



NAMICO

NATIONAL MINING CORPORATION

**SUPPLY, INSTALLATION, CONFIGURATION,
CUSTOMIZATION, TRAINING, COMMISSIONING AND
SUPPORT SERVICES FOR ENTERPRISE RESOURCE
PLANNING (ERP) SYSTEM**

TENDER NO: NAMICO/OT/11/2023-2024

**KWFT Centre 4th Floor
Kiambere-Masaba Rd, upper hill
Nairobi**

**P.O. Box 115 – 00100, Nairobi
Mobile: +254 020-7869420**

info@nmckenya.go.ke/tenders@nmckenya.go.ke

CLOSING DATE: 03RD MAY, 2024, AT 11:00AM

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INVITATION TO TENDER

DATE OF INVITATION TO TENDER: 23RD APRIL 2024

PROCURING ENTITY: NATIONAL MINING CORPORATION (NAMICO)

TENDER NO: NAMICO/OT/11/2023-2024

**TENDER FOR SUPPLY, INSTALLATION, CONFIGURATION, CUSTOMIZATION, TRAINING,
COMMISSIONING AND SUPPORT SERVICES FOR ENTERPRISE RESOURCE PLANNING
SYSTEM**

(ERP) SYSTEM (OPEN NATIONAL TENDER)

1. The NATIONAL MINING CORPORATION (NAMICO) invites sealed tenders for the supply, installation, configuration, customization, training, commissioning and support services for enterprise resource planning (ERP) system. Tendering will be conducted under open competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
2. Qualified and interested tenderers may obtain a complete set of tender documents from the State Department for Mining website www.nmkenya.go.ke and PPIP portal, www.tenders.go.ke free of charge.
3. Qualified and interested tenderers may obtain further information during office hours [*i.e., 0800 to 1700 hours*] at the address given below.
4. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
5. Clarity on Serialization of Tender Documents by Prospective Bidders Please note that all pages of the tender documents submitted by bidders shall be sequentially serialized numerically that is; 1, 2, 3, 4, 5... etc. The serialization shall be undertaken by the bidder, by doing fresh numbering on its documents. The pagination of the tender documents as downloaded from the NAMICO website should not be used as a means of Serialization. The bidder's serialization should follow the same logical sequence from the first page to the end.
6. The Tenderer shall initialize/sign all pages of the tender documents where entries are made.
7. The submitted tender documents MUST be tape bounded.
8. Tender Security of **Kshs 1,000,000.00** (One Million Kenya Shillings only) from a Reputable Bank recognized in Kenya shall be required. For 180 days from the date of bid submission
9. All certifications, stamping and Signatures must be original and not scanned. Electronic signatures, scanned stamps, and scanned certifications shall be rejected.
10. Completed tenders must be delivered to the address below on or before **Friday, 03rd May 2024, 11.00a.m.** Electronic Tenders will not be permitted.

11. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
12. All submitted Documents may be verified from the issuing agencies, NAMICO Reserves the right to verify all submitted documents.
13. Late tenders will be rejected.
14. The addresses referred to above are:
15. The Bidders Must not interfere with the tender document as issued by NAMICO. All pages of NAMICO's issued tender document must form part of the bidders submitted bid document.

A. ADDRESS FOR OBTAINING FURTHER INFORMATION

Principal Supply Chain Management Officer
National Mining Corporation (NAMICO)
KWFT Centre 4th Floor
Kiambere-Masaba Rd, Upper Hill Nairobi
P.O. Box 115-00100, Nairobi
Mobile: +254 020-7869420

Email: kkira@nmckenya.go.ke/ tenders@nmckenya.go.ke

B. Address for Submission of Tenders.

**Ag. Chief Executive Officer
National Mining Corporation (NAMICO)
KWFT Centre 4th Floor
Kiambere-Masaba Rd, Upper Hill Nairobi
P.O. Box 115-00100, Nairobi
Mobile: +254 020-7869420**

Email: info@nmckenya.go.ke/ tenders@nmckenya.go.ke

Tenders should be deposited at the tender box provided at the
KWFT Centre, 4th floor, Kiambere-Masaba Rd, Upper Hill Nairobi

HEAD OF SUPPLY CHAIN MANAGEMENT SERVICES

For: AG. CHIEF EXECUTIVE OFFICER

PART 1 - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS (ITT)

Section I - Instructions to Tenderers

A. GENERAL

1. Scope of Tender

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

2. Definitions

- 2.1 Unless otherwise stated, throughout this tendering document definitions and interpretations shall be as prescribed in the Section VI, General Conditions of Contract.
- 2.3 Throughout this tendering document:
- a) The term “in writing” means communicated in written form (e.g., by mail, e-mail, fax, including if specified in the **TDS**, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
 - b) If the context so requires, “singular” means “plural” and vice versa; and
 - c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes the Procuring Entity's official public holidays.
 - d) “Information System” shall carry the same meaning as “Information Technology”.

3. Fraud and Corruption

- 3.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.
- 3.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/ or civil sanctions may be imposed. To this effect, Tenderers shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.
- 3.3 Unfair Competitive Advantage -Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. The Procuring Entity shall indicate in the TDS firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.
- 3.4 Tenderers shall permit and shall cause their agents (whether declared or not), subcontractors, sub- consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

4. Eligible Tenderers

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

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

- 4.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms / organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a. Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
 - b. Receives or has received any direct or indirect subsidy from another Tenderer; or
 - c. Has the same legal representative as another Tenderer; or
 - d. Has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
 - e. Any of its affiliates participates as a consultant in the preparation of the design or technical specifications of the Information System that are the subject of the Tender; or
 - f. Or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity as Project Manager for the Contract implementation; or
 - g. Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDSITT2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
 - h. Has a close business or family relationship with a professional staff of the Procuring Entity who: -
 - i. Are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/ or the Tender evaluation process of such Contract. or
 - ii. Would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.
- 4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate as a Tenderer or as JV member in more than one Tender except for permitted alternative Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. However, this does not limit the participation of a Tenderer as subcontractor in another Tender or of a firm as a subcontractor in more than one Tender.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case maybe. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub- consultants for any part of the Contract including related Services.
- 4.6 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
- 4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not under supervision of the Procuring Entity.
- 4.8 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or

entity in that country.

- 4.9 The Procuring Entity may require tenderers to be registered with certain authorities in Kenya. Such registration shall be defined in the **TDS**, but care must be taken to ensure such registration requirement does not discourage competition, nor exclude competent tenderers. Registration shall not be a condition for tender, but where a selected tenderer is not so registered, the tenderer shall be given opportunity to register before signing of the contract.
- 4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in “SECTION III- EVALUATION AND QUALIFICATION CRITERIA, Item 9”.
- 4.11 Pursuant to the eligibility requirements of ITT 4.11, a tenderer is considered a foreign tenderer, if it is registered in Kenya, has less than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms are registered in Kenya have less than 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 4.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke
- 4.13 Tenderers shall be considered ineligible for procurement if they offer goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment.
- 4.14 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

5 Eligible Goods and Services

- 5.1 The Information Systems to be supplied under the Contract may have their origin in any eligible country.
- 5.2 For the purposes of this tendering document, the term “Information System” means all:
- i. the required information technologies, including all information processing and communications-related hardware, software, supplies, and consumable items that the Supplier is required to supply and install under the Contract, plus all associated documentation, and all other materials and goods to be supplied, installed, integrated, and made operational; and
 - ii. the related software development, transportation, insurance, installation, customization, integration, commissioning, training, technical support, maintenance, repair, and other services necessary for proper operation of the Information System to be provided by the selected Tenderer and as specified in the Contract.
- 5.3 For purposes of ITT 5.1 above, “origin” means the place where the goods and services making the Information System are produced in or supplied from. An Information System is deemed to be produced in a certain country when, in the territory of that country, through software development, manufacturing, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 5.4 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement under this Act.

B. CONTENTS OF TENDERING DOCUMENT

6 Sections of Tendering Document

PART 1 - Tendering Procedures

- Section I - Instructions to Tenderers (ITT)
- Section II - Tender Data Sheet (TDS)
- Section III - Evaluation and Qualification Criteria
- Section IV - Tendering Forms

PART 2 - Procuring Entity's Requirements

- Section V - Requirements of the Information Systems
- Section VI - Technical Requirements
- Section VII - Implementation Schedule
- Section VIII - System Inventory Tables
- Section IX - Background and Informational Materials

PART 3 - Contract

- Section X - General Conditions of Contract
- Section XII - Special Conditions of Contract
- Section XIII - Contract Forms

- 6.1 The Invitation to Tender Notice issued by the Procuring Entity is not part of this tendering document.
- 6.2 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.
- 6.3 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

7 Site Visit

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

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

- 8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender visit of the site of the works will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.
- 8.3 Minutes of the pre-Tender meeting and the pre-arranged pre-tender visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.
- 8.4 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meeting and the pre-arranged pre-tender visit of the site of the works at the web page identified **in the TDS**. Any

modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

9 Clarification of Tender Documents

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

10 Amendment of Tendering Document

- 10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.
- 10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 8.1.
- 10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.

C. PREPARATION OF TENDERS

11 Cost of Tendering

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

12 Language of Tender

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

13 Documents Comprising the Tender

- 13.1 The Tender submitted by the Tenderer shall comprise the following:
- a. **Form of Tender** prepared in accordance with ITT 14;
 - b. **Price Schedules** completed in accordance with ITT 14 and ITT 16;
 - c. **Tender Security or Tender-Securing Declaration** in accordance with ITT 22;
 - d. **Alternative Tender:** if permissible, in accordance with ITT 15;
 - e. **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 23.3;
 - f. **Eligibility of Information System:** documentary evidence established in accordance with ITT 16.1 that the Information System offered by the Tenderer in its Tender or in any alternative Tender, if permitted, are eligible;

- g. **Tenderer's Eligibility:** documentary evidence in accordance with ITT 17 establishing the Tenderer's eligibility and qualifications to perform the contract if its Tender is accepted;
- h. **Conformity:** documentary evidence established in accordance with ITT 18 that the Information System offered by the Tenderer conform to the tendering document;
- i. **Subcontractors:** list of subcontractors, in accordance with ITT 18.4;
- j. **Intellectual Property:** a list of: Intellectual Property as defined in GCC Clause 15;
 - i) All Software included in the Tender, assigning each item to one of the software categories defined in GCC Clause 1.1(C):
 - a. System, General Purpose, and Application Software; or
 - b. Standard and Custom Software;
 - iii. All Custom Materials, as defined in GCC Clause 1.1(c), included in the Tender;

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

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

13.1 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender. The Tenderer shall serialize page so fall tender documents submitted.

14 Form of Tender and Price Schedules

14.1 The Tenderer shall complete the Form of Tender, including the appropriate Price Schedules, using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize all pages of the tender documents submitted.

15 Alternative Tenders

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

15.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included **in the TDS**, and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.

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

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

16 Documents Establishing the Eligibility of the Information System

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

17 Documents Establishing the Eligibility and Qualifications of the Tenderer

- 17.1 To establish its eligibility and qualifications to perform the Contracting accordance with Section III, Evaluation and Qualification Criteria, the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tendering Forms.
- 17.1 In the event that pre-qualification of potential Tenderers has been undertaken as stated **in the TDS**, only Tenders from pre-qualified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission.
- 17.2 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 17.3 The purpose of the information described in ITT 15.1 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 17.4 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control, any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 17.5 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 17.6 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 17.7 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- a. If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
 - b. If the contract has been awarded to that tenderer, the contract award will be set aside,
 - c. the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 17.8 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

18 Documents Establishing Conformity of the Information System

- 18.1 Pursuant to ITT 11.1(h), the Tenderer shall furnish, as part of its Tender documents establishing the conformity to the tendering documents of the Information System that the Tenderer proposes to design, supply and install under the Contract.
- 18.2 The documentary evidence of conformity of the Information System to the tendering documents including:
- a) Preliminary Project Plan describing, among other things, the methods by which the Tenderer will carry out its overall management and coordination responsibilities if awarded the Contract, and the human and other resources the Tenderer proposes to use. The Preliminary Project Plan must also address any other topics **specified in the TDS**. In addition, the Preliminary Project Plan should state the Tenderer's assessment of what it expects the Procuring Entity and any other party involved in the implementation of the Information System to provide during implementation and how the Tenderer proposes to coordinate the activities of all involved parties;
 - b) Written confirmation that the Tenderer accepts responsibility for the successful integration and interoperability of all components of the Information System as required by the tendering documents;
 - c) An item-by-item commentary on the Procuring Entity's Technical Requirements, demonstrating the substantial responsiveness of the Information System offered to those requirements. In demonstrating responsiveness, the Tenderer is encouraged to use the Technical Responsiveness Checklist (or Checklist Format) in the Sample Tendering Forms (Section IV). The commentary shall include explicit cross-references to the relevant pages in the supporting materials included in the tender. Whenever a discrepancy arises between the item-by-item commentary and any catalogs, technical specifications, or other preprinted materials submitted with the tender, the item-by-item commentary shall prevail;
 - d) Support material (e.g., product literature, white papers, narrative descriptions of technologies and/or technical approaches), as required and appropriate; and
 - e) Any separate and enforceable contract(s) for Recurrent Cost items which the TDS ITT 17.2 required Tenderers to tender.
- 18.3 ReferencetobrandnamesormodelnumbersornationalorproprietarystandardsdesignatedbytheProcuring Entity in the tendering documents are intended to be descriptive and not restrictive. Except where explicitly prohibited in the **TDS** for specific items or standards, the Tenderer may substitute alternative brand /model names or standards in its tender, provided that it demonstrates to the Procuring Entity's satisfaction that the use of the substitute(s) will result in the Information System being able to perform substantially equivalent to or better than that specified in the Technical Requirements.
- 18.4 For major items of the Information System as listed by the Procuring Entity in Section III, Evaluation and Qualification Criteria, which the Tenderer intends to purchase or subcontract, the Tenderer shall give details of the name and nationality of the proposed subcontractors, including manufacturers, for each of those items. In addition, the Tenderer shall include in its Tender information establishing compliance with the requirements specified by the Procuring Entity for these items. Quoted rates and prices will be deemed to apply to whichever subcontractor is appointed, and no adjustment of the rates and prices will be permitted.
- 18.5 The Tenderer shall be responsible for ensuring that any subcontractor proposed complies with the requirements of ITT 4, and that any goods or services to be provided by the subcontractor comply with the requirements of ITT 5 and ITT 16.1.

19 Tender Prices

- 19.1 All Goods and Services identified in the Supply and Installation Cost Sub-Tables in System Inventory Tables in Section VII, and all other Goods and Services proposed by the Tenderer to fulfill the requirements of the Information System, must be priced separately and summarized in the corresponding cost tables in the Sample Tendering Forms (Section IV), in accordance with the instructions provided in the tables and in the manner specified below.
- 19.2 **Unless otherwise specified in the TDS**, the Tenderer must also tender Recurrent Cost Items specified in the Technical Requirements, Recurrent Cost Sub-Table of the System Inventory Tables in Section VII (if any). These must be priced separately and summarized in the corresponding cost table in the Sample Tendering Forms (Section IV), in accordance with the instructions provided in the tables and in the manner specified below:
- a) **If specified in the TDS**, the Tenderer must also tender separate enforceable contracts for the Recurrent Cost Items not included in the main Contract;

- b) prices for Recurrent Costs are all-inclusive of the costs of necessary Goods such as spare parts, software license renewals, labor, etc., needed for the continued and proper operation of the Information System and, if appropriate, of the Tenderer's own allowance for price increases;
 - c) prices for Recurrent Costs beyond the scope of warranty services to be incurred during the Warranty Period, defined in GCC Clause 29.4 and prices for Recurrent Costs to be incurred during the Post-Warranty Period, defined in SCC Clause 1.1. (e) (xiii), shall be quoted as Service prices on the Recurrent Cost Sub-Table in detail, and on the Recurrent Cost Summary Table in currency totals.
- 19.3 Unit prices must be quoted at a level of detail appropriate for calculation of any partial deliveries or partial payments under the contract, in accordance with the Implementation Schedule in Section VII), and with GCC and SCC Clause 12 – Terms of Payment. Tenderers may be required to provide a breakdown of any composite or lump-sum items included in the Cost Tables
- 19.4 The price of items that the Tenderer has left blank in the cost tables provided in the Sample Tender Forms (Section IV) shall be assumed to be included in the price of other items. Items omitted altogether from the cost tables shall be assumed to be omitted from the tender and, provided that the tender is substantially responsive, an adjustment to the tender price will be made during tender evaluation in accordance with ITT 31.3.
- 19.5 The prices for Goods components of the Information System are to be expressed and shall be defined and governed in accordance with the rules prescribed in the edition of incoterms **specified in the TDS**, as follows:
- a) Goods supplied from outside Kenya:
Unless otherwise specified in the TDS, the prices shall be quoted on a CIP (named place of destination) basis, exclusive of all taxes, stamps, duties, levies, and fees imposed in Kenya. The named place of destination and special instructions for the contract of carriage are as specified in the SCC for GCC 1.1(e) (iii). In quoting the price, the Tenderer shall be free to use transportation through carriers registered in any eligible countries. Similarly, the Tenderer may obtain insurance services from any eligible source country;
 - b) Locally supplied Goods: Unit prices of Goods offered from within Kenya, shall be quoted on an EXW (ex- factory, ex works, ex ware house or off- the-shelf, as applicable) basis, including all customs duties, levies, fees, sales and other taxes incurred until delivery of the Goods, but excluding all VAT or sales and other taxes and duties/fees incurred for the Goods at the time of invoicing or sales transaction, if the Contract is awarded; and
 - c) Inland transportation.
- 19.6 Unless otherwise stated in the **TDS**, inland transportation, insurance and related local costs incidental to the delivery of the Goods to the designated Project Sites must be quoted separately as a Service item in accordance with ITT 17.5, whether the Goods are to be supplied locally or from outside Kenya, except when these costs are already included in the price of the Goods, as is, e.g., the case, when ITT 17.5 (a) specifies CIP, and the named places of destination are the Project Sites.
- 19.7 The price of Services shall be separated into their local and foreign currency components and where appropriate, broken down into unit prices. Prices must include all taxes, duties, levies and fees whatsoever, except only VAT or other indirect taxes, or stamp duties, that may be assessed and/ or apply in Kenyan /to the price of the Services invoiced to the Procuring Entity, if the Contract is awarded.
- 19.8 Unless otherwise specified in the **TDS**, the prices must include all costs incidental to the performance of the Services, as incurred by the Supplier, such as travel, subsistence, office support, communications, translation, printing of materials, etc. Costs incidental to the delivery of the Services but incurred by the Procuring Entity or its staff, or by third parties, must be included in the price only to the extent such obligations are made explicit in these tendering documents (as, e.g., a requirement for the Tenderer to include the travel and subsistence costs of trainees).
- 19.9 Unless otherwise specified in the **TDS**, prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not subject to increases on any account. Tenders submitted that are subject to price adjustment will be rejected.

20 Currencies of Tender and Payment

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

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

21 Period of Validity of Tenders

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

21.2 exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 20.1, it shall also be extended for thirty days (30) beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 19.3.

22 Tender Security

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

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

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

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

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

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

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

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

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

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

- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender; or
- b) if the successful Tenderer fails to:

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

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

22.9 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the tender. If the JV has not been legally constituted in to a legally enforceable JV at the time of Tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 11.2.

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

23 Format and Signing of Tender

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

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

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

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

23.5 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. SUBMISSION AND OPENING OF TENDERS

24 Submission, Sealing and Marking of Tenders

24.1 The Tenderer shall deliver the Tender in a single, sealed envelope (one (1) envelope process). Within the single envelope the Tenderer shall place the following separate, sealed envelopes:

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

24.2 The inner envelopes shall:

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

The outer envelopes shall:

- e) Be addressed to the Procuring Entity/ Employer in accordance with ITT 23.1;
- f) Bear the specific identification of this Tendering process specified in accordance with ITT 1.1; and bear a warning not to open before the time and date for Tender opening.

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

25 Deadline for Submission of Tenders

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

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

26 Late Tenders

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

27 Withdrawal, Substitution, and Modification of Tenders

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

- a) prepared and submitted in accordance with ITT 21 and ITT 22 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and
- b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT23.

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

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

28 Tender Opening

28.1 Except as in the cases specified in ITT 24 and ITT 25.2, the Procuring Entity shall conduct the Tender opening in public, in the presence of Tenderers’ designated representatives who chooses to attend, and at the address, date and time specified **in the TDS**. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1, shall be as specified **in the TDS**.

28.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelopes with the corresponding Tender shall not be opened but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

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

- 28.4 Envelopes marked “Modification” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening. Only Tenders that are opened and read out at Tender opening shall be considered further.
- 28.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and the Tender Price(s), including any discounts and alternative Tenders, and indicating whether there is a modification; the presence or absence of a Tender Security or Tender-Securing Declaration; and any other details as the Procuring Entity may consider appropriate.
- 28.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further in the evaluation. The Form of Tender and the Price Schedules are to be initiated by representatives of the Procuring Entity attending Tender opening in the manner specified **in the TDS**.
- 28.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1).
- 28.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:
- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
 - b) The Tender Price, per lot if applicable, including any discounts;
 - c) Any alternative Tenders; and
 - d) The presence or absence of a Tender Security or a Tender-Securing Declaration.
- 28.9 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers upon request.

E. Evaluation and Comparison of Tenders

29 Confidentiality

- 29.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the Notification of Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 42.
- 29.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.
- 29.3 Not with standing ITT 27.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

30 Clarification of Tenders

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

31 Deviations, Reservations, and Omissions

- 31.1 During the evaluation of Tenders, the following definitions apply:
- a) “Deviation” is a departure from the requirements specified in the tendering document;
 - b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document; and

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

32 Determination of Responsiveness

- 32.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11.
- 32.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that;
 - a) If accepted, would:
 - i) Affect in any substantial way the scope, quality, or performance of the Information System specified in the Contract; or
 - ii) Limit in any substantial way, in consistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the proposed Contract; or
 - b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 32.3 The Procuring Entity shall examine the technical aspects of the Tender in particular, to confirm that all requirements of Section V, Procuring Entity's Requirements have been met without any material deviation, reservation, or omission.
- 32.4 To be considered for Contract award, Tenderers must have submitted Tenders:
 - a) for which detailed Tender evaluation using the same standards for compliance determination as listed in ITT 29 and ITT 30.3 confirms that the Tenders are commercially and technically responsive, and include the hardware, Software, related equipment, products, Materials, and other Goods and Services components of the Information System in substantially the full required quantities for the entire Information System or, if allowed in the TDS ITT 35.8, the individual Subsystem, lot or slice Tender on; and are deemed by the Procuring Entity as commercially and technically responsive; and
 - b) that offer Information Technologies that are proven to perform up to the standards promised in the tender by having successfully passed the performance, benchmark, and/or functionality tests the Procuring Entity may require, pursuant to ITT 39.3.

33 Non-material Non-conformities

- 33.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any nonconformity in the Tender that does not constitute a material deviation, reservation or omission.
- 33.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 33.3 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in the TDS**.

34 Correction of Arithmetical Errors

- 34.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in anyway by any person or entity.
- 34.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:
 - a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.

- b) Any errors in the submitted tender 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, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail.

35 Conversion to Single Currency

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

36 Margin of Preference and Reservations

- 36.1 A margin of preference on local contractors may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/ threshold specified in the Regulations.
- 36.2 A margin of preference shall not be allowed unless it is specified so in the **TDS**.
- 36.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 34.4.
- 36.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case maybe), and who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates in the **TDS** that only businesses or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

37 Evaluation of Tenders

- 37.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Best Evaluated Tender.
- 37.2 To evaluate a Tender, the Procuring Entity shall consider the following:
 - a) Price adjustment due to discounts offered in accordance with ITT 14.4;
 - b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 33;
 - c) price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3; and
 - d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

38 Preliminary Examination

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

39 Technical Evaluation

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

- a) Overall completeness and compliance with the Technical Requirements; and deviations from the Technical Requirements;
- b) suitability of the Information System offered in relation to the conditions prevailing at the site; and the suitability of the implementation and other services proposed, as described in the Preliminary Project Plan included in the tender;
- c) achievement of specified performance criteria by the Information System;
- d) compliance with the time schedule called for by the Implementation Schedule and any alternative time schedules offered by Tenderers, as evidenced by a milestone schedule provided in the Preliminary Project Plan included in the tender;
- e) type, quantity, quality, and long-term availability of maintenance services and of any critical consumable items necessary for the operation of the Information System;
- f) any other relevant technical factors that the Procuring Entity deems necessary or prudent to take into consideration;
- g) any proposed deviations in the tender to the contractual and technical provisions stipulated in the tendering documents.

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

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

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

40 Financial/ Economic Evaluation

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

- a) price adjustment due to unconditional discounts offered in accordance with ITT 26.8; excluding provisional sums and contingencies, if any, but including Day work items, where priced competitively.
- b) Price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3;
- c) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITT 33; and
- d) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.

If price adjustment is allowed in accordance with ITT 17.9, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

40.1 The Procuring Entity will evaluate and compare the Tenders that have been determined to be substantially responsive, pursuant to ITT 35.4. The evaluation will be performed assuming either that:

- a) The Contract will be awarded to the Lowest Evaluated Tender for the entire Information System; or
- b) if specified **in the TDS**, Contracts will be awarded to the Tenderers for each individual Subsystem, lot, or slice if so defined in the Technical Requirements whose Tenders result in the Lowest Evaluated Tender/ Tenders for the entire System.

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

41 Comparison of Tenders

41.1 The Procuring Entity shall compare all substantially responsive Tenders in accordance with ITT 35.6 to

determine the lowest evaluated cost.

42 Abnormally Low Tenders and Abnormally High Tenders

- 42.1 An Abnormally Low Tender is one where the Tender price in combination with other constituent elements of the Tender appears unreasonably low to the extent that the Tender price raises material concerns as to the capability of the Tenderer to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.
- 42.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the tendering document.
- 42.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

Abnormally High Tenders

- 42.4 An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.
- 42.5 In case of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:
- a. If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
 - b. If specifications, scope of work and/ or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.
- 42.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

43 Unbalanced or Front-Loaded Tenders

- 43.1 If the Tender that is evaluated as the lowest evaluated cost is, in the Procuring Entity's opinion, seriously unbalanced or front loaded the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Tender prices with the scope of information systems, installations, proposed methodology, schedule and any other requirements of the tendering document.
- 43.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may: -
- a) Accept the Tender; or
 - b) If appropriate, require that the total amount of the Performance Security be increased, at the expense of the Tenderer, to a level not exceeding twenty percent (20%) of the Contract Price; or
 - c) Reject the Tender.

44 Eligibility and Qualification of the Tenderer

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

- 44.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 15.
- 44.3 Unless otherwise specified in the **TDS**, the Procuring Entity will NOT carry out tests at the time of post-qualification, to determine that the performance or functionality of the Information System offered meets those stated in the Technical Requirements. However, if so specified in the **TDS** the Procuring Entity may carry out such tests as detailed in the **TDS**.
- 44.4 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the next lowest evaluated cost or best evaluated Tender, as the case may be, to make a similar determination of that Tenderer's qualifications to perform satisfactorily.
- 44.5 The capabilities of the manufacturers and subcontractors proposed by the Tenderer that is determined to have offered the Best Evaluated Tender for identified major items of supply or services will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a Form of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Tender will not be rejected, but the Tenderer will be required to substitute an acceptable manufacturer or subcontractor without any change to the Tender price. Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.
- 44.6 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in "*SECTION III- EVALUATION AND QUALIFICATION CRITERIA*."

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

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

F. AWARD OF CONTRACT

46 Award Criteria

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

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

- a) **When rated criteria are used:** The Tenderer that meets the qualification criteria and whose Tender:
- i) Is substantially responsive; and
 - ii) Is the Best Evaluated Tender (i.e. the Tender with the highest combined technical/ quality/ price score); or
- b) **When rated criteria are not used:** The Tenderer that meets the qualification criteria and whose Tender has been determined to be:
- i) Most responsive to the tendering document; and
 - ii) The lowest evaluated cost.

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

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

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

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

49 Standstill Period

- 49.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.
- 49.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter in to a Contract with the successful Tenderer.

50 Debriefing by the Procuring Entity

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

51 Letter of Award

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

52 Signing of Contract

- 52.1 Upon the expiry of the fourteen days of the Notification of Intention to enter in to contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.
- 52.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.
- 52.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.
- 52.4 Notwithstanding ITT 47.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Procuring Entity, to Kenya, or to the use of the Information System to be supplied, where such export restrictions arise from trade regulations from a country supplying those Information System, the Tenderer shall not be bound by its Tender, provided that the Tenderer can demonstrate that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Tenderer in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Information System under the terms of the Contract.

53 Performance Security

- 53.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Tenderer shall furnish the performance security in accordance with the General Conditions, subject to ITT38.2 (b), using for that purpose the Performance Security Form included in Section X, Contract

Forms, or another form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a Performance Security shall have a correspondent financial institution located in Kenya.

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

49 Publication of Procurement Contract

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

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

50. Adjudicator

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

51. Procurement Related Complaints and Administrative Review

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

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

SECTION II - TENDER DATA SHEET (TDS)

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

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

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

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	The reference number of the Request for Tenders is: NAMICO/OT/11/2023-2024 The Procuring Entity is: NATIONAL MINING CORPORATION The name of the ITT is: SUPPLY, INSTALLATION, CONFIGURATION, CUSTOMIZATION, TRAINING, COMMISSIONING AND SUPPORT SERVICES FOR ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM
ITT 2.3 (a)	N/A
ITT 3.3	The firms (if any) that provided consulting services for the contract being tendered for are N/A
ITT 4.1	Maximum number of members in the JV shall be: N/A
ITT 4.9	The Procuring Entity may require tenderers to be registered with _____
B. Tendering Document	
ITT 8.1	For Clarification of Tender purposes only, the Procuring Entity's address is: NATIONAL MINING CORPORATION KWFT CENTRE 4TH FLOOR KIAMBERE-MASABA ROAD, UPPER HILL NAIROBI P.O BOX 115-00100, NAIROBI MOBILE: +254 020-7869420 info@nmkenya.go.ke/tenders@nmkenya.go.ke OR kkira@nmkenya.go.ke Requests for clarification should be received by the Procuring Entity no later than: 29th April 2024 .
ITT 8.2	Web page: www.nmkenya.go.ke and/ or www.tenders.go.ke
ITT 8.4	A Pre-Tender meeting shall not take place at the following date, time and place: A site visit conducted by the Procuring Entity shall not be organized.
ITT 9.1	The Procuring Entity shall publish its response at the website www.nmkenya.go.ke
C. Preparation of Tenders	
ITT 13.1 (k)	The Tenderer shall submit with its Tender the following additional documents: N/A
ITT 15.1	Alternative Tenders are not permitted.
ITT 15.2	Alternatives to the Time Schedule are not permitted.
ITT 15.4	Alternative technical solutions shall not be permitted
ITT 17.2	Prequalification has not been undertaken.
ITT 18.2 (a)	In addition to the topics described in ITT Clause 16.2 (a), the Preliminary Project Plan must address the following topics: (i) Project Organization and Management Sub-Plan, including management authorities, responsibilities, and contacts, as well as task, time and resource-bound schedules (in GANTT format);

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	(ii) <i>Implementation Sub-Plan;</i> (iii) <i>Training Sub-Plan;</i> (iv) <i>Testing and Quality Assurance Sub-Plan;</i> (v) <i>Warranty Defect Repair and Technical Support Service Sub-Plan</i>
ITT 18.3	In the interest of effective integration, cost-effective technical support, and reduced re-training and staffing costs, Tenderers are required to offer specific brand names and models for the limited number of items
ITT 19.2	The Tenderer must state tender Recurrent Cost Items
ITT 19.2 (a)	The Tenderer must tender for contracts of Recurrent Cost Items not included in the main Contract.
ITT 19.5	N/A
ITT 19.5 (a)	N/A
ITT 19.6	Named place of final destination (or Project site) is: National Mining Corporation (NAMICO) KWFT Centre 4th Floor Kiambere-Masaba Rd, Upper Hill Nairobi Before or on Friday, 03rd May 2024, 11.00a.m
ITT 19.8	There is no modification to ITT 17.8
ITT 19.9	The prices quoted by the Tenderer shall not be subject to adjustment during the performance of the Contract.
ITT 20.1	The Tenderer is required to quote in the currency of Kenya the portion of the Tender price that corresponds to expenditures incurred in that currency.
ITT 21.1	The Tender validity period shall be 180 days.
ITT 22.1	A Tender Security shall be required. A Tender-Securing Declaration shall not be required. If a Tender Security shall be required, the amount and currency of the Tender Security shall be Kenya Shillings One Million (Kshs. 1,000,000.00) only
ITT 22.3 (v)	N/A
ITT 23.1	In addition to the original of the Tender, the number of copies is: ONE (1)
ITT 23.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of POWER OF ATTORNEY
D. Submission and Opening of Tenders	
ITT 25.1	<p style="text-align: center;"><u>For Tender submission purposes only, the Procuring Entity's address is:</u></p> <p style="text-align: center;">Principal Supply Chain Management Officer National Mining Corporation (NAMICO) KWFT Centre 4th Floor Kiambere-Masaba Rd, Upper Hill Nairobi P.O. Box 115-00100, Nairobi Mobile: +254 020-7869420 Email: kkira@nmckenya.go.ke/ tenders@nmckenya.go.ke</p> <p>The deadline for Tender submission is: Date: 03rd May, 2024 Time: 11: 00 am</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 25.1	Tenderers shall not have the option of submitting their Tenders electronically.
ITT 28.1	<p>The Tender opening shall take place at: NATIONAL MINING CORPORATION KWFT Centre Kiambere-Masaba Road, Upper Hill 4th Floor P. O. Box 115 – 00100 NAIROBI Date: 03rd May, 2024 Time: 11: 00 am</p>
ITT 28.1	N/A
ITT 28.6	The Form of Tender and Price Schedules shall be initialed by Four (4) representatives of the Procuring Entity conducting Tender opening.
E. Evaluation, and Comparison of Tenders	
ITT 33.3	The adjustment shall be based on the NONE _____ (<i>insert “average” or “highest”</i>) 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. If the missing Goods and Services are a scored technical feature, the relevant score will be set at zero.
ITT 35.1	<p>The currency(ies) of the Tender shall be converted into a single currency as follows: Kenya Shillings The currency that shall be used for Tender evaluation and comparison purposes to convert all Tender prices expressed in various currencies into a single currency is: Kenya Shillings ONLY The source of exchange rate shall be The Central Bank in Kenya The date for the exchange rate shall be: 03rd May, 2024 at 11:00 am</p>
ITT 36.2	Margin of Preference shall not apply .
ITT 36.4	The invitation to tender is extended to the following group that qualify for Reservations N/A
ITT 40.2 (b)	<p>Tenderers shall not be allowed to quote separate prices for different lots (contracts for Subsystems, lots, or slices of the overall Information System) and the methodology to determine the lowest tenderer is specified in Section III, Evaluation and Qualification Criteria.</p> <p>Discount that are conditional on the award of more than one Subsystem, lot, or slice may be offered in Tenders and such discounts shall not be considered in the price evaluation.</p>
ITT 44.3	N/A
ITT 46.1	The award will be made on the basis of [<i>insert “rated” or “not rated” criteria</i>] pursuant to ITT 35.7, if applicable, in accordance with Section III, Evaluation and Qualification Criteria.
ITT 47.1	<p>The maximum percentage by which quantities may be increased is: [NONE] The maximum percentage by which quantities may be decreased is: [<i>insert percentage</i>] The items for which the Procuring Entity may increase or decrease the quantities are the following.</p> <p style="text-align: right;">_____ [List the items for which the quantities may be increased or decreased]</p> <p><i>[Note: The percentage of increase or decrease for hardware, software and similar components should normally not exceed 15 to 20 percent for each item and in the aggregate. If the System contains a number of virtually identical Subsystems, a specific percentage should be given, allowing a reasonable increase or decrease in the number of Subsystems to be contracted for at the time of Contract award.]</i></p> <p style="text-align: center;">Page 30 of</p>
ITT 50.1	There will be no Adjudicator under this Contract.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 51.1	<p>The procedures for making a Procurement-related Complaint are detailed in the “Notice of Intention to Award the Contract” herein and are also available from the PPRA website info@ppra.go.ke or complaints@ppra.go.ke.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:</p> <p style="text-align: center;">Ag. Chief Executive Officer NATIONAL MINING CORPORATION KWFT Centre, Kiambere-Masaba Road, Upper Hill 4th Floor P. O. Box 115 – 00100 NAIROBI info@nmkenya.go.ke</p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ol style="list-style-type: none"> 1. the terms of the Tendering Documents; and 2. the Procuring Entity’s decision to award the contract.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provisions

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

- a) For business turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
- b) Value of single contract - Exchange rate prevailing on the date of the contract signature.
- C. Exchange rates shall be taken from the publicly available source identified in the ITT

14.3. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

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

2. Evaluation of Tenders (ITT 33)

1.3 Successful Tender or Tenders

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

- a) be substantially responsive to the tender documents;
- b) offer prices that fall within the prevailing market rates.

1.4 Evaluation of Tenders

Evaluation Criteria: The evaluation of tenders shall systematically proceed in the following stages:

1. Stage one: Preliminary Evaluation: Tenders that do not pass at this stage will be considered non-responsive and will not be considered further. The responsive tenders will proceed to the next stage

2. Stage two: Technical Evaluation: tenders that do not pass at this stage will be considered non responsive and will not be considered further. The responsive tenders will proceed to the next stage

3. Stage three: Financial Evaluation: This stage involves comparison of quoted prices. Only the lowest responsive bidder will be considered for award.

Preliminary examination for Determination of Responsiveness

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

The Preliminary evaluation shall adopt YES/ No or \surd / X Approach and it shall include:

Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

No.	Item Description	Bidder's Response with Evidence Referenced pages – Where applicable YES /NO
M1.	Dully filled, Signed & Stamped Form of Tender in the required format provided.	
M2.	Dully filled, Signed & Stamped Price Schedules.	
M3.	An original Tender Security of Kshs 1,000,000.00 (One Million Kenya) from a Reputable Bank recognized in Kenya shall be required. For 150 days from the date of bid submission and valid for thirty (30) days beyond the tender validity period.	
M4.	Copy of Certificate of Incorporation/ Registration in Kenya Certified by Commissioner for Oaths	
M5.	Copy of VALID Tax compliance certificate valid at the time of opening. The validity of the Tax certificate shall be confirmed from KRA Tax Checker	
M6.	Copy of Certificate of Confirmation of directors and shareholding (CR12) for limited companies or copies of Identity Card card for Sole Proprietorships Certified by Commissioner for Oaths. NB.) MUST PROVIDE Copy of recent CR 12 (Issued within the last Six 6 months to the date of Tender Opening). To be certified by the commissioner for Oaths	
M7.	Copy of Valid Single Business Permit for the Year 2024 must be certified by the commissioner for Oaths	
M8.	Filled and Signed Certificate of Independent Tender Determination in the format provided	
M9.	Filled and Signed Self Declaration Form (FORM SD1) That the Person/Tenderer Is Not Debarred in The Matter of The Public Procurement and Asset Disposal ACT 2015 in the format provided.	
M10.	Filled and Signed Self Declaration Form (FORM SD2) That the Person/Tenderer Will Not Engage In Any Corrupt Or Fraudulent Practice in the format provided.	
M11.	Filled and Signed Declaration and Commitment to the Code of Ethics in the format provided.	
M12.	Filled and Signed Tenderer Information Form in the format provided.	
M13.	Must provide details and reference letters of at least three (3) clients for a similar work done. Details to include are period work was done, email and telephone number of the contact person. (The letters must be written on the letterhead of the client with the dates and appropriate signatures indicating supply of similar projects and details of the contact persons.)	
M14.	Filled and Signed Tenderer's Eligibility Confidential Business Questionnaire Form in the format provided	
M15.	Provide a Power of Attorney witnessed by an advocate stating the person, the firm has authorized to transact and do business on behalf of the company. The signature used must be consistent in the submitted tender document.	
M16.	Proof of citizenship; Bidders Must provide copies of National Identity card / Passport for the Directors to be Certified by Commissioner for Oaths. The copies of ID must be eligible.	
M17.	Serialization of the Bid: Bidders shall sequentially serialize all pages of each tender submitted. Any written Pages or document attached or inserted Documents must be sequentially serialized	

	The Serialization must be numerically sequential starting from Numeric 1.	
M18.	Litigation History (No consistent history of court/arbitral award decisions against the Tenderer for the last three (3) years).	
M19.	Submit original bank reference letter addressed to the CEO NAMICO which must indicate the company credit limit/line of credit amount.	
M20.	Letter of commitment indicating Delivery Period	
M21.	Submit a valid and current Manufacturer's Authorization Form	
M22.	Submit a valid Microsoft Dynamics Developer License Authorization letter for National Mining Corporation. To be Certified by the Commissioner for Oaths	
M23.	Must fill, sign and stamp the disclosure of interest forms, conflict of interest disclosure forms provided in the TD. The conflict of interest must be expressed explicitly.	
M24.	The Bidders must not interfere with the tender document as issued by NAMICO. All pages of NAMICO's issued tender document must form part of the bidders submitted bid document.	
M25.	Submit 1 (one) Original Bid document and MUST be addressed as stated in the invitation to tender	
M26.	Submit proof of registration from the Data protection commission for data controller and data processor	
M27.	Submit accreditation certificates for: Systems & Applications level 1 from ICT Authority	
M28.	The submitted tender document to be tape bounded.	
M29.	Completeness of tender document; All pages with entries (Typed or hand written) must be initialed. Any alterations made in the tender document must be countersigned. All relevant Forms/ Schedules shall be duly filled including it being signed, dated, and stamped	
Tenderers bids will either be Responsive or Non- Responsive. Failure to Meet Any of the Above Mandatory Requirements will lead to Automatic disqualification.		

