PROCURING ENTITY: KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012

TENDER NUMBER	KPARBS2012/DPI/003/2026
TENDER DESCRIPTION	TENDER FOR PROVISION OF DATA PROTECTION IMPACT ASSESSMENT SERVICES
PROCUREMENT METHOD	RESTRICTED TENDER
INVITATION DATE	5th NOVEMBER 2026
SUBMISSION	20th NOVEMBER 2026 AT 10:00 AM

Chairman Board of Trustees,
Kenya Ports Authority Retirement Benefits Scheme 2012
P.O. Box 1019 - 80100 Mombasa, Kenya
Tel 0768777444
Email: procurement@kpapension.co.ke
Website: www.kpapension.co.ke
Cannon Towers (Old Block), 7th Floor, on Moi Avenue, Mombasa.

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

(NOVEMBER 2026)

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1.1 **KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012 CONTRACT NAME: PROVISION OF DATA PROTECTION IMPACT ASSESSMENT SERVICES TENDER NO. KPARBS2012/DPI/003/2026**

1.2 The KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012 (KPARBS2012) invites bids from eligible tenderers for **PROVISION OF DATA PROTECTION IMPACT ASSESSMENT SERVICES TENDER NO. KPARBS2012/DPI/003/2026**

1.3 Tendering will be conducted under Restricted method using a standardized tender document.

1.4 Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours [0800 to 1700 hours] at the address given below.

Kenya Ports Authority Retirement Benefits Scheme 2012
P.O. Box 1019 - 80100 Mombasa, Kenya
Tel 0768777444
Email: procurement@kpapension.co.ke
Website: www.kpapension.co.ke
Cannon Towers (Old Block), 7th Floor, on Moi Avenue, Mombasa

1.5 Tender documents may be viewed and downloaded for **FREE** from the website www.kpapension.co.ke and Tenderers who download the tender document must forward their particulars immediately to the postal and email address named above to facilitate any further clarification or addendum.

1.6 Completed Tenders MUST be enclosed in plain sealed envelopes marked with the tender reference number '**TENDER NO. KPARBS2012/DPI/003/2026'** and Tender name **'PROVISION OF DATA PROTECTION IMAPCT ASSESSMENT SERVICES''** and be deposited in the Tender Box on the 7th Floor Old Cannon Towers (Old Block), on Moi Avenue, Mombasa before 10.00 am on 20th November 2026**. Electronic Tenders will not be permitted.**

1.7 Bidders who submit documents in accordance with this paragraph **must sign the submission register** for bulky Tender documents which will be availed at the time and place of submission.

1.8 Tenders will be opened immediately after the deadline date and time specified above or any deadline date and times specified later. Tenders will be opened in the presence of the Tenderers' designated representatives who choose to attend at **7th floor, Board Room, Cannon Towers, Old block-Mombasa**.

1.9 Prices quoted should be inclusive of all taxes and delivery costs to the required site (where applicable) and **must be in Kenya Shillings** and shall remain valid for Two Hundred and Ten (**210**) days from the closing date of the tender.

1.10 The Tenderer shall chronologically serialize all pages of the tender documents submitted.

1.11 The Fund reserves the right to conduct due diligence and, for that purpose, to contact agency, organization or institution in order to satisfy itself of the eligibility and/or suitability of any Bidder, provided that the foregoing shall not be interpreted to excuse any Bidder from making all disclosures required in the tender documents.

1.12 Late tenders will be rejected.

CHAIRMAN BOARD OF TRUSTEES
5h NOVEMBER 2026.

PART 1 - TENDERING PROCEDURES

SECTION I -INSTRUCTIONS TO TENDERERS

A. General

Definitions

In this tender, unless the context or express provision otherwise requires: -

a. *"Date of Tender Document" shall be the start date specified on the KPARBS2012 tender document*

b. *"Day" means calendar day and "month" means calendar month.*

c. *"KEBS" wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*

d. *Reference to "the tender" or the "Tender Document" includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*

e. *"The Procuring Entity" means Kenya Ports Authority Retirement Benefits Scheme 2012 or its successor(s) and assign(s) where the context so admits (hereinafter referred to as KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012 abbreviated as KPARBS2012).*

f. *"The Tenderer" means the person(s) submitting its Tender for the supply, installation and commissioning (where applicable) of the goods in response to the Invitation to Tender.*

g. *Where there are two or more persons included in the expression the "Tenderer", any act or default or omission by the Tenderer shall be deemed to be an act, default or omission by any one or more of such persons.*

h. *Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.*

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

j. *KPARBS2012's "authorized person" shall mean its Chairman Board of Trustees who is designated to exercise such power, authority or discretion as is required under the tender and any contract arising therefrom, or such other KPARBS2012 staff delegated with such authority.*

k. *Local suppliers- a firm shall be qualified as a local supplier if it is registered in Kenya.*

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 Throughout this tendering document:

2.1 The terms:

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 contexts or esquires, "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 TDS**.

3. Fraud and Corruption

3.1 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.

3.2 **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 gives such firm any unfair competitive advantage over competing firms.

3.3 Unfair Competitive Advantage-Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. The Procuring Entity shall indicate in the **TDS** firms (if any) that provide 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 any tenderer information that would give such firm unfair competitive advantage over competing firms.

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 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. Members of a joint venture may not also make an individual tender, be a subcontract or in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS.**

4.2 Public Officers, of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse in which they have a substantial or controlling interest shall not be eligible to tender or be awarded 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 Non-Consulting 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 non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 2. 1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or

h has a close business or family relationship with a professional staff of the Procuring Entity or of the project implementing agency, who:

i. are directly or directly involved in the preparation of the tendering document or specifications of the contract, and/or the Tender evaluation process of such contract; or

ii. Would be involved in the implementation or supervision of such contract unless the conflicts teeming 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.

4.6 A Tenderer that has been sanctioned by any entity of the Government of Kenya shall be ineligible to be pre-qualified for, initially selected for, tender for, propose for, or be awarded a contract during such period of sanctioning.

4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they: (i) are legally and financially autonomous; (ii) operate under Commercial law; and (iii) are not under supervision of the Procuring Entity.

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

4.9 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.

4.10 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 who do not meet this criterion will be automatically disqualified. Information required to enable the Procuring Entity to determine if this condition is met shall be provided in for this purpose is be provided in *"SECTION III-EVALUATION AND QUALIFICATION CRITERIA, Item 9"*.

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

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

4.13 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 authorities as harmful to human beings and to the environment shall not be eligible for procurement.

4.14 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled

his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate is sued by the Kenya Revenue Authority.

5 Qualification of the Tenderer

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

5.2 In the event that pre-qualification of Tenderers has been undertaken as stated in ITT 18.3, the provisions on qualifications of 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 10.

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) notice or the notice to pre-qualify 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 10. 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.

1. Site Visit

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect 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 beat the Tenderer's own expense.

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 site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

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

8.3 Minutes of the pre-Tender meeting and the pre-arranged pre tender visit of the site of the service, 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 ITT6.3. 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 service 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 ITT10 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 Service 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 webpage 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 8.4.

10 Amendment of Tender Documents

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 web page in accordance with ITT 8.4.

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

C. Preparation of Tenders

11 Cost of Tendering

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

12 Language of Tender

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

The Tenderer shall chronologically serialize pages of all tender documents submitted.

13.2 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. 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.

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

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 22.3. All blank spaces shall be filled in with the information requested.

14.2 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.

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 Best Evaluated Tender 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 a reemitted 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 the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, sub mitted 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 16.1.

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 30 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.

17 Currencies of Tender and Payment

17.1 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 Non-Consulting 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 Non-Consulting 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.

18.3 Tender 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 to identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement processor contract management.

18.4 The purpose of the information described in ITT 18.3 above, outrides 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 work. 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.

18.4 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 ITT18.3. 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.

18.6 All information provided by the tendered 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.

18.7 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 tendered pursuant to these requirements, then the tender will be rejected.

18.8 If information submitted by a tendered 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 on going, 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, pending the outcome of (iii),

iii) The tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.

18.9 If a tenderer submits information pursuant to these requirements that is in complete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 18.9 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 err or which was not attributable to the intentional act, negligence or recklessness of the tenderer.

19 Documents Establishing the Eligibility and Qualifications of the Tenderer

19.1 To establish Tenderer's eligibility in accordance with ITT4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.

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

19.3 All Tenderers shall provide, in Section IV, Tendering Forms, with a preliminary description of the proposed methodology, work plan and schedule.

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

19.5 If pre-qualification has not taken place before Tendering, the qualification criteria for the Tenderers are specified- in Section III, Evaluation and Qualification Criteria.

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 24.1). 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 ITT20, 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.

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 21.1, 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 Tender Security is specified pursuant to ITT 21.1, 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. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.

