



REPUBLIC OF KENYA

MINISTRY OF HEALTH

**P.O. BOX 30016 – 00100
NAIROBI**

**PROVISION OF ACCOMODATION, CONFERENCE AND
HOTEL SERVICES IN ALL THE COUNTIES**

TENDER NO: MOH/ADM/ONT/003/2021-2022

FRAMEWORK AGREEMENT

Tender Date: 30/11/10/2021

Closing/Opening Date: 14/12/2021 AT 10.00 A.M

TABLE OF CONTENTS

PREFACE	2
APPENDIX TO THE PREFACE	
GUIDELINES FOR PREPARATION OF TENDER DOCUMENTS	
1. GENERAL.....	4
2. PART 1 - TENDERING PROCEDURES.....	6
3. PART 2 - PROCUREMENT ENTITY'S REQUIREMENTS.....	23
4. PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS.....	52
INVITATION TO TENDER	4
SECTION I – INSTRUCTIONS TO TENDERERS	7
A. General	7
1. Scope of Tender	7
2. Definitions.....	7
3. Fraud and Corruption.....	7
4. Eligible Tenderers	8
5. Qualification of the Tenderer	9
B. Contents of Tendering Document	9
6. Sections of Tendering Document.....	9
7. Site Visit.....	10
8. Pre-Tender Meeting and a pre-arranged pretender visit of the site of the works.....	10
9. Clarification of Tender Documents.....	10
10. Amendment of Tendering Document.....	11
C. Preparation of Tenders	11
11. Cost of Tendering.....	11
12. Language of Tender.....	11
13. Documents Comprising the Tender.....	11
14. Form of Tender and Activity Schedule.....	12
15. Alternative Tenders.....	12
16. Tender Prices and Discounts.....	12
17. Currencies of Tender and Payment.....	12
18. Documents Establishing Conformity of Services.....	12
19. Documents Establishing the Eligibility and Qualifications of the Tenderer.....	13
20. Period of Validity of Tenders.....	14
21. Tender Security.....	14
22. Format and Signing of Tender.....	15
D. Submission and Opening of Tenders	15
23. Sealing and Marking of Tenders.....	15
24. Deadline for Submission of Tenders.....	16
25. Late Tenders.....	16
26. Withdrawal, Substitution and Modification of Tenders.....	16
27. Tender Opening.....	16
E. Evaluation and Comparison of Tenders	17
28. Confidentiality.....	17
29. Clarification of Tenders.....	17
30. Deviations, Reservations, and Omissions.....	17
31. Determination of Responsiveness.....	17

32.	Arithmetical Errors.....	18
33.	Conversion to Single Currency.....	18
34.	Margin of Preference.....	18
35.	Evaluation of Tenders.....	19
36.	Comparison of Tenders.....	19
37.	Abnormally Low Tenders and Abnormally High Tenders.....	19
38.	Unbalanced and/or Front-Loaded Tenders.....	20
39.	Qualification of the Tenderer.....	20
40.	Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders.....	20
F.	Award of Contract.....	20
41.	Award Criteria.....	20
42.	Notice of Intention to enter into a Contract.....	20
43.	Standstill Period.....	21
44.	Debriefing by the Procuring Entity.....	21
45.	Letter of Award.....	21
46.	Signing of Contract.....	21
47.	Performance Security.....	21
48.	Publication of Procurement Contract.....	22
49.	Adjudicator.....	22
50.	Procurement Related Complaints.....	22
	SECTION II - TENDER DATASHEET (TDS).....	23
	SECTION III - EVALUATION AND QUALIFICATION CRITERIA.....	28
1.	General Provision.....	28
2.	Preliminary examination for Determination of Responsiveness.....	28
3.	Tender Evaluation.....	28
	SECTION IV –TENDERING FORMS.....	34
1.	FORM OF TENDER.....	34
a)	TENDER SECURING DECLARATION.....	37
b)	TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE.....	38
b)	CERTIFICATE OF INDEPENDENT TENDER DETERMINATION.....	41
c)	SELF- DECLARATION FORMS.....	42
d)	APPENDIX 1 - FRAUD AND CORRUPTION.....	45
2.	NOTIFICATION OF INTENTION TO AWARD	64
3.	REQUEST FOR REVIEW	67
4.	LETTER OF AWARD	67
5.	FORM OF CONTRACT.....	68
6.	FORM OF TENDER SECURITY (Bank Guarantee)	70
7.	FORM OF TENDER SECURITY (INSURANCE GUARANTEE)	71
8.	FORM OF TENDER- SECURING DECLARATION.....	72

INVITATION TO TENDER

**PROCURING ENTITY: MINISTRY OF HEALTH
P.O. BOX 30016 – 00100 NAIROBI**

CONTRACT NAME AND DESCRIPTION: FRAMEWORK CONTRACT FOR PROVISION OF ACCOMODATION, CONFERENCE AND HOTEL SERVICES IN ALL THE COUNTIES IN KENYA.

1. The **MINISTRY OF HEALTH** invites sealed tenders for Provision of Accommodation, Conference and Hotel services in all the counties in Kenya on “As and when Required” basis for a period of Two (2) years.
2. Tendering will be conducted under Open Competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours i.e; **0900 to 1600 hours** at the address given below. More details on the Services are provided in PART 2 - Services' Requirements and Section V - Description of Services of the Tender Document
4. A complete set of tender documents may be obtained by interested candidates at Public Procurement Information Portal (www.tenders.go.ke) and the Ministry website www.health.go.ke for free of charge before the closing date.
5. All Tenders must be accompanied by a tender securing declaration form valid for a Period of 120 days from the date of tender opening.
6. Tenders are to remain valid for a period of 120 days from the date of tender submission. Shorter validity period will render the bid non-responsive.
7. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
8. Completed tenders must be delivered to the address below on or before **Tuesday 14th December 2021 at 10am.** **Electronic Tenders will not be permitted.**
9. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
10. Late tenders will be rejected.
11. The addresses referred to above are:

A. Address for obtaining further information about the tender documents

Ministry of Health

Supply Chain Management Office, Afya House, 5th Floor, Room No.514 Nairobi.

P.O. Box 30016 – 00100 Nairobi

Email: procurement@health.go.ke

B. Address for Submission of Tenders.

Principal Secretary,
Ministry of Health,
Afya House, 1st Floor,
P.O. Box 30016–00100 NAIROBI

C. Address for Opening of Tenders.

GTZ Boardroom, Afya House, Ground floor.

Name: SUSAN MOCHACHE, CBS

Designation: PRINCIPAL SECRETARY, MINISTRY OF HEALTH

PART 1 - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A. General

1. Scope of Tender

- 1.1 This tendering document is for the delivery of Non-Consulting Services, as specified in Section V, Procuring Entity's Requirements. The name, identification and number of this tender are specified in the TDS.

2. Definitions

2.1 Throughout this tendering document:

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

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

3. Fraud and Corruption

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

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

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

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

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

4. Eligible Tenderers

- 4.1 A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to ITT 4.6, or any combination of such entities in the form of an association or subcontracting arrangement or a Joint Venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a Form of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS**.
- 4.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a) Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
 - b) Receives or has received any direct or indirect subsidy from another Tenderer; or
 - c) Has the same legal representative as another Tenderer; or
 - d) Has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
 - e) Or any of its affiliates participated as a consultant in the preparation of the Procuring Entity's Requirements (including Activities Schedules, Performance Specifications and Drawings) for the Maintenance services that are the subject of the Tender; or
 - f) Or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
 - g) Would be providing goods, works, or maintenance services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the **TDS** ITT 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
 - h) Has a close business or family relationship with a professional staff of the Procuring Entity 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 the Procuring Entity throughout the procurement process and execution of the Contract.
- 4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member, may participate as a sub-contractor in more than one Tender.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services.
- 4.6 A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya, shall be ineligible to be prequalified for, initially selected for, tender for, propose for, or be awarded a contract during such period of sanctioning. The list of debarred firms and individuals is available at the electronic address info@ppra.go.ke.

- 4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they: (i) are legally and financially autonomous; (ii) operate under commercial law; and (iii) are not under supervision of the Procuring Entity.
- 4.8 A Tenderer under suspension from tendering as the result of the operation of a Tender-Securing Declaration or Proposal-Securing Declaration shall not be eligible to tender.
- 4.9 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.
- 4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in “SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9”.
- 4.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if it is registered in Kenya, has less than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms are registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 4.12 The Procuring Entity may require tenderers to be registered with certain authorities in Kenya. Such registration shall be defined in the TDS, but care must be taken to ensure such registration requirement does not discourage competition, nor exclude competent tenderers. Registration shall not be a condition for tender, but where a selected tenderer is not so registered, the tenderer shall be given opportunity to register before signature of contract.
- 4.13 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke
- 4.14 A Tenderer may be considered ineligible if he/she offers goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

5. Qualification of the Tenderer

- 5.1 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 5.2 In the event that prequalification of Tenderers has been undertaken as stated in ITT 18.4, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

B. Contents of Tendering Document

6. Sections of Tendering Document

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

PART 1: Tendering Procedures

- i) Section I-Instructions to Tenderers (ITT)

- ii) Section II-Tender Data Sheet (TDS)
- iii) Section III-Evaluation and Qualification Criteria

- iv) Section IV – Tendering Forms

PART 2: Procuring Entity's Requirements

- v) Section V- Procuring Entity's Requirements

PART 3: Contract

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

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

6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 9. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

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

7. Site Visit

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

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

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

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

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

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

9. Clarification of Tender Documents

9.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-arranged pretender visit of the site of the works if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline

for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 10.

