Rfx no. 2000020480

TENDER NO. KP2/9A/RT/NS/001/26-27

TENDER FOR PROCUREMENT OF SAFE CLEAN BOTTLED DRINKING WATER FOR NAIROBI REGION

NOVEMBER, 2026

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

TENDER DOCUMENT FOR SUPPLY OF GOODS
(E-PROCUREMENT RESTRICTED TENDERING TENDER SYSTEM)

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PREFACE

Pursuant to Section 70 of the Public Procurement and Asset Disposal Act, 2015 (PPADA), this Standard Tender Document (STD) for procurement of Goods has been prepared by Kenya Power based on The Public Procurement Regulatory Authority's Standard Tender Document (STD) for "Procurement of Goods" (February 2021).

ABBREVIATIONS

AO	Accounting Officer
CBK	Central Bank of Kenya
CBQ	Confidential Business Questionnaire
FY	Financial / Fiscal Year
GTP	Guaranteed Technical Particulars
IFT	Invitation for Tenders
ITT	Instructions to Tenderers
JV	Joint Venture
NCB	National competitive tender
PPADA	Public Procurement and Asset Disposal Act, 2015
PPADR	Public Procurement and Asset Disposal Regulations 2020
PPRA	Public Procurement Regulatory Authority
R	Responsive
NR	Not-Responsive
RT	Restricted Tendering
STD	Standard Tender Documents
TDS	Tender Data Sheet
TEC	Tender Evaluation Committee

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INVITATION TO TENDER (ITT)

DATE: 23RD FEBRUARY,2026
TENDER NO. KP2/9A/RT/NS/001/26-27
TENDER NAME: PROCUREMENT OF SAFE CLEAN BOTTLED DRINKING WATER FOR NAIROBI REGION

1. Introduction.

The Kenya Power & Lighting Company Plc (KPLC) invites bids from eligible Tenderers for **PROCUREMENT OF SAFE CLEAN BOTTLED DRINKING WATER FOR NAIROBI REGION**

Interested Eligible Tenderers may obtain further information from the Principal Supply Chain Office Kenya Power & Lighting Company PLC at Electricity House Harambee Avenue, P.O. Box 30099 – 00100 Nairobi, Kenya.

2. Obtaining tender documents.

Tender documents detailing the requirements may be obtained from the KPLC E- Procurement Portal - RFx *2000019810.*

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

3. Submission of Tender documents

Completed Tenders are to be submitted in electronic format on the KPLC's E-procurement portal by the due date and time published on the portal.

Tenderers are required to visit the portal from time to time for revised closing dates and addendums. The Tender is to be submitted **ONLINE** on or before the submission date and time indicated on the **KPLC tendering portal.**

4. Tender Closing Date and Time

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

5. Prices

Prices Offered should be inclusive of all taxes, duties, levies and delivery costs to the premises (where applicable) of KPLC or other specified site must be in Kenya Shillings or a freely convertible currency in Kenya and shall remain valid for **One Hundred and Eighty (180) days** from the closing date of the tender. ***Please note that prices indicated on the KPLC tendering portal should be exclusive of VAT.*** **Price quoted shall be inclusive of a 0.03% Public Procurement Capacity Building Levy of the contract value exclusive of VAT. The levy shall be deducted from the suppliers payment during contract implementation and remitted to PPRA as stipulated in the Public Procurement Capacity Building Levy order 2023 effective for all tenders published after 1st September 2024.**

6. Opening of submitted Tenders

Tenders will be opened promptly thereafter in the presence of the Tenderer's or their representatives who choose to attend at KPLC Electricity House 1st Floor Procurement Office, Nairobi.

7. Pre-bid

There will be a **MANDATORY** pre-bid meeting on **Friday 14th November 2026** at Electricity House **1st Floor Procurement office at 10:00 am**.

TENDER SUBMISSION CHECKLIST

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

No.	Item	Tick Where Provided
1.	Tender Form duly completed, signed and Stamped	
2.	Confidential Business Questionnaire (CBQ) Is fully filled, signed and stamped. *i)* Declared maximum value of business *ii)* (Shareholding and citizenship for preferences where applicable.	
3.	Certificate of Independent Tender determination, duly completed, signed and Stamped	
4.	Self-Declaration Forms (SD1&SD2, duly completed, signed and stamped	
5.	Declaration and Commitment to the code of Ethics, duly completed, signed and stamped	
6.	Copy of Company or Firm's Registration Certificate	
7.	Copy of PIN Certificate	
8.	Copy of Valid Tax Compliance Certificate	
9.	Certification of confirmation of Directors and Shareholdings (CR 12) valid for the last six months	
10.	Water analysis report from KEBS or accredited laboratory	
11.	A valid KEBS Mark of Quality Certificate or KEBS Standardization Mark Certificate for supply of drinking water	
12.	Section V - Schedule of Requirements and Section VI - Technical Specifications, duly completed, signed and stamped	
13.	At least two (2) names with full contacts of similar or higher capacity as well as physical address of previous customers of similar services and letters from the previous customers confirming completion of the contracts	
14.	Price Schedule(s) duly completed, correctly computed, and signed and stamped	
15.	Audited financial statements required which must be those that are reported within eighteen (18) calendar months of the date of the tender document	
16.	For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original.	

PART 1 - TENDERING PROCEDURES

SECTION I: INSTRUCTIONS TO TENDERERS

A General Provisions

1. Scope of Tender

1.1 KPLC as defined in the **TDS** invites tenders for supply of goods and, if applicable, any Related Services incidental thereto, as specified in Section V, Supply Requirements. The name, identification, and number of lots (contracts) of this Tender Document are specified in the **TDS**.

1.2 Throughout this tendering document:

a) the term "in writing" means communicated in written form (e.g. by mail, e-mail, fax, including if specified in the **TDS**, distributed or received through the electronic procurement system used by KPLC) with proof of receipt;

b) if the context so requires, "singular" means "plural" and vice versa;

c) "Day" means calendar day, unless otherwise specified as "Business Day". A Business Day is any day that is an official working day of KPLC. It excludes official public holidays.

2. Fraud and Corruption

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

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

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

3. Eligible Tenderers

3.1 A Tenderer may be a firm that is a private entity, an individual, a state-owned enterprise or institution subject to ITT3.7, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. 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 entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS.**

3.2 Public Officers of KPLC, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:

a) directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
b) receives or has received any direct or indirect subsidy from another Tenderer; or
c) has the same - representative or ownership as another Tenderer; or
d) has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of KPLC regarding this Tendering process; or
e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Tender; or
f) or any of its affiliates has been hired (or is proposed to be hired) by KPLC or Procuring Entity for the Contract implementation; or
g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the **TDS** ITT 1.1 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 has a close business or family relationship with a professional staff of KPLC (or of the project implementing agency, who: (i) are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to KPLC throughout the Tendering process and execution of the Contract.

3.4 A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified.

3.5 A firm that is a Tenderer (either individually or as a JV member) shall not submit more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor.
Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender.

3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub consultants for any part of the Contract including related Services.

3.7 A Tenderer that has been debarred by the PPRA 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 PPRA's website www.ppra.go.ke

3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis. Public employees and their close relatives are not eligible to participate in the tender.

3.9 Tenderers may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or(b) by an act of compliance with a decision of the United Nations Security Council taken under

Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting for supply of goods or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to KPLC, as KPLC shall reasonably request.

3.10 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by KPLC to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.

3.11 Where the law requires tenderers to be registered with certain authorities in Kenya, such registration requirements shall be defined in the **TDS**

3.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke.

3.13 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

4. Eligible Goods and Related Services

4.1 All the Goods and Related Services to be supplied under the Contract shall have their origin in any country that is eligible in accordance with ITT 3.9.

4.2 For purposes of this ITT, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” include services such as insurance, installation, training, and initial maintenance.

4.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

4.4 A procuring entity shall ensure that the items listed below shall be sourced from Kenya and there shall be no substitutions from foreign sources. The affected items are: a) motor vehicles, plant and equipment which are assembled in Kenya;

b) furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather, agro-processed products, sanitary products, and other goods made in Kenya; or

c) goods manufactured, mined, extracted or grown in Kenya.

4.5 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.

B Contents of Request for Tender Document

5. Sections of Tendering Document

5.1 The tendering document consist of Parts 1, 2, and 3, which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT8.

PART 1: Tendering Procedures

i) Section I - Instructions to Tenderers (ITT) ii) Section II - Tendering Data Sheet (TDS)

Section III - Evaluation and Qualification Criteria iv) Section IV - Tendering Forms

PART 2: Supply Requirements

v) Section V - Schedule of Requirements

PART 3: Contract

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

5.2 The notice of Invitation to Tender or the notice to the prequalified Tenderers issued by KPLC is not part of the tendering document.

5.3 Unless obtained directly from KPLC, KPLC is not responsible for the completeness of the document, responses to requests for clarification, the minutes of the pre-tender meeting (if any), or addenda to the tendering document in accordance with ITT7.

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

6. Clarification of Tendering Document

6.1 A Tenderer requiring any clarification of the Tender Document shall contact KPLC in writing at KPLC's address specified in the **TDS** or raise its enquiries during the preTender meeting if provided for in accordance with ITT 6.4. KPLC will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. KPLC shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 5.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS,** KPLC shall also promptly publish its response at the web page identified in the **TDS.** Should the clarification result in changes to the essential elements of the Tender Documents, KPLC shall amend the Tender Documents following the procedure under ITT 7.

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

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

6.4 Minutes of the pre-Tender meeting, 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.

6.5 KPLC shall also promptly publish anonymized (*no names*)Minutes of the pre-Tender meeting at the web page identified **in the TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by KPLC exclusively through the issue of an Addendum pursuant to ITT 7 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre- Tender meeting will not be a cause for disqualification of a Tenderer.

7. Amendment of Tendering Document

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

7.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tender document from KPLC in accordance with ITT 6.3. KPLC shall also promptly publish the addendum on KPLC's web page in accordance with ITT 7.1.

7.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, KPLC may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 21.2.

C. Preparation of Tenders

8. Cost of Tendering

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

9. Language of Tender

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

10. Documents Comprising the Tender

10.1 The Tender shall comprise the following:

a) Form of Tender prepared in accordance with ITT 11;

b) Price Schedules: completed in accordance with ITT 11 and ITT 13;

c) Tender Security or Tender-Securing Declaration, in accordance with ITT 18.1;

d) Alternative Tender: if permissible, in accordance with ITT12;

e) Authorization: written confirmation authorizing the signatory of the Tender to commit the
Tenderer, in accordance with ITT19.3;

f) Qualifications: documentary evidence in accordance with ITT 16.2 establishing the
Tenderer qualifications to perform the Contract if its Tender is accepted;

g) Tenderer Eligibility: documentary evidence in accordance with ITT16.1 establishing the
Tenderer eligibility to tender;

h) Eligibility of Goods and Related Services: documentary evidence in accordance with ITT 15, establishing the eligibility of the Goods and Related Services to be supplied by the Tenderer;

i) Conformity: documentary evidence in accordance with ITT15.2 that the Goods and Related Services conform to the tender document; and

j) any other document required in the **TDS**.

10.2 In addition to the requirements under ITT 10.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.

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

11. Form of Tender and Price Schedules

11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize pages of all tender documents submitted.

Alternative Tenders

12.1 Unless otherwise specified **in the TDS,** alternative Tenders shall not be considered.

13. Tender Prices and discounts

13.1 The prices quoted by the Tenderer in the Form of Tender and in the Price, Schedules shall conform to the requirements specified below.

13.2 All lots (contracts) and items must be listed and priced separately in the Price Schedules.

13.3 The price to be quoted in the Form of Tender in accordance with ITT10.1 shall be the total price of the Tender, including any discounts offered.

13.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the form of tender. Conditional discounts will be rejected.

13.5 Prices quoted by the Tenderer shall be fixed during the performance of the Contract and not subject to variation on any account, unless otherwise specified **in the TDS.** A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITT 28. However, if in accordance with **the TDS**, prices quoted by the Tenderer shall be subject to

adjustment during the performance of the Contract, a Tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

13.6 If specified in ITT 1.1, Tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Unless otherwise specified **in the TDS,** prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 13.4 provided the Tenders for all lots (contracts) are opened at the same time.