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.

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

a. If a Tenderer withdraw sits Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension there to provide by the Tenderer; or

b. if the successful Tenderer fails to:

c. sign the Contract in accordance with ITT 46; or

d. Furnish a performance security in accordance with ITT 47.

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 13.2.

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

22 Format and Signing of Tender

22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13, 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 person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified **in the TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialized 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:

a. in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT13; and

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

c. if alternative Tenders are permitted in accordance with ITT15, and if relevant:

i. in an envelope or package or container marked "ORIGINAL–ALTERNATIVE TENDER", the alternative Tender; and

ii. in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

a) Bear the name and address of the Procuring Entity.

b) Bear the name and address of the Tenderer; and

c) Bear the name and Reference number of the Tender.

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

24 Deadline for Submission of Tenders

24.1 Tenders must be received by the Procuring Entity at the address 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**.

24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT9, 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 24. 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 a n 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:

a) 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

b) Received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.

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

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

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, 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 ITT25.1).

27.8 The Procuring Entity shall prepare are cord 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, include any discounts; and

c) any alternative Tenders;

d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.

e) Number of pages of each tender document submitted

27.9 The Tenderers' representatives who a rep resent 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 tender opening register shall be distributed to Tenderer 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 42.

28.2 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 28.2, 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 ITT32.

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

30.1 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 non-Consulting 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.

31.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 18and ITT 19, 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.

31.4 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.

31.5 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformity in the Tender.

31.6 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, 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.

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

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

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

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

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

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

33 Conversion to Single Currency

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

34 Margin of Preference and Reservations

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 Best Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

a) Substantially responsive to the 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 16.4;

b) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 31.3;

c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance withITT33; and

d) any additional evaluation factors specified **in the TDS** and 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. For one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT

35.5. The methodology to determine the lowest evaluated tenderer or tenderers based on one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

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 regard to the Tenderer's ability to perform the Contract for the offered Tender Price.

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

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

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

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 10% 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.

39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. 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.

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. 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

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 into a Contract/Notification of a ward 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 stand still period;

43 Stand still 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 42, 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.

44.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer

shall bear its own costs of attending such a debriefing meeting.

45 Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 43.1, 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 VIII, 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 Best Evaluated Tender.

48 Adjudicator

48.1 The Procuring Entity proposes the person named **in the TDS** to be appointed as adjudicator or under the Contract, at an hourly fee specified in **the TDS**, plus reimbursable expenses. If the Tenderer disagrees with this Tender, 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.

49 Procurement Related Complaints and Administrative Review

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

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 herein shall prevail over those in ITT.

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

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

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	A. General
ITT 1.1	The reference number of the Request for Tenders (ITT) is: KPARBS2012/DPI/003/2026 The Procuring Entity is **KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012** The name of the ITT is: **PROVISION OF DATA PROTECTION IMPACT ASSESSMENT SERVICES** The number and identification of lots (contracts) comprising this ITT is: **NONE**
ITT 2.2	The Intended Completion Date is **3 MONTHS**
ITT 3.3	Information that any unfair competitive advantage over competing firms is as follows: **NONE**
ITT 3.4	The firms that provided consulting services **NONE**
ITT 4.1	Maximum number of members in the Joint Venture (JV) shall be **JV NOT ALLOWED FOR THIS TENDER**
	B. Contents of Tendering Document
ITT 8.1	A pre-tender conference will be held/will not be held on _**NOT APPLICABLE**
ITT 8.2	The questions in writing, to reach the Procuring Entity not later than **7 CALENDER DAYS BEFORE TENDER SUBMISSION DEADLINE**
ITT 8.4	Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works shall be published on the website **NOT APPLICABLE**
ITT 9.1	The Tenderer will submit any request for clarifications in writing at the Address procurement@kpapension.co.ke to reach the Procuring Entity not later than **7 CALENDER DAYS BEFORE TENDER SUBMISSION DEADLINE** The Procuring Entity shall publish its response at the website www.kpapension.co.ke
	The Procuring Entity shall also promptly publish response at the website

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	www.kpapension.co.ke
	C. Preparation of Tenders
ITT 13.1 (i)	The Tenderer shall submit the following additional documents in its Tender: ***[list any additional document not already listed in ITT 13.1 that must be submitted with the Tender]***
	Other documents required are AS PER TENDER DCUMENTS REQUIRED
ITT 15.1	Alternative Tenders ***SHALL NOT BE*** considered.
ITT 15.2	Alternative times for completion **SHALL NOT BE** permitted.
ITT 15.3	NOT APPLICABLE
ITT 16.7	The prices quoted by the Tenderer **SHALL NOT BE** be subject to adjustment during the performance of the Contract.
ITT 20.1	The Tender validity period shall be **210** days.
ITT 21.1	***[If a Tender Security shall be required, a Tender-Securing Declaration shall not be required, and vice versa.]*** A Tender Security ***SHALL NOT BE*** required.
ITT 21.3 (a)	The Contract price shall be adjusted- NOT APPLICABLE.
ITT 22.1	In addition to the original of the Tender, the number of copies is**: ONE ORIGINAL AND ONE COPY**
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of**:** **_ POWER OF ATTORNEY**
	D. Submission and Opening of Tenders
ITT 24.1	For **Tender submission purposes** only, the Procuring Entity's address is **KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012** Attention: Chairman Board of Trustees, Kenya Ports Authority Retirement Benefits Scheme 2012 P.O. Box 1019 - 80100 Mombasa, Kenya Tel 0768777444 Cannon Towers (Old Block), 7th Floor, on Moi Avenue, Mombasa.

ITT 24.1	**The deadline for Tender submission is:** Date: **FRIDAY 20th NOVEMBER 2026 AT 10:00 AM** AT CANNON TOWERS (OLD BLOCK), 7TH FLOOR, ON MOI AVENUE, MOMBASA
ITT 27.1	The Tender opening shall take place at: Cannon Towers (Old Block), 7th Floor, on Moi Avenue, Mombasa

ITT Reference	**PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS**
	Physical Address: CANNON TOWERS (OLD BLOCK), 7TH FLOOR, ON MOI AVENUE, MOMBASA Date and Time: **FRIDAY 20th NOVEMBER 2026 AT 10:00 AM**
ITT 27.1	**NOT APPLICABLE**
ITT 27.6	The Form of Tender and priced Activity Schedule shall be initiated by 3 representatives of the Procuring Entity conducting Tender opening. **Each Tender shall be initiated by all representatives, and total price shall be initialed by the Representative of the KPARBS2012**
	E. Evaluation and Comparison of Tenders
ITT 31.7	For comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified as follows: The adjustment shall be based on the AVERAGE price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate.
ITT 33.1	The currency shall be in KENYA SHILLINGS
ITT 34.1	Margin of preference allowed or not allowed NO
ITT 34.2	NOT APPLICABLE
ITT 35.2 (d)	Additional evaluation factors shall be NOT APPLICABLE
ITT 35.4	THERE ARE NO LOTS IN THIS TENDER
	F. Award of Contract
ITT 41	Lowest evaluated bidder

ITT 50.1	If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: For the attention: **Chairman Board of Trustees,** **Kenya Ports Authority Retirement Benefits Scheme 2012** **P.O. Box 1019 -** **80100 Mombasa,** **Kenya** **Tel 0768777444** **Cannon Towers (Old Block), 7th Floor, on Moi Avenue, Mombasa.** . In summary, a Procurement-related Complaint may challenge any of the following: 1. The terms of the Tendering Documents; and 2. The Procuring Entity's decision to award the contract.

SECTION III (a) EVALUATION AND QUALIFICATION CRITERIA

Preliminary and Mandatory Evaluation

No.	Mandatory Requirement	Evidence	Result
1	Certificate of incorporation or registration.	Certified copy.	Pass/Fail
2	Valid tax compliance certificate.	Copy valid at tender opening.	Pass/Fail
3	Duly completed, signed and stamped Form of Tender.	Completed tender form.	Pass/Fail
4	Confidential Business Questionnaire and current ownership information.	Completed form and applicable registry evidence.	Pass/Fail
5	Power of attorney or written authority for the signatory.	Signed authority.	Pass/Fail
6	Professional indemnity insurance or commitment to obtain it before contract signature.	Policy or written commitment to cover not less than the total contract price, valid through the assignment and for at least twelve months after completion.	Pass/Fail
7	ODPC registration where legally applicable to the bidder.	Valid certificate or reasoned statement of non-applicability.	Pass/Fail
8	Conflict-of-interest and non-debarment declarations.	Signed declarations.	Pass/Fail
9	Chronological page serialization and required copies.	Tender submission.	Pass/Fail
10	Separate technical and financial proposals.	Properly sealed or submitted as prescribed.	Pass/Fail

14. Detailed Technical Evaluation Matrix

Only bidders that satisfy all mandatory requirements shall proceed to technical evaluation. The minimum technical pass mark shall be 75 out of 100 marks.

