of the following:

a accept the Supplier's estimate with instructions to the Supplier to proceed with the preparation of theChange Proposal.

b advise the Supplier of any part of its Change Estimate Proposal that is unacceptable and request theSupplier to review its estimate.

c advise the Supplier that the Procuring Entity does not intend to proceed with the Change.

39.2.6 Upon receipt of the Procuring Entity's instruction to proceed under GCC Clause 39.2.2 (a), the Supplier shall,with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Clause
39.2.1. The Supplier, at its discretion, may specify a validity period for the Change Proposal, after which if the Procuring Entity and Supplier has not reached agreement in accordance with GCC Clause 39.2.6, then GCC Clause 39.2.7 shall apply.

39.2.7 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the nature of the Change is such that the Contract rates and prices are in equitable,the parties to the Contract shall agree on other specific rates to be used for valuing the Change.

39.2.8 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate impact of compliance with the Request for Change Proposal and with all other Change Orders that have already becomebinding upon the Supplier under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen (15) percent, the Supplier may give a written notice of objection to this Request for Change Proposal prior to furnishing theChange Proposal. If the Procuring Entity accepts the Supplier's objection, the Procuring Entity shall withdrawthe proposed Change and shall notify the Supplier in writing of its

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acceptance.

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

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

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

39.3 Changes Originating from Supplier

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

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

39.4.1 The value engineering proposal shall, at a minimum, include the following.

(a) The proposed change (s), and a description of the difference to the existing Contract requirements.

(b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and

(c) a description of any effect(s) of the change on performance/ functionality.

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

a) accelerates the delivery period; or

b) reduces the Contract Price or the life cycle costs to the Procuring Entity; or

c) improves the quality, efficiency, safety or sustainability of the systems; or

d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the systems.

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

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a) a reduction of the Contract Price; the amount to be paid to the Supplier shall be the percentagespecified 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.

40 Extension of Time for Achieving Operational Acceptance

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

a) Any Change in the System as provided in GCC Clause39 (Change in the Information System).

b) Any occurrence of Force Majeure as provided in GCC Clause 38 (Force Majeure).

c) Default of the Procuring Entity; or

d) Any other matter specifically mentioned in the Contract; by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Supplier.

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

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

41 Termination

41.1 Termination for Procuring Entity's Convenience

41.1.1 The Procuring Entity may at any time and upon issuance of a Sixty (60) day notice terminate the Contract for any reason by giving the Supplier a noticeof termination that refers to this GCC Clause 41.1.

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

a) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition.

b) terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to GCC Clause (d)
(ii) below.

c) Remove all Supplier's Equipment from the site, repatriate the Supplier's and its Sub contractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind.

d) In addition, the Supplier, subject to the payment specified in GCC Clause 41.1.3, shall

i) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination.

ii) to the extent legally possible, assign to the Procuring Entity all right, title, and benefit of the Supplierto the System, or Subsystem, as at the date of termination, and, as may be required by the ProcuringEntity, in any subcontracts concluded between the Supplier and its Subcontractors.

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iii) deliver to the Procuring Entity all nonproprietary drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

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

a) The Contract Price, properly attributable to the parts of the System executed by the Supplier as of the date of termination.

b) The costs reasonably incurred by the Supplier in the removal of the Supplier's Equipment from the site and in the repatriation of the Supplier's and its Subcontractors 'personnel.

c) any amount to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges.

d) costs incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 41.1.2(a); and

e) the cost of satisfying all other obligations, commitments, and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GCC Clauses 41.1.3 (a) through (d) above.

41.2 Termination for Supplier's Default

41.2.1 The Procuring Entity, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons there forto the Supplier, referring to this GCC Clause41.2:

a) If the Supplier becomes bankrupt or in solvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Supplier takes or suffers any other analogous action in consequence of debt;

b) If the Supplier assigns or transfers the Contractor any right or interest, there in in violation of the provision of GCC Clause 42 (Assignment); or

If the Supplier, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a. of the Appendix to the GCC, in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract.

41.2.2 If the Supplier:

c) Has abandoned or repudiated the Contract.

d) Has without valid reason failed to commence work on the System promptly.

e) Persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause.

f) Refuses or is unable to provide sufficient Materials, Services, or labor to execute and complete the System in the manner specified in the Agreed Project Plan furnished under GCC Clause 19 at rates of progress that give reasonable assurance to the Procuring Entity that the Supplier can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended; then the Procuring Entity may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same with in fourteen (14) days of its receipt of such notice, then the Procuring Entity may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GCC Clause 41.2.

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

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g) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that part of the System already executed or any work required to leave the site in a clean and safe condition.

h) terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to GCC Clause (d)below.

i) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination.

j) to the extent legally possible, assign to the Procuring Entity all right, title and benefit of the Supplier to the System or Subsystems as at the date of termination, and, as may be required by the Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors.

k) deliver to the Procuring Entity all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the System.

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

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

41.2.6 If the Procuring Entity completes the System, the cost of completing the System by the Procuring Entity shallbe determined. If the sum that the Supplier is entitled to be paid, pursuant to GCC Clause 41.2.5, plus the reasonable costs incurred by the Procuring Entity in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess. If such excess is greater than the sums due the Supplier under GCC Clause41.2.5, the Supplier shall pay the balance to the Procuring Entity, and if such excess is less than the sums due the Supplier under GCC Clause 41.2.5, the Procuring Entity shall pay the balance to the Supplier. The Procuring Entity and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

41.3 Termination by Supplier

41.3.1 If:

a) the Procuring Entity has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause **pursuant to the SCC,** or commits a substantial breach of the Contract, the Supplier may give a notice to the Procuring Entity that requires payment of such sum, with interest on this sum as stipulated in GCC Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Procuring Entity to remedy the same, as the case may be. If the Procuring Entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Supplier's notice; or

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

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obligations under the Contract for any reason attributable to the Procuring Entity within twenty-eight (28) days of the said notice, the Supplier may by a further notice to the Procuring Entity referring to this GCC Clause 41.3.1, forth with terminate the Contract.

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

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

a. Cease all further work, except for such work as may be necessary for the purpose of protecting that partof the System already executed, or any work required to leave the site in a clean and safe condition.
b. Terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to Clause 41.3.3 d(ii).
c. remove all Supplier's Equipment from the site and repatriate the Supplier's and its Subcontractor'spersonnel from the site.
d. In addition, the Supplier, subject to the payment specified in GCC Clause 41.3.4, shall:

i) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination.
ii) to the extent legally possible, assign to the Procuring Entity all right, title, and benefit of the Supplier to the System, or Subsystems, as of the date of termination, and, as may be required bythe Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors.
iii) to the extent legally possible, deliver to the Procuring Entity all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

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

41.3.5 Termination by the Supplier pursuant to this GCC Clause 41.3 is without prejudice to any other rights or remedies of the Supplier that may be exercised in lieu of or in addition to rights conferred by GCC Clause41.3.

41.4 In this GCC Clause 41, the expression “portion of the System executed” shall include all work executed, Services provided, and all Information Technologies, or other Goods acquired (or subject to a legally binding Obligation to purchase) by the Supplier and used or intended to be used for the purpose of the System, up to and including the date of termination.

