



**KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL
(KMPDC)**

**REQUEST FOR PROPOSAL (RFP)
FOR
PRE-QUALIFICATION FOR THE PROVISION OF LEGAL
SERVICES FOR THE FY 2022-2025**

TENDER NO: KMPDC/ITT/S/13/2022-2025

CLOSING DATE: FRIDAY, 16TH SEPTEMBER, 2022 AT 12:00PM

AUGUST, 2022

Kenya Medical Practitioners and Dentists' Council (KMPDC)
KMPDC Complex Plaza
Woodlands, Off Lenana Road
P.O BOX 44839-00100, Nairobi-Kenya
Telephone: 0727666444/011052222
Email Address: info@kmpdc.go.ke | procurement@kmpdc.go.ke

Table of Contents

SECTION 1 (A) - REQUEST FOR PROPOSAL (RFP)	3
SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET	5
SECTION 2 (B). DATA SHEET	20
Capacity of the firm	24
SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS	28
2 CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION	30
3. FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE	Error!
Bookmark not defined.	
5 FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES	36
6 FORM TECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS (NOT APPLICABLE)	37
7. FORM TECH-6B: CURRICULUM VITAE (CV)	38
8. FORMTECH-7: MANDATORY SUPPORT DOCUMENTS	39
FORM TECH - 8: SELF-DECLARATIONFORMS	40
FORM SD2	41
DECLARATION AND COMMITMENT TO THE CODE OF ETHICS	42
FORM TECH - 9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}	43
SECTION 4. FINANCIALPROPOSAL	44
SECTION 5. TERMS OF REFERENCE	45
CONTRACT FOR CONSULTANT'S SERVICES	48
I. FORM OF CONTRACT - LUMP-SUM	49
SECTION 7: GENERAL CONDITIONS OF CONTRACT	64
SECTION 8: SPECIAL CONDITIONS OF CONTRACT	76
SECTION 9: APPENDICES	80
SECTION 10. NOTIFICATION FORMS	95
i) Short listed Consultants	96
4 BENEFICIAL OWNERSHIP DISCLOSURE FORM	101

SECTION 1 (A) - REQUEST FOR PROPOSAL (RFP)

Date: 24th August 2022

TENDER NO. KMPDC/ITT/S/13/2022-2025

Name of Assignment: **Pre-qualification for the Provision of Legal Services for the Years 2022- 2025**

TO: All eligible bidders

1. The Kenya Medical Practitioners and Dentists Council is a statutory authority established under Cap 253 Laws of Kenya to regulate the training, practice and licensing of medicine, dentistry and healthcare institutions that include private & mission hospitals, medical, dental centers & clinics, nursing and maternity homes and standalone funeral homes, in the country.
2. The Kenya Medical Practitioners and Dentists Council has set aside funds in its budget towards the cost of the subject services.
3. The Procuring Entity now invites proposals to provide the following consulting services (here in after called “the services”): **Pre-qualification for the Provision of Legal Services**. More details on the Services are provided in Section 5 Terms of Reference.
4. It is not permissible to transfer this RFP to any other firm.
5. Interested eligible candidates may obtain further information from and inspect the tender documents at the KMPDC COMPLEX, Supply Chain Division, 2nd floor – Committee Room, between 9:00am to 4:00pm, Monday to Friday excluding Public Holidays.
6. The tender document can be accessed and downloaded from the Council’s website www.kmpdc.go.ke
7. A complete tender document may also be obtained by interested candidates upon payment of a non-refundable fee of **Kshs. 1,000**. The payment can be remitted to our Accounts office, located at the First Floor.
8. The firms that download the document must arrange to forward their particulars/contacts to the Head of Procurement, Kenya Medical Practitioners and Dentists Council, through the email address procurement@kmpdc.go.ke before the closing date for records and for purposes of receiving clarifications and/or addendum, if any. Additional information relating to this tender, if any, will be availed through the Council’s website and PPIP from time to time.
9. Duly completed RFP documents, in a plain sealed envelope marked; **“RFP FOR PRE-QUALIFICATION FOR THE PROVISION OF LEGAL SERVICES: KMPDC/ITT/S/13/2022-2025**, should be mailed to the address below or deposited in the KMPDC tender box on the ground floor of the KMPDC Complex Plaza along Lenana Rd on or before **16th September 2022 at 12.00 P.m.**
10. Firms will be selected using the criteria provided in the tender and in a format as described in this RFP, in accordance with the Public Procurement and Asset Disposal Act 2015, a copy of which is found at the following website: www.ppra.go.ke.
11. The: Section 1: Letter of Request for Proposals
Section2: Instructions to consultants and Data Sheet
Section 3: Mandatory & Technical Proposal Standard Forms Section
4: Standard Forms Section 5: Terms of Reference
Section 6: Standard Forms of Contract ([Select: Time-Based or Lump-Sum])

The proposals should be enclosed in an envelope clearly marked as RFP for Pre-qualification for the provision of legal services.