Ref.	Criterion and Scoring Guide	Marks	Required Evidence
A	Firm experience and corporate capability	20	
A1	Completed DPIA/privacy compliance assignments in the last seven years: 5 or more = 8; 3-4 = 6; 2 = 4; 1 = 2.	8	Contracts, completion certificates or reference letters.
A2	Relevant pension, banking, insurance or regulated financial-sector assignments: 3 or more = 6; 2 = 4; 1 = 2.	6	Evidence of scope and client sector.
A3	At least three positive client references for comparable assignments: 3 = 3 marks; 2 = 2; 1 = 1.	3	Signed reference letters or verifiable contacts.
A4	Documented quality assurance, confidentiality and information security arrangements.	3	Policies or concise control descriptions.
B	Understanding, methodology and work plan	30	
B1	Understanding of the Scheme context, objectives, risks and expected outcomes.	4	Technical proposal.
B2	DPIA approach covering necessity, proportionality, high-risk processing, inherent and residual risk.	5	Methodology and sample tools.
B3	Data discovery, mapping, dataflow and ROPA methodology.	4	Approach and templates.

Ref.	Criterion and Scoring Guide	Marks	Required Evidence
B4	Legal and regulatory compliance methodology tailored to Kenya and retirement benefits, covering every applicable ODPC and RBA instrument in force, requirement-level evidence traceability and justified applicability decisions.	4	Compliance framework.
B5	Technical, cloud, biometric, children's data, health data, financial-sector, consent, data-sharing, cross-border, breach-readiness and third-party assessment approach.	5	Assessment procedures and tools.
B6	Stakeholder engagement, validation, training and knowledge-transfer approach.	3	Engagement and training plan.
B7	Quality assurance, evidence traceability, confidentiality and secure working methods.	2	QA and security plan.
B8	Detailed 12-week work plan, dependencies, person-days and delivery schedule.	3	Gantt chart or equivalent.
C	Key personnel qualifications and experience	30	
C1	Lead Consultant: relevant degree = 2; relevant postgraduate degree = 2; recognised privacy/security certification = 3; 7+ years relevant experience = 4; comparable regulated-sector assignment experience = 2.	13	CV and certificates.
C2	Data Protection/Legal Specialist: relevant degree and Kenyan privacy expertise = 3; certification = 2; 5+ years' experience = 2.	7	CV and certificates.
C3	Information Security Specialist: relevant degree = 2; recognised security certification = 2; 5+ years controls assessment experience = 2.	6	CV and certificates.
C4	Pension/Business Process Specialist and Data Analyst: relevant qualifications, sector experience and evidence-management capability.	4	CV and evidence.
D	Deliverables, value addition and capacity building	15	
D1	Completeness and usability of proposed reports, registers, matrices, templates and roadmap.	6	Deliverables description and samples.
D2	Practical privacy-by-design, vendor due-diligence and compliance-monitoring tools.	3	Proposed toolkits.
D3	Role-based staff, management, DPO and Board training programme.	3	Training plan and materials outline.
D4	Relevant, achievable value additions beyond minimum TOR without additional cost.	3	Clearly costed or expressly included proposal.
E	Business continuity and delivery assurance	5	
E1	Business continuity, backup, secure collaboration and incident response arrangements for the engagement.	3	Policy extracts or concise plan.
E2	Availability of proposed personnel and credible replacement arrangements.	2	Availability declaration and replacement protocol.
	TOTAL TECHNICAL SCORE	100	Minimum pass mark: 80 marks.

15. Financial Evaluation Matrix

Only bidders that attain the minimum technical score shall proceed to financial evaluation. Financial proposals shall be checked for completeness, tax treatment and arithmetic consistency in accordance with the tender document and applicable procurement requirements.

Step	Financial Evaluation Item	Method	Outcome
1	Completeness and responsiveness	All required cost components, taxes and reimbursables are stated.	Pass/Fail
2	Arithmetic and consistency checks	Apply the treatment prescribed in the tender document and applicable procurement law.	Adjusted evaluated price
3	Financial score	Sf = (Fm / F) x 100, where Sf is the financial score, Fm is the lowest evaluated financial proposal and F is the evaluated price of the proposal.	100 points before weighting
4	Financial weighting	Weighted financial score = Sf x 20%.	20%

16. Combined Quality and Cost Evaluation

The recommended evaluation method is Quality and Cost Based Selection, subject to confirmation by the procuring entity that this method and weighting are permitted under the applicable procurement framework and approved tender strategy.

This TOR shall be incorporated into the applicable Scheme Standard Request for Proposals for selection of consulting firms. Instructions to consultants, proposal forms, procurement-specific mandatory requirements and contract conditions shall be completed in the RFP and shall prevail where required by applicable procurement law.

Component	Raw Score	Weight	Weighted Score
Technical proposal	T out of 100	80%	T x 0.80
Financial proposal	Sf out of 100	20%	Sf x 0.20
Final combined score		100%	(T x 0.80) + (Sf x 0.20)

The bidder with the highest combined score shall be considered for award, subject to due diligence, confirmation of qualifications, availability of key personnel, successful negotiations where permitted, and compliance with the tender document.

17. Proposed Price Schedule

No.	Cost Component	Amount (KES)
1	Professional fees by phase and deliverable	
2	Training and knowledge transfer	
3	Travel and reimbursable expenses, if applicable	
4	Other approved costs	
	Subtotal	
	Applicable taxes	
	Total tender price	

18. Proposed Payment Schedule

Milestone	Deliverables	Payment
1	Approved inception report, work plan and information request.	15%
2	Approved data inventory, data-flow maps and ROPA.	25%
3	Accepted draft DPIA, biometric assessment, special-category and sectoral assessment, risk register, ODPC and sector compliance matrix, data-sharing and cross-border registers, registration verification, third-party assessment and prioritized remediation plan.	30%
4	Accepted final reports, roadmap, templates, training and management/Board presentations.	30%

Payments shall be subject to satisfactory completion and formal acceptance of the relevant deliverables, submission of a valid invoice and compliance with contract requirements.

19. Due Diligence and Contract Conditions

- The Scheme may verify references, qualifications, certifications, experience, ownership, financial capacity and key-personnel availability.
- Key personnel presented and evaluated shall not be replaced without prior written approval and an equal or better substitute.
- Material misrepresentation may result in disqualification or contract termination.
- The contract shall define deliverable acceptance, defect correction, service levels, confidentiality, intellectual property, data protection, breach notification, audit rights and secure close-out.
- The Scheme may require a post-assessment verification review, as an optional or separately priced service, to confirm closure of critical and high-risk actions and record verified, partially verified or outstanding status.
- The consultant shall disclose actual or potential conflicts of interest throughout procurement and contract execution.

SECTION IV - TENDERING FORMS

A. TENDER FORM

Date:
Tender No.
To:
The KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012,
P.O. Box 1019 - 80100 Mombasa,
Kenya

Ladies and Gentlemen,

1. Having read, examined and understood the Tender Document including all Addenda, the receipt of which ishereby duly acknowledged, we, the undersigned Tenderer, offer **services of** ……. *(insert **service description***) in accordance and conformity with the said tender document **sum of .....***(total tender **amount inclusive of all taxes in words and figures**)*
or such sums as may be ascertained in accordance with the Price Schedule attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the services in accordance with the delivery schedule specified in the Schedule of requirements (terms of reference).

3. If our Tender is accepted, we will obtain the performance security of a licensed bank in Kenya in a sum equivalent to ten percent (10%) of the contract price for the due performance of the contract, in the form(s) prescribed by KPARBS2012.

4.* We agree to abide by this Tender for a **period of 210 days (Tenderer please indicate validity of your tender)** from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall not constitute a contract, between us. The contract shall be formed between us when both parties duly sign the written contract.

6. We understand that you are not bound to accept any Tender you may receive.

Yours sincerely,

_____
Name of Tenderer

_____
Signature of duly authorised person signing the Tender

_____

Name and Designation of duly authorised person signing the Tender

_____
Stamp or Seal of Tenderer

***NOTES:**

1. KPARBS2012 requires a validity period of at least **Two hundred and ten (210) days.**
2. This form must be duly signed, stamped and/or sealed.

B. CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

All Tenderers are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. You are advised that it is a serious offence to give false information on this form.

Part 1 – General
Business Name……

Location of business premises…… Plot

No. ……Street/ Road ……..

Postal Address …….. Postal Code ……. Tel

No……..

Facsimile..…….. Mobile

and/ or CDMA No……..