13.7 The terms EXW, CIP, CIF, DDP and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce.

13.8 Prices shall be quoted as specified in each Price Schedule included in Section IV, Tendering Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by KPLC. This shall not in any way limit KPLC's right to contract on any of the terms offered. In quoting prices, the Tenderer shall be free to use transportation through carriers registered in any eligible country. Similarly, the Tenderer may obtain insurance services from any eligible country in accordance with ITT 3.6, Eligible Tenders. Prices shall be entered in the following manner:

a) For Goods manufactured in Kenya:

I) the price of the Goods quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the- shelf, as applicable) final destination point indicated in the **TDS**, including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;

ii) any sales tax and other taxes which will be payable in Kenya on the Goods if the Contract is awarded to the Tenderer; and **iii)** the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination specified **in the TDS.**

b) For Goods manufactured outside Kenya, to be imported:

i) the price of the Goods, quoted CIP named place of destination, in Kenya, as specified **in the TDS; ii)** the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination specified **in the TDS;**

c) For Goods manufactured outside Kenya, already imported:

i) the price of the Goods, including the original import value of the Goods; plus, any mark-up (or rebate); plus, any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported;

ii) the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported;

iii) any sales and other taxes levied in Kenya which will be payable on the Goods if the Contract is awarded to the Tenderer; and

iv) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) specified **in the TDS.**

d) for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements, the price of each item comprising the Related Services (inclusive of any applicable taxes).

14. Currencies of Tender and Payment

14.1 The currency (ies) of the Tender, the currency (ies) of award and the currency (ies) of contract payments shall be the same**.**

14.2 The Tenderer shall quote in Kenya shillings. If allowed in the **TDS**, the Tenderer may express the Tender price in any currency, provided it shall use no more than two foreign currencies in addition to the Kenya Shilling.

14.3 The rates of exchange to be used by the Tenderer shall be based on the exchange rates provided by the Central Bank of Kenya on the date 30 days prior to the actual date of tender opening.

15. Documents Establishing the Eligibility and Conformity of the Goods and

Related Services

15.1 To establish the eligibility of the Goods and Related Services in accordance with ITT 15, Tenderers shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Tendering Forms.

15.2 To establish the conformity of the Goods and Related Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.

15.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.

15.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period **specified in the TDS** following commencement of the use of the goods by KPLC.

15.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by KPLC in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to KPLC's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

16. Documents Establishing the Eligibility and Qualifications of the Tenderer

16.1 To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.

16.2 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to KPLC's satisfaction:

a) that, if required **in the TDS**, a Tenderer that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Tendering Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in Kenya;

b) that, if required **in the TDS**, in case of a Tenderer not doing business within the Kenya, the Tenderer is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and

c) that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

17. Period of Validity of Tenders

17.1 Tenders shall remain valid for the Tender Validity period specified **in the TDS**. The Tender

Validity period starts from the date fixed for the Tender submission deadline (as prescribed by KPLC in accordance with ITT 21.1). A Tender valid for a shorter period shall be rejected by KPLC as non-responsive.

17.2 In exceptional circumstances, prior to the expiration of the Tender validity period, KPLC may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 18, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 17.3.

17.3 If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond the expiry of the initial tender validity period, the Contract price shall be determined as follows:

a) in the case of **fixed price** contracts, the Contract price shall be the tender price adjusted by the factor specified **in the TDS**;

b) in the case of **adjustable price** contracts, no adjustment shall be made; or in any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicated above.

18. Tender Security

18.1 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.**

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

18.3 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer option: i) cash; ii) a bank guarantee;
iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or iv) a letter of credit; or

v) guarantee by a deposit taking micro-finance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund.

18.4 If an unconditional guarantee is issued by a non-Bank financial institution located outside Kenya, the issuing non-Bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless KPLC has agreed in writing, prior to Tender submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form

included in Section IV, Tendering Forms, or in another substantially similar format approved by KPLC prior to Tender submission. The Tender Security shall be valid for thirty
(30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 17.2.

18.5 If a Tender Security is specified pursuant to ITT 18.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by KPLC as non-responsive.

18.6 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security of unsuccessful
Tenderers shall be returned as promptly as possible upon the successful Tenderer signing the Contract and furnishing the Performance Security pursuant to ITT 47.KPLC shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.

18.7 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.

18.8 The Tender Security may be forfeited or the Tender Securing Declaration executed: a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the
Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or b) if the successful Tenderer fails to:
i) sign the Contract in accordance with
ITT 46; or ii) furnish a Performance
Security in accordance with ITT 47.

18.9 Where tender securing declaration is executed, KPLC shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.

18.10 The Tender Security or Tender- Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender Security or Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT3.1 and ITT 10.2.

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

19. Format and Signing of Tender

19.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in
ITT 11 and clearly mark it “ORIGINAL.” Alternative Tenders, if permitted in accordance with ITT 12, 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.

19.2 Tenderers shall mark as "CONFIDENTIAL" information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

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

19.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by each members' legally authorized representatives.

19.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. Submission and Opening of Tenders

20 Sealing and Marking of Tenders

20.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to KPLC and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

a) in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and

b) in an envelope or package or container marked "COPIES", all required copies of the Tender; and

c) if alternative Tenders are permitted in accordance with ITT 12, and if relevant:

i) in an envelope or package or container marked "ORIGINAL – ALTERNATIVE TENDER", the alternative Tender; and ii) in the envelope or package or container marked "COPIES- ALTERNATIVE

TENDER", all required copies of the alternative Tender.

20.2 The inner envelopes or packages or containers shall:

a) bear the name and address of KPLC.
b) bear the name and address of the Tenderer; and
c) bear the name and Reference number of the Tender.

20.3 Where a tender package or container cannot fit in the tender box, KPLC shall:

a) Specify in the **TDS where** such documents should be received.
b) maintain a record of tenders received and issue acknowledgement receipt note to each

tenderer specifying time and date of receipt.
c) Ensure all tenders received are handed over to the tender opening committee for opening at the specified opening place and time.

20.4 If an envelope or package or container is not sealed and marked as required, KPLC will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

21. Deadline for Submission of Tenders

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

21.2 KPLC may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT7, in which case all rights and obligations of KPLC and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

22. Late Tenders

22.1 KPLC shall not consider any Tender that arrives after the deadline for submission of Tenders. Any Tender received by KPLC after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

23. Withdrawal, Substitution, and Modification of Tenders

23.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT19.3, (except that withdrawal notices do not require copies). The

corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

a) prepared and submitted in accordance with ITT 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and

b) received by KPLC prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

23.3 Tenders requested to be withdrawn in accordance with ITT 23.1 shall be returned unopened to the Tenderers.

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

24. Tender Opening

24.1 Except as in the cases specified in ITT 23, KPLC shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives who choose to attend, including to attend any specific electronic tender opening procedures if electronic tendering is permitted in accordance with ITT 21.1, shall be as specified **in the TDS.**

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

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

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

24.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including

any discounts and alternative Tenders; the presence or absence of a Tender Security, if required; and any other details as KPLC may consider appropriate.

24.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening committee attending the opening. The number of representatives of KPLC to sign shall be specified in the **TDS.**

24.7 KPLC shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 22.1).

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

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

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

E. Evaluation and Comparison of Tenders

25. Confidentiality

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

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

25.3 Notwithstanding ITT 25.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact KPLC on any matter related to the Tendering process, it should do so in writing.

26. Clarification of Tenders

26.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, KPLC may, at its discretion, ask

any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by KPLC shall not be considered. KPLC's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by KPLC in the Evaluation of the Tenders, in accordance with ITT 30.

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

27. Deviations, Reservations, and Omissions

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

a) "Deviation" is a departure from the requirements specified in the Tendering document;

b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document; and

c) "Omission" is the failure to submit part or all of the information or documentation required in the tendering document.

28. Determination of Responsiveness

28.1 KPLC's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT28.2.

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

28.3 if accepted, would:

a) affect in any substantial way the scope, quality, or performance of the Goods and Related
Services specified in the Contract; or

b) limit in any substantial way, inconsistent with the tendering document, KPLC's rights or the Tenderer obligations under the Contract; or

28.4 if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

28.5 KPLC shall examine the technical aspects of the Tender submitted in accordance with ITT 15 and ITT 16, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.

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

29. Non-conformities, Errors and Omissions

29.1 Provided that a Tender is substantially responsive, KPLC may waive any non-conformities in the Tender.

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

29.3 Provided that a Tender is substantially responsive, KPLC shall rectify quantifiable nonmaterial nonconformities 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**. 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, KPLC shall use its best estimate.

30. Arithmetical Errors

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

30.2 Provided that the Tender is substantially responsive, KPLC shall handle errors on the following basis:

a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive .

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

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

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

31. Conversion to Single Currency

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

32. Margin of Preference and Reservations

32.1 A margin of preference may be allowed on locally manufactured goods only when the contract is open to international tendering, where the tender is likely to attract foreign goods and where the contract exceeds the threshold specified in the Regulations.

32.2 For purposes of granting a margin of preference on locally manufactured goods under international competitive tendering, a procuring entity shall not subject the items listed below to international tender and hence no margin of preference shall be allowed. The affected items are: a) motor vehicles, plant and equipment which are assembled in Kenya;

b) furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather agro-processing, sanitary products, and other goods made in Kenya; or

c) goods manufactured, mined, extracted or grown in Kenya.

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

32.4 Contracts procured on basis of international competitive tendering shall not be subject to reservations to specific groups s as provided in ITT 32.5.

32.5 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 may be), 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 that only businesses or firms belonging to the specified group are eligible to tender as specified in the **TDS**. No tender shall be reserved to more than one group. If not so stated in the Tender documents, the invitation to tender will be open to all interested tenderers.

33. Evaluation of Tenders

33.1 KPLC shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, KPLC shall determine the Lowest Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be: a) substantially responsive to the tender documents; and

b) the lowest evaluated price.

33.2 Price evaluation will be done for Items or Lots (contracts), as specified **in the TDS;** and the Tender Price as quoted in accordance with ITT 14. To evaluate a Tender, KPLC shall consider the following:

a) price adjustment due to unconditional discounts offered in accordance with ITT 13.4;
b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 31;
c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 29.3; and
d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

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

33.4 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 33.2. 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 will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

33.5 KPLC's evaluation of a Tender will include and consider:

a) in the case of Goods manufactured in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Tenderer;
b) in the case of Goods manufactured outside Kenya, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Tenderer;

33.6 KPLC's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Tenders, unless otherwise specified in the **TDS** from amongst those set out in Section III, Evaluation and Qualification Criteria. The additional criteria and methodologies to be used shall be as specified in ITT 33.2(d).

34. Comparison of Tenders

34.1 KPLC shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 33.2 to determine the Tender that has the lowest evaluated cost. The

comparison shall be on the basis of total cost (place of final destination) prices for all goods and all prices, plus cost of inland transportation and insurance to place of destination, for goods manufactured within the Kenya, together with prices for any required installation, training, commissioning and other services.

35. Abnormally Low Tenders

35.1 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 with KPLC as to the capability of the Tenderer to perform the Contract for the offered Tender price.

35.2 In the event of identification of a potentially Abnormally Low Tender by the evaluation committee, KPLC shall seek written clarification from the Tenderer, including a detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the tendering document.

35.3 After evaluation of the price analysis, in the event that KPLC determines that the Tenderer has failed to demonstrate its capability to perform the contract for the offered Tender price, KPLC shall reject the Tender.

36. Abnormally High Tenders

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

36.5 In case of an abnormally high tender price, KPLC 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. KPLC may also seek written clarification from the tenderer on the reason for the high tender price. KPLC shall proceed as follows:

i) If the tender price is abnormally high based on wrong estimated cost of the contract, KPLC may accept or not accept the tender depending on KPLC's budget considerations. ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, KPLC 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.

36.6 If KPLC determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*),

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

37. Post-Qualification of the Tenderer

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

37.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 15 and 16. The determination shall not take into consideration the qualifications of other firms such as the Tenderer subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the tendering document), or any other firm(s) different from the Tenderer.

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

38. Lowest Evaluated Tender

38.1 Having compared the evaluated prices of Tenders, KPLC shall determine the Lowest Ev
Tender. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be: a) most responsive to the Tender document; and
b) the lowest evaluated price.