10. Amendment of Tendering Document

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

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

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

C. Preparation of Tenders

11. Cost of Tendering

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

12. Language of Tender

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

13. Documents Comprising the Tender

13.1 The Tender shall comprise the following:

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

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

14. Form of Tender and Activity Schedule

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

15. Alternative Tenders

15.1 Unless otherwise indicated in the TDS, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the Most Advantageous Tenderer shall be considered by the Procuring Entity.

15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the TDS and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.

15.3 When specified in the TDS, Tenderers are permitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified in the TDS, as will the method for their evaluating, and described in Section VII, Procuring Entity's Requirements.

16. Tender Prices and Discounts

16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Activity Schedule(s) shall conform to the requirements specified below.

16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).

16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, submitted by the Tenderer.

16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 13.1.

16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, Procuring Entity's Requirements. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.

16.6 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.

16.7 If provided for in the TDS, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.

17. Currencies of Tender and Payment

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

18. Documents Establishing Conformity of Services

18.1 To establish the conformity of the Maintenance services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, Procuring Entity's Requirements.

18.2 Standards for provision of the Maintenance services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Procuring Entity's Requirements.

19. Documents Establishing the Eligibility and Qualifications of the Tenderer

19.1 Tenderers shall complete the Form of Tender and all the Tendering Forms included in Section IV to establish their eligibility in accordance with ITT 4.

19.2 The documentary evidence of the Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

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

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

19.5 The purpose of the information described in ITT 18.1 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

19.6 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

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

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

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

- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
- ii) If the contract has been awarded to that tenderer, the contract award will be set aside,
- iii) The tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other person have committed any criminal offence.

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

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

20. Period of Validity of Tenders

20.1 tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by the Procuring Entity in accordance with ITT 23.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 20, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 19.3.

21. Tender Security

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

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

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

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

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

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

21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security. The Procurement Entity shall also return tender security to the tenderers where;

- a). The procurement proceedings are terminated
- b). All tenders were determined non-responsive and
- c). Where a bidder decline to extent the tender validity period.

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

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

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

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

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

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

22. Format and Signing of Tender

22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 12, bound with the volume containing the Form of Tender, and clearly marked "Original." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS**, and clearly marked as "Copies." In the event of discrepancy between them, the original shall prevail.

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

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

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

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

D. Submission and Opening of Tenders

23. Sealing and Marking of Tenders

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

- in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and
- in an envelope or package or container marked "COPIES", all required copies of the Tender; and
- if alternative Tenders are permitted in accordance with ITT 13, and if relevant:
 - i) in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", the alternative Tender; and
 - ii) in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies of the alternative Tender.

23.2 The inner envelopes or packages or containers shall:

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

23.3 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume

no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will be rejected.

24. Deadline for Submission of Tenders

- 24 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified in the **TDS**. When so specified in the **TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the **TDS**.
- 25 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

25. Late Tenders

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

26. Withdrawal, Substitution and Modification of Tenders

- 26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:
- 26.2 prepared and submitted in accordance with ITT 21 and ITT 22 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
- 26.3 received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.
- 26.4 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.
- 26.5 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

27. Tender Opening

- 27.1 Except as in the cases specified in ITT 23 and ITT 25.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1, shall be as specified **in the TDS**.
- 27.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.
- 27.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 27.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

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

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

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

27.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:

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

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

E. Evaluation and Comparison of Tenders

28. Confidentiality

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

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

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

29 Clarification of Tenders

29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the Procuring Entity may, at the Procuring Entity's discretion, ask any Tenderer for clarification of its Tender including breakdowns of the prices in the Activity Schedule, and other information that the Procuring Entity may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT 32.

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

30 Deviations, Reservations, and Omissions

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

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

31. Determination of Responsiveness

- 31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.
- 31.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- a) If accepted, would:
 - i) Affect in any substantial way the scope, quality, or performance of the Maintenance services specified in the Contract; or
 - ii) Limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
 - b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 31.2 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 17 and ITT18, in particular, to confirm that all requirements of Section VII, Procuring Entity's Requirements have been met without any material deviation or reservation, or omission.
- 31.3 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. Non-conformities, Errors and Omissions
- 31.4 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformities in the Tender.
- 31.5 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non- conformities or omissions in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 31.6 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable non material non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS**.

32. Arithmetical Errors

- 32.1 Corrected tender prices shall not be used in the evaluation of tenders, comparison of tender prices.
- 32.2 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in anyway by any person or entity.
- 32.3 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:
- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
 - b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
 - c) If there is a discrepancy between words and figures, the amount in words shall prevail,

33. Conversion to Single Currency

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

34. Margin of Preference

- 34.1 Margin of preference on local service providers may be allowed if it is deemed that the services require participation of foreign tenderers. If so allowed, it will be indicated in the **TDS**.

34.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and/or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to the specified group are eligible to tender as specified in the **TDS**. Otherwise if not so stated, the invitation will be open to all tenderers.

35. Evaluation of Tenders

35.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Most Advantageous Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- a) Substantially responsive to the tendering document; and
- b) The lowest evaluated cost.

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

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

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

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

36. Comparison of Tenders

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

37. Abnormally Low Tenders and Abnormally High

Tenders Abnormally Low Tenders

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

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

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

Abnormally High Tenders

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

compromised.

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

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

38. Unbalanced and/or Front-Loaded Tenders

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

38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:

- a) Accept the Tender; or
- b) Require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price; or
- c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
- d) reject the Tender.

39. Qualification of the Tenderer

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

39.1 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

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

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

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

F. Award of Contract

41 Award Criteria

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

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

42.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter in to a Contract/Notification of award to all tenderers which shall

contain, at a minimum, the following information:

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

43. Standstill Period

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

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

44. Debriefing by the Procuring Entity

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

45. Letter of Award

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

46. Signing of Contract

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

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

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

47. Performance Security

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

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

48. Publication of Procurement Contract

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

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

49. Adjudicator

49.1 The Procuring Entity proposes the person named **in the TDS** to be appointed as Adjudicator under the Contract, at an hourly fee specified **in the TDS**, plus reimbursable expenses. If the Tenderer disagrees with the proposed Adjudicator, the Tenderer should so state in the Tender. If, in the Form of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

50. Procurement Related Complaints and Administrative Review

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

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

SECTION II - TENDER DATA SHEET (TDS)

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

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT Reference	A. General
ITT 1.1	<p>The reference number of the Request for Tenders (ITT) is: MOH/ADM/ONT/003/2021-2022</p> <p>The Procuring Entity is: MINISTRY OF HEALTH</p> <p>The name of the Tender is: PROVISION OF ACCOMODATION, CONFERENCE AND HOTEL SERVICES IN ALL THE COUNTIES</p> <p>The number and identification of lots (contracts) comprising this Invitation for Tenders is: NOT APPLICABLE</p>
ITT 2.1	Electronic Bidding is NOT ALLOWED
ITT 2.2	The intended completion date is TWO (2) YEARS FROM THE DATE OF CONTRACT SIGNING.
ITT 3.3 & 3.4	The firms (if any) that provided consulting services for the contract being tendered for are NONE
	B. Contents of Tendering Document
ITT 8.2	<p>For <u>Clarification of Tender purposes</u> only, the Procuring Entity's address is:</p> <p>Attention: Head, Supply Chain Management</p> <p>Postal Address: P.O. Box 30016 – 00100 NAIROBI</p> <p>Physical Address: Afya House 5th Floor, Room No.514 Nairobi.</p> <p>Electronic mail address: procurement@health.go.ke</p> <p><i>Requests for clarification should be received by the Procuring Entity not later than: 5 days before closing date</i></p> <p>Web page: www.tenders.go.ke and www.health.go.ke</p> <p>A. A pretenders' conference WILL NOT BE HELD</p> <p>B. A pre-arranged pretender visit of the site of the works IS NOT APPLICABLE</p>
ITT 8.4	Minutes of the pre-tender meeting and the pre-arranged pretender visit of the site of the works shall be published at the website NOT APPLICABLE
ITT 9.1	Where hotels operate under a group of companies/hotels, they will be required to submit their bid documents separately.
ITT 9.1	The Procuring Entity will respond to request for clarification in 3 days and shall publish its response at the website www.health.go.ke/tenders or www.tenders.go.ke