E-mail:……

Nature of your business ……..
Registration Certificate No.……

Maximum value of business which you can handle at any time KSh……. Name of

your Bankers ……..Branch… ……

*Names of Tenderer's contact person(s) ……. Designation of the

Tenderer's contact person(s) ……

Address, Tel, Fax and E-mail of the Tenderer's contact person(s) ……..
……...
……

Part 2 (a) Sole Proprietor
Your name in full ……. Nationality
……Country of origin ……..
*Citizenship details…….

Part 2 (b) Partnership
Give details of partners as follows: -

Names	Nationality	*Citizenship Details	Shares
1……			
2……			
3……			
4……			
5……			

Part 2 (c) Registered Company

Private or Public ……..

State the nominal and issued capital of company-Nominal KSh.…… Issued KSh……

Give details of all directors as follows

Name	Nationality	*Citizenship Details	Shares
1…….			
2…….			
3……..			
4……..			
5……..			

Name of duly authorized person to sign for and on behalf of the Tenderer

……..……..

Designation of the duly authorized person……

Signature of the duly authorized person……..

***NOTES TO THE TENDERERS ON THE QUESTIONNAIRE**

1. *The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*
2. *If a Kenyan citizen, please indicate under "Citizenship Details" whether by birth, naturalization or registration.*
3. *The details on this Form are essential and compulsory for all Tenderers.* The **CR12 must be attached**.

Failure to provide all the information requested shall lead to the Tenderer's disqualification.

4. *For foreign Tenderers please give the details of nominal and issued share capital in the currency of the country of origin of the Tenderer.*

C. DECLARATION FORM

Date _____

To:

The KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012,
P.O. Box 1019 - 80100 Mombasa, Kenya

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address)_____
_____declare the following: -

a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.

b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.

c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Tenderers.

d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.

e) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely, Name

_____
of Tenderer

~~Signature of duly authorised person signing the T~~ender

_____

Name and Designation of duly authorised person signing the Tender

_____
Stamp or Seal of Tenderer

SECTION XII– DRAFT LETTER OF NOTIFICATION OF INTENT OF AWARD

To:

(Name and full address of the Successful Tenderer)……

Dear Sirs/ Madams,

RE: NOTIFICATION OF INTENT OF AWARD OF TENDER NO. ……

We refer to your tender dated……we are pleased to inform you that following evaluation, we intend to award you a contract for the above mentioned subject to provision herein.

This notification of intent does not constitute a contract. The formal Contract Agreement and notification of award

You are required to accept or reject this offer within a period of 14 days.

We take this opportunity to remind you to again note and strictly comply with the provisions as stated in the tender document.

KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012 is committed to best practices in quality management systems and supply chain management, attached please read carefully our Suppliers' Charter. We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

FOR: THE KENYA PORTS AUTHORITY

RETIREMENT BENEFITS SCHEME 2012

CHAIRMAN BOARD OF TRUSTEES

D. DRAFT LETTER OF NOTIFICATION OF REGRET

To: *(Name and full address of the Unsuccessful Tenderer)*……

Date:

Dear Sirs/ Madams,

RE: NOTIFICATION OF REGRET IN RESPECT OF TENDER NO. ……

We wish to notify you that following evaluation, your Tender is unsuccessful. It is therefore not accepted. The brief reasons are as follows:-

1. ……
2. ……

3…… etc

The successful bidder was _____.

However, this notification does not reduce the validity period of your Tender Security. In this regard, we request you to relook at the provisions regarding the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

It is expected that by that time KPARBS2012 and the successful bidder will have entered into a contract after 14 days.

We thank you for the interest shown in participating in this tender and wish you well in all your future endeavours.

Yours faithfully,
FOR: THE KENYA PORTS AUTHORITY

RETIREMENT BENEFITS SCHEME 2012

CHAIRMAN BOARD OF TRUSTEES

E. CONTRACT AGREEMENT FORM

THIS AGREEMENT made this**……**day of …… **20…. BETWEEN THE KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012**, a retirement benefits fund licensed by Retirement Benefits Authority situated at Old Cannon Towers 7th Floor, Moi Avenue Mombasa in the Republic of Kenya and of Post Office P.O. Box 1019 - 80100 Mombasa, Kenya in the Republic aforesaid *(hereinafter referred to as the "KPARBS2012")* of the one part,

AND

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

WHEREAS KPARBS2012 invited tenders for certain services and/ or goods, that is to say for Provision of **……..…… under Tender Number……..…..**
AND WHEREAS KPARBS2012 has accepted the Tender by the Supplier for the services and/ or goods in the sum of **…** ……***include any payable taxes, duties and insurance where applicable e.g. Value Added Tax)***
(*hereinafter called "the Contract Price"*).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -

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

2. Unless the context or express provision otherwise requires: -

a) reference to "this Agreement" includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.

b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.

c) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.

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

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

3. In consideration of the payment to be made by KPARBS2012 to the Supplier as hereinbefore mentioned, the Supplier hereby covenants with KPARBS2012 to perform and provide the services and/ or goods and remedy any defects thereon in conformity in all respects with the provisions of the Contract.

4. KPARBS2012 hereby covenants to pay the Supplier in consideration of the proper performance and provision of the services and/ or goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. The following documents shall constitute the Contract between KPARBS2012 and the Supplier and each shall be read and construed as an integral part of the Contract: -

a) this Contract Agreement

b) the Special Conditions of Contract as per the Tender Document
c) the General Conditions of Contract as per the Tender Document
d) the Price Schedules submitted by the Supplier and agreed upon with KPARBS2012.
e) the Schedule of Requirements/ terms of reference as per the Tender Document
f) KPARBS2012's Notification of Award dated……
g) the Tender Form signed by the Supplier
h) the Declaration Form signed by the Supplier/ successful Tenderer
i) the services shall be provided for a **period of……** from the Commencement Date *(hereafter referred to as the "term"*)

6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract documents are listed in 5 above except where otherwise mutually agreed in writing.

7. The Commencement Date shall be the working day immediately following the fulfillment of all the following: -
a) Execution of this Contract Agreement by KPARBS2012 and the Supplier.
b) Issuance of the Performance Bond by the Supplier and confirmation of its authenticity by KPARBS2012.
c) Issuance of the Official Order by KPARBS2012 to the Supplier.
8. The period of contract validity shall begin from the Commencement date and end sixty (60) days after the last date of the agreed performance schedule.
Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.

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

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

11. No failure or delay to exercise any power, right or remedy by KPARBS2012 shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.

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

13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be

deemed served two (2) days after such receipt by the courier service for Local Suppliers and five (5) days for Foreign Suppliers.

14. For the purposes of Notices, the address of KPARBS2012 shall be CHAIRMAN BOARD OF TRUSTEES, KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012, 7th Floor Old Cannon Towers Mombasa, Kenya. The address for the Supplier shall be the Supplier's address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the

laws of Kenya the day and year first above written.

SIGNED for and on behalf of
KPARBS2012

_____
CHAIRMAN BOARD OF TRUSTEES

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

_____ _____
DIRECTOR *Affix Supplier's Seal / Stamp here*

_____
DIRECTOR'S FULL NAMES

and in the presence of:-

_____
DIRECTOR/ COMPANY SECRETARY

_____
DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

F. **PERFORMANCE SECURITY FORM (BANK GUARANTEE)**

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

To:
The KENYA PORTS AUTHORITY RETIREMENT BENEFITS SCHEME 2012, Kenya Ports Authority Retirement Benefits Scheme 2012
P.O. Box 1019 - 80100
Mombasa, Kenya

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

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

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

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

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

EITHER

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

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

OR

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

_____

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

_____

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

TO SUPPLIERS AND BANKS

1. Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Performance Security Bond (the Bond) to be furnished by the successful Tenderer/ Supplier. If any are made, the Bond may not be accepted and shall be rejected by KPARBS2012. For the avoidance of doubt, such rejection will be treated as non-submission of the Bond where such Bond is required in the tender and Contract.

2. KPARBS2012 shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPARBS2012. The period for response shall not exceed five (5) days from the date of KPARBS2012's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified.