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

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

F. Award of Contract

40. Award Criteria

40.1 KPLC shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender in

accordance with procedures in Section 3: Evaluation and Qualification Criteria.

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

41.1 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.**

42. Notice of Intention to enter into a Contract

Upon award of the contract and Prior to the expiry of the Tender Validity Period KPLC 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;

43. Standstill Period

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

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

44. Debriefing by the Procuring Entity

44.1 On receipt of KPLC's Notification of Intention to Enter into a Contract referred to in ITT 41, an unsuccessful tenderer may make a written request to KPLC for a debriefing on specific issues or concerns regarding their tender. KPLC shall provide the debriefing within five days of receipt of the request.

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

45. Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42, upon addressing a complaint that has been filed within the Standstill Period, KPLC shall transmit the Letter of Award to the successful Tenderer. The

letter of award shall request the successful tenderer to furnish the Performance Security within 21days of the date of the letter.

46. Signing of Contract

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

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

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

47. Performance Security

47.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from KPLC, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 18, using for that purpose the Performance Security Form included in Section X, Contract Forms. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to KPLC. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless KPLC has agreed in writing that a correspondent financial institution is not required.

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

47.3 Performance security shall not be required for a contract, if so specified in the **TDS**.

48. Publication of Procurement Contract

48.1 Within fourteen days after signing the contract, KPLC shall publish and publicize the awarded contract at its notice boards, entity website; and on the Website of the Authority in manner and format prescribed by the Authority. At the minimum, the notice shall contain the following information:

a) name and address of KPLC;

b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;

c) the name of the successful Tenderer, the final total contract price, the contract duration.

d) dates of signature, commencement and completion of contract;

e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening;

49. Procurement Related Complaints and Administrative Review

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

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

SECTION II – TENDER DATA SHEET (TDS)

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

ITT Reference	Particulars of Appendix to Instructions to Tenders
A. General	
ITT 1.1	The reference number of the Invitation for Tenders is: K**P2/9A/RT/NS/001/26-27** The name of the Tender is: **PROCUREMENT OF SAFE CLEAN BOTTLED DRINKING WATER FOR NAIROBI REGION** The number and identification of this Invitation for Tenders is: **[*RFx No. 2000020480]***
ITT 1.2(a)	**Electronic –Procurement System** KPLC shall use the following electronic-procurement system to manage this tendering process: **SAP Tendering Portal on www.kplc.co.ke (NB: Bidders are required to log on and register via this link to be able to participate in this tender)** The electronic-procurement system shall be used to manage the following aspects of the tendering process:
ITT 3.1	Definition of relative will be as provided for under Section 59(2)(b) of the Public Procurement and Asset Disposal Act, 2015
ITT 3.11	Tenderers shall be required to be to be registered with - N/A
	B. Contents of Tendering Document
ITT 6.1	(a) Address where to send enquiries is: *Chief Supply Chain Officer,* *The Kenya Power and Lighting Company PLC,* *Electricity House* *Harambee Avenue* *P.O Box 30099 - 00100* *Nairobi, Kenya* *Telephone:+254-719 079182* *Electronic mail address: JWachira.@kplc.co.ke and copy to Jwamwaki@kplc.co.ke* to reach the KPLC not later than **seven (7) days** before tender closing date). (b) KPLC will publish its response at the website **www.kplc.co.ke**
	C. Preparation of Tenders
ITT 12.1	Alternative Tenders shall not be considered.
ITT 13.5	The prices quoted by the Tenderer shall not be subject to adjustment during the Performance of the Contract.
ITT 13.6	Price quoted shall be inclusive of a **0.03% Public Procurement Capacity Building Levy** of the contract value exclusive of VAT. The levy shall be deducted from the suppliers payment during contract implementation and remitted to PPRA as stipulated in the Public Procurement Capacity Building Levy order 2023 effective for all tenders published after **1st September 2024.**
ITT 13.7	Tenderers shall quote on **Delivered Duty Paid (DDP**) terms
ITT 13.8 (a) (i) and (iii)	Place of final destination shall be as specified under Section V – Schedule of Requirements

ITT 15.4	1) The Warranty will remain valid for …12 months after the Goods, or any portion of as the case may be, have been delivered to the final destination indicated in contract.	
ITT 16.2	1)	Pursuant to clause 16.2, the Tenderer shall furnish, as part of its Tender, **documents establishing the Tenderer's eligibility** to tender and its qualifications to perform the contract if its Tender is accepted.
	2)	The documentary evidence of the Tenderer's eligibility to tender shall establish to KPLC's satisfaction that the Tenderer, at the time of submission of its Tender, is from an eligible source country as defined under clause 5.1.
	3)	The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall be established to KPLC's satisfaction –

ITT Reference	**Particulars Of Appendix To Instructions To Tenders**
	a) That the Tenderer has the financial capability necessary to perform the contract. The Tenderer shall be required to provide the documents as specified Section III, Evaluation and Qualification Criteria including a valid **Tax Compliance Certificate**.
ITT 17.1	The Tender validity period shall be 180 days.
ITT 18.1	***[If a Tender Security shall be required,-***A *Tender Security* ***shall be*** not be required.
ITT 19.1	The tendering documents are to be submitted in electronic format on the KPLC SAP tendering portal on www.kplc.co.ke
	D. Submission and Opening of Tenders
ITT 20	Mode of submission will be electronic through the KPLC SAP tendering portal
ITT 21.1	Tenders must be received by KPLC by **the date** and **time** specified in KPLC's tendering portal in **PDF form**.
ITT 23	Withdrawals, substitution or modifications can be done through the KPLC tendering portal before the tender closing time
ITT 24	Public opening will be done through the KPLC tendering portal at Electricity House 1st Floor procurement Office as specified in the KPLC Tendering Portal for **submitted** tenders only.
ITT 24.6	The number of representatives of KPLC to sign is minimum of three
E. Evaluation and Comparison of Tenders	
ITT 27.1	Deviations, reservations or omissions shall not apply.

ITT 28.1	a. Prior to the detailed Technical and Financial evaluation, KPLC will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KPLC's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence. b. KPLC will examine the Tenders to determine whether they conform to the Preliminary Evaluation Criteria set out in the Section III - Evaluation Criteria. c. Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KPLC and cannot subsequently be made responsive by the Tenderer by correction of any non–conformity.
ITT 29.3	The manner to rectify quantifiable nonmaterial nonconformities shall be addressed under Section III Evaluation and Qualification Criteria.
ITT 31	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
ITT 32.5	The invitation to tender is extended to the following group that qualify for Reservations Special Groups who shall be duly registered with AGPO *(These groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be; describe precisely which group qualifies).*
ITT 33.2 (d)	Additional evaluation factors are: *(a) that the Supplier's offered Delivery Schedule meets KPLC's requirements* *(b) that the Supplier's offered Terms of Payment meets KPLC's requirements*
ITT Reference	**F. Award of Contract** **Particulars Of Appendix To Instructions To Tenders**
ITT 40	*Mode of award shall be in accordance with the following:* Tender award will **be to the lowest evaluated compliant bidder for the whole lot.**
ITT 41	a) Simultaneously, and without prejudice to the contents of clause 41, on issuance of Notification to Conclude a Framework Agreement to the successful Tenderer, KPLC shall notify each unsuccessful Tenderer. b) A notification of the tender outcome does not reduce the validity period for any tender security whether the Tenderer is successful or not, except where such tender security is officially released to the Bank and/or the Tenderer and such Bank discharged of all its obligations by KPLC prior to the expiry of its stated validity period

ITT 49	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 www.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: Dr. John Wachira Title/position: Chief Supply Chain Officer Procuring Entity: Kenya Power & Lighting Co. PLC Email address*: JWachira@kplc.co.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

1. General Provisions

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

a) For business turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.

b) Value of single contract - Exchange rate prevailing on the date of the contract signature

c) Exchange rates shall be taken from the publicly available source identified in **the ITT 14.3.** Any error in determining the exchange rates in the Tender may be corrected by KPLC

1.2 This section contains the criteria that KPLC shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than those specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms.

2. Evaluation of Tenders (ITT 33)

2.1 Successful Tender or Tenders

KPLC shall use the criteria and methodologies listed in this Section to evaluate Tenders. By applying these criteria and methodologies, KPLC shall determine the successful Tender or Tenders which has/have been determined to:

a) be substantially responsive to the tender documents;

b) offer the lowest evaluated cost to KPLC for all items of Goods to be procured based on either a single Contract or all multiple Contracts combined, as the case may be, in accordance with the ITT 13.6 inviting Tender prices and discounts, and provisions made of the Tender Document for evaluation of tenders and award of contract (s); and

c) be offered by Tenderer or Tenderers that substantially meet the qualification criteria applicable for Contract or combined Contracts for which they are selected.

2.2 Evaluation of Tenders

Preliminary examination for Determination of Responsiveness

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

Part 1 - PRELIMINARY EVALUATION CRITERIA under clause 28.2 of the ITT.

These are mandatory requirements. This shall include confirmation of the following: -

(i) Submission and considering Tender Form duly completed and signed
(ii) Confirming that the Tender is valid for the period required (180) days
(iii) Submission of Certificate of Independent Tender Determination duly completed and signed
(iv) Submission of Self-Declaration Forms (SD1 & SD2) duly completed and signed
(v) Declaration and Commitment to the Code of Ethics duly completed and signed .
(vi) Submission and considering the Confidential Business Questionnaire: -

a) Is fully filled, signed and stamped.
b) That details correspond to the related information in the bid.
c) That the Tenderer is not ineligible as per ITT 3.

(vii) Submission and considering the following:

a) Copy of Company or Firm's Registration Certificate
b) Copy of PIN Certificate
c) Copy Valid Tax Compliance Certificate.
d) Copy of CR12 that is valid for the last six months

Tenders will proceed to the Technical Evaluation Stage only if they qualify in compliance with Part 1 above, Preliminary Evaluation under clause 28.3 of the ITT.

Part II – TECHNICAL EVALUATION CRITERIA

These are mandatory requirements.

a) The bidder must provide a valid KEBS Mark of Quality Certificate or KEBS Standardization Mark Certificate for goods manufactured in Kenya.

b) The bidder must provide a water test/analysis report from KEBS or an accredited laboratory confirming the water has been tested for chemical and bacterial elements.

c) KPLC shall evaluate the Technical aspects of the Tender to determine compliance with KPLC's requirements under **Section V - Schedule of Requirement**s and **Section VI - Technical Specifications**. The bidder must be compliant to all requirements.

d) The bidder should submit at least two (2) names with full contacts of similar or higher capacity as well as physical address of previous customers of similar services and letters from the previous customers confirming completion of the contracts.

E). The bidder must demonstrate their capacity to deliver the bottled drinking water on monthly basis as required. This is by having access to areas on tender by showing availability of vehicles (owned or leased) with enough capacity to supply region-wide

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

PART III – FINANCIAL EVALUATION CRITERIA **Under clause 33 of the ITT. These are mandatory requirements.**

This will include the following: -

a) Confirmation of and considering Price Schedule duly completed, correctly computed, and signed and stamped. **(Note: In case of a price discrepancy between those entered in the SRM portal and those on the price schedule uploaded as an attachment, the latter shall prevail)**

b) Checking that the tenderer has quoted prices based on Delivery Duty Paid (DDP) terms.

c) Checking submission of audited financial statements required which must be those that are reported within eighteen (18) calendar months of the date of the tender document.

d) For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original.

e) Considering information submitted in the Confidential Business Questionnaire against other information in the bid including:
   (i) Declared maximum value of business
   (ii) Shareholding and citizenship for preferences where applicable

**NOTES:*

- *For purposes of evaluation, the exchange rate to be used for currency conversion shall be the selling exchange rate prevailing on the date of tender closing provided by the Central Bank of Kenya. (Visit the Central Bank of Kenya website).*

- ***Total tender value** means the Tenderer's total tender price inclusive of Value Added Tax (V.A.T) for the Goods it offers to supply.*

- ***Price quoted shall be inclusive of a 0.03% Public Procurement Capacity Building Levy of the contract value exclusive of VAT. The levy shall be deducted from the suppliers payment during contract implementation and remitted to PPRA as stipulated in the Public Procurement Capacity Building Levy order 2023 effective for all tenders published after 1st September 2024.***

3. **AWARD CRITERIA**

Tender award will **be to the lowest evaluated compliant bidder for the whole lot.**

SECTION IV - TENDERING FORMS

Form of Tender

Certificate of Independent Tender Determination

Self-Declaration Forms

Declaration and Commitment to the Code of Ethics Tenderer Information Form

Tenderer's Eligibility-Confidential Business Questionnaire

Price Schedule

Form of Tender-Securing Declaration

1. FORM OF TENDER

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

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

To: The Kenya Power & Lighting Company PLC,
Electricity House, Harambee Avenue,
P.O Box 30099 - 0100,
Nairobi, Kenya.