Kindly note that all **MANDATORY REQUIREMENTS MUST BE** Certified by the Commissioner for Oaths and all certifications MUST be Original.

Copies of All the copies of the documents attached/submitted must be eligible

NB: Tenderers who will not meet the above requirements will be declared non-responsive and their bids will not be evaluated further.

Please note that the authenticity of the above documents provided may be verified with the issuing/relevant authority and any forgery or false presentation in any one of the above shall lead to automatic disqualification and render the tenderers bid non-responsive.

Note that you may be required to produce original Certificates for ease of verification.

NAMICO reserves the right to carry out independent investigations to verify the accuracy of Information provided without notifying the tenderer

NB Clarity on Serialization of Tender Documents by Prospective Bidders Please note that all pages of the tender documents submitted by bidders shall be sequentially serialized numerically that is; 1, 2, 3, 4, 5... etc.

The serialization shall be undertaken by the bidder, by doing fresh numbering on its documents.

The pagination of the tender documents as downloaded from the NAMICO website should not be used as a means

of Serialization. The bidder's serialization should follow the same logical sequence from the first page to the end

EVALUATION OF TECHNICAL ASPECTS OF THE TENDER

The Procuring Entity shall evaluate the technical aspects of the Tender to determine compliance with the Procuring Entity's requirements under Section V 'Schedule of Requirement' and whether the Tenders are substantially responsive to the Technical Specifications and other Requirements.

Technical Evaluation Criteria –

This shall be based on compliance to the following requirements as tabulated.

Checking completeness of financial bids. The bids will be checked for costing of all items and payment terms.

Award will be inclusive of taxes and transport cost to **KWFT NAMICO** Offices

No correction of arithmetic errors

-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.

Technical Evaluation Criteria

STAGE 2: THE TECHNICAL EVALUATION (CAPACITY TO DELIVER THE SERVICE)

The Criteria, sub-criteria, and point system for the evaluation of the Tenders Proposal on meeting the Procuring Entity's Requirements: *[Note to Procuring Entity: Allocation of points shall be within the range provided for each criteria and sub-criteria]*

S/N	TECHNICAL EVALUATION CRITERIA	MAX. SCORE
1	Experience/ Capacity. Bidder to provide proof of at least three (3) similar projects of KES. 50 million and above cumulatively, where they have deployed the proposed ERP Dynamics 365 System. (Attach proof of LPOs or Contracts clearly indicating the scope of works done.	15
2	Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):	
	<p style="text-align: center;">Technical approach and methodology</p> <p>a. Compliance of the proposed solutions/modules to the General System Requirements and Detailed Description Functionalities to be implemented tables (Bidder must complete columns on bidder response with either YES or NO)</p> <ol style="list-style-type: none"> i. complete table filling - 20 points, ii. incomplete/partial table filling - 0 points, <p>b. Project management requirement – The bidder to provide holistic and integrated project management processes to deliver the project:</p> <ol style="list-style-type: none"> i. Project Management Methodology Requirements – 1 point, ii. Project work breakdown structure during the implementation period – 1 point, iii. Project Deliverables – 1 point, iv. Project Governance – 1 point, v. Resource / personnel availability schedule – 1 point, <p>c. Post implementation support - Bidders to attach a draft Service Level Agreement specifying the nature and condition of post implementation support including post go – live support, maintenance schedule with sample issues log, on - site support and help desk services.</p> <ol style="list-style-type: none"> i. Comprehensive SLA attached - 5 points ii. No attachment – 0 points, 	20
3	<p style="text-align: center;">Organization and Staffing</p> <p>Attach a sample the project organization structure for this tender with summarized details for each role and the project proposal for the upgrade</p>	5
4	Team Competency and Capacity (Attach CVs and copies of certificates)	
	<p>Project Manager</p> <ul style="list-style-type: none"> • Degree (bachelor’s degree preferably in Computer Science or equivalent) Attach certificates and CV -1 points, • Microsoft Dynamics 365 Certification or equivalent – 2 points, • Project management certification – 2 points • At least Ten (10) years’ experience in ERP solutions development, installation, configuration and maintenance and handling of similar ICT projects -5 points, 	10

	<p>ERP Microsoft Dynamics 365 Solution developers provide at least four (4) developers</p> <ul style="list-style-type: none"> • Degree (bachelor’s degree preferably in Computer Science or equivalent) Attach certificates and CV -2 points, • Microsoft Dynamics 365 Certification or equivalent – 2 points, • Microsoft SQL certification – 2points • At least five (5) years’ experience in ERP solutions development, installation, configuration, software development/customization and maintenance and database administration -14 points, 	20
5	<p>Transfer of knowledge and training program (relevance of approach and methodology)</p> <p>Bidders must demonstrate Strong ability to provide Training and Local Support. International bidders must associate with local companies to enhance their ability to provide Training and Local Support The following must be attached.</p> <ol style="list-style-type: none"> The bidders should have a training plan for users and technical staff including a knowledge transfer mechanism well thought out and clearly articulated. (10 point) <p>Detailed training materials/manuals/ user guides. (5 point,)</p>	15
6	<p>Financial Capabilities</p> <p>-Bidders shall provide audited balance sheets or, other financial statements acceptable to the Procuring Entity, for the last 3 years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability (as demonstrated by Financial Evaluation ratios).</p> <p>-Attachments include: Audited accounts</p> <p>All pages must be initialed and stamped by both a practicing Auditor registered with ICPAK and one of the Directors. Auditor’s practicing membership number from ICPAK must be indicated and a copy of valid practicing license shall be provided for the year 2024.</p>	10
7	<p>The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments. Hence,</p> <p>The bidder must provide either their bank statement for the last six months.</p> <p>The bank statements must be stamped by the issuing bank and must be valid. Or line of credit with minimum amount of Ksh. 30M from the bank.</p>	5
	OVERALL SCORE	100

NB all the LSOs/LPOs, Attached Letters of Award and Completion Certificates, technical staffs copies of certificate provided must be certified by the Commissioner for Oaths.

Note: The pass mark for technical evaluation shall be **85 marks out of 100 marks**. Tenderers that do not pass the technical evaluation will be considered Non responsive and will not be considered further.

1. **Evaluation of Commercial Terms and Conditions of the Tender (ITT 33.1(a))**

This is a framework agreement, where goods shall be ordered on a call off approach, as and when required, therefore the framework agreement shall be awarded to multiple bidders based on a range of prices. Bidders bidding above the lowest Evaluated Tender Price shall be required to match the lowest evaluated price (Based on the prevailing Market Price) within a certain range set by the evaluation committee.

2. **Evaluation Criteria (Other Factors) (ITT 33.6)**

The Procuring Entity's evaluation of a Tender may take into account, in addition to the Tender Price quoted in accordance with ITT 13.8, one or more of the following factors as specified in ITT 33.2(d) and in TDS ITT 33.6, using the following criteria and methodologies.

1. Delivery schedule.

The Goods specified in the List of Goods are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section V, Schedule of Requirements. No credit will be given to deliveries before the earliest date, and Tenders offering delivery after the final date shall be treated as non-responsive. Within this acceptable period, an adjustment of [insert the adjustment factor], will be added, for evaluation purposes only, to the Tender price of Tenders offering deliveries later than the "Earliest Delivery Date" specified in Section V, Schedule of Requirements.

2. Deviation in payment schedule. *[insert one of the following]*

2.1 tenderers shall state their Tender price for the payment schedule outlined in the SCC. Tenders shall be evaluated on the basis of this base price. tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in Tender price they wish to offer for such alternative payment schedule. The Procuring Entity may consider the alternative payment schedule and the reduced Tender price offered by the tenderer selected on the basis of the base price for the payment schedule outlined in the SCC.

or

2.2 The SCC stipulates the payment schedule specified by the Procuring Entity. If a Tender deviate from the schedule and if such deviation is considered acceptable to the Procuring Entity, the Tender will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the Tender as compared with those stipulated in the SCC, at the rate per annum [insert adjustment rate].

3. Cost of major replacement components, mandatory spare parts, and service. *[Not applicable]* The list of items and quantities of major assemblies, components, and selected spare parts, likely to be required during the initial period of operation specified in the TDS 15.4, is in the List of Goods.

An adjustment equal to the total cost of these items, at the unit prices quoted in each Tender, shall be added to the Tender price, for evaluation purposes only.

or

or

The Procuring Entity will draw up a list of high-usage and high-value items of components and spare parts, along with estimated quantities of usage in the initial period of operation specified in the TDS 15.4. The total cost of these items and quantities will be computed from spare parts unit prices submitted by the tenderer and added to the Tender price, for evaluation purposes only.

or

Tenderer shall provide along with its Tender, the list of recommended spare parts for Goods offered indicating for each item of spare part the recommended quantity and unit, and total CIP final destination prices required during the initial period of operation specified in the TDS 15.4. The prices offered shall not exceed the prevailing prices charged to other parties by the Tenderer.

The cost of such spare parts will not be taken into account for

tender evaluation. The Procuring Entity may award the contract for spare parts to the Tenderer that is successful for the supply of Goods, by selecting at its option, from the Tender's list of recommended spare parts, such items and quantities against each as the Procuring Entity may deem appropriate at the unit prices indicated by the Tenderer but not exceeding % (present) of the cost of Goods [normally not more than 10% or 15%.]

E. Availability in Kenya of spare parts and after sales services for equipment offered in the Tender.

An adjustment equal to the cost to the Procuring Entity of establishing the minimum service facilities and parts inventories if quoted separately, shall be added to the Tender price, for evaluation purposes only

F. Life Cycle Costs

Life Cycle Costs

If specified in TDS 33.6, an adjustment to consider the additional life cycle costs for the period specified below, such as the operating and maintenance costs of the Goods, will be added to the Tender price, for evaluation purposes only. The adjustment will be evaluated in accordance with the methodology specified below and the following information: **Not Applicable**

- i) number of years for life cycle cost determination [**Not Applicable**];
- ii) the discount rate to be applied to determine the net present value of the life-cycle-cost is [**Not Applicable**];
- iii)** the annual operating and maintenance costs (recurrent costs) shall be determined on the basis of the following methodology: **Not Applicable**
- iv) and the following information is required from tenderers [insert any information required from tenderers, including prices e.g. Guaranteed fuel and/or power consumption, cost of labor, spare parts, etc].

a) Performance and productivity of the equipment: [insert one of the followings]

- i) Performance and productivity of the equipment. An adjustment representing the capitalized cost of additional operating costs over the life of the goods will be added to the Tender price, for evaluation purposes if specified in the TDS

33.6. The adjustment will be evaluated based on the drop in the guaranteed performance or efficiency offered in the Tender below the norm of 100, using the methodology specified below.

*[Insert the methodology and criteria if applicable e.g. The Following aspects could be considered in the formulation of this methodology and criteria: (i) Tender price for the equipment; ii) Price of spare parts required for AAA years of operations, iii) Adjustments to tender price for omissions, deviations and exceptions to technical and commercial conditions in the tender documents; iv) Capitalized cost savings due to the equipment efficiency at the rate of **XXX** (specify currency and amount) for each **YYY** % (percent) above the **minimum ZZZ** % (percent) efficiency; v) Capitalized cost for the auxiliary power consumption at **PPP** (specify currency and amount) per KW for AAA years; and vi) Applicable discount rate of **BBB**%.]*

or

- ii) An adjustment to consider the productivity of the goods offered in the Tender will be added to the Tender price, for evaluation purposes only, if specified in ITT 33.6. The adjustment will be evaluated based on the cost per unit of the actual productivity of goods offered in the Tender with respect to minimum required values, using the methodology specified below.

[Insert the methodology and criteria if applicable E.G. The evaluation and comparison of responsive tenders shall be based on the total life cycle cost for XXX years, per unit of output. The life cycle cost shall be the sum of the initial purchase price of the equipment and the cost of operation in electric energy for XXX years of operation at unit cost of AAA (specify currency and amount) per kwh, discounted to net present value at YYY percent

b) Specific additional criteria

[Other specific additional criteria to be considered in the evaluation, and the evaluation method shall be detailed in TDS 34.6][If specific **sustainable procurement technical requirements** have been specified in Section VII-Specification, **either** state that (i) those requirements will be evaluated on a pass/fail (compliance basis) **or** otherwise (ii) in addition to evaluating those requirements on a pass/fail (compliance basis), if applicable, specify the monetary adjustments to be applied to Tender Prices for comparison purposes on account of Tenders that exceed the specified minimum sustainable procurement technical requirements.]

2 Apply Margin of Preference

- 2.1 If the TDS so specifies, the Procuring Entity will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of the foreign tenderers, where the percentage of shareholding of Kenyan citizens is less than fifty-one percent (51%).
- 2.2 Contractors for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors' qualifies for a margin of preference.
- 2.3 After Tenders have been received and reviewed by the Procuring Entity, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into the following groups:
 - i) Group A: tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of over fifty one percent (51%).
 - ii) Group B: tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty one percent (51%).
- 2.4 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 3.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group B and the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group B based on the first evaluation price shall be selected.

3 Post qualification and Contract award (ITT 39), more specifically,

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.
- b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.
 - i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shillings
 - ii) Minimum average annual construction turnover of Kenya Shillings _____ [*insert amount*], equivalent calculated as total certified payments received for contracts in progress and/ or completed within the last ___ [*insert of year*] years.
 - iii) At least _____ (*insert number*) of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings _____ equivalent.
 - iv) Contractor's Representative and Key Personnel, which are specified as _____
 - v) Contractors' key equipment listed on the table "Contractor's Equipment" below and more specifically listed as [*specify requirements for each lot as applicable*] _____
 - iv) Other conditions depending on their seriousness.

- a) **History of non-performing contracts:**

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last _____ (*specify years*). The required information shall be furnished in the appropriate form.

b) Pending Litigation

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) Litigation History

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last _____ (*specify years*). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or on going under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

4 QUALIFICATIONFORM

Item No.	Qualification Subject	Qualification Requirement to be met	Document To be Completed by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
1	2.1.1 Nationality	Nationality in accordance with ITT 4.5.	Form ELI –2.1.1 and 2.1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14.	Form of Tender	
3	2.1.2 Conflict of Interest	No- conflicts of interests as described in ITT 4.3.	Form of Tender	
4	2.1.3 Country Ineligibility	Not having been declared ineligible by the PPRA as described in ITT 4.6.	Form of Tender	
5	2.1.4 State owned Entity of the Procuring Entity country	Compliance with conditions of ITT 4.7	Form ELI –2.1.1 and 2.1.2, with attachments	
6	2.1.5 United Nations resolution or Kenya law	Not having been excluded as a result of prohibition in Kenya laws or official regulations against commercial relations with the Tenderer's country, or by an act of compliance with UN Security Council resolution, both in accordance with ITT 4.8	Form of Tender	
7	History of non-performing contracts	Non-performance of a contract ¹ did not occur as a result of Tenderer's default since 1 st January [<i>insert year</i>].	Form CON - 2	
8	Suspension	Not under suspension based on execution of a Tender Securing Declaration or Tender Securing Declaration pursuant to ITT 4.8 and ITT 20.10	Form of Tender	
9	Pending Litigation	Tenderer's financial position and prospective long-term profitability still sound according to criteria established in 2.3.1 below and assuming that all pending litigation will be resolved against the Tenderer.	Form CON – 2	
10	2.3.1 Historical Financial Performance	Submission of audited balance sheets or if not required by the law of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last ____ [] years to demonstrate the current soundness of the Tenderers financial position and its prospective long-term profitability.	Form FIN – 2.3.1 with attachments	
11	2.3.2 Average Annual Turnover	Minimum average annual turnover of _____ Kenya Shillings equivalent, calculated as total certified payments received	Form FIN –2.3.2	

Nonperformance, as decided by the Procuring Entity, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Procuring Entity decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the applicant have been exhausted.

<i>Item No.</i>	<i>Qualification Subject</i>	<i>Qualification Requirement to be met</i>	<i>Document To be Completed by Tenderer</i>	<i>For Procuring Entity's Use (Qualification met or Not Met)</i>
		for contracts in progress or completed, within the last _____() years		
12	2.3.3 Financial Resources	The Tenderer must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet the following cash-flow requirement: Minimum of _____ Kenya Shillings equivalent.	Form FIN –2.3.3	
13	2.4.1 General Experience	Experience under Information System contracts in the role of prime supplier, management contractor, JV member, or subcontractor for at least the last _____[_____] years prior to the applications submission deadline.	Form EXP-2.4.1	
	2.4.2 Specific Experience	Participation as a prime supplier, management contractor, JV ² member, sub-contractor, in at least () contracts within the last _() years, each with a value of at least _____(____), that have been successfully and substantially completed and that are similar to the proposed Information System. <i>[Specify minimum key requirements in terms of physical size, complexity, methods, technology and/or other characteristics from those described in Section VII, Procuring Entity's Requirements</i>	Form EXP 2.4.2	

² For contracts under which the Tenderer participated as a joint venture member or sub-contractor, only the Tenderer's share, by value, and role and responsibilities shall be considered to meet this requirement.

10.

PERSONNEL

The Tenderer must demonstrate that it will have the personnel for the key positions that meet the following requirements:

No.	Position	Information System Experience [Specify specific experience requirement for the key positions]
1		
2		
3		
...		

The Tenderer shall provide details of the proposed personnel and their experience records in the relevant Forms included in Section IV, Tendering Forms.

11. Subcontractors/vendors/manufacturers

Subcontractors/vendors/manufacturers for the following major items of supply or services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1		
2		
3		
...		

Failure to comply with this requirement will result in rejection of the subcontractor/vendor.

In the case of a Tenderer who offers to supply and install major items of supply under the contract that the Tenderer did not manufacture or otherwise produce, the Tenderer shall provide the manufacturer’s authorization, using the form provided in Section IV, showing that the Tenderer has been duly authorized by the manufacturer or producer of the related sub system or component to supply and install that item in Kenya. The Tenderer is responsible for ensuring that the manufacturer or producer complies with the requirements of ITT 4 and 5 and meets the minimum criteria listed above for that item.

SECTION IV - TENDERING FORMS

1. FORM OF TENDER

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

INSTRUCTIONS TO TENDERERS

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

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

Tender Name and Identification:.....[insert identification]

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

To..... [Insert complete name of Procuring Entity]

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with Instructions to Tenderers (ITT 8);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;
- c) **Tender-Securing Declaration:** We have not been debarred by the Authority based on execution of a Tender-Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 4.8;
- d) **Conformity:** We offer to provide design, supply and installation services in conformity with the tendering document of the following: [insert a brief description of the IS Design, Supply and Installation Services];
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is: [Insert one of the options below as appropriate]
[Option 1, in case of one lot:] Total price is: [insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];
Or
[Option 2, in case of multiple lots:] (a) Total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and (b) Total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];
- f) **Discounts:** The discounts offered and the methodology for their application are:
 - i) The discounts offered are: [Specify in detail each discount offered.]
 - ii) The exact method of calculations to determine the net price after application of discounts is shown below: [Specify in detail the method that shall be used to apply the discounts];
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS ITT 19.1 (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS ITT 23.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- i) **One Tender per Tenderer:** We are not submitting any other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member, and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 13;
- j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not eligible under Laws of Kenya or official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT 4.7];*
- l) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount

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

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- Name of the Tenderer:** **[insert complete name of person signing the Tender]*
- p) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.
- q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from www.pppra.go.ke during the procurement process and the execution of any resulting contract.
- r) **Beneficial Ownership Information:** We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.
- s) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:
- i) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
 - ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
 - iii) Self-Declaration of the Tenderer–to declare that we will, if awarded a contract, not engage in any form

of fraud and corruption.

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

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

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

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

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

(1) **TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIRE**

Instruction to Tenderer

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

a) Tenderer's details

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

General and Specific Details

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

Name in full _____ Age _____

Nationality _____ Country of Origin _____

Citizenship _____

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

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

(i) Private or public Company _____

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

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

(iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

If yes, provide details as follows.

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

ii) CONFLICT OF INTEREST DISCLOSURE

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

f) CERTIFICATION

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

Full Name _____

Title or Designation _____

(Signature)

(Date)

1) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

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

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

Name _____

Title _____

Date _____

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

(3) SELF-DECLARATION FORMS

FORM SD1

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

I,, of Post Office Boxbeing a resident of in the Republic of do hereby make a statement as follows: -

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

2. THAT the aforesaid Bidder, its directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

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

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

Bidder Official Stamp

FORM SD2

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

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

1. THAT I am the Chief Executive /Managing Director/ Principal Officer/ Director of.....
..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.**
..... for (*insert tender title/description*) for..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and /or employees and /or agents of..... (*insert name of the Procuring entity*) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and /or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/ or employees and/ or agents of..... (*name of the procuring entity*).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender
5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

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

Bidder Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address..... Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

Sign.....

Date.....

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

(Appendix 1 shall not be modified)

1. Purpose

1.1 The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act, 2015 (the Act) and the Public Procurement and Asset Regulations, 2020 (the Regulations) and any other relevant Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

2. Requirements

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

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

- i) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- ii) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- iii) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
- iv) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- v) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
 - a) Shall not take part in the procurement proceedings;
 - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
- c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
- vi) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- vii) If a person contravenes sub section (1) with respect to a conflict of interest described in sub section (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

- a) Defines broadly, for the purposes of the above provisions, the terms:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

- ii) “Fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii) “Collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv) “Coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v) “Obstructive practice” is:
 - 1) Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - 2) acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- b) Defines more specifically, in accordance with the Act, provisions set forth for fraudulent and collusive practices as follows:
- "Fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal processor the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - d) Pursuant to the Act and the Regulations, the Procuring Entity may recommend to PPRA for sanctioning and debarment of a firm or individual, as applicable under the Act and the Regulations;
 - e) Requires that a clause be included in the tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect²all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
 - f) Pursuant to Section 62 of the Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/ will not engage in any corrupt or fraudulent practices.

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

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

PRICE SCHEDULE FORMS

Notes to Tenderers on working with the Price Schedules

1.1 General

The Price Schedules are divided into separate Schedules as follows:

- a Grand Summary Cost Table
- b Supply and Installation Cost Summary Table
- c Recurrent Cost Summary Table
- d Supply and Installation Cost Sub-Table (s)
- e Recurrent Cost Sub-Tables (s)
- f Country of Origin Code Table

[insert:]

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

2. Pricing

- 2.1 Prices shall be filled in indelible ink, and any alterations necessary due to errors, etc., shall be initialed by the Tenderer. As specified in the Tender Data Sheet, prices shall be fixed and firm for the duration of the Contract.
- 2.2 Tender prices shall be quoted in the manner indicated and, in the currencies, specified in ITT 18.1 and ITT 18.2. Prices must correspond to items of the scope and quality defined in the Technical Requirements or elsewhere in these tendering documents.
- 2.3 The Tenderer must exercise great care in preparing its calculations, since there is no opportunity to correct errors once the deadline for submission of tenders has passed. A single error in specifying a unit price can therefore change a Tenderer's overall total tender price substantially, make the tender noncompetitive, or subject the Tenderer to possible loss. The Procuring Entity will correct any arithmetic error in accordance with the provisions of ITT 32.
- 2.4 Payments will be made to the Supplier in the currency or currencies indicated under each respective item. As specified in ITT18.2, no more than two foreign currencies may be used.

1. Grand Summary Cost Table

		<i>[insert: Kenya shillings] Price</i>	<i>[insert: Foreign Currency A] Price</i>	<i>[insert: Foreign Currency B] Price</i>
1.	Installation, Configuration, Customization and Commissioning for Enterprise Resource Planning (ERP) System			
2.	Training cost (Provide a detailed training cost plan)			
3.	Microsoft Dynamics 365 Business Central Solution licenses for one year (60 users)			
4.	Hosting Fee for 2 years			

Name of Tenderer: _____

_____ Date _____

Authorized Signature of Tenderer:

2. Supply and Installation Cost Summary Table

Costs MUST reflect prices and rates quoted in accordance with ITT17 and

Line Item No.	Subsystem / Item	Supply and Installation Cost Sub-Table No.	<i>[insert: Kenya shillings] Price</i>	<i>[insert: Local Currency] Price</i>	<i>[insert: Foreign Currency A] Price</i>
1	Project Plan	- -			
2	Subsystem 1				
SUBTOTALS					
TOTAL (To Grand Summary Table)					

Note: - indicates not applicable. “Indicates repetition of table entry above. Refer to the relevant Supply and Installation Cost Sub-Table for the specific components that constitute each Subsystem or line item in this summary table

Name of Tenderer: _____

_____ Date _____

Authorized Signature of Tenderer:

3. Recurrent Cost Summary Table

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

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

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

Name of Tenderer: _____

Date _____

Authorized Signature of Tenderer: _____

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

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

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

				Unit Prices / Rates				Total Prices				
				Supplied Locally	Supplied from outside Kenya				Supplied Locally	Supplied from outside Kenya		
Component No.	Component Description	Country of Origin Code	Quantity	<i>[insert: local currency]</i>	<i>[insert: local currency]</i>	<i>[insert: foreign currency A]</i>	<i>[insert foreign currency B]</i>	<i>[insert: local currency]</i>	<i>[insert: local currency]</i>	<i>[insert: foreign currency A]</i>	<i>[insert: foreign currency B]</i>	
X.1	_____	--	--	--	--	--	--					
Subtotals (to <i>[insert: line item]</i> of Supply and Installation Cost Summary Table)												

Note: - - indicates not applicable

Name of Tenderer: _____

Date _____

Authorized Signature of Tenderer:

5. Recurrent Cost Sub-Table [insert: identifying number] –Warranty Period

Lot number: [if a multi-lot procurement, insert: *lot number*, otherwise state “*single lot procurement*”] Line item

number: [specify: *relevant line item number from the Recurrent Cost Summary Table– (e.g., y.1)*] Currency:

[specify: *the currency of the Recurrent Costs in which the costs expressed in this Sub-Table are expressed*]

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

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

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

Name of Tenderer: _____ Date _____

Authorized Signature of Tenderer: _____

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40% RULE

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

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

2 Form ELI-1 Tenderer Information Form

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

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

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

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

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4. <input type="checkbox"/> In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing: <ul style="list-style-type: none"> • Legal and financial autonomy • Operation under commercial law • Establishing that the Tenderer is not under the supervision of the Procuring Entity <input type="checkbox"/> Included are the organizational chart and a list of Board of Directors.

3 Form ELI-1 Tenderer's JV Members Information Form

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

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

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

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

alternative] Page _____ of _____ pages

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

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

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

Tenderer's Legal Name: _____ Date: _____

JV member Legal Name: _____

ITT No.: _____

Age of _____ pages

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

5. Form EXP - 1 Experience – General Experience

Tenderer's Legal Name: _____ Date: _____

JV Member Legal Name: _____ ITT No.: _____

Page _____ of _____ pages

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

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

6. Form EXP – 2 Specific Experience

Tenderer’s Legal Name: _____
 JV Member Legal Name: _____

Date: _____
 ITT No.: _____

Page _____ of _____ pages

Similar Contract Number: ___ of ___ required.	Information		
Contract Identification	_____		
Award date Completion date	_____ _____		
Role in Contract	<input type="checkbox"/> Prime Supplier	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		US\$ _____ -
If member in a JV or subcontractor, specify participation of total contract amount	_____ %	_____	US\$ _____
Procuring Entity’s Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number: E-mail:	_____ _____		

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

Tenderer’s Legal Name: _____
 JV Member Legal Name: _____

Page _____ of _____ pages

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

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

Name of Tenderer or partner of a Joint Venture.

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

Name of contract	Procuring Entity, contact address/tel./fax	Value of outstanding Information System (current US\$ equivalent)	Estimated completion date	Average monthly invoicing over last six months (US\$/month)
1.				
2.				
3.				
4.				
5.				
etc.				

9. Form FIN – 1 Financial Situation

Historical Financial Performance

Tenderer's Legal Name: _____ Date: _____

JV Member Legal Name: _____ ITT No. _____

Page _____ of _____ pages

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

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

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

- a) Must reflect the financial situation of the Tenderer or member to a JV, and not sister or parent companies.
- b) Historic financial statements must be audited by a certified accountant.
- c) Historic financial statements must be complete, including all notes to the financial statements.
- d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

10. Form FIN –2 Average Annual Turnover

Tenderer's Legal Name: _____ Date: _____

JV Member Legal Name: _____ ITT No.: _____

Page _____ of _____ pages

Annual turnover data (applicable activities only)		
Year	Amount and Currency	US\$ equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Turnover	_____	_____

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

11. Form F-3 Financial Resources

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

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

12. Personnel Capabilities

i) Key Personnel

Name of Tenderer or partner of a Joint Venture

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

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

Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>

ii) Candidate Summary

Position		Candidate <input type="checkbox"/> Prime <input type="checkbox"/> Alternate	
Candidate information	Name of candidate	Date of birth	
	Professional qualifications		
Present employment	Name of Employer		
	Address of Employer		
	Telephone	Contact (manager / personnel officer)	
	Fax	Email	
	Job title of candidate	Years with present Employer	

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

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

iii) Technical Capabilities

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

(iv) MANUFACTURER'S AUTHORIZATION

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

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

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

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

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

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

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

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

(*where appropriate*)]

(v) Subcontractor’s Agreement

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

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

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

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

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

Signed _____ Duly authorized to sign the authorization for and on

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

Dated this _____ [*insert: ordinal*] day of _____ [*insert: month*], _____ [*insert: year*].

[*add Corporate Seal (where appropriate)*]

vi) List of Proposed Subcontractors

	Item	Proposed Subcontractor	Place of Registration & Qualifications

13. Intellectual Property Forms

Notes to Tenderers on working with the Intellectual Property

Forms

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

14. Conformance of Information System Materials

I) Format of the Technical Tender

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

- a) The Tenderer's Preliminary Project Plan, including, but not restricted, to the topics specified in the TDS ITT 16.2. The Preliminary Project Plan should also state the Tenderer's assessment of the major responsibilities of the Procuring Entity and any other involved third parties in System supply and installation, as well as the Tenderer's proposed means for coordinating activities by each of the involved parties to avoid delays or interference.
- b) A written confirmation by the Tenderer that, if awarded the Contract, it shall accept responsibility for successful integration and interoperability of all the proposed Information Technologies included in the System, as further specified in the Technical Requirements.
- c) Item-by-Item Commentary on the Technical Requirements demonstrating the substantial responsiveness of the overall design of the System and the individual Information Technologies, Goods, and Services offered to those Technical Requirements.

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

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

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

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

- d) Supporting materials to underpin the Item-by-item Commentary on the Technical Requirements (e.g., product literature, white-papers, narrative descriptions of technical approaches to be employed, etc.). In the interest of timely tender evaluation and contract award, Tenderers are encouraged not to overload the supporting materials with documents that do not directly address the Procuring Entity's requirements.
- e) Any separate and enforceable contract(s) for Recurrent Cost items which the TDSITT17.2 required Tenderers to tender.

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

SECTION V - REQUIREMENTS OF THE INFORMATION SYSTEM

TERMS OF REFERENCE

Responsiveness Checklist (Format)

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

General System Requirements

The General System Requirements provide the basic requirements that the system must possess. The requirements listed below are not exhaustive but will provide for the setup and operation of the system. ***Bidders at this stage are required to indicate solution or a detailed response to each module to be considered responsive. Indicate the page your responses in the last column of the table below***

No	Description of General system requirement	Bidder's response (YES/NO)	Reference page in the document
	Graphical User-friendly interface.		
1	Simple and Intuitive navigation between functions such as drop-down menu driven options for common/known data fields.		
2	Auto email Facility		
3	Automatic population of known fields to reduce data re-entry.		
4	Ability to print any information displayed on a screen.		
5	Data validation and error checking facility.		
6	Ability for the system to set up various parameters that are user specific (data classifications, formulas).		
7	Provide for a multi-currency facility transaction processing system.		
8	Have a report generator facility allowing for the generation of standard and non-standard reports.		
9	The system should be on service oriented architecture (SOA) and based on web technology standards; interoperable with open standards.		
10	The system should comply with international standards like GAAP and ISO		
11	The system should be proactive with in-built intelligence		
12	The system should interface with other applications		
13	The system must provide a facility for output/reports to be directed either to a printer, screen or file and have the following: a) Title/description; b) Page numbering c) End of report message Default spooling where output size exceeds user defined limits		

14	Workflow configuration utility should be part of the ERP Dynamics 365 system		
15	Ability to handle versatile reporting queries from staff.		
16	Generate standard and customized reports. Automatically refresh when the underlying data is changed.		
17	Ability to configure the layout of standard reports. Possibility to include the logos on a standard report.		
18	Ability to transform existing data in a report into a chart or graph.		
19	Ability to create every report in multiple formats: Word processor spreadsheets, PDF, html, xml and export to email.		
20	Ability to schedule reports and print on queue as required		
21	Ability to predefine the generation of automatic reports for example, weekly, bi-weekly, monthly, quarterly, annually.		
22	Ability to easily setup user-defined (ad hoc) reports.		
23	System should have IFRS based report features		
	System Access and Security		
24	Ability to set multiple levels of authorizations: - configure users based on roles and responsibilities.		
25	Ability to allow for remote access to the System via standard web browser. a) The system should support access by all types of devices; desktops, laptops, notebooks, tablets		
	and Smart phones through a web browser. b) System management and control through a restricted system administration level. c) The facility to control user access at the following levels/functions: <ul style="list-style-type: none"> • User id/ password Systems Administration and Control of Application • Screen /remotely • Read/write/execute functions • Department 		
	System Backup and Recovery		
26	The system must provide for security backup facilities to enable complete file restore and recovery and backup to more than one remote location.		
27	The System must have the capability of performing incremental and full backups without system downtime.		
28	The system must enable consistency and quality of data through the use of predefined tables of codes or other appropriate tools or processes.		
29	The system must have the ability to define validation rules between fields (inter-field validation) that are conditional based on the values entered. e.g. an end date is mandatory for every contract		

30	The system will be used by staff and other persons with varying skill levels. The system must be consistent in style and intuitive to use with natural and logical data entry and management processes.		
31	The application must be configurable so that a user, user group, or role is only able to access the areas of the system (organization units, menus, forms, fields) that have been authorized.		
32	The system must allow the creation of additional data fields within all areas of the application which allow: a) Data to be entered and validated b) The use of drop-down lists of values c) Application security and audit rules d) Reference to screens and reports e) Data to be searched.		
33	The system must be able to: a) Maintain an audit trail on changes and modifications to any/all user-selected standard and additional data items b) Permit verification reports and checks on locally-specified sensitive employee and payroll data c) Provide audit reports based on user-determined selection and control parameters d) Archive and retrieve the audit data		
	e) Produce payroll exception reports.		
34	The system must be able to provide simple, flexible but effective security of data at all levels so that information can only be accessed by those with the authority to do so by: a) Post b) Levels in the organization structure c) Menu d) Function e) Screen/table f) Field Level Based on the content of a field e.g. pay grade.		
35	The system must have comprehensive on-line context-sensitive user help. Manuals must: a) be provided in electronic format b) be easy to read c) be indexed and cross-referenced d) Contain details of output screens, reports, system commands, error messages, and corrective actions.		
36	Every screen must have easy identification of the data being displayed – e.g. Depending on screen and module - Employee Name and Number		
37	With the exception of Employee Self-Service, any user of the system MUST not be able to amend their own HR or payroll record directly on the system without validation.		
38	Ensure that duplicate records (i.e. multiple records for individuals where only one is required) are either prevented or quickly identifiable.		

39	<p>The system must enable users to access historic data: Hold and display a complete set of historic data items, chronologically within all functional areas e.g.post history, employment history b) Provision should be made for the transfer of data on employment history from existing systems Enable users to enter information after an event has occurred whilst storing that event in correct chronological order d) Enable access to that data on current and future releases of the software.</p>		
40	<p>The system must comply with legal obligations in relation to data protection, whilst allowing employees, as far as possible, to view their information securely on- line, e.g.:</p> <p>a) Applying policy on retention and disposal of records b) Ensuring that data held on applicants, employees, interns and other non-employees is only used for purposes permitted.</p>		
41	<p>The system should provide error messages at several levels;</p> <p>a) Context sensitive error messages which end users can understand The text of error messages may be amended by the Placement Service to add further explanation A separate layer of ‘error messages’ for technical support purposes. All errors that require technical information to be passed to support staff should be recorded in a system log file.</p>		

**SECTION V - REQUIREMENTS OF THE INFORMATION SYSTEM
TERMS OF REFERENCE**

**PART 2 – PROCURING ENTITY'S
REQUIREMENTS**

DETAILED DESCRIPTION FUNCTIONALITIES TO BE IMPLEMENTED

Bidders at this stage are required to indicate solution or a detailed response to each module to be considered responsive. Indicate the page your response is at the last column of the table below

1. Finance & Accounting process

Requirements	Bidders Response Yes/No	Reference page in the document
1. General Ledger (Chart of Accounts)		
<ul style="list-style-type: none"> • One must be able to define and maintain the structure of the Chart of Accounts • The system should allow for the same Chart ofAccounts that can be used by multiple entities • The system must provide for the use of different Chart of Accounts by more than one entity • The Chart of Accounts must provide for a unique alphanumeric, flexible account codestructure with a user defined number of segments and lengths per segment. • The accounting structure must be accessiblefrom all locations • Changes to the Chart of Accounts must be controlled and require necessary approval or amendment to be restricted to authorized personnel • The system must be able to maintain budgets atall levels of the Chart of Accounts • The system must be able to create/setup GL accounts and deactivate the same without erasing it in its entirety • Enable the viewing and extraction of GL accounts listing • Ability to create profit and cost centers and report at those levels • The chart of accounts MUST be flexible to accommodate the future business expansions in the segments & GL codes • The accounting structure MUST have controls inbuilt not to allow updates by users from other sub ledger modules unless it is approved. The application MUST freeze the changes made in the structure and also display the last 		

<ul style="list-style-type: none"> • update responsibility. • The application should facilitate summary account reporting based on all dimensions available in the database • The system must be able to support reporting on separate Chart of Accounts • The application MUST have the capability to generate parent-child within the accounts defined or account categories for all possible combinations. • The system MUST be able to generate reporting • for specific accounts. 		
1.1 Reporting Requirements for the Chart of Accounts		
<ul style="list-style-type: none"> • Dynamic reports with the provision for a drill-down capability. • Create customized reports (user defined). Users who perform this function will have to be trained on use of the tools • Reports with the following parameters: • Expenditure/Revenue by chart of account code either individually or as consolidated • Expenditure/Revenue by Cost center Supplier/Staff/Customer accounts • Based on posting date, date of data capture • Reversed journals 		
2. Currencies		
<ul style="list-style-type: none"> • The system must be able to support the Kenya Shilling as the functional currency and should further be able to support other major currencies including but not limited to Euro, US Dollar, Sterling Pound. Additional currencies should also be • configurable. 		
<ul style="list-style-type: none"> • The system should allow one to upload currency exchange rates downloaded in predefined file formats from certain websites e.g. CBK, Commercial Banks • Able to translate amounts from functional currency or source currency in the originating ledger, based on a specified • exchange rate 		

<ul style="list-style-type: none"> • Should be able to perform foreign exchange gain/loss per transaction and post in the designated account. • The application MUST support Conversion: Convert foreign currency amounts in journal entries to functional currency at the time of entry. Converted values are factored into the computation of average balances functional currency. • The application MUST support Revaluation: Revalue of accounts at the end of each year which are recorded on books in a foreign currency. Revalued balances, as well as the unrealized exchange gain or loss, are factored into the computation of average balances. • The application MUST support conversion rate types to automatically assign a rate while converting foreign currency journal amounts to functional currency equivalents. • The application MUST maintain all effective exchange rates for all foreign currency transactions. 		
2.1 Reporting Requirements for Currencies		
<ul style="list-style-type: none"> • Dynamic reports with the provision for a drill-down capability • Create customized reports (user defined). Users who perform this function will have to be trained on use of the tools • Reports with the following parameters: Foreign currency trends • Currency loss/gain per transaction • Currency loss/gain translation at defined periods • Invoices/Credit Notes/Debit Notes in foreign • Currency 		
3. Journals		
<ul style="list-style-type: none"> • The application MUST provide a facility to input, update, copy, balance, and post the Journals. Journal Voucher No. MUST be automatically generated by the system. • The application MUST restrict updates to account structure and amounts of a Journal Voucher after posting. • The system must be able to create and post journal entries • The system must allow the holding of journal entries • The system must enable held journals to be viewed and posted • For any transaction posted through this system, the system must allow for correction/reversal of the same through an approved workflow process • When reversing a transaction, the system should perform Credit/Debit transaction and must maintain the previous transaction historically instead of erasing it. However, for rejected journals, the system should cancel the transaction without keeping its record. • The system should be able to handle different types of journals e.g. budget journal, general ledger journal, accrual journal, etc. The system must be able to maintain a history of full details of all transactions and avail them for printing when required • Establish an accounting system capable of accurately and simultaneously recording and reporting financial data for The Corporation's on accrual basis • Maintain a user defined period (in years) prior history online before archiving. • A facility to enable enquiry on archived data and reports • The system must be able to import/upload journal vouchers in batch from a spreadsheet document or text files. There should be workflow for approving such uploads. • The system must be able to export journal vouchers in batch to spreadsheet or text file <p>The application MUST have the functionality of defining journal sources based on</p>		

<p>which</p> <ul style="list-style-type: none"> • transactions are monitored • The application MUST generate interface reports for the transactions source modules. • The application MUST be reporting the exception reports for sub-ledger modules for reconciliation purpose. • The application MUST have categories for single journals and batches • The application MUST provide the capability to identify source documents or module references which are associated with the journal entry (e.g., Invoice No., Payment Voucher No., Telephone No. etc.) for reporting purposes. • Capability to set and journals entries for transactions that are processed in a • recurring manner 		
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<ul style="list-style-type: none"> • The application SHOULD provide for Recurring Journals • This is a journal that posts a fixed amount to an account beginning from an effective date and continuing through the user specified end-date. The user can define the cycles or recurring transactions. • The system automatically generates and posts the recurring JVs. Recurring JVs may cross more than one fiscal year. • Recurring Journal Entries may be based on templates with predefined schedules. • Posting to control accounts must only take place via sub ledgers • Period-end closing should be performed by • account type 		
<p>Reporting Requirements for Journals</p>		
<ul style="list-style-type: none"> • Dynamic reports with the provision for a drill-down capability. • Create customized reports (user defined). Users who perform this function will have to be trained on use of the tools • Reports with the following parameters: Foreign currency journals • Journals reports by prepared, reviewed, posted Journals held (pending posting) • Journal reversal • Journals by date/user defined period 		
<p>4. Calendar</p> <ul style="list-style-type: none"> • The system must have a mechanism for defining a financial year and setting up accounting periods it contains. • The system should be able to close accounting periods at pre-defined frequencies • One must be able to set up and update separate accounting periods for adjusting and Closing entries • The system must be capable of posting to multiple posting periods • The application SHOULD change a period's specifications, except for the period type, as long as the period has not been used in a set of books. • Reporting Requirements for Calendar Dynamic reports with the provision for a drill- • down capability. • Create customized reports (user defined). Users who perform this function will have to be trained on use of the tools • Reports with the following parameters: Notifications on due date • Change of dates 		

<ul style="list-style-type: none"> • Calendar by due date • Calendar by completed activities • Calendar by pending activities 		
5. Other General Ledger Requirements		
<p>Setting up GL parameters that will ensure:</p> <ul style="list-style-type: none"> • Ledger validity and approvals are captured • Transactional rules are defined • Handling of bank payments • Definition of currency rules such as payment limits, currency rates, tolerance levels, and other currency related parameters • Authorized payment overrides • Unique identification/numbering of avoucher • Origination details of the GL are captured (staff name, date, etc.) • Query functionality must be sufficient enough to query all information that has been captured on: <ul style="list-style-type: none"> a) GL accounts b) Ledgers c) Journals d) Payment vouchers e) Receipts • The system must be able to consolidate several general ledgers into one • The system should enable one to preview all open items such as open purchase orders, Open invoices, etc. • Ability to meet requirements of the following types of tax and have provision for setting up any additional tax requirements: <ul style="list-style-type: none"> a) Withholding tax b) Withholding Value Added Tax c) Pay As You Earn (PAYE) d) Value Added Tax (VAT) e) Any other defined taxes f) Reverse VAT g) Housing Levy • In addition to a flexible report extraction facility, the following reports must come inbuilt in the application: <ul style="list-style-type: none"> a) Journal listing b) Held journal listing • The system must address balance brought forwards on assets & liabilities (suppliers, customers, staff loans, etc. 		