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

42 Assignment

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

I. Settlement of Disputes

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43 Settlement of Disputes

43.1 Adjudication

43.1.1 If any dispute of any kind what so ever shall arise between the Procuring Entity and the Supplier in connectionwith or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the System (whether during the progress of implementation or after its achieving Operational Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute **by mutual consultation**. If the parties fail to resolve such a dispute by mutual consultation within fourteen (14)days after one party has notified the other in writing of the dispute, then, if the Contract Agreement in Appendix2 includes and names an Adjudicator, the dispute shall, within another fourteen (14) days, be referred in writing by either party to the Adjudicator, with a copy to the other party. If there is no Adjudicator specified in the Contract Agreement, the mutual consultation period stated above shall last twenty-eight (28)days (instead of fourteen), upon expiry of which either party may move to the notification of arbitration pursuant to GCC Clause43.2.1.

43.1.2 The Adjudicator shall give his or her decision in writing to both parties within twenty-eight (28) days of thedispute being referred to the Adjudicator. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Procuring Entity or the Supplier within fifty-six (56) daysof such reference, the decision shall become final and binding upon the Procuring Entity and the Supplier. Any decision that has become final and binding shall be implemented by the parties forth with.

43.1.3 The Adjudicator shall be paid an hourly fee at the rate specified in the Contract Agreement plus reasonable expenditures incurred in the execution of duties as Adjudicator, and these costs shall be divided equally between the Procuring Entity and the Supplier.

43.1.4 Should the Adjudicator resign or die, or should the Procuring Entity and the Supplier agree that the Adjudicator is not fulfilling his or her functions in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Procuring Entity and the Supplier. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be appointed at the request of either party by the Appointing Authority **specified in the SCC,** or, if no Appointing Authority is **specified in SCC,** the Contract shall, from this point onward and until the parties may otherwise agree on an Adjudicator or an Appointing Authority, be implemented as if there is no Adjudicator.

43.2 Arbitration

43.2.1 If

a) the Procuring Entity or the Supplier is dissatisfied with the Adjudicator's decision and acts before this decision has become final and binding pursuant to GCC Clause 43.1.2, or

b) the Adjudicator fails to give a decision within the allotted time from referral of the dispute pursuant to GCC Clause 43.1.2, and the Procuring Entity or the Supplier acts within the following fourteen (14) days, or

c) in the absence of an Adjudicator from the Contract Agreement, the mutual consultation pursuant to GCC Clause 43.1.1 expires without resolution of the dispute and the Procuring Entity or the Supplier acts within the following fourteen (14) days, then either the Procuring Entity or the Supplier may act to give notice to the other party, with a copy for information to the Adjudicator incase an Adjudicator had been involved, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

43.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Clause 43.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after Installation of the Information System.

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

43.3 Notwithstanding any reference to the Adjudicator or arbitration in this clause,

a) The parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.

b) The Procuring Entity shall pay the Supplier any monies due the Supplier.

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B. SPECIAL CONDITIONS OF CONTRACT

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract

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

A. *Contract and Interpretation*

1. Definitions (GCC Clause1)

GCC 1.1(c)(xiv)	"**Business Continuity**" refers to Provider's documented plans and Procedures to maintain essential business functions and minimize service disruptions during and after a significant business disruption.
GCC 1.1 (b) (i)	The Procuring Entity is: **Central Bank of Kenya**
GCC 1.1 (b) (ii)	The Project Manager is **Director, General Services Department, Central Bank of Kenya**
GCC 1.1(d)(vii)	User Acceptance Testing" refers to the test and validation of the system by the end user or business representative confirming that the system meets the business requirements functional specifications and user needs before achieving the full operational acceptance of the system
GCC 1.1(d)(viii)	"Maintenance period" refers to the period after the end of the defect liability period
GCC 1.1 (e) (ix)	***There are no Special Conditions associated with GCC 1.1 (e) (ix).*** ***vi) "Technical Requirements" means the Technical Requirements in Section V of the tendering documents.*** ***vii) "Implementation Schedule" means the Implementation Schedule in Section V of the tendering documents.***
GCC 1.1 (e) (xii)	The Post-Warranty Services Period is ***[Please insert the number of months here]*** starting with the completionof the Warranty Period.
GCC 2.1	a) The Tender Documents for the tender shall form part of this Agreement constituting the following priority in the event of a conflict. i. Contract agreement form; ii. Tender Form; iii. Price Schedule or bill of quantities submitted by Contractor iv. Schedule of Requirements v. Technical Specifications vi. General and special Conditions of contract vii. Notification of intention to enter into a contract dated …. viii. Acceptance letter dated …. ix. Notification of award dated ……
3.5	As updated from time to time

2. Joint Venture (GCC Clause 3.9)

GCC 3.9	----------shall be the leader of the JV

4.0 Notices (GCC Clause 4)

GCC 4.3	Director General Services Department, Central Bank of Kenya, Haile Selassie Avenue, P.O. Box 60000-00200 Nairobi. For Electronic Data Interchange (EDI) the Procuring Entity and Supplier will use the following standards, protocols, addresses, and procedures: ***NA***

B. Subject Matter of Contract

3. Scope of the System (GCC Clause 7)

GCC 7.1	No limitation
GCC 7.3	The Supplier's obligations under the Contract will include the following recurrent cost items, as identified in the Recurrent Cost tables in the Supplier's Tender: as per **appendix 8.** The summary list of services/deliverables are defined in **appendix 9** Three years Software support shall commence upon Full operational acceptance and sign off Post Migration support shall commence upon project implementation signoff.

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

GCC 8.1	The Supplier shall commence work on ----------

5. Supplier's Responsibilities (GCC Clause 9)

GCC 9.5	In addition to the responsibilities of the supplier. He shall perform the following obligations	
	Gap Area	Proposed Clause Addition
	Cybersecurity and Data Protection	"The Supplier shall ensure compliance with applicable data protection laws and maintain security controls aligned with recognized cybersecurity frameworks (e.g., ISO 27001). Any data breaches must be reported to the Procuring Entity within 24 hours."
	Subcontractor Oversight	"The Supplier shall conduct periodic audits of its subcontractors and submit compliance reports to the Procuring Entity."
	Business Continuity and Resilience	"The Supplier shall develop, test, and maintain a Business Continuity Plan (BCP to ensure continuity of services during disruptions."
	Performance Monitoring and Reporting	"The Supplier shall submit monthly performance reports detailing progress, risk and mitigations. Critical delays must be escalated immediately to the Procuring Entity."
	Training and Knowledge Transfer	"The Supplier shall provide comprehensive training sessions for the Procuring Entity's personnel on the operation, maintenance, and administration of the System."
	Sustainable Procurement	"The Supplier shall adhere to sustainable procurement guidelines, including reporting on environmental, social, and governance (ESG) compliance quarterly."
	Risk Management Responsibilities	"The Supplier shall maintain a Risk Register throughout the contract duration and update the Procuring Entity monthly on risk mitigation actions."
GCC 9.8	The referenced clause 9.8 Pursuant to paragraph 2.2e. of Appendix B to the General Conditions; is hereby amended to read; Pursuant to section 1.1 (a) vi & vii of the General Conditions to the Contract; the Supplier shall permit and shall cause Its subcontractors and sub-consultants to permit, the PPRA and/or persons appointed by the PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Supplier's and its Sub contractors' and sub-consultants' attention is drawn to Sub-Clause 6.1 which provides, inter alia, that acts intended to	