No reservations: We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);

a) **Eligibility**: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;

b) **Tender/Proposal-Securing Declaration**: We have not been suspended nor declared ineligible by KPLC based on execution of a Tender-Securing Declaration or proposal Securing Declaration in Kenya in accordance with ITT 3.6;

c) **Conformity:** We offer to supply in conformity with the Tendering document and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods: [*insert a brief description of the Goods and Related Services*];

d) **Tender Price**: The total price of our Tender, excluding any discounts offered in item (f) below is:

ITEM	PRICE, VAT INCLUSIVE (KSHS)

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

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

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

f) **Tender Validity Period**: Our Tender shall be valid for a period of **__180_** days as specified in TDS 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

g) **One Tender per tenderer**: We are not submitting any other Tender(s) as an individual tenderer, and we are not participating in any other Tender(s) as a Joint Venture member, or as a subcontractor, and meet the requirements of ITT 3.9, other than alternative Tenders submitted in accordance with ITT 12;

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

i) **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount

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

j) **Binding Contract**: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;

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

l) **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.

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

n) **Collusive practices**: We hereby certify and confirm that the tender is genuine, no 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.

o) We, the Tenderer, have completed fully 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.

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

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

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

Title of the person signing the Tender: _____
[*insert Complete title of the person signing the Tender]*

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

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

*: In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as tenderer.
**: Person signing the Tender shall have the power of attorney given by the tenderer. The power of attorney shall be attached with the Tender Schedules.

INSTRUCTIONS TO TENDERERS

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

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

2. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to **KPLC** [Name of Procuring Entity]

_____

_____

_ _____[Name and number

of

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

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

1. I have read and I understand the contents of this Certificate;

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

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

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

a) has been requested to submit a Tender in response to this request for tenders;

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

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

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

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

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

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

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

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

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

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

Name_____

Title_____

Date_____

_

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

3. SELF-DECLARATION FORMS

FORM SD 1

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 KPLC)* 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's Official Stamp

FORM SD2

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

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of.....……...…….. *(insert name of the Company)* who is a Bidder in respect of **Tender No**. ..... for.....*(Insert tender title/description) f*or..... *(insert name of KPLC)* 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 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 KPLC)* which is KPLC.

4. 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 KPLC).*

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

6. THAT the aforesaid bidder does not have any conflict of interest or pecuniary interest with any other tenderer participating in this tender

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

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

Bidder's Official Stamp

4. DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory.....

Sign…….....

Position.....

Office address…….

Telephone…….....…….

Email…….....

Name of the Firm/Company…….....……

Date…….....

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

Witness:

Name…….....……

Sign…….....……

Date…….....……

5. APPENDIX 1- FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Subcontractors, Sub consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

2.2 Kenya's Public Procurement and Asset Disposal Act *(no. 33 of 2015)* under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
2) A person referred to under subsection (1) who contravenes the provisions of that subsection commits an offence;
3) Without limiting the generality of the subsection (1) and (2), the person shall be—

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

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

4) The voiding of a contract by KPLC under subsection (7) does not limit any legal remedy KPLC may have;
5) An employee or agent of KPLC or a member of the Board or committee of KPLC who has a conflict of interest with respect to a procurement:- a) shall not take part in the procurement proceedings;

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

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

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

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

2.3 In compliance with Kenya's laws, regulations and policies mentioned above, KPLC:

a) defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

v) “obstructive practice” is:

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

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

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

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of KPLC 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 KPLC 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 Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ices) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to 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 above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved

in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

6. TENDERER INFORMATION FORM (where applicable)

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

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

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

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

Page_____of_ _____ pages

1. Tenderer's Name ……..
2. Tenderer's actual or intended country of registration:…….
4. Tenderer's year of registration:……..
5. Tenderer's Address in country of registration: ……..
6. Tenderer's Authorized Representative Information Name: …… Address: …… Telephone/Fax numbers: …… Email Address: ……
7. Attached are copies of original documents of *[check the box(es) of the attached original documents]* ☐ For Kenyan Tenderers a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. ☐Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.4. .

7. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Instruction to Tenderer

All Tenderers are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) whichever applies to your type of business. Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV.* Tenderers are advised that it is a serious offence to give false information on this form.

.**PART 1 – General Details**

a) **Tenderer's details**

	ITEM	**DESCRIPTION** *[Insert Details here below]*
1	Name of Procuring Entity	***Kenya Power & Lighting Company PLC***
2	Reference Number of the Tender	…….
3	Name of Tender	…….
4	Name of the Tenderer	…….
5	Full Address and Contact Details of the Tenderer.	Business Name ……. Country ……. County …….…….. City / Town ……... Physical Location ……. Plot No. …… Street / Road …….. Building (if applicable) ……. Floor …..… Postal Address …….. Email ……. Telephone No(s) ……
6	Current Business Permit Registration Number and Expiring date	No.……Expiry Date ……...
7	Description of Nature of Business	…… …….

8	Registration Certificate No.	……..
9	Name of Banker	……..
10	Name of Tenderer's contact person(s) and contacts (*Email, and telephone number*)	Name ……. Designation ……. Email ……..… Tel No. ……
11	Maximum value of business which the Tenderer handles at any time.	Kshs ……

PART 2 - General and Specific Details

(a) Sole Proprietor, provide the following details.

Name in full _____ID / Passport No. _____

Business name *(If applicable)* _____ Reg. No. _____

Nationality Country of Origin_____

Citizenship_____

b) Partnership, provide the following details.

	Names of Partners	**Nationality**	**Citizenship**	**% Shares owned**
1				
2				
3				

Business name *(If applicable)* _____

Date of Registration of Partnership Deed _____

c) Registered Company, provide the following details. If director is a company is a company, give details of human directors until human directors are disclosed:

i) Private or Public Company

_____

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

- Nominal in Kenya Shillings (Equivalent)

  _____

- Issued Kenya Shillings (Equivalent)

  _____

iii) Give details of Directors as follows. (If director is a company, give details of human Directors of the company director)

	Names of Director	**Nationality**	**Citizenship**	**% Shares owned**
1				
2				
3				

DISCLOSURE OF INTEREST-Interest of the Firm in KPLC.

i) Are there any person/ persons in ..... ***KPLC*** ..... (Name of KPLC) who has/ have an interest or relationship in this firm. Yes/No ..... If yes, provide details as follows.

	Names of Person	**Designation in KPLC**	**Interest or Relationship with Tenderer**
1			
2			
3			

ii) Conflict of interest disclosure

	Type of Conflict	**Disclosure YES OR NO**	**If YES provide details of the relationship with Tenderer**
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties that puts it in a position to influence the tender of another tenderer, or influence the decisions of KPLC regarding this tendering process.		

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

e) Certification

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

Full Name: _____

Title or Designation _____

Signature: _____ Date: _____

8. TENDERER'S JV MEMBERS INFORMATION FORM (where applicable)

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

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

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

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1. Tenderer's Name: *[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(is) 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 that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6.

8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

10. TENDER SECURITY FORM – (BANK GUARANTEE)

(To Be Submitted On Bank's Letterhead) **Date:**

To:

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

WHEREAS …… (*Name of the Tenderer*) (*hereinafter called "the Tenderer")* has submitted its Tender dated …… for the supply, installation and commissioning
of……
(Please insert KPLC tender no. and name) *(Hereinafter called "the Tender");*

KNOW ALL PEOPLE by these presents that WE…….of
…….having our registered office at…….*(hereinafter called "the Bank")*, are bound unto The Kenya Power and Lighting Company Limited (*hereinafter called "KPLC" which expression shall where the context so admits include its successors-in-title and assigns*) in the sum of ……. for which payment well and truly to be made to the said KPLC, the Bank binds itself, its successors, and assignees by these presents.

We undertake to pay you, upon your first written demand declaring the Tenderer to be in breach of the tender requirements and without cavil or argument, the entire sum of this guarantee being …….. (*Amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This tender guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the date below.

This guarantee is valid until the …..…day of……20……

EITHER

SEALED with the)
COMMON SEAL)

of the said **BANK**) _____
This ……day) BANK SEAL of

……20… .)

in the presence of:)

_____

) and in
the presence of: -)

_____
)

OR

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

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

_____
Signature(s) of the duly authorized person(s)

NOTES TO TENDERERS AND BANKS

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*
2. *It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC's query. Should there be no*
4. *Conclusive response by the Bank within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.*
3. ***The issuing bank should address its response or communication regarding the bond to KPLC at the following e-mail address – "guarantees@ kplc.co.ke"***
5. *The Tender validity period is one eighty (180) days as set out in the Invitation to tender*
   (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore, the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.

11. TENDER SECURITY FORM (SACCO SOCIETY, DEPOSIT TAKING MICRO FINANCE INSTITUTIONS, WOMEN ENTERPRISE FUND & YOUTH ENTERPRISE FUND)

(To Be Submitted On Institutions Letterhead) **Date:**

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

WHEREAS……(hereinafter called "the Tenderer") has undertaken, in pursuance of your Tender Number……..(*reference number of the Tender)* and its Tender dated ……*(insert Tenderer's date of Tender taken from the Tender Form)* to supply ……(*description of the Goods*)

(Hereinafter called "the Contract);

AND WHEREAS it has been stipulated by you in the said Contract that the Tenderer shall furnish you with an Institution's guarantee by an acceptable Institution for the sum specified therein as security for Compliance of the Tenderer's performance obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Tenderer a Guarantee;

THEREFORE, WE HEREBY AFFIRM that we are Guarantors and responsible to you, on behalf of the
Tenderer, up to a total of……. (*Amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of ……...
(*Amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the ……day of…….…..…20….

EITHER

SEALED with the)
COMMON SEAL)
of the said **INSTITUTION**)

)
this ……day)
)
of ……20….)
in the presence of: -)
_____)

) and in the presence of: -
)
_____)

_____
INSTITUTION SEAL

OR

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

_____
Name(s) and Designation of duly authorized representative(s)/ attorney(s) of the **Institution**.

_____
Signature(s) of the duly authorized person(s)

NOTES TO SUPPLIERS AND INSTITUTIONS

1.Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as no submission of the Tender Security where such Security is required in the tender.

2.It is the responsibility of the Tenderer to sensitize its issuing institution on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed three (3) days from the date of

KPLC's query. Should there be no conclusive response by the institution within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.

*3.**The issuing institution should address its response or communication regarding the Tender Security to KPLC at the following e-mail address – "guarantees@ kplc.co.ke"***

4.The Tender validity period is one eighty (180) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore, the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.

12. TENDER SECURITY – (LETTERS OF CREDIT)

The Mandatory Conditions to be included in the Letters are in two parts, A and B.

Part A

Form of Documentary credit - "Irrevocable Standby"

Applicable rules - "Must be UCP Latest Version" i.e. UCP 600 (2007 REVISION) ICC Publication No. 600.

Place of expiry - At the counters of the advising bank.

The SBLC should be available – "By Payment"

Drafts should be payable at - "SIGHT"

Documents required -

1. Beneficiary's signed and dated statement demanding for payment under the letter of credit no…….. (*Insert LC No.*) as…….(*Name of applicant*)
   (Hereinafter called the "Tenderer") indicating that the "Tenderer" has defaulted in the obligations of the Tenderer as stated by the Beneficiary.

2. The Original Letter of Credit and all amendments, if any.

Additional Conditions -

1. All charges levied by any bank that is party to this documentary credit are for the account of the applicant.

2. There should be no conditions requiring compliance with the specific regulations or a particular Country's Law and regulations.