<ul style="list-style-type: none"> • The application MUST support the functionality to allocate overhead costs to relevant departments based on common cost drivers. The system MUST accommodate user defined cost drivers for allocation • Maintain either twelve or thirteen periods for current-year transactions and a number of additional periods for prior year adjustments for allowed users. . Allow prior period and prior year adjustments and allow this facility to be restricted. Prior year adjustments should be allowed simultaneously with current year accounting entries • Provide facilities posting adjusting journal entries to prior periods by authorized users (only) • Ability to support postings of journal entries to future periods (where current period is open and need to begin new accounting period) • Provide multi-segment facility for the Chart of Accounts 		
<p>5.1 Reporting Requirements for other General Ledger</p>		
<p>. Dynamic reports with the provision for a drill-down capability.</p> <ul style="list-style-type: none"> • Create customized reports (user defined). Users who perform this function will have to be trained on use of the tools. • The system must be able to generate the following financial statements (IPSAS & IFRS formats) and reports: <ul style="list-style-type: none"> a) Statement of comprehensive Income b) Trial Balance c) Statement of Financial Position d) Cash Flow Statement e) Changes in Equity f) Taxes e.g. withholding VAT, Withholding Tax, Withholding Rent, PAYE etc. by user defined dates <p>and exported in formats compatible with the KRA iTax system</p> <ul style="list-style-type: none"> • One should also be able to generate the financial statements in a particular format/template for the purpose of meeting statutory requirements including explanation notes for any of the above. 		
<p>6. Accounts Payables</p> <ul style="list-style-type: none"> • The system must be able to process supplier invoices by interfacing with the procurement module • Ability to raise, print and post payment vouchers • The system must embed a workflow for verifying and approving invoices received for payment. The approval levels will depend on the invoice value. • The system must have an inbuilt workflow for processing payment vouchers that have been converted from credit notes • Calculate tax for vendor invoices and record tax transactions separately • Automate the generation of remittance advice and tax certificate • The system should be able to process payments in multiple currencies, capture the foreign exchange rate, and date. • The system must be able to capture all the relevant details relating to invoice processing and maintain a complete history for audit purposes. At a minimum, the following information needs to be captured: 		

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|---|--|--|
| <p>a) Invoice type (debit memo, credit memo, expense, etc)</p> <p>b) Invoice number</p> <p>c) Invoice currency</p> <p>d) Invoice amount</p> <p>e) Payment terms</p> <p>f) GL date</p> <p>g) Supplier details</p> <p>h) Transaction date</p> <p>i) Line description / details</p> <p>j) Payment Voucher number</p> <p>k) Payment Voucher amount</p> <p>l) Balance</p> <p>m) Payee</p> <p>n) Cheque number (physical cheques) / EFT reference</p> <p>o) Budget line number/description</p> <p>p) Bank details (bank code, bank description, etc.)</p> <p>q) Section/department</p> <ul style="list-style-type: none"> • The system must support payment of invoices in partiality or installments. Where partial payments are being made, the cumulative payment should match the Purchase Order value. • The system must have controls that prevent duplicate processing of payments or overpayment. It should prompt the user upon detecting the same invoice number from different suppliers, and allow it to be processed, but prevent processing of the same invoice number from the same supplier. • The system should be able to indicate payment type: cash, physical cheque, EFT, Card, Mobile money transfer/pay, and RTGS • The system should automatically notify the payment recipient via email upon completion of the payment process (completion of bank processing of the particular payment) • The system should be able to cluster similar payments into categories (i.e. cost center-based categorization) • The system should be able to produce reports on various payment categories as defined above • System should be capable of grouping several invoices to be settled as a single payment or settled individually • The system must be able to convert approved loans/advance applications to payment vouchers • Support matching: Requisition, Purchase/Service Order, Goods/Service Receipt Note, Invoice & payment: <p>. The system should be able to close a purchase order upon payment of the full amount.</p> <ul style="list-style-type: none"> • The system must be able to create and maintain supplier payment information (if not captured in the procurement when creating a supplier): | | |
|---|--|--|

- a) Supplier details (e.g. name, physical address, contact details)
 - b) Bank account details
 - c) Payment details e.g. payment mode, frequency, discounts, penalties, rating, etc.
 - d) Currency details
 - e) Tax details (PIN, tax category, compliance, injunctions)
 - f) User defined data/miscellaneous/comments
 - The setting up of all supplier details should be via a workflow/process
 - The system must interface with the procurement module so as to be able to retrieve all other supplier master details relevant for the payment.
 - The system must be able to capture payment terms such as payment discount conditions and penalty conditions to all business to be able to make payment decisions that will maximize discounts while minimizing penalties
 - The system must interface with the HR module so as to be able to retrieve all other employee master details relevant for the payment.
 - The system must be able to generate a file of payments that have been approved for uploading to the Online Banking portal.
 - The system MUST facilitate archival of invoices, vouchers, payment forms online in a separate database and MUST be accessible.
 - The payment application MUST stop payment clearance for all the vendors whose payments are on hold due to business specific reasons
 - Payment schedules could be based upon
 - a) Vendor category (Local, Foreign etc.)
 - b) Due date
 - c) Payment method (EFT, Cheque etc.)
 - d) Voucher types (Vendor Invoices, Staff advances etc.).
- The application SHOULD support these payment schedules
- The application MUST support payment interventions such as partial payments, stop payments, void payments, write off etc.

6.1 Reporting Requirements for Accounts Payables		
<p>The system must be able to generate the following AP reports:</p> <ul style="list-style-type: none"> . Invoice Aging Report (using specific criteria -department, date range, specific vendor or all vendors and suppliers) <ul style="list-style-type: none"> • Invoice due date forecast • Down payments/payment advances listing • Trial Balance (This includes invoices due for payment, those not due and those on hold due to invoicing errors or questions about invoice charges) • Supplier Payment history report • Supplier statement • Contract Payment history report • Project Payment history report • AP posting status reports per period • Accounts payable aging report categorizes payables to suppliers based on time buckets: <ul style="list-style-type: none"> a) 0 to 30 days old b) 31 to 60 days old c) 61 to 90 days old d) Older than 90 days <p>Note that this report should list only those supplier invoices that are nearly due or overdue for payment, based on invoice</p> <ul style="list-style-type: none"> • dates and supplier payment terms 		

7. Accounts Receivables		
<ul style="list-style-type: none"> • The system must be enable creation and update of a single customer account with multiple customer groups • The system must be able to automate the receipting process and generate Payment Receipts that can be printed. • The system must be able to update accounts receivables and cash/bank as a result of receipting • The application MUST have the facility of generating automatic receipts & clearance of the same. • The system must only accept receipts that properly match with a receivable. Receipt entries must automatically interface with the General Ledger. • The application MUST provide facilities to query accounts • The application MUST facilitate Interfacing of invoices using Auto Invoice interface functionality to import and validate transaction data from legacy financial systems or any other third party system and create invoices, debit memos, credit memos, and on account credits in Receivables. • The system MUST facilitate provision of Proforma invoicing with automatic numbering. • The system MUST facilitate conversion of Proforma invoicing to Tax/Final invoice. • The application MUST facilitate invoicing based on fees regulation in built • The application MUST facilitate interfacing invoices from an external Billing System or revenue accounting system and could process in batch. • The system should be configurable so as to allocate receipts into various GL accounts. One should also be able to generate reports on receipts on the various categories as defined. • The application must be able to restrict posting of receipts by users to specific accounts. • The application MUST support the reversals, corrections of the payments and the receipts. • The application MUST capture receipts other than direct revenue generating activities through miscellaneous receipts. • The application MUST allow matching of receipts to invoices based on different parameters like customer id, name, invoice numbers etc. • The receivable system MUST maintain Payment terms. • Capability to charge customers for bounced cheques. • Capability to charge customers for approved penalties and/or fines. Thus, the system should have the capability to define penalties and/or fines and allow for their selection from a drop down or similar facility. • The system must allow one to print a comprehensive customer account statement showing all transaction • The application must be able to process receipts in multiple currencies • Capability for application of payments made in converted currency and clear foreign currency amount in full • Ability to backdate receipts date but after several levels of approval. This is especially important to prevent interest accrual on receipts that are processed after the system has been offline for an extended period of time. 		

- The system should be able to produce cumulative reports on receipts per customer, per bank, etc.
- The application should interface with the bank so as to support creation of automatic receipts based on the bank files having customers depositing the cash directly into the corporate account.
 - The system must be able to interface with other modules so as to be able to retrieve customer details (such as: customer codes, customer name, location, contact details, etc.) and invoices being settled (licenses, penalties, etc.).
 - The system must be able to set up payment parameters for customers such as: currency of payment, payment frequency, etc.
 - The system must be able to handle suppliers who are also customers.
 - The system must be able to detect duplicate customers by comparing a combination of unique customer details like the NAMICO internal generated numbers and the tax PIN.
 - The system must be able to capture and maintain a complete history of customer transactions and generation of customer statements that can be emailed.
 - Alerts and notifications when accounts receivables are due.
 - The system must be able to produce exception reports so as to determine customers whose credit limit is older than a specified number of days.
 - The System MUST generate dunning or collection letters, to have credit limit and credit hold functions.
 - The application MUST send notification through workflows once credit limit for customer is exhausted
 - Ability to define Customer credit policies/limits.
 - Ability to track a customer's credit balance and issue alerts upon attainment of a set threshold
 - The system must be able to produce aged receivables report for various account categories.
 - The financial module should be able to interface with the respective system so as to pull credit policy
 - conditions/terms per category
 - The system must support bad debt provisioning.
 - The application MUST have write off limits defined for users and inbuilt approval process for bad debts or adjustments.

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7.1 Reporting Requirements for Accounts Receivables		
<p>The system must be able to generate the following AR reports:</p> <ul style="list-style-type: none"> • Aging Report (AR) using specific criteria likedepartment, date range, specific vendor or all vendors and suppliers. • The report MUST have details in terms of payment terms, customer profile class, customer category, the amount overdue and the payment mode. • Aging report categorizes receivables toclients based on time buckets: <ul style="list-style-type: none"> a) 0 to 30 days old b) 31 to 60 days old c) 61 to 90 days old d) Older than 90 days • AR due date forecast . Down payments/payment advances listing • Client Payment history report • AR posting status reports per period • Client Statement 		
8. Petty Cash		
<ul style="list-style-type: none"> • The system must be able to address petty cash disbursement or refund. • The system must be able to address petty cash replenishment. • Staff must be able to apply for petty cash online (Petty cash voucher or through a refund). • System must have a workflow for processingpetty cash disbursements. • Automatic tracking of petty cash balance forpurposes of replenishment. • Raise alerts and notifications for petty cash replenishment. • The system should enable posting of petty cash entries to the GL. • Reminders or notifications on overdue petty cash both to the applicant and the issuer. 		
8.1 Reporting Requirements for CashManagement		
<ul style="list-style-type: none"> • Dynamic reports with the provision for adrill-down capability. • Create customized reports (user defined).Users who perform this function will have to be trained on use of the tools • The system must be able to generate the following financial statements (IPSAS &IFRS formats) and reports: Cash disbursements byindividual/amount/date Cash in foreign currency Cash by cost center 		

9. Imprest		
<ul style="list-style-type: none"> • The system should have an employee self- service functionality that allows the staff to apply for per diem/imprest. • The system should allow recommendations and approvals on vouchers with referrals by different level of authorities. • The system should be able to calculate the per diem based on set parameters • The system should have an employee self- service functionality that allows the staff to clear all outstanding balances before they apply for new per diem/imprest e.g. cash payment • The system should have an employee self- service functionality that allows the staff to account for/ surrender per diem/imprest that had been advanced to the employee. • The system should have a functionality to Automatically create claim on expenditure being more than imprest amount 		
<ul style="list-style-type: none"> • The system should be able to calculate and charge interest on overdue imprest • The system should be able to deny processing of imprest to a staff with outstanding imprest • The system must be able to generate a file of imprests that have been approved for uploading to the Online Banking portal. 		
9.1 Reporting Requirements for Imprest		
<ul style="list-style-type: none"> • Create customized reports (user defined). Users who perform this function will have to be trained on use of the tools • The system must be able to generate the following reports: Imprest by individual/amount/date Un-surrendered imprest as at a particular date Aged imprest report as at a particular date Classification of outstanding imprest e.g. Training, duty etc. 		
10 Bank Reconciliation		
<ul style="list-style-type: none"> • Functionality for reconciling cashbook and bank statements. 		

- The application SHOULD allow therecording of bank entries in bank statements automatically or upload formats.
- The application SHOULD provide an extension to load bank statements online. The application SHOULD have acceptanceof standard formats for bank statements that are applicable in case of all banking practices and standards
- The application MUST automatically create miscellaneous transactions to record bank initiated activities like interest gained, bankcharges etc.
- The system MUST facilitate auto reconciliations based on customer id, invoice number and site details, etc. formatching. The bank balance MUST be automatically updated online based on clearances.
- The system SHOULD have basic set up (like limits for matching in case of payment clearance or receipt matching with cheque clearance). The system SHOULD populate value dates for all records. Apart fromthis, the system SHOULD generate a report on the transaction not cleared and the reason for that (like funds getting rejected, invoice -payment mismatch etc.)
- The system SHOULD enable auto reconciliation between the receipts /Payments within the other sub ledgers with the bank statement data in terms of cheque clearances, EFT, etc.
- The system SHOULD have an additionalfunctionality of manual clearances in case that NAMICO opts for manual reconciliations incase of payment as well as receipts for revenue
- The application MUST automatically generate reconciliation accounting entries.
- The cash management application MUST be well integrated with payable and receivablesystem and MUST be having access to verify payable invoices as well as revenue receipts.
- The application MUST automatically record foreign currency gains and losses.

10.1 Reporting Requirements for Bank Reconciliations		
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<ul style="list-style-type: none"> • Dynamic reports with the provision for adriill-down capability. • Create customized reports (user defined).Users who perform this function will have to be trained on use of the tools • The system must be able to generate thefollowing: <ul style="list-style-type: none"> a) Bank reconciliation report b) Direct debits/credits c) Unreconciled balances 		
11 Bank Accounts		
<p>Bank details to be captured in full:</p> <ul style="list-style-type: none"> a) Bank code b) Status (active/inactive)c) Bank name d) Bank branch e) Sort code f) Address g) Account name h) Account number i) Lookup code j) Transaction details: k) Transaction limit l) Transaction reference m) Comments n) Transaction type o) Supplier code p) Customer code 		
11.1 Reporting Requirements for Bank Accounts		
<ul style="list-style-type: none"> • Dynamic reports with the provision for adriill-down capability. • Create customized reports (user defined).Users who perform this function will have to be trained on use of the tools a) Deposit List b) Deposit Report c) Cash payments (supporting electronic fundtransfer) d) Cash receipts (supporting direct debit) e) The reports conforming to NAMICO's existing bankers' requirements f) Bank by Bank name/staff/amount 		
12 Budgeting Process		
<ul style="list-style-type: none"> • The system should incorporate online budgetpreparation functionality and should be able to cover all budgetary elements whether capital or operational expenses 		

- The system must possess functionality that allows budget preparation at a departmental/sectional level prior to merging several departments'/sections' budgets into a singular corporate budget.
- System should be able to maintain and track budgets and expenditure at departmental and corporate level and be able to provide alerts upon attainment of an alert threshold e.g. 80% of the budget
- The system must have a work flow approval for creating, uploading and updating the company's annual and supplementary budgets
- The system must be able to keep historic budget information
- Budget amounts must be allocated to accounting periods defined in the system
- The system must be able to maintain budget version number and approval status where the annual budget has been updated through a supplementary budget/budget reallocation
- The system should be able to trace payments to budget line items for cost management purposes
- The system should be able to trace payments to project budget line items for cost management purpose
- The system should be able to accommodate a budget calendar that may be different from a financial calendar
- Capability to copy an entire budget year on year. It should also support rolling over of budget amounts/lines year on year
- Should provide functionality to view actual data against budgeted data
- The system must be able to support reallocation of budgets between budget lines
- Support Activity Based Budgeting providing for a facility to capture objectives, activities and outcomes at item and sub item level
- Multiple years budgeting – prior years and at least 3 future years.
- Facility to allocate budget ceilings by programmes and by account code.
- Ability to allow budgeting for any time period (Monthly, Quarterly, Biannual, Annually etc.).

<ul style="list-style-type: none"> • Support both Bottom-Up and Top-Down budgeting. • Support commitment control of the budget not to allow spending on a line item in the absence of a budget and linked to procurement plan • The system MUST generate reports in terms of budgetary control of last few years with actual figures in order to key in data for a new financial year • The application MUST have Budget input at account level. It may be input for the year or by month • The application should support copying of budgets from a financial period to another. The copied budget should be modifiable through application of percentages or absolute figures. • The application MUST provide online facilities to view actual data with original budget or revised budgets • The budgeting process MUST be working in sync with procurement and payment process in order to have inbuilt control within the business cycle. • The application MUST be able to view each department/function budget, spending to date and expected expenditures for the rest of the period • The appropriate notifications MUST get generated based on the workflow to be triggered for approval events. • The system MUST facilitate transferring of budgets based on the cost codes assigned or budget codes .It should facilitate smooth transition across budget codes as well as departmental transfer. • The system MUST facilitate contingency budgeting if required • The system MUST allow adding supplementary budgets activities and by cost center 		
<p>12.1 Reporting Requirements for Budgeting Process</p>		
<ul style="list-style-type: none"> • Dynamic reports with the provision for a drill-down capability. • Create customized reports (user defined). Users who perform this function will have to be trained on use of the tools • The reports must conform to the National Treasury 		

reporting requirements: a) Monthly budget reports b) Quarterly budget reports c) Reallocation reports d) Actual vs. Budget e) Year expenditure/revenue reports f) Annual budget reports g) Cost center budget reports in user defined period h) Performance contracting reports		
12.2 Budgetary Controls		
<ul style="list-style-type: none"> • When preparing the budget out-turn report, one must be able to generate it with the options of: Factoring in all actual payments and committed funds (i.e. funds whose purchase requisition has been approved but the actual payment has not been made) Factoring in only actual payments made • The system must be able to produce reports on committed budgets, actual expenditures and balances per budget line/account holder • System prevents department level users from updating budget information after it has been submitted • Allows Budget Office to "push" worksheets out to departments electronically for budget preparation 		
13 Financial Reporting Requirements		
<ul style="list-style-type: none"> • The system MUST facilitate forecasting of costs and revenue in terms of trends based on historical data. • The system MUST also allow downloading budgeted revenue and expense items from the budget system and creating a link with the current period data to produce variance explanations between the two items. • The application MUST have following types of reports: <ol style="list-style-type: none"> a) Profit & Loss account b) Trial balance (Average, Detail & Budget) c) Balance Sheet (actual and projected) d) Performance report e) Forecasted Income Statement f) Cash Flow Statement (Direct and Indirect Method) g) Statement of changes in equity h) Budget Vs Actuals i) User defined j) Complete IPSAS formats including notes, k) IFRS formats, Complete Quarterly financial statements reports in IPSAS & IFRS formats l) User defined period reports Notes to the financial statements 		

14 Fixed Assets Management		
a) Postings groups b) Revaluation of Fixed Assets c) Annual Fixed assets verification and inspection d) Accounting of Assets e) Recognition and capitalization policy f) Accounting treatment of recognition and capitalization g) Acquisition h) Fixed Assets register i) Fixed Asset registration process j) Depreciation		
2.3.2 Human Resource Management		
1. Organizational Structure		
1.1 Reporting Requirements for Organizational Structure		
<ul style="list-style-type: none"> • Ability to generate multiple statistical reports for all positions & jobs within the organization. • The system MUST produce the following reports: • Organizational structure reporting by location. • Organizational structure reporting by geographical area. • Open and filled positions reporting Budget & Actual Head Count Comparison 		
2. Payroll Management		
The system should be able to do the following: a) Develop Standard Statutory Reports: NHIF, NSSF, PAYE, Pension, HELB, Gratuity, et.c. b) Generate Income Tax P9, P10, P10A, P10D, P10 Summary c) Generate Pay slips – Summary, Standard d) Generate online reports and viewable payslips/downloadable by employees e) Develop Employee Payment List f) Develop Analysis Report g) Develop Payroll Summary h) Develop Variance Report i) Develop Period Report j) Develop Advances Report k) Develop Sacco Contribution Report l) Develop Insurance Deductions Reports		

<p>m) Automatic increments as per approved payment tables</p> <p>n) Controls and notifications to specific Corporation when rules are violated</p> <p>o) Allow payment to members of the Board and deduct PAYE and Housing Levy on sitting allowance</p> <p>p) Provide electronic bank payment format for salary transfer and Board allowances payments</p> <p>q) Generate payslip (Printable and send to employee's email address/ viewable on a portal) clearly showing position title, department/division etc. as per the current format.</p> <p>r) Provide summary of salary payment monthly/ yearly.</p>		
<p>3. Recruitment Management staff/ Interns and attaches</p>		
<p>Online recruitment to garner potential candidates for available positions in the organization</p> <p>The system SHOULD automatically disqualifies those applicants failing to meet the minimum mandatory requirements</p> <p>The system should allow picking of the longlisted candidates for the next stage i.e. shortlisting</p> <p>The system should allow for the creation of a shortlisted folder and provides a link for attaching the shortlisting report.</p> <p>The system should allow for notification to be sent to the shortlisted candidates for interview and also to the interview panel.</p> <p>The system carries out the interview scoring for each candidate per Interviewer and the calculation of the aggregate scores and also the provision for the panels comment</p> <p>The system should allow uploading of the employees' data to the employee management module.</p> <p>Each position to be properly graded</p>		
<p>4. Leave Management</p>		
<ul style="list-style-type: none"> • The system must automate the leave application process by enabling end-to-end online leave management 		
<ul style="list-style-type: none"> • Ability to accrue leave days at a configurable rate. 		
<ul style="list-style-type: none"> • Ability to deduct leave days. 		

<ul style="list-style-type: none"> • Capability to track and extract a history of the leave management data of an employee 		
<ul style="list-style-type: none"> • Calculation of leave balances and how much they are worth 		
<ul style="list-style-type: none"> • The system must be able to carry forward leave balances as per HR policy and Kenya Statutory laws 		
<ul style="list-style-type: none"> • Provide alerts and notifications to users and relevant Corporation on leave anniversary, • public holidays, etc. 		
<ul style="list-style-type: none"> • The system should provide for Public holidays 		
<ul style="list-style-type: none"> • Enable one to apply for the following types of leave: 		
- Maternity		
- Examination		
- Study		
- Paternity		
- Compassionate		
- Annual		
- Compulsory		
- Emergency		
- Sick		
- Unpaid		
<ul style="list-style-type: none"> • The system must allow initiation of sick leave application by HR personnel on behalf of the employee 		
<ul style="list-style-type: none"> • At a minimum, the following details on leave application must be captured: 		
- Name		
- Section/department		
- Grade		
- Date of appointment		
- Leave entitlement (days per annum)		
- Leave days applied for		
- Leave start date		
- Leave end date		
- Contacts when away		
- Leave balance carried forward		
- Leave balance brought forward		
- Leave balance		
<ul style="list-style-type: none"> • The system MUST have a facility for the supervisors or the HR users to approve or reject the leave applied by the employees 		
<ul style="list-style-type: none"> • The system should be able to check those who have qualified for leave allowance (15 days earned) and notify HR 		
<ul style="list-style-type: none"> • The system should allow for reimbursement of days not taken when employee is recalled from leave 		

4.1. Reporting Requirements for Leave Management		
Ability to generate the following reports:		
<ul style="list-style-type: none"> The system MUST have a provision to report the usages of leave types. 		
<ul style="list-style-type: none"> The system must have reporting for various types of leaves for employees. 		
<ul style="list-style-type: none"> Leave accruals reporting 		
5. Employee Self – Service		
The system MUST enable the users to maintain their personal data such as name, address, telephone numbers, contacts, qualifications, school and colleges attended, skills attained etc. subject to the supervisor’s verification.		
The system MUST enable the users to view their pay slip on-line for all the processed payrolls.		
The payment details for employees such as bank name, bank branch, account number etc. MUST be visible to users and they must be able to modify the same.		
The system MUST have a facility for the users to maintain their beneficiary details and dependents information.		
The system MUST facilitate the users to maintain their emergency / next of kin Contact details.		
The system MUST have the leave request functionality, which would enable the users to apply for leave.		
The system MUST be able to display the leave balances, leaves taken and eligible leaves for the users.		
Allow employee to update his training information.		
5.1 Other Portal/Self Service Requirements		
Staff imprest (Trip creation, trip acceptance, imprest surrender) – self service		
Stores requisition – self service		
Staff performance appraisal (Annual target setting for corporate, functional unit and individual) quarterly and annual appraisal)		
Procurement requisition		
Recruitment portal (refine and migration of the current portal to the new system portal)		
ICT Help Desk		
Complaints management (access to information)		

Leave Management (to include leave balance, leave application, leave approval, leave recall, leave summary)		
Petty cash request		
Local Service/Purchase Order		
5.2 Manager Self – Service		
Line managers MUST have access to search and view information pertaining to their sub-ordinates.		
A supervisor MUST have access to view his/her sub-ordinates' employment as well as applicant history.		
Supervisors MUST have access to view the team members' leave requests and approve/reject those.		
Manager must be able to view absence history for his/her entire team.		
6. Medical Scheme Module		
Staff (or HR) should be able to access Sick Sheets online and update the same.		
An inbuilt workflow for initiating and processing sick sheet and capturing comments and approvals from relevant personnel.		
Must be able to capture the employee's medical expenses.		
The following details must be captured on the Medical Claim Form at a minimum:		
- Serial number (auto-generated)		
- Employee's name		
- Patient name		
- Section/department		
- Designation		
- Staff number		
- Medical billing details		
- Valid dependent's name & age (pulled from the employee master details so as to process sick sheets for dependants only)		
- Medical facility		
- Medical Scheme (where applicable)		
Be able to interface with the Finance Module and Payroll Module for management of the medical payment process.		
Capture and maintain details (such as contacts, names, location, address, etc.) of medical service providers (dentists, doctors, hospitals, laboratories, pharmacists, etc.		

Maintenance of medical limits per employee and be able to track utilization of the Medical limits		
Alerts and notifications when a staff is about to go beyond their medical limits		
Provide medical statements to the employee.		
Ability to the employee to request New Medical Card, Medical card removal, Medical card Replacement, or Employee ID.		
The system MUST be able to capture admission, discharge and transfer data.		
The system MUST allow changing the patient type from inpatient to outpatient and vice versa.		
The system MUST maintain both inpatient and outpatient data.		
The system MUST maintain the entire employee's medical history of usage of medical entitlements		
The system SHOULD facilitate processing of insurance claims with insurance company, where applicable.		
The system SHOULD maintain accident records separately.		
The system SHOULD be integrated with Accounts payable module for raising invoices.		
The system SHOULD integrate with Payroll for medical leaves.		
The system MUST have a functionality to keep a track of insurance eligibility for various employees depending upon their hierarchical position in the organizations.		
The system MUST be able to manage the agencies providing the insurance coverage. The system MUST be able to add new agencies, delete the existing agencies etc.		
The system MUST be able to track the dependants of the employee.		
The users MUST be able to upload the claims related documents in the system.		
Reporting Requirements for Medical		
Provide medical statements analysis by spend per		
- Medical Provider		
- Financial Period		
Medical reports to track utilisation of medical limits per employee		
7. Loans and advances		

Staff must be able to fill loan application form online through the self-service module for the different types of loans and advances:		
- Salary advance		
- Car loan		
- Property loan / Property refinancing		
- Car overhaul advance		
- Furniture loans		
- Car Insurance advance		
An inbuilt workflow(s) for processing applications of the different types of loans and advances must be present that addresses the unique qualification requirements for each loan/advance. The workflow must address the entire loans application, processing and approval process.		
The system must capture the loan/advance against the employee's compensation and benefits profile.		
The system must interface with the payroll component so as to correctly record issued loans, recovered loans/advances.		
The system must not allow for issuance of loans/advances that violate the statutory guidance on employee deductions in Kenya.		
Reporting Requirements for Loans and advances		
Production of the various Payroll forms/reports including:		
- P9A - Tax Deduction Card (Benefits /Owner Occupiers Interest / Normal Cases)		
- P9A (HOSP) - Tax Deduction Card (Home Ownership Savings Plan)		
- P9B - Tax Deduction Card (Tax Free Remuneration)		
- P10 - Employers Covering Certificates End of Year Returns		
- P10A - Supporting list to End of Year Certificate		
- P10B - Fringe Benefit Tax Return		
- P10C - Employer's Certificate (WCPS Cases Only)		
- P10D - PAYE Quarterly Return Form		
- P11 - Credit Slip Pay In Book (sample) (only originals are acceptable)		
8. Fleet Management		

The system must cater for the capturing and updating of vehicle related details including:		
- Registration Number		
- Make		
- Type of vehicle		
- Specialized use of the vehicle		
- Specialized equipment on the vehicle		
- Year of Manufacture		
- Insurance		
- Fuel type		
- Tire size		
The system must cater for the capture of vehicle related maintenance including:		
- Lubrication History		
- Vehicle Repair History		
- Travel itineraries History (including the start and return odometer readings)		
The system must cater for the capture of vehicle fueling and associated odometer reading		
The system must cater for the capture of the vehicle booking and maintain the car booking status detail (e.g. Available, booked, in use, under repair, etc.)		
The system must cater for the capture of the driver allocation and maintain the driver's allocation status detail (e.g. Available, allocated, on safari, Not on duty, etc.)		
The system must cater for the capture of the vehicle Work ticket		
The system should have the ability to link the vehicle to a specific driver		
The system must cater for the capturing and updating of driver related details (Staff No, Class of Driving License, etc.) and should have the provision to be linked to Employee Master details		
The system must cater for the capture of the details of vehicle usage and the Responsible department		
The system must capture the manufacturer recommended vehicle's Maintenance schedule		
The system must produce the Resource utilization and optimization report		
The system must capture the details of New Insurance Registration, Renewals, Modifications, and Cancellations.		

The system must capture the details of Maintenance Activity Reports		
The system must report using TrendAnalysis per vehicle with respect to usage, maintenance, and consumables		
The system must produce the New andRetiring Vehicles Report		
9. Asset Movement Management		
The system should have the functionality to request for and get approval of an asset movement/transfer from one location to another		
The system should have the functionality tomonitor the asset movements within NAMICO		
Provide facility to generate asset movement forms when asset is moved and identify current location and current user (whenever it is applicable)		
Ability to facilitate inter-branch / inter-department asset issues and transfers		
Ability to facilitate inter-branch / inter-department asset receipts		
10. Employee Management		
Act a centralized portal for disseminatingstatic employee information such as benefits, leave information, disciplinary action and appeal process, FAQs, loans application, benefits, etc. which can be updated as need be.		
The system must be able to manage stafftransfers, acting appointments, relocations, promotions and demotions and track such movements.		
The system should be able to address acting appointments. It should be able to capture under an employee’s profile:		
The event of acting appointment		
Position		
Start and end dates of the appointments		
Benefits applicable		
Embed a workflow that supports Employee transfers including acting appointments		
Provision for uploading and attaching documents to an employee’s profile such as scanned transfer letters, etc.		
Maintain a history of Employee transferstaken and support the ability to profile the Same employee		
Employee transfers module should beinterfaced with payroll processing component		

Provision for managing employee disciplinary actions		
Embed a workflow that supports the disciplinary process (disciplinary module)		
Provision for uploading and attaching documents to an employee's profile such as scanned warning letters, certificates, commendations, etc.		
Maintain a history of disciplinary action taken against an employee and support the Ability to profile the same employee		
Disciplinary module should be interfaced with payroll processing component		
Disciplinary module should integrate with the personal development, training and separation modules		
The system must be able to address situations where an employee is suspended and capture this event on the employee's profile. This includes provision of workflows for initiating the suspension process, ending suspension, and reinstating/rejecting an employee after suspension		
10.1 Reporting Requirements Employee Management		
Ability to generate the following reports:		
- Employee details by department, location, positions, jobs, grades, payroll, Allowances, etc.		
- New appointments / joiners report.		
- Acting appointments report.		
- Transferred employees report.		
- Employee addresses and contact details report.		
- Employees' summary reporting by specific criteria e.g. by department, grade etc.		
- Employees Locations report		
- Employee turnover reporting and analysis		
- Disciplinary actions taken report		
- Positions Analysis		
- Contract Employees		
- Employees by Cost Centre		
- Employees Ethnicity Reports		
- Employees by Education Level		
- Promoted Employees		
- Retiring Employees		
- Terminated Employees		
- Transferred Employees		

- Workforce planning		
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- Staffing level analysis		
- Ages of staff		
- Dates of employment		
- Report listing employee NHIF, NSSF, PIN, HELB, NSSF, NITA details		
- Gender analysis		
- People with Disabilities (PWD) analysis		
Skill set and competencies status: to list per employee the professional qualifications, academic qualifications, learning / development map, job requirements.		
11. Performance management		
<ul style="list-style-type: none"> Ability to support the 360 degrees appraisal system with the ability to be configured to any other system such as the balanced scorecard. 		
<ul style="list-style-type: none"> The 360 degrees appraisal system and KPI's must be amendable for different categories of employees. 		
<ul style="list-style-type: none"> The system must enable calculations for the KPIs against predefined rules to arrive at the performance measurement. 		
<ul style="list-style-type: none"> Ability to monitor and manage performance contract deliverables. 		
<ul style="list-style-type: none"> Ability to capture performance requirements per position: qualification requirements, personal attributes, education, experience, skills, etc. 		
<ul style="list-style-type: none"> Ability to receive periodic (e.g. quarterly) appraisal reviews/results from various business units online. 		
<ul style="list-style-type: none"> Ability to track performance appraisal results over a period of time per employee, special group, department, etc. 		
<ul style="list-style-type: none"> The system should support self-appraisal. 		
<ul style="list-style-type: none"> Assessment of self-appraisals for annual or periodic appraisal process MUST be possible for the managers. 		
<ul style="list-style-type: none"> Support electronic signoffs between the appraised and appraiser and other relevant officials. 		
<ul style="list-style-type: none"> The system must allow the employee to receive performance feedback from their supervisor/manager. 		
<ul style="list-style-type: none"> A workflow must be present for issuing a performance rating to an employee. 		
2.3.3 Supply Chain Management process		
1. Formulation of Procurement Plan		
Ability for creating annual/ad hoc procurement plans		

The system to allow for procurement plan approval based on the set thresholds for the different approvers in the work flow process.		
The system must enable various departments to develop their procurement plans for the year whose view can be broken down to enable viewing as per various periods e.g. month-on-month, week-on-week, etc.		
Automatic confirmation of procurement plans against departmental budget		
Consolidation of procurement plans of various departments into a single procurement plan and vice versa		
Ability to print both a summarized and a detailed view of the procurement plan		
Have a workflow for procurement plan preparation and approval by the relevant approvers.		
Enable the attachment of documentation to procurement plans submitted by departments and avail the same during consolidated viewing		
Enable the attachment or association of requisite documentation associated with each procurement plan submission where necessary		
The system must be able to address the requirement of updating the procurement plan on a periodic basis by having an inbuilt workflow for updating the procurement plan		
Ability to track requisitions against the procurement plan at departmental level and company-wide level		
The system should be able to allow procurement personnel to group procurement plan requests into categories		
The system should be able to set alerts with respect to initiation of procurement plans preparation		
2. Formulation of procurement plan – Reporting		
Ability to track and report on purchasing trends against the procurement plan		
Procurement Plan implementation report based on a defined criterion e.g. per period, department etc.		
3. Registration/Prequalification of suppliers		
The system must support the registration and prequalification of suppliers		