3. The issuing Bank should address its response or communication regarding the bond to KPARBS2012 at the following e-mail address – "procurement@kpapension.co.ke"

G. SUPPLIER EVALUATION FORM

ASPECTS	RATING GUIDELINES				PROC. SCORE	USER'S SCORE	COMMENT	TOTAL
1. COST OF SERVICE/PRODU CT	Did the vendor assist in or advice on ways of reducing the costs?	YES:5	PARTIALLY:2.5	NO: 0				
	Did the company vary agreed contract amount?	YES:0	-	NO: 5				10
	Rate guidelines				Proc. Score	User's Score	Comments	Totals
2.ON TIME DELIVERY OF PRODUCT OR SERVICE	Did the vendor perform work in compliance with contract terms and agreements?	YES:8	PARTIALLY:4	NO: 0				
	Was the vendor prompt and effective in correction of situations and conditions?	YES:4	PARTIALLY:2	NO: 0				
	Are you able to track service level agreements and determine duration of incidents from the vendor?	YES:4	PARTIALLY:2	NO: 0				
								16
3. QUALITY	Rating guidelines				Proc. Score	User's Score	Comments	Totals
	When performing their duties, was there - rework or returns caused by non conformance to quality?	NO:10	PARTIALLY:5	YES: 0				
	Was the quality of service /goods delivered equal to KPARBS2012 's minimum requirements?	YES:10	PARTIALLY:5	NO:0				
								20
4.RESPONSIVENESS	Rating guidelines				Proc. Score	User's Score	Comments	Totals
	Was the vendor well responsive to information requests, issues, or problems that arose in the course of service?	YES:6	PARTIALLY:3	NO: 0				
	Was the vendor open to feedback on low quality	YES:4	PARTIALLY:2	NO: 0				

	of service levels and willing to act on this?							
	Is it easy to reach staff members of suppliers in case of a request or query? (are communication channels clear?)	YES:4	PARTIALLY:2	NO: 0				14
6. CUSTOMER SUPPORT	**Rating guidelines**				**Proc. Score**	**User's Score**	**Comments**	**Totals**
	Did the vendor offer effective customer support?	YES:10	PARTIALLY:5	NO: 0				
	In case of reported problems/issues, were there follow ups by the vendor to ensure the problem is fully resolved during support?	YES:8	PARTIALLY:4	NO: 0				

								18
7. COMMUNICATION SKILLS	**Rating guidelines**				**Proc. Score**	**User's Score**	**Comments**	**Totals**
	Are you satisfied with the attitude, courtesy, and professionalism of this vendor's staff? Written or spoken?	YES:4	PARTIALLY:2	NO: 0				
	Are the vendor's staff well equipped and skilled in handling requests / issues? Are you rotated too much among staff on an issue?	YES:8	PARTIALLY:4	NO: 0				
								12
8. VALUE ADD	**Rating guidelines**					**User's Score**	**Comments**	**Totals**
	Did the vendor go over and above in optimizing service delivery process for effective services delivery?	YES:5	PARTIALLY:5	NO: 0				
								10
Maximum Score						100.0		100.00 %

User to summarize key performance issues for the vendor.				
Evaluation Done by:	**Name**	**Department**	**Sign**	**Date**

PART II – PROCURING ENTITY'S REQUIREMENTS

TERMS OF REFERENCE AND REQUIREMENTS FOR PROVISION OF DATA PROTECTION IMPACT ASSESSMENT SERVICES TENDER NO. KPARBS2012/DPI/003/2026

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1. BACKGROUND

The Kenya Ports Authority Pension Retirement Benefits Scheme, 2012 (the Scheme) is a retirement benefits scheme established to provide retirement and related benefits to eligible members and beneficiaries. The Scheme processes substantial volumes of personal data and sensitive personal data relating to active members, deferred members, pensioners, beneficiaries, dependants, trustees, employees, service providers and other stakeholders.

The Scheme collects, stores, uses, shares, transmits, archives and disposes of personal data through pension administration processes and supporting information systems, including enterprise resource planning, electronic document and records management, self-service portals, biometric solutions, financial systems, human resource systems, websites, cloud services, backup infrastructure and disaster recovery environments.

The Scheme therefore intends to engage a qualified and independent consultant to conduct a comprehensive Data Protection Impact Assessment (DPIA), privacy compliance review, data governance assessment and privacy risk assessment across its operations, systems, projects and third-party processing arrangements.

2. Purpose of the Assignment

The purpose of the assignment is to independently assess the Scheme's personal data processing activities, identify high-risk processing and compliance gaps, evaluate privacy and information security controls, and provide a practical, prioritized roadmap for mitigating privacy risks and sustaining compliance.

3. Objectives of the Assignment

1. Assess level of compliance with the Data Protection Act, 2019 and applicable subsidiary regulations.
2. Identify processing operations that require a DPIA and assess whether consultation with or submission to the Office of the Data Protection Commissioner is required.
3. Develop a complete data inventory, data-flow maps and Record of Processing Activities (ROPA).
4. Assess privacy, information security and operational risks arising from the processing of personal data.
5. Evaluate data protection governance, accountability, policies, procedures and organisational controls.
6. Assess processing across the full pension member, pensioner, beneficiary and dependant lifecycle.
7. Review biometric and other sensitive personal data processing activities.
8. Assess third-party processors, outsourced service providers and contractual safeguards.
9. Evaluate cross-border transfers, cloud services and externally hosted platforms.
10. Assess personal data breach prevention, detection, escalation, notification and response readiness.
11. Develop a risk-based remediation plan and a 12-to-24-month compliance implementation roadmap.
12. Build internal capability through training, knowledge transfer, templates and operational tools.

4. Legal, Regulatory and Best-Practice Framework

The consultant shall assess the Scheme against all applicable laws, regulations, regulatory guidance and contractual requirements in force during the assignment. The review shall include where applicable:

4.1 Data Protection and Privacy

- Constitution of Kenya, 2010, including the right to privacy.
- Data Protection Act, 2019.
- Data Protection (General) Regulations, 2021.
- Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021.
- Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021.
- ODPC guidance on DPIAs, biometric data, consent, data protection officers, registration, data protection policies, children's data, cross-border transfers, health data, data sharing and relevant sector guidance, including finance, public sector and technology where applicable.

- Any other, subsequent or replacement ODPC guidance, code, directive or advisory in force during the assignment.

4.2 Retirement Benefits and Sector Requirements

- Retirement Benefits Act and applicable regulations.
- Applicable Retirement Benefits Authority guidelines, governance requirements, circulars and supervisory expectations.
- Scheme trust deed and rules, policies and contractual obligations relevant to personal data processing.

4.3 Other Applicable Kenyan Laws

- Computer Misuse and Cybercrimes Act, 2018.
- Kenya Information and Communications Act and applicable regulations.
- Access to Information Act, 2016.
- Children Act 2022, including best-interests and safeguarding obligations relevant to children and dependents.
- Employment Act, 2007.
- Evidence Act requirements applicable to electronic records.
- Public Procurement and Asset Disposal Act, 2015 and applicable regulations for procurement of the consultancy.
- Any other Kenyan law or regulatory requirement relevant to the Scheme's processing activities.

4.4 Standards and Good Practice

- ISO/IEC 27001 for information security management.
- ISO/IEC 27701 for privacy information management.
- ISO 31000 risk management principles.
- NIST Cybersecurity Framework and CIS Controls, where appropriate.
- Privacy-by-design and privacy-by-default principles.
- International privacy good practice where it does not conflict with Kenyan law.

5. Scope of Work

5.1 Governance and Accountability Review

- Governance structure and oversight by the Board and management.
- Data Protection Officer mandate, independence, competence, reporting and resources.
- Policies, procedures, registers, accountability records and compliance monitoring.
- Privacy notices, consent records, complaints handling and data-subject rights procedures.
- Data retention, records management, data classification and secure disposal.

5.2 Data Discovery, Mapping and ROPA

- Identify data subjects, data categories, systems, repositories, data owners and custodians.
- Document collection sources, purposes, lawful basis, recipients, internal and external flows, storage locations, retention and disposal.
- Prepare data-flow diagrams and a complete Record of Processing Activities.

5.3 Pension Member Lifecycle Assessment

- Member onboarding and registration.
- Contributions administration and reconciliation.
- Benefit calculations, claims and payments.
- Pension payroll and pensioner administration.
- Deferred member and transfer processing.
- Beneficiary nominations, dependant records and death-benefit processing.
- Member complaints, enquiries and communications.