Charges - All bank charges are for the account of the applicant.

*****Confirmation instructions – (See notes below)

Part B

The proceeds of these Letters are payable to KPLC -

a) if the Tenderer withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which the Tenders must remain valid.
b) if the Tenderer fails to enter into a written contract in accordance with the Tender Document
c) if the successful Tenderer fails to furnish the performance security in accordance with the Tender Document.
d) if the Tenderer fails to extend the validity of the tender security where KPLC has extended the tender validity period in accordance with the Tender Document.

NOTES TO TENDERERS AND BANKS.

1. *Please note that should the Tender Security (LC) omit any of the above conditions the LC shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as no submission of the LC where such LC is required in the Tender.*

2. *It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to any queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.*

3. ***The issuing bank should address its response or communication regarding the bond to KPLC at the following e-mail address – "guarantees@ kplc.co.ke"***

4. *The Tender validity period is one eighty (180) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore, the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

5. *All Guarantees issued by foreign banks must be confirmed by a local bank in Kenya.*

13. FORM OF TENDER-SECURING DECLARATION (for disadvantaged groups only)

[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.

14. MANUFACTURER'S AUTHORIZATION FORM (if applicable)

(To Be Submitted On Manufacturer's Letterhead)

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

WHEREAS WE ……(*name of the manufacturer*) who are established and reputable manufacturers of ……

(*Name and description of the Goods*) having factories at ……*(full address and physical location of factory where Goods to be supplied are manufactured)* do hereby confirm that ……

(*Name and address of Supplier*) is authorized by us to transact in the Goods required against your Tender …… (*Insert reference number and name of the Tender*) in respect of the above Goods manufactured by us.

DATED THIS…….. DAY OF…….20……

_____
Signature of duly authorized person for and on behalf of the Manufacturer.

_____
Name and Designation of duly authorized person signing on behalf of the Manufacturer

NOTES TO TENDERERS AND MANUFACTURERS

1. *Only a competent person in the service of the Manufacturer should sign this letter of authority.*
2. ***This form is not applicable for this tender***

15. MANUFACTURER'S WARRANTY FORM (not applicable on this tender)

To Be Submitted On Manufacturer's Letterhead)

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

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

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

WE HEREBY WARRANT THAT:

a) The Goods to be supplied under the contract are new, unused, of the most recent or current specification and incorporate all recent improvements in design and materials unless provided otherwise in the Tender.

b) The Goods in the Tenderer's bid have no defect arising from manufacture, materials or workmanship or from any act or omission of the Tenderer that may develop under normal use of the Goods under the conditions obtaining in Kenya.

The Warranty will remain valid for _____ after the Goods, or any portion thereof as the case may be, have been delivered and accepted to the final destination indicated in the contract.

DATED THIS…….. DAY OF…….20……

_____
Signature of duly authorized person for and on behalf of the Manufacturer.

_____
Name and Capacity of duly authorized person signing on behalf of the Manufacturer.

NOTES TO TENDERERS AND MANUFACTURERS

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

PART 2: SUPPLY REQUIREMENTS

SECTION V - SCHEDULE OF REQUIREMENTS / DELIVERY SCHEDULE

BRIEF SCHEDULE OF DETAILS ON GOODS REQUIRED FOR TENDER NO. KP2/9A/RT/NS/001/26-27: PROCUREMENT OF SAFE CLEAN BOTTLED DRINKING WATER FOR NAIROBI REGION COUNTIES.

NO	DEPOT/SUBSTATION	NUMBER OF 18.9-LITRES BOTTLES OF WATER PER MONTH	NUMBER OF 18.9-LITRES BOTTLES OF WATER PER YEAR
	MACHAKOS COUNTY		
1	MLOLONGO OFFICE	25	300
2	TALA OFFICE	25	300
3	MATUU OFFICE	20	240
4	MACHAKOS OFFICE	40	480
5	WAMUNYU OFFICE	10	120
6	ATHI RIVER SUBSTATION	4	48
7	MACHAKOS STORE YARD	6	72
	MAKUENI COUNTY		
8	EMALI OFFICE	28	336
9	KIBWEZI	25	300
10	MTITO ANDEI OFFICE	10	120
11	WOTE OFFICE	28	336
	KAJIADO COUNTY		
12	RONGAI DEPOT	30	360
13	OLOITOKTOK OFFICE	20	240
14	NAMANGA OFFICE	25	300
15	KITENGELA OFFICE	30	360
16	KAJIADO OFFICE	22	264
17	MATASIA SUBSTATION	3	36
18	NGONG TOWN SUBSTATION	3	36
19	NGONG OFFICE	30	360
	NAIROBI COUNTY		
20	PARKLANDS SUBSTATION	3	36
22	BABA DOGO SUBSTATION	3	36
23	RIDGEWAYS SUBSTATION	3	36
24	WESTLANDS SUBSTATION	3	36
25	KITSURU SUBSTATION	3	36
26	CITY CENTRE	5	60
27	ROYSAMBU	40	480
28	RUARAKA	35	420
29	BULK STORE	6	72
30	RAGATI DEPOT	43	516
32	KABETE SUBSTATION	3	36
34	KAREN OFFICE	15	180
35	LANGATA SUBSTATION	3	36
36	SOUTH C S/S	3	36
37	ELECTRICITY HOUSE	250	3000
38	WILSON AIRPORT	3	36

39	EMBAKASI SUBSTATION	8	96
40	EMBAKASI POLE YARD	3	36
41	MUTHURWA SUBSTATION	15	180
42	NAIROBI SOUTH	60	720
43	ISIOLO ROAD PROJECTS	8	96
44	ISIOLO ROAD WORKSHOP/ STORES	25	300
45	RUAI OFFICE	25	300
46	NEW AIRPORT SUBSTATION	3	36
47	NEW INDUSTRIAL AREA SUBSTATION	3	36
48	JUJA CONTROL NAIROBI AREA	10	120
49	TRANSMISSION JUJA	8	96
50	HURUMA SUBSTATION	5	60
52	KILELESHWA SUBSTATION	3	36
54	MAMLAKA SUBSTATION	10	120
55	UNDERGROUNG CABLE (TRAINING SCHOOL)	4	48
56	DANDORA SUBSTATION	7	84
	No. of bottles	999	11988

Name: _____

Position:_____

Authorised for and on behalf of (*specify name of tenderer*) _____

_____ _____

Signature:

Date _____

And Seal/Stamp

Name: _____

Position:_____

Authorised for and on behalf of (*specify name of tenderer*) _____

_____ _____

Signature:_____

Date _____

And Seal/Stamp

SECTION VI: TECHNICAL SPECIFICATIONS

Technical specifications describe the basic requirements for Goods. In addition to the information and documentation in the Tender Document regarding the technical aspects of this tender, all Tenderers shall comply with the following -

PART A - GENERAL REQUIREMENTS

1. Technical documentation shall be in English language. The specific items on offer shall be marked clearly for the Goods they intend to supply. The type reference or model number(s) of the item(s) on offer must be clearly indicated in the bid.

2. The Tenderer shall submit the Schedule of Guaranteed Technical Particulars (GTP) completed and signed by the Manufacturer. In submitting the GTP, cross-references should be made to the documents submitted.

3. Deviations from the tender specifications, if any, shall be explained in detail in writing, with supporting data including calculation sheets, detailed drawings and certified test reports and submitted together with the Tender. In submitting the deviations, cross-references should be made to the documents submitted. KPLC reserves the right to reject the Goods if such deviations shall be found critical to the use and operation of the Goods.

4. Detailed contact information including title, e-mail, facsimile, telephone or any other form of acceptable communication of the testing and standards body used shall be provided.

5. Where Type Test Certificates and their Reports and or Test Certificates and their Reports are translated into English, all pages of the translations must be signed and stamped by the testing authority.

6. A Copy of the manufacturer’s valid quality management system certification i.e. ISO 9001 shall be submitted for evaluation. For locally manufactured Goods, valid KEBS Mark of Quality Certificate or KEBS Standardization Mark Certificate will also be accepted.

PART B – DETAILED TECHNICAL SPECIFICATIONS (DTS) FOR TENDER NO. KP2/9A/RT/NS/001/26-27

Tenderer to complete Column 'Tenderer's Offer' indicating YES or No and if NO indicate the specification of the offered item

No.	Details of service/goods specification are as follows;	KPLC Requirements	Tenderer's Offer
(i)	Packaging should be in bottles, each with a capacity of 18.9Litres	Yes (Mandatory)	
(ii)	Delivered bottled drinking water shall be made to different depots/substations within KPLC's Nairobi region as per prescribed schedule of requirements	Yes (Mandatory)	
(iii)	Delivery on monthly basis on the first day of the month. Supplier to have enough bottles to ensure continuous supply	Yes (Mandatory)	
(iv)	A delivery note will accompany water delivery indicating quantity and an invoice at the end of the month	Yes (Mandatory)	
(v)	Water will be inspected upon delivery to ascertain the quantity and whether in good condition. **Water quality analysis report to be submitted monthly**	Yes (Mandatory)	
(vi)	In case of water spoilage/leakage there will be a replacement immediately	Yes (Mandatory)	
(vii)	User will notify supplier on time (7 days prior in case there is need for more water or any changes on quantity)	Yes (Mandatory)	
(viii)	Confirm capacity for deliver. Provide: (i) Evidence of sufficient means of transport, i.e. copies of vehicle logbooks or copies of valid vehicle leases;and/or (ii) Evidence of business presence in the locality	Yes (Mandatory)	
(ix)	Confirmation that the water is purified using the UV treatments technology	Yes (Mandatory)	
(x)	Provide a minimum of 30 dispensers to be utilized in locations that will be specified. • The dispensers should have hot water, warm water and cold water options. • The dispensers shall be cleaned and serviced monthly	Yes (Mandatory)	

Name: _____

Position:_____

Authorised for and on behalf of (*specify name of tenderer*) _____

_____ _____

Signature:

Date _____

And Seal/Stamp

Name: _____

Position:_____

Authorised for and on behalf of (*specify name of tenderer*) _____
_____ _____

Signature:

Date _____

And Seal/Stamp

SECTION VII – PRICE SCHEDULE

PROCUREMENT OF BOTTLED DRINKING WATER FOR NAIROBI REGION COUNTIES - TENDER NO. KP2/9A/RT/NS/001/26-27

NO	DEPOT/SUBSTATION	NUMBER OF 18.9-LITRES BOTTLES OF WATER PER MONTH	Unit Price DDP (EXCL PPCBL & VAT EXCL)	Unit Price DDP (PPCBL Incl & VAT Excl Kshs)	Total Price DDP (PPCBL Incl & VAT Excl Kshs)
	MACHAKOS COUNTY				
1	MLOLONGO OFFICE	25			
2	TALA OFFICE	25			
3	MATUU OFFICE	20			
4	MACHAKOS OFFICE	40			
5	WAMUNYU OFFICE	10			
6	ATHI RIVER SUBSTATION	4			
7	MACHAKOS STORE YARD	6			
	MAKUENI COUNTY				
8	EMALI OFFICE	28			
9	KIBWEZI	25			
10	MTITO ANDEI OFFICE	10			
11	WOTE OFFICE	28			
	KAJIADO COUNTY				
12	RONGAI DEPOT	30			
13	OLOITOKTOK OFFICE	20			
14	NAMANGA OFFICE	25			
15	KITENGELA OFFICE	30			
16	KAJIADO OFFICE	22			
17	MATASIA SUBSTATION	3			
18	NGONG TOWN SUBSTATION	3			
19	NGONG OFFICE	30			
	NAIROBI COUNTY				
20	PARKLANDS SUBSTATION	3			
22	BABA DOGO SUBSTATION	3			
23	RIDGEWAYS SUBSTATION	3			
24	WESTLANDS SUBSTATION	3			
25	KITSURU SUBSTATION	3			
26	CITY CENTRE	5			
27	ROYSAMBU	40			