C. Preparation of Tenders				
ITT 13.1 (i)	The Tenderer shall submit the following additional documents in its Tender:			
	S/No.	Requirement	Mandatory	Bidder's Response
	STATUTORY DOCUMENTS			
	1.	Copy of brochure detailing all the features and facilities of the Hotel (Accommodation, Conferences and Hotel facilities)	Yes	
	2.	Provide a copy of the company's Certificate of Incorporation/Business Registration Certificate	Yes	
	3.	Provide copy of the company's current valid Tax Compliance issued by Kenya Revenue Authority (KRA) valid up-to the date of tender opening	Yes	
	4.	Valid trade license/ single business permit	Yes	
	5.	CR 12/ ID Card identification of directors where applicable	Yes	
	6.	Copy of Valid Health licenses for the Hotel– Medical certificate, Food hygiene, Covid -19 Certificate	Yes	
	7.	Attachment of Classification Certificate from Tourism Regulatory Authority (Indicate if Classified and the rating) <ul style="list-style-type: none"> • If not classified give reasons and attach all the necessary documents to support this 	Yes	
8.	Duly filled, stamped and signed following documents; <ul style="list-style-type: none"> i) Form of Tender ii) Confidential Business Questionnaire <ul style="list-style-type: none"> i) Certificate of Independent Tender Determination ii) Self-Declaration Forms (SD1, SD2 and Declaration and Commitment to the Code of Ethics) iii) Fraud and Corruption 	Yes		
9.	All pages of both original and copy of the tender documents submitted MUST be sequentially serialized by the tenderers in line with Section 74(1) of the Public Procurement and Asset Disposal Act, 2015. Pagination should be in the format 1, 2, 3,4.....to the last page. A tender with repeated pages, missing page numbers and other inconsistencies will be rejected.	Yes		

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 15.1	Alternative Tenders <i>shall not be</i> considered.
ITT 15.2	Alternative times for completion SHALL NOT permitted.
ITT 15.3	Alternative technical solutions shall be permitted for the following parts of the Services: WILL NOT BE ALLOWED
ITT 16.7	The prices quoted by the tenderer “SHALL NOT BE” subject to adjustments during the performance of the contract
ITT 20.1	The Tender validity period shall be 120 days
ITT 21.1	A Tender Security “ SHALL NOT BE ” required. A Tender-Securing Declaration SHALL BE required.
ITT 21.1	The tender security shall be NOT APPLICABLE
ITT 21.9 (b) ii	The Procuring entity shall declare the tender ineligible to be awarded a contract by the procuring entity for a period of NOT APPLICABLE
ITT 22.1	In addition to the original of the tender, the number of copies is 1 copy (One original and One copy)
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: A LETTER SIGNED BY THE DIRECTORS AUTHORIZING THE TRANSFER OF POWERS TO THEIR NOMINEE FOR THIS SPECIFIC TENDER AND ADDRESSED TO THE PRINCIPAL SECRETARY, MINISTRY OF HEALTH
	D. Submission and Opening of Tenders
ITT 23.1	For <u>Tender submission purposes</u> only, the Procuring Entity’s address is: Attention: PRINCIPAL SECRETARY, MINISTRY OF HEALTH Postal Address: 30016 – 00100 NAIROBI Physical Address: Afya House, 1stFloor AT THE TENDER BOX
ITT 24.1	The deadline for Tender submission is: Date: TUESDAY 14TH DECEMBER 2021 Time: 10am KENYAN TIME The electronic Tendering submission procedures shall be: NOT APPLICABLE
ITT 26.1	The Tender opening shall take place at: Physical Address: MINISTRY OF HEALTH, AFYA HOUSE, GROUND FLOOR,GTZ BOARDROOM. P.O. Box 30016 – 00100 NAIROBI Date: 14TH DECEMBER 2021 Time: 10.00 am KENYAN TIME
ITT 27.6	The priced activity schedule shall be initialed by ALL representatives of the procuring entity conducting the tender opening and all tenders shall be numbered.
	E. Evaluation and Comparison of Tenders
ITT 34.1	Margin of preference is not allowed

ITT 34.2	The invitation to tender is extended to the following group that qualify for reservations NOT APPLICABLE
ITT 35.2 (d)	Additional evaluation factors shall be NOT APPLICABLE
ITT 35.4	Tenderers shall be NOT APPLICABLE to quote separate prices for different lots and the methodology to determine the lowest tenderer is specified in section III evaluation & qualification criteria
F. Award of Contract	
ITT 49.1	The Adjudicator proposed by the Procuring entity is NOT APPLICABLE . The hourly fee for this proposed Adjudicator shall be NOT APPLICABLE . The biographical data of the proposed Adjudicator is as follows NOT APPLICABLE The Adjudicator proposed by the Procuring entity is NOT APPLICABLE . The
ITT 50.1	<p>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.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:</p> <p>For the attention: PAULINE OBONYO OPIYO (Ms.) Title/position: Ag. DIRECTOR GENERAL Procuring Entity: PUBLIC PROCUREMENT REGULATORY AUTHORITY Email address: info@ppra.go.ke; complaints@ppra.go.ke</p> <p style="text-align: center;">In summary, a Procurement-related Complaint may challenge any of the following:</p> <p style="text-align: center;">(i) the terms of the Tender Documents; and (ii) the Procuring Entity’s decision to award the contract.</p>

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

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

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

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

Evaluation and contract award Criteria

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

2. Preliminary examination for Determination of Responsiveness

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

The table below shows the preliminary evaluation criteria.

(a) STAGE 1: PRELIMINARY EVALUATION

S/No.	REQUIREMENTS	Mandatory	Bidder’s Response
1.	Copy of brochure detailing all the features and facilities of the Hotel (Accommodation, Conferences and Hotel facilities)	Yes	
2.	Provide a copy of the company’s Certificate of Incorporation/Business Registration Certificate	Yes	
3.	Provide copy of the company’s current valid Tax Compliance issued by Kenya Revenue Authority (KRA) valid up-to the date of tender opening	Yes	
4.	Valid trade license/ single business permit	Yes	
5.	CR 12/ ID Card/passport of directors where applicable	Yes	
6.	Copy of Valid Health licenses for the Hotel–Medical certificate, Food hygiene, Covid -19 Certificate	Yes	
7.	Attachment of Classification Certificate from Tourism Regulatory Authority (Indicate if Classified or not classified) <ul style="list-style-type: none"> • If not classified give reasons and attach all the necessary documents to support this. 	Yes	
8.	Duly filled, stamped and signed following documents; <ol style="list-style-type: none"> i) Form of Tender ii) Confidential Business Questionnaire iii) Certificate of Independent Tender Determination iv) Self-Declaration Forms (SD1, SD2 and Declaration and Commitment to the Code of Ethics) v) Fraud and Corruption 	Yes	

9.	All pages of both original and copy of the tender documents submitted MUST be sequentially serialized by the tenderers in line with Section 74(1) of the Public Procurement and Asset Disposal Act, 2015. Pagination should be in the format 1, 2, 3, 4,to the last page. A tender with repeated pages, missing page numbers and other inconsistencies will be rejected.	Yes	
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KEY:

✓ PASS

X FAIL

NB: Failure to adhere to any one of the above requirements will lead to automatic disqualification from further evaluation.

Bidders complying with all the above requirements will proceed to Stage 2 Detailed Evaluation stage.

(b) STAGE 2: DETAILED EVALUATION

In addition to the criteria listed in ITT 35.2 (a)–(d) the following check list will be adopted by the evaluation committee at this stage:

- All bidders **MUST** clearly illustrate that the following parameters have been fully met at this stage. If a hotel is not classified (**OTHERS**) please indicate how the following parameters have been fully met.
- Attachment of brochures is Mandatory.

SECTION - ITEM	ONE STAR	TWO STAR	THREE STAR	FOUR STAR	FIVE STAR	Mandatory	REMARKS
1.0 LOCATION							
1.1 Location	The location of the establishment should clearly indicated(outlined).	Same as for One Star	Same as for One Star, but offering easy accessibility, safety, comfort and tranquility	Same as for Three Star.	Same as for Three Star.	YES	
2.0 BUILDING							
2.1 Autonomy of Building	There should be separate and independent access for the hotel guests	Same as for One Star	Same as for One Star but all rooms should be approached through a corridor or private passages.	Same as for Three Star but in addition, it should be semi - detached from other buildings.	Same as for Four Star but in addition the whole building should be completely detached from other buildings.	YES	
2.2 Capacity	The hotel should have at least (10) lettable accommodation units	Same as One Star.	Same as for One Star	Same as for One Star.	Same as for One Star.	YES	
3.0 FRONT OFFICE							
3.1 Reception Area	An appropriate area suitably designed for receiving of guests should be available.	Same as One Star.	Same as for One Star but a separate concierge service area should be provided.	Same as for Three Star but customer service/ public relation area should be provided to assist	Same as Four Star.	YES	
3.2 Hours of Service	Should be twenty-four (24).	Same as for One Star.	Same as for One Star.	Same as for One Star	Same as for One Star	YES	
4.0 LOBBY/LOUNGE/PUBLIC AREA(S)							
4.1 Lobby/Lounge/ Public Areas	Should be available, modest in design, functional and in line with applicable Building Code	Same as for One Star, but with better design.	Same as for Two Star but exclusively designed for and used by guests.	Same as for Three Star but with excellent design, material, workmanship, elegant finish and high degree of luxury.	Same as for Four Star but with very high degree of luxury, ambiance and beauty.	YES	
4.2 Size of Lobby/Lounge	Should be proportionate to the capacity of the establishment.	Same as for One Star	Same as for One Star	Same as for One Star but should be more spacious.	Same as for Four Star	YES	

4.3 Floors, Walls and Ceilings	Should be of good quality, permanent and impervious material and well maintained, reflecting high standards of cleanliness with proper attention to hygiene.	Same as for One Star but all materials and finish should be of better quality.	Same as for Two Star, but should be of high quality materials and excellent finish.	Same as for Three Star but with a degree of luxury in the quality, materials, design, workmanship and finish.	Same as for Four Star but with highest standard of palatial elegance and quality.	YES	
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5.0 FUNCTION ROOMS: (Briefing, Conferences, Banquets etc.)