5.4 Biometric and Sensitive Data Assessment

- Map all biometric processing, including enrolment, identity verification, authentication, deduplication, matching, storage, transfer, archiving and deletion across production, mobile, backup and disaster recovery environments.
- Distinguish and assess raw biometric samples, fingerprint or facial images, photographs, signatures, extracted templates, matching scores, decision results, audit logs and associated metadata.
- Determine the purpose, lawful basis, necessity and proportionality of each biometric processing activity and whether the objective can reasonably be achieved by a less intrusive method.
- Assess whether a reasonable non-biometric alternative is available for people unable or unwilling to provide biometric data, where legally appropriate, and whether refusal results in unjustified disadvantage.
- Review biometric privacy notices for the biometric type collected, purpose, lawful basis, enrolment and template-generation process, recipients, storage locations, retention, sharing, consequences of refusal, rights, complaint channels and withdrawal arrangements.
- Where consent is relied upon, verify that it is explicit, informed, freely given, specific, recorded, demonstrable and capable of withdrawal, and determine whether consent is inappropriate because of imbalance or absence of genuine choice.
- Assess accuracy, false acceptance and false rejection rates, matching thresholds, duplicate enrolment controls, demographic performance, periodic testing, exception handling and correction of erroneous matches.
- Assess liveness detection, presentation-attack detection, anti-spoofing controls, replay protection, device integrity, enrolment fraud, template extraction and unauthorized reconstruction risks.
- Review automated or materially biometric-driven decisions, human intervention, adverse-decision notices, appeal and contestation procedures, and safeguards against decisions based solely on unreliable matches.
- Confirm the location of raw samples, templates, backups and disaster recovery copies; assess biometric data localization, remote access and cross-border transfer requirements and safeguards.
- Determine applicable ODPC registration, notification, DPIA, prior consultation and breach-notification obligations for biometric processing.
- Assess safeguards for children, dependents, people lacking capacity and other vulnerable data subjects, including authority to enroll and exercise rights on their behalf.
- Assess access control, segregation of duties, encryption, key management, logging, monitoring, processor access, retention schedules and verified deletion from systems, devices, caches, logs, backups, disaster recovery environments and supplier platforms.
- Evaluate incident response for compromised biometric data, recognizing that biometric identifiers cannot ordinarily be reissued like passwords, including template disabling, re-enrolment, alternative verification and fraud monitoring.
- Assess medical, health, financial and other sensitive personal data processed with or linked to biometric identifiers.

5.5 Children, Dependents and Vulnerable Data Subjects

- Map all processing of children's, beneficiaries' and dependents' data throughout nomination, eligibility verification, medical review, death-benefit and payment processes.
- Verify the lawful basis, necessity, best interests, age-appropriate transparency, parental or guardian authority where applicable, data minimization and restrictions on profiling or automated decisions.
- Assess procedures for verifying age, legal guardianship and authority to exercise rights, while avoiding excessive collection.
- Review access controls, sharing, publication, retention, safeguarding, complaint handling and escalation for vulnerable persons or persons lacking capacity.

5.6 Health and Medical Data Assessment

- Identify all health and medical data processed for benefit eligibility, incapacity, insurance, wellness, occupational health, medical-board or related purposes.

- Assess lawful basis, purpose limitation, necessity, confidentiality, professional secrecy, data minimization and separation from general member records.
- Review disclosures to medical providers, insurers, trustees, employers and other recipients, including authority, minimum necessary disclosure and data-sharing safeguards.
- Assess access restrictions, encryption, audit trails, retention, disposal, data-subject access, correction of inaccurate clinical information and breach response.

5.7 Financial Data and Sector-Specific Assessment

- Assess contribution, payroll, banking, payment, tax, property, investment, beneficiary and benefit-transaction data across the pension lifecycle.
- Review lawful and fair processing, financial-data accuracy, reconciliation, correction, confidentiality, segregation of duties, fraud prevention and auditability.
- Assess profiling, risk scoring, fraud analytics and automated decisions for transparency, necessity, human intervention and contestability.
- Review disclosures to banks, custodians, administrators, investment managers, insurers, auditors, regulators and payment providers, together with sector-specific retention and confidentiality obligations.

5.8 Applications, Infrastructure and Technology

- Pension administration, ERP, EDRMS, member portal, property portal, HR, finance and CRM platforms.
- Websites, mobile applications, APIs, databases, file stores, email and Microsoft 365 services.
- Identity and access management, privileged access, MFA, encryption, logging, endpoint and network security.
- Backups, disaster recovery, business continuity, cloud platforms and hosted services.

5.9 Third-Party and Outsourcing Review

- Administrators, custodians, investment managers, actuaries, auditors, insurers, medical providers, ICT vendors and cloud providers.
- Controller-processor roles, due diligence, data processing agreements, confidentiality and security clauses.
- Sub-processing, audit rights, breach notification, return or deletion of data, business continuity and exit provisions.

5.10 Data Sharing and Disclosure Review

- Inventory routine, ad hoc, internal, controller-to-controller, controller-to-processor and public-sector data-sharing arrangements.
- For each sharing activity, assess legal basis, purpose compatibility, necessity, proportionality, transparency, data quality, minimization, security, retention and data-subject rights.
- Review data-sharing agreements for roles, permitted data and purposes, accuracy, security, breach handling, onward disclosure, audit, retention, deletion, rights handling and termination.
- Prepare a data-sharing register and identify arrangements requiring a benefit-risk assessment, DPIA, revised notice, contract or cessation.

5.11 Cross-Border Transfer Review

- Identify transfers, cloud storage, hosting, support access and remote administration involving locations outside Kenya.
- Document receiving jurisdictions, recipients, systems, transfer purposes, data categories, onward transfers and storage or support locations.
- Determine and evidence the applicable transfer mechanism, including adequacy, necessity, consent or appropriate safeguards, and assess transfer agreements, binding rules and reciprocal arrangements where relevant.
- Assess transfer risks, data localization requirements for sensitive and biometric data, cloud-provider safeguards, onward-transfer controls and data-subject rights.
- Prepare a cross-border transfer register and transfer-risk assessment with supporting evidence and remediation actions.

5.12 Data Subject Rights and Consent

- Access, correction, erasure, restriction, objection, portability and the right not to be subject to solely automated decision-making, where applicable.
- Identity verification, response tracking, statutory timelines, human review of disputed biometric matches and evidence of closure.
- Consent wording, explicit consent records, withdrawal, proof of choice and non-biometric alternatives where consent is relied upon or is inappropriate.
- Biometric-specific privacy notices, complaint channels, appeals against adverse decisions and safeguards for minors, dependents and vulnerable data subjects.

5.13 Personal Data Breach Readiness

- Prevention, detection, classification, containment, investigation and recovery arrangements.
- Escalation, internal reporting, evidence preservation and decision-making.
- Readiness for notification to affected data subjects and the ODPC where required.
- Tabletop review of breach and ransomware scenarios.

5.14 Privacy Risk and Compliance Assessment

- Identify inherent risk, existing controls, control gaps, residual risk and treatment actions.
- Assess necessity and proportionality of processing.
- Rate findings by severity, regulatory exposure, urgency, effort, owner and target date.

5.15 Privacy Maturity and Capacity Building

- Conduct interviews, surveys, workshops and document reviews.
- Assess awareness, accountability, operational maturity and compliance culture.
- Deliver role-based training for staff, management, DPO, ICT and the Board of Trustees.

6. Required Deliverables and Acceptance Criteria

No.	Deliverable	Minimum Content	Acceptance Standard
1	Inception Report	Scope confirmation, stakeholders, methodology, information request, risks and detailed work plan.	Approved by Project Champion.
2	Data Inventory and Flow Maps	Data subjects, categories, sources, systems, owners, recipients, locations, retention and flows.	Validated by process and system owners.
3	Record of Processing Activities	Complete ROPA covering business units, systems and third parties.	Complete, editable and aligned to mapped processes.
4	DPIA and High-Risk Processing Register	Necessity, proportionality, risk, controls, residual risk and consultation recommendation. The DPIA shall document consultation with the DPO, process and system owners and affected stakeholders; data-subject views where appropriate; a DPIA status register; review triggers and reassessment dates; criteria for prior consultation with the ODPC; and formal residual-risk acceptance by the authorized Scheme governance body.	Findings supported by evidence and assigned owners.
5	Privacy and Technical Risk Register	Inherent risk, controls, residual risk, treatment, owner and target date.	Risk ratings use an agreed methodology.
6	Third-Party Privacy Assessment	Processor inventory, contract gaps, risk ratings and remediation.	Includes priority contracts and standard clauses.
7	Biometric Data Compliance	Requirement-by-requirement assessment against the ODPC Guidance Notes on Biometric Data and annexed checklist,	Evidence-based, traceable to the ODPC checklist, with prioritised corrective

No.	Deliverable	Minimum Content	Acceptance Standard
	Assessment and Remediation Plan	covering lawful basis, notices, alternatives, consent, accuracy, security, localization, processors, transfers, DPIA, notification, rights, vulnerable persons, lifecycle controls and breach response.	actions, owners and target dates.
8	Cross-Border Transfer Register	Transfers, jurisdictions, recipients, systems, purpose and safeguards.	All identified transfers are documented.
9	ODPC and Sector Compliance Matrix	Requirement-level mapping for every applicable ODPC instrument and RBA requirement in force, showing applicability, evidence, compliance status, finding, risk, corrective action, owner, priority and target date.	Complete, evidence-based and traceable; every non-applicable requirement is justified.
10	Special-Category and Sectoral Data Assessment	Consolidated assessment of children, dependants, vulnerable persons, health, financial data, consent, notices, data-subject rights, retention, secure disposal, registration particulars and required amendments.	Evidence-based, operationally actionable and validated by relevant owners.
11	Breach Readiness Assessment	Capability review, gaps, escalation and notification workflow.	Includes practical recommendations and test scenario.
12	Privacy Maturity Assessment	Current maturity, target maturity and improvement actions.	Scoring basis is transparent and repeatable.
13	Templates and Toolkits	Operational DPIA governance procedure; DPIA and legitimate-interest templates; privacy-by-design checklist; privacy notices; consent and withdrawal forms; data-subject request and breach registers; breach notification decision form; data-sharing agreement; cross-border transfer assessment; retention and disposal schedule; children's-data checklist; processor onboarding, due-diligence and exit tools; and compliance-monitoring dashboard.	Editable and tailored to the Scheme.
14	Implementation Roadmap	Prioritized 12-to-24-month plan, dependencies, owners, effort and milestones.	Actions categorized as immediate, short, medium and long term.
15	Training and Knowledge Transfer	Role-based training, attendance, materials and evaluation.	Materials handed over in editable format.
16	Draft and Final Reports	Executive summary, detailed report, evidence-based findings and action register.	Comments resolved and final report formally accepted.
17	Management and Board Presentations	Concise presentation of material risks, decisions and roadmap.	Delivered to designated governance forums.