	materially impede the exercise of the PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the PPRA's prevailing sanctions procedures).
GCC 9.9	Conformity to sustainable procurement contractual provisions ICT to provide during tendering
GCC 9.10	Supplier Responsibility: a) Maintain a current Business Continuity Plan (BCP) and Disaster Recovery Plan (DRP) designed to ensure the continued performance of its obligations under this Agreement. b) Review and update the BCP/DRP annually or more frequently as needed. c) Test the BCP/DRP on a regular basis (at least annually) and document the test results. d) Through mutual agreement provide the Procuring Entity with a summary copy of the documented test results upon request. These results should detail the scope of the testing, any identified weaknesses, and the planned corrective actions. e) In addition (or "Furthermore"), the supplier shall participate in mutually agreed-upon Business Continuity/Disaster Recovery test exercises conducted by the Procuring Entity at least [frequency] (e.g., annually). f) Communication During Disruptions: Provider shall promptly within (8hours) notify the Procuring Entity of any material service disruption, communicate the estimated restoration timeframe, and keep the Procuring Entity updated on the recovery process. g) Service Level Credits and Compensation for Downtime Beyond SLA: In the event of a service disruption exceeding agreed-upon RTOs or RPOs due to a non-Force Majeure event, Procuring Entity shall be entitled to Service Level Credits as defined in of this Agreement.
GCC 10.12	Procuring Entity's responsibility, IT to advise during tendering

C. PAYMENT

6. Contract Price (GCC Clause 11)

GCC 11.2	Adjustments to the Contract Price shall be as follows***: "This is not applicable.***

7. Terms of Payment (GCC Clause 12)

GCC 12.1	Subject to the provisions of GCC Clause 12 (Terms of Payment), the Procuring Entity shall pay the Contract Price to the Supplier according to the categories and in the manner specified below. Only the categories Advance Payment and Complete System Integration relate to the entire Contract Price. In other payment categories, the term "total Contract Price" means the total cost of goods or services under the specific payment category. Within each such category, the Contract Implementation Schedule may trigger pro-rata payments for the portion of the total Contract Price for the category corresponding to the goods or services actually Delivered, Installed, or
	Operationally Accepted, at unit prices and in the currencies specified in the Price Schedules of the Contract Agreement.- To be stated in the contract (a) Advance Payment A maximum of twenty percent (20%) of the Contract Price for supply, delivery, installation, testing and commission, exclusive of all Recurrent Costs,may be paid against receipt of a claim accompanied by the Advance Payment Security specified in GCC Clause 13.2 (b) Information Technologies, Materials, and other Goods, with the exception of CustomSoftware and Custom Materials: sixty percent (60%) of the total or pro-rata Contract Price for this category againstDelivery

	ten percent (10%) of the same price against Installation ten percent (10%) of the same price against Operational Acceptance. (c) Custom Software and Custom Materials: sixty percent (60%) of the total or pro-rata Contract Price for this category againstInstallation twenty percent (20%) of the same price against Operational Acceptance. (d) Services other than Training: eighty percent (80%) of the pro-rata Contract Price for services performed will be paidmonthly in arrears, on submission and Procuring Entity's approval of invoices: **(see appendix 8 attached) To be stated in the contract**
	(e) Training - **(see appendix 8 attached) To be stated in the contract** thirty percent (30%) of the total Contract Price for training services at the start of the full training program fifty percent (50%) of the pro-rata Contract Price for training services performed will be paid monthly in arrears, on submission and approval of appropriate invoices. (f) Complete System Integration ten percent (10%) of the entire Contract Price, exclusive of all Recurrent Costs, as final payment against Operational Acceptance of the System as an integrated whole. (g) Recurrent Costs one hundred percent (100%) of the price of the services actually delivered will be paid quarterly in arrears, on submission and Procuring Entity's approval of invoices. ***[Note:*** *If a separate Operational Acceptance for the System as an integrated whole is not required, increase by 10% points the final payment percentages of all other goods and services above.]*
GCC 12.3	The Procuring Entity shall pay to the Supplier interest on the delayed payments for the certified invoice at a rate of:[***insert: "3%" above the prevailing Central Bank rate per annum].***
GCC 12.4	The Supplier will invoice promptly to the procurement division for the Procuring Entity in Kenya Shilling and payment for goods and services will be made in Kenya Shilling
GCC 12.5	Not Applicable

8. Securities (GCC Clause 13)

GCC 13.2	Advance Payment allowed for up to 20 percent (20%)
GCC 13.3.1	Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Tenderer shall furnish the Bank with a performance security of 5% of the value of the tender sum provided by a Commercial Bank operating in Kenya and supervised by the Central Bank of Kenya

GCC 13.3.4	During the Warranty Period (i.e., after Operational Acceptance of the System), the Performance Security shall be reduced to 2 Percent ***[2%]*** percent of the Contract Price, excluding any Recurrent Costs.

D. INTELLECTUAL PROPERTY

9. Copyright (GCC Clause 15)

GCC 15.1	***Provided that the intellectual property for the system or materials developed by the Procuring Entity including value engineering in the course of implementation remains with the procuring entity***
GCC 15.2	***Within 15 days***
GCC 15.3	***the Procuring Entity may assign to entities under the governance structure of the Procuring Entity***

GCC 15.4	***There are no Special Conditions of Contract applicable to GCC Clause 15.4***

GCC 15.5	***CBK shall have full rights to the software /source code of the integration flows/ APIs which will be developed by the vendor. Working and latest copy of the Source Code shall be delivered to CBK for safe custody as part of the go-live sign-off and any subsequent updates.***

10. Software License Agreements (GCC Clause 16)

GCC 16.1 (a) (iv)	***Special Conditions of Contract applicable to GCC Clause 16.1 (a) (iv)*** *Except to the extent that the Intellectual Property Rights in the Software vest in the Procuring Entity, the Supplier here by, subject to the terms, conditions and limitations issued by the manufacturer of the software, grants to the Procuring Entity license to access and use the Software, including all inventions, designs, and marks embodied in the Software.*
GCC 16.1 (b) (vi)	***There are no Special Conditions of Contract applicable to GCC Clause 16.1 (b) (vi)***
GCC 16.1 (b) (vii)	***There are no Special Conditions of Contract applicable to GCC Clause 16.1 (b) (vii)***
GCC 16.1(vii)	***may be disclosed or reproduced for use by other affiliates of the bank***
GCC 16.2	***within 14 days***

11. Confidential Information (GCC Clause 17)

GCC 17.1	***There are no Special Conditions of Contract applicable to GCC Clause 17.1***
GCC 17.7	The provisions of this GCC Clause17 shall survive the termination, for whatever reason, of the Contract.