5.1 Features and Facilities	At least One multi - purpose room with good furniture to match the general standard of the hotel.	Same as for One Star.	At least One large room of not less than 75 sq. m. comfortably furnished, sound proofed, and well maintained.	Same as for Three Star but with at least One large room of not less than 75 sq. m. and at least Two smaller Ones, both carpeted, well-lit and maintained. High quality furniture furnishings and fittings. Acoustically sound decoration in addition, fully equipped with public address system.	Same as for Four Star but of very high quality audiovisual and internet facilities.	YES	
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6.0 RESTAURANT (S)

6.1 Features and Facilities	At least One restaurant, well furnished, ventilated, lit and maintained. Total seating capacity should be at least 30% of the bed capacity.	Same as for One Star	Same as for One Star, but the seating capacity should be at least 40% of the bed capacity.	Same as for Three Star but with at least two restaurants plus a coffee shop. Total seating capacity should be at least 80% of the bed capacity.	Same as for Four Star but with a minimum of two restaurants offering different cuisine and services. Rich a la carte Menu should be available.	YES	
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6.2 Furniture, Equipment and Accessories	Should be adequate, functional, comfortable, clean appropriate, of good quality, taking into consideration the needs of Children, Disabled/ Handicapped persons.	Same as for One Star but all of better quality.	Same as for two Star but all should be of superior quality	Same as for Three Star but luxurious and more elegant.	Same as for Four Star but distinctively luxurious and elegant	YES	
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6.3. Menu	Priced menu cards should be available with a modest selection of local and international dishes with at least three courses and a beverage List.	Same as for One Star but with better quality presentation and choice.	Same as for Two Star but with at least a four course menu and wider selection of dishes and beverages.	Same as for Three Star but with superior quality cuisine, wide choice of both a la carte and table d'hôte of at least five courses and a rich bar and wine list.	Same as Four Star, but featuring excellent cuisine and very rich bar and wine list.	YES	
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7.0 BAR(S)

7.1 General Features and Facilities	At least One bar should be conveniently located near the dining room and /or lounge, or may be part of the restaurant.	Same as for One Star.	Same as for One Star but more spacious with better ambiance. Facilities to prepare non -stocked refreshments should be provided	Same as for Three Star but will be elegant, spacious and provide facilities of internationally recognizable standards.	Same as for Three Star but with a higher degree of creativity, ambiance and comfort.	YES	
7.2. Floors, Walls, Ceilings and Decorations	Woodwork and fittings should be modestly decorated, of fine finish, functional and well maintained.	Same as for One Star but with more attractive decoration, tasteful finish and design.	Same as for Two Star but with very high quality finish.	Same as for Three Star but with excellent design and finish offering a higher degree of comfort.	Same as for Four Star but with luxurious finish and décor.	YES	
7.3 Beverage Cooling Systems	Adequate refrigeration /cooling should be available and storage of wines should be done professionally.	Same as for One Star	Same as for One Star but with extensive and varied cooling systems to meet demand of various storage and cooling requirements.	Same as for Three Star	Same as for Three Star	YES	
7.4 Selection of Drinks and Snacks	Adequate variety of local and international beverages, wines, and snacks should be available.	Same as for One Star but with wide variety and choice	Same as for Two Star but with a wider selection of beverage, wines, and snacks.	Same as for Three Star but with premium internationally re - known brands available.	Same as for Four Star but with an extensive selection of premium brands.	YES	
8 .0 KITCHEN (S)							
8.1 Size	Area including food stores and pantry should be in proportion to the capacity of the establishment, but shall not be less than half sq. m. per guest bed.	Same as for One Star.	Same as for One Star.	Same as for One Star but area per guest bed should be ¾ sq. m. for hotels with more than 100 beds.	Same as for Four Star.	YES	
8. 2. Relation to Restaurant	Should be on the same floor as the restaurant/ dining room and open directly into the same via airlocks.	Same as for One Star.	Same as for One Star, but if the kitchen is on another floor, separate food lift(s) should be provided.	Same as for Three Star.	Same as for Three Star.	YES	
8.3. Flow of Food Service	There should be two independent access ways to facilitate one way movement between the preparation area and the restaurant/ dining room.	Same as One Star	Same as for One Star.	Same as for One Star.	Same as for One Star	YES	

8.4 Organization of the Kitchen	There should be visible segregation in terms of working areas for cleaning, preparation of meats, vegetables, fish, poultry and pastries.	Same as One Star but with different and appropriate working areas for preparation of meats, vegetables, fish, poultry and pastries.	Same as for Two Star but highly organized and departmentalized	Same as for Three Star but with sections clearly labelled.	Same as for Four Star but labelled and screened off where applicable.	YES	
8.5 Equipment of Kitchen	Work tops should be of none rusty impervious materials, and should include an adequate number of sinks, with hot and cold running water. Basic utensils, tools and cooking equipment should be provided. All should be of good quality and be kept in good and clean condition.	Same as for One Star.	Same as for One Star, but each section should be provided with appropriate tools.	Same as for Three Star but with high quality tools.	As for Four Star but with very high quality tools.	YES	
8.6. Hand Wash Basins	Adequate and separate hand wash basins, with at least one located at the entrance, all hygienically controlled, with hot and cold running water, and soap dispensers should be provided. Hygienic means of hand drying should be provided.	Same as for One Star	Same as for One Star.	Same as for One Star	Same as for One Star	YES	
8.7. Ventilation	Adequate and efficient natural and/ or mechanical ventilation/ fume and hot air extraction should be provided.	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	

8.8 Waste Collection and Storage	<p>There should be sufficient number of separate waste bins preferably for glass, organic and non - organic material with tight fitting covers, protected from weather and animals.</p> <ul style="list-style-type: none"> •All bins should be lined with appropriate waste bags. •Waste must be collected from the kitchen, on a regular basis. 	Same as One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
8.9. Drainage	<p>All drains in and around the kitchen should be covered and connected to the drainage system of the building via a grease trap. In areas where there is no sewage system, it should be connected to the soakage pit. All to be maintained in good working condition, at all times</p>	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
8.10 Floors, Walls, and Ceilings	<p>Should be of impervious materials, non-corrosive and non -slip, conducive to easy cleaning. All should be of good workmanship and finish. Excellent levels of hygiene should be observed. Floors should have a gentle slope towards the drainage point and the junction between all vertical and horizontal surfaces</p>	Same as for One Star	Same as for One Star but with high quality materials and finish.	Same as for Three Star	Same as for Three Star	YES	

	should be covered						
8.11 Food Storage	Should be adequate, providing for separation of perishables and non - perishables, well ventilated and maintained in hygienic condition. Built in facilities for refrigeration, shelving, pallets and cabinets should be available	Same as for One Star	Same as for One Star but should have separate compartments for various foodstuffs.	Same as for Three Star	Same as Three Star.	YES	
9.0 GUEST ROOMS							
9.1 Minimum Size	Minimum size of bedrooms should be 12 sq. m.	Minimum size to be 12 sq.m.	Minimum size to be 15 sq.m.	Minimum size to be 20 sq.m.	Minimum size to be 25 sq.m.	YES	
9.2. Regulation of Temperature	Adequate natural ventilation, where openable window area is not of less than 20% of floor area and/ or sufficient mechanical air conditioning should be provided, so as to maintain a temperature range for the comfort of the guests	Same as for One Star	Same as for One Star but with quality fixtures and fittings	Same as for Two Star but with high quality air conditioning systems	Same as for One Star	YES	
9.3. Balconies/ Terraces	Not essential	Not essential	At least 50% of the rooms should have balconies	At least 75% of the rooms should have balconies.	All rooms should have balconies.	YES	
9.4 Change of Linen	Should be changed after every two nights of use or with every new guest.	Same as for One Star	Same as for One Star	Should be changed daily or as requested by the guest	Same as for Four Star	YES	
9.5 Floors, Walls And Ceilings	Should be of good finish and well maintained. •Carpets where applicable, should be professionally fitted, with a good under lay and should be clean at all the times. •Doors and windows should be of quality material.	Same as for One Star	Same as for One Star but with high quality material used.	Same as for Three Star but with a luxury touch in material, workmanship and	Same as for four Star but of exceptionally high quality material and finish.	YES	