The system must support an on-line supplierportal that shall allow interaction between suppliers and NAMICO.		
The suppliers should be able to:		
-Track on-line the status of theirprocurement documents (e.g. order, invoice, etc.).		
- Maintain supplier information (e.g. Contacts, bank details, etc.)		
- Register as a supplier and submit bids and seek clarifications pertaining to open bids.		
Embed a workflow for the supplier registration and prequalification process and capture approvals and comments associated with this process		
Should be able to capture the followingsupplier details and maintain a central repository (supplier master database):		
- Supplier number (auto-generated)		
- Supplier type		
- Category of service		
- Items / services supplied		
- Supplier's name		
- Multiple supplier addresses		
- Office address		
- Physical location		
- Nature of business		
- Telephone		
- E-mail address		
- Trade license no		
- Certificate of incorporation/registration		
- Registration no. & date		
- Tax compliance certificate number		
- Tax compliance certificate valid to date		
- VAT Certificate		
- VAT number		
- PIN Certificate		
- PIN number		
- Details of directors (name, nationality, shares)		
- Share capital		
- Name of bankers		
- NSSF Compliance Certificate		
- NHIF Compliance Certificate		
- Certificate of Good Conduct		
- Youth Access to Government Procurement Opportunities (YAGPO) Certificate		
- Maximum value of business which can behandled by your firm at anygiven		

time		
- Bank details		
-Supplier status (Active/Inactive/Blacklisted)		
- Comments on the supplier		
- Ownership/directorship of the company		
- The system must allow users in the procurement department to change the status of a successfully registered or prequalified supplier to various status e.g. active to inactive/blacklisted/suspended and vice versa.		
Allow sharing of supplier data in the central repository.		
Detection of duplicate suppliers based on unique multiple supplier identification number such as PIN, Internal NAMICO reference numbers, etc.		
For suppliers with more than one location, the system should be able to capture all the alternate locations of the supplier under one profile (belonging to the supplier).		
Enable the attachment of documents to supplier prequalification tasks e.g. tender advertised, supplier responses, filled business questionnaire, prequalification document, etc.		
The system MUST be able to block the suppliers who have been debarred		
The system MUST be able to unblock the supplier by appropriate Corporation		
The system MUST be able to record complaints about the supplier.		
The system MUST maintain a list that shows the items supplied by different suppliers.		
The application MUST facilitate assignment of different items/products to a supplier upon prequalification/registration.		
4. Registration/Prequalification of suppliers – Reports		
The system should maintain Purchases Year to Date (YTD) in number and currency per supplier		
The system MUST support reporting of supplier performance analysis in a given period e.g. quality defects, delivery performance, cost/price amongst others.		
The system MUST support reporting of supplier performance in a given period		

e.g. Price, quality, delivery, rejected items in number and currency amongst others.		
The system MUST support generation of areport on shortlisted suppliers		
The system MUST support generation of areport on status of supplier prequalification process.		
The system MUST support generation of a report history of bidders who have been given work many times (to promote fairness). The report should have the following details:		
Name of supplier		
Date of award		
Nature of work		
Value of work		
Date of prequalification		
The system MUST support generation of reports for supplier company ownership		
The system MUST support generation of historical information on purchase order/contract cancelled by Company, if any		
5. Tendering and Requests for Quotations		
The system must be able to capture the following tender details. At a minimum, these details are:		
- Tender number		
- Name / description of service, goods or works		
- Tender submission format e.g. combined technical and financial proposal		
- Location of the bid document e.g. on website or obtained from procurement office		
- Tender submission location		
- Deadline for tender submission		
- Date of tender opening		
- Bid bond		
- Handling fee & mode of submission (banker's cheque, cash, insurance bond, etc.)		
- Tender evaluation results (both technical and financial results)		
- Currency of the quotations		
- Tender Validity period		
- Tender document (specifications, terms & conditions, etc.)		
- Status (Evaluation, under negotiation, awarded, advertised, etc.)		
- Value of tender/quotation		

- Name of bidder		
- Number of tenders issued		
- Responder details: Name of responders,value, technical and financial scores...		
- Location of the suppliers		
- Performance bond value		
- Expected date of start and completion		
- Source of funds/budget availability for thetender		
- User department		
- Date of contract signing		
- Name of persons signing the contract/signatories		
- Date of advertisement		
- Date of tender award		
- Method of tender procurement (direct procurement, open tender, restricted...		
- Reasons for using the method of procurement		
- Persons who approved the tender		
- Tender termination details: tender number, reasons for termination		
<ul style="list-style-type: none"> • The system should support the generation of tender number for the different types of tender 		
<ul style="list-style-type: none"> • The system must be able to print out the tender details above for purposes of advertisement and reporting 		
<ul style="list-style-type: none"> • The system should have the functionality to manage procurements through Open Tendering process 		
<ul style="list-style-type: none"> • The system should have the functionality to manage procurements through Request for Proposals process 		
<ul style="list-style-type: none"> • The system should have the functionality to manage procurements through Request for Quotations process 		
<ul style="list-style-type: none"> • The system should have the functionality to manage procurements through Restricted Tendering process 		
<ul style="list-style-type: none"> • The system should have the functionality to manage procurements through Direct Procurement process 		
<ul style="list-style-type: none"> • The system should have the functionality to manage procurements through Low Value Procurement process 		
<ul style="list-style-type: none"> • The system should have the functionality to manage procurements through Design Competition process 		

<ul style="list-style-type: none"> The system should have the functionality to manage procurements through Electronic Reverse Auction process 		
<ul style="list-style-type: none"> The system should have the functionality to manage procurements through Framework Agreements process 		
<ul style="list-style-type: none"> The system should have the functionality to manage procurements through Force Account process 		
<ul style="list-style-type: none"> The system should have the functionality to manage procurements through Two- Stage Tendering process 		
<ul style="list-style-type: none"> For all the above tendering processes, based on the Procurement Plan, it should then provide reminders (to user departments and procurement department) within a pre- defined advance period to initiate tender requests. 		
<ul style="list-style-type: none"> The value based on which the system determines whether an RFQ or a tender is needed should be configurable as per the procurement method. 		
<ul style="list-style-type: none"> The system should support the RFQ process by providing a workflow that allows approval prior to the issuance of the quotation in the procurement section to: <ul style="list-style-type: none"> i. Receive purchase requisitions from the user ii. department iii. Convert the purchase requisition into an RFQ if it is less than a certain amount iv. Allow prequalified suppliers to be selected through a workflow in the procurement. v. Automatically send the RFQ to the selected suppliers via email or allow for printing vi. Convert an RFQ to the procurement department's purchase requisition vii. Convert the procurement department's purchase requisition to an LPO upon approval viii. Email the approved LPO to a supplier. 		
<p>The workflow must be able to clearly capture all approvals that have taken place.</p>		
<p>Provide functionality for evaluating and ranking supplier responses to an RFQ so as to determine the lowest quoting vendor.</p>		
<p>For each RFQ sent, the system should be able to capture the following details:</p>		
<ul style="list-style-type: none"> - RFQ reference number 		
<ul style="list-style-type: none"> - Description of service 		

- Names of suppliers to whom the RFQ was sent		
- Name of responders		
- Prices quoted		
- Results of evaluation		
- User defined comments		
Ability to keep track of the tender evaluation process and stages through the process including:		
- Tender opening:		
- Technical evaluation		
- Financial evaluation		
- Management of tender opening/evaluation committees		
- Supplier notification		
The management tender opening/evaluation committee's access rights are only valid for the duration the tender is active or their appointment is active.		
Ability to track timelines for each stage of the procurement process		
Ability to maintain documents associated with the tender process such as:		
- Minutes of opening of tenders		
- Evaluation reports		
- Contracts		
- LPOs		
Ability to create a "single "contract number per physical contract that can be utilized across all operations of the ERP, and other NAMICO systems.		
Create standardized contracts quickly and easily by utilizing standard menus, lists and auto-fills for population of contract data.		
Need to have the ability to create contracts using standard terms and clauses.		
The system supports required fields to avoid missing information		
The system differentiates between prospective and existing vendors.		
Allow special item products to be defined as needed		
The system should have the ability for contract specialists to document the products covered by the contract. This should include general and specific product information.		
Build mechanisms for pricing and service-level agreement flexibility into the contract.		

Support for document management to maintain a tender library of templates and sample documents for the various elements of a tender including tender terms and conditions, draft contract terms and conditions, specifications and related documents		
Ability to track timelines associated with each stage in the contract process and flag where these are exceeded		
Ability to track status of bid bonds. Bid bonds for unsuccessful bidders should be returned when sending regret letters.		
6. Tendering and Requests for Quotations – Reporting		
The system MUST be able to generate reports on tenders in the pipeline and their status		
The system MUST be able to generate reports on status of the tendering process e.g. contract being drawn, awarded, evaluating, advertised, etc.		
The system MUST be able to generate reports on a list of tenders whose submission dates were extended.		
The system MUST be able to generate reports on a list of RFQ sorted by different criteria e.g. RFQ number, supplier, material group, material/product etc.		
The system MUST be able to generate reports on a price comparison list for RFQs		
The system MUST be able to generate reports on a summary of tender awards by procurement method, value, reserved tenders etc.		
The system should generate reports on the responsiveness in a particular period e.g. How many responsive/unresponsive tenders in a particular period.		
The system should generate a list of tenders that have been terminated.		
7. Purchase requisition and Purchase Order Management		
Embed a workflow for the purchase requisition process and capture approvals, comments and documentation associated with this process/task.		
The system should allow for requisition approvals based on the set thresholds for the different approvers in the work flow process.		
Avail online a purchase requisition form for business end users for raising purchase		

	requisitions to the procurement department. The purchase requisition form should capture the following details:		
	- Department and section raising the request		
	- Requisition date		
	- Description of the item requested		
	- Quantity of items		
	- Reasons for purchase		
	- Technical specifications (e.g. ToR, engineering specifications, etc.)		
	- Budget code		
	- Budget availability (this should be the funds available as at the time of making the requisition)		
	- Name of requestor		
	- User manager/departmental/sectional approval		
	- Date of approval		
	Once the purchase requisition is submitted to procurement, the procurement departments should be able to input extra data that will enable the requisition to be converted to a Purchase Order:		
	- Name of suggested supplier		
	- Address of suggested supplier		
	- Quantity & unit of measure		
	- Description/quality of goods		
	- Costs		
	- Name of alternative supplier		
	- Address of alternative supplier		
	- Delivery address		
	- Delivery date of goods		
	- Deadline of submission of the quotation/tender		
	- Discount (percentages, amount)		
	- VAT		
	- Tender/quotation number		
	The system should have provision for raising purchase requisition in foreign currency		
	The system should have a workflow that allows the following to be carried out when raising a purchase requisition:		
	- Enables verification of the requisition against departmental budget so as to confirm the availability of funds		
	- Capturing approval/rejection of the requisition by the user manager and departments/sectional head		

	- Verification by finance that the budget code has been allocated correctly		
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	- Computation of departmental budget balance following the final approval of the purchase requisition		
	The workflow for raising a purchase requisition must be set up such that approval of the budget code associated with a purchase requisition is subjected to the approved procurement plan and the available budget		
	The system should be able to perform funds reservation for budgeted items		
	For purchase requisitions that have been rejected, the system must be able to release the commitment of funds		
	The system must automate the raising of purchase requisition for stocked and non- stocked goods, and services from short listed suppliers		
	The system MUST capture the following details for Purchase order header		
	- PO Number		
	- PO description		
	- PO type (maintenance & repair , one time purchase, and service contract)		
	- Description		
	- Requestor ID		
	- Supplier & Site		
	- Priority		
	- Comments		
	- Ship to address		
	- Terms (FOB, C&F, NAMICO CODE...etc.)		
	- Payment term		
	- Fully /Partially shipments		
	- Supplier terms		
	- P.O. date		
	- Expiry Date		
	- Extension date		
	- Total value of the PO/Contract		
	- Quantity		
	And any other necessary details for a PO		
	<ul style="list-style-type: none"> The system SHOULD be able to print the PO information with company logo only once as an original copy. The re-print option SHOULD indicate duplicate copy. 		
	<ul style="list-style-type: none"> The system must have a workflow for generation / raising of local purchase orders following approval of purchase requisition 		

	<ul style="list-style-type: none">• Ability to record purchase order acknowledgement from vendor		
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	<ul style="list-style-type: none"> The system should be able to generate LocalService Orders (LSO) through a workflow. 		
	<ul style="list-style-type: none"> System should automatically generate an alert if acknowledgement is not received within a specified time from PO issue date 		
	<ul style="list-style-type: none"> All LPOs and LSOs generated should include terms and conditions; the system should allow for the definition and maintenance of the terms and conditions. 		
	<ul style="list-style-type: none"> The system shall allow an authorized user to change shipping, payment method for a purchase order 		
	<ul style="list-style-type: none"> Ability to merge several requisitions into a single purchase order 		
	<ul style="list-style-type: none"> The system shall notify the user about any changes made to the order. 		
	<ul style="list-style-type: none"> Confirmation of item stock levels prior to raising a purchase requisition 		
	<ul style="list-style-type: none"> The system should have a workflow for processing Purchase Requisitions where: 		
	<ul style="list-style-type: none"> i. The supplier and prices have been identified 		
	<ul style="list-style-type: none"> ii. The supplier and prices have not been identified 		
	<ul style="list-style-type: none"> iii. The system must be able to capture all approvals related to the purchase requisitions these include: 		
	<ul style="list-style-type: none"> - Electronic signoff/approvals at the user department level (name, department, section, date of approval) 		
	<ul style="list-style-type: none"> - Approval references such as referencing to tender deliberation minutes, etc. 		
	<ul style="list-style-type: none"> - All approvals on the system must be clearly captured. 		
	<ul style="list-style-type: none"> The system should have provision for raising purchase requisition for recurring services 		
	<ul style="list-style-type: none"> The system should have provision for raising purchase requisition for recurring services that do not issue an invoice such as invoices from utility companies, etc. 		
	<ul style="list-style-type: none"> The system should be able to provide for supplementary LPOs and PRs 		

	<ul style="list-style-type: none">• System should be able to support procurement of different services i.e. fixed rate contract service/fixed rate temporary labor/rate based temporary labor		
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	<ul style="list-style-type: none"> • Manage the entry of Service Entry Sheets i.e.the acknowledgement of the of services received against an PO or Contract 		
	<ul style="list-style-type: none"> • System is able to show Incoterms and display clearly the incoterms with selectionoptions for Countries and their city (s). the final output on PO should be e.g., Free on Board (FOB) 		
	<ul style="list-style-type: none"> • Ability of the system to carry out pricetrending per item and units of services 		
	<ul style="list-style-type: none"> • Ability of the system to track the total cost Ownership for projects. The system to provide traceability of all cost relating to initial acquisition, installation, maintenance/support as well as disposal /residual value especially for projects. 		
	<ul style="list-style-type: none"> • Ability of the system to provide flex fieldsfor end user acceptance of goods and comments 		
	<ul style="list-style-type: none"> • Ability of system to generate material requests from vendors for consignment stocks, based on the set up min-max levels. 		
	<ul style="list-style-type: none"> • Ability to have the material requests for consignment stock generated go through an approval process and a purchase order • created from them. 		
	<ul style="list-style-type: none"> • Ability of the system to allow for multiple line description per item 		
	<ul style="list-style-type: none"> • - Processes multi-item type POs 		
	<ul style="list-style-type: none"> • The system should be able to process POswith multiple ship-to locations 		
	<ul style="list-style-type: none"> • The system Checks for duplicate Purchase order numbers 		
	<ul style="list-style-type: none"> • Purchase order numbers to be systemassigned 		
	<ul style="list-style-type: none"> • System should allow reprint of PO with 'copy, amendment no., reprint' marked on the print out 		
	<ul style="list-style-type: none"> • Ability to enter project details while creatingpurchase order and interface the details to project 		
	<ul style="list-style-type: none"> • Ability to print purchase order terms andconditions 		

	<ul style="list-style-type: none"> • Ability to allow authorised users to track status of approval their purchaserequisitions and related purchase orders 		
	<ul style="list-style-type: none"> • Ability to restrict information that end usersshould view in the procurement process such as vendor awarded 		

	<ul style="list-style-type: none"> Ability to enforce requirement for a contract based on the nature of items/service or value 		
	8. Purchase requisition and Purchase Order Management- Reporting		
	<ul style="list-style-type: none"> The system MUST Provide a report of all requisitions for a specific Period. 		
	<ul style="list-style-type: none"> The system MUST provide a report of all pending requisitions as at a certain date showing how long they have been pending 		
	<ul style="list-style-type: none"> The system MUST generate reports on Frequency and volumes purchased and seasonal trending of items 		
	<ul style="list-style-type: none"> The system MUST generate reports on a list of open purchase orders 		
	<ul style="list-style-type: none"> The system MUST generate reports on open purchase order cost centre wise, which can be used to review the open purchase order relating to one or more cost centres. 		
	<ul style="list-style-type: none"> The system MUST generate reports on overdue supplies, which can be used to follow- up with suppliers for the material to be supplied. 		
	<ul style="list-style-type: none"> The system MUST generate reports on Purchase order commitment, which is used to show the monetary value of the purchased commitments for the specified period. 		
	<ul style="list-style-type: none"> The system MUST generate reports on Purchase order detail showing the details of all type of purchase orders specified by the user. It MUST display the quantity received against the purchase order so that one can monitor the status of the purchase order 		
	9. Goods/Services Receipts and Inspections		
	<ul style="list-style-type: none"> The system allows for the receipt of goods, services, works, repaired items, inter stores transfers, etc. 		
	<ul style="list-style-type: none"> The system automates generation of Goods Received Note (GRN) that must be associated / matched with an open Purchase Order(s). 		
	<ul style="list-style-type: none"> The system allows for full or partial receipts against a purchase order or contract 		

	<ul style="list-style-type: none"> The system must allow for the inspection of goods/services/works 		
	<ul style="list-style-type: none"> The system must allow for ad hoc set up of the Inspection and Acceptance Committee 		

	<ul style="list-style-type: none"> The system must be able to capture the Inspection and Acceptance Committee reports after a workflow approval process 		
	<ul style="list-style-type: none"> The system must be able to address situations where the goods have been received but needs to be returned to the supplier. 		
	<ul style="list-style-type: none"> The system should be able to provide alerts to key stakeholders on attainment of certain GRN status 		
	<ul style="list-style-type: none"> Allow for invoicing only for an approved GRN or for consolidated GRNs 		
	<ul style="list-style-type: none"> The system has the ability to support one-time vendors 		
	<ul style="list-style-type: none"> The system has the ability to maintain approved supplier catalogue/ lists for inventory items 		
	10. Goods/Services Receipts and Inspections – Reporting		
	<ul style="list-style-type: none"> The system has the ability to generate reports on pending PR/PO supplier-wise, item-wise and department-wise 		
	<ul style="list-style-type: none"> The system should be able to support the production of standard goods receipts reports 		
	11. Stores Management		
	11.1: Inventory Item		
	The system MUST allow the definition of new Item without affecting the ongoing processes.		
	The system MUST allow the definition and maintenance of alpha numeric character codes for items		
	The system MUST allow the definition of all the inventory items at one master location.		
	The system MUST allow the definition of item templates with predefined set of item attributes		
	The system MUST capture following important information for each Item:		
	Item Number/code (alphanumeric)		
	Item description (brief information)		
	Unit price		
	Minimum stock quantity, maximum stock quantity		
	Safety stock level, re-order stock quantity		
	Last stock date, last stock quantity		

	Cycle count code		
	Physical attributes such as weight, volume, length etc.		
	Lot number, serial number, bar code number		

	Supplier information, country of origin		
	Expiry date, purchase date		
	The system MUST allow the definition of the following inventory types inside the application e.g. Discrete Items and fluids, Serial numbered items etc.		
	The system MUST have an ability to define new Item categories and Catalogues based on their characteristics		
	The system MUST allow the assignment of Inventory items to one of these categories and catalogues defined		
	The system allows for the issuance of goods, inter stores transfers, etc.		
	The system automates generation of Goods Issue Note that must be associated / matched with a stores requisition note.		
	The system allows for full or partial issues/receipts against a stores requisition note or contract		
	Ability of the system to enable creation and maintenance of approved items price lists		
	Ability of the system to enable creation and maintenance of supplier items catalogues		
	Ability of the system to create Electronic Catalogue for all items /Services		
	The system allows for the receipt of goods to a specific location in the store		
	The system must allow for the issuance of goods from a specific location in the store		
	The system must allow for the generation of:		
	stores issue notes		
	stores receipt notes		
	goods in transit notes		
	prove of delivery notes		
	The system has the functionality that allows different movements of stock items from one store location to another		
	The system has the functionality to close a store for stock take purposes		
	The system has the functionality to open a store after a stock take		
	The system has the ability to create a new storage location including:		
	- A new store		
	- A new stock room		
	- A new bin location		
	The system has the ability to retire an existing storage location including:		
	- A store		

	- A stock room		
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	- A bin location		
	12. Inventory Item – reporting		
	The system can generate, per storage location, the store movement reports including:		
	- Current stocks (Value and Quantity reports, reorder level, balance to reorder level, etc.)		
	- Receipts per a selected period (Value and Quantity reports)		
	- Issues per a selected period (Value and Quantity reports)		
	- Transfers ((Value and Quantity reports))		
	- Damaged stocks (Value and Quantity reports)		
	- Expired stocks (Value and Quantity reports)		
	- Stock Analysis Report: this report gives information classifying all the items available based on their importance and value.		
	Item categories Report		
	Stock issues		
	Per user		
	Per department/Section		
	13. Inventory maintenance		
	Embed a workflow for the receipt/rejection of inventory (including related procurement and stores movements) and capture approvals, comments and documentation associated with this process/task and updating of the inventory data.		
	Automatic updating of inventory levels and balances after issuance/reception of inventory (stocked items and services)		
	Valuation of stock: The following options must be available for calculating the unit cost of a good in the store:		
	Last In First Out (LIFO)		
	First in First Out (FIFO)		
	Simple average		
	Weighted average		
	The following details should be captured for updating the stock levels:		
	Item / part number		
	Item name		
	Inventory type/category		
	Item description		
	Stock date		
	Comments		

	Goods Receipt Note (GRN) number		
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	Delivery note number		
	Quantity in		
	Cost of items		
	Quantity out		
	Expiry date		
	Supplier number (referenced to the supplier master data in the procurement module)		
	Supplier name (referenced to the supplier master data in the procurement module)		
	Allow the receiving of inventory both at once and partially		
	Should maintain a central access-controlled items master database		
	The system must give alerts and notifications when stocks are at the re-order level and on expiry dates		
	Embed a workflow for the disposal of items (fixed assets and store items) and capture approvals, comments and documentation associated with this process /task and updating of the information in the fixed asset register or inventory		
	Support the identification of items for disposal both manually and through preconfigured rules e.g. expired, useful life exhausted, damaged, etc.		
	Automatic generation of disposal codes		
	13.1 Inventory maintenance – Reporting		
	The system must have provision for extracting any or all of the information above as a report		
	14. Stock takes		
	The system should be able to generate a Stock take count lists		
	Allow the manual stock verification stock counts capture by the system, reconcile the physical count against the system count and produce a variance report		
	The system should allow for the different actions to be carried out to address the identified variances (e.g. adjustments of the system values, or capture of missing store movements, etc.)		
	The system should allow for approval of the stock take through a workflow process		
	The system should allow for the following types of stock takes:		
	Annual stock take		
	Periodic stock takes		
	Ad hoc stock takes		

	Select (e.g. Fast moving items, etc.) stock takes		
	The system should have the ability to stop, complete, approve/cancel, and/or suspend the movement freeze the stock movements during the period of stock take.		
	The system should allow for scheduled stock takes alerts		
	The system should have the ability to set up an ad hoc Stock take and Physical Verification Committee		
	The system should have the ability to set up access rights to the ad hoc Stock take and Physical Verification Committee for only the duration of the stock take		
	The system should have the ability to carry out the stock take for a section or stock room of the store		
	The system should have the ability to generate all standard reports with respect to stock takes		
	The system should allow for capture of stock take notes/observations to accompany the physical counts		
	15. Additional Reporting requirements		
	In addition to providing a flexible reporting mechanism, the system must be readily able to generate the following reports:		
	Value of store with options for calculating the value of the store		
	With items flagged for disposal		
	Minus items flagged for disposal		
	The Head of Procurement should have access to a screen that provides him/her with an update on the status of all workflows in his/her department. The objective of this is to allow the procurement manager to have an overview of the status of all requests and activities of his department.		
	16. Tendering Requirements		
	16.1 Types of Tender		

	<p>The system should support various types of Bids applicable at NAMICO namely: Open Tendering</p> <ul style="list-style-type: none">a) Request for Proposalsb) Request for Quotationsc) Restricted Tenderingd) Direct Procuremente) Low Value Procurementf) Design Competition		
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	<ul style="list-style-type: none"> g) Electronic Reverse Auction Framework h) Agreements Force Account i) Two-Stage Tendering 		
	<p>The system should have the facility of Indent Creation that allows for one to:</p> <ul style="list-style-type: none"> a) Approve and reject Indent b) Split Single Indent into multiple Tenders 		
	16.2 Tender Notice Creation		
	<p>It should be possible to float Tender notice in any format</p> <p>System should allow Archival of Tenders and allow retrieval when required</p> <p>System should allow Cancelled Tender to be revived</p> <p>It should be possible to categorize a Tender as New, Live, Archived, on hold, Cancelled, etc.</p> <p>There should be provision for attaching images with Tender Notice</p> <p>The system should have the capability of assigning unique internal reference number to each Tender</p>		
	16.3 Tender Setting		

	<p>System should support Tenders with or without RFP cost</p> <p>System should support Tenders with bid security requirements (or Earnest Money Deposit)</p> <p>System should support Tenders with or without Pre-Bid Meeting</p> <p>System should support Tenders with or without pre-qualification phase</p> <p>System should support Tenders with or without Technical Bid</p> <p>System should have provision for inviting EOI and issuing RFP to only prequalified bidders of EOI</p> <p>System should have inbuilt check to ensure that incomplete bids in any manner is not accepted</p> <p>Bid withdrawal option should be available such that Vendor is allowed to withdraw bid, that they might have submitted on or before due date and time.</p> <p>System should have facility of sending emails to be sent to all Registered Vendors</p> <p>System should have the ability to set maximum size of single file upload</p> <p>System should have ability for uploading various types of documents</p> <p>System should have facility for Vendor Registration & Administration</p>		
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	<p>NAMICO should be able to black list a Vendor It should be possible to down load Tenders free of cost or at determined cost System should maintain Vendor details of those Vendors who have downloaded the Tender It should be possible to specify brief description of the Tender System should allow upload of multiple documents for a Tender. System should have the facility of virus scan for uploading documents</p>		
	<p>16.4 Electronic Document Formats</p>		
	<p>The system should support the capture of records created in native file formats from commonly used Software applications such as: standard office applications (word processing, spread-sheets, presentation, simple databases) email client applications imaging applications web authoring tools</p>		
	<p>16.5 Bid Submission</p>		
	<p>System should allow submission along with attachments As each phase gets completed the comparative chart of Vendors should get auto generated Rejected Vendors should not qualify for next round System should have the facility to export data to spread sheets The system should “Generate Bid Comparison Sheet”. Comparative Statement should be generated automatically and will be in MS Excel format.</p>		
	<p>16.6 Reverse Auctioning</p>		
	<ul style="list-style-type: none"> • System should have provision of Reverse / Forward auctions, • including Rank bidding, Anonymous & Alias bidder etc. • System should have provision for Parameters Defining and Setting of Opening Price, Historic Price, Reserve Price, Landed & Base Price • The System should display and record Start and End Time • There should be Automatic and Manual Extensions of closing rules and/or times • There should be facility of Uploading file attachments • There should be facility for Message Broadcast to Vendors during auction for information and clarification 		

	<ul style="list-style-type: none"> • Administration features like Roles and Rights, checking login status of participants etc.should be available • The system should be capable of providing event-wise history, Vendor wise, Product- wise, date-wise reports • System should have the provision to generate L1, L2, L3 chart dynamically • Audit Trail - logs should be available for all User Transactions and administrative actions • The system should have the ability to set:Auction Opening Price <ol style="list-style-type: none"> 1. Auction 2. Historic 3. Price 4. Auction 5. Reserve Price 6. Landed & Base Price 7. Auction Start and End Time • The system should have the ability to set Automatic and Manual Extensions and Closing rules • The system should have the ability to set Data validation rules, Auction Rules like lowest • / highest bid wins or highest / lowest quality wins etc. • The system should allow the uploading of file attachments • Facility is provided to NAMICO to define criteria for accepting bids during the auction, with any one of the following options: 'Meet or Beat on Start Price' and also 'Beat on Rank-1Bid' 'Meet or Beat on Start Price', and also 'Meet or Beat on Rank-1 Bid' 'Beat on Starting Price', and also 'Beat on Rank-1 Bid' 'Meet or Beat on Start Price', 'Beat on own Last Bid' Facility is provided to the NAMICO to select the 'Currency' for bidding. In case of multiple entities, it is possible to select a separate currency for each entity The system's Disclosure Norms for Security & 		
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	<p>Transparency capabilities should allow for;</p> <ul style="list-style-type: none">Display of system-generated 'Pseudo-Identity' in lieu of each Bidder's 'Actual-Identity'Display of Rank-1 Bid Details (i.e. Rank-1 Bidder's Identity)Display of Bidder's Own RankDisplay of Other Bidders' DetailsDisplay of Reserve-Price		
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	The system maintains a complete Audit-trail of the various activities of the auction process.		
	16.7 Vendor Contract Management		
	<p>The system should support the automatic/balanced allocation of the file(s) to the contract drafting officer for drafting the contract</p> <p>The system should support the sending of an allocation alert to the drafting officer and contract reviewer(s)</p> <p>The system should support the reallocation instructions by the reallocating officer and capture the reason for their allocation</p> <p>The system should support the upload, storage, versioning and tracking of iterations of draft documents in their original form (e.g. Ms Word, Ms Excel, pdf etc.)</p> <p>The system should support the insertion of annotations on the draft contract document by each reviewer</p> <p>The system should support the tracking of comments made by reviewers (i.e. both internal and external reviewers)</p> <p>The system should support the final editing of the penultimate contract package (i.e. Notification of award, letter of acceptance, negotiation minutes, draft contract etc.) by the drafting officer</p> <p>The system should support the uploading of the signed contract by authorized personnel</p> <p>The system should support the sending of alerts upon loading of the signed contract to the relevant internal stakeholders (e.g. Finance, Procurement, user department etc.)</p> <p>The system should support the flagging of the file serialized number with the various statues such as opened, signed, registered open, on hold, closed)</p>		
	16.8 Purchase Indent Management		
	<p>Indent Creation – Facilitate online creation of the works and goods indents in standardized formats. Facilitate upload of documents (Drawings-scanned or NAMICO format, technical specifications, etc.) with the indent. The system should auto generate a unique indent number for each new indent.</p>		

	Demand Aggregation - In case of goods procurement, provide		
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	<p>online templates for demand estimation from several departmental locations. Support consolidation of several indents into a single indent by a centralized indenting Corporation.</p>		
	<p>Estimate Preparation – In case of works and goods procurements facilitate preparation of estimates should be supported.</p>		
	<p>Indent Approval Workflow – Facilitate hierarchy-based workflow in the system for creation and approval of the indent. In the workflow system, comments made by an approver at each stage or creator should be frozen, stored, and viewable. In case of works procurement, facilitate the workflow for creation and approvals (Administrative & Technical Approvals) of plans and estimates. Facilitate configuration of separate workflows depending on the type & value of work selected at the time of creating the indent (e. g. major or minor work, original or repair, etc.)</p>		
	<p>Indent Approval - Facilitate online review of submitted indent by the approver. In case of works procurement, support use of Digital Certificates for providing administrative approval and technical sanction online. Facilitate providing comments, etc. with the indent. System should capture comments of the approvers at each stage. Update/cancel the indent number based on the results of the review by the authorized approver. Provision for modifications/amendments after publication of indent</p>		
	<p>Identification of indents under project code - Allow linking of the indent number with the overall project code, if the procurement is part of a bigger project with multiple procurements (indents). Facilitate computation of the overall project expenditure based on the expenditures of the individual procurements (indents) linked to the project code</p>		

	Integration with Budgeting/ Project Management Module - Allow integration with existing budgeting/project management module or back- office application to facilitate validation of		
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	project (indent) cost with available departmental budget, to avoid project cost overruns		
	Indent Tracking - Allow tracking of the indent throughout the creation and approval cycle using the unique indent number		
	2.3.4 System Administration Requirements		
	1. System Administration		
	The System MUST have ability to provide adequate audit trails that can be reviewed for information. These records MUST be non – editable and be secured from unauthorized access.		
	Electronic records MUST maintain the old and new values to the change and the transaction used to generate the record.		
	The system parameters, including application controls, authorizations and standard security configuration MUST be clear, well defined and can allow processing in an efficient and controlled manner, while protecting valuable data.		
	The system MUST support multiple levels of security. This includes protecting certain fields from unauthorized access. In addition, access to certain functions and data MUST be protected until they are approved by policy makers (e.g. budget scenarios that are created for analysis prior to publishing a formal recommendation.) Application security MUST be integrated with database security.		
	Templates or group functions MUST be provided to facilitate maintenance. Changes in assignment or termination MUST automatically trigger a review of the employee’s security privileges. Comprehensive logs of transactions and security incidents MUST be maintained for auditing purposes.		
	The system MUST allow one to export logs on various formats for further offline analysis.		
	2. System Access		
	The System MUST have a robust security administration and authorization profiles that assure system access.		

	The system user and security administration functions MUST provide the necessary controls to ensure that not more than one		
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	individual have the same identification code (user ID) or password.		
	The system MUST execute Corporation checks in its security administration and authorization profiles to ensure only authorized individuals can access the system or perform specific operations.		
	<ul style="list-style-type: none"> The system MUST record changes to authorization profiles. 		
	<ul style="list-style-type: none"> The system MUST facilitate archival of documents from the ERP System to a Separate database and MUST be accessible. 		
	<ul style="list-style-type: none"> Access to archived records MUST be secured using standard authorization profiles. 		
	<ul style="list-style-type: none"> System MUST prohibit multiple users from updating the same records simultaneously. 		
	<ul style="list-style-type: none"> The number of failed attempts allowed MUST be configurable. 		
	<ul style="list-style-type: none"> The system MUST have features that prevent the user from further access when the SET number of failed attempts is exceeded. 		
	<ul style="list-style-type: none"> The system MUST allow one to define security events / incidents which upon occurrence, the system generates an email and sends it to a defined distribution list to notify the security administration "in an immediate and urgent manner". The messaging system MUST also have the capability of being interfaced to send this message externally to e-mail system such as Microsoft Exchange or SMS system. 		
	<ul style="list-style-type: none"> The system MUST have capability to be configured to force users to change passwords at various intervals and provide system checks to prevent users from repeating passwords or using combinations of alphanumeric characters that are included in the user ID. User IDs can also be invalidated for example, when an employee leaves the company. 		
	<ul style="list-style-type: none"> The system MUST have the ability to log out the user automatically after a specified period of an idle session. 		

	<ul style="list-style-type: none">• The profiles user defined or system defined MUST be maintained at different levels for better security usage.		
	<ul style="list-style-type: none">• The system MUST have the ability to support single sign-on.		

	<ul style="list-style-type: none"> The users in the systems MUST have controlled access to different business areas such as modules and /or menus in the system. The system administrator MUST control this access. 		
	The user MUST be able to access a single or multiple menus / module in the system as granted by the system administrator.		
	<ul style="list-style-type: none"> The system MUST have facility to run an individual job schedule request / group of job schedule requests. 		
	<ul style="list-style-type: none"> The system MUST have facility to create a group of job schedule requests that would be accessible to a single or group of users. 		
	<ul style="list-style-type: none"> The system should have the facility to create user defined menus and attach different business functions to it. 		
	<ul style="list-style-type: none"> The system MUST provide default data groups or user defined data groups to enable access to different business data in the system. 		
	<ul style="list-style-type: none"> The system MUST have an inbuilt System Administrator Role with the ability to monitor all the requests submitted in the system. 		
	<ul style="list-style-type: none"> The system MUST have the flexibility to create user defined responsibilities / profiles to which different requests / functions / reports can be attached. 		
	<ul style="list-style-type: none"> The system MUST have support for alpha- numeric characters as part of the password. The system must be able to enforce such a policy for all users 		
	<ul style="list-style-type: none"> The system MUST be able to define policies for different levels of users e.g. a "High Security" profile for power users whose requirements are stricter than "Medium Security" profile for business end users 		
	<ul style="list-style-type: none"> The system MUST have support for One Time Password functionality at the time of user creation or amendment. It MUST be able to enforce this as a global policy for all users. 		

	<ul style="list-style-type: none"> • Clear segregation of privileges must be presented and implemented by security matrix of roles against Corporation. Security matrix will be gathered and created by vendor during the project analysis phase 		
	<ul style="list-style-type: none"> • Data masking/encryption of sensitive data MUST be supported 		

	<ul style="list-style-type: none"> The system MUST support digital signatures 		
	3. User Interface		
	<ul style="list-style-type: none"> The system MUST provide an intuitive, user-friendly, and easy – to – use interface that minimizes the need for training. 		
	<ul style="list-style-type: none"> The system SHOULD have a common look and feel across all modules. 		
	<ul style="list-style-type: none"> Online help MUST be available for all modules. 		
	<ul style="list-style-type: none"> The system MUST identify errors, inconsistencies or additional requirements at the time data is entered. Processing of the transaction MUST be suspended and / or re- routed to resolve the problem in “real time”. 		
	<ul style="list-style-type: none"> The system SHOULD provide quick menus(favorites) which would be helpful to store the most used menu for a user. 		
	<ul style="list-style-type: none"> The language of the system and all its components MUST be English. 		
	4. Date and Time Stamping (Audit Trails)		
	<ul style="list-style-type: none"> The system MUST automatically generate all records and logs when creating, modifying, or deleting data. 		
	<ul style="list-style-type: none"> These records and logs MUST be date and time stamped and MUST include the userID of the individual who is logged onto the system and performed the action. 		
	5. System Flexibility		
	<ul style="list-style-type: none"> All records generated by the system MUST be accurate, complete, and presented in a human readable format. 		
	<ul style="list-style-type: none"> The system MUST support open systems interfaces with complementary software partners. 		
	<ul style="list-style-type: none"> The system MUST be portable and environment independent. 		
	<ul style="list-style-type: none"> The system MUST support Graphical User Interface (GUI) input and output screen design. 		
	<ul style="list-style-type: none"> The system MUST support web-based architecture. 		

	<ul style="list-style-type: none"> • The system MUST provide a multi-user access solution capability of supporting an unlimited number of work stations while at the same time providing high speed simultaneous multi-user response times. 		
	<ul style="list-style-type: none"> • The System MUST be scalable 		
	<ul style="list-style-type: none"> • The system MUST have interface capabilities feeding into the back-office from other systems (such as, including, but not 		

	limited to, legacy systems and web-based systems).		
	<ul style="list-style-type: none"> The system MUST be vendor agnostic. It must be compatible with standard hardware, operating system, database management software, networking hardware, internet and intranet supporting the applications software. 		
	<ul style="list-style-type: none"> The system MUST be a complete, fully developed, integrated and operationally proven system offering unsurpassed maturity and reliability. 		
	<ul style="list-style-type: none"> The system MUST be easily reconfigured to respond to changes in business practices, policy directives, organization structure, statutes and regulations. As business requirements change, the system MUST also change to support the new requirements. 		
	5. Output Controls		
	<ul style="list-style-type: none"> The system MUST ensure that the processed data is provided to users in a consistent and secure manner. 		
	6. Multiple Environments		
	<ul style="list-style-type: none"> In addition to the production environment, the system MUST support independent copies for training, development, and test. 		
	7. System Performance		
	<ul style="list-style-type: none"> The system MUST be responsive and available. Any volume (batch) processing MUST not interfere with online responsiveness or availability. 		
	8. Disaster Recovery		
	<ul style="list-style-type: none"> Bidders MUST propose a number of disaster recovery configurations and should indicate the level of protection offered by each alternative. 		
	<ul style="list-style-type: none"> The system MUST support rapid fail-over or redeployment in the event of problems or planned maintenance. 		
	9. Reporting		
	<ul style="list-style-type: none"> The system MUST include comprehensive reporting tools that allow for easy access to authorized data. 		
	<ul style="list-style-type: none"> Standard reports SHOULD be included that will serve as models for customized reporting as well as provide for basic functional reports. 		

	<ul style="list-style-type: none"> Report wizards or similar techniques SHOULD be available to guide users through report creation. 		
	<ul style="list-style-type: none"> The system MUST be designed such that reporting activities do not compromise the responsiveness of the interactive system. 		
	<ul style="list-style-type: none"> The system MUST be able to provide departments the ability to develop ad hoc reports at their discretion. The system MUST include a data dictionary or similar provision to allow non-technical users to identify the appropriate data elements for inclusion in their reports. 		
	<ul style="list-style-type: none"> Reports MUST have output flexibility i.e. can be printed or exported into several industry-standard formats such as Adobe PDF, XML, XLS, XLSX, CSV, TXT (tab delimited), etc. 		
Overall score			

3 Project Management Requirements

Requirement Number	Requirement description	Bidders Response	Reference page in the document
3.1	<ul style="list-style-type: none"> The bidder MUST provide information on the proposed, recognized methodology for implementing the integrated Enterprise Resource Planning including the functional analysis, installation, configuration, testing, staging, data migration deployment activities, risk management, and training services. 		
3.2	<ul style="list-style-type: none"> The vendor MUST develop an overall implementation strategy which includes a comprehensive project implementation plan; it shall include, but not be limited to, 		
	- Tasks estimation		
	- Project planning		
	- Work allocation		
	- Progress tracking and monitoring		

	- Reporting scenarios		
3.3	<ul style="list-style-type: none">• The vendor MUST develop an issuesresolution methodology.		

3.4	<ul style="list-style-type: none"> The vendor MUST develop a risk identification and mitigation strategy And develop a contingency. 		
3.5	<ul style="list-style-type: none"> The vendor MUST develop technical standards for modifications, security,conversion, and system administration for all modules. 		
3.6	<ul style="list-style-type: none"> The bidder MUST describe what tools andtechniques will be used in managing this project. 		
3.7	<ul style="list-style-type: none"> The bidder MUST describe the project management team structure, along withthe roles and responsibilities of all team members. 		
3.8	<ul style="list-style-type: none"> The bidder MUST describe the approach that will be used for task management and tracking as well as project meetingsand documentation, as well as the updating of the senior management on timely status of the project. 		
3.9	<ul style="list-style-type: none"> The bidder MUST describe what resources (Business & IT resources) will be necessaryfor the project to succeed including clear resource roles and responsibilities during the project and how to better utilize these resources, and transfer the knowledge for them. 		
3.10	<ul style="list-style-type: none"> The bidder MUST describe what procedureswill be used to keep the projection track, and what escalation procedures will be used to address any problems with project progress. 		
3.11	<ul style="list-style-type: none"> The bidder MUST provide specificationsand a list of all project deliverables. 		
3.12	<ul style="list-style-type: none"> The bidder MUST NOT propose a development, customization or implementation model where offshore resources are required to log on to onshore servers, instead the vendor MUST propose a plan for performing all development activities on – site. 		