The Proposals will be opened immediately thereafter in the presence of bidders or representatives who choose to attend at the KMPDC Complex Plaza, on the 2nd Floor Committee Room.

Yours sincerely,

**Dr. DANIEL M. YUMBYA, EBS
CHIEF EXECUTIVE OFFICER
KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL**

SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET

A. GENERAL PROVISIONS

1. Meanings/Definitions

- a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- b) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- c) “Procuring Entity” means the entity that is carrying out the consultant selection process and signs the Contract for the Services with the selected Consultant.
- d) “Consultant” means a legally established professional law firm or an entity that may provide or provides the Services to the Procuring Entity under the Contract.
- e) “Contract” means a legally binding written agreement signed between the Procuring Entity and the Law firm and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- f) “Data Sheet” means an integral part of the Instructions to Consultants (ITC) Section2 that is used to reflect specific assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- g) “Day” means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- h) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Law firm, Sub-consultant or Joint Venture member(s).
- i) “Government” means the Government of the Republic of Kenya.
- j) “In writing” means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the Procuring Entity with proof of receipt.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the Council to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the law firm's proposal.
- m) “ITC” (this Section2 of the RFP) means the Instructions to Consultants that provides the Consultants with all information needed to prepare their Proposals.
- n) “Letter of RFP” means the letter of invitation being sent by the Procuring Entity to the Consultants.
- o) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CV are not evaluated individually.
- p) “Proposal” means the Technical Proposal and the Financial Proposal of the Consultant.
- q) “Public Procurement Regulatory Council (PPRA)” means the statutory Council of the Government of Kenya that mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.

- r) “RFP” means the Request for Proposals to be prepared by the Procuring Entity for the selection of Consultants.
- s) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- t) “Sub-consultant” means an entity to whom the Consultant intends to subcontract any part of the Services while the Consultant remains responsible to the Procuring Entity during the whole performance of the Contract.
- u) “Terms of Reference (TORs)” means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.
- v) Admitted lawyers shall mean qualified lawyers who have been admitted to the Bar and hold a valid year 2019 practicing certificate. It includes all Partners and Associates in the law firm.

2. Introduction

- 2.1 The Procuring Entity named in the Data Sheet intends to select a Consultant from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the Data Sheet.
- 2.2 The Consultants are invited to submit a Technical Proposal and a Financial Proposal, for consulting services required for the assignment named in the Data Sheet. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.
- 2.3 The Consultants should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the Data Sheet. Attending any such pre-proposal conference is optional and is at the Consultants' expense.
- 2.4 The Procuring Entity will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the Data Sheet.
- 2.5 The Pre-qualification and enlisting on Kenya Medical Practitioners and Dentist’s Panel shall not constitute a retainer
- 2.6 The selected lawyers will also be expected to provide timely, up to date informed responses and recommendations to queries from the Council.
- 2.7 Kenya Medical Practitioners and Dentists Council does not bind itself to request for provision of any service but shall endeavor to ensure that empaneled lawyers will be treated equitably.
- 2.8 The lawyers shall at all times during the period of the engagement conduct him/herself in a manner suited to the best interests of Kenya Medical Practitioners and Dentists Council.
- 2.9 The selected lawyers should have good credentials in handling relevant Kenyan cases and matters. He/she should also have appropriate experience and/or national affiliations or networks in the major towns of Kenya (Such affiliation will be an added advantage).

3. Conflict of Interest

- 3.1 The Consultant is required to provide professional, objective, and impartial advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.
- 3.2 The Consultant has an obligation to disclose to the Procuring Entity any situation of actual or

potential conflict that impacts its capacity to serve the best interest of the Procuring Entity. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract.

3.3 Without limitation on the generality of the foregoing, and unless stated otherwise in the Data Sheet, the Consultants shall not be hired under the circumstances set forth below:

i) *Conflicting Activities*

Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Procuring Entity to provide goods, works, or non-consulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any of its Affiliates, shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

ii) *Conflicting Assignments*

Conflict among consulting assignments: A Consultant (including its Experts and Sub-consultants) or any of its Affiliates shall not be hired for any assignment that, by its nature, may conflict with another assignment of the Consultant for the same or for another Procuring Entity.

(iii) *Conflicting Relationships*

Relationship with the Procuring Entity's staff: a Consultant (including its Experts and Sub-consultants) that has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and: (i) are directly or indirectly involved in the preparation of the Terms of Reference for the assignment,(ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from such relationship has been resolved in a manner that determines there is no conflict to affect this selection process.

iv) *Others*

Any other types of conflicting relationships as indicated in the Data Sheet.

4. Unfair Competitive Advantage

4.1 Fairness and transparency in the selection process require that the Consultants or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all Consultants together with this RFP all information that would in that respect give such Consultant any unfair competitive advantage over competing Consultants.

5. Corrupt and Fraudulent Practices

5.1 Consultant firms or any of its members shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Consultant firms or any of its members that are proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.