12. Representatives (GCC Clause 18)

GCC 18.3	***Upon the decision by the Procuring Entity to remove a representative, the Supplier shall provide a replacement immediately but no longer than Fourteen (14) days***

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

13. Project Plan (GCC Clause 19)

GCC 19.1	Chapters in the Project Plan shall address the following subject**:** ***(a) Project Organization and Management Sub-Plan, including management authorities, responsibilities, and contacts, as well as task, time and resource-bound schedules (in GANTT format);*** ***(b) Implementation Sub-Plan;*** ***(c) Training Sub-Plan;*** ***(d) Testing and Quality Assurance Sub-Plan;*** ***(e) Warranty Defect Repair and Technical Support Service Sub-Plan*** ***Further details regarding the required contents of each of the above chapters are contained in the Technical Requirements, (insert: reference)].***
GCC 19.5	***The Supplier shall submit to the Procuring Entity:*** ***(i) monthly inspection and quality assurance reports*** ***(ii) monthly training participants test results*** ***(iii) monthly log of service calls and problem resolutions*** ***In addition to the above-mentioned reports, the supplier should submit reports on:***

Report Name	Purpose:
1	**Project Progress**
2	**Risk Management**
3	**System Performance and Uptime**
4	**Cybersecurity and Data Protection**
5	**Compliance and SLA Monitoring**
6	**Financial and Invoicing**
7	**Training and Knowledge Transfer**
8	**Change Management**

14. Design and Engineering (GCC Clause 21)

GCC 21.3.2	***There are no Special Conditions of Contract applicable to GCC Clause 21.3.2. "none":***

15. Product Upgrades (GCC Clause 23)

GCC 23.4	***There are no Special Conditions of Contract applicable to GCC Clause 23.4.***

16. Inspections and Tests (GCC Clause 25)

GCC 25.6	***26.6.1 Rights to Audit*** ***The Procuring Entity (or its authorized representatives, including external auditors) shall have the right to audit, inspect, and review all books, records, accounts, systems, documents, and operations maintained by the Supplier, its subcontractors, and agents, that relate to the performance of the Contract.*** ***25.6.2 Scope of Audit*** ***The audit may cover the following areas:*** ***a) Compliance with the terms and conditions of the Contract.*** ***b) Financial records, including invoices, payments, expenses, and cost breakdowns.*** ***c) Operational performance, including adherence to agreed timelines, milestones, and service levels.*** ***d) Data protection, cybersecurity practices, and information security controls.*** ***e) Subcontractor and third-party compliance with contractual obligations.*** ***f) Environmental, Social, and Governance (ESG) requirements, where applicable.*** ***25.6.3 Frequency and Notice*** ***a) Audits may be conducted upon reasonable notice of at least [7 to 14 days] to the Supplier.*** ***b) The Procuring Entity may conduct audits annually or at any time in response to reasonable concerns, disputes, or regulatory obligations.*** ***c) Audits may be conducted during normal business hours unless otherwise agreed or in cases of suspected fraud or breaches of contract.*** ***25.6.4 Access to Records and Facilities*** ***The Supplier shall grant full and unrestricted access to:*** ***a) All relevant documents, systems, and financial records related to the Contract.*** ***b) Facilities, sites, or data centres used to perform obligations under the Contract.*** ***c) Subcontractor operations and records where applicable.*** ***The Supplier shall cooperate fully during the audit process and provide reasonable assistance as required.*** ***25.6.5 Audit Costs*** ***a) The cost of any routine audit shall be borne by the Procuring Entity.*** ***b) If an audit reveals material non-compliance, misrepresentation, or overbilling, the Supplier shall reimburse the Procuring Entity for:*** ***a. The full cost of the audit.*** ***b. Any overpaid amounts, along with applicable interest or penalties, as determined in the Contract.*** ***25.6.6 Retention of Records*** ***The Supplier shall:*** ***a) Retain all records, documents, and data related to the Contract for a period of [3 to 7 years] after the Contract's expiration or termination.*** ***b) Ensure that records remain accessible and legible during this retention period, including electronic records.*** ***25.6.7 Confidentiality of Audit Information*** ***a) All information obtained during the audit shall be treated as confidential and used solely for the purpose of verifying compliance with the Contract.*** ***b) The Procuring Entity and its auditors shall not disclose such information to third parties except where required by law, regulation, or court order.*** ***25.6.8 Corrective Actions*** ***a) If an audit identifies non-compliance, breaches, or deficiencies, the Supplier shall:***

	a. Remedy the identified issues within [30 days] or an agreed timeframe. ***b. Implement corrective and preventive measures to avoid recurrence.*** ***b) The Procuring Entity reserves the right to impose penalties, withhold payments, or terminate the Contract if non-compliance is not rectified within the agreed period.*** ***25.6.9 Subcontractor Audits*** ***a) The Supplier shall ensure that all subcontractors engaged in the Contract provide the Procuring Entity with equivalent audit rights as outlined in this clause.*** ***b) The Supplier remains fully responsible for ensuring subcontractor compliance.*** ***25.6.10 Regulatory Compliance Audits*** ***If required by law, regulation, or government authorities, the Procuring Entity may conduct audits to ensure compliance with:*** ***c) Applicable laws and regulations, including data protection and cybersecurity laws.*** ***d) Financial reporting standards.*** ***e) Industry best practices or certifications (e.g., ISO 27001, NIST, SOC 2 compliance).*** ***25.6.11 Human Resources Security*** ***Purpose*** ***This clause mitigates risks of insider threats, unauthorized access, and data breaches by ensuring personnel are properly vetted, trained, and monitored.*** ***25.6.12 Pre-Employment Screening*** ***The Supplier shall conduct background checks, including identity verification, employment history, and criminal records, for all personnel accessing the Procuring Entity's systems, data, or facilities. Evidence of screening shall be maintained and shared upon request.*** ***25.6.13 Confidentiality and Training*** ***a) All personnel and subcontractors shall sign Non-Disclosure Agreements (NDAs) before deployment.*** ***b) The Supplier shall provide security awareness training on data protection, cybersecurity practices, and system handling, with annual refresher sessions.*** ***25.6.14 Access Management*** ***The Supplier shall:*** ***a) Grant system or facility access based on the principle of least privilege.*** ***b) Immediately revoke access upon termination, reassignment, or project completion.*** ***c) Maintain access logs and provide them upon request.*** ***25.6.15 Termination and Asset Return*** ***Upon personnel termination or role change, the Supplier shall:*** ***a) Revoke all access rights.*** ***b) Ensure prompt return of assets, credentials, and documentation provided by the Procuring Entity.*** ***25.6.15 Subcontractors and Incident Reporting*** ***a) The Supplier shall ensure subcontractors comply with all HR security provisions.*** ***Any personnel-related security incidents must be reported immediately to the Procuring Entity, with a root cause analysis provided within 5 business***

17. Commissioning and Operational Acceptance (GCC Clause 27)

GCC 27.2.1	***. The Operational Acceptance Tests to include System Integration Test as outlined in the Technical Specification***

F. Guarantees and Liabilities

18. Operational Acceptance Time Guarantee (GCC Clause 28)

GCC 28.2	***There are no Special Conditions of Contract applicable to GCC Clause 28.2.***
GCC 28.3	***There are no Special Conditions of Contract applicable to GCC Clause 28.3.***

19. Defect Liability (GCC Clause 29)

GCC 29.1	***There are no Special Conditions of Contract applicable to GCC Clause 29.1.***
GCC 29.4	***The Defect liability period shall be …….***
GCC 29.10	***There are no Special Conditions of Contract applicable to GCC Clause 29.10***

20. Functional Guarantees (GCC Clause 30)

GCC 30	***There are no Special Conditions of Contract applicable to GCC Clause 30.***
GCC 30.3	***The period for achieving operational acceptance shall defined in the agreed Service Level Agreement signed by both parties***

21. Limitation of Liability (GCC Clause 33)

GCC 33.1	

22. Care of the System (GCC Clause 35)

GCC 35.1	The Procuring Entity shall avail a secure place for the storage of the system upon delivery and shall not take responsibility until the system has been operationalized and commissioned.