28	RUARAKA	35			
29	BULK STORE	6			
30	RAGATI DEPOT	43			
32	KABETE SUBSTATION	3			
34	KAREN OFFICE	15			
35	LANGATA SUBSTATION	3			
36	SOUTH C S/S	3			
37	ELECTRICITY HOUSE	250			
38	WILSON AIRPORT	3			
39	EMBAKASI SUBSTATION	8			
40	EMBAKASI POLE YARD	3			
41	MUTHURWA SUBSTATION	15			
42	NAIROBI SOUTH	60			
43	ISIOLO ROAD PROJECTS	8			
44	ISIOLO ROAD WORKSHOP/ STORES	25			
45	RUAI OFFICE	25			
46	NEW AIRPORT SUBSTATION	3			
47	NEW INDUSTRIAL AREA SUBSTATION	3			
48	JUJA CONTROL NAIROBI AREA	10			
49	TRANSMISSION JUJA	8			
50	HURUMA SUBSTATION	5			
52	KILELESHWA SUBSTATION	3			
54	MAMLAKA SUBSTATION	10			
55	UNDERGROUNG CABLE (TRAINING SCHOOL)	4			
56	DANDORA SUBSTATION	7			
	No. of bottles	999			
TOTAL PPCBL INCL & VAT EXCLUSIVE (KSHS)					
ADD 16%					
TOTAL PPCBL & VAT INCLUSIVE (KSHS)					

Name of Tenderer:

_____

Name and Designation of authorized person signing the Tender

_____

Signature of authorized person signing the Tender

_____

Stamp of Tenderer and date

_____

NOTES

- ***The Tenderer shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items of the Price Schedules shall coincide with the List of Goods specified by KPLC in the Schedule of Requirements. The quantities are estimated to cover the contract period.***
- ***The offered unit price MUST be rounded to two decimal places. Where the Tenderer fails to round the offered unit price as required, then, the offered unit price shall be rounded down-wards to two decimal places and used for the purposes of this tender.***
- ***The unit prices indicated on the KPLC tendering portal should be exclusive of VAT and the quoted price not be subject to change for the contract period.***
- ***Bidders should use the prevailing VAT rate. However, prices entered in the KPLC-SRM tendering portal should be exclusive of VAT. In case of discrepancies between the price keyed in the SRM portal and those on this price schedule uploaded as an attachment, the latter shall prevail.***
- ***The Bidder's grand totals should be the same as the tender sum indicated in the Tender Form and should be correctly computed.***
- ***The prices indicated on the KPLC tendering portal should be inclusive of (DDP) Delivery Duty paid, meaning inclusive of transport charges***
- ***Price quoted shall be inclusive of a 0.03% Public Procurement Capacity Building Levy of the contract value exclusive of VAT. The levy shall be deducted from the suppliers payment during contract implementation and remitted to PPRA as stipulated in the Public Procurement Capacity Building Levy order 2023 effective for all tenders published after 1st September 2024.***

PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VIII - GENERAL CONDITIONS OF CONTRACT

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

   a) "Contract" means the Contract Agreement entered into between KPLC and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.

   b) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.

   c) "Contract Price" means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

   d) "Day" means calendar day.

   e) "Completion" means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.

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

   g) "Goods" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to KPLC under the Contract.

   h) "Procuring Entity" means KPLC or the public entity purchasing the Goods and Related Services, as **specified in the SCC.**

   i) "Related Services" means the services incidental to the supply of the goods, such as insurance, delivery, installation, commissioning, training and initial maintenance and other such obligations of the Supplier under the Contract.

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

   k) "Subcontractor" means any person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.

   l) "Supplier" means the person, private or government entity, or a combination of the above, whose Tender to perform the Contract has

been accepted by KPLC and is named as such in the Contract Agreement.

m) **"Base Date"** means a date 30 day prior to the submission of tenders.

n) **"Laws"** means all national legislation, statutes, ordinances, and regulations and by-laws of any legally constituted public authority.

o) **"Letter of Acceptance"** means the letter of formal acceptance, signed by the contractor. Procuring Entity, including any annexed memoranda comprising agreements between and signed by both Parties.

2. Interpretation

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

2.2. Incoterms

a) Unless inconsistent with any provision of the Contract**,** the meaning of any trade term and

the rights and obligations of parties thereunder shall be as prescribed by Incoterms **specified in the SCC**.

b) The terms EXW and CIP and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.

3. Contract Documents

Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole. The documents forming the Contract shall be interpreted in the following order of priority: a) the Contract Agreement, b) the Letter of Acceptance,

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

4. Fraud and Corruption

3.1 The supplier shall comply with anti-corruption laws and guidelines and the prevailing sanctions, policies and procedures as set forth in the Laws of Kenya.

3.2 The Supplier shall disclose any commissions, gratuity or fees that may have been paid or are to be paid to agents or any other person with respect to the Tendering process or execution of the Contract. The

information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

4.1 Entire Agreement

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

4.2 Amendment

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

4.3 Non-waiver

a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

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

4.4 Severability

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

5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and KPLC, shall be written in the **English Language.** Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate and certified translation of the relevant passages in the **English Language,** in which case, for purposes of interpretation of the Contract, the English language is translation shall govern.

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

6. Joint Venture, Consortium or Association

6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to KPLC for the fulfilment of the provisions of the Contract and shall designate one member of the joint venture, consortium, or association to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior written consent of KPLC.

7. Eligibility

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

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

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

8. Notices

8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC.** The term "in writing" means communicated in written form with proof of receipt.

8.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

9. Governing Law

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

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

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

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

10. Settlement of Disputes

10.1 KPLC and the Supplier shall make every effort to resolve amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.

10.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either KPLC or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.

10.2 Arbitration proceedings shall be conducted as follows:

10.2.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 10.1 shall be finally settled by arbitration.

10.2.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within thirty days of the occurrence or discovery of the matter or issue giving rise to the dispute.

10.2.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

10.2.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any due payments.

10.2.5 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for the dispute given in its notice of a claim or dispute.

10.2.6 Arbitration may be commenced prior to or after delivery of the goods. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the delivery of goods.

10.2.7 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

10.3 Arbitration Proceedings

10.3.1 Arbitration proceedings with national suppliers will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either

party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person or persons to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions; i) Kenya National Chamber of Commerce ii)

Chartered Institute of Arbitrators (Kenya

Branch) iii) The Law Society of Kenya

10.3.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

10.3.3 Alternative Arbitration Proceedings

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

10.4 Arbitration with Foreign Suppliers

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

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

10.5 Alternative Arbitration Proceedings

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

10.6 Failure to Comply with Arbitrator's Decision

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

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

10.7 Contract operations continue

Notwithstanding any reference to arbitration herein,

a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
b) KPLC shall pay the Supplier any monies due the Supplier.

11. Inspections and Audit by the Procuring Entity

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

11.2 Pursuant to paragraph 2.2 of Instruction to Tenderers, the Supplier shall permit and shall cause its subcontractors to permit, KPLC and/or persons appointed by KPLC or by other statutory bodies of the Government to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by KPLC. The Supplier's and its Subcontractors' attention is drawn to Sub- Clause 3.1 which provides, inter alia, that acts intended to materially impede the exercise of KPLC's inspection and audit rights constitute a prohibited practice subject to contract termination, as well as to a determination of ineligibility.

12. Scope of Supply

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

13. Delivery and Documents

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

14. Supplier's Responsibilities

14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.

15. Contract Price

15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the **SCC.**

15.2 Where the contract price is different from the corrected tender price, in order to ensure the supplier is not paid less or more relative to the contract price (*which would be the tender price*), any partial payment valuation based on rates in the schedule of prices in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked

out during tender evaluation is worked out as follows: *(corrected tender price – tender price)/tender price X 100*.

16. Terms of Payment

16.1 The Supplier shall request for payment by submitting invoice(s), delivery note(s) and any other relevant documents as specified in the **SCC** to KPLC.

16.2 Payments shall be made promptly by KPLC, but not later than thirty (30) days after submission of an invoice by the Supplier, and after KPLC has accepted it.

16.3 Where a Procuring Entity rejects Goods and Related Services, in part or wholly, KPLC shall promptly inform the Supplier to collect, replace or rectify as appropriate and give reasons
for rejection. The Supplier shall submit a fresh invoice, delivery note and any other relevant documents as specified in the **SCC**.

16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed.

16.5 In the event that KPLC fails to pay the Supplier any payment by its due date or within the period set forth in the **SCC,** KPLC may pay to the Supplier interest on the amount of such delayed payment at the rate shown in the **SCC,** for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

17. Taxes and Duties

17.1 The Supplier shall be entirely responsible for all taxes, duties, license fees, and other such levies incurred to deliver the Goods and Related Services to KPLC at the final delivery point.

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

18. Performance Security

18.1 If required as specified in the **SCC**, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC.**

18.2 The proceeds of the Performance Security shall be payable to KPLC as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

18.3 As specified in **the SCC**, the Performance Security, if required, shall be denominated in the currency(ices) of the Contract, or in a freely convertible currency acceptable to KPLC; and shall be in one of the formats stipulated by KPLC in **the SCC**, or in another format acceptable to KPLC.

18.4 The Performance Security shall be discharged by KPLC and returned to the Supplier not later than thirty (30) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC.**

19. Copyright

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to KPLC by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to KPLC directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

20. Confidential Information

20.1 KPLC and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Sub Supplier such documents, data, and other information it receives from KPLC to the extent required for the Sub Supplier to perform its work under the Contract, in which event the Supplier shall obtain from such Sub Supplier undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.

20.2 KPLC shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from KPLC for any purpose other than the performance of the Contract.

20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

a) KPLC or Supplier need to share with other arms of Government or other bodies participating in the financing of the Contract; such parties shall de disclosed in **the SCC;**

b) now or hereafter enters the public domain through no fault of that party;

c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto

prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

21. Subcontracting

21.1 The Supplier shall notify KPLC in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

22. Specifications and Standards

22.1 Technical Specifications and Drawings

a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.

b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of KPLC, by giving a notice of such disclaimer to KPLC.

c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by KPLC and shall be treated in accordance with GCC Clause 33.

23. Packing and Documents

23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional

requirements, if any, specified **in the SCC**, and in any other instructions ordered by KPLC.

24. Insurance

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

25. Transportation and Incidental Services

25.1 Unless otherwise specified in the **SCC,** responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

25.2 The Supplier may be required to provide any or all of the following services, including additional services, if any, specified **in SCC:**

a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;

b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;

c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;

d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and

e) training of KPLC's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

25.3 Prices charged by the Supplier for incidental services, if not included in the Contract Price for

the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services

26. Inspections and Tests

26.1 The Supplier shall at its own expense and at no cost to KPLC carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC.**

26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in Kenya as specified in the **SCC.** Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities

and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KPLC.

26.3 KPLC or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that KPLC bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.

26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to KPLC. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable KPLC or its designated representative to attend the test and/or inspection.

26.5 KPLC may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

26.6 The Supplier shall provide KPLC with a report of the results of any such test and/or inspection.

26.7 KPLC may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to KPLC, and shall repeat the test and/or inspection, at no cost to KPLC, upon giving a notice pursuant to GCC Sub- Clause 26.4.

26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by KPLC or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

27. Liquidated Damages

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, KPLC may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for

each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC.** Once the maximum is reached, KPLC may terminate the Contract pursuant to GCC Clause 35.

28. Warranty

28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

28.3 Unless otherwise specified in the **SCC,** the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC,** or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.

28.4 KPLC shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. KPLC shall afford all reasonable opportunity for the Supplier to inspect such defects.

28.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC,** expeditiously repair or replace the defective Goods or parts thereof, at no cost to KPLC.

28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC,** KPLC may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which KPLC may have against the Supplier under the Contract.

29. Patent Indemnity

29.1 The Supplier shall, subject to KPLC's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless KPLC and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which KPLC may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and

b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

29.2 If any proceedings are brought or any claim is made against KPLC arising out of the matters referred to in GCC Sub-Clause 29.1, KPLC shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in KPLC's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

29.3 If the Supplier fails to notify KPLC within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then KPLC shall be free to conduct the same on its own behalf.

29.4 KPLC shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

29.5 KPLC shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising
out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of KPLC.

30. Limitation of Liability

30.1 Except in cases of criminal negligence or willful misconduct,

a) the Supplier shall not be liable to KPLC, 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 KPLC, and

b) the aggregate liability of the Supplier to KPLC, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of

repairing or replacing defective equipment, or to any obligation of the supplier to indemnify KPLC with respect to patent infringement.