3.13	<ul style="list-style-type: none"> The bidder MUST HAVE the Infrastructure to host the ERP application, Database and its associated portals for two (2) years 		
Overall score			

4 Data Management Requirement

Requirement Number	Requirement description	Bidders Response	Reference page in the document
4.1	The system MUST have capability for data conversion.		

4.2	The system MUST have exception reports to capture items not converted automatically during data conversion.		
4.3	The system MUST have functionality for methods to verify conversion, e.g. file comparisons, balance / totals / count comparisons.		
4.4	The system MUST have Parameters for successful conversion, e.g. Percentages consistency.		
4.5	The System MUST have capability for scheduling and sequencing of tasks.		
4.6	The Bidder MUST provide in the Technical proposal, sufficient details covering the data conversion approach to be adopted to ensure sound data migration:		
	- Database analysis		
	- Data mapping.		
	- Post - conversion clean up.		
	- Conversion coding development.		
	- Data integrity checking and audit methodology.		
Overall score			

5 Business Value Enhancements Requirements

Requirement Number	Requirement Description	Bidders Response Yes/No	Reference page in the document
5.1	The Vendor MUST work with the relevant user departments / sections to identify all business requirements		
5.2	The vendor MUST provide services to implement "best practice" business processes associated with the supplied systems.		
5.3	The vendor MUST provide "best practice" business process documentation for business processes associated with the supplied systems.		
5.4	The bidder MUST describe how they will assist the organization in maximizing the business value out of the supplied systems.		

5.5	The vendor must describe a detailed methodology for undertaking business		
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	process improvement activities and execute business process improvement activities		
5.6	The vendor should highlight experience of the firm for delivering the following services:		
5.7	Gap analysis of the “best practices” business processes as brought by the bidder with the organization’s current business processes.		
5.8	Developing a “To-Be” business model based on the proposed system solution and best practices.		
5.9	Creating Key Performance Indicators (KPIs) to measure the efficiency of the new processes.		
Overall score			

6 Documentation Standards

Requirement Number	Requirement description	Bidders Response	Reference page in the document
6.1	All project documentations (softcopy and hardcopy) and source code including customizations done MUST be handed over by the vendor and will be considered FINAL once approved by NAMICO project management team.		
6.2	The documentation provided should be done at all the phases of the implementation		
6.3	All project documentation versions MUST be controlled by the use of a Project Library directory. All relevant documentation MUST be handed over to NAMICO after the project implementation.		
6.4	Documents MUST be submitted in English language, including user manuals.		
6.5	Requirements and Business Process documents including customization, modification or extensions		
6.7	Solution, Architecture and design document,		
6.8	Data Migration Strategy (to be reviewed by the Corporation and amended as appropriate)		
6.9	Testing Strategy (to be reviewed by the Corporation and amended as appropriate)		
6.10	Training / User guide manuals for each module,		

6.11	Technical administration guide for all the technical		
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	components of the Solution		
6.12	Backup and restore document, and any documentation needed to transfer the knowledge.		
Overall score			

7. Training and Knowledge Transfer

Requirement Number	Requirement description	Bidders Response	Reference page in the document
7.1	The Bidder MUST provide information on the training to be offered for super users, end users ,IT personnel, among others.		
7.2	information provided should include:		
	<ul style="list-style-type: none"> • Training strategy and plan for pre and post implementation 		
	<ul style="list-style-type: none"> • Location 		
	<ul style="list-style-type: none"> • Training provider (in-house, external) 		
	<ul style="list-style-type: none"> • Type of training and modules provided 		
	<ul style="list-style-type: none"> • Medium (class room, e-learning etc.) 		
7.3	The bidder MUST provide Knowledge Transfer Plan. The approach MUST cover the following:		
	<ul style="list-style-type: none"> • Functional Area: by which the key-users MUST be able to configure, setup, and handle any new requirements after the implementation. This will allow NAMICO to continue with process improvement exercises after the completion of the implementation. 		
	<ul style="list-style-type: none"> • Assistance and guidance with development of the business rules and applying them to the software. 		
	<ul style="list-style-type: none"> • Fit and gap analysis and systems analysis. 		
	<ul style="list-style-type: none"> • Technical Area: by which the IT personnel of NAMICO MUST have the sufficient knowledge that qualify them to carry out: 		
	<ul style="list-style-type: none"> • System administration (ability to maintain, install, configure) especially in the initial stages of testing and implementation. 		
	<ul style="list-style-type: none"> • Database Administration, during the initial stages of implementation and subsequent performance tuning later in the implementation. 		

	<ul style="list-style-type: none"> Workflow and Graphical User Interface (GUI) customization support 		
	<ul style="list-style-type: none"> Release management support 		
	<ul style="list-style-type: none"> Development of data interfaces to / from external entities. 		
	<ul style="list-style-type: none"> Conversion of data. 		
7.4	The knowledge transfer plan MUST include a component where NAMICO's staff is involved in all phases of the project's design, development, implementation and support.		
7.5	Knowledge transfer for the solution implemented should include, and not limited to, operating system administration, database administration, application administration, modules management, troubleshooting, backup and restore.		
7.6	The bidder MUST provide a list of expected training documents and material to be delivered during the project.		
Overall score			

8 Testing and Acceptance

Requirement Number	Requirement description	Bidders Response	Reference page in the document
8.1	The Vendor MUST design and develop detailed functional test specifications scripts that cover all possible business scenarios with the help of business users for all the modules.		
8.2	The vendor must participate in the User Acceptance Testing processes and be available for consultation during this process.		
8.3	The vendor must implement results of all test activities conducted during the project		
8.4	The Vendor MUST designs, develop, manage and conduct Integration System Testing (IST). The scope and results of this testing must be presented to NAMICO's project Management team for approval.		
8.5	Vendor MUST design, develops, manage and conduct Performance and Volume Testing. The scope and results of this testing must be presented to NAMICO's project Management team for approval.		

8.6	Vendor MUST provide test reports on all conducted tests.		
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8.7	Vendor MUST design, develop, and conduct regression testing following the correction of problems identified during the testing cycle.		
Overall score			

9. Implementation Schedule and Location

Requirement Number	Requirement description	Bidders Response	Reference page in the document
9.1	The Implementation schedule should NOT be more than 6 months, addressing the following requirements, among others:		
	<ul style="list-style-type: none"> Project organization and management plan 		
	<ul style="list-style-type: none"> Full customization, implementation and commissioning of the ERP System. 		
	<ul style="list-style-type: none"> Regular updates to the NAMICO's Project Management team on the progress of the project. 		
	<ul style="list-style-type: none"> Hardware procurement, where necessary. 		
	<ul style="list-style-type: none"> Testing schedules such as unit testing, integration testing, etc. 		
	<ul style="list-style-type: none"> User Acceptance testing, Performance testing and regression testing. 		
	<ul style="list-style-type: none"> Training for Business Executives, Managers, end users and power users. 		
	<ul style="list-style-type: none"> Soft launch 		
	<ul style="list-style-type: none"> Final Go live 		
	<ul style="list-style-type: none"> Provision of all documentation and manuals. 		
	<ul style="list-style-type: none"> Sign – offs 		
	<ul style="list-style-type: none"> Official handover and commissioning of the system. 		
	<ul style="list-style-type: none"> Task, time and resource scheduling 		
9.2	As part of the implementation plan, the bidder should clearly demonstrate how the following reporting components have been incorporated as part of their implementation schedule:		
	<ul style="list-style-type: none"> Updates to the Project Management and Steering committee summarizing: 		
	<ul style="list-style-type: none"> Results accomplished between the reporting periods 		

	<ul style="list-style-type: none"> • Deviations from project plan/milestones and reasons for such 		
	<ul style="list-style-type: none"> • Corrective actions to be taken and their due dates 		
	<ul style="list-style-type: none"> • Other issues and outstanding problems and proposed corrective actions that should be undertaken 		
	<ul style="list-style-type: none"> • Actions that should be undertaken by NAMICO and due dates 		
	<ul style="list-style-type: none"> • Other issues that the bidder foresees could impact on the project's progress or effectiveness 		
	<ul style="list-style-type: none"> • Project management reports 		
	<ul style="list-style-type: none"> • Inspection and quality assurance reports 		
	<ul style="list-style-type: none"> • Training participants test results 		
	<ul style="list-style-type: none"> • Log of service calls and problems resolution 		
9.3	The Bidder is required to provide the specification and description of the different phases and activities of the project. The plan shall clearly specify the start and end dates (relative to contract signing) of each of the project phases specifying key milestones allowing visibility of project progress.		
Overall score			

10. Hardware and Operating System Requirements

Requirement Number	Requirement description	Bidders Response	Reference page in the document
10.1	The bidder MUST indicate which alternative hardware and operating systems the application software runs under, and the vendor's preferred option.		
	While it is expected that the vendor will conduct a technical architecture / sizing exercise during the Definition Phase to determine the required infrastructure required to host and run the solution appropriately, the bidder MUST estimate from previous experiences the following:		

	<ul style="list-style-type: none">• The Computer servers' configuration and architecture including number of applications and database servers, memory size requirements, CPU power requirements and hard disk capacity requirement for each server.		
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	<ul style="list-style-type: none"> Assess and evaluate the current infrastructure and recommend the best way to utilize it in order to get the maximum reuse of the current hardware. 		
	<ul style="list-style-type: none"> Assess current network connectivity, speed, stability, and recommend any required updates. 		
	<ul style="list-style-type: none"> Recommend other communication requirements, backup, printing, development tools, etc. 		
	The vendor MUST conduct a technical architecture / sizing exercise during the Definition Phase to determine the required infrastructure required to host and run the solution appropriately.		
10.4	The Vendor MUST ensure that the implementation is secure and reliable for access to the implemented solution.		
10.5	The Bidder MUST propose the optimal connectivity required for the solution within a WAN environment while utilizing the NAMICO's current infrastructure. The Bidder MUST also recommend any additional optional bandwidth and requirements to the existing infrastructure.		
Overall score			

11. Warranty, Post implementation and Annual Maintenance Support

Requirement Number	Requirement description	Bidders Response	Reference page in the document
11.1	The Bidder MUST describe the approach and plan to provide on-site support for six to 1 (one) year as may be required during the project implementation		
11.2	The Bidder MUST describe the services and activities that will be provided during the one year off-site support.		
11.3	The Bidder will be expected to provide comprehensive warranty maintenance of the ERP system after the post-implementation support period. This will include all aspects of the system support including software updates, among others. This will be spelt out in a Service Level Agreement (SLA) between the bidder and NAMICO.		
Overall score			

FINANCIAL EVALUATION

Tenderers who score less than the required pass will be automatically disqualified.
Tenderers who pass the technical evaluation will be evaluated further.

No	Description	Unit of Measure	Unit Cost (KES)	Total Cost (KES)
1.	Development and Installation ERP Microsoft Dynamics 365 Business Central Solution	Lot		
2.	Training cost (Provide a detailed training cost plan)	Lot		
3.	Microsoft Dynamics 365 Business Central Solution licenses for one year (60 USERS)	Lot		
4	Hosting fee for 2 years	Lot		
4.	Grand Totals (to be taken to the Form of Tender)			

PART 2 – PROCURING ENTITY'S REQUIREMENTS

TECHNICAL SPECIFICATIONS

1.0 DETAILS OF ERP MICROSOFT DYNAMICS 365 BUSINESS CENTRAL SOLUTION REQUIREMENT

1.1 Objectives of ERP Solution

The main objective of investing in ERP based applications is to integrate all processes and systems. The specific objectives include: -

- a) Implement a web-based Enterprise Resource Planning (ERP) system to automate and integrate all the Corporation's operations/processes included in the user requirements;
- b) Review of ALL the processes, workflows and any other workflow which departments shall suggest during the implementation;
- c) Automate all approvals and workflows through the system;
- d) Enhance the ability to support management decision-making based upon access to accurate and timely financial and operational information and reports from the ERP system and database system business intelligence reports.
- e) Ensure that NAMICO users and IT administrators are suitably trained and equipped in the usage and support of the ERP.
- f) Integrate with other existing systems e.g. MS Dynamics CRM, Government Human Resource Information System (G.H.R.I.S) SharePoint, email system and any other system that shall be found necessary for NAMICO operations.
- g) Improve organizational productivity through the reduction of time spent on managing documents among others.
- h) Provide periodical and ad hoc reports.

1.2 Scope of Work

In order for NAMICO to get maximum benefit from implementing the System upgrade, the successful bidder will be expected to: -

- a) Study the current environment and Corporation's processes and provide recommendations to fully realize the objectives of the system;
- b) Evaluate the existing systems and get a detailed understanding of the current Corporation's operations;

- c) System analysis in relation to the Corporation's functions and procedures;
- d) Analysis of the hardware for the new system and provide specifications to the Corporation on the appropriate hardware requirements for the system. This includes server hardware and other peripheral devices specifications that may be needed for the new environment.

- e) Development, installation, customization, configuration, testing and commissioning of the ERP system based on the proposed functionalities detailed in the tender document
- f) The vendor will be required to supply, develop, install, configure, test, train, hand-hold users, commission, maintain and support the ERP modules and apply adequate patches, upgrades, utilities and tools to achieve full functionality as will be specified by the client.
- g) Preparation of a project proposal detailing implementation methodology, training plans, timelines and milestones.
- h) Training of staff on the system; this shall entail imparting skills required to enable users be able to understand and have knowledge of the ERP system. Technical training that will involve the provision of complete training of trainers on administration of supplied ERP solution, system development and training on related software including databases.
- i) The vendor should streamline integration of ERP solution with existing systems;
- j) System data migration to the new system, test and implement the workflow solutions;
- k) Supply and install the required licenses and renewal programme and the entitlement;
- l) Provide annual support and maintenance of the entire system for two years and thereafter sign annual SLA for maintenance;
- m) Must be able to integrate with Microsoft Office to collaborate effectively and share information;
- n) Enable automatic offsite backup of the system;
- o) Supply the system's documentation in the form of installation media, user manuals and administration manuals.
- p) Develop a business blue print with users to form a basis for the contract.

2. TECHNICAL SPECIFICATIONS OF THE ERP SYSTEM UPGRADE

2.1 SUMMARIZED ERP REQUIREMENTS

Key Modules to be upgraded.

1. Financial Management
2. Supply Chain Management (Procurement Services)
3. Funds Management
4. Advanced Human Resources
5. Payroll Management
6. Inventory Management
7. Asset Management

8. General and IT Administration

Additionally, the vendor will configure the following modules and submodules in close consultation with the client: -

- Procurement and Inventory Management (E-Bidding/Procurement Portal)
- Human Resources and Payroll (Employee Self Service)
- Recruitment Portal

Technical Requirements

Notes on preparing the Technical Requirements

The Technical Requirements—in combination with the Implementation Schedule and the supporting System Inventory Tables – state the Supplier's obligations to design, supply and install the Information System and, as such, should be “voiced” to the Supplier (i.e., “The System MUST...” “The Supplier MUST...”). They form the contractual basis for the Procuring Entity-Supplier interactions on technical matters (in combination with refinements introduced through the Supplier's tender, the Project Plan, and any Change Orders).

The Technical Requirements also must include all the technical details that Tenderers will need to prepare realistic, responsive, and competitive tenders (i.e., covering all their obligations under the Contract if so awarded). However, matters addressed to the Tenderer's (i.e., before contract award) generally belong in the Format of the Technical Tender Section 8 of Part 1.

Often Technical Requirements are based on either consultant's project proposals (voiced to the Procuring Entity's management) or tenders from previous procurements (voiced to the Procuring Entity). In both instances, care needs to be taken in converting these materials into Technical Requirements (voiced to the Supplier). Otherwise, substantial ambiguity will be introduced in to the Technical Requirements from, among other things, “aspirational” text suggesting the benefits (to the Procuring Entity) which are often not obligations that the Supplier can deliver on or be held to deliver upon. Tender based language will often include “sales pitches”, such as “expandability up to sixteen processors”, whereas the Technical Requirements need to be stated as threshold values to be cleared by the Supplier (e.g., “expandability to at least sixteen processors”).

Any sustainable procurement technical requirements shall be clearly specified. The sustainable procurement requirements may be specified to enable evaluation of such a requirement on a pass/ fail basis and/orated criterion (point system), as appropriate.

To the greatest extent possible, the Technical Requirements should be expressed in terms of the Procuring Entity's business activities, rather than a technological design. This leaves it up to the market to determine what specific Information Technologies can best satisfy these business needs. This is particularly relevant where the Information System will embody complex business logic in the form of application software.

Even in the case of a relatively straight-forward Information System, where the business need scan be clearly linked to technological and methodological requirements known in advance of any tendering, the requirements must still be vendor-neutral and admit the widest possible range of technical responses.

Accordingly, references to brand names, catalog numbers, or other details that limit the source of any item or component to a specific manufacturer should be avoided. Where such references are unavoidable, the words “or substantially equivalent” should be added to permit Tenderers to tender equivalent or superior technologies. (The Procuring Entity will need to be ready to indicate how this equivalence will be assessed.) Only in the most exceptional circumstances may Tenderers be required to offer brand-name

items and the equivalency clause be omitted. Such brand-name components are the absolute fewest possible and each component has been explicitly identified in the Tender Data Sheet for ITT 16.3.

Similarly, where national standards or codes of practice are specified, the Procuring Entity should include a statement that other national or international standards “that are substantially equivalent” will also be acceptable.

To help ensure comparable tenders and ease Contract execution, the Procuring Entity's requirements must be stated as clearly as possible, with minimum room for differing interpretations. Thus, wherever possible, technical requirements should include definitive characteristics and quantifiable measures. If technical characteristics in a specific range, or above or below specific thresholds, are required, then these should be clearly specified. For example, the expandability of a server should be stated as “no less than four processors.” Technical specifications that state only “four processors” create an unnecessary uncertainty for Tenderers regarding whether or not, for example, a server that could be expanded up to six process or boards would be technically responsive.

Quantitative technical specifications must, however, be employed with care. They can dictate technical architectures and, thus, be unnecessarily restrictive. For example, a quantitative requirement for the minimum width of the data path in a processor may be unnecessarily restrictive. Instead, a specification of a required level of standard performance benchmark test is more appropriate, allowing different technical approaches to achieving the Procuring Entity's functional and performance objectives. In general, the Procuring Entity should try to use widely accepted direct measures of performance and functionality whenever possible and carefully review specifications for those that might dictate technical architectures.

It is important that the Technical Requirements clearly identify which are mandatory features (for which a tender's nonconformance might require rejection for non-responsiveness) and which are preferable features that can be included or excluded from a tender at the Tenderer's option. To enhance the clarity of the specifications, Procuring Entities are advised to use the word “MUST” (in bold capitals) in sentences describing mandatory requirements. A clear requirement numbering scheme is also essential.

The following presents a sample outline format for the Technical Requirements Section. This can and should be adapted to meet the Procuring Entity's needs for the specific Information System to be procured.

A. acronyms Used in the Technical Requirements

i) Acronym Table

Note: Compile a table of organizational and technical acronyms used in the Requirements. This can be done, for example, by extending the following table.

	Term	Explanation
	Bps	bits per second
	Cps	characters per second
	DBMS	Database Management System
	DOS	Disk Operating System
	Dpi	dots per inch
	Ethernet	IEEE 802.3 Standard LAN protocol
	GB	Gigabyte
	Hz	Hertz (cycles per second)

	Term	Explanation
	IEEE	Institute of Electrical and Electronics Engineers
	ISO	International Standards Organization
	KB	Kilobyte
	kVA	Kilovolt ampere
	LAN	Local area network
	Lpi	lines per inch
	Lpm	lines per minute
	MB	Megabyte
	MTBF	Mean time between failures
	NIC	Network interface card
	NOS	Network operating system
	ODBC	Open Database Connectivity
	OLE	Object Linking and Embedding
	OS	Operating system
	PCL	Printer Command Language
	Ppm	pages per minute
	PS	PostScript -- Adobe page description language
	RAID	Redundant array of inexpensive disks
	RAM	Random access memory
	RISC	Reduced instruction-set computer
	SCSI	Small Computer System Interface
	SNMP	Simple Network Management Protocol
	SQL	Structured Query Language
	TCP/IP	Transmission Control Protocol / Internet Protocol
	V	Volt
	WLAN	Wireless LAN

A. Functional, Architectural and Performance Requirements

i) Legal and Regulatory Requirements to be met by the Information System

1.1 The Information System MUST comply with the following laws and regulations:

- 1) *[as appropriate, summarize: each relevant legal code and regulations that govern the business processes and procedures that will be automated with the Information System;]*
- 2) **Note:** If appropriate, prepare a sub section with the relevant legal codes and regulations to be included in the Background and Informational Materials and reference these materials.

ii) Business Function Requirements to be met by the Information System

2.1 The Information System MUST support the following business functions

- 1) *[describe, at the appropriate level of detail for the Information System being supplied and installed: each specific business processes and procedures that will be automated by the Information System.]*
- 2) **Note:** *These business process descriptions may be textual as well as presented in a formal system analysis formats (e.g., process model and data model, use-case model, entity-relation diagrams, swim-lane diagrams, etc.)*

As appropriate, prepare a subsection for the Background and Informational Materials with samples of existing standardized reports, data entry forms, data formats, data coding schemes, etc. which the Information System will need to implement; reference these materials.

iii) Architectural Requirements to be met by the Information System

(3.1) The Information System MUST be supplied and configured to implement the following architecture.

- 1) Software Architecture: *[specify: features (use diagrams as appropriate)]*.
- 2) Hardware Architecture: *[specify: features (use diagrams as appropriate)]*.

iv) Systems Administration and Management Functions Required to be met by the Information System

- 1) The Information System MUST provide for the following management, administration, and security features at the overall System level in an integrated fashion.
- 2) Installation, Configuration and Change Management: *[specify: features]*.
- 3) Operational Monitoring, Diagnostics, and Troubleshooting: *[specify: features]*.
- 4) User Administration and Access Control; User and Usage Monitoring and Audit Trails: *[specify: features]*
- 5) System and Information Security and Security Policies: *[specify: features]*
- 6) Back-up and Disaster- Recovery: *[specify: features]*

v) Performance Requirements of the Information System

5.1 The Information System MUST reach the following performance levels.

- 1) *[describe, at the appropriate level of detail for the particular Information System being supplied and installed: each relevant throughput and/or response times for specific business processes and procedures automated by the System; also describe: in business process terms, the relevant conditions under which the System must achieve these performance standards (e.g., the number of concurrent users, type of transactions, type and quantity of business data that the System must process in achieving these performance standards, etc.)]*
- 2) *Note: Whenever feasible, business functions should be stated and used as the basis for performance specifications. Relying solely on technological requirements can in advertently restrict competition.*

B. Service Specifications– Supply& Install Items

i) System Analysis, Design and Customization/ Development

- (1) The Supplier MUST perform the following Analysis and Design activities using a formal system analysis/ development methodology with the following key activities and design deliverables.
- 2) Detailed Analysis: *[for example, specify: System Design Document; System Requirements Specification; Interface Requirements Specification); Software/System Test Descriptions; Software/ System Test Plan, etc.]*

- 3) Physical Design: [for example, specify: **Software Design Description; Interface Design Document; Data base Design Document; etc.**]
- 4) Integrated System: [for example, specify: **User's Manual; Operations Manual; Source Code; CASE Files; etc.**]

ii) Software Customization/ Development

- (1) The Supplier MUST perform Software Customization / Development using a formal software development methodology with the following characteristics and/ or with the following technologies and/ or tools.
- 2)[for example, describe: **Software Development Method** (e.g., Cascade, Rapid Application Development; and/ or **Open Standards** (e.g., Java, XML, etc.); and/ or **CASE tools**, etc.]

iii) System Integration (to other existing systems)

- 1) The Supplier MUST perform the following Integration Services [for example, describe: **existing information systems** (as appropriate, reference the relevant subsection of the Background and Informational Materials Section containing any detailed description of existing systems); and specify: **technical and functional level of integration with the Information System.**]

(iv) Training and Training Materials

(4.1) The Supplier MUST provide the following Training Services and Materials.

- 1) User: [for example, specify: **minimum curricula, modes of training, modes of testing, and training materials for: the introduction to computers, the operation of the relevant equipment incorporated in the System, as well as the operation of the Software applications incorporated in the System; as appropriate, reference the relevant subsection in the Background and Informational Material Section containing any detailed information regarding the available training facilities; etc.**]
- 2) Technical: [for example, specify: **minimum curricula, modes of training, modes of testing (e.g., certification levels), training materials and training locations for: the key technology and methodology components of the Information System; etc.**]
- 3) Management: [for example, specify: **minimum curricula, modes of training, modes of testing, training materials and training locations for: the familiarization with the functionality, technology and methodology components of the Information System, corporate management of information systems; etc.**]

v) Data Conversion and Migration

- 1) The Supplier MUST provide services and tools to perform the following Data Conversion and Migration Services: [for example, specify: **volume of data; type, structure, and media of data; timing of conversion; quality assurance and validation methods; etc.**]

vi) Documentation Requirements

(6.1) The Supplier MUST prepare and provide the following Documentation.

- 1) End-User Documents: [for example, specify: **type(s) of end-user documents; language; content; formats; quality control and revision management; medium; reproduction and distribution methods; etc.**]
- 2) Technical Documents: [for example, specify: **type(s) of technical documents; language; content; formats; quality control and revision management; medium; reproduction and distribution methods; etc.**]

vii) Requirements of the Supplier's Technical Team

(7.1) The Supplier MUST maintain a technical team of the following roles and skill levels during the Supply

and Installation Activities under the Contract:

- 1) Project Team Leader: [for example, specify: *education/ certifications, years' experience in, demonstrated successful experience in, etc.*]
- 2) [specify: Business Area] Expert: [for example, specify: *education/ certifications, years' experience in, demonstrated successful experience in, etc.*]
- 3) System Analyst: [for example, specify: *education/certifications, years' experience in, demonstrated successful experience in, etc.*]
- 4) Database Expert: [for example, specify: *education/certifications, years' experience in, demonstrated successful experience in, etc.*]
- 5) Programming Expert: [for example, specify: *education/certifications, years' experience in, demonstrated successful experience in, etc.*]
- 6) System Administration / Security Expert: [for example, specify: *education/ certifications, years' experience in, demonstrated successful experience in, etc.*]
- 7) Computer Hardware Expert: [for example, specify: *education/ certifications, years' experience in, demonstrated successful experience in, etc.*]
- 8) Network and Communications Expert: [for example, specify: *education/ certifications, years' experience in, demonstrated successful experience in, etc.*]
- 9) Training Expert: [for example, specify: *education/certifications, years' experience in, demonstrated successful experience in, etc.*]
- 10) Documentation Specialist: [for example, specify: *education/certifications, years' experience in, demonstrated successful experience in, etc.*]
- 11) ...

C. Technology Specifications– Supply& Install Items

(i) General Technical Requirements

- 1) Language Support: All information technologies must provide support for the [insert: *either national or business language(s) of the end-user(s)*]. Specifically, all display technologies and software must support the ISO [insert: *character set number*] character set and perform sorting according to [insert: *appropriate standard method*].
- 2) Electrical Power: All active (powered) equipment must operate on [specify: *voltage range and frequency range, e.g., 220v +/- 20v, 50Hz +/- 2Hz*]. All active equipment must include power plugs standard in [insert: *Procuring Entity's Country*].
- 3) Environmental: Unless otherwise specified, all equipment must operate in environments of [specify, *temperature, humidity, and dust conditions, e.g., 10-30 degrees centigrade, 20-80 percent relative humidity, and 0-40 grams per cubic meter of dust*].

(3) Safety:

- 4.1 Unless otherwise specified, all equipment must operate at noise levels no greater than [insert: *maximum number, e.g.,55*] decibels.
- 4.2 All electronic equipment that emits electromagnetic energy must be certified as meeting [insert: *emission standard, e.g., USFCC class B or END 55022 and END 50082-1*], or equivalent, emission standards.

ii) Computing Hardware Specifications

- 2.1 Processing Unit Type 1: [specify: *name of processing unit and technical function (e.g., Central Database Server)*]:

- 1) Processing unit performance: As configured for the tender, the processing unit **MUST**, at a minimum,
 - a) Achieve [*specify: **standard benchmark test or tests and minimum performance levels, for example, "SPEC CPU 2006 rating"***] (Or, for PCs) Achieve a minimum performance equal to a score of [*specify: **score***] under the benchmark [*specify: **benchmark, for example "Sysmark 2007 Rating"***]
 - b) Provide input-output performance, as follows [*specify: **minimum input-output performance levels** (e.g., data bus transfer rates; standard peripheral interfaces; minimum number of concurrent terminal sessions, etc.)*]
 - (2) Processor expandability: [*for example, specify: **minimum acceptable number of processors; minimum acceptable levels of performance; minimum acceptable degree of expandability for processors/performance, relative to tender configuration; minimum acceptable number of internal Sub system expansions lots; etc.,***]
 - (3) Processor memory and other storage: [*for example, specify: **main memory; cache memory; disk storage; tape storage; optical drives; etc.***]
- Note: If the upgrade requirements over the next few years for processing power, memory, etc., are reasonably well known at the time the tendering documents are to be issued, the Procuring Entity may wish to incorporate these requirements in the Recurrent Cost Table and possibly include them in the Contract Price. This will subject them to competition and provide away contractually to control future price increases. This approach reserves for the Procuring Entity the option of including upgrades in the Contract, even if upgrades are not needed in the end. An SCC needs to be included clarifying how upgrades will be treated in the final Contract.
- (4) Processing unit fault tolerance: [*for example, specify: **error checking; failure detection, prediction, reporting, and management; redundant power supplies and other modules; "hot-swappable modules"; etc.***]
 - (5) Processing unit management features: [*for example, specify: **features and supported standards; local and remote management; etc.***]
 - (6) Processing unit input and output devices: [*for example, specify: **network interfaces and controllers; display; keyboard; mouse; bar-code, smart-card, and identification-card readers; modems; audio and video interfaces and devices; etc.***]
 - (7) Other processing unit features: [*for example, specify: **power-saving features; battery life for portable equipment; etc.***]
- 2.2 Processing Unit Type 2: [*specify: **name of processing unit and technical function** (e.g., General Purpose Work station):*]

3.1.2.1 ...

ii) Network and Communications Specifications

3.1 Local Area Network:

- 1) Equipment and software: [*for example, specify: as appropriate, for each type of equipment and software: **protocols supported; performance levels; expandability, fault tolerance, administration, management and security features; etc.***]
- 2) Cabling: [*for example, specify: **cable type(s); topology(ies); cable protectors, channels and other installation standards** (e.g., ANSI / EIA / TIA 598); cable labeling schemes, references to premises drawings; etc.]*]

3.2 Wide-Area Network:

- 3) Equipment and software: [*for example, specify: **protocols supported; performance levels; expandability; fault tolerance; administration, management, and security features; etc.***]

- 4) Telecommunications Services: *[for example, specify: media; capacity; protocols supported; performance levels; expandability; fault tolerance; administration, management, and security features; etc.]*
- 3.2 Other Communications Equipment: *[for example, specify: modems; facsimile devices; modem and facsimile servers, etc.]*
- 3.3 Video Conferencing/ Congress Equipment:
- 3.5. ...

iii) Ancillary Hardware Specifications

- 1) Shared Data Storage Devices: *[specify: disk; tape; optical storage devices, including capacities, interfaces, hardware-based administration/ diagnostics/ fail over, etc.]*:
- 2) Shared Output and Input Devices:

General Requirements: Unless otherwise specified, all shared output and input devices must be capable of handling A4 standard sized paper.

Printers: *[for example, specify: high-speed, high-quality printer; standard-speed, high-quality printer; high-speed, large-format (A3) printer; color, high-quality printer, video and output devices; etc.]*

Scanners: *[for example, specify: scanner resolution; paper-/ film-handling features; speed; etc.]*

- 3) Power Conditioning Devices:

3.1 Uninterruptable Power Supplies: *[for example, specify: output power delivery and duration capacity, power filtering capacity, battery features, interfaces, device management diagnostics and fail over features, etc.]*

- 4) Specialized Furnishing/ Equipment:

4.1 Equipment Cabinets/ Racks: *[for example, specify: size, capacity, physical access and access control, ventilation and environmental control features, etc.]*

4.2 Environment Control Equipment: *[for example, specify: air conditioning units; humidity control equipment; etc.]*

4.3 Physical Access Control Equipment: *[for example, specify: door entry controls; intrusion detection; video surveillance, etc.]*

4.4 Logical Access Control Equipment: *[for example, specify: secure identity tokens; token readers, etc.]*

iv) Standard Software Specifications

- 5 System Software and System - Management Utilities:

- 1) Processing unit type 1: *[for example, specify: operating system; back-up, optimization, anti-virus, and other utilities; systems administration, maintenance, and troubleshooting tools; etc.]*
- 2) Processing unit type 2: *[for example, specify: operating system; back-up, optimization, anti-virus, and other utilities; systems administration, maintenance, and troubleshooting tools; etc.]*
- 3) Etc...

5.1 Networking and Communications Software: *[for example, specify: protocols, media and equipment to be supported; network services, management and administration features; security and failure*

management features; etc.]

5.2 General-Purpose Software: *[for example, specify: Office Automation Software; programming tools*

and libraries; etc.]

5.3 Database Software and Development Tools: *[for example, specify: database and database management feature; development tools and environments; etc.]*

5.4 Business Application Software: [*for example, specify: specific business functions to be supported in native code; application management feature; customization options and tools; etc.*]

v) Consumables

6.1 Printer Ink/ Toner–PrinterType1:

vi) Other Non-IT Goods

6.2 Work station Desks:

6.3 Photocopiers:

6.4 Specialized Mechanical Systems–Data center [*for example, specify: raised floor system, electrical distribution subsystem, etc.*]

D. Testing and Quality Assurance Requirements

(i) Inspections

1.1 Factory Inspections: [*if any, specify: the items, criteria, and methods to be employed by the Procuring Entity, or its agent, during factory inspections of the Information Technologies and other Goods prior to their shipment to the site(s).*]

1.2 Inspections following delivery: [*if any, specify: the items, criteria, and methods to be employed by the Procuring Entity, or its agent, upon delivery and unpacking of the Information Technologies and other Goods to the Site(s).*]

ii) Pre-commissioning Tests

2.1 In addition to the Supplier's standard check-out and set-up tests, the Supplier (with the assistance of the Procuring Entity) must perform the following tests on the System and its Sub systems before Installation will be deemed to have occurred and the Procuring Entity will issue the Installation Certificate (s) (pursuant to GCC Clause 26 and related SCC clauses).

2.2 [*specify: Sub system1(as defined in the Site Table[s] attached to the Implementation Schedule) specify: tests, test conditions, success criteria, etc.*]

2.3 [*specify: Sub system2(as defined in the Site Table{s}) specify: tests, test conditions, success criteria, etc.*]

2.4 the Entire System: Pre-commissioning Tests for the entire System are: [*specify: tests, test conditions, success criteria, etc.*]

iii) Operational Acceptance Tests

3.1 Pursuant to GCC Clause27 and related SCC clauses, the Procuring Entity (with the assistance of the Supplier) willperformthefollowingtestsontheSystemanditsSubsystemsfollowingInstallati on to determine whether the System and the Sub systems meet all the requirements mandated for Operational Acceptance.

3.2 [*specify: Subsystem 1 (as defined in the Implementation Schedule) specify: tests, test conditions, success criteria, etc.*]

3.3 [*specify: Subsystem 2 (as defined in the Implementation Schedule) specify: tests, test conditions, success criteria, etc.*]

3.4 the Entire System: Pre-commissioning Tests for the entire System are: [*specify: tests, test conditions, success criteria, etc.*]

Note: The complexity of the Operational Acceptance Testing needed will vary in accordance with the complexity of the System being procured. For simpler Information Systems Operational Acceptance Testing may simply consist of requiring a specified period of trouble-free System or Sub system operation under normal operating conditions. For more complex Systems, Operational

Acceptance testing will require extensive, clearly defined tests under either production or mock-production conditions.

E. Service Specifications–Recurrent Cost Items

i) Warranty Defect Repair

1.1 The Supplier MUST provide the following services under the Contract or, as appropriate under separate contracts (as specified in the tendering documents).

1) Warranty Defect Repair Service: [for example, specify: *coverage period; response time and problem- resolution performance standards; modes of service, such as on-site, on-call, or return to warehouse; etc. (indicate how these may vary among hardware, software, network technologies, etc.)*]

2) ...

ii) Technical Support

2.1 The Supplier MUST provide the following services under the Contract or, as appropriate under separate contracts (as specified in the tendering documents).

1) User support / hot line: [for example, specify: *coverage period; response time and problem resolution performance standards; etc.*]

2) Technical Assistance: [for example, specify: *categories of technical staff required; anticipated tasks and objectives; response-time performance standards; etc. (indicate how these may vary among hardware, software, network technologies, etc.)*]

3) Post-Warranty Maintenance Services: [for example, specify: *coverage period; response time and problem-resolution performance standards; modes of service, such as on-site, on-call, or return to warehouse; etc. (indicate how these may vary among hardware, software, network technologies, etc.)*]

4)

iii) Requirements of the Supplier's Technical Team

3.1 The Supplier MUST provide a technical team to cover the Procuring Entity's anticipated Post-Operational Acceptance Technical Assistance Activities Requirements (e.g., modification of the Information System to comply with changing legislation and regulations) with the roles and skill levels that are specified below. The minimum expected quantities of inputs by the Supplier's technical support team are specified in the relevant System Inventory Tables for Recurrent Cost Items.

1) System Analyst: [for example, specify: *education/certifications, years' experience in, demonstrated successful experience in, etc.*]

2) Database Expert: [for example, specify: *education/certifications, years' experience in, demonstrated successful experience in, etc.*]

3) Programming Expert: [for example, specify: *education/certifications, years' experience in, demonstrated successful experience in, etc.*]

4) ...

Note: The Technical Assistance Team specification may be used to develop tender prices for technical support Recurrent Costs. These may be included in the main Contract or be subject to separate contracts. In either regard, to obtain meaningful and comparable tender prices, the Procuring Entity will need to specify the roles of the technical support team members in this section and indicate the quantities of the corresponding inputs in the Systems Inventory Tables for Recurrent Cost items.

F. Implementation Schedule

Notes on preparing the Implementation Schedule *the Implementation Schedule summarize when and where Installation, and Operational Acceptance should take place for all Sub systems and/ or major components of the System, and for the overall System it self—as well as any other major Contract milestones.*

Note: *The delivery date is not presented in the Implementation Schedule. Under Incoterms 2010 for CIP, Delivery refers to the date when the Supplier delivers the goods to the first carrier at the port of embarkation, not to the arrival of the goods at the destination site. Delivery (shipment) date therefore varies according to the country of origin of the goods and the Supplier’s chosen method of transport.*

The target dates need to be realistic and achievable in light of the capacity of both the average Supplier and the Procuring Entity to carry out their respective contract obligations. Also, the Procuring Entity must take care to ensure that the dates specified in the Schedule are consistent with any specified elsewhere in the tendering document, especially in the GCC/SCC (e.g., and/ or times specified for the submission and acceptance of the Agreed Project Plan). The work breakdown structure (deliverables) in the Implementation Schedule should be sufficiently detailed to facilitate careful management of the Contract - but not so detailed that it unnecessarily constrains tenderers from organizing the proposed work in the most efficient and effective manner.

To facilitate the tendering and the contract management processes, the Implementation Schedule, the System Inventory Tables and Price Schedules should be closely linked. In particular, the Implementation Schedule defines the major deliverable Subsystems. For each Subsystem there should be a corresponding System Inventory Table or Tables. These System Inventory Tables catalog the specific items (inputs) comprising the Sub system, as well as the quantities of each item required (for the supply and install cost items as well as their current cost items). For each System Inventory Table there should be a corresponding Price Schedule that closely mirrors the System Inventory Table. Careful development of these materials will greatly improve the chances of obtaining complete and comparable tenders (and ease the tender evaluation process) as well as improving the likelihood that the Procuring Entity’s and Supplier’s interactions during contract execution are closely orchestrated (thus easing the burden of contract management and improving the likelihood of successful implementation of the Information System).

The sample tables comprise:

- a) An Implementation Schedule Table;*
- b) A Site Table(s); and*
- c) A Table of Holidays and other Non-Working Days.*

The Procuring Entity should modify these tables, as required, to suit the particulars of the System (and Sub systems) to be supplied and installed. The sample text in the tables is illustrative only and should be modified or deleted as appropriate. The timings stated in the Implementation Schedule should be specified in weeks from Contract Effectiveness. This will ease the maintenance of the tendering documents during the preparation and tendering processes.

Where appropriate, the Implementation Schedule should indicate the deliverables against which Liquidated Damages maybe applied in the event of implementation delays arising from the actions of the Supplier (as governed by the SCC and GCC clause 28). These milestones should be kept to the essential minimum needed by the Procuring Entity to ensure contract discipline by the Supplier- but not so many that they unnecessarily strain the Procuring Entity-Supplier relationship upon which the successful implementation of the Information System will invariably depend.