9.6 Room Designation	Should be numbered, lettered or otherwise designated with clear signage.	Same as for One Star	Same as for One Star but in good quality fittings.	Same as for Three Star but of better quality.	Same as for four Star but of excellent finish.	YES	
9.7 Room Security	The main door and windows should be of good quality weather resistant material and fitted with secure locks/locking system, providing maximum privacy and security should be installed.	Same as for One Star	Same as for One Star, but with higher quality fittings	Same as for Three Star, but provision for double locking system and door lens.	Same as for Four Star, but with a functional electronic surveillance systems	YES	
9.8 Supplies in Bedrooms	Approved and sealed bottled drinking water should be supplied daily. Bedside rug for each guest, "Do Not Disturb" sign, stationery, waste bin, appropriate insect repellent, laundry bags, air-freshening supplies and water glasses should be provided.	Same as for One Star but all items should be of good quality.	Same as for Two Star. In addition, hot water bottle, extra pillows, duvet/ blanket, tea/ coffee tray, and assorted tissue paper, Shoe bags, shoe shining pads, sewing kits and bedroom slippers, should be provided	Same as for Three Star, but with flowers, chocolates, sweets and fruits in season.	Same as for four Star	YES	
10.0 GUEST BATHROOM (S)							
10.1 Bathroom (s)	Should be ensuite to each guest room	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
10.2. Size	Bathroom/ WC of not less than 3½ sq. m.	Same as for One Star.	Same as for One Star, but should be of not less than 5 sq.m.	Same as for Three Star but of not less than 6 sq.m.	Same as for Four Star but should be more spacious.	YES	
10.3. Fittings, Equipment, and Amenities	Should be modest, functional and include a shower and/ or bath tub with mixer and splash guard hanging naturally into the shower tray, WC toilet paper holder, hand wash basin with hot and cold water, a reasonably sized mirror, towel rail, grab rail, clothes hook or hanger, and non -slip shower tray	Same as for One Star but with a large mirror.	Same as for One Star but should include an efficient mechanical air extraction system and a larger mirror. Indirect light fittings are recommended. Built -in bath tubs should be at least 160 cm. long.	Same as for Three Star but all equipment should be of high quality, with Arabic shower provided	Same as for Four Star but with hair dryers and telephone extensions.	YES	

10.4. Floors, Walls and Ceilings	Good impervious non - slip materials should be used. The materials used to cover the walls should be at least up to a height of 2.5 metres from the floor.	Same as for One Star but with better workmanship and finish.	Same as for Two Star, but with higher quality materials.	Same as for Three Star, but with superior quality materials.	Same as for Four Star.	YES	
10.5 Towels and Bathrobes	Should be adequate, of good quality material in good condition, and changed daily. Bath mat of modest material should be provided	Same as for One Star	Same as for One Star but of bigger size and better quality including a face towel and a bathrobe.	Same as for Three Star but the bath towel should not be of less than 80cm x 150cm and should be of higher quality material	Same as for Four Star, but should be of a much higher quality.	YES	
10.6 Lighting and Ventilation	Should provide adequate illumination suitable for different bathroom uses. There should be effective natural and artificial ventilation.	Same as for One Star but with improved materials, fittings, workmanship and finish.	Same as for Two Star but of better quality.	Same as for Three Star but with superior quality fittings.	Same as for Four Star	YES	
10.7 Supplies in Bathrooms	The following should be supplied in each bathroom: Ashtray, sanitary bin, soap and toilet paper, a water glass per guest and toiletry tray or basket provided.	Same as for One Star	Same as for One Star but with addition of sanitary bags, paper tissues and cotton pads.	Same as for Three Star	Same as for Three Four Star the quality and range should reflect a degree of luxury.	YES	
10.8 Sanitization	Bins, WC, hand wash basins, bath tub and shower tray should be sanitized with appropriate detergents and chemicals daily.	Same as for One Star.	Same as for One Star.	Same as for One Star.	Same as for One Star.	YES	

11.0 HYGIENE AND SANITATION

<p>12.1 Guest Cloakrooms</p>	<p>Good impervious non - slip material should be used for floors and walls. The materials used to cover the wall should be up to a height of not less than 1½ metres from the floor.</p> <ul style="list-style-type: none"> • Cloakrooms should be conveniently located to public areas, properly ventilated and well lit; • Gender privacy should be assured and clearly indicated • All doors should be fitted with appropriate locks; • All toilets should be clean and functional; • The following should be provided and maintained: - <ul style="list-style-type: none"> - Soap dispenser with soap, - Disposable tissue, and/ or electric hand drier - A hand wash basin - Running hot and cold water. - Toilet paper - Sanitary bin with liner and lid. - Mother and child facilities - Coat hangers/ hooks • Facilities for the Disabled/ handi-capped; 	<p>Same as for One Star</p>	<p>Same as for One Star but in addition, fresh flowers or indoor plants should be provided.</p>	<p>Same as for Three Star but in addition, a well-equipped powder room should be provided.</p>	<p>Same as for Four Star</p>	<p>YES</p>	
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	<ul style="list-style-type: none"> • Individual urinals with running water and drainage should be available. • Toilets should follow the township buildings code • The entrance to the cloakrooms from adjacent rooms should have air locks. 						
12.2 Staff Changing/Wash Rooms	<p>Should be sufficient in relation to the number of staff, in line with the Building Code and health regulations. Should be clean and well maintained at all times.</p> <ul style="list-style-type: none"> • Should be provided with sufficient toilets, showers and individual lockers. • Gender separation and privacy should be observed; • Facilities for the Disabled/ handicapped should be provided <p>Amenities should be in keeping with standards of the establishment</p>	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
12.3 Refuse Storage and Disposal	Facilities should meet the local health standards and environmental protection regulations.	Same as for One Star	Same as for One Star	Same as for One Star but with evidence for professional handling	Same as for Four Star but with a higher display of professionalism	YES	
12.4 Sewerage	Drainage should be	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	

	connected to the sewage disposal of the town, where applicable. Where there is no sewerage system, the disposal should be in line with the Building Code and health regulations.						
12.5 Vermin Proofing	The premises should be fumigated regularly in accordance with health regulations and properly protected against vermin	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
12.6 Water Supply	There should be consistent supply of safe water conforming to local and WHO standards. Water from private sources should be regularly treated and appropriately certified by competent National Authority	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
12.7 Water Storage	Should be adequate to last for at least two (2) day, in case of supply breakdown.	Same as for One Star	Should be adequate to last for at least three (3) days.	Should be adequate to last for at least five (5) days.	Should be adequate to last for at least seven (7) days.	YES	
13.0 SAFETY AND SECURITY							
13.1 Electrical Safety	All electrical installations should be well maintained, in accordance with applicable electrical safety laws.	Same as for One Star	Same as for One Star but with high quality materials, fittings and workmanship	Same as for Three Star	Same as for Three Star but with higher quality materials, fittings and workmanship	YES	

13.2 Security	There should be adequate security arrangements including the following: - •a functional alarm system connected to external rapid response system; •Adequate, properly trained and equipped security personnel.	Same as for One Star	Same as for One Star, but with more elaborate rapid response arrangements	Same as for Three Star	Same as for Three Star, but in addition there should be a functional electronic surveillance system in place.	YES	
13.3 First Aid	Adequate Aid Kits should be provided, with some of the staff on duty trained in its application techniques.	Same as for One Star	Same as for One Star but with a doctor on call.	Same as for Three Star	Same as for Three Star.	YES	
14.0 SUNDRY SERVICES							
14.1 Luggage, Lost and Found Room	There should be a room for storage of luggage. All lost and found property should be appropriately kept.	Same as for One Star.	Same as for One Star	Same as for One Star	Same as for One Star	YES	
14.2 Room Service	Should be available on request.	Same as for One Star	Should be available for 24 hours.	Same as for Three Star	Same as for Three Star	YES	
15.0 HUMAN RESOURCE							
15.1 Human Resource Policy	There should be a documented Human Resource Management Policy specifying: - Terms and conditions of service; Schemes of service; Employee reward/ incentive scheme(s); In-house and External training programs	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
15.2 Professional Qualifications	General management of the establishment should	Same as for One Star	Same as for One Star but should be under	The hotel should be supervised by a highly	Same as for Four Star but in addition should	YES	

of management Staff	be under a qualified person, certified by appropriate national authorities.		the supervision of a person suitably trained and experienced in hotel management, assisted by One or more persons with similar training. Continuous training, including in -house programs should be available.	trained and experienced person, assisted by several persons with relevant professional qualifications in their respective fields. Comprehensive in - house training programs should be in place.	have a Human Resources Development Manager.		
15.3 Departmental Heads	Depending on the size and organizational structure of the establishment, there should be at least one suitably qualified and experienced person to assist in the day to day operations. For establishments of 50 rooms and above, an appropriately qualified person should supervise each department.	Same as for One Star	Same as for One Star but each department must be under the supervision of a person or persons of appropriate training from a recognized institution and experienced, to maintain very good service for guests, at all times.	Same as for Three Star but with duty manager available at all times.	Same as for Four Star	YES	
15.4 Professional Qualifications of Operative Staff	All operative staff should possess professional qualifications and appropriate experience to maintain satisfactory services for guests, at all times. At least 40% of the staff should possess certified qualifications from recognized institutions.	Same as for One Star but the proportion of professionally certified staff should be at least 50%	Same as for One Star but the proportion of professionally certified staff should be at least 70%	Same as for One Star but the proportion of professionally certified staff should be at least 80%	Same as for One Star but the proportion of professionally certified staff should be 90%	YES	