31. Change in Laws and Regulations

31.1 Unless otherwise specified in the Contract, if after the date of 30 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Kenya (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

32. Force Majeure

32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of KPLC in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

32.3 If a Force Majeure situation arises, the Supplier shall promptly notify KPLC in writing of such condition and the cause thereof. Unless otherwise directed by KPLC in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

33. Change Orders and Contract Amendments

33.1 KPLC may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for KPLC;
b) the method of shipment or packing;
c) the place of delivery; and

d) the Related Services to be provided by the Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of KPLC's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

33.4 **Value Engineering:** The Supplier may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

a) the proposed change(s), and a description of the difference to the existing contract requirements;

b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) KPLC may incur in implementing the value engineering proposal; and

c) a description of any effect(s) of the change on performance/functionality.

33.5 KPLC 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 KPLC; or

c) improves the quality, efficiency or sustainability of the Goods; or

d) yields any other benefits to KPLC, without compromising the necessary functions of the Facilities.

33.6 If the value engineering proposal is approved by KPLC and results in:

a) a reduction of the Contract Price; the amount to be paid to the Supplier shall be the percentage specified **in the SCC** of the reduction in the Contract Price; or

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

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

34. Extensions of Time

34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify KPLC in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice,
KPLC shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

35. Termination

35.1 Termination for Default

a) KPLC, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by KPLC pursuant to GCC
Clause 34; ii) if the Supplier fails to perform any other obligation under the Contract; or iii) if the Supplier, in the judgment of KPLC has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix to the GCC, in competing for or in executing the Contract.

b) In the event KPLC terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), KPLC may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to KPLC for any additional costs for such similar Goods or Related Services.
However, the Supplier shall continue performance of the Contract to the extent not terminated.

35.2 Termination for Insolvency.

KPLC may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to KPLC

35.2 Termination for Convenience.

a) KPLC, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for KPLC's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by KPLC at the Contract terms and prices. For the remaining Goods, KPLC may elect:
i) to have any portion completed and delivered at the Contract terms and prices; and/or ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

36. Assignment

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

37. Export Restriction

37.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to KPLC, to Kenya, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of KPLC that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for KPLC's convenience pursuant to Sub-Clause 35.3.

SECTION IX - SPECIAL CONDITIONS OF CONTRACT

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

[The Procuring Entity shall select insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 1.1(h)	The Procuring Entity is: **Kenya Power & Lighting Company PLC**
GCC 2.2	The terms of contract shall strictly **Delivered Duty Paid (DDP)**
GCC 3	The following additional documents shall form part of this contract: (a) Letter of Award dated…….. (b) Price Schedule (c) Detailed Technical Specifications
GCC 4	1) The Contractor shall not offer or give or agree to give to any person in the service of the KPLC any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for KPLC for showing or forbearing to show favour or disfavor to any person in relation to this or any other contract with KPLC. 2) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement and Disposal Regulations 2005 and the regulations made thereunder.
GCC 12	For **notices**, the Procuring Entity's address shall be: Attention: Chief Supply Chain Officer, The Kenya Power and Lighting Company PLC, Electricity House 1st Floor P.O Box 30099 - 00100 Nairobi, Kenya Telephone:+254-719 079182
GCC 10	The place of arbitration shall be Nairobi, Kenya (specify City and Country if applicable).
GCC 13	1) Delivery of the goods shall be made by the Supplier to the place and in accordance with the terms specified by KPLC in its Schedule of Requirements.

	2) It is the responsibility of the Supplier to ensure that the delivery documents are received by KPLC at the designated delivery point at the time of delivery.
	3) Any late or non-submission of the delivery documents shall be treated as part of nonperformance on the part of the Supplier and KPLC shall be entitled to call up the Performance Security.
	4) The Supplier should notify KPLC in writing of its intention to deliver goods fourteen (14) days prior to delivery, and a further confirmation two (2) working days before actual delivery to the designated delivery point.

GCC 15	1) Subject to clause 39 of GCC, prices charged by the Supplier for Goods delivered under the contract shall, be fixed for the period of the contract with no variations. 2) Subject to clause 3 herein below, prices charged by the Supplier for Goods delivered under the contract shall, be fixed for the period of the contract with no variations. ***Price Variation:*** Variation of a contract shall only be considered after twelve months from the date of signing the contract. 4) KPLC and the Supplier may vary the contract only in accordance with the following: a. The price variation is based on the prevailing consumer price index obtained from Kenya National Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya; b. the quantity variation for Goods shall not exceed Fifteen percent (15%) of the original contract quantity. c. The cumulative value variation shall not exceed twenty-five percent (25%) of the original contract value.
GCC 16	1) Payments shall be made promptly by KPLC thirty (30) days after delivery and submission of invoice together with other required and related documents or as otherwise prescribed in the contract. 2) The credit period shall be thirty (30) days from satisfactory delivery and submission of invoice together with other required and related documents.

GCC 16	3) Upon satisfactory delivery and submission of invoice together with other required and related documents, KPLC shall pay for the Goods after the credit period. 4) Payment shall primarily be through KPLC's cheque or Real Time Gross Settlement (RTGS) for local based suppliers or Telegraphic Transfer (TT) for foreign based suppliers. 5) Suppliers who are to be paid through RTGS or TT must ensure that they submit the following: a) invoice containing the Bank's Name and Branch, b) Name/Title of Bank account, c) Bank account number d) SWIFT CODE. e) A letter signed by the authorized signatory of the bank account of the Tenderer confirming details (a) to (d) above. This letter must contain the name of that authorized signatory and a Board Resolution that is sealed. 6) Where applicable, a copy of a valid Performance Security, stamped, certified as authentic by KPLC, shall form part of the documents to be presented to KPLC before any payment is made. 7) The terms shall be strictly on Delivered and Duty Paid (DDP) 8) KPLC shall have the sole discretion to accept or decline any Supplier's payment request through Letters of Credit without giving any reason for such decline. 9) Interest payment by KPLC is inapplicable in this contract.
GCC 17	The terms of delivery shall be Delivered Duty Paid (DDP) terms .
GCC 24	a) The Supplier shall (except in respect to losses, injuries or damage resulting from any act or neglect of KPLC) indemnify and keep indemnified KPLC against all losses and claims for injuries or damage to any person or property whatsoever which may arise out of or in consequence of the contract and against all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.
GCC 28	The Warranty will remain valid for 12 months after the Goods have been delivered and accepted.

GCC 34	1) Variation of a contract shall only be considered after twelve months from the date of signing the contract. 2) KPLC and the Supplier may vary the contract only in accordance with the following: a) The price variation is based on the prevailing consumer price index obtained from Kenya National Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya b) the quantity variation for Goods shall not exceed Fifteen percent (15%) of the original contract quantity c) The cumulative value variation shall not exceed twenty-five percent (25%) of the original contract value

SECTION X - CONTRACT FORMS

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

SECTION X – CONTRACT FORMS

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FORM No. 1: NOTIFICATION OF INTENTION TO AWARD

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

FORMAT

1. For the attention of Tenderer's Authorized Representative

   I) Name:

   _____*[insert*

   Authorized Representative's name] ii)

   Address:

   _____*[insert*

   Authorized Representative's Address] iii)

   Telephone:_____*[insert Authorized*

   Representative's telephone/fax numbers] iv)

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

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

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

   This Notification is sent by_____(*Name and designation*)_____

3. Notification of Intention to Award

_____

_____

_____

_____

_____

I) Employer: *[insert the name of the Employer] ii)* Project:

[insert name of project]

iii) Contract title: *[insert the name of the contract] iv)* Country:

[Insert country where ITT is issued]

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

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

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

Submit a Procurement-related Complaint in relation to the decision to award the contract. a) The successful tenderer

i) Name of successful Tender

ii) Address of the successful Tender

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

(

_____)

b) Other Tenderers

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

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

(Note a) State NE if not evaluated

5. How to request a debriefing

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

b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.

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

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

ii) Agency: [*insert name of employer*] _____

iii) iii) Email address: _____[*insert email address*]

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

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

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

6. How to make a complaint

a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [*insert date*] (local time).

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

Attention: [insert full name of person, if applicable] ii) Title/position:__[insert title/position] iii) Agency: _____ [insert name of Employer] iv) Email address:
_[Insert email address]

c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

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

You should read these documents before preparing and submitting your complaint. e) There are four essential requirements:

i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.

ii) The complaint can only challenge the decision to award the contract. iii) You must submit the complaint within the period stated above. iv) You must include, in your complaint, all of the information required to support your complaint.

7. **Standstill Period**

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

ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.

iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above. If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Employer:

Signature:_____

Name:_____

Title/position:_____

Telephone:_____

Email: _____

FORM NO. 2 - REQUEST FOR REVIEW

FORM FOR

REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO…….OF…….….20……...

BETWEEN

……...…….APPLICANT AND

……RESPONDENT (Procuring Entity)

Request for review of the decision of the…… (Name of the Procuring Entity 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

FORM NO. 3 LETTER OF AWARD

[Use letter head paper of the Procuring Entity]

_____ *[Date]*

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

Subject: _____ ***Notification of Award Contract No.*** . . . .

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

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

Authorized Signature:_____

Name and Title of Signatory:_____

Name of Agency:_____

Attachment: Contract Agreement

FORM NO. 4 - CONTRACT AGREEMENT

[The successful tenderer shall fill in this form in accordance with the instructions indicated]
THIS AGREEMENT **made this**……**day of**…….**20**…. BETWEEN THE KENYA POWER
& LIGHTING COMPANY PLC, a limited liability company duly incorporated under the Companies Act, Chapter 486 of the Laws of Kenya, with its registered office situated at Stima Plaza, Kolobot Road, Parklands, Nairobi in the Republic of Kenya and of Post Office Box Number 30099-00100, Nairobi in the Republic aforesaid *(hereinafter referred to as the "KPLC")* of the one part,

AND

…….. (*Supplier's full name and principal place of business)* a duly registered entity according to the laws of**..…… *(state country)*** and of Post Office Box Number/Physical Address **…….*(full address of Supplier)*** in the Republic aforesaid, *(Hereinafter referred to as the "Supplier")* of the other part;

WHEREAS KPLC invited tenders for certain goods, that is to say for **……(*KPLC Supply Chain – Procurement Department insert description of Goods*) (herein after referred to as the "Goods")** under Tender Number**…….. (*KPLC Supply Chain – Procurement Department insert tender number*)**

AND WHEREAS KPLC has accepted the Tender by the Supplier for the Goods in the sum of **……(*KPLC Supply Chain – Procurement Department_specify the total amount in words which should include any payable taxes, duties and insurance where applicable e.g. Value Added Tax)*** (*hereinafter called "the Contract Price"*).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract and the Tender Document.

2. Unless the context or express provision otherwise requires: -
   a) Reference to "this Agreement" includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.

   b) any reference to any Act shall include any statutory extension, amendment, modification, amendment
   or replacement of such Act and any rule, regulation or order made there-under.
   c) Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.

d) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the *"Supplier"* the covenants, agreements obligations expressed to be made or performed by the Supplier shall be deemed to be made or performed by such persons jointly and severally.

e) where there are two or more persons included in the expression the *"Supplier"* any act default or omission by the Supplier shall be deemed to be an act default or omission by any one or more of such persons.

3. In consideration of the payment to be made by KPLC to the Supplier as hereinafter mentioned, the Supplier hereby covenants with KPLC to supply the Goods and remedy any defects thereon in conformity in all respects with the provisions of the Contract.

4. KPLC hereby covenants to pay the Supplier in consideration of the proper supply of the Goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. The following documents shall constitute the Contract between KPLC and the Supplier and each shall be read and construed as an integral part of the Contract: -
   a) this Contract Agreement Form
   b) the Special Conditions of Contract as per the Tender Document
   c) the General Conditions of Contract as per the Tender Document
   d) the Price Schedules submitted by the Supplier and agreed upon with KPLC
   e) the Schedule of Requirements
   f) KPLC's Notification of Award dated……
   g) the Tender Form signed by the Supplier
   h) the Declaration Form signed by the Supplier/ successful Tenderer
   j) the Warranty
6. 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 5 above except where otherwise mutually agreed in writing.