G. Risk Distribution

23. Insurances (GCC Clause 37)

GCC 37.1 (c)	***Third party insurance shall include*** ***a) cyber liability insurance*** ***b) WIBA***
	The insured Parties shall be ***[list insured parties].*** The Insurance shall cover the period from ***[insert beginning date, relative to the Effective Date of the Contract]***until ***[insert: expiration date, relative to the Effective Date of the Contract or its completion]. As per tender document***
GCC 37.1 (e)	***There are no Special Conditions of Contract applicable to GCC Clause 37.1 (e).*** ***[Note: Many countries have statutory requirements for various insurances. These should be reviewed with the Procuring Entity's legal department. - As per tender document***

H. Change in Contract Elements

24. Changes to the System (GCC Clause 39)

GCC 39.4.3	**Value Engineering N/A** If the value engineering proposal is approved by the Procuring Entity the amount to be paid tothe Supplier shall be 50 % (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price.

25. Extension of Time for achieving Operational acceptance (GCC Clause 40)

GCC 40.2	The request for extension shall be made by the supplier promptly but not more than Fourteen (14) days from the commencement of such event or circumstance. In the event the supplier does not issue a notice of extension after the 14 days, then they are deemed ineligible for an extension

26. Termination (GCC Clause 41)

GCC 41.2.1 (c)	Add the following clause to 41.2.1(c) If the Procuring Entity has documented evidence that the supplier has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for or executing the Contract, the Procuring Entity shall: a) Notify the supplier in writing, providing details of the alleged malpractice and evidence supporting the claim. b) Allow the supplier 14 calendar days to respond in writing and, where feasible, rectify the alleged malpractice. If, after reviewing the supplier's response, the Procuring Entity concludes that malpractice has occurred, it may terminate the Contract by issuing a written notice specifying the effective date of termination. The supplier shall retain the right to receive payment for services satisfactorily performed up to the date of termination unless such payments are directly linked to the malpractice.
41.2.2(h)	If the supplier fails to achieve the Operational Acceptance Test within the specified period

I. Settlement of Disputes

27. Settlement of Disputes (GCC Clause 43)

41.1.1	*The Procuring Entity may at any time and upon issuance of a thirty (30) day notice terminate the Contract for any reason by giving the Supplier a notice of termination that refers to this GCC Clause 41.1.*
41.2.2	Acceptance of the System by the Time for Achieving Operational Acceptance as extended; then the Procuring Entity may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same within Twenty One (21) days of its receipt of such notice, then the Procuring Entity may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GCC Clause 41.2.
GCC 43.1& 43.2	***"not applicable.".***
GCC 43.4	*a. The parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to this Agreement and may not initiate any further proceedings until either party has, by written notice to the other, declared that such negotiations have failed.* *b. Any disputes between the parties arising out of or in connection with this Agree, which cannot be settled amicably shall proceed to the Courts of Law in Kenya. The Courts of Law in Kenya shall have exclusive jurisdiction to resolve all disputes arising herein.*

28. Data Protection (GCC Clause 44)

GCC 44	**Data Protection** a. The supplier acknowledges that this Agreement may involve the processing of personal data. The Parties shall handle such personal data in accordance with the Data Protection Act (No. 4 of 2019 Laws of Kenya) and any applicable laws, regulations, and other legal requirements relating to; i. privacy and data security; and

	ii. the use, collection, retention, storage, security, disclosure, transfer, disposal, and other processing of any personal data. b. The Parties shall process personal data in accordance with the Data Processing Agreement between the Parties as provided in Annex xxxxxx[“Data Processing Agreement”]. c. The Parties agree to be bound by the terms of the Data Processing Agreement in connection with the processing of personal data under this Agreement. d. Without prejudice to any clauses in this Agreement, this Clause shall survive termination of this Agreement.

SECTION VIII - CONTRACT FORMS

Notes to the Procuring Entity on preparing the Contract Forms.

Performance Security: Pursuant to GCC Clause 13.3, the successful Tenderer is required to provide the Performance Security within twenty-eight (28) days of notification of Contract award.

Advance Payment Security: Pursuant to Clause13.2, the successful Tenderer is required to provide a bank guarantee securing the Advance Payment, if the SCC related to GCC Clause 12.1 provides for an Advance Payment.

Installation and Operational Acceptance Certificates: Recommended formats for these certificates are included in this SPD. Unless the Procuring Entity has good reason to require procedures that differ from those recommended, or to require different wording in the certificates, the procedures and forms shall be included unchanged. If the Procuring Entity wishes to amend the recommended procedures and/ or certificates, it may do so before release of the tendering document to potential Tenderers.

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

Notes to Tenderers on working with the Sample Contractual Forms

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

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

Performance Security: Pursuant to GCC Clause 13.3, the successful Tenderer is required to provide the Performance Security in the form contained in this section of these tendering documents and in the amount specified in accordance with the SCC.

Advance Payment Security: Pursuant to GCC Clause 13.2, the successful Tenderer is required to provide a bank guaranteeforthefullamountoftheAdvancePayment-ifanAdvancePaymentisspecifiedintheSCCforGCCClause 12.1- in the form contained in this section of these tendering documents or another form acceptable to the Procuring Entity. If a Tenderer wishes to propose a different Advance Payment Security form, it should submit a copy to the Procuring Entity promptly for review and confirmation of acceptability before the tender submission deadline.