15.5 Languages	The Manager should have a working knowledge of other internationally recognized languages, in addition to English/ French and Kiswahili.	Same as for One Star	Same as for One Star but the Manager, Assistant Manager and Guest Contact staff should have working knowledge of at least One of the widely recognized international languages in addition to English/ French and Kiswahili.	Same as for Three Star but the Manager, Assistant Manager and Guest Contact staff should be able to speak at least One of the recognized international languages, in addition to English/ French and Kiswahili.	Same as for Four Star.	YES	
15.6 Health	Staff should be medically examined regularly, in line with statutory health regulations.	Same as for One Star.	Same as for One Star.	Same as for One Star.	Same as for One Star.	YES	
15.7 Staff Uniforms	Different uniforms for each department kept in good, clean condition, in conformity with safety requirements, should be provided. All staff should have name tags indicating designation.	Same as for One Star	Same as for One Star.	Same as for One Star, but of very good quality.	Same as for One Star but of superior good quality.	YES	
15.8 Personal Grooming	All staff should be well groomed, at all times.	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
15.9 Dining and Recreation Facilities for Staff	A Dining Room of adequate size in relation to the number of staff, well ventilated, lit and functionally furnished, including basic recreational facilities; clean and well maintained should be provided	Same as for One Star	Same as for One Star but additional in door and out door entertainment facilities should be provided.	Same as for Three Star	Same as for Three Star	YES	

16.0 GENERAL

16.1 Lifts/Elevators	Guest lifts should be provided for buildings of four or more storeys, including the ground floor. The local building code should be applied	Same as for One Star.	Same as for One Star but with service lift/ passage provided for all floors	Same as for Three Star but Guest lift should have luxurious décor and features.	Same as for Four Star.	YES	
16.2 General Stores	Should be adequate providing for separation of different types of merchandise/ goods, well ventilated and maintained. Proper shelving and cabinets should be available	Same as for One Star	Same as for One Star, but better organized, both in terms of goods segregation, layout and management	Same as for Three Stars	Same as for Three Stars	YES	
16.3 ‘Courtesy of Choice’	Smoking and non - smoking zones should be identified and clearly indicated.	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
16.4 Parking Space	Adequate parking space, in relation to the number of rooms and in close proximity of the hotel, should be provided. Special parking and access for the disabled/ hand -capped should be provided.	Same as for One Star	Same as for One Star.	Same as for One Star but in addition, the surface of the parking space should be well paved, marked and secured. Sufficient and marked walkways should be designated.	Same as for Four Star.	YES	
16.5 Shopping Facilities	Not essential	Not essential	A boutique stocking items convenient for travellers, should be available.	Same as for Three Star but with wider variety of gifts and souvenir items.	Same as for Four Star.	YES	
16.6 Taxi Services	Should be available on call	Same as for One Star	Same as for One Star but an appointed taxi service should be provided.	Same as for Three Star.	Same as for Three Star.	YES	
16.7 Guest Transport Service	Services to areas of interest for the convenience of guests should be available	Same as for One Star	Same as for One Star	Same as for One Star	Same as for One Star	YES	
16.8 Health Club	Optional, but where it exists, it should be well equipped with a suitably trained instructor.	Same as for One Star	Same as for One Star but with Steam bath, whirlpool and massage parlour provided.	Same as for Three Star	Same as for Three Star but with a wider range of luxurious facilities	YES	

KEY:

✓ PASS

X FAIL

NB: 1) Failure to adhere to any one of the above requirements will lead to automatic disqualification from further evaluation.

2) ONLY the successful bidders who qualify at this stage will proceed to the Financial Evaluation stage

STAGE 3: FINANCIAL EVALUATION STAGE

- 1) This will involve comparison of the financial quotes submitted to determine the evaluated price of each tender. Any minor deviations will also be taken into account.
- 2) Tenders will be ranked from the lowest evaluated price to the highest evaluated based on the Provision of Full day Conference package which is the commonly procured service by the Ministry.

STAGE 4: PRE-AWARD

- 1) Prior to award of successful tenderers, the Procuring Entity may conduct post qualification and due diligence of the successful tenderers in reference to the documents submitted. Any confirmed false information will automatically lead to disqualification.

STAGE 5: AWARD CRITERIA

- 1) This is a framework agreement, where services shall be ordered on a call off approach “As and when” required basis, therefore, the framework agreement shall be awarded to multiple bidders.
- 2) The Ministry of Health will award to a minimum of **FOUR (4)** hotels in each county as per their classifications (1-star,2-star,3-star,4-star, and 5-star ratings and “Others” in this order) where applicable.
- 3) Whenever need arises, the hotels with capacity and are available to offer the services will be considered.
- 4) The lowest evaluated bidders will be recommended for consideration of award of the tender.

Firms must submit their financial proposal (Cost for service provision) using the following format

TABLE 1: COST FOR SERVICE PROVISION

S/No.	Class of Hotel	Description	Rate Per Person (Kshs)
1.	Full Day Conference Package	Provision of full day conference package inclusive of the following; i) Mid-morning and afternoon beverages with assorted snacks ii) Provision of drinking water in the morning and in the afternoon iii) Buffet lunch inclusive of one soft drink iv) Stationery (pens, writing pads, flipcharts & marker pens) v) LCD projector vi) Public Address System and vii) Break-away rooms for at least 20pax	
THE FOLLOWING ITEMS WILL BE PROCURED ON “AS AND WHEN REQUIRED” AND WILL NOT BE USED FOR AWARD DURING PRICE COMPARISON AT THE EVALUATION STAGE			
3.	Half Board Accommodation on “As and When Required” basis	Executive room	
		Standard Room	
4.	Cocktail	Standard Cocktail Menu	

SECTION IV - TENDERING FORMS

1 FORM OF TENDER

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.
- iii) Tenderer must complete and sign **CERTIFICATE OF INDEPENDENT TENDER DETERMINATION** and the **SELF DECLARATION OF THE TENDERER** attached to this Form of Tender.
- iv) The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.
 - a) Tenderer's Eligibility-Confidential Business Questionnaire
 - b) Certificate of Independent Tender Determination
 - c) Self-Declaration of the Tenderer

1.1 Date of this Tender submission: 14TH DECEMBER 2021 [*insert date (as day, month and year) of Tender submission*] **PROVISION OF ACCOMODATION, CONFERENCE AND HOTEL SERVICES IN ALL THE COUNTIES** [*insert number of ITT process*] **MOH/ADM/OT/003/2021-2022** Alternative No.: N/A [*insert identification No if this is a Tender for an alternative*] To: **MINISTRY OF HEALTH** [*insert complete name of Procuring Entity*]

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with ITT9;
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT4;
- c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT21;
- d) **Conformity:** We offer to provide the Non-Consulting Services in conformity with the tendering document of the following: [*insert a brief description of the Non-Consulting Services*];
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is: [*Insert one of the options below as appropriate*]

Total price is: [*insert the total price of the Tender in words and figures, indicating the various amounts in local currency*];
- f) **Discounts:** The discounts offered and the methodology for their application are:
 - i) The discounts offered are: [*Specify in detail each discount offered.*]
 - ii) The exact method of calculations to determine the net price after application of discounts is shown below: [*Specify in detail the method that shall be used to apply the discounts*];
- g) **Tender Validity Period:** Our Tender shall be valid for the period of **120 days** from the date fixed for the Tender submission deadline (specified in TDS 23.1 (as amended if applicable)), and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- i) **One Tender Per Tenderer:** We are not submitting any other Tender(s) as an individual Tenderer, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT4.3, other than alternative Tenders submitted in accordance with ITT14;

- j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under Kenya's official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 4.6];*
- g) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, r gratuity].*

Name of Recipient	Address	Reason	Amount

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

- a) *[Delete if not appropriate, or amend to suit]* We confirm that we understand the provisions relating to Standstill Period as described in this tendering document and the Procurement Regulations.
- l) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- m) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- p) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.
- q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from *(specify website)* during the procurement process and the execution of any resulting contract.
- r) 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 person signing the Tender]

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

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

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

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

1. FORM OF TENDER - SECURING DECLARATION

[The Tenderer shall fill in this Form in accordance with the instructions indicated.]