7. The Commencement Date shall be the working day immediately following the fulfillment of all the following: -
   a) Execution of this Contract Agreement by KPLC and the Supplier.
   b) Issuance of the Performance Bond by the Supplier and confirmation of its authenticity by KPLC.
   c) Issuance of the Official Order by KPLC to the Supplier.
   d) Where applicable, Opening of the Letter of Credit by KPLC.

8. The period of contract validity shall begin from the Commencement date and end on -
   a) sixty (60) days after the last date of the agreed delivery schedule, or,
   b) where a Letter of Credit is adopted as a method of payment, sixty (60) days after the expiry date of the Letter of Credit or the expiry date of the last of any such opened Letter of Credit whichever is later. Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.

9. It shall be the responsibility of the Supplier to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.

10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.

11. No failure or delay to exercise any power, right or remedy by KPLC shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy shall operate as a complete waiver of that other right, power or remedy.

12. Notwithstanding proper completion of delivery or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.

13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively (*and proof of service shall be by way of confirmation report of such transmission and or delivery*), notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service for Local (Kenyan) Suppliers and five (5) days for Foreign Suppliers.

14. For the purposes of Notices, the address of KPLC shall be Company Secretary, The Kenya Power & Lighting Company Plc, 7th Floor, Stima Plaza, Kolobot Road, Post Office Box Number 30099–00100,

    Nairobi, Kenya, Facsimile + 254-20-3514485. The address for the Supplier shall be the Supplier's address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya the day and year first above written.

SIGNED FOR and on BEHALF of **KPLC**

_____

MANAGING DIRECTOR & CEO

and in the presence of: -

_____

COMPANY SECRETARY

SEALED with the **COMMON SEAL** of the **SUPPLIER** in the presence of: -

DIRECTOR *Affix Supplier's Seal here*

DIRECTOR'S FULL NAMES

and in the presence of: -

DIRECTOR/ COMPANY SECRETARY

DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

*OR

SIGNED BY and on BEHALF of
the **SUPPLIER**

SIGNATURE OF THE SUPPLIER

FULL NAMES OF THE SUPPLIER

*NOTES TO THE SUPPLIER

1. *Please note that the alternative is applicable IF AND ONLY IF the Supplier is not a registered company but has tendered, and, is trading as a sole proprietor or a partnership as provided in the Confidential Business Questionnaire or is registered as a business name.*

2. *In all other cases, the Supplier is required to execute the contract as first provided.*

DRAWN BY: -

Imelda Bore,
Advocate
C/o The Kenya Power & Lighting Company Plc,
2nd Floor, Stima Plaza,
Kolobot Road, Parklands,
Post Office Box Number 30099–00100,
NAIROBI, KENYA,
Telephones: + 254-20-3201000/ 731
Facsimile: + 254-20-3514485

FORM NO. 5 - PERFORMANCE SECURITY FORM (BANK GUARANTEE)

(To Be Submitted On Bank's Letterhead) **Date:**

To:

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

WHEREAS…… (Hereinafter called "the Supplier") has undertaken, in pursuance of your Tender Number……. (*Reference number of the Tender)* and its Tender dated …… *(Insert Supplier's date of Tender taken from the Tender Form)* to supply …… (*Description of the Goods*)

(Hereinafter called "the Contract);

AND WHEREAS it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by an acceptable bank for the sum specified therein as security for compliance of the Supplier's performance obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Supplier a guarantee;

THEREFORE, WE HEREBY AFFIRM that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total sum of……. (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil or argument, any sum or sums within the limits of ……...
(*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the ……day of…….…...…20….

EITHER

SEALED with the)
COMMON SEAL)
of the said **BANK**)
)

this ……day)
) _____
) BANK SEAL

of ……20….) in
the presence of :-)
)
_____)
)
and in the presence of:-)
)
_____)

OR

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

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

_____
Signature(s) of the duly authorized person(s)

NOTES TO SUPPLIERS AND BANKS

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Performance Security Bond (the Bond) to be furnished by the successful Tenderer/ Supplier. If any are made, the Bond may not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the Bond where such Bond is required in the tender and Contract.*

4. *KPLC shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from*

   KPLC. The period for response shall not exceed three (3) days from the date of KPLC's query. Should

5. *there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified.*

2. The issuing Bank should address its response or communication regarding the bond to KPLC at the following e-mail address – "guarantees@ kplc.co.ke"

FORM No. 6 - PERFORMANCE SECURITY (LC)

Mandatory Conditions that should appear on the Performance Security (LC). **Form of Documentary credit -** "Irrevocable Standby"

Applicable rules - "Must be UCP Latest Version" i.e. UCP 600 (2007 REVISION) ICC Publication No. 600.

Place of expiry - At the counters of the advising bank.

The SBLC should be available – "By Payment"

Drafts should be payable at - "SIGHT"

Documents required -

1. Beneficiary's signed and dated statement demanding for payment under the letter of credit no……. (*Insert LC No.*) as……. (*Name of Applicant*) (hereinafter called the "Supplier") indicating that the "Supplier" has defaulted in the performance and adherence to and performance of the contract between the Beneficiary and the Supplier.

2. The Original Letter of Credit and all amendments, if any.

Additional Conditions -

1. All charges levied by any bank that is party to this documentary credit are for the account of the Applicant.

2. (Include) that there should be no conditions requiring compliance with the specific regulations or a

   particular country's laws and regulations.

Charges - All bank charges are for the account of the Applicant.

Confirmation instructions – (See notes below)

NOTES TO SUPPLIERS AND BANKS

1. *Please note that should the Performance Security (LC) omit any of the above conditions the LC shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the LC where such LC is required in the tender and Contract.*

2. *KPLC may seek authentication of the Performance Security (LC) from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security (LC) may be deemed as invalid and the Contract nullified.*
   6. The issuing bank should address its response or communication regarding the bond to KPLC at the Following e-mail address – "guarantees@ kplc.co.ke"

3. All Guarantees issued by foreign banks must be confirmed by a local bank in Kenya.

FORM NO. 7 - ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee] *[Guarantor letterhead]*

Beneficiary: _____ *[Insert name and Address of* Employer*]*
Date: _____ *[Insert date of issue]*

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

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

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

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

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

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

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

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

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

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

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

_____

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

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

FORM NO. 8 - BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or in directly holding 25% or more of the voting rights.*
- *Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

Tender Reference No.:___[*insert identification* no] Name of the Assignment:__*[insert name of the assignment]* to:_*[insert Complete name of Procuring Entity]*

In response to your notification of award dated *[insert date of notification of award]* to furnish Additional information on beneficial ownership: *[select one option as applicable and delete the Options that are not applicable]*

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

Details of beneficial ownership

Identity of Beneficial Owner	**Directly or indirectly holding 25% or more of the shares (Yes / No)**	**Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)**	**Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)**
[include full name (last, middle, first), nationality, country of residence]			

OR

ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions: Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.

OR

We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding25% or more of the voting rights.

Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer]"

Name of the Tenderer: .....[insert complete name of the Tenderer]*

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

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

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

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

FORM NO. 9 - SUBCONTRACTORS

(INFORMATION TO BE PROVIDED BY THE TENDERER)

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

No.	Subcontractor	Address	Brief Description of the Works to be Sub- contracted	% works subcontracted

FORM NO. 10 - PREVIOUS EXPERIENCE WITH SIMILAR WORK

(INFORMATION TO BE PROVIDED BY THE TENDERER)

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

No.	Description	Customer Name & Contacts	Date of Supply

FORM NO. 12 - SUPPLIER EVALUATION FORM

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

Name of Firm……...Date……

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

Period of evaluation…….....

1. COST OF SERVICE/PRODUCT	**Rating guidelines**				**Supplier Score**	**Procurement Score**	**User Score**	**Comments**	**Totals**
	Did the vendor assist in or advice on ways of reducing the costs?	**YES: 4**	**PARTIALLY: 2**	**NO : 0**					10
	How closely did your final costs correspond to your expectation at the beginning of the project/tender?	**YES: 2**	**PARTIALLY: 1**	**NO : 0**					10.00 %
	Did the company stick to the agreed transaction/contract rates?	**YES: 4**	**PARTIALLY: 2**	**NO : 0**					
									Totals
2.ON TIME DELIVERY OF PRODUCT OR SERVICE	Did the vendor perform work in compliance with contract terms and agreements?	**YES: 6**	**PARTIALLY: 3**	**NO : 0**					10
	Was the vendor prompt and effective in correction of situations and conditions?	**YES: 2**	**PARTIALLY: 1**	**NO : 0**					10.00 %

	Are you able to track service level agreements and determine duration of incidents from the vendor?	**YES: 2**	**PARTIALLY: 1**	**NO : 0**					

3. FLEXIBILITY TO RESPOND TO UNEXPECTED DEMAND OF SERVICE	**Rating guidelines**								**Totals**
	Was the vendor willing to change their product/service on special needs?	**YES: 6**	**PARTIALLY: 3**	**NO : 0**					6
4. QUALITY									6.00%
	Rating guidelines								**Totals**
	When performing their duties, was there - rework or returns caused by non-conformance to quality?	**NO:6**	**PARTIALLY: 3**	**YES : 0**					14
	Was the quality of service delivered equal to KPLC minimum requirements?	**YES: 8**	**PARTIALLY: 4**	**NO: 0**					14.00 %
5.RESPONSIVE NESS	**Rating guidelines**								**Totals**
	Was the vendor well responsive to information requests, issues, or problems that arose in the course of service?	**YES: 2**	**PARTIALLY: 1**	**NO : 0**					14

	Was the vendor open to feedback on low quality of service levels and willing to act on this?	**YES: 6**	**PARTIALLY: 3**	**NO : 0**					14.00 %
	Is it easy to reach staff members of suppliers in case of a request or query? (are Communication channels clear?)	**YES: 6**	**PARTIALLY: 3**	**NO : 0**					

6. CUSTOMER SUPPORT	**Rating guidelines**								**Totals**
	Did the vendor offer effective customer support?	**YES: 10**	**PARTIALLY: 4**	**NO : 0**					18
	In case of reported problems/issues, were there follow ups by the vendor to ensure the problem is fully resolved during support?	**YES: 8**	**PARTIALLY: 4**	**NO : 0**					18.00 %
7. COMMUNICATION SKILLS	**Rating guidelines**								**Totals**
	Are you satisfied with the attitude, courtesy, and professionalism of this vendor's staff? Written or spoken?	**YES: 2**	**PARTIALLY: 1**	**NO : 0**					6

	Are the vendor's staff well equipped and skilled in handling requests / issues? Are you rotated too much among staff on an issue?	**YES: 4**	**PARTIALLY: 2**	**NO : 0**					6.00%
1. COST OF SERVICE/PRODUCT	**Rating guidelines**				**Supplier Score**	**Procurement Score**	**User Score**	**Comments**	**Totals**
8. DOCUMENTATION AND ACCOUNTING	**Rating guidelines**								**Totals**

	Are you satisfied with how the Vendor presents documentation (invoices & licenses etc) when required to do so, to necessitate finalization of contract renewals and payments?	**YES: 6**	**PARTIALLY: 3**	**NO : 0**					10
	Was problem documentation (incident reports) presented promptly by the vendor and was it complete?	**YES: 4**	**PARTIALLY: 2**	**NO : 0**					10.00 %
9. VALUE ADD	**Rating guidelines**								**Totals**

	Did the vendor go over and above in optimizing service delivery process for effective services delivery?	**YES: 6**	**PARTIALLY: 3**	**NO : 0**					12
	Did the vendor go over and above and offer training or knowledge to assist with better systems support?	**YES: 6**	**PARTIALLY: 3**	**NO : 0**					12.00 %
									Totals
									Score:
Totals							**100.0**		100.0
Maximum Score									100.00 %
VENDOR'S TOTAL SCORE									
VENDOR'S PERCENTAGE SCORE									
	ISSUES FOR FOLLOW UP -								
Evaluation Done by: Name Department Date Checked/Validated by									

Score in Percentage % **……**

PERFORMANCE LEVEL DEFINATION;

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

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

FORM NO. 13 - RECOMMENDATION

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

Name:……Sign:……..Date:……-…...

Name:……Sign:……..Date:……....

Name:……Sign:……..Date:……...

APPENDIX II – TABLE OF CHANGES

NO.	SECTION	CLAUSE	DETAILS OF CHANGE