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

1. Notification of Intention to Award

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

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

Address: ..... *[insert Authorized Representative's Address]*

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

Email Address: ..... *[insert Authorized Representative's email address]*

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

DATE OF TRANSMISSION: .....This Notification is sent by: [*email/fax*] on[*date*](local time)
Notification of Intention to Award

[Procuring Entity]: ..... *[insert the name of the Procuring Entity]*

Project: .....*[insert name of project]*

Contract title: ..... *[insert the name of the contract]*

Country: .....*[insert country where ITT is issued]*

ITT No: ..... *[insert ITT reference number from Procurement Plan]*

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

a) Request a debriefing inrelation to the evaluation of your Tender, and/ or

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

i) The successful Tenderer

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

2) Other Tenderers ***[INSTRUCTIONS: insert 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.]***

Name of Tenderer	Technical Score (If applicable)	Tender price	Evaluated Tender Cost	Combined Score (if applicable)
[*insert name*]	[*insert Technical score*]	[*insert Tender price*]	[*insert evaluated cost*]	[*insert combined score*]
[*insert name*]	[*insert Technical score*]	[*insert Tender price*]	[*insert evaluated cost*]	[*insert combined score*]
[*insert name*]	[*insert Technical score*]	[*insert Tender price*]	[*insert evaluated cost*]	[*insert combined score*]
[*insert name*]	[*insert Technical score*]	[*insert Tender price*]	[*insert evaluated cost*]	[*insert combined score*]
[*insert name*]	[*insert Technical score*]	[*insert Tender price*]	[*insert evaluated cost*]	[*insert combined score*]

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

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

4) ***How to request a debriefing***

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

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

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

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

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

number:_____[*insert fax number*] ***delete if not used***

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

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

5) How to make a complaint

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

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

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

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

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends. Further information:

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

In summary, there are four essential requirements:

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

6) Standstill Period

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

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

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

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

Signature:_____

Name:_____

Title/position:

_____

Telephone:_____

Email: _____

2. REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO…….OF……..…20……...

BETWEEN

……...…….APPLICANT

AND

……RESPONDENT (Procuring Entity)

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

REQUEST FOR REVIEW

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

1.

2.

By this memorandum, the Applicant requests the Board for an order/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 of ……....20….……

SIGNED

Board Secretary

3. Letter of Award

_____)_____

To: _____

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

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

Authorized Signature:_____

Name and Title of Signatory:_____

Name of Agency:_____

Attachment: Contract Agreement

4. Contract Agreement

THE CENTRAL BANK OF KENYA established under Article 231 of the Constitution of Kenya 2010 and of Post Office Box Number 60000 – 00200, Nairobi, situate, Haile Selassie Avenue Nairobi (hereinafter referred to as the "Procuring Entity") which expression shall where the context so admits include its successors in title and permitted assigns) on the one part;

-AND-

The Supplier……

WHEREAS the Procuring Entity desires to engage the Supplier to supply, install, achieve Operational Acceptance of, and support the following Information System XXXXX ("the Systems"), and the Supplier (JV) has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement.

NOW IT IS HERE BY AGREED as follows:

1.0 Article 1. Contract Documents

Contract Documents (Reference GCC Clause1.1(a) (ii))

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

a) This Contract Agreement and the Appendices attached to the Contract Agreement

b) Special Conditions of Contract

c) General Conditions of Contract

d) Technical Requirements (including Implementation Schedule)

e) The Supplier's tender and original Price Schedules

f) Scope of Works document detailing the work to be done and deliverables

g) Joint Venture Agreement

1**.2 Order of Precedence (Reference GCC Clause 2)**

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

1.3 Definitions (Reference GCC Clause1)

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

2.0 Article 2. Contract Price and Terms of Payment

2.1 Contract Price (Reference GCC Clause 1.1(a) (viii) and GCC Clause 11) The Procuring Entity here by agrees to pay to the Supplier the Contract Price in consideration of the performance by the Supplier of its obligations under the Contract. The Contract Price shall be the aggregate shown below and more particularly as specified in the Grand Summary Price Schedule.

1. Provision of XXXXX at a total cost of Kenya Shillings Kes. AMOUNT. The breakdown of the cost and services is as per appendix 7 and schedule 2

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

3.0 Article 3. Effective Date for Determining Time for Operational Acceptance

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

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

a) This Contract Agreement has been duly executed for and on behalf of the Procuring Entity and the Supplier.

b) The Supplier has submitted to the Procuring Entity the performance security and the advance payment security, in accordance with GCC Clause 13.2 and GCC Clause13.3.

c) The Procuring Entity has paid the Supplier the advance payment, in accordance with GCC Clause 12; Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract Agreement because of reasons not attributable to the Supplier, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Achieving Operational Acceptance and/or other relevant conditions of the Contract.

4.0 Article4. Appendixes.

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

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

APPENDIXES

Appendix 1. Supplier's Representative

Appendix 2. Adjudicator *[**"not applicable"**]*

Appendix 3. List of Approved Subcontractors / NA

Appendix 4. Categories of Software

Appendix 5. Custom Materials NA

Appendix 6. Revised Price Schedules (if any)

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

Appendix 8. Payment milestone.

Appendix 9: Deliverables/Services

Appendix 10: SLA

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

For and on behalf of **CENTRAL BANK OF KENYA** *[Authorized Representative]*

_____ _____

Name: Designation

_____ _____

Signature Date

Witnessed By:

_____ _____

Name Designation

_____

Signature

For and on behalf of **SUPPLIER** *[Authorized Representative]*

_____ _____

Name: Designation

_____

Signature

Witnessed By:

_____ _____

Name Designation

_____

Signature

5. Appendices

a) Appendix 1. Supplier's Representative

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

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

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

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

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

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

b) Appendix 2. Adjudicator (Not Applicable)

c) Appendix 3. List of Approved Subcontractors – Not Applicable

d) Appendix 4. Categories of Software

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

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

e) Appendix 5. Custom Materials

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

Custom Materials

f) **Appendix 6. Revised Price Schedules**

The attached Revised Price Schedules (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the Price Schedules contained in the Supplier's Tender. These Revised Price Schedules reflect any corrections or adjustments to the Supplier's tender price, pursuant to the ITT Clauses 30.3 and 38.2.

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

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

h) **Appendix 8. Payment milestone**

Schedule 1: Summary of Total Project Costs

Schedule 2: Breakdown of Costs Per Year

Schedule 3: Payment Schedule

i) **Appendix 9: Deliverables/Services**

j) **Appendix 10: Service Level Agreement**

Service Level Agreement (SLA)

1. **Online Issue Logging System**
   The supplier shall provide an online support mechanism, preferably a web portal where the Procuring Entity shall log all issues. The online system shall provide tracking and dashboard capabilities including:
   - Date and time of issue logging
   - Issue Description
   - Attachments capability
   - Issue priority
   - User reports – aging analysis, issue categorization
   - Integrations and email notifications- any updates on the ticket should be viewable online and email notifications should be generated upon update
   - User account creation and profiles
   - The procuring entity should have the capability to mark issues as closed; the supplier should never close any logged ticket

   The supplier to also provide a corporate support email address with ability to receive large content

2. **Issue Categorization and Prioritization**
   The priority assigned to an issue by the Procuring entity shall not be changed; however, in exceptional circumstances, the two parties might review and downgrade/re-prioritize the issue

   Reported faults will be prioritized into three categories:-

Priority 1	Critical faults requiring an immediate response
Priority 2	Faults requiring an urgent, though not necessarily an immediate response
Priority 3	Other faults

3. **Issue Resolution time Targets**

he targets for resolving faults reported are as follows: -

Priority	Response	Resolution (Temporary solution)	Target for Correction of fault
1	Immediate	1 hours	Within the business day
2	Within 1 working day	3 hours	By the next day
3	Within 2 – 5 days	By agreement	By agreement

4. **Help Desk Service and 24/7 On-Call Services Requirements**

The supplier shall provide support on 24/7/365 hour basis and maintain local support office at all times during the duration of the contract

The supplier shall maintain a Help Desk facility. The Help Desk facility shall be staffed with qualified personnel who will take problem reports, answer technical questions and attempt to resolve problems and non-conformities over the telephone. Help Desk problem resolution time limits and penalty amounts are like that of 'On-Call Service Requirements' and are given in the below tables.