Date:[date (as day, month and year)]

ITT No.:..... **MOH/ADM/OT/003/2021-2022**.....[number of

Tendering process] Alternative No.:.....N/A..... [insert identification No if this is a

Tender for an alternative] To: **MINISTRY OF HEALTH**.....[complete name of Procuring

Entity] We, the undersigned, declare that: We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Tendering or submitting proposals in any contract with the Procuring Entity for the period of time of [one year] starting on [date], if we are in breach of our obligation(s) under the Tender conditions, because we:

- a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- b) Having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity, (i) fail to sign the Contract agreement; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

Name of the Tenderer* _____

_____ Name of the person duly authorized to sign the Tender on behalf

of the Tenderer** _____

_____ Title of the person signing the Tender _____

_____ Signature of the person named above _____

_____ Date signed _____ day of _____,

*: In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer

** : Persons signing the Tender shall have the power of attorney given by the Tenderer attached to the Tender

[Note: In case of a Joint Venture, the Tender-Securing Declaration must be in the name of all members to the Joint Venture that submits the Tender.]

ii) TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

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

a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	MINISTRY OF HEALTH
2	Reference Number of the Tender	MOH/ADM/OT/003/2021-2022
3	Date and Time of Tender Opening	14TH DECEMBER 2021
4	Name of the Tenderer	PROVISION OF ACCOMODATION, CONFERENCE AND HOTEL SERVICES IN ALL THE COUNTIES
5	Full Address and Contact Details of the Tenderer.	1.Country 2.County 3.City 3.Location 4.Building 5.Floor 6.Postal Address 7.Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (<i>postal and physical addresses, email, and telephone number</i>) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address (<i>postal and physical addresses, email, and telephone number</i>) of state which stock exchange	

General and Specific Details

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

Name in full _____ Age _____
 Nationality _____ Country of Origin _____
 Citizenship _____

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

S/NO.	Details of Partner	Nationality	Citizen	% Shares Owned
1.				
2.				
3.				

2
3

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

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

If yes, provide details as follows.

S/No.	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

ii) **Conflict of interest disclosure**

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

5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		

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

f) Certification

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

Full Name _____

Title or Designation _____

(Signature)

(Date)

iii) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the **MINISTRY OF HEALTH** [*Name of Procuring Entity*] for: **PROVISION OF ACCOMODATION, CONFERENCE AND HOTEL SERVICES IN ALL THE COUNTIES.**

ITT No.: **MOH/ADM/OT/003/2021-2022** [*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]

(iv) 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. **MOH/ADM/OT/003/2021-2022** for **PROVISION OF ACCOMODATION, CONFERENCE AND HOTEL SERVICES IN ALL THE COUNTIES** 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 deposed to herein above is true to the best of my knowledge, information and belief.

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

Bidder Official Stamp

FORM SD2

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

I,..... of P. O. Boxbeing a resident of.....in the Republic ofdo 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... MOH/ADM/OT/003/2021-2022 for PROVISION OF ACCOMODATION, CONFERENCE AND HOTEL SERVICES IN ALL THE COUNTIES** (insert tender title/description) for **MINISTRY OF HEALTH** (insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of **MINISTRY OF HEALTH** (insert name of the Procuring entity) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents/subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of **MINISTRY OF HEALTH**..... (name of the procuring entity).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender
5. THAT what is deposed to herein above is true to the best of my knowledge information and belief.

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

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory

Sign.....

Position.....

Office address.....

Telephone..... E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

Sign.....

Date.....

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

(Appendix 1 shall not be modified)

1. Purpose

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

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

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 sub-section commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the person shall be:-
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement:-
 - a) Shall not take part in the procurement proceedings;
 - b) Shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontract or appointed shall meet all the requirements of this Act.
- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;

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

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

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
- i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - i) "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;
 - ii) "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;
 - iii) "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;
 - iv) "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) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- c) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- d) 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.

2 TENDERER INFORMATION FORM

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

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

ITT No.: **MOH/ADM/OT/003/2021-2022** [insert number of Tendering process]

Alternative No.: N/A _____ [insert identification No if this is a Tender for an alternative]

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4. <input type="checkbox"/> In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1. <input type="checkbox"/> A current tax clearance certificate or tax exemption certificate in case of Kenyan tenderers issued by the Kenya Revenue Authority in accordance with ITT 4.14. <input checked="" type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing:
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

1. NOTIFICATION OF INTENTION TO AWARD

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

For the attention of Tenderer's Authorized Representative

Name: *[insert Authorized Representative's name]*

Address *[insert Authorized Representative's Address]*

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

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

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

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

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

Contract title: *[insert the name of the contract]*

ITT No *[insert ITT reference number from Procurement Plan]*

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

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

i). The successful Tenderer

Name:	<i>[insert name of successful Tenderer]</i>
Address:	<i>[insert address of the successful Tenderer]</i>
Contract price:	<i>[insert contract price of the successful Tenderer]</i>

ii). **Other Tenderers***[INSTRUCTIONS: insert names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.]*

	Tender price	Evaluated Tender price (if applicable)
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]

iii). **How to request a debriefing?**

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

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

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

Attention..... [insert full name of person, if applicable]
Title/position [insert title/position]
Agency [insert name of Procuring Entity]
Email address [insert email address]

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

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

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

iv. How to make a complaint

Period: Procurement-related Complaint challenging the decision to award shall be submitted by [insert date and time].

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

Attention..... [insert full name of person, if applicable]

Title/position [insert title/position]

Agency [insert name of Procuring Entity]

Email address [insert email address]

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

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required to support the complaint.

The application must be accompanied by the fees set out in the Procurement Regulations, which shall not be refundable (information available from the Public Procurement Authority at info@ppra.go.ke or complaints@ppra.go.ke)

v). Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on [insert date] (local time). The Standstill Period lasts fourteen (14) Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above. If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Procuring Entity:

Signature: _____

Name:

Title/position: _____

Telephone: _____

Email: _____

2 NOTIFICATION OF AWARD-FORM OF ACCEPTANCE

[Form head paper of the Procuring Entity][date]To: [name and address of the Service Provider]

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of *[amount in numbers and words]* *[name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us (Procuring Entity).

Please return the attached Contract dully signed

Authorized Signature:

Name and Title of Signatory:

Name of Hotel:

Attachment: Contract

3. FORM OF CONTRACT

This CONTRACT (herein after called the “Contract”) is made the [day] day of the month of [month],[year], between, on the one hand,[name of Procuring Entity](herein after called the “Procuring Entity”) and, on the other hand, [name of Service Provider](hereinafter called the “Service Provider”).

[**Note:** In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows:“...(herein after called the “Procuring Entity”)and, ontheotherhand,ajointventureconsistingofthefollowingentities,eachof which will be jointly and severally liable to the Procuring Entity for all the Service Provider's obligations under this Contract, namely, [name of Service Provider]and[name ofService Provider](hereinafter calledthe “Service Provider”).]

WHEREAS

- a) The Procuring Entity has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the “Services”);
- b) the Service Provider, having represented to the Procuring Entity that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of... ..;

NOW THEREFORE the parties hereto hereby agree as follows:

- 1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
 - a) The Form of Acceptance;
 - b) The Service Provider's Tender
 - c) The Special Conditions of Contract;
 - d) The General Conditions of Contract;
 - e) The Specifications;
 - f) The Priced Activity Schedule; and
- 2. The mutual rights and obligations of the Procuring Entity and the Service Provider shall be as set forth in the Contract, in particular:
 - a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
 - b) The Procuring Entity shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHERE OF, the Parties here to have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of _____ *[name of Procuring Entity]*
_____ *[Authorized Representative]*

For and on behalf of *[name of Service Provider]*
_____ *[Authorized Representative]*

[Note: If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]

For and on behalf of each of the Members of the Service Provider

-*[name of member]*
-*[Authorized Representative]*
- *[name of member]*
-*[Authorized Representative]*

PART III – CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VIII - GENERAL CONDITIONS OF CONTRACT

Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) The Adjudicator is the person appointed jointly by the Procuring Entity and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- b) "Activity Schedule" is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- c) "Completion Date" means the date of completion of the Services by the Service Provider as certified by the Procuring Entity
- d) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- e) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6;
- f) "Day works" means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- g) "Procuring Entity" means the Procuring Entity or party who employs the Service Provider
- h) "Foreign Currency" means any currency other than the currency of Kenya;
- i) "GCC" means these General Conditions of Contract;
- j) "Government" means the Government of Kenya;
- k) "Local Currency" means Kenya shilling;
- l) "Member," in case the Service Provider consists of a joint venture of more than one entity, means any of these entities; "Members" means all these entities, and "Member in Charge" means the entity specified in the SC to act on their behalf in exercising all the Service Provider's rights and obligations towards the Procuring Entity under this Contract;
- m) "Party" means the Procuring Entity or the Service Provider, as the case may be, and "Parties" means both of them;
- n) "Personnel" means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- o) "Service Provider" is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- p) "Service Provider's Tender" means the completed Tendering Document submitted by the Service Provider to the Procuring Entity
- q) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- r) "Specifications" means the specifications of the service included in the Tendering Document submitted by the Service Provider to the Procuring Entity
- s) "Services" means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.
- t) "Subcontractor" means any entity to which the Service Provider subcontracts any part of the

Services in accordance with the provisions of Sub-Clauses 3.5 and 4;

- u) “Public Procurement Regulatory Authority (PPRA)” shall mean the Government Agency responsible for oversight of public procurement.
- v) “Project Manager” shall be the person appointed by the Procuring Entity to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointed from time to time by the Procuring Entity and notified to the Contractor.
- w) “Notice of Dissatisfaction” means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

1.1 Applicable Law

The Contract shall be interpreted in accordance with the laws of Kenya.