The Site Table(s) catalog the physic allocation of the site(s) where the System is to be supplied, installed, and operated. The site(s) may consist of a number of branch offices in remote regions, different departments or offices in the same city, or a combination of these. The Procuring Entity must specify this information in sufficient detail so that Tenderers can accurately estimate costs related to:

- a) Delivery and insurance;*
- b) Installation, including cabling and inter-building communications, etc.*
- c) Perform support services, such as warranty defect repair, maintenance, and other technical support services; and*
- d) Other related Service obligations the successful Tenderer will have to perform under the Contract, including related travel and subsistence costs.*

This information will also help Tenderers identify which site(s) may warrant a site visit during the period they are

preparing their tenders. If the System presents complex installation challenges, site layout drawings should be included in the Background and Informational Materials Section.

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

Beneficiary: _____

Request for Tenders No:

Date: _____

TENDER GUARANTEE No.: _____

Guarantor: _____

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

[signature(s)]

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

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.:

1. Whereas [*Name of the tenderer*] (hereinafter called “the tenderer”) has submitted its tender dated [*Date of submission of tender*] for the [*Name and/or description of the tender*] (hereinafter called “the Tender”) for the execution of__under Request for Tenders No. _____ (“the ITT”).

2. KNOW ALL PEOPLE by these presents that WE of [**Name of Insurance Company**] having our registered office at (hereinafter called “the Guarantor”), are bound unto [*Name of Procuring Entity*] (hereinafter called “the Procuring Entity”) in the sum of (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this ____day of _____20 ____.

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

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

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

[Date]

[Signature of the Guarantor]

[Witness]

[Seal]

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

TENDER - SECURING DECLARATION FORM {r 46 and 155(2)}

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

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

Tender No. [insert number of tendering process]

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

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

Signed:

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

Name:

Duly authorized to sign the bid for and on behalf of: _____ [insert complete name of Tenderer]

Dated on..... day of..... [Insert date of signing]

Seal or stamp

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VI - General Conditions of Contract

General Conditions of Contract

A. CONTRACT AND INTERPRETATION

1. Definitions

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

a) Contract Elements

- i) “Contract” means the Contract Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein. The Contract Agreement and the Contract Documents shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.
- ii) “Contract Documents” means the documents specified in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments to these Documents).
- iii) “Contract Agreement” means the agreement entered into between the Procuring Entity and the Supplier using the form of Contract Agreement contained in the Sample Contractual Forms Section of the tender documents and any modifications to this form agreed to by the Procuring Entity and the Supplier. The date of the Contract Agreement shall be recorded in the signed form.
- iv) “GCC” means the General Conditions of Contract.
- v) “SCC” means the Special Conditions of Contract.
- vi) “Technical Requirements” means the Technical Requirements in Section VII of the tendering documents.
- vii) “Implementation Schedule” means the Implementation Schedule in Section VII of the tendering documents.
- viii) “Contract Price” means the price or prices defined in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- ix) “Procurement Regulations” refers to the Regulations issued under the Public Procurement and Asset Disposal Act (2015).
- x) “tendering documents” refers to the collection of documents issued by the Procuring Entity to instruct and inform potential suppliers of the processes for tendering, selection of the winning tender, and Contract formation, as well as the contractual conditions governing the relationship between the Procuring Entity and the Supplier. The General and Special Conditions of Contract, the Technical Requirements, and all other documents included in the tendering documents reflect the Procurement Regulations that the Procuring Entity is obligated to follow during procurement and administration of this Contract.

b) Entities

- i) “Procuring Entity” means the entity purchasing the Information System, as **specified in the SCC**.
- ii) “Project Manager” means the person **named as such in the SCC** or otherwise appointed by the Procuring Entity in the manner provided in GCC Clause 18.1 (Project Manager) to perform the duties delegated by the Procuring Entity.
- iii) “Supplier” means the firm or Joint Venture whose tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.
- iv) “Supplier's Representative” means any person nominated by the Supplier and named as such in the Contract Agreement or otherwise approved by the Procuring Entity in the manner provided in GCC Clause 18.2 (Supplier's Representative) to perform the duties delegated by the Supplier.
- v) “Subcontractor” means any firm to whom any of the obligations of the Supplier, including preparation of any design or supply of any Information Technologies or other Goods or Services, is sub contracted directly or indirectly by the Supplier.
- vi) “Adjudicator” means the person named in Appendix 2 of the Contract Agreement, appointed by agreement between the Procuring Entity and the Supplier to make a decision on or to settle any

Dispute between the Procuring Entity and the Supplier referred to him or her by the parties, pursuant to GCC Clause 43.1 (Adjudication).

c) Scope

- i) "Information System," also called "the System," means all the Information Technologies, Materials, and other Goods to be supplied, installed, integrated, and made operational (exclusive of the Supplier's Equipment), together with the Services to be carried out by the Supplier under the Contract.
- ii) "Subsystem" means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System.
- iii) "Information Technologies" means all information processing and communications-related hardware, Software, supplies, and consumable items that the Supplier is required to supply and install under the Contract.
- iv) "Goods" means all equipment, machinery, furnishings, Materials, and other tangible items that the Supplier is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Supplier's Equipment.
- v) "Services" means all technical, logistical, management, and any other Services to be provided by the Supplier under the Contract to supply, install, customize, integrate, and make operational the System. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support.
- vi) "The Project Plan" means the document to be developed by the Supplier and approved by the Procuring Entity, pursuant to GCC Clause 19, based on the requirements of the Contract and the Preliminary Project Plan included in the Supplier's tender. The "Agreed Project Plan" is the version of the Project Plan approved by the Procuring Entity, in accordance with GCC Clause 19.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
- vii) "Software" means that part of the System which are instructions that cause information processing Sub systems to perform in a specific manner or execute specific operations.
- viii) "System Software" means Software that provides the operating and management instructions for the underlying hardware and other components, and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Systems Software. Such System Software includes, but is not restricted to, micro-code embedded in hardware (i.e., "firmware"), operating systems, communications, system and network management, and utility software.
- ix) "General-Purpose Software" means Software that supports general-purpose office and software development activities and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be General-Purpose Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.
- x) "Application Software" means Software formulated to perform specific business or technical functions and interface with the business or technical users of the System and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Application Software.
- xi) "Standard Software" means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Standard Software.
- xii) "Custom Software" means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Custom Software.
- xiii) "Source Code" means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).

- xiv) “Materials” means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Procuring Entity under the Contract.
- xv) “Standard Materials” means all Materials not specified as Custom Materials.
- xvi) “Custom Materials” means Materials developed by the Supplier at the Procuring Entity's expense under the Contract and identified as such in Appendix 5 of the Contract Agreement and such other Materials as the parties may agree in writing to be Custom Materials. Custom Materials includes Materials created from Standard Materials.
- xvii) “Intellectual Property Rights” means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extractor re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sub license, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter in to computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.
- xviii) “Supplier's Equipment” means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Supplier, but excluding the Information Technologies, or other items forming part of the System.

d) Activities

- i) “Delivery” means the transfer of the Goods from the Supplier to the Procuring Entity in accordance with the current edition Incoterms specified in the Contract.
- ii) “Installation” means that the System or a Subsystem as specified in the Contract is ready for Commissioning as provided in GCC Clause 26 (Installation).
- iii) “Pre-commissioning” means the testing, checking, and any other required activity that may be specified in the Technical Requirements that are to be carried out by the Supplier in preparation for Commissioning of the System as provided in GCC Clause 26 (Installation).
- iv) “Commissioning” means operation of the System or any Subsystem by the Supplier following Installation, which operation is to be carried out by the Supplier as provided in GCC Clause 27.1 (Commissioning), for the purpose of carrying out Operational Acceptance Test (s).
- v) “Operational Acceptance Tests” means the tests specified in the Technical Requirements and Agreed Project Plan to be carried out to ascertain whether the System, or a specified Sub system, is able to attain the functional and performance requirements specified in the Technical Requirements and Agreed Project Plan, in accordance with the provisions of GCC Clause 27.2 (Operational Acceptance Test).
- vi) “Operational Acceptance” means the acceptance by the Procuring Entity of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Clause 27.3 (Operational Acceptance).

e) Place and Time

- i) “Supplier's Country” is the country in which the Supplier is legally organized, as named in the Contract Agreement.
- ii) **Unless otherwise specified in the SCC** “Project Site (s)” means the place (s) in the Site Table in the Technical Requirements Section for the supply and installation of the System.
- iii) “Eligible Country” means the countries and territories eligible for participation in procurements.
- iv) “Day” means calendar day of the Gregorian Calendar.
- v) “Week” means seven (7) consecutive Days, beginning the day of the week as is customary in Kenya.
- vi) “Month” means calendar month of the Gregorian Calendar.
- vii) “Year” means twelve (12) consecutive Months.

- viii) “Effective Date” means the date of fulfillment of all conditions specified in Article 3 (Effective Date for Determining Time for Achieving Operational Acceptance) of the Contract Agreement, for the purpose of determining the Delivery, Installation, and Operational Acceptance dates for the System or Sub system(s).
- ix) “Contract Period” is the time period during which this Contract governs the relations and obligations of the Procuring Entity and Supplier in relation to the System, as **unless otherwise specified in the SCC**, the Contract shall continue in force until the Information System and all the Services have been provided, unless the Contract is terminated earlier in accordance with the terms set out in the Contract.
- x) “Defect Liability Period” (also referred to as the “Warranty Period”) means the period of validity of the warranties given by the Supplier commencing at date of the Operational Acceptance Certificate of the System or Sub system(s), during which the Supplier is responsible for defects with respect to the System (or the relevant Sub-system[s]) as provided in GCC Clause 29 (Defect Liability).
- xi) “The Coverage Period” means the Days of the Week and the hours of those Days during which maintenance, operational, and/ or technical support services (if any) must be available.
- xii) The Post-Warranty Services Period” means the number of years **defined in the SCC** (if any), following the expiration of the Warranty Period during which the Supplier may be obligated to provide Software licenses, maintenance, and/ or technical support services for the System, either under this Contractor under separate contract(s).

2. Contract Documents

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

3. Interpretation

3.1 Governing Language

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

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

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

3.3 Headings

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

3.4 Persons

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

3.5 Incoterms

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

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

3.6 Entire Agreement

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

3.7 Amendment

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

3.8 Independent Supplier

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

Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Sub contractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Procuring Entity, and nothing contained in the Contractor in any sub contract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Sub contractors and the Procuring Entity.

3.9 Joint Venture

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

3.10 Non-waiver

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

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

3.11 Severability

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

3.12 Country of Origin

“Origin” means the place where the Information Technologies, Materials, and other Goods for the System were produced or from which the Services are supplied. Goods are produced when, through manufacturing, processing, Software development, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The Origin of Goods and Services is distinct from the nationality of the Supplier and may be different.

4. Notices

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

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

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

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

- 4.1.4 Either party may change its postal, facsimile, electronic mail, or EDI addresses for receipt of such notices by ten (10) days' notice to the other party in writing.
- 4.2 Notices shall be deemed to include any approvals, consents, instructions, orders, certificates, information and other communication to be given under the Contract.
- 4.3 Pursuant to GCC Clause 18, notices from/to the Procuring Entity are normally given by, or addressed to, the Project Manager, while notices from/to the Supplier are normally given by, or addressed to, the Supplier's Representative, or in its absence its deputy if any. If there is no appointed Project Manager or Supplier's Representative (or deputy), or if their related authority is limited by the SCC for GCC Clauses 18.1 or 18.2.2, or for any other reason, the Procuring Entity or Supplier may give and receive notices at their fall back addresses. The address of the Project Manager and the fall back address of the Procuring Entity are as **specified in the SCC** or as subsequently established/ amended. The address of the Supplier's Representative and the fall back address of the Supplier are as specified in Appendix 1 of the Contract Agreement or as subsequently established/amended.

5. Governing Law

- 5.1 The Contract shall be governed by and interpreted in accordance with the laws of Kenya.
- 5.2 Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in Kenya when
- a As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - b by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

6 Fraud and Corruption

- 6.1 The Procuring Entity requires compliance with the laws of Kenya on Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in its statutes.
- 6.2 The Procuring Entity requires the Suppliers to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

B. SUBJECT MATTER OF CONTRACT

7 Scope of the System

- 7.1 Unless otherwise expressly **limited in the SCC** or Technical Requirements, the Supplier's obligations cover the provision of Information Technologies, Materials and other Goods as well as the performance of all Services required for the design, development, and implementation (including procurement, quality assurance, assembly, associated site preparation, Delivery, Pre-commissioning, Installation, Testing, and Commissioning) of the System, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the Contract and the Agreed Project Plan.
- 7.2 The Supplier shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and Materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Operational Acceptance of the System as if such work and/or items and Materials were expressly mentioned in the Contract.
- 7.3 The Supplier's obligations (if any) to provide Goods and Services as implied by the Recurrent Cost tables of the Supplier's tender, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), areas **specified in the SCC**, including the relevant terms, characteristics, and timings.

8 Time for Commencement and Operational Acceptance

- 8.1 The Supplier shall commence work on the System within the period **specified in the SCC**, and without prejudice to GCC Clause 28.2, the Supplier shall thereafter proceed with the System in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed Project Plan.
- 8.2 The Supplier shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time for Operational Acceptance of such Sub system (s) is specified in the Contract) in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed Project Plan, or within such extended time to which the Supplier shall be entitled under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).

9 Supplier's Responsibilities

- 9.1 The Supplier shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of information technologies, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. In particular, the Supplier shall provide and employ only technical personnel who are skilled and experienced in the irrespective callings and supervisory staff who are competent to adequately supervise the work at hand.
- 9.2 The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Procuring Entity and on the basis of information that the Supplier could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the Supplier relating to the System as at the date twenty-eight (28) days prior to tender submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.
- 9.3 The Supplier shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed Project Plan (pursuant to GCC Clause 19.2) within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision-making may constitute grounds for termination pursuant to GCC Clause 41.2.
- 9.4 The Supplier shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in Kenya that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Procuring Entity under GCC Clause 10.4 and that are necessary for the performance of the Contract.
- 9.5 The Supplier shall comply with all laws in force in Kenya. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Supplier. The Supplier shall indemnify and hold harmless the Procuring Entity from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Sub contractors and their personnel, but without prejudice to GCC Clause 10.1. The Supplier shall not indemnify the Procuring Entity to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Procuring Entity.
- 9.6 The Supplier shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor.
- 9.7 Any Information Technologies or other Goods and Services that will be incorporated in or be required for the System and other supplies shall have their Origin, as defined in GCC Clause 3.12, in a country that shall be an Eligible Country, as defined in GCC Clause 1.1 (e) (iv).
- 9.8 Pursuant to paragraph 2.2e. of Appendix B to the General Conditions the Supplier shall permit and shall cause its subcontractors and sub-consultants to permit, the PPRA and/or persons appointed by the PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Supplier's and its Sub contractors' and sub-consultants' attention is drawn to Sub-Clause 6.1 which provides, inter alia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the PPRA's prevailing sanctions procedures).

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

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

10 Procuring Entity's Responsibilities

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

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

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

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

10.5 In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Supplier, as specified in the Technical Requirements, SCC, Agreed Project Plan, or other parts of the Contract, the Procuring Entity shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.

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

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

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

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

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

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

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

C. Payment

11 Contract Price

- 11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- 11.2 Unless an adjustment clause is **provided for in the SCC**, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the System pursuant to GCC Clause 39 or to other clauses in the Contract;
- 11.3 The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
- 11.4 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$.

12 Terms of Payment

- 12.1 The Supplier's request for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the System or Subsystem(s), Delivered, Pre-commissioned, Installed, and Operationally Accepted, and by documents submitted pursuant to GCC Clause 22.5 and upon fulfillment of other obligations stipulated in the Contract. The Contract Price shall be paid as **specified in the SCC**.
- 12.2 No payment made by the Procuring Entity herein shall be deemed to constitute acceptance by the Procuring Entity of the System or any Sub system (s).
- 12.3 Payments shall be made promptly by the Procuring Entity, but in no case later than (sixty (60) days after submission of a valid invoice and upon satisfactorily performance of the contractual obligations by the Supplier. In the event that the Procuring Entity fails to make any payment by its respective due date or within the period set forth in the Contract, the Procuring Entity shall pay to the Supplier interest on the amount of such delayed payment at the rate (s) **specified in the SCC** for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.
- 12.4 Payments shall be made in the currency (ies) specified in the Contract Agreement, pursuant to GCC Clause 11. For Goods and Services supplied locally, payments shall be made **as specified in the SCC**.
- 12.5 **Unless otherwise specified in the SCC**, payment of the foreign currency portion of the Contract Price for Goods supplied from outside Kenya shall be made to the Supplier through an irrevocable Form of credit opened by an authorized bank in the Supplier's Country and will be payable on presentation of the appropriate documents. It is agreed that the Form of credit will be subject to Article 10 of the latest revision of *Uniform Customs and Practice for Documentary Credits*, published by the International Chamber of Commerce, Paris.

13 Securities

13.1 Issuance of Securities

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

13.2 Advance Payment Security

- a) Unless otherwise specified in the SCC, the Supplier shall provide within twenty-eight (28) days of the notification of Contract award an Advance Payment Security in the amount and currency of the Advance Payment specified in SCC for GCC Clause 12.1 above and valid until the System is Operationally Accepted.
- b) The security shall be in the form provided in the tendering documents or in another form acceptable to the Procuring Entity. The amount of the security shall be reduced in proportion to the value of the System

executed by and paid to the Supplier from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Procuring Entity. **Unless otherwise specified in the SCC**, the reduction in value and expiration of the Advance Payment Security are calculated as follows:

$P*a/(100-a)$, where “P” is the sum of all payments effected so far to the Supplier (excluding the Advance Payment), and “a” is the Advance Payment expressed as a percentage of the Contract Price pursuant to the SCC for GCC Clause 12.1.

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

13.3 Performance Security

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

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

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

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

14 Taxes and Duties

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

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

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

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

D. Intellectual Property

15 Copyright

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

- 15.2 The Procuring Entity agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 16, except that additional copies of Standard Materials may be made by the Procuring Entity for use within the scope of the project of which the System is apart, in the event that the Supplier does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.
- 15.3 The Procuring Entity's contractual rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed, or otherwise transferred voluntarily except in accordance with the relevant license agreement or **unless otherwise specified in the SCC** to a legally constituted successor organization (e.g., a reorganization of a public entity formally authorized by the government or through a merger or acquisition of a private entity).
- 15.4 **Unless otherwise specified in the SCC**, the Intellectual Property Rights in all Custom Software and Custom Materials specified in Appendices 4 and 5 of the Contract Agreement (if any) shall, at the date of this Contractor on creation of the rights (if later than the date of this Contract), vest in the Procuring Entity. The Supplier shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Procuring Entity may consider necessary or desirable to perfect the right, title, and interest of the Procuring Entity in and to those rights. In respect of such Custom Software and Custom Materials, the Supplier shall ensure that the holder of an or all right in such an item does not assert it, and the Supplier shall, if requested to do so by the Procuring Entity and where permitted by applicable law, ensure that the holder of such a moral right waives it.
- 15.5 **Unless otherwise specified in the SCC**, escrow arrangements shall NOT be required.

16 Software License Agreements

- 16.1 Except to the extent that the Intellectual Property Rights in the Software vest in the Procuring Entity, the Supplier here by grants to the Procuring Entity license to access and use the Software, including all inventions, designs, and marks embodied in the Software.
Such license to access and use the Software shall:
- a) be:
 - i. non-exclusive;
 - ii. fully paid up and irrevocable (except that it shall terminate if the Contract terminates under GCC Clauses 41.1 or 41.3);
 - iii. **unless otherwise specified in the SCC** valid throughout Kenya;
 - iv. **unless otherwise specified in the SCC subject** to NO additional restrictions.
 - b) Permit the Software to be:
 - i. used or copied for use on or with the computer(s) for which it was acquired (if specified in the Technical Requirements and/or the Supplier's tender), plus a backup computer(s) of the same or similar capacity, if the primary is (are) in operative, and during a reasonable transitional period when use is being transferred between primary and back up;
 - ii. used or copied for use on or transferred to are placement computer (s), (and use on the original and replacement computer(s) may be simultaneous during a reasonable transitional period) provided that, if the Technical Requirements and/or the Supplier's tender specifies a class of computer to which the license is restricted, the replacement computer (s) is (are) within that class;
 - iii. if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or back up computer (s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access;
 - iv. reproduced for safe keeping or back up purposes;
 - v. customized, adapted, or combined with other computer software for use by the Procuring Entity, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as a set forth in this Contract;
 - vi. **unless otherwise specified in the SCC**, disclosed to, and reproduced for use by, support service suppliers and their sub-contractors, (and the Procuring Entity may sub-license such persons to use and copy for use the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as a set forth in this Contract; and
 - vii. **unless otherwise specified in the SCC** disclosed to, and reproduced for use by, NO other parties.

16.2 The Supplier has the right to audit the Standard Software to verify compliance with the above license agreements. **Unless otherwise specified in the SCC**, the Procuring Entity will make available to the Supplier, within seven (7) days of a written request, accurate and up-to-date records of the number and location of copies, the number of authorized users, or any other relevant data required to demonstrate use of the Standard Software as per the license agreement. If and only if, expressly agreed in writing between the Procuring Entity and the Supplier, Procuring Entity will allow, under a pre-specified agreed procedure, the execution of embedded software functions under Supplier's control, and unencumbered transmission of resulting information on software usage.

17 Confidential Information

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

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

17.3 Notwithstanding GCC Clauses 17.1 and 17.2:

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

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

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

- a) Now or hereafter enters the public domain through no fault of the Receiving Party;
- b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party;
- c) otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.

17.6 The above provisions of this GCC Clause 17 shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the System or any part thereof.

17.7 **Unless otherwise specified in the SCC**, the provisions of this GCC Clause 17 shall survive the termination, for whatever reason, of the Contract for three (3) years.

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

18 Representatives

18.1 Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Procuring Entity shall appoint and notify the Supplier in writing of the name of the Project Manager. The

Procuring Entity may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Supplier without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the Supplier. **Unless otherwise specified in the SCC** (if any), the Project Manager shall have the authority to represent the Procuring Entity on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Procuring Entity pursuant to GCC Clause 4.

18.2 Supplier's Representative

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

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

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

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

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

18.2.6 Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause 18.2.5 shall be deemed to be an act or exercise by the Supplier's Representative.

18.3 Objections and Removals

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

18.3.2 If any representative or person employed by the Supplier is removed in accordance with GCC Clause 18.3.1, the Supplier shall, where required, promptly appoint a replacement.

19 Project Plan

19.1 In close cooperation with the Procuring Entity and based on the Preliminary Project Plan included in the Supplier's tender, the Supplier shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as **specified in the SCC** and/ or Technical Requirements.

- 19.2 **Unless otherwise specified in the SCC**, within thirty (30) days from the Effective Date of the Contract, the Supplier shall present a Project Plan to the Procuring Entity. The Procuring Entity shall, within fourteen (14) days of receipt of the Project Plan, notify the Supplier of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Technical Requirements and/or the SCC (in this Clause 19.2 called “non-conformities” below). The Supplier shall, within five (5) days of receipt of such notification, correct the Project Plan and resubmit to the Procuring Entity. The Procuring Entity shall, within five (5) days of resubmission of the Project Plan, notify the Supplier of any remaining non-conformities. This procedure shall be repeated as necessary until the Project Plan is free from non-conformities. When the Project Plan is free from non-conformities, the Procuring Entity shall provide confirmation in writing to the Supplier. This approved Project Plan (“the Agreed Project Plan”) shall be contractually binding on the Procuring Entity and the Supplier.
- 19.3 If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clauses 39 and 40.
- 19.4 The Supplier shall undertake to supply, install, test, and commission the System in accordance with the Agreed Project Plan and the Contract.
- 19.5 **Unless otherwise specified in the SCC**, the Supplier shall submit to the Procuring Entity Monthly Progress Reports summarizing:
- i) Results accomplished during the prior period;
 - ii) cumulative deviations to date from schedule of progress milestones as specified in the Agreed Project Plan;
 - iii) corrective actions to be taken to return to planned schedule of progress; proposed revisions to planned schedule;
 - iv) other issues and outstanding problems; proposed actions to be taken;
 - v) resources that the Supplier expects to be provided by the Procuring Entity and/ or actions to be taken by the Procuring Entity in the next reporting period;
 - vi) other issues or potential problems the Supplier foresees that could impact on project progress and/or effectiveness.
- 19.6 The Supplier shall submit to the Procuring Entity other (periodic) reports **as specified in the SCC**.

20 Sub-contracting

- 20.1 Appendix 3 (List of Approved Subcontractors) to the Contract Agreement specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Procuring Entity. If no Subcontractors are listed for an item, the Supplier shall prepare a list of Subcontractors it considers qualified and wishes to be added to the list for such items. The Supplier may from time to time propose additions to or deletions from any such list. The Supplier shall submit any such list or any modification to the list to the Procuring Entity for its approval insufficient time so as not to impede the progress of work on the System. The Procuring Entity shall not withhold such approval unreasonably. Such approval by the Procuring Entity of a Subcontractor (s) shall not relieve the Supplier from any of its obligations, duties, or responsibilities under the Contract.
- 20.2 The Supplier may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Clause 20.1. If the Supplier wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek the Procuring Entity's prior approval under GCC Clause 20.3.
- 20.3 For items for which pre-approved Subcontractor lists have not been specified in Appendix 3 to the Contract Agreement, the Supplier may employ such Subcontractors as it may select, provided: (i) the Supplier notifies the Procuring Entity in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Subcontractor; and (ii) by the end of this period either the Procuring Entity has granted its approval in writing or fails to respond. The Supplier shall not engage any Subcontractor to which the Procuring Entity has objected in writing prior to the end of the notice period. The absence of a written objection by the Procuring Entity during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits the deemed approval of the Procuring Entity of Subcontractors not listed in the Contract Agreement, nothing in this Clause, however, shall limit the rights and obligations of either the Procuring Entity or Supplier as they are specified in GCC Clauses

20.1 and 20.2, or in Appendix 3 of the Contract Agreement.

21 Design and Engineering

21.1 Technical Specifications and Drawings

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

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

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

21.2 Codes and Standards

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

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

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

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

GCC Clauses 21.3.2 through 21.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

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

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

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

- 21.3.6 If any dispute occurs between the Procuring Entity and the Supplier in connection with or arising out of the disapproval by the Project Manager of any document and/ or any modification (s) to a document that cannot be settled between the parties within a reasonable period, then, in case the Contract Agreement includes and names an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance with GCC Clause 43.1 (Adjudication). If such dispute is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Supplier shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the Supplier's view on the dispute and if the Procuring Entity has not given notice under GCC Clause 43.1.2, then the Supplier shall be reimbursed by the Procuring Entity for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Achieving Operational Acceptance shall be extended accordingly.

- 21.3.7 The Project Manager's approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Supplier by or on behalf of the Procuring Entity.
- 21.3.8 The Supplier shall not depart from any approved document unless the Supplier has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this GCC Clause 21.3. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 39 (Changes to the System) shall apply to such request.

22 Procurement, Delivery, and Transport

- 22.1 Subject to related Procuring Entity's responsibilities pursuant to GCC Clauses 10 and 14, the Supplier shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.
- 22.2 Delivery of the Information Technologies, Materials, and other Goods shall be made by the Supplier in accordance with the Technical Requirements.
- 22.3 Early or partial deliveries require the explicit written consent of the Procuring Entity; which consent shall not be unreasonably withheld.
- 22.4 Packaging and Transportation
- 22.4.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Procuring Entity's instructions to the Supplier.
- 22.4.2 The Supplier will bear responsibility for and cost of transport to the Project Sites in accordance with the terms and conditions used in the specification of prices in the Price Schedules, including the terms and conditions of the associated Inco terms.
- 22.4.3 **Unless otherwise specified in the SCC**, the Supplier shall be free to use transportation through carriers registered in any eligible country and to obtain insurance from any eligible source country.

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

- 22.4.4 For Goods supplied from outside Kenya:
Upon shipment, the Supplier shall notify the Procuring Entity and the insurance company contracted by the Supplier to provide cargo insurance by cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Supplier shall promptly send the following documents to the Procuring Entity by mail or courier, as appropriate, with a copy to the cargo insurance company:
- a Two copies of the Supplier's invoice showing the description of the Goods, quantity, unit price, and total amount;
 - b usual transportation documents;
 - c insurance certificate;
 - d certificate (s) of origin; and
 - e estimated time and point of arrival in Kenya and at the site.

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

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

- a Two copies of the Supplier's invoice showing the Goods' description, quantity, unit price, and total amount;
- b Delivery note, railway receipt, or truck receipt;
- c certificate of insurance;
- d certificate (s) of origin; and
- e estimated time of arrival at the site.

25.6 Customs Clearance

- a) The Procuring Entity will bear responsibility for, and cost of, customs clearance into Kenya in accordance with the particular Incoterm(s) used for Goods supplied from outside Kenya in the Price Schedules referred to by Article 2 of the Contract Agreement.
- b) At the request of the Procuring Entity, the Supplier will make available a representative or agent during the process of customs clearance in Kenya for goods supplied from outside Kenya. In the event of delays in customs clearance that are not the fault of the Supplier:
 - i) the Supplier shall be entitled to an extension in the Time for Achieving Operational Acceptance, pursuant to GCC Clause 40;
 - ii) the Contract Price shall be adjusted to compensate the Supplier for any additional storage charges that the Supplier may incur as a result of the delay.

23 Product Upgrades

- 23.1 At any point during performance of the Contract, should technological advances be introduced by the Supplier for Information Technologies originally offered by the Supplier in its tender and still to be delivered, the Supplier shall be obligated to offer to the Procuring Entity the latest versions of the available Information Technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause 39 (Changes to the System).
- 23.2 At any point during performance of the Contract, for Information Technologies still to be delivered, the Supplier will also pass on to the Procuring Entity any cost reductions and additional and/ or improved support and facilities that it offers to other clients of the Supplier in Kenya, pursuant to GCC Clause 39 (Changes to the System).
- 23.3 During performance of the Contract, the Supplier shall offer to the Procuring Entity all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in Kenya, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the Supplier in the Recurrent Costs tables in its tender.
- 23.4 **Unless otherwise specified in the SCC**, during the Warranty Period, the Supplier will provide at no additional cost to the Procuring Entity all new versions, releases, and updates for all Standard Software that are used in the System, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in Kenya, and no later than twelve (12) months after they are released in the country of origin of the Software.
- 23.5 The Procuring Entity shall introduce all new versions, releases or updates of the Software within eighteen (18) months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the Supplier shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the Supplier stop supporting or maintaining a version or release of the Software less than twenty-four (24) months after the Procuring Entity receives a production-ready copy of a subsequent version, release, or update. The Procuring Entity shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the twenty-four-month-long stop date.

24 Implementation, Installation, and Other Services

- 24.1 The Supplier shall provide all Services specified in the Contract and Agreed Project Plan in accordance with the highest standards of professional competence and integrity.
- 24.2 Prices charged by the Supplier for Services, if not included in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Supplier in the Recurrent Cost Schedules of its Tender) and shall not exceed the prevailing rates charged by the Supplier to other Procuring Entity's in Kenya for similar services.

25 Inspections and Tests

- 25.1 The Procuring Entity or its representative shall have the right to inspect and/or test any components of the System, as specified in the Technical Requirements, to confirm their good working order and/ or conformity to the Contract at the point of delivery and/ or at the Project Site.
- 25.2 The Procuring Entity or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Procuring Entity shall bear all costs and expenses incurred in connection with such attendance, including but not limited to all inspection agent fees, travel, and related expenses.
- 25.3 Should the inspected or tested components fail to conform to the Contract, the Procuring Entity may reject the component (s), and the Supplier shall either replace the rejected component (s), or make alterations as necessary so that it meets the Contract requirements free of cost to the Procuring Entity.
- 25.4 The Project Manager may require the Supplier to carry out any inspection and/or test not specified in the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such inspection and/ or test shall be added to the Contract Price. Further, if such inspection and/ or test impedes the progress of work on the System and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Achieving Operational Acceptance and the other obligations so affected.
- 25.5 If any dispute shall arise between the parties in connection with or caused by an inspection and/ or with regard to any component to be incorporated in the System that cannot be settled amicably between the parties within a reasonable period of time, either party may invoke the process pursuant to GCC Clause 43 (Settlement of Disputes), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract Agreement.

26 Installation of the System

- 26.1 As soon as the System, or any Subsystem, has, in the opinion of the Supplier, been delivered, Pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with the Technical Requirements, the SCC and the Agreed Project Plan, the Supplier shall so notify the Procuring Entity in writing.
- 26.2 The Project Manager shall, within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 26.1, either issue an Installation Certificate in the form specified in the Sample Contractual Forms Section in the tendering documents, stating that the System, or major component or Subsystem (if Acceptance by major component or Sub system is specified pursuant to the SCC for GCC Clause 27.2.1), has achieved Installation by the date of the Supplier's notice under GCC Clause 26.1, or notify the Supplier in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/ or deficiencies that the Project Manager has notified the Supplier of. The Supplier shall then promptly carry out retesting of the System or Sub system and, when in the Supplier's opinion the System or Sub system is ready for Commissioning and Operational Acceptance Testing, notify the Procuring Entity in writing, in accordance with GCC Clause 26.1. The procedure set out in this GCC Clause shall be repeated, as necessary, until an Installation Certificate is issued.
- 26.3 If the Project Manager fails to issue the Installation Certificate and fails to inform the Supplier of any defects and/or deficiencies within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 26.1, or if the Procuring Entity puts the System or a Subsystem in to production operation, then the System (or Subsystem) shall be deemed to have achieved successful Installation as of the date of the Supplier's notice or repeated notice, or when the Procuring Entity put the System in to production operation, as the case may be.

27 Commissioning and Operational Acceptance

27.1 Commissioning

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

- a) immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 26.2; or
- b) as otherwise specified in the Technical Requirement or the Agreed Project Plan; or
- c) immediately after Installation is deemed to have occurred, under GCC Clause 26.3.

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

27.2 Operational Acceptance Tests

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

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

27.3 Operational Acceptance

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

- a) the Operational Acceptance Tests, as specified in the Technical Requirements, and/or SCC and/or the Agreed Project Plan have been successfully completed; or
- b) the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Procuring Entity within the period from the date of Installation or any other agreed-upon period as specified in GCC Clause 27.2.2 above; or
- c) the Procuring Entity has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the Supplier shall notify the Procuring Entity and document such use.

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

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

- a) Issue an Operational Acceptance Certificate; or
- b) Notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
- c) Issue the Operational Acceptance Certificate, if the situation covered by GCC Clause 27.3.1 (b) arises.

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

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

a The Procuring Entity may consider terminating the Contract, pursuant to GCC Clause 41.2.2; or

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

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

27.4 Partial Acceptance

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

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

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

F. Guarantees and Liabilities

28 Operational Acceptance Time Guarantee

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

28.2 **Unless otherwise specified in the SCC**, if the Supplier fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the SCC for GCC Clause 27.2.1) within the time for achieving Operational Acceptance specified in the Implementation Schedule or the Agreed Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance), the Supplier shall pay to the

Procuring Entity liquidated damages at the rate of one half of one percent per week as a percentage of the Contract Price (exclusive of Recurrent Costs if any), or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount often (10) percent of the Contract Price (exclusive of Recurrent Costs if any). Once the Maximum is reached, the Procuring Entity may consider termination of the Contract, pursuant to GCC Clause 41.2.2.

- 28.3 **Unless otherwise specified in the SCC**, liquidated damages payable under GCC Clause 28.2 shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule and/or Agreed Project Plan. This Clause 28.3 shall not limit, however, any other rights or remedies the Procuring Entity may have under the Contract for other delays.
- 28.4 If liquidated damages are claimed by the Procuring Entity for the System (or Subsystem), the Supplier shall have no further liability whatsoever to the Procuring Entity in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the Supplier from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

29 Defect Liability

- 29.1 The Supplier warrants that the System, including all Information Technologies, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship that prevent the System and/or any of its components from fulfilling the Technical Requirements or that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems. **Unless otherwise specified in the SCC**, there will be NO exceptions and/or limitations to this warranty with respect to Software (or categories of Software). Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.
- 29.2 The Supplier also warrants that the Information Technologies, Materials, and other Goods supplied under the Contract are new, unused, and incorporate all recent improvements in design that materially affect the System's or Subsystem's ability to fulfill the Technical Requirements.
- 29.3 **Unless otherwise specified in the SCC**, the Supplier warrants that (i) all Goods components to be incorporated into the System form part of the Supplier's and/or Subcontractor's current product lines, and (ii) they have been previously released to the market.
- 29.4 **Unless otherwise specified in the SCC**, the Warranty Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for thirty-six (36) months.
- 29.5 If during the Warranty Period any defect as described in GCC Clause 29.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the Supplier, the Supplier shall promptly, in consultation and agreement with the Procuring Entity regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Supplier shall, at its discretion, determine) such defect as well as any damage to the System caused by such defect. Any defective Information Technologies or other Goods that have been replaced by the Supplier shall remain the property of the Supplier.
- 29.6 The Supplier shall not be responsible for the repair, replacement, or making good of any defect, or of any damage to the System arising out of or resulting from any of the following causes:
- Improper operation or maintenance of the System by the Procuring Entity;
 - Normal wear and tear;
 - use of the System with items not supplied by the Supplier, unless otherwise identified in the Technical Requirements, or approved by the Supplier; or
 - modifications made to the System by the Procuring Entity, or a third party, not approved by the Supplier.
- 29.7 The Supplier's obligations under this GCC Clause 29 shall not apply to:
- any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or

- b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Procuring Entity or any matters for which the Supplier has disclaimed responsibility, in accordance with GCC Clause 21.1.2.

29.8 The Procuring Entity shall give the Supplier a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence. The Procuring Entity shall afford all reasonable opportunity for the Supplier to inspect any such defect. The Procuring Entity shall afford the Supplier all necessary access to the System and the site to enable the Supplier to perform its obligations under this GCC Clause 29.

29.9 The Supplier may, with the consent of the Procuring Entity, remove from the site any Information Technologies and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Procuring Entity may give the Supplier notice requiring that tests of the defective part be made by the Supplier immediately upon completion of such remedial work, where upon the Supplier shall carry out such tests.

If such part fails the tests, the Supplier shall carry out further repair, replacement, or making good (as the case maybe) until that part of the System passes such tests. The tests shall be agreed upon by the Procuring Entity and the Supplier.

29.10 **Unless otherwise specified in the SCC**, the response times and repair/replacement times for Warranty Defect Repair are specified in the Technical Requirements. Nevertheless, if the Supplier fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within two weeks the Procuring Entity may, following notice to the Supplier, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Procuring Entity in connection with such work shall be paid to the Procuring Entity by the Supplier or may be deducted by the Procuring Entity from any monies due the Supplier or claimed under the Performance Security.

29.11 If the System or Subsystem cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the System shall be extended by a period equal to the period during which the System or Subsystem could not be used by the Procuring Entity because of such defect and/or making good of such defect.

29.12 Items substituted for defective parts of the System during the Warranty Period shall be covered by the Defect Liability Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater. For reasons of information security, the Procuring Entity may choose to retain physical possession of any replaced defective information storage devices.

29.13 At the request of the Procuring Entity and without prejudice to any other rights and remedies that the Procuring Entity may have against the Supplier under the Contract, the Supplier will offer all possible assistance to the Procuring Entity to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Goods included in the System, including without limitation assignment or transfer in favor of the Procuring Entity of the benefit of any warranties given by such producers or licensors to the Supplier.

30 Functional Guarantees

30.1 The Supplier guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Procuring Entity's requirements set forth in the Technical Requirements and it conforms to all other aspects of the Contract. The Supplier acknowledges that GCC Clause 27 regarding Commissioning and Operational Acceptance govern show technical conformance of the System to the Contract requirements will be determined.

30.2 If, for reasons attributable to the Supplier, the System does not conform to the Technical Requirements or does not conform to all other aspects of the Contract, the Supplier shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Technical Requirements and meet all functional and performance standards. The Supplier shall notify the Procuring Entity upon completion of the necessary changes, modifications, and/or additions and shall request the Procuring Entity to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.

30.3 If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Procuring Entity may consider termination of the Contract, pursuant to GCC Clause 41.2.2, and forfeiture of the Supplier's Performance Security in accordance with GCC Clause 13.3 in compensation for the extra costs and delays likely to result from this failure.

31 Intellectual Property Rights Warranty

31.1 The Supplier here by represents and warrants that:

- a) The System as supplied, installed, tested, and accepted;
- b) Use of the System in accordance with the Contract; and
- c) Copying of the Software and Materials provided to the Procuring Entity in accordance with the Contract do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfer so frights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Procuring Entity to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Supplier shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the System.

32 Intellectual Property Rights Indemnity

32.1 The Supplier shall indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that the Procuring Entity or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of:

- a) Installation of the System by the Supplier or the use of the System, including the Materials, in the country where the site is located;
- b) copying of the Software and Materials provided by the Supplier in accordance with the Agreement; and
- c) sale of the products produced by the System in any country, except to the extent that such losses, liabilities, and costs arise as a result of the Procuring Entity's breach of GCC Clause 32.2.