The Help Desk should initiate remote problem diagnostic routines and attempt to correct the problems or guide. The procuring entity's personnel through problem resolution.

5. **System Upgrade & Documentation**

The supplier shall ensure it provides the Procuring Entity with Regular Solution software updates & an up-to-date system documentation(s) as will relate to system functionality operations as specified in the contract.

6. **Security Vulnerabilities and Patches**

The supplier shall provide the necessary fixes to ensure the continued working of the provided solution if any security and product fixes/patches released to address security and product vulnerabilities. These shall also be logged as priority 1 issues

C. FORMS

SECTION VIII -CONTRACT FORMS

FORM NO. 1 - PERFORMANCE SECURITY – (Unconditional Demand Bank Guarantee)

[Guarantor letterhead or SWIFT identifier code]

Beneficiary:_____*[insert name and Address of* Procuring Entity*]*

Date:_____*[Insert date of issue]*

PERFORMANCE GUARANTEE No.:_____

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

1. We have been informed that_____(hereinafter called "the Applicant") has entered into Contract No._____*dated*_____with the Beneficiary, for the execution of_____ (herein after 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 Applicant, we as Guarantor, hereby irrevocably under take to pay the Beneficiary any sum or sums not exceeding in total an amount of_____(),[1] such sum being payable in the types and proportions ofcurrenciesinwhichtheContractPriceispayable,uponreceiptbyusoftheBeneficiary'scomplyingdemand 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 this 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.

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[1] *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter o Acceptance, less provisional sums, if any, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2] *Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity 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. In preparing this guarantee, the Procuring Entity might consider adding the following text to the form, at the end of the pen ultimate paragraph: "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."*

FORM No. 2 - 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 Procuring Entity*]* **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 (herein after called "the Surety"), are held and firmly bound unto_____] as Obligee (herein after called "the Procuring Entity")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 Procuring Entity 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 herein after 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 Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, 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 Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity 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 here under, 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 Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
   3) pay the Procuring Entity the amount required by Procuring Entity 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 Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

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_____ behalf of by___in the capacity of In the presence of

   SIGNED ON behalf of By_____in the capacity of In the

   presence of

FORM NO. 3 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]

[Guarantor letter head or SWIFT identifier code] [Guarantor letter head or SWIFT identifier code]

Beneficiary: _____*[Insert name and Address of* Procuring Entity*]*

Date:_____*[Insert date of issue]*

ADVANCE PAYMENTGUARANTEE 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 Applicant") has entered into Contract No._*dated* _with the Beneficiary, for the execution of (herein after called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum is to be made against an advance payment 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_____()[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 ac companying 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 Works; 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 Applicant 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 Applicant 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]

[1]*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.*

[2]*Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity 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. In preparing this guarantee, the Procuring Entity might consider adding the following ext. to the form, at the end of the penultimate paragraph: "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."*

1. Installation and Acceptance Certificates *(insert format)*

Installation Certificate

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

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

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

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

Dear Sir or Madam:

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

1. Description of the System (or relevant Subsystem or major component.....***[insert description]***

2. Date of Installation ..... ***[insert date]***

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

For and on behalf of the Procuring Entity

Signed: .....

Date: .....

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

1.1 Operational Acceptance Certificate

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

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

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

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

Dear Sir or Madam:

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

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

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

For and on behalf of the Procuring Entity

Signed: .....

Date: .....

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

7. Change Order Procedures and Forms

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

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

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

General

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

Change Order Log

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

References to Changes

1) Request for Change Proposals (including Application for Change Proposals) shall be serially numbered CR-nnn.
2) Change Estimate Proposals shall be numbered CN-nnn.
3) Estimate Acceptances shall be numbered CA-nnn.
4) Change Proposals shall be numbered CP-nnn.
5) Change Orders shall be numbered CO-nnn. On all forms, the numbering shall be determined by the original CR-nnn.

Annexes

7.1 Request for Change Proposal Form

7.2 Change Estimate Proposal Form

7.3 Estimate Acceptance Form

7.4 Change Proposal Form

7.5 Change Order Form

7.6 Application for Change Proposal Form

7.1 Request for Change Proposal Form

(Procuring Entity's Form head)

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

Dear Sir or Madam:

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

1. Title of Change: [***insert title]***
2. Request for Change No./Rev.: [***insert number]***
3. Originator of Change: ***[select Procuring Entity / Supplier (by Application for Change Proposal), and add name of originator]***
4. Brief Description of Change: ***[insert description]***
5. System (or Subsystem or major component affected by requested Change): [***insert description]***
6. Technical documents and/ or drawings for the request of

   Change: Document or Drawing No. Description
7. Detailed conditions or special requirements of the requested Change: [***insert description]***
8. Procedures to be followed:
   a) Your Change Proposal will have to show what effect the requested Change will have on the Contract Price.
   b) Your Change Proposal shall explain the time it will take to complete the requested Change and the impact, if any, it will have on the date when Operational Acceptance of the entire System agreed in the Contract.
   c) If you believe implementation of the requested Change will have a negative impact on the quality, operability, or integrity of the System, please provide a detailed explanation, including other approaches that might achieve the same impact as the requested Change.
   d) You should also indicate what impact the Change will have on the number and mix of staff needed by the Supplier to perform the Contract.
   e) You shall not proceed with the execution of work related to the requested Change until we have accepted and confirmed the impact it will have on the Contract Price and the Implementation Schedule in writing.

9. As next step, please respond using the Change Estimate Proposal form, indicating how much it will cost you to prepare a concrete Change Proposal that will describe the proposed approach for implementing the Change, all it's elements, and will also address the points in paragraph 8 above pursuant to GCC Clause 39.2.1. Your Change Estimate Proposal should contain a first approximation of the proposed approach, and implications for schedule and cost, of the Change.

For and on behalf of the Procuring Entity

Signed: .....

Date: .....

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

7.2 Change Estimate Proposal Form
(Supplier's Form head)

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

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

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

To: ..... *[insert: name of Procuring Entity and address]*

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

Dear Sir or Madam:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change in accordance with GCC Clause 39.2.1 of the Contract. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Clause 39.2.2, is required before we proceed to prepare the actual Change Proposal including a detailed estimate of the cost of implementing the Change itself.

1. Title of Change:.....*[insert: title]*

2. Request for Change No./Rev.:.....*[insert: number]*

3. Brief Description of Change (including proposed implementation approach) ..... *[insert description]*

4. Schedule Impact of Change (initial estimate)..... *[insert description]*

5. Initial Cost Estimate for Implementing the Change: .....*[insert initial cost estimate]*

6. Cost for Preparation of Change Proposal .....*[insert cost in the currencies of the Contract],* as detailed below in the breakdown of prices, rates, and quantities.