7. Methodology Requirements

- Document and evidence review, stakeholder interviews and process walkthroughs.
- System and control demonstrations. Vulnerability scanning, penetration testing, source-code review, destructive database testing and intrusive biometric performance testing are excluded unless separately authorized in writing and governed by an approved test plan.
- Complete data discovery, flow mapping, ROPA, third-party inventory, data-sharing register and cross-border transfer register. Sampling may be used for control testing only and shall not limit the completeness of these inventories and registers.

- Risk assessment using an agreed likelihood-impact methodology, with inherent risk, controls, residual risk, treatment, management response, risk owner, acceptance authority, closure evidence and verification status.
- Validation workshops with process owners, ICT, DPO/legal, risk, internal audit and management.
- Requirement-to-evidence traceability against every applicable law, regulation, ODPC instrument and RBA requirement, with reasoned justification for non-applicability.
- Quality assurance and independent internal review before submission.
- Secure handling, minimization, masking and controlled retention of all information collected during the engagement.

8. Assignment Duration and Indicative Schedule

The assignment shall be completed within twelve (12) weeks from the commencement date, subject to timely access to personnel, systems and documentation.

Phase	Activities	Indicative Period
1. Inception and planning	Kick-off, stakeholder mapping, information request and detailed work plan.	Weeks 1-2
2. Discovery and assessment	Interviews, data mapping, process walkthroughs, systems and third-party review.	Weeks 3-6
3. Analysis and drafting	Risk assessment, legal compliance matrix, DPIA, gap analysis and roadmap.	Weeks 7-10
4. Validation and close-out	Validation workshops, training, final reports and presentations.	Weeks 11-12

9. Reporting, Governance and Scheme Responsibilities

9.1 Reporting and Project Governance

- The consultant shall report to the CEO/Trust Secretary or a designated Project Champion.
- All deliverables shall be submitted in editable Microsoft Word, Excel and PowerPoint formats, together with signed PDF versions where requested.
- The consultant shall maintain decisions, issues, risks and action log throughout the assignment.

9.2 Scheme Responsibilities

- The Scheme shall establish a multidisciplinary project team comprising the Data Protection Officer and relevant business, ICT, risk, legal/compliance, records, human resources, procurement and internal audit representatives.
- The Scheme shall facilitate controlled access to required records, personnel and systems.
- The Data Protection Officer shall coordinate operational ownership of the DPIA register, DPIA screening and review cycle, remediation monitoring, evidence retention and annual status reporting, supported by risk, legal/compliance, ICT and relevant process and system owners.

9.3 Ongoing DPIA Governance

- The consultant shall develop and document an operational DPIA governance procedure tailored to the Scheme.
- The Scheme shall maintain a complete and current DPIA register.
- Documented DPIA screening shall be conducted for every new system, project, technology, processing activity and material change. A full DPIA shall be completed before implementation where high risk is identified.
- High-risk DPIAs shall be reviewed at least annually and whenever there is a material change in purpose, technology, data categories, processing scale, recipients, location, threats or applicable law.
- The Data Protection Officer shall coordinate preparation and submission of a report on DPIA status, residual risks and outstanding remediation actions to the Risk and Audit Committee at least annually, supported by risk, legal/compliance, ICT and relevant process and system owners.

- Approved DPIA reports, decisions, consultations, risk acceptances and remediation evidence shall be retained in a secure and controlled repository that is readily retrievable for regulatory review or inspection by the ODPC.

10. Confidentiality, Data Handling and Security

- The successful consultant shall sign a non-disclosure agreement and, where applicable, a data processing agreement before commencement.
- Scheme information shall be processed only for the assignment within Scheme-approved collaboration and storage environments, using named-user access, multi-factor authentication, encryption in transit and at rest, logging and least privilege access.
- Production data shall be minimized and masked where practicable. Removable media, personal email, consumer file-sharing services and unapproved cloud platforms are prohibited.
- No Scheme information may be uploaded to public generative-AI services or used to train any model. Use of any AI-enabled service requires prior written approval, documented safeguards and confirmation that Scheme data will not be retained or used for training.
- No Scheme information shall be transferred outside approved locations, disclosed to a subcontractor or accessed remotely from another jurisdiction without prior written approval and applicable transfer safeguards.
- The consultant shall notify the Scheme of any actual or suspected information security or personal data incident within four hours of discovery and provide continuing support, evidence preservation and status updates.
- Subcontractors shall be bound by equivalent confidentiality, security, data protection, incident-reporting, audit and deletion obligations. Subcontracting and replacement of key personnel require prior written approval.
- The Scheme may audit or obtain reasonable assurance over the consultant's handling environment and compliance with these requirements.
- At close-out, all working copies shall be returned or securely destroyed and the consultant shall provide a signed deletion certificate, subject only to approved legal retention obligations.
- All final reports, registers, templates and working products created specifically for the assignment shall become the property of the Scheme.

11. Minimum Consultant Qualifications

11.1 Firm

- Demonstrated experience in DPIAs, privacy compliance, data governance or information security assessments.
- Experience in pension, financial services, insurance or another highly regulated sector.
- Evidence of successful completion of comparable assignments supported by contracts, completion certificates or reference letters.
- Documented quality assurance, confidentiality, information security, business continuity and conflict-of-interest controls.
- Valid ODPC registration where required by law based on the bidder's processing activities.

11.2 Key Personnel

- Lead Consultant/Project Manager: relevant degree, at least seven years of relevant experience, recognized privacy or information-security certification, and primary accountability for quality and delivery.
- Data Protection/Legal Specialist: demonstrated Kenyan data-protection expertise. Where formal legal opinions are required, the specialist shall be an Advocate of the High Court of Kenya with a current practicing certificate.
- Information Security Specialist: controls-assessment experience across infrastructure, applications, cloud, identity, logging, backup and disaster recovery.
- Pension/Business Process Specialist: experience in retirement benefits, insurance, banking or regulated financial operations.

- Data Analyst: evidence management, data mapping, registers, analysis and reporting.
- The bidder should state person-days and availability for each key expert. The Lead Consultant, Legal/Privacy Specialist and Information Security Specialist shall personally lead their respective workstreams and attend validation and final presentation sessions.

12. Bid Submission Requirements

- Technical proposal responding to every TOR requirement.
- Detailed methodology, tools, assumptions, exclusions and quality assurance approach.
- Work plan showing activities, dependencies, deliverables, personnel and person-days.
- Firm profile and documentary evidence of comparable assignments.
- CVs and certificates for all proposed key personnel.
- At least three relevant client references.
- Conflict-of-interest declaration, confidentiality undertaking and disclosure of proposed subcontractors.
- Separate financial proposal with professional fees, reimbursables, taxes and total tender price.

Proposed deliverables acceptance and payment schedule.