32.2 Such indemnity shall not cover any use of the System, including the Materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the System, or any products of the System produced there by in association or combination with any other goods or services not supplied by the Supplier, where the infringement arises because of such association or combination and not because of use of the System in its own right.

32.3 Such indemnities shall also not apply if any claim of infringement:

- a) Is asserted by apparent, subsidiary, or affiliate of the Procuring Entity's organization;
- b) Is a direct result of a design mandated by the Procuring Entity's Technical Requirements and the possibility of such infringement was duly noted in the Supplier's Tender; or
- c) Results from the alteration of the System, including the Materials, by the Procuring Entity or any persons other than the Supplier or a person authorized by the Supplier.

32.4 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Clause 32.1, the Procuring Entity shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Procuring Entity within the twenty-eight (28) days, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

32.5 The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or

Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the Supplier in connection with this Contract by the Procuring Entity or any persons (other than the Supplier) contracted by the Procuring Entity, except to the extent that such losses, liabilities, and costs arise as a result of the Supplier's breach of GCC Clause 32.8.

32.6 Such indemnity shall not cover

- a) any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract;
- b) any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Procuring Entity or any other person contracted by the Procuring Entity, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.

32.7 Such indemnities shall also not apply:

- a) If any claim of infringement is asserted by apparent, subsidiary, or affiliate of the Supplier's organization;
- b) to the extent that any claim of infringement is caused by the alteration, by the Supplier, or any persons contracted by the Supplier, of the design, data, drawing, specification, or other documents or materials provided to the Supplier by the Procuring Entity or any persons contracted by the Procuring Entity.

32.8 If any proceedings are brought or any claim is made against the Supplier arising out of the matters referred to in GCC Clause 32.5, the Supplier shall promptly give the Procuring Entity notice of such proceedings or claims, and the Procuring Entity may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Procuring Entity fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Procuring Entity has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Procuring Entity's request, afford all available assistance to the Procuring Entity in conducting such proceedings or claim and shall be reimbursed by the Procuring Entity for all reasonable expenses incurred in so doing.

33 Limitation of Liability

33.1 Provided the following does not exclude or limit any liabilities of either party in ways not permitted by applicable law:

- a) the Supplier shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring Entity; and
- b) the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Supplier to indemnify the Procuring Entity with respect to intellectual property rights infringement.

G. Risk Distribution

34 Transfer of Ownership

34.1 With the exception of Software and Materials, the ownership of the Information Technologies and other Goods shall be transferred to the Procuring Entity at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Contract Agreement.

34.2 Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 15 (Copyright) and any elaboration in the Technical Requirements.

34.3 Ownership of the Supplier's Equipment used by the Supplier and its Subcontractors in connection with the Contract shall remain with the Supplier or its Subcontractors.

35 Care of the System

35.1 The Procuring Entity shall become responsible for the care and custody of the System or Subsystems upon their Delivery. The Procuring Entity shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause from the date of Delivery until the date of Operational Acceptance of the System or Subsystems, pursuant to GCC Clause 27 (Commissioning and Operational Acceptance), except such loss or damage arising from acts or omissions of the Supplier, its employees, or subcontractors.

35.2 If any loss or damage occurs to the System or any part of the System by reason of:

- a) (in so far as they relate to the country where the Project Site is located) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, in so far as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 37;
- b) Any use not in accordance with the Contract, by the Procuring Entity or any third party;
- c) Any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Procuring Entity, or any such matter for which the Supplier has disclaimed responsibility in accordance with GCC Clause 21.1.2, the Procuring Entity shall pay to the Supplier all sums payable in respect of the System or Subsystems that have achieved Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If the Procuring Entity requests the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Supplier shall make good the same at the cost of the Procuring Entity in accordance with GCC Clause 39. If the Procuring Entity does not request the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Procuring Entity shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the System thereby lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, the Procuring Entity shall terminate the Contract pursuant to GCC Clause 41.1.

35.3 The Procuring Entity shall be liable for any loss of or damage to any Supplier's Equipment which the Procuring Entity has authorized to locate within the Procuring Entity's premises for use in fulfillment of Supplier's obligations under the Contract, except where such loss or damage arises from acts or omissions of the Supplier, its employees, or subcontractors.

36 Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

36.1 The Supplier and each and every Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in Kenya.

36.2 Subject to GCC Clause 36.3, the Supplier shall indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Procuring Entity or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property (other than the System, whether accepted or not) arising in connection with the supply, installation, testing, and Commissioning of the System and by reason of the negligence of the Supplier or its Subcontractors, or their employees, officers or agents, except any injury, death, or property damage caused by the negligence of the Procuring Entity, its contractors, employees, officers, or agents.

36.3 If any proceedings are brought or any claim is made against the Procuring Entity that might subject the Supplier to liability under GCC Clause 36.2, the Procuring Entity shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Procuring Entity within the twenty-eight (28) day period, the Procuring Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

- 36.4 The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the Procuring Entity, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 37 (Insurances), provided that such fire, explosion, or other perils were not caused by any act or failure of the Supplier.
- 36.5 If any proceedings are brought or any claim is made against the Supplier that might subject the Procuring Entity to liability under GCC Clause 36.4, the Supplier shall promptly give the Procuring Entity notice of such proceedings or claims, and the Procuring Entity may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Procuring Entity fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Procuring Entity has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Procuring Entity's request, afford all available assistance to the Procuring Entity in conducting such proceedings or claim and shall be reimbursed by the Procuring Entity for all reasonable expenses incurred in so doing.
- 36.6 The party entitled to the benefit of an indemnity under this GCC Clause 36 shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

37 Insurances

- 37.1 The Supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the Procuring Entity, who should not unreasonably withhold such approval.
- a) Cargo Insurance During Transport
as applicable, 110 percent of the price of the Information Technologies and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site.
 - b) Installation "All Risks" Insurance
as applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under "all risks" insurance policies of this type by reputable insurers) occurring prior to Operational Acceptance of the System.
 - c) Third-Party Liability Insurance
On terms as **specified in the SCC**, covering bodily injury or death suffered by third parties (including the Procuring Entity's personnel) and loss of or damage to property (including the Procuring Entity's property and any Subsystems that have been accepted by the Procuring Entity) occurring in connection with the supply and installation of the Information System.
 - d) Automobile Liability Insurance
In accordance with the statutory requirements prevailing in Kenya, covering use of all vehicles used by the Supplier or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.
 - e) Other Insurance (if any), as **specified in the SCC**.
- 37.2 The Procuring Entity shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1, except for the Third-Party Liability, and the Supplier's Subcontractors shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1 except for Cargo Insurance During Transport. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 37.3 The Supplier shall deliver to the Procuring Entity certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.

- 37.4 The Supplier shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Supplier.
- 37.5 If the Supplier fails to take out and/or maintain in effect the insurance referred to in GCC Clause 37.1, the Procuring Entity may take out and maintain in effect any such insurance and may from time to time deduct from any amount due to the Supplier under the Contract any premium that the Procuring Entity shall have paid to the insurer or may otherwise recover such amount as a debt due from the Supplier.
- 37.6 Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clause 37, and all monies payable by any insurers shall be paid to the Supplier. The Procuring Entity shall give to the Supplier all such reasonable assistance as may be required by the Supplier in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Procuring Entity's interest is involved, the Supplier shall not give any release or make any compromise with the insurer without the prior written consent of the Procuring Entity. With respect to insurance claims in which the Supplier's interest is involved, the Procuring Entity shall not give any release or make any compromise with the insurer without the prior written consent of the Supplier.

38 Force Majeure

- 38.1 "Force Majeure" shall mean any event beyond the reasonable control of the Procuring Entity or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:
- a) war, hostilities, or war like operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
 - b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;
 - c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler, or any other act or failure to act of any local state or national government authority;
 - d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
 - e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
 - f) failure, by the Supplier, to obtain the necessary export permit (s) from the governments of the Country(s) of Origin of the Information Technologies or other Goods, or Supplier's Equipment provided that the Supplier has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of the System and all of its components for receipt of the necessary export permits.
- 38.2 If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.
- 38.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Achieving Operational Acceptance shall be extended in accordance with GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).

- 38.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Clause 38.6.
- 38.5 No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:
- a) Constitute a default or breach of the Contract;
 - b) (subject to GCC Clauses 35.2, 38.3, and 38.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance, if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- 38.6 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.
- 38.7 In the event of termination pursuant to GCC Clause 38.6, the rights and obligations of the Procuring Entity and the Supplier shall be as specified in GCC Clauses 41.1.2 and 41.1.3.
- 38.8 Notwithstanding GCC Clause 38.5, Force Majeure shall not apply to any obligation of the Procuring Entity to make payments to the Supplier under this Contract.

H. Change in Contract Elements

39 Changes to the System

39.1 Introducing a Change

- 39.1.1 Subject to GCC Clauses 39.2.5 and 39.2.7, the Procuring Entity shall have the right to propose, and subsequently require, the Project Manager to order the Supplier from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in, or from the System (interchangeably called "Change"), provided that such Change falls within the general scope of the System, does not constitute unrelated work, and is technically practicable, taking into account both the state of advancement of the System and the technical compatibility of the Change envisaged with the nature of the System as originally specified in the Contract.
- 39.1.2 A Change may involve, but is not restricted to, the substitution of updated Information Technologies and related Services in accordance with GCC Clause 23 (Product Upgrades).
- 39.1.3 The Supplier may from time to time during its performance of the Contract propose to the Procuring Entity (with a copy to the Project Manager) any Change that the Supplier considers necessary or desirable to improve the quality or efficiency of the System. The Procuring Entity may at its discretion approve or reject any Change proposed by the Supplier.
- 39.1.4 Notwithstanding GCC Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Supplier in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Achieving Operational Acceptance.
- 39.1.5 The procedure on how to proceed with and execute Changes is specified in GCC Clauses 39.2 and 39.3, and further details and sample forms are provided in the Sample Contractual Forms Section in the tendering documents.
- 39.1.6 Moreover, the Procuring Entity and Supplier will agree, during development of the Project Plan, to a date prior to the scheduled date for Operational Acceptance, after which the Technical Requirements for the System shall be "frozen." Any Change initiated after this time will be dealt with after Operational Acceptance.

39.2 Changes Originating from Procuring Entity

39.2.4 If the Procuring Entity proposes a Change pursuant to GCC Clauses 39.1.1, it shall send to the Supplier a "Request for Change Proposal," requiring the Supplier to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

- a Brief description of the Change;
- b Impact on the Time for Achieving Operational Acceptance;
- c Detailed estimated cost of the Change;
- d Effect on Functional Guarantees (if any);
- e Effect on any other provisions of the Contract.

39.2.5 Prior to preparing and submitting the "Change Proposal," the Supplier shall submit to the Project Manager a "Change Estimate Proposal," which shall be an estimate of the cost of preparing the Change Proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Supplier's Change Estimate Proposal, the Procuring Entity shall do one of the following:

- a accept the Supplier's estimate with instructions to the Supplier to proceed with the preparation of the Change Proposal;
- b advise the Supplier of any part of its Change Estimate Proposal that is unacceptable and request the Supplier to review its estimate;
- c advise the Supplier that the Procuring Entity does not intend to proceed with the Change.

39.2.6 Upon receipt of the Procuring Entity's instruction to proceed under GCC Clause 39.2.2 (a), the Supplier shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Clause 39.2.1. The Supplier, at its discretion, may specify a validity period for the Change Proposal, after which if the Procuring Entity and Supplier has not reached agreement in accordance with GCC Clause 39.2.6, then GCC Clause 39.2.7 shall apply.

39.2.7 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the nature of the Change is such that the Contract rates and prices are inequitable, the parties to the Contract shall agree on other specific rates to be used for valuing the Change.

39.2.8 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate impact of compliance with the Request for Change Proposal and with all other Change Orders that have already become binding upon the Supplier under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen (15) percent, the Supplier may give a written notice of objection to this Request for Change Proposal prior to furnishing the Change Proposal. If the Procuring Entity accepts the Supplier's objection, the Procuring Entity shall withdraw the proposed Change and shall notify the Supplier in writing of its acceptance.

The Supplier's failure to so object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested Changes or Change Orders, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Supplier represents.

39.2.9 Upon receipt of the Change Proposal, the Procuring Entity and the Supplier shall mutually agree upon all matters contained in the Change Proposal. Within fourteen (14) days after such agreement, the Procuring Entity shall, if it intends to proceed with the Change, issue the Supplier a Change Order. If the Procuring Entity is unable to reach a decision within fourteen (14) days, it shall notify the Supplier with details of when the Supplier can expect a decision. If the Procuring Entity decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Supplier accordingly. Under such circumstances, the Supplier shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Supplier in its Change Estimate Proposal submitted in accordance with GCC Clause 39.2.2.

39.2.10 If the Procuring Entity and the Supplier cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Achieving Operational Acceptance, or any other matters identified in the Change Proposal, the Change will not be implemented. However, this provision does not limit the rights of either party under GCC Clause 6 (Settlement of Disputes).

39.3 Changes Originating from Supplier

If the Supplier proposes a Change pursuant to GCC Clause 39.1.2, the Supplier shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Clause 39.2.1. Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Clauses 39.2.6 and 39.2.7. However, should the Procuring Entity choose not to proceed or the Procuring Entity and the Supplier cannot come to agreement on the change during any validity period that the Supplier may specify in its Application for Change Proposal, the Supplier shall not be entitled to recover the costs of preparing the Application for Change Proposal, unless subject to an agreement between the Procuring Entity and the Supplier to the contrary.

39.4 Value engineering. The Supplier may prepare, at its own cost, a value engineering proposal at any time during the performance of the Contract.

39.4.1 The value engineering proposal shall, at a minimum, include the following;

- (a) The proposed change (s), and a description of the difference to the existing Contract requirements;
- (b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
- (c) a description of any effect(s) of the change on performance/ functionality.

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

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

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

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

40 Extension of Time for Achieving Operational Acceptance

40.1 The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- a) Any Change in the System as provided in GCC Clause 39 (Change in the Information System);
- b) Any occurrence of Force Majeure as provided in GCC Clause 38 (Force Majeure);
- c) Default of the Procuring Entity; or
- d) Any other matter specifically mentioned in the Contract; by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Supplier.

40.2 Except where otherwise specifically provided in the Contract, the Supplier shall submit to the Project Manager a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Procuring Entity and the Supplier shall agree upon the period of such extension. In the event that the Supplier does not accept the Procuring Entity's estimate of a fair and reasonable time extension, the Supplier shall be entitled to refer the matter to the provisions for the Settlement of Disputes pursuant to GCC Clause 43.

40.3 The Supplier shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

41 Termination

41.1 Termination for Procuring Entity's Convenience

41.1.1 The Procuring Entity may at any time terminate the Contract for any reason by giving the Supplier a notice of termination that refers to this GCC Clause 41.1.

41.1.2 Upon receipt of the notice of termination under GCC Clause 41.1.1, the Supplier shall either as soon as reasonably practical or upon the date specified in the notice of termination

- a) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- b) terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to GCC Clause (d) (ii) below;
- c) Remove all Supplier's Equipment from the site, repatriate the Supplier's and its Sub contractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
- d) In addition, the Supplier, subject to the payment specified in GCC Clause 41.1.3, shall
 - i) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination;
 - ii) to the extent legally possible, assign to the Procuring Entity all right, title, and benefit of the Supplier to the System, or Subsystem, as at the date of termination, and, as may be required by the Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors;
 - iii) deliver to the Procuring Entity all nonproprietary drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

41.1.3 In the event of termination of the Contract under GCC Clause 41.1.1, the Procuring Entity shall pay to the Supplier the following amounts:

- a) The Contract Price, properly attributable to the parts of the System executed by the Supplier as of the date of termination;
- b) The costs reasonably incurred by the Supplier in the removal of the Supplier's Equipment from the site and in the repatriation of the Supplier's and its Subcontractors' personnel;
- c) any amount to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- d) costs incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 41.1.2(a); and
- e) the cost of satisfying all other obligations, commitments, and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GCC Clauses 41.1.3 (a) through (d) above.

41.2 Termination for Supplier's Default

41.2.1 The Procuring Entity, without prejudice to any other rights or remedies it may possess, may terminate the Contract forth within the following circumstances by giving a notice of termination and its reasons there for to the Supplier, referring to this GCC Clause 41.2:

- a) If the Supplier becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Supplier takes or suffers any other analogous action in consequence of debt;
- b) If the Supplier assigns or transfers the Contractor any right or interest, there in in violation of the provision of GCC Clause 42 (Assignment); or
- c) If the Supplier, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a. of the Appendix to the GCC, in competing for or in executing the Contract, including but

Not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract.

41.2.2 If the Supplier:

- d) Has abandoned or repudiated the Contract;
- e) Has without valid reason failed to commence work on the System promptly;
- f) Persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
- g) Refuses or is unable to provide sufficient Materials, Services, or labor to execute and complete the System in the manner specified in the Agreed Project Plan furnished under GCC Clause 19 at rates of progress that give reasonable assurance to the Procuring Entity that the Supplier can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended; then the Procuring Entity may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Procuring Entity may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GCC Clause 41.2.

41.2.3 Upon receipt of the notice of termination under GCC Clauses 41.2.1 or 41.2.2, the Supplier shall, either immediately or upon such date as is specified in the notice of termination:

- h) cease all further work, except for such work as the Procuring Entity may specify in the notice of termination for the sole purpose of protecting that part of the System already executed or any work required to leave the site in a clean and safe condition;
- i) terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to GCC Clause (d) below;
- j) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination;
- k) to the extent legally possible, assign to the Procuring Entity all right, title and benefit of the Supplier to the System or Subsystems as at the date of termination, and, as may be required by the Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors;
- l) deliver to the Procuring Entity all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the System.

41.2.4 The Procuring Entity may enter upon the site, expel the Supplier, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Procuring Entity thinks appropriate, the Procuring Entity shall give notice to the Supplier that such Supplier's Equipment will be returned to the Supplier at or near the site and shall return such Supplier's Equipment to the Supplier in accordance with such notice. The Supplier shall thereafter without delay and at its cost remove or arrange removal of the same from the site.

41.2.5 Subject to GCC Clause 41.2.6, the Supplier shall be entitled to be paid the Contract Price attributable to the portion of the System executed as at the date of termination and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to GCC Clause 41.2.3 (a). Any sums due the Procuring Entity from the Supplier accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier under this Contract.

41.2.6 If the Procuring Entity completes the System, the cost of completing the System by the Procuring Entity shall be determined. If the sum that the Supplier is entitled to be paid, pursuant to GCC Clause 41.2.5, plus the reasonable costs incurred by the Procuring Entity in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess. If such excess is greater than the sums due the Supplier under GCC Clause 41.2.5, the Supplier shall pay the balance to the Procuring Entity, and if such excess is less than the sums due the Supplier under GCC Clause 41.2.5, the Procuring Entity shall pay the balance to the Supplier. The Procuring Entity and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

41.3 Termination by Supplier

41.3.1 If:

- a) the Procuring Entity has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause **pursuant to the SCC**, or commits a substantial breach of the Contract, the Supplier may give a notice to the Procuring Entity that requires payment of such sum, with interest on this sum as stipulated in GCC Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Procuring Entity to remedy the same, as the case may be. If the Procuring Entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Supplier's notice; or
- b) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Procuring Entity, including but not limited to the Procuring Entity's failure to provide possession of or access to the site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the System; then the Supplier may give a notice to the Procuring Entity of such events, and if the Procuring Entity has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Supplier is still unable to carry out any of its obligations under the Contract for any reason attributable to the Procuring Entity within twenty-eight (28) days of the said notice, the Supplier may by a further notice to the Procuring Entity referring to this GCC Clause 41.3.1, forth with terminate the Contract.

41.3.2 The Supplier may terminate the Contract immediately by giving a notice to the Procuring Entity to that effect, referring to this GCC Clause 41.3.2, if the Procuring Entity becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Procuring Entity takes or suffers any other analogous action in consequence of debt.

41.3.3 If the Contract is terminated under GCC Clauses 41.3.1 or 41.3.2, then the Supplier shall immediately:

- c) Cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- d) Terminate all subcontracts, except those to be assigned to the Procuring Entity pursuant to Clause 41.3.3 (d) (ii);
- e) remove all Supplier's Equipment from the site and repatriate the Supplier's and its Subcontractor's personnel from the site.
- f) In addition, the Supplier, subject to the payment specified in GCC Clause 41.3.4, shall:
 - i) deliver to the Procuring Entity the parts of the System executed by the Supplier up to the date of termination;
 - ii) to the extent legally possible, assign to the Procuring Entity all right, title, and benefit of the Supplier to the System, or Subsystems, as of the date of termination, and, as may be required by the Procuring Entity, in any subcontracts concluded between the Supplier and its Subcontractors;
 - iii) to the extent legally possible, deliver to the Procuring Entity all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

41.3.4 If the Contract is terminated under GCC Clauses 41.3.1 or 41.3.2, the Procuring Entity shall pay to the Supplier all payments specified in GCC Clause 41.1.3 and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Supplier arising out of, in connection with, or in consequence of such termination.

41.3.5 Termination by the Supplier pursuant to this GCC Clause 41.3 is without prejudice to any other rights or remedies of the Supplier that may be exercised in lieu of or in addition to rights conferred by GCC Clause 41.3.

41.4 In this GCC Clause 41, the expression "portion of the System executed" shall include all work executed, Services provided, and all Information Technologies, or other Goods acquired (or subject to a legally binding

Obligation to purchase) by the Supplier and used or intended to be used for the purpose of the System, up to and including the date of termination.

41.5 In this GCC Clause 41, in calculating any monies due from the Procuring Entity to the Supplier, account shall be taken of any sum previously paid by the Procuring Entity to the Supplier under the Contract, including any advance payment paid **pursuant to the SCC**.

42 Assignment

42.1 Neither the Procuring Entity nor the Supplier shall, without the express prior written consent of the other, assign to any third party the Contractor any part thereof, or any right, benefit, obligation, or interest there in or there under, except that the Supplier shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

I. Settlement of Disputes

43 Settlement of Disputes

43.1 Adjudication

43.1.1 If any dispute of any kind what so ever shall arise between the Procuring Entity and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the System (whether during the progress of implementation or after its achieving Operational Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute **by mutual consultation**. If the parties fail to resolve such a dispute by mutual consultation within fourteen (14) days after one party has notified the other in writing of the dispute, then, if the Contract Agreement in Appendix2 includes and names an Adjudicator, the dispute shall, within another fourteen (14) days, be referred in writing by either party to the Adjudicator, with a copy to the other party. If there is no Adjudicator specified in the Contract Agreement, the mutual consultation period stated above shall last twenty-eight (28) days (instead of fourteen), upon expiry of which either party may move to the notification of arbitration pursuant to GCC Clause43.2.1.

43.1.2 The Adjudicator shall give his or her decision in writing to both parties within twenty-eight (28) days of the dispute being referred to the Adjudicator. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Procuring Entity or the Supplier within fifty-six (56) days of such reference, the decision shall become final and binding upon the Procuring Entity and the Supplier. Any decision that has become final and binding shall be implemented by the parties forth with.

43.1.3 The Adjudicator shall be paid an hourly fee at the rate specified in the Contract Agreement plus reasonable expenditures incurred in the execution of duties as Adjudicator, and these costs shall be divided equally between the Procuring Entity and the Supplier.

43.1.4 Should the Adjudicator resign or die, or should the Procuring Entity and the Supplier agree that the Adjudicator is not fulfilling his or her functions in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Procuring Entity and the Supplier. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be appointed at the request of either party by the Appointing Authority **specified in the SCC**, or, if no Appointing Authority is **specified in SCC**, the Contract shall, from this point onward and until the parties may otherwise agree on an Adjudicator or an Appointing Authority, be implemented as if there is no Adjudicator.

43.2 Arbitration

43.2.1 If

- a) the Procuring Entity or the Supplier is dissatisfied with the Adjudicator's decision and acts before this decision has become final and binding pursuant to GCC Clause 43.1.2, or
- b) the Adjudicator fails to give a decision within the allotted time from referral of the dispute pursuant to GCC Clause 43.1.2, and the Procuring Entity or the Supplier acts within the following fourteen (14) days, or
- c) in the absence of an Adjudicator from the Contract Agreement, the mutual consultation pursuant to GCC Clause 43.1.1 expires without resolution of the dispute and the Procuring Entity or the Supplier acts within the following fourteen (14) days, then either the Procuring Entity or the Supplier may act to give notice to the other party, with a copy for information to the Adjudicator incase an Adjudicator had

been involved, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

43.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Clause 43.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after Installation of the Information System.

43.2.3 Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC.**

43.3 Notwithstanding any reference to the Adjudicator or arbitration in this clause,

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

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions of the SCC shall prevail over those in the General Conditions of Contract. For the purposes of clarity, any referenced GCC clause numbers are indicated in the left column of the SCC.

A. Contract and Interpretation

1. Definitions (GCC Clause 1)

GCC 1.1 (b) (i)	The Procuring Entity is: NATIONAL MINING CORPORATION
GCC 1.1 (b) (ii)	The Project Manager is: <i>[insert: name and/or the official title of Project Manager].</i> GCC
GCC 1.1 (e) (ix)	<i>There are no Special Conditions associated with GCC 1.1 (e) (x).</i> <i>[Note: The GCC default specifies the Contract Period as when all the Supplier's obligations are completed. If there is a reason to set a hard-and-fast calendar date for the Contract Period to end, then specify here]</i>
GCC 1.1 (e) (xii)	The Post-Warranty Services Period is <i>[insert: number of months]</i> starting with the completion of the Warranty Period.

2. Notices (GCC Clause 4)

GCC 4.3	Address of the Project Manager: <i>[as appropriate, insert: personal delivery, postal, email, and/or EDI addresses.]</i> Fallback address of the Procuring Entity: <i>[as appropriate, insert: personal delivery, postal, facsimile, email, and/or EDI addresses.]</i> <i>[Note: If the Procuring Entity wishes to use Electronic Data Interchange (EDI) to communicate with the Supplier, it should specify the standards and protocols (for example ANSI A1 or ISO EDIFACT). The details may then be revised at Contract finalization. If so, add the following text.]</i> For Electronic Data Interchange (EDI) the Procuring Entity and Supplier will use the following standards, protocols, addresses, and procedures: <i>[insert: standards, protocols, addresses; also describe: any relevant procedures]</i>
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B. Subject Matter of Contract

3. Scope of the System (GCC Clause 7)

GCC 7.3	The Supplier's obligations under the Contract will include the following recurrent cost items, as identified in the Recurrent Cost tables in the Supplier's Tender: <i>[specify: the recurrent cost items/services that are included in the Contract; also provide cross reference to the place in the Technical Requirements where each item/service is specified in detail.]</i> <i>[Note: The requirements in terms of recurrent cost items should be defined here, reflected in the Recurrent Cost Table for the Warranty period, and elaborated in the Technical Requirements. See also notes to SCC Clause 29.4 regarding services that are not typically included in commercial</i>
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	<p>warranties.</p> <p><i>If the Procuring Entity expects that wear and tear on System components will necessitate routine replacement of such components, and if Procuring Entity technical staff will perform these repair and replacement tasks, the Procuring Entity may wish to consider adding the following clause to the SCC that obligates the Supplier to stock and/or provide certain spare parts.]</i></p> <p>The Supplier agrees to supply spare parts required for the operation and maintenance of the System, as stated below, for <i>[insert: number of years]</i> years beginning with Operational Acceptance. Moreover, the price of such spare parts shall be those specified in the spare parts price schedule submitted by the Supplier as part of its Tender. These prices shall include the purchase price for such spare parts and other costs and expenses (including the Supplier’s fees) relating to the supply of spare parts.</p> <p><i>[list the spare parts needs, or reference the line items in the Spare Parts Price Schedule in the Supplier’s Tender, if the Supplier is the source of the identity of the spares, i.e., reflecting its own understanding of its own technologies.]</i></p> <p><i>[Note: The need to ensure the availability of spare parts sources, above and beyond those the Supplier would routinely and implicitly need to perform under its defect liability and/or maintenance responsibilities, generally is not a major issue for the Information Technologies available in the market today. A System is likely to become obsolete long before it begins to develop physical defects.]</i></p>
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4. Time for Commencement and Operational Acceptance (GCC Clause 8)

GCC 8.1	The Supplier shall commence work on the System within: <i>[insert: number of days]</i> days from the Effective Date of the Contract.
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5. Supplier’s Responsibilities (GCC Clause 9)

C. PAYMENT

6. Contract Price (GCC Clause 11)

GCC 11.2	<p>Adjustments to the Contract Price shall be as follows: <i>[state: “not applicable” or specify: the items, adjustment formula or formulas, and the relevant price indices].</i></p> <p><i>[Note: Price adjustment is not generally associated with Information System procurements. Price adjustment may be appropriate when: (i) performance of the Contract is expected to last more than eighteen months; (ii) the cost of an important input, such as labor, is subject to inflation (or deflation); and (iii) meaningful price indices are readily available and well accepted. Thus, for example, if the Contract provides a substantial number of recurrent cost items following Operational Acceptance, would the inclusion of an SCC to permit adjustment be appropriate. In such cases, adjustment should be limited to those items only and use appropriate indices that accurately mirror the relevant price trends.]</i></p>
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7. Terms of Payment (GCC Clause 12)

<p>GCC 12.1</p>	<p>Subject to the provisions of GCC Clause 12 (Terms of Payment), the Procuring Entity shall pay the Contract Price to the Supplier according to the categories and in the manner specified below. Only the categories Advance Payment and Complete System Integration relate to the entire Contract Price. In other payment categories, the term "total Contract Price" means the total cost of goods or services under the specific payment category. Within each such category, the Contract Implementation Schedule may trigger pro-rata payments for the portion of the total Contract Price for the category corresponding to the goods or services actually Delivered, Installed, or Operationally Accepted, at unit prices and in the currencies specified in the Price Schedules of the Contract Agreement.</p> <p>(a) Advance Payment</p> <p>twenty percent (20%) of the entire Contract Price, exclusive of all Recurrent Costs, shall be paid against receipt of a claim accompanied by the Advance Payment Security specified in GCC Clause 13.2.</p> <p><i>[Note: The advance payment may be higher than 10% in cases where Supplier's mobilization costs (i.e., costs between Contract effectiveness and the first scheduled Contract payment) are likely to be much larger than the advance payment, resulting in substantial negative cash flow for the Supplier. This happens primarily in projects where the Supplier must acquire expensive highly-specialized equipment to customize and configure a solution system prior to the first scheduled payment milestone. In these cases, the entire schedule of payments below obviously needs to be adjusted accordingly.]</i></p> <p>(b) Information Technologies, Materials, and other Goods, with the exception of Custom Software and Custom Materials:</p> <p>sixty percent (60%) of the total or pro-rata Contract Price for this category against Delivery</p> <p>ten percent (10%) of the same price against Installation</p> <p>ten percent (10%) of the same price against Operational Acceptance.</p> <p>(c) Custom Software and Custom Materials:</p> <p>sixty percent (60%) of the total or pro-rata Contract Price for this category against Installation</p> <p>twenty percent (20%) of the same price against Operational Acceptance.</p> <p><i>[Note: Large custom software development or system integration contracts (e.g., those taking longer than six months from Contract Effectiveness to Operational Acceptance of the Application Software subsystem) are usually paid in increments against Procuring Entity's acceptance of major intermediate deliverables defined in the implementation schedule as key milestones (e.g. a sequence of major system design documents, such as: software requirements specifications, software design document, development of a prototype for a major subsystem, delivery of a pilot implementation of the software for a subsystem or the entire system, etc.). In those cases, the above payment terms should be modified accordingly and refer to the milestones in the Implementation Schedule. The payment terms should allow the Supplier an adequate cash flow vis-à-vis the steps need to achieve an operational Information System.]</i></p> <p>(d) Services other than Training:</p> <p>eighty percent (80%) of the pro-rata Contract Price for services performed will be</p>
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	<p>paid monthly in arrears, on submission and Procuring Entity’s approval of invoices:</p> <p><i>[Note: Some Contracts may involve considerable “Services other than Training” (and services other than software customization). For instance, there could be the digitization of maps using the procured Geographical Information System (GIS), or the scanning, indexing and conversion of paper documents, or the conversion or migration of existing electronic data sets. In these cases, payment may be keyed to acceptance of intermediate deliverables or completion of service delivery phases defined in the project implementation schedule, rather than merely to the passage of time, as illustrated. In designing this type of payment terms, the Procuring Entity has an obligation to balance and ensure consistency between its own interest to pay only against value received, the supplier's need for a reasonable cash flow, the design of the project implementation schedule, the specification of service milestones and even the process for acceptance testing of intermediate deliverables (when milestones completion would be subject to such testing).]</i></p> <p>(e) Training</p> <p>thirty percent (30%) of the total Contract Price for training services at the start of the full training program</p> <p>fifty percent (50%) of the pro-rata Contract Price for training services performed will be paid monthly in arrears, on submission and approval of appropriate invoices.</p> <p>(f) Complete System Integration</p> <p>ten percent (10%) of the entire Contract Price, exclusive of all Recurrent Costs, as final payment against Operational Acceptance of the System as an integrated whole.</p> <p>(g) Recurrent Costs</p> <p>one hundred percent (100%) of the price of the services actually delivered will be paid quarterly in arrears, on submission and Procuring Entity’s approval of invoices.</p> <p><i>[Note: If a separate Operational Acceptance for the System as an integrated whole is not required, increase by 10% points the final payment percentages of all other goods and services above.]</i></p>
GCC 12.3	The Procuring Entity shall pay to the Supplier interest on the delayed payments at a rate of: <i>[insert: “%” per annum].</i>
GCC 12.4	The Supplier will invoice the Procuring Entity in the currency used in the Contract Agreement and the Price Schedules it refers to, for Goods and Services supplied locally, and the conversion between this currency and Kenya shillings for payment purposes - in case the two currencies are different - will be made as of the actual payment date using the exchange rate found in <i>[insert: source of exchange rate].</i>

8. Securities (GCC Clause 13)

GCC 13.3.1	<p>The Performance Security shall be denominated in <i>[insert currency]</i> for an amount equal to <i>[insert: number]</i> percent of the Contract Price, excluding any Recurrent Costs.</p> <p><i>[Note: The general rule is that the Performance Security is denominated in the currency or currencies of the contract or in a freely convertible currency acceptable to the Procuring Entity. It should be set as no more than ten (10) percent of the Contract Price, including Recurrent Costs during the Warranty Period. Provision of the Performance Security increases the transaction costs incurred by the successful Tenderer, which it can recover</i></p>

	<i>only by increasing its price. Therefore, for a simple/moderate system, Performance Security in an amount of 6-10% of the Contract Price would provide adequate protection].</i>
GCC 13.3.4	<p>During the Warranty Period (i.e., after Operational Acceptance of the System), the Performance Security shall be reduced to [<i>insert: number</i>] percent of the Contract Price, excluding any Recurrent Costs.</p> <p><i>[Note: An appropriate amount for the Performance Security for a (three-year) Warranty Period would be between one (1) and two and a half (2.5) percent of the Contract Price including Recurrent Costs for the Warranty period.]</i></p>

D. Intellectual Property

9. Copyright (GCC Clause 15)

GCC 15.3	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 15.3</i></p> <p><i>[Note: If the Procuring Entity is a corporate or commercial entity, it may choose to specify the conditions under which contractual rights would be conveyed to any Procuring Entity of the concern, or any successor entities following a group reorganization or bankruptcy or other insolvency procedures. Procuring Entities with other organizational structures may need to add other similar provisions.]</i></p>
GCC 15.4	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 15.4</i><i>[Note:</i></p> <p><i>There is a broad spectrum of strategies that the Procuring Entity can adopt regarding Intellectual Property Rights in Custom Software (and in Custom Materials). One extreme case is that the Procuring Entity retains all Intellectual Property Rights and tightly restricts what the Supplier can do with the Custom Software and information related to it. This approach may be appropriate when the Procuring Entity has highly sensitive procedures embedded in the Custom Software (e.g., a central bank's settlement system) or commercial competitive concerns regarding wider use of the Software, designs, or information, or where the Procuring Entity considers that it is contributing valuable know-how to the development of the Custom Software and wishes to share in future profits with the Supplier that derives from exploitation of that know-how. The other extreme case is where the Procuring Entity retains no Intellectual Property Rights in the Custom Software and only licenses its use from the Supplier. This approach is most appropriate when the Supplier wants to take advantage of the potential cost reduction in allowing the Supplier to commercialize the Custom Software (rather than sharing in future profits) and where the Procuring Entity has no proprietary or commercial concerns regarding its reuse.</i></p> <p><i>A wide variety of intermediate arrangements can be appropriate, depending on the circumstances. These would entail variations of what the Procuring Entity is entitled to do with the software, designs, and related information (and under what conditions). These rights and obligations include the following: (i) duplicating and using the software on different equipment, such as back-ups, additional computers, replacements, upgraded units, etc.; (ii) transferring the license or sublicensing the software for other entities to use, modify, develop, commercialize, etc.; (iii) sharing proprietary information regarding the Custom Software with various parties. The Procuring Entity's obligations and rights (and the conditions under which those rights and obligations apply) can vary substantially also. These include: (i) what the Procuring Entity must and can do with the CASE files, Source Code, and executable code of the Custom Software; (ii) sharing, reselling, and otherwise providing access to the software, designs and related information; and (iii) auditing for license compliance.</i></p>

The Supplier's rights in relation to the Custom Software may:

- *Be limited to use in order to support the Procuring Entity; or*
- *Extend to commercial exploitation by re-licensing to third-party customers.*

If the Supplier's rights extend to commercial exploitation, they may be limited as follows:

- *There may be an interim period, designed to protect the Procuring Entity's competitive edge, during which the Supplier is not permitted to exploit commercially; and/or*
- *The Supplier may be prohibited from licensing the Custom Software to certain categories of customer (for example, direct competitors of the Procuring Entity) or in certain territories (for example, Kenya), either for a limited period or indefinitely; and/or*
- *The Supplier may be required to pay royalties to the Procuring Entity when it licenses third parties to use the Custom Software.*

The first two of these categories of limitation are intended to protect the Procuring Entity's competitive edge. The third is intended to allow the Procuring Entity to share in future profits made by the Supplier through exploitation of the Custom Software. Royalty arrangements will have to be backed up by obligations to report to the Procuring Entity regarding future sales of products to which royalties apply and audit rights so that the Procuring Entity can check that the Supplier's reports are accurate. Clearly, if royalty arrangements are put in place, the value of the Custom Software to the Supplier is reduced, so the Procuring Entity may not benefit from an up-front cost saving.

The Procuring Entity's rights in relation to the Custom Software may also be restricted to "user" rights or extended to commercial exploitation. If the Procuring Entity is to be treated as a mere user of the Custom Software, it might accept restrictions on use similar to those imposed in relation to the Standard Software (indeed, the default position in the GCC is that the Custom Software will be licensed to the Procuring Entity on exactly the same terms as the Standard Software if the Intellectual Property Rights in the Custom Software does not vest in the Procuring Entity). It may, however, also expect to have access to, and a right to use, CASE files and Source Code to the Custom Software (whereas, at best, Source Code to the Standard Software is likely to be deposited in escrow).

If the Procuring Entity is to be permitted to exploit the Custom Software commercially, its exploitation rights may be limited in similar ways to the ways in which the Procuring Entity's own usage rights to the Custom Software may be limited.

It may be appropriate to apply different arrangements to various elements of the Custom Software, according to their commercial sensitivity and potential for exploitation and the degree of competitive advantage that they afford to the Procuring Entity.

The various possible arrangements can be achieved by a variety of contractual mechanisms. Ownership of Intellectual Property Rights in the Custom Software may vest the Supplier or the Procuring Entity, with the owner of those rights granting an appropriate license to the other party. This license may be subject to various degrees of exclusivity, depending on the

desired commercial outcome (for example, the Supplier may own the Intellectual Property Rights in the Custom Software by granting to the Procuring Entity a license that is exclusive, in relation to exploitation in Kenya, for two years).

If an exclusive license is to be granted, competition law issues will need to be considered in some jurisdictions.

Each is sufficiently different as to render virtually all sample text inappropriate in numerous cases. Accordingly, the Procuring Entity of Custom Software will, in most instances, require the services of an appropriately skilled lawyer to draft SCC for the rights and obligations regarding Custom Software (more particularly, the variety of rights and obligations that potentially apply to different items of Custom Software).]