For and on behalf of the Supplier Signed:

.....

Date: .....

in the capacity of: .....*[state: "Supplier's Representative" or other higher-level authority in the Supplier's organization]*

7.3 Estimate Acceptance Form

(Procuring Entity's Form head) Date ..... *[insert date]*

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

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

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

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

Dear Sir or Madam:

We hereby accept your Change Estimate and agree that you should proceed with the preparation of a formal Change Proposal.

1. Title of Change: *[insert title]*

2. Request for Change No./ Rev.: *[insert request number /revision]*

3. Change Estimate Proposal No./ Rev.: *[insert proposal number/ revision]*

4. Estimate Acceptance No./ Rev.: *[insert estimate number/ revision]*

5. Brief Description of Change: *[insert description]*

6. Other Terms and Conditions:

In the event that we decide not to order the Change referenced above, you shall be entitled to compensation for the cost of preparing the Change Proposal up to the amount estimated for this purpose in the Change Estimate Proposal, in accordance with GCC Clause 39 of the General Conditions of Contract.

For and on behalf of the Procuring Entity

Signed: .....

Date: .....

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

7.4 Change Proposal Form

(Supplier's Form head)

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

To: ..... *[insert: name of Procuring Entity and address]*

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

Dear Sir or Madam:

In response to your Request for Change Proposal No. *[insert number],* we here by submit our proposal as follows:

1. Title of Change: *[insert name]*

2. Change Proposal No./ Rev.: *[insert proposal number /revision]*

3. Origin at or of Change: *[select: Procuring Entity /Supplier; and add name]*

4. Brief Description of Change: *[insert description]*

5. Reasons for Change: *[insert reason]*

6. The System Subsystem, major component, or equipment that will be affected by the requested Change: *[insert description]*

7. Technical documents and/ or drawings for the requested Change: Document or Drawing No. Description

8. Estimate of the increase/ decrease to the Contract Price resulting from the proposed Change: *[insert amount in currencies of Contract],* as detailed below in the breakdown of prices, rates, and quantities. Total lump sum cost of the Change:

   Cost to prepare this Change Proposal (i. e., the amount payable if the Change is not accepted, limited as provided by GCC Clause 39.2.6):

9. Additional Time for Achieving Operational Acceptance required due to the Change: *[insert amount in days/ weeks]*

10. Effect on the Functional Guarantees: *[insert description]*

11. Effect on the other terms and conditions of the Contract: ***[insert description]***

12. Validity of this Proposal: for a period of .....*[insert number]* days after receipt of this Proposal by the Procuring Entity

13. Procedures to be followed:
    a) You are requested to notify us of your acceptance, comments, or rejection of this detailed Change Proposal within. ....*[insert number]* days from your receipt of this Proposal.
    b) The amount of any increase and / or decrease shall be taken into account in the adjustment of the Contract Price.

For and on behalf of the Supplier

Signed: .....

Date: .....

in the capacity of: …… *[state: "Supplier's Representative" or other higher-level authority in the Supplier's organization]*

7.5 Change Order Form

(Procuring Entity's Form head)

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

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

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

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

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

Dear Sir or Madam:

We hereby approve the Change Order for the work specified in Change Proposal No. ***[insert number***], and agree to adjust the Contract Price, Time for Completion, and/ or other conditions of the Contract in accordance with GCC Clause 39 of the Contract.

1. Title of Change: [***insert name]***

2. Request for Change No./ Rev.: [***insert request number/ revision]***

3. Change Order No./ Rev.: [***insert order number/ revision]***

4. Origin at or of Change: [***select: Procuring Entity / Supplier; and add name]***

5. Authorized Price for the Change: Ref. No.: ***[insert number]*** Date: ***[insert date]***

[insert: amount in foreign currency A] plus ***[insert amount in foreign currency B]*** plus ***[insert amount in foreign currency C]*** plus ***[insert amount in local currency]***

6. Adjustment of Time for Achieving Operational Acceptance: ***[insert amount and description of adjustment]***

7. Other effects, if any: ***[state: "none" or insert description]***

For and on behalf of the Procuring Entity

Signed: .....

Date: .....

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

For and on behalf of the Supplier

Signed: .....

Date: .....

in the capacity of.....[***state "Supplier's Representative" or higher-level authority in the Supplier's organization]***

7.6 Application for Change Proposal Form

(Supplier's Form head)

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

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

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

To: .....*[insert: name of Procuring Entity and address]*

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

Dear Sir or Madam:

We hereby propose that the below-mentioned work be treated as a

Change to theSystem.

1. Title of Change:..... *[insert name]*

2. Application for Change Proposal No./ Rev.:..... *[insert number/ revision]* dated: [*insert date]*

3. Brief Description of Change:.....*[insert description]*

4. Reasons for Change:..... *[insert description]*

5. Order of Magnitude Estimation..... *[insert amount in currencies of the Contract]*

6. Schedule Impact of Change..... *[insert description]*

7. Effect on Functional Guarantees, if any:.....*[insert description]*

8. Appendix .....*[insert titles (if any); otherwise, state "none"]*

For and on behalf of the Supplier

Signed: .....

Date: .....

in the capacity of: .....*[state: "Supplier's Representative" or higher-level authority in the Supplier's organization*

FORM NO. 4 BENEFICIAL OWNERSHIP DISCLOSURE FORM

FORM NO. 4 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.:_____

Name of the Tender Title/Description:_____

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 hereby provide the following beneficial ownership information.

Details of beneficial ownership

	Details of all Beneficial Owners		***% of shares a person holds in the company Directly or indirectly***	***% of voting rights a person holds in the company***	***Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer*** *(Yes / No)*	***Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)***
1.	*Full Name*		*Directly---------- % of shares* *Indirectly---------- % of shares*	*Directly…… …….% of voting rights* *Indirectly----------% of voting rights*	*1. Having the right to appoint a majority of the board of the directors or an equivalent*	*1. Exercises significant influence or control over*
	National identity card number or Passport number					
	Personal Identification Number (where applicable)					

	Details of all Beneficial Owners		***% of shares a person holds in the company Directly or indirectly***	***% of voting rights a person holds in the company***	***Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer*** *(Yes / No)*	***Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)***
	Nationality				*governing body of the Tenderer: Yes ----- No----*	*the Company body of the Company (tenderer)*
	Date of birth [dd/mm/yyyy]				*2. Is this right held directly or indirectly? :*	*Yes -----No----*
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession				*Direct…… ……*	*2. Is this influence or control exercised directly or indirectly?*
					Indirect…… ……	*Direct…… …..*
						Indirect…… ……
2.	*Full Name*					

	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)***
	National identity card number or Passport number		*Directly---------- % of shares* *Indirectly---------- % of shares*	*Directly…… …….% of voting rights* *Indirectly----------% 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…… …..*
	Personal Identification Number (where applicable)					
	Nationality(ies)					
	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)***
						Indirect…… ……
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:

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

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

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

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

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

Name of the Tenderer: .....[insert complete name of the Tenderer]___*

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

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

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

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

Bidder Official Stamp