1.2 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.3 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

1.4 Location

The Services shall be performed at such locations as specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

1.5 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Service Provider may be taken or executed by the officials **specified in the SCC**.

1.6 Inspection and Audit by the PPRA

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Service Provider shall permit and shall cause its sub contract or sand sub-consultants to permit, PPRA and/or persons appointed by PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by PPRA. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, inter alia, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

1.7 Taxes and Duties

The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to

have been included in the Contract Price.

2 Commencement, Completion, Modification, and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as maybe **stated in the SCC**.

2.2 Commencement of Services

1.2.1 Program

Before commencement of the Services, the Service Provider shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.

2.2.2 Starting Date

The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.

2.3 Intended Completion Date

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

2.4.1 Value Engineering

The Service Provider 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, if applicable) the Procuring Entity may incur in implementing the value engineering proposal; and
- c) A description of any effect(s) of the change on performance/functionality.

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

- a) accelerates the delivery period; or
- b) reduces the Contract Price or the lifecycle costs to the Procuring Entity; or
- c) improves the quality, efficiency, safety or sustainability of the services; or

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

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

- a) a reduction of the Contract Price; the amount to be paid to the Service Provider 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 lifecycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Service Provider shall be the full increase in the Contract Price.

2.5 Force Majeure

2.5.1 Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the able control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the Procuring Entity

The Procuring Entity may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through

(d) of this Sub-Clause 2.6.1:

- a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;
- b) if the Service Provider becomes insolvent or bankrupt;

- c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a. of Attachment 1 to the GCC, in competing for or in executing the Contract

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and

(b) of this Sub-Clause 2.6.2:

- a) If the Procuring Entity fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Payment up on Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Procuring Entity shall make the following payments to the Service Provider:

- a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

3 Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contractor the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contractor to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be qualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees' inactive duty or on any type of leave, to perform any activity under this Contract;
- c) After the termination of this Contract, such other activities as may be **specified in the SCC**.

3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

- 3.4 The Service Provider** (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Service Provider's Actions Requiring Procuring Entity's Prior Approval

The Service Provider shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:

- a) Entering into a subcontract for the performance of any part of the Services,
- b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- c) changing the Program of activities; and
- d) Any other action that may be **specified in the SCC**.

3.6 Reporting Obligations

The Service Provider shall submit to the Procuring Entity the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents Prepared by the Service Provider to Be the Property of the Procuring Entity

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Procuring Entity, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software.

Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to the Procuring Entity at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Procuring Entity may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Procuring Entity shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

3.8.3 Lack of performance penalty

If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

3.9 Performance Security

The Service Provider shall provide the Performance Security to the Procuring Entity no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

3.10 Fraud and Corruption

The Procuring Entity requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Procuring Entity requires the Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

3.11 Sustainable Procurement

The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the SCC.

4 Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix

C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix Care hereby approved by the Procuring Entity.

4.2 Removal and/or Replacement of Personnel

- a) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the Procuring Entity finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.
- c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5 Obligations of the Procuring Entity

5.1 Assistance and Exemptions

The Procuring Entity shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC**.

5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2(a) or (b), as the case may be.

5.3 Services and Facilities

The Procuring Entity shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6 Payments to the Service Provider

6.1 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.

6.2 Contract Price

- a) The price payable is **set forth in the SCC**.
- b) Price may be payable in foreign currency, if so allowed in this document.

6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed

under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

6.3.2 If the SCC so specify, the service provider shall be paid performance incentive compensation asset out in the Performance Incentive Compensation appendix.

6.3.3 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$.

6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Procuring Entity specifying the amount due.

6.5 Interest on Delayed Payments

If the Procuring Entity has delayed payments beyond thirty (30) days after the due date stated in the SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in **the SCC**.

6.6 Price Adjustment

6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment fact or to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c L_{mc} / L_{oc} + C_c I_{mc} / I_{oc}$$

Where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.

A_c , B_c and C_c are coefficients specified in the SCC, representing: A_c the non-adjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and

L_{mc} is the index prevailing at the first day of the month of the corresponding invoiced ate and L_{oc} is the index prevailing 28 days before Tender opening for labor; both in the specific currency “c”.

I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} is the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of p_n for the formula of the relevant currency.

Z_o is the number of units of Kenya Shillings of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account to fall changes in cost due to fluctuations in costs.

6.7 Day works

- 6.7.1 If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when the Procuring Entity has given written instructions in advance for additional services to be paid in that way.
- 6.7.2 All work to be paid for as Day works shall be recorded by the Service Provider on forms approved by the Procuring Entity. Each completed form shall be verified and signed by the Procuring Entity representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.
- 6.7.3 The Service Provider shall be paid for Day works subject to obtaining signed Day works forms as indicated in Sub-Clause 6.7.2

7 Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Procuring Entity shall be as **indicated in the SCC**. The Procuring Entity shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities.

The Procuring Entity may instruct the Service Provider to search for a Defect and to uncover and test any service that the Procuring Entity considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

Correction of Defects, and Lack of Performance Penalty

- a) The Procuring Entity shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Procuring Entity's notice.
- c) If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, the Procuring Entity will assess the cost of having the Defect corrected, the Service Provider will pay this amount and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8 Settlement of Disputes

8.1 Contractor's Claims

- 8.1.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.
- 8.1.2 If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clauses shall apply.
- 8.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all relevant to such event or circumstance.
- 8.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and /or

instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

8.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and /or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

8.1.5.1 This fully detailed claim shall be considered as interim;

- a) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and /or amount claimed, and such further particulars as the Project Manager may reasonably require; and
- b) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

8.1.6 Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

8.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

8.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

8.1.9 If the Project Manager does not respond within the time framed in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 8.2 [Matters that may be referred to arbitration].

8.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

8.2 Matters that may be referred to arbitration

8.2.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Services or abandonment of the Services or termination of the Contract by either party:

- a) The appointment of a replacement Project Manager upon the said person ceasing to act.
- b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions
- c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- e) Any dispute arising in respect of war risks or war damage.
- f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

8.3 Amicable Settlement

8.3.1 Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

8.4 Arbitration

8.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

8.4.2 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

SECTION VI: SPECIAL CONDITIONS OF THE CONTRACT

1. Special Conditions of contract shall supplement the General Conditions of contract. Whenever there is a conflict, the provision herein shall prevail over those in the general conditions of contract.

2. CONTRACT DOCUMENTS

2.1 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;

- (1) Agreement,
- (2) Contractors Tender
- (3) Letter of Award and Acceptance,
- (4) Special and General Conditions of Contract,
- (5) Schedule of Rates
- (6) Tenderer Statement of compliance
- (7) Key Performance Indicators and Services Level Agreement as will be agreed by both parties.

3. EMPLOYER'S REPRESENTATIVE'S DECISIONS

3.1 Except where otherwise specifically stated, the Employer's Representative will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

4. INSTRUCTIONS

4.1 The Contractor shall carry out all instructions of the Ministry's Representative which are in accordance with the Contract.

4.2 All verbal instructions to the Contractor shall as soon as possible after such instructions has been made be confirmed in writing by the Accounting Officer.

5. MANAGEMENT MEETINGS

5.1 Communication between parties shall be effective only when in writing or by E-mail.

6. DURATION OF CONTRACT

6.1 This Agreement shall unless extended by both parties terminate at the end of two (2) years expiry from the commencement date.

7. TERMINATION

7.1 Ministry of Health may without prejudice to any other remedy accruing to it terminate this Agreement in writing in whole or in part if: -

(a) By Breach of Contract

- i. The Contractor frequently fails to provide services of acceptable standards set in the performance of this Agreement and
- ii. The Contractor fails to perform any other obligation under this Agreement.

(b) By Agreement either party may terminate the Agreement by giving to the other party Three (3) months' notice in writing or payment of three (3) months the set fees and charges in lieu of such notice;

8. CONFIDENTIALITY

8.1 The Contractor, servants and agents shall not at any time during or after termination of this Agreement divulge or allow to be divulged to any person or third party any information relating to the business or affairs of Ministry of Health.

9. ASSIGNMENT

9.1 The Contractor shall not assign or sub-contract any of its rights or duties under this Agreement

10. SUB-CONTRACT

12.1. The contract shall not be sub-contracted under this agreement.

11. PAYMENT TERMS

13.1. Ministry of Health payment terms are within 30 days upon receipt of certified invoices confirming that the services have been delivered in accordance with the contract. Payment on submission of an invoice will be after certification by an authorized officer of the Ministry that services have been offered satisfactory.