GCC 15.5

There are no Special Conditions of Contract applicable to GCC Clause 15.5

[Note: Special software escrow arrangements are generally needed in relation to Contracts for the supply of Software, particularly Application Software, where there is concern about the ability of the Supplier to provide ongoing support throughout the life of the System. The protection provided by an escrow arrangement, however, should be weighed against the costs of administering it. The actual language of the escrow contract will vary depending on the laws of the country in which the escrow deposit is to be made (which may be Kenya or another country with a suitable legal regime) and the escrow agent selected (escrow agents generally have their own standard form contracts). Provisions may cover:

- (i) the Supplier's obligations to deliver the Source Code to the escrow agent and make replacement deposits to ensure that the Source Code is up to date;*
- (ii) the Supplier's warranties that the Source Code is at all times capable of being used to generate the latest version of the executable code to the relevant Software in use by the Procuring Entity and suitable to enable the Procuring Entity to support and develop the Software;*
- (iii) the escrow agent's obligations to keep the Source Code secure and confidential;*
- (iv) the escrow agent's obligations in relation to verification of the Source Code (to ensure that it is Source Code and that it is capable of generating the executable code);*
- (v) the obligations of the Supplier and the Procuring Entity in relation to payment of the escrow agent's fee;*
- (vi) the escrow agent's right and obligation to release the Source Code to the Procuring Entity in certain specified "release events" (e.g., bankruptcy or insolvency of the Supplier or the Supplier's failure to make deposits or to support the Software);*
- (vii) limitations and exclusions of the escrow agent's liability;*
- (viii) the circumstances in which the escrow arrangement will terminate, and what will happen to the deposited Source Code on termination; and*
- (ix) confidentiality undertakings to be given by the Procuring Entity on release of the Source Code.]*

10. Software License Agreements (GCC Clause 16)

GCC 16.1 (a) (iv)	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 16.1 (a) (iv)</i></p> <p><i>[Note: In the interest of soliciting lower Tender prices, Procuring Entities may wish to consider defining limitations in the use of the software. For example:</i></p> <ul style="list-style-type: none"> <i>(a) restrictions on the number of records in particular categories that may be held by the System;</i> <i>(b) restrictions on the numbers of transactions in particular categories that may be processed by the System in any day, week, month, or other specified period;</i> <i>(c) restrictions on the number of persons who may be authorized to use the System at any time;</i> <i>(d) restrictions on the number of persons who may access the System simultaneously at any time; or</i> <i>(e) restrictions on the number of workstations that may be connected to the System at any time.</i> <p><i>Note that, from the point of view of the Procuring Entity, if restrictions of any of these kinds (or any similar kind) are to be imposed and there is a real likelihood that the limits may be reached, it would be better to specify additional license fees that are payable when the limits are reached rather than imposing an absolute prohibition on exceeding the limits.]</i></p>
GCC 16.1 (b) (vi)	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 16.1 (b) (vi)</i></p> <p><i>[Note: The Procuring Entity may also wish to specify, for example, that such entities shall be not direct competitors of the Supplier.]</i></p>
GCC 16.1 (b) (vii)	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 16.1 (b) (vii)</i></p> <p><i>[Note: The Procuring Entity may, for example, wish to specify the members of the Procuring Entity's business group that are not direct competitors of the Supplier and that the Procuring Entity must obtain and provide the Supplier written evidence from such parties that such parties will adhere by the terms of the Contract as if they were party to the Contract.]</i></p>
GCC 16.2	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 16.2</i></p> <p><i>[Note: If on-site audits are acceptable, the Procuring Entity may specify conditions on the duration and number of audits per year; the hours or days during which audits may be conducted; the categories of software subject to audit; the procedures for access to Procuring Entity's hardware or software; the number and affiliation of individual auditors; the timing and terms of advance notice; the indemnity by Supplier for losses, liabilities, and costs incurred by the Procuring Entity as a direct result of the audit; etc.]</i></p>

11. Confidential Information (GCC Clause 17)

GCC 17.1	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 17.1</i></p> <p><i>[Note: The Procuring Entity may wish to give members of its business group or related agencies, for example, access to certain specific types of technical and / or financial information it obtains or develops with respect to the Supplier and its Information Technologies. The SCC covering such an exemption should define the individuals covered and generally provide that the Procuring Entity will ensure that such parties are aware of and will adhere by the Procuring Entity's obligations under GCC Clause 17 as if such party</i></p>
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	<p style="text-align: center;"><i>were a party to the Contract in place of the Procuring Entity.</i></p> <p style="text-align: center;"><i>if necessary and appropriate, specify: persons, topics, and conditions for which the confidentiality clause does not apply.]</i></p>
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E. Supply, Installation, Testing, Commissioning, and Acceptance of the System

12. Representatives (GCC Clause 18)

GCC 18.1	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 18.1</i></p> <p><i>[Note: If appropriate specify additional powers or limitations.]</i></p> <p>The Procuring Entity’s Project Manager shall have the following additional powers and / or limitations to his or her authority to represent the Procuring Entity in matters relating to the Contract <i>[state necessary and appropriate clauses].</i></p>
GCC 18.2.2	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 18.2.2</i></p> <p><i>[Note: If appropriate specify additional powers or limitations.]</i></p> <p>The Supplier’s Representative shall have the following additional powers and / or limitations to his or her authority to represent the Supplier in matters relating to the Contract <i>[state necessary and appropriate clauses].</i></p> <p><i>[Note: Any additional powers or limitations of the Supplier’s Representative will, of necessity, be subject to discussions at Contract finalization and the SCC amended accordingly.]</i></p>

13. Project Plan (GCC Clause 19)

GCC 19.1	<p>Chapters in the Project Plan shall address the following subject:</p> <ul style="list-style-type: none"> <i>(a) Project Organization and Management Sub-Plan, including management authorities, responsibilities, and contacts, as well as task, time and resource-bound schedules (in GANTT format);</i> <i>(b) Implementation Sub-Plan;</i> <i>(c) Training Sub-Plan;</i> <i>(d) Testing and Quality Assurance Sub-Plan;</i> <i>(e) Warranty Defect Repair and Technical Support Service Sub-Plan</i> <p><i>Further details regarding the required contents of each of the above chapters are contained in the Technical Requirements, (insert: reference)].</i></p>
GCC 19.6	<p><i>The Supplier shall submit to the Procuring Entity:</i></p> <ul style="list-style-type: none"> <i>(i) monthly inspection and quality assurance reports</i> <i>(ii) monthly training participants test results</i> <i>(iii) monthly log of service calls and problem resolutions</i>

14. Design and Engineering (GCC Clause 21)

GCC 21.3.1	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 21.3.1.</i></p> <p><i>[Note: If necessary and appropriate, specify the Controlling Technical Documents (i.e., document that must be approved by the Procuring Entity’s Project Manager before any relevant downstream work can be undertaken by the Supplier).]</i></p> <p><i>[The Supplier shall prepare and furnish to the Project Manager the following documents for which the Supplier must obtain the Project Manager’s approval before proceeding with work on the System or any Subsystem covered by the documents. [state “none” or specify, for example:</i></p> <ul style="list-style-type: none"><i>(*) detailed site surveys;</i><i>(*) final Subsystem configurations;</i><i>(*) etc.</i>
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15. Product Upgrades (GCC Clause 23)

GCC 23.4	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 23.4.</i></p> <p><i>[Note: Mandating that all new versions, releases, and updates of Standard Software will be passed on for free during the Warranty Period is a comprehensive requirement, the benefits of which must be balanced against the perceived costs in the mind of the successful Tenderer at the time of tender submission. To require the Supplier to provide for free only new releases and updates, but agreeing that it would be reimbursed for the supply of complete new versions might be more cost-effective. For example, this may be particularly appropriate when the Procuring Entity would not benefit from costs of migrating its business applications to an entirely new version of the underlying database system if such a version came out during a three Warranty Period. Another approach may be to shorten the time period during which updates, etc., would have to be supplied for free, for example, to only the first year of the Warranty Period; or alternatively, a narrower set of Standard Software could be covered.]</i></p>
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16. Inspections and Tests (GCC Clause 25)

GCC 25	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 25.</i></p> <p><i>[Note: Procuring Entity’s may wish to consider employing qualified inspectors to inspect and certify the Information Technologies, Materials, and other Goods prior to shipment. This can minimize the number of cases where the Procuring Entity receives shipped goods that do not conform to the Technical Requirements and shorten the repair or replacement time.]</i></p>
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17. Commissioning and Operational Acceptance (GCC Clause 27)

GCC 27.2.1	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 27.2.1.</i></p> <p><i>[Note: Few aspects of Information Technology procurement are more critical to the successful implementation of a System than the specification of Operational Acceptance Tests. It is imperative that the Procuring Entity prepare the specification for these tests as carefully as the overall specification of the System itself. The description should be sufficiently comprehensive, unambiguous, and verifiable to result in proper operation of the System with minimal confusion or controversy between the Procuring Entity and its management, the</i></p>
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	<p><i>Supplier, and any users.</i></p> <p><i>In addition, where the Contract covers the Installation and acceptance testing of a number of Subsystems, the nature of the acceptance tests required for each Subsystem, and for the final tests to be carried out on the entire System once all Subsystems have been completed, needs to be clearly specified here and/or in the Technical Requirements and which party bears responsibility for correcting any defects discovered during the final tests of the entire System needs to be identified.]</i></p>

F. Guarantees and Liabilities

18. Operational Acceptance Time Guarantee (GCC Clause 28)

GCC 28.2	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 28.2.</i></p> <p><i>[Note: Typical percentages are, respectively, one half of one percent (0.5%) per week and ten percent (10%) of the total. In some instances, the Procuring Entity may wish to consider specifying liquidated damages on a daily basis. If so, specify this in the SCC].</i></p>
GCC 28.3	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 28.3.</i></p> <p><i>[Note: Establishing more milestones for liquidated damages may provide a somewhat greater degree of control and assurances regarding the pace of the implementation of the System. However, this will come at a price of increased complexity of Contract management and increased perceptions of financial risks on the part of Tenderers. This most likely will lead to higher tender prices. In most cases, Operational Acceptance should be the most appropriate financial control for ensuring the timeliness of implementation, since it captures the impact of earlier delays and is, in the final analysis, the milestone that truly matters. Whatever milestones are selected, it is critical that the Implementation Schedule precisely specify what Subsystems or other components are covered and when the milestone is set. These, of course, can be refined and revised through the Agreed Project Plan.]</i></p>

19. Defect Liability (GCC Clause 29)

GCC 29.1	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 29.1.</i></p> <p><i>[Note: Software is never completely error or “bug” free. Thus, the Procuring Entity may wish to refine or to limit the Supplier’s warranty obligations. Properly done, this can reduce Tenderer’s perceptions of financial risk and help lower tender prices. However, the Procuring Entity should balance the potential savings against the risks to reliable and effective operation of the System and the related costs to the Procuring Entity. These tradeoffs are very specific to the type of the System and its uses. These tradeoffs are also changing very rapidly with technological development. The Procuring Entity should consult experts in the relevant areas for an up-to-date assessment of the risks and the most appropriate text to express any such exceptions and limitations.]</i></p>
GCC 29.4	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 29.4.</i></p> <p><i>[Note: When defining the Warranty period, Procuring Entity should be careful to recognize that services such as resident engineer support, new software releases and end-user help desk support are not typically included in commercial warranties and should be priced separately in the Recurrent Cost Table].</i></p>
GCC 29.10	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 29.10</i></p> <p><i>[Note: Typically, the Procuring Entity should develop a set of response times for different degrees of seriousness of the defects and/or categories of IT and/or specific Subsystems. The most appropriate and economical set of response times are highly dependent on the specific System, its use, and the relevant conditions in Kenya.</i></p> <p><i>The GCC specifies that the Supplier must commence work on warranty defects within a</i></p>

maximum of two weeks; else the Procuring Entity may contract-in such services at the Supplier's expense. The Procuring Entity may wish to shorten or lengthen this period in the SCC. The time specified must strike a reasonable balance between the response time the typical qualified Supplier can physically achieve and the importance of maintaining continued System operation. If too short a time period is specified, Suppliers will need to protect themselves by adding a contingency to their tender prices.]

20. Functional Guarantees (GCC Clause 30)

GCC 30	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 30.</i></p> <p><i>[Note: In the event that Information Systems and Technologies would have to conform to other calendar system(s), here would be the place to specify related requirements in addition to, or in variation of, the requirements in GCC clause 30.2.]</i></p>
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G. Risk Distribution

21. Insurances (GCC Clause 37)

GCC 37.1 (c)	<p>The Supplier shall obtain Third-Party Liability Insurance in the amount of <i>[insert: monetary value]</i> with deductible limits of no more than <i>[insert: monetary value]</i>. The insured Parties shall be <i>[list insured parties]</i>. The Insurance shall cover the period from <i>[insert: beginning date, relative to the Effective Date of the Contract]</i> until <i>[insert: expiration date, relative to the Effective Date of the Contract or its completion]</i>.</p>
GCC 37.1 (e)	<p><i>There are no Special Conditions of Contract applicable to GCC Clause 37.1 (e).</i></p> <p><i>[Note: Many countries have statutory requirements for various insurances. These should be reviewed with the Procuring Entity's legal department.</i></p> <p><i>For example:</i></p> <p><i>The Supplier shall obtain Worker's Compensation Insurance in accordance with the statutory requirements of [insert: Kenya]. Specifically: [insert: requirements]. The Insurance shall cover the period from [insert: beginning date, relative to the Effective Date of the Contract] until [insert: expiration date, relative to the Effective Date of the Contract or its completion].</i></p> <p><i>The Supplier shall obtain Employer's Liability Insurance in accordance with the statutory requirements of [insert: Kenya]. Specifically: [insert: requirements]. The Insurance shall cover the period from [insert: beginning date, relative to the Effective Date of the Contract] until [insert: expiration date, relative to the Effective Date of Contract or its completion].</i></p>

H. CHANGE IN CONTRACT ELEMENTS

22. Changes to the System (GCC Clause 39)

GCC 39.4.3	<p>Value Engineering</p> <p>If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Supplier shall be ___% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price.</p>
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I. Settlement of Disputes

23. Settlement of Disputes (GCC Clause 43)

GCC 43.1.4	The Appointing Authority for the Adjudicator is: <i>[insert: the name of an impartial international technical organization in the information technology sector, or, if no Adjudicator is used in this Contract Agreement or no organization has been identified and agreed to serve as Appointing Authority for the Adjudicator, state “not applicable.”]</i> .
GCC 43.2.3	<p>If the Supplier is from outside Kenya arbitration proceedings shall be conducted in accordance with the rules of arbitration of <i>[select one of the following: UNCITRAL / the International Chamber of Commerce (ICC) / the Arbitration Institute of the Stockholm Chamber of Commerce / the London Court of International Arbitration]</i>. These rules, in the version in force at the time of the request for arbitration, will be deemed to form part of this Contract.</p> <p>If the Supplier is a national of Kenya, any dispute between the Procuring Entity and a Supplier arising in connection with the present Contract shall be referred to arbitration in accordance with the laws of Kenya.</p>

SECTION VIII - CONTRACT FORMS

Notes to the Procuring Entity on preparing the Contract Forms.

Performance Security: Pursuant to GCC Clause 13.3, the successful Tenderer is required to provide the Performance Security within twenty-eight (28) days of notification of Contract award.

Advance Payment Security: Pursuant to Clause 13.2, the successful Tenderer is required to provide a bank guarantee securing the Advance Payment, if the SCC related to GCC Clause 12.1 provides for an Advance Payment.

Installation and Operational Acceptance Certificates: Recommended formats for these certificates are included in this SPD. Unless the Procuring Entity has good reason to require procedures that differ from those recommended, or to require different wording in the certificates, the procedures and forms shall be included unchanged. If the Procuring Entity wishes to amend the recommended procedures and/ or certificates, it may do so before release of the tendering document to potential Tenderers.

Change Order Procedures and Forms: Similar to the Installation and Operational Acceptance Certificates, the Change Estimate Proposal, Estimate Acceptance, Change Proposal, Change Order, and related Forms should be included in the tendering document unaltered. If the Procuring Entity wishes to amend the recommended procedures and/ or certificates, it may do so before release of the tendering document.

Notes to Tenderers on working with the Sample Contractual Forms

The following forms are to be completed and submitted by the successful Tenderer following notification of award:

(i) Contract Agreement, with all Appendices; (ii) Performance Security; and (iii) Advance Payment Security.

Contract Agreement: In addition to specifying the parties and the Contract Price, the Contract Agreement is where the: (i) Supplier Representative; (ii) if applicable, agreed Adjudicator and his/her compensation; and (iii) the List of Approved Subcontractors are specified. In addition, modifications to the successful Tenderer's Tender Price Schedules are attached to the Agreement. These contain corrections and adjustments to the Supplier's tender prices to correct errors, adjust the Contract Price to reflect - if applicable - any extensions to tender validity beyond the last day of original tender validity plus 56 days, etc.

Performance Security: Pursuant to GCC Clause 13.3, the successful Tenderer is required to provide the Performance Security in the form contained in this section of these tendering documents and in the amount specified in accordance with the SCC.

Advance Payment Security: Pursuant to GCC Clause 13.2, the successful Tenderer is required to provide a bank guarantee for the full amount of the Advance Payment - if an Advance Payment is specified in the SCC for GCC Clause 12.1 - in the form contained in this section of these tendering documents or another form acceptable to the Procuring Entity. If a Tenderer wishes to propose a different Advance Payment Security form, it should submit a copy to the Procuring Entity promptly for review and confirmation of acceptability before the tender submission deadline.

The Procuring Entity and Supplier will use the following additional forms during Contract implementation to formalize or certify important Contract events: (i) the Installation and Operational Acceptance Certificates; and (ii) the various Change Order forms. These and the procedures for their use during performance of the Contract are included in the tendering documents for the information of Tenderers.

1. Notification of Intention to Award

[This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.]

[Send this Notification to the Tenderer's Authorized Representative named in the Tenderer Information Form]

1) For the attention of Tenderer's Authorized Representative Name:..... [insert Authorized Representative's name]

Address: [insert Authorized Representative's Address]

Telephone/Fax numbers:..... [insert Authorized Representative's telephone/fax numbers]

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

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

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

Notification of Intention to Award

[Procuring Entity]..... [insert the name of the Procuring Entity]

Project..... [insert name of project]

Contract title..... [insert the name of the contract]

Country:..... [insert country where ITT is issued]

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

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

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

i) The successful Tenderer

Name:	[insert name of successful Tenderer]
Address:	[insert address of the successful Tenderer]
Contract price:	[insert contract price of the successful Tenderer]
Total combined score:	[insert the total combined score of the successful Tenderer]

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

Name of Tenderer	Technical Score (If applicable)	Tender price	Evaluated Tender Cost	Combined Score (if applicable)
[insert name]	[insert Technical score]	[insert Tender price]	[insert evaluated cost]	[insert combined score]
[insert name]	[insert Technical score]	[insert Tender price]	[insert evaluated cost]	[insert combined score]
[insert name]	[insert Technical score]	[insert Tender price]	[insert evaluated cost]	[insert combined score]
[insert name]	[insert Technical score]	[insert Tender price]	[insert evaluated cost]	[insert combined score]
[insert name]	[insert Technical score]	[insert Tender price]	[insert evaluated cost]	[insert combined score]

3) **Reason/s why your Tender was unsuccessful [Delete if the combined score already reveals the reason]**

[INSTRUCTIONS; State the reason/s why this Tenderer's Tender was unsuccessful. Do NOT include: (a) a point by point comparison with another Tenderer's Tender or (b) information that is marked confidential by the Tenderer in its Tender.]

4) **How to request a debriefing**

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

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

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

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

Agency: [insert name of Procuring Entity] **Email address:** _____ [insert email address] **Fax number:** _____ [insert fax number] **delete if not used**

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

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

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

5) **How to make a complaint**

DEADLINE: The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, [insert date] (local time).

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

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

Agency: [insert name of Procuring Entity] **Email address:** _____ [insert email address]

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

For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website info@ppra.go.ke or complaints@ppra.go.ke.

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this procurement, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the deadline stated above.
4. You must include, in your complaint, all of the information required by the Procurement Regulations (as described in Annex III).

6) Standstill Period

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

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens we will notify you of the extension.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Procuring Entity:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

2. REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....**APPLICANT**

AND

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

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

REQUEST FOR REVIEW

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

- 1.
- 2.

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

- 1.
- 2.

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

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

SIGNED

Board Secretary

3. Letter of Award

_____) _____

To: _____

This is to notify you that your Tender dated _____ for execution of the _____ for the Contract Price in the aggregate of _____, as corrected and modified in accordance with the Instructions to Tenderers is here by accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section X, - Contract Forms, of the Tendering Document.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract Agreement

4. Contract Agreement

THIS CONTRACT AGREEMENT is made on the[insert: ordinal] day of [insert: month], [insert: year]. BETWEEN (1).....[insert: Name of Procuring Entity], a [insert: description of type of legal entity, for example, an agency of the Department of.....] of the Government of Kenya, or corporation incorporated under the laws of Kenya and having its principal place of business at [insert: address of Procuring Entity] (here in after called “the Procuring Entity”), and (2).....[insert: name of Supplier], a corporation incorporated under the laws of [insert: country of Supplier] and having its principal place of business at [insert: address of Supplier] (here in after called “the Supplier”).

WHEREAS the Procuring Entity desires to engage the Supplier to supply, install, achieve Operational Acceptance of, and support the following Information System [insert: brief description of the Information System] (“the System”), and the Supplier has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement.

NOW IT IS HERE BY AGREED as follows:

Article 1. Contract Documents

1. Contract Documents (Reference GCC Clause 1.1(a) (ii))

The following documents shall constitute the Contract between the Procuring Entity and the Supplier, and each shall be read and construed as an integral part of the Contract:

- a) This Contract Agreement and the Appendices attached to the Contract Agreement
- b) Special Conditions of Contract
- c) General Conditions of Contract
- d) Technical Requirements (including Implementation Schedule)
- e) The Supplier's tender and original Price Schedules
- f) [Add here: any other documents]

1.2 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 7 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.

1.3 Definitions (Reference GCC Clause 1)

Capitalized words and phrases used in this Contract Agreement shall have the same meanings as prescribed to them in the General Conditions of Contract.

Article 2.

Contract Price and Terms of Payment

- 2.1 Contract Price (Reference GCC Clause 1.1(a)(viii) and GCC Clause 11) The Procuring Entity here by agrees to pay to the Supplier the Contract Price in consideration of the performance by the Supplier of its obligations under the Contract. The Contract Price shall be the aggregate of: [insert: amount of foreign currency A in words], [insert: amount in figures], plus [insert: amount of foreign currency B in words], [insert: amount in figures], plus [insert: amount of foreign currency C in words], [insert: amount in figures], [insert: amount of local currency in words], [insert: amount in figures], as specified in the Grand Summary Price Schedule.

The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the terms and conditions of the associated incoterms, and the taxes, duties and related levies if and as identified.

Article 3.

Effective Date for Determining Time for Operational Acceptance

- 3.1 Effective Date (Reference GCC Clause 1.1(e) (ix))

The time allowed for supply, installation, and achieving Operational Acceptance of the System shall be determined from the date when all of the following conditions have been fulfilled:

- a) This Contract Agreement has been duly executed for and on behalf of the Procuring Entity and the Supplier;
- b) The Supplier has submitted to the Procuring Entity the performance security and the advance payment security, in accordance with GCC Clause 13.2 and GCC Clause 13.3;

c) The Procuring Entity has paid the Supplier the advance payment, in accordance with GCC Clause 12; Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract Agreement because of reasons not attributable to the Supplier, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Achieving Operational Acceptance and/or other relevant conditions of the Contract.

Article 4.
Appendixes

4.1 The Appendixes listed below shall be deemed to form an integral part of this Contract Agreement.

4.2 Reference in the Contract to any Appendix shall mean the Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly.

APPENDIXES

Appendix 1. Supplier's Representative

Appendix 2. Adjudicator [*If there is no Adjudicator, state "not applicable"*]

Appendix 3. List of Approved Subcontractors

Appendix 4. Categories of Software

Appendix 5. Custom Materials

Appendix 6. Revised Price Schedules (if any)

Appendix 7. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

IN WITNESS WHEREOF the Procuring Entity and the Supplier have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

i) For and on behalf of the Procuring Entity

Signed:

in the capacity of [*insert: title or other appropriate designation*]

in the presence of _____

ii) For and on behalf of the Supplier

Signed:

in the capacity of [*insert: title or other appropriate designation*]

in the presence of _____

5. Appendices

a) Appendix 1. Supplier's Representative

In accordance with GCC Clause 1.1 (b) (iv), the Supplier's Representative is:

Name: [*insert: name and provide title and address further below, or state "to be nominated within fourteen (14) days of the Effective Date"*]

Title: [*if appropriate, insert: title*]

In accordance with GCC Clause 4.3, the Supplier's addresses for notices under the Contract are:

Address of the Supplier's Representative: [*as appropriate, insert: personal delivery, postal, cable, facsimile, electronic mail, and/or EDI addresses.*]

Fallback address of the Supplier: [*as appropriate, insert: personal delivery, postal, cable, facsimile, electronic mail, and/or EDI addresses.*]

b) Appendix

2 Adjudicator in accordance with GCC Clause 1.1 (b) (vi), the agreed-upon Adjudicator is: Name:

..... *[insert: name]* Title:

[insert: title] Address:.....*[insert: postal address]* Telephone:

..... *[insert: telephone]* in accordance with GCC Clause 43.1.3, the

agreed-upon fees and reimbursable expenses are: Hourly Fees:

[insert: hourly fees] Reimbursable Expenses:.....*[list: reimbursables]*

Pursuant to GCC Clause 43.1.4, if at the time of Contract signing, agreement has not been reached between the Procuring Entity and the Supplier, an Adjudicator will be appointed by the Appointing Authority named in the SCC.

e) **Appendix 5. Custom Materials**

The follow table specifies the Custom Materials the Supplier will provide under the Contract.

Custom Materials

f) Appendix 6. Revised Price Schedules

The attached Revised Price Schedules (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the Price Schedules contained in the Supplier's Tender. These Revised Price Schedules reflect any corrections or adjustments to the Supplier's tender price, pursuant to the ITT Clauses 30.3 and 38.2.

g) Appendix 7. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

The attached Contract amendments (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the relevant clauses in the GCC, SCC, Technical Requirements, or other parts of this Contract as defined in GCC Clause 1.1 (a) (ii).

6. Performance and Advance Payment Security Forms

5.1 Performance Security Form (Demand Bank Guarantee)

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]

[Guarantor Form head or SWIFT identifier code]

[insert: Bank's Name, and Address of Issuing Branch or Office]

Beneficiary:..... *[insert: Name and Address of Procuring Entity]*

Date:*[insert: date]*

PERFORMANCE GUARANTEE No.:.....*[insert: Performance Guarantee Number]* **Guarantor:**
.....*[Insert name and address of place of issue, unless indicated in the Form head.]*

We have been informed that on *[insert: date of award]* you awarded Contract No. *[insert: Contract number]* for *[insert: title and/or brief description of the Contract]* (hereinafter called "the Contract") to *[insert: complete name of Supplier which in the case of a joint venture shall be in the name of the joint venture]* (hereinafter called "the Applicant"). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor here by irrevocably undertake to pay you any sum(s) not exceeding *[insert: amount(s)¹ in figures and words]* such sum being payable in the types and proportions of currencies which the Contract Price is payable upon receipt by us of the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the contract without the Beneficiary needing to prove or to showgrounds or reasons for their demand or the sum specified there in.

On the date of your issuing, to the Supplier, the Operational Acceptance Certificate for the System, the value of this guarantee will be reduced to any sum(s) not exceeding *[insert: amount(s) 4 in figures and words]*. This remaining guarantee shall expire no later than..... *[insert: number and select: of months/of years (of the Warranty Period that needs to be covered by the remaining guarantee)]* from the date of the Operational Acceptance Certificate for the System², and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under 15 (a) is hereby excluded.

[Signature(s)]

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

¹The bank shall insert the amount(s) specified and denominated in the SCC for GCC Clauses 13.3.1 and 13.3.4 respectively, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Procuring Entity.

²In this sample form, the formulation of this paragraph reflects the usual SCC provisions for GCC Clause 13.3. However, if the SCC for GCC Clauses 13.3.1 and 13.3.4 varies from the usual provisions, the paragraph, and possibly the previous paragraph, need to be adjusted to precisely reflect the provisions specified in the SCC.

5.2 Advance Payment Security

Demand Bank Guarantee

[Guarantor Form head or SWIFT identifier code]

Beneficiary:..... *[insert: Name and Address of Procuring Entity]*

Date: *[insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[insert: Advance Payment Guarantee Number]*

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

We have been informed that on.....*[insert: date of award]* you awarded Contract No. *[insert: Contract number]* for..... *[insert: title and/or brief description of the Contract]* (here in after called "the Contract") to *[insert: complete name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (here in after called" the Applicant").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert: amount in numbers and words, for each currency of the advance payment]* is to be made to the Supplier against an advance payment guarantee.

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

- (a) Has used the advance payment for purposes other than toward delivery of Goods; or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number.....*[insert number]*at.....*[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety

(90) percent of the Accepted Contract Amount, has been certified for payment, or on the..... *[insert day]* day of.....*[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No.758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

7. Installation and Acceptance Certificates (*insert format*)

Installation Certificate

Date:..... *[insert: date]*

ITT: *[insert: title and number of ITT]*

Contract:..... *[insert: name and number of Contract]*

To:..... *[insert: name and address of Supplier]*

Dear Sir or Madam:

Pursuant to GCC Clause 26 (Installation of the System) of the Contract entered into between yourselves and the..... *[insert: name of Procuring Entity]* (hereinafter the “Procuring Entity”) dated..... *[insert: date of Contract]*, relating to the..... *[insert: brief description of the Information System]*, we hereby notify you that the System (or a Subsystem or major component thereof) was deemed to have been correctly installed on the date specified below.

1. Description of the System (or relevant Subsystem or major component: *[insert: description]*
2. Date of Installation:..... *[insert: date]*

Notwithstanding the above, you are required to complete the outstanding items listed in the attachment to this certificate as soon as practicable. This Form shall not relieve you of your obligation to achieve Operational Acceptance of the System in accordance with the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Procuring Entity

Signed:

Date:

in the capacity of:..... *[state: “Project Manager” or state the title of a higher-level authority in the Procuring Entity's organization]*

1.1 Operational Acceptance Certificate

Date:..... *[insert: date]*

ITT: *[insert: title and number of ITT]*

Contract:.....*[insert: name of System or Subsystem and number of Contract]*

To:..... *[insert: name and address of Supplier]*

Dear Sir or Madam:

Pursuant to GCC Clause 27 (Commissioning and Operational Acceptance) of the Contract entered into between yourselves and the.....*[insert: name of Procuring Entity]* (hereinafter the “Procuring Entity”) dated..... *[insert: date of Contract]*, relating to the.....*[insert: brief description of the Information System]*, we hereby notify you the System (or the Subsystem or major component identified below) successfully completed the Operational Acceptance Tests specified in the Contract. In accordance with the terms of the Contract, the Procuring Entity here by takes over the System (or the Subsystem or major component identified below), together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

- 1. Description of the System (or Subsystem or major component):*[insert: description]*
- 2. Date of Operational Acceptance:.....*[insert: date]*

This Form shall not relieve you of your remaining performance obligations under the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Procuring Entity

Signed:

Date:

in the capacity of:..... *[state: “Project Manager” or higher-level authority in the Procuring Entity's organization]*

7. Change Order Procedures and Forms

Date:..... [*insert: date*]

ITT: [*insert: title and number of ITT*]

Contract:.....[*insert: name or System or Subsystem and number of Contract*]

General

This section provides samples of procedures and forms for carrying out changes to the System during the performance of the Contract in accordance with GCC Clause 39 (Changes to the System) of the Contract.

Change Order Log

The Supplier shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Change Orders authorized or pending. Changes shall be entered regularly in the Change Order Log to ensure that the log is kept up-to-date. The Supplier shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Procuring Entity.

References to Changes

- 1) Request for Change Proposals (including Application for Change Proposals) shall be serially numbered CR-nnn.
- 2) Change Estimate Proposals shall be numbered CN-nnn.
- 3) Estimate Acceptances shall be numbered CA-nnn.
- 4) Change Proposals shall be numbered CP-nnn.
- 5) Change Orders shall be numbered CO-nnn. On all forms, the numbering shall be determined by the original CR-nnn.

Annexes

- 7.1 Request for Change Proposal Form
- 7.2 Change Estimate Proposal Form
- 7.3 Estimate Acceptance Form
- 7.4 Change Proposal Form
- 7.5 Change Order Form
- 7.6 Application for Change Proposal Form

7.1 Request for Change Proposal Form

(Procuring Entity's Form head)

Date:..... [insert: date]

ITT: [insert: title and number of ITT]

Contract:..... [insert: name of System or Subsystem or number of Contract]

To:..... [insert: name of Supplier and address]

Attention: [insert: name and title]

Dear Sir or Madam:

With reference to the above-referenced Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within [*insert: number*] days of the date of this Form.

1. Title of Change: [*insert: title*]
2. Request for Change No./Rev.: [*insert: number*]
3. Originator of Change: [*select Procuring Entity / Supplier (by Application for Change Proposal), and add: name of originator*]
4. Brief Description of Change: [*insert: description*]
5. System (or Subsystem or major component affected by requested Change): [*insert: description*]
6. Technical documents and/ or drawings for the request of
Change: Document or Drawing No. Description
7. Detailed conditions or special requirements of the requested Change: [*insert: description*]
8. Procedures to be followed:
 - a) Your Change Proposal will have to show what effect the requested Change will have on the Contract Price.
 - b) Your Change Proposal shall explain the time it will take to complete the requested Change and the impact, if any, it will have on the date when Operational Acceptance of the entire System agreed in the Contract.
 - c) If you believe implementation of the requested Change will have a negative impact on the quality, operability, or integrity of the System, please provide a detailed explanation, including other approaches that might achieve the same impact as the requested Change.
 - d) You should also indicate what impact the Change will have on the number and mix of staff needed by the Supplier to perform the Contract.
 - e) You shall not proceed with the execution of work related to the requested Change until we have accepted and confirmed the impact it will have on the Contract Price and the Implementation Schedule in writing.
9. As next step, please respond using the Change Estimate Proposal form, indicating how much it will cost you to prepare a concrete Change Proposal that will describe the proposed approach for implementing the Change, all it's elements, and will also address the points in paragraph 8 above pursuant to GCC Clause 39.2.1. Your Change Estimate Proposal should contain a first approximation of the proposed approach, and implications for schedule and cost, of the Change.

For and on behalf of the Procuring Entity

Signed:

Date:

in the capacity of:..... [*state: "Project Manager" or higher-level authority in the Procuring Entity's organization*]

7.2 Change Estimate Proposal Form

(Supplier's Form head)

Date:.....[insert: date]

ITT: [insert: title and number of ITT]

Contract:[insert: name of System or Subsystem and number of Contract]

To:..... [insert: name of Procuring Entity and address]

Attention:..... [insert: name and title]

Dear Sir or Madam:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change in accordance with GCC Clause 39.2.1 of the Contract. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Clause 39.2.2, is required before we proceed to prepare the actual Change Proposal including a detailed estimate of the cost of implementing the Change itself.

- 1. Title of Change:[insert: title]
- 2. Request for Change No./Rev.: [insert: number]
- 3. Brief Description of Change (including proposed implementation approach):..... [insert: description]
- 4. Schedule Impact of Change (initial estimate): [insert: description]
- 5. Initial Cost Estimate for Implementing the Change:.....[insert: initial cost estimate]
- 6. Cost for Preparation of Change Proposal:..... [insert: cost in the currencies of the Contract], as detailed below in the breakdown of prices, rates, and quantities.

For and on behalf of the Supplier Signed:

.....

Date:

in the capacity of:.....[state: "Supplier's Representative" or other higher-level authority in the Supplier's organization]

7.3 Estimate Acceptance Form

(Procuring Entity's Form head) Date:.....[insert: date]

ITT[insert: title and number of ITT]

Contract:.....[insert: name of System or Subsystem and number of Contract]

To:.....[insert: name of Supplier and address]

Attention:[insert: name and title]

Dear Sir or Madam:

We hereby accept your Change Estimate and agree that you should proceed with the preparation of a formal Change Proposal.

1. Title of Change: [insert: title]
2. Request for Change No./ Rev.: [insert: request number /revision]
3. Change Estimate Proposal No./ Rev.: [insert: proposal number/ revision]
4. Estimate Acceptance No./ Rev.: [insert: estimate number/ revision]
5. Brief Description of Change: [insert: description]
6. Other Terms and Conditions:

In the event that we decide not to order the Change referenced above, you shall be entitled to compensation for the cost of preparing the Change Proposal up to the amount estimated for this purpose in the Change Estimate Proposal, in accordance with GCC Clause 39 of the General Conditions of Contract.

For and on behalf of the Procuring Entity

Signed:

Date:

in the capacity of:.....[state: "Project Manager" or higher-level authority in the Procuring Entity's organization]

7.4 Change Proposal Form

(Supplier's Form head)

Date:[insert: date]

ITT: [insert: title and number of ITT]

Contract: [insert: name of System or Subsystem and number of Contract]

To:..... [insert: name of Procuring Entity and address]

Attention: [insert: name and title]

Dear Sir or Madam:

In response to your Request for Change Proposal No. [insert: number], we here by submit our proposal as follows:

1. Title of Change: [insert: name]
2. Change Proposal No./ Rev.: [insert: proposal number /revision]
3. Origin at or of Change: [select: Procuring Entity /Supplier; and add: name]
4. Brief Description of Change: [insert: description]
5. Reasons for Change: [insert: reason]
6. The System Subsystem, major component, or equipment that will be affected by the requested Change: [insert: description]
7. Technical documents and/ or drawings for the requested Change: Document or Drawing No. Description
8. Estimate of the increase/ decrease to the Contract Price resulting from the proposed Change: [insert: amount in currencies of Contract], as detailed below in the breakdown of prices, rates, and quantities. Total lump sum cost of the Change:
Cost to prepare this Change Proposal (i. e., the amount payable if the Change is not accepted, limited as provided by GCC Clause 39.2.6):
9. Additional Time for Achieving Operational Acceptance required due to the Change: [insert: amount in days/ weeks]
10. Effect on the Functional Guarantees: [insert: description]
11. Effect on the other terms and conditions of the Contract: [insert: description]
12. Validity of this Proposal: for a period of.....[insert: number] days after receipt of this Proposal by the Procuring Entity
13. Procedures to be followed:
 - a) You are requested to notify us of your acceptance, comments, or rejection of this detailed Change Proposal within.[insert: number] days from your receipt of this Proposal.
 - b) The amount of any increase and / or decrease shall be taken into account in the adjustment of the Contract Price.

For and on behalf of the Supplier

Signed:

Date:

in the capacity of: [state: "Supplier's Representative" or other higher-level authority in the Supplier's organization]

7.5 Change Order Form

(Procuring Entity's Form head)

Date:..... *[insert: date]*

ITT: *[insert: title and number of ITT]*

Contract:.....*[insert: name of System or Subsystem and number of Contract]*

To:..... *[insert: name of Supplier and address]*

Attention: *[insert: name and title]*

Dear Sir or Madam:

We hereby approve the Change Order for the work specified in Change Proposal No. *[insert: number]*, and agree to adjust the Contract Price, Time for Completion, and/ or other conditions of the Contract in accordance with GCC Clause 39 of the Contract.

1. Title of Change: *[insert: name]*
2. Request for Change No./ Rev.: *[insert: request number/ revision]*
3. Change Order No./ Rev.: *[insert: order number/ revision]*
4. Origin at or of Change: *[select: Procuring Entity / Supplier; and add: name]*
5. Authorized Price for the Change: Ref. No.: *[insert: number]* Date: *[insert: date]*
[insert: amount in foreign currency A] plus [insert: amount in foreign currency B] plus [insert: amount in foreign currency C] plus [insert: amount in local currency]
6. Adjustment of Time for Achieving Operational Acceptance: *[insert: amount and description of adjustment]*
7. Other effects, if any: *[state: "none" or insert description]*

For and on behalf of the Procuring Entity

Signed:

Date:

in the capacity of:.....*[state: "Project Manager" or higher-level authority in the Procuring Entity's organization]*

For and on behalf of the Supplier

Signed:

Date:

in the capacity of:.....*[state "Supplier's Representative" or higher-level authority in the Supplier's organization]*

7.6 Application for Change Proposal Form

(Supplier's Form head)

Date:.....[insert: date]

ITT:..... [insert: title and number of ITT]

Contract:[insert: name of System or Subsystem and number of Contract]

To:..... [insert: name of Procuring Entity and address]

Attention: [insert: name and title]

Dear Sir or Madam:

We hereby propose that the below-mentioned work be treated as a Change to the System.

1. Title of Change:..... [insert: name]
2. Application for Change Proposal No./ Rev.: [insert: number/ revision] dated: [insert: date]
3. Brief Description of Change:..... [insert: description]
4. Reasons for Change:..... [insert: description]
5. Order of Magnitude Estimation: [insert: amount in currencies of the Contract]
6. Schedule Impact of Change: [insert: description]
7. Effect on Functional Guarantees, if any:..... [insert: description]
8. Appendix: [insert: titles (if any); otherwise state "none"]

For and on behalf of the Supplier

Signed:

Date:

in the capacity of:.....[state: "Supplier's Representative" or higher-level authority in the Supplier's organization]

7.7 BENEFICIAL OWNERSHIP DISCLOSURE FORM
(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

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

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

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

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

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

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

Details of beneficial ownership

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

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

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

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

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
- (c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
- (d) exercises significant influence or control, directly or indirectly, over the company.

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

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

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

Designation of the person signing the Tender: [insert complete title of the person signing the Tender]

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

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

Bidder Official Stamp.