PART III – CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VI - GENERAL CONDITIONS OF CONTRACT

A. General

Provisions 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-Clause8.2 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) Data Protection Act, 2019 means applicable Act for Data Protection in Kenya.

g) ''Data Controller'' - means a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purpose and means of processing of personal data;

h) ''Data Processor'' - means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller;

i) ''Data Subject'' - means an identified or identifiable natural person who is the subject of personal data;

j) "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.

k) "Procuring Entity" means the Procuring Entity or party who employs the Service Provider

l) "Foreign Currency" means any currency other than the currency of Kenya;

m) "GCC" means these General Conditions of Contract;

n) "Government "means the Government of Kenya;

o) "Local Currency "means Kenya shilling;

p) "Member," in case the Service Provider consist 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' rights and obligations towards the Procuring Entity under this Contract;

q) "Party" means the Procuring Entity or the Service Provider, as the case maybe, and "Parties" means both of them;

r) "Personnel" means persons hired by the Service Provider or by any SubSupplier as employees and assigned to the performance of the Services or any part there of;

s) "Service Provider" is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;

t) "Service Provider's Tender" means the completed Tendering Document submitted by the Service Provider to the Procuring Entity

u) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;

v) "Specifications" means the specifications of the service included in the Tendering Document submitted by the Service Provider to the Procuring Entity

w) "Services" means the work to be performed by the Service Provider pursuant to this Contract; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.

x) "Sub Supplier" means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses3.5and4;

y) "Project Manager" shall 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 Supplier.

z) 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 a respecified, 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 Taxes and Duties

The Service Provider, SubSuppliers, 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

2.2.1 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-Clause3.8.Inthiscase,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,"ForceMajeure"meansaneventwhichisbeyondthereasonablecontrolofa 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 Extention of time

Any period with in 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 paragraph2.2a. of Attachment1 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 Supplier 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 SubSuppliers 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 remunerationinconnectionwiththisSupplierthe Services, andtheServiceProvidershallnotacceptfortheir own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Supplier 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 SubSuppliers, 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 SubSupplier and any of its affiliates, shall bed is 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 SubSuppliers 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) After the termination of this Contract, such other activities as may be **specified in the SCC.**

3.3 Confidentiality

The Service Provider, its SubSuppliers, 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 SubSuppliers to take out and maintain, at its (or the Sub Suppliers', 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 ("Key Personnel and SubSuppliers"),

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 the terms of reference, and within the periods set forth.

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 in 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-Clause7.2 and **specified in the SCC.**

3.9 Performance Security

The Service Provider shall provide 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 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.

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. The Key Personnel and SubSuppliers listed by title as well as by name 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 Service Provider performs its obligations.

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.

6 Payments to the Service Provider

6.1 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price, 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 2.4and6.3.

6.2 Contract Price

a) The price payable is **set forth in the tender form and signed contract.**

b) Price shall be in Kenya Shillings.

6.2.1 Where the contract price is different from the corrected tender price, in order to ensure the Supplier is not paid less or more relative to the contract price (*which would be the tender price*), 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:*(corrected tender price–tender price)/tender price X100*.

6.3 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.

6.4 Interest on Delayed Payments

The Procuring Entity shall not pay interest on delayed payments beyond thirty (30) days.

6.5 Price Adjustment

6.5.1 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:

$P_c = A_c + B_c$ Lmc / Loc + C_c Imc / loc 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

Lmc is the index prevailing at the first day of the month of the corresponding invoiced ate and Loc is the index prevailing28 days before Tender opening for labor; both in the specific currency "c".

Imc is the index prevailing at the first day of the month of the corresponding invoice date and loc 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 Zo/Zn will be applied to the respective component factor of pn for the formula of the relevant currency. Zo 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 Zn is the corresponding number of such currency units on the date of the current index.

6.5.2 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.

6.6 Day works

6.6.1 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.

6.6.2 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-Clause1.6 within two days of the Services being performed.

6.6.3 The Service Provider shall be paid for Day works subject to obtaining signed Day works forms as indicated in Sub-Clause6.7.2

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 checks 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**.

7.2 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 Supplier's Claims

8.1.1 If the Supplier 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 Supplier 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 Supplier became aware, or should have become aware, of the event or circumstance.

8.1.2 If the Supplier fails to give notice of a claim within such period of 28days, the Time for Completion shall not be extended, the Supplier 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 hall apply.

8.1.3 The Supplier shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all s relevant to such event or circumstance.

8.1.4 The Supplier 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 Supplier to keep further contemporary records. The Supplier 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 Supplier 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 Supplier and approved by the Project Manager, the Supplier 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 Supplier 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;

b) The Supplier 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 Supplier 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 Supplier, 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 Supplier 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 Supplier shall only been titled to payment for such part of the claim as he has be enable to substantiate.

8.1.9 If the Project Manager does not respond within the time framed fined 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 withSub-Clause8.2 [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 Contract or 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) Whetherornotacertificatehasbeenimproperlywithheldorisnotinaccordance with these Conditions.

e) Any dispute arises 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 Supplier 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.

8.4.3 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

8.4.4 Arbitration may commence prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.

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

8.5 Arbitration with proceedings

8.5.1 In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

a) Law Society of Kenya or

b) Chartered Institute of Arbitrators (Kenya Branch)

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

8.5.3 The arbitration maybe on the construction of this Supplier on any matter or thing of what so ever nature arising there under or in connection there with, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Supplier may claim to been titled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

8.5.4 Provided that no arbitration proceedings shall commence on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

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

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

8.5.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

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

8.6 Failure to Comply with Arbitrator's Decision

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

1.1 The Adjudicator

1.1.1 Should the Adjudicator resign or die, or should the Procuring Entity and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Procuring Entity and the Service Provider. In case of disagreement between the Procuring Entity and the Service Provider, within 30days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

1.2 The Adjudicator shall be paid by the hour at the rate **specified in the TDS and SCC,** together with reimbursable expenses of the type's **specified in the SCC**, and the cost shall be divided equally between the Procuring Entity and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

10 Data Protection

10.1 The parties will adhere to the provisions in this clause on Data protection, and comply with all applicable requirements of the legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

10.2 Without prejudice to the generality of the clause above the parties shall, in relation to any Personal Data processed in connection with the performance of its obligations under Agreement:

a) process the Personal Data only on the documented written instructions of the Data Controller unless expressly required under this agreement or policy document.

b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organizational measures adopted by it);

c) not process the Personal Data under this Agreement except for the agreed purpose or in a way that does not comply with this Agreement.

d) promptly comply with any request or instruction requiring the party to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorized processing of the Personal Data;

e) maintain the confidentiality of all the Personal Data and shall not disclose the Personal Data to third parties unless authorized in writing or this Agreement specifically authorizes the disclosure, or as required by law. If a law, court or regulator requires a party to process or

disclose the Personal Data, the party shall first inform the other party of the legal or regulatory requirement and give an opportunity to object or challenge the requirement, unless the law prohibits such notice;

f) ensure that all its employees are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data. The parties shall also take reasonable steps to ensure the reliability, integrity and trustworthiness of and conduct background checks consistent with applicable law on all of their employees with access to the Personal Data;

g) at all times implement appropriate technical and organizational measures against unauthorized or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of the Personal Data; and

h) Immediately following any unauthorized or unlawful Personal Data processing or Personal Data Breach, the Supplier will investigate the matter and shall reasonably co-operate in handling of the matter, including:

   i. assisting with any investigation.
   ii. providing the other party with physical access to any facilities and operations affected;
   iii. facilitating interviews with employees, former employees and others involved in the matter;
   iv. making available all relevant records, logs, files, data reporting and other materials reasonably required by the other party;
   v. taking reasonable and prompt steps to mitigate the effects and to minimize any damage resulting from the Personal Data Breach or unlawful personal data processing.
   vi. at the written direction the other party, delete or return the Personal Data and copies thereof on termination of the Agreement; and
   vii. maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the other party or their designated auditor and immediately inform the other party if, an instruction infringes the provisions of this Agreement.

i) Supplier shall, at no additional cost, take such technical and organizational measures as may be appropriate, and promptly provide such information to KPARBS2012 as may be reasonably required, to enable them to comply with;

j) the rights of Data Subjects, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data

k) At the other party's request, a party shall give a copy of or access to all or part of the Personal Data in its possession or control under Agreement in the format and on the media reasonably specified by the KPARBS2012.

l) On termination of this Agreement, the parties shall securely delete or destroy or, if directed in writing by the other party, return and not retain, all or any Personal Data related to this Agreement in its possession or control, [except for one copy that it may retain and use for audit purposes only or if required by any law].

B. SPECIAL CONDITIONS OF CONTRACT

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract *hereinafter abbreviated as SCC* shall form part of the Conditions of Contract. They are made in accordance with the law and KPARBS2012's guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GCC. The clauses in this section need not therefore, be completed but must be completed by KPARBS2012 if any changes to the GCC provisions are deemed necessary. Whenever there is a conflict between the GCC and SCC, the provisions of the SCC shall prevail over those in the GCC.

No.	GCC Reference Clause	Particulars of SCC
1.	Terms of Payment	Payment is thirty (30) days from submission of report(s) and invoice together with other required and related documents subject to satisfactory delivery and acceptance of the corresponding deliverable(s) as per the terms of reference and below milestones; a. Upon signing of contract and submission of inception report - 20% b. Upon submission and acceptance of draft DPIA report - 40% c. Upon submission and acceptance of final DPIA report and closeout presentation - 40%
2.	Liquidated damages	The liquidated damage shall be: 0.05 % per week for a maximum of 10% of the contract value