5.2 Collusive practices

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

5.3 In further pursuance of this policy, Consultants shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their

personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

6. Eligibility

- 6.1 In selection of Consultants, short-listing shall be composed of firms or individuals who belong to the same line of professional business and who are almost of the same qualifications.
- 6.2 Unless otherwise specified in the Data Sheet, the Procuring Entity permits Consultants including proposed experts, joint ventures and individual members from all countries and categories to offer consulting services. The maximum number of members so far JV shall be specified in the TDS.
- 6.3 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 Council. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. AJV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Council of Kenya may be accessed from the website www.cak.go.ke
- 6.4 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.
- 6.5 It is the Consultant's responsibility to ensure that it's Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.
- 6.6 As an exception to the foregoing ITC 6.1 and 6.2 above:
 - a) Sanctions-A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
 - b) Prohibitions-Firms and individuals of a country or goods in a country maybe ineligible if:
 - i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - ii) 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 services from that country or any payments to any country, person, or entity in that country.
 - c) Restrictions for Government-ownedEnterprises-Government-ownedenterprisesorinstitutionsinKenya shall be eligible only if they can establish that they
 - i) Are legally and financially autonomous,
 - ii) Operate under commercial law, and
 - iii) That they are not dependent agencies of the Procuring Entity.
 - d) Restrictions for public employees - Government officials and civil servants and employees of public institutions shall not be hired for consulting contracts.
- 6.7 Margin of Preference and Reservations-no margin of preference shall be allowed in the selection of consultants. Reservations may however be allowed to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are

appropriately registered as such by the Council to be specified in the Data Sheets. A procuring entity shall ensure that the invitation to submit proposals specifically includes only businesses or firms belonging to one group.

B. Preparation of Proposals

7. General Considerations

7.1 In preparing the Proposal, the Consultant is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

8. Cost of Preparation of Proposal

8.1 The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Procuring Entity is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to Contract award, without there by incurring any liability to the Consultant.

9. Language

9.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Consultant and the Procuring Entity shall be written in the English language.

10. Documents Comprising the Proposal

10.1 The Proposal shall comprise the documents and forms listed in the Data Sheet.

10.2 The Consultant shall declare in the Financial Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid rigging.

10.3 The Consultant shall furnish information on commissions, gratuities and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution, as requested in the Financial Proposal Submission Form.

11. Only One Proposal

11.1 The Consultant (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude Sub-consultant, or the Consultant's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the Data Sheet.

11.2 Members of a joint venture may not also make an individual Proposal, be a subcontractor in a separate proposal or be part of another joint venture for the purposes of the same Contract.

11.3 Should a Joint Venture subsequently win the Contract, it shall consider whether an application for exemption from the Competition Council of Kenya is merited pursuant to Section 25 of the Competition Act 2010.

12. Proposal Validity

a. Proposal Validity Period

- 12.1 The Data Sheet indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.
- 12.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.
- 12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with IT C5.

b. Extension of Validity Period

- 12.4 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.
- 12.5 If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts, except as provided in ITC 12.7.
- 12.6 The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

b. Substitution of Key Experts at Validity Extension

- 12.7 If any of the Key Experts become unavailable for the extended validity period, the Consultant shall provide a written adequate justification and evidence satisfactory to the Procuring Entity together with the substitution request. In such case, a replacement Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluations core, however, will remain to be based on the evaluation of the CV of the original Key Expert.
- 12.8 If the Consultant fails to provide a substitute Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Procuring Entity, such Proposal will be rejected.

c. Sub-Contracting

- 12.9 The Consultant shall not subcontract the whole or part of the Services without reasonable justification and written approval of the Procuring Entity.

13. Clarification and Amendment of RFP

- 13.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the Data Sheet. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all Consultants. Should the Procuring Entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:
- 13.2 At any time before the proposal submission deadline, the Procuring Entity may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Consultants and will be binding on them. The Consultants shall acknowledge receipt of all amendments in writing.
- 13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Consultants reasonable time to take an amendment into account in their

Proposals.

- 13.4 The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

14. Preparation of Proposals—Specific Considerations

14.1 While preparing the Proposal, the Consultant must give particular attention to the following:

- (a) If a Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so long as only one Proposal is submitted, in accordance with ITC 11. Above. A Consultant cannot associate with shortlisted Consultant(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-consultancy, the shortlisted/invited Consultant shall be a lead member. If shortlisted/invited Consultant associates with each other, any of them can be a lead member.
- (b) The Procuring Entity may indicate in the Data Sheet the estimated amount or Key Experts' time input (expressed in person-month), or the Procuring Entity's estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the Consultant's own estimates for the same. This clause shall not apply when using Fixed Budget selection method.
- (c) For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input shall not be disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the Data Sheet, and the Financial Proposal shall not exceed this budget.
- d) Key Experts shall not appear in more than one proposal unless so allowed in the Data Sheet. Invited firms must confirm and ensure their Key experts do not appear in proposal of other invited firms, otherwise proposals with Key experts appearing in other proposals will be rejected.

15. Technical Proposal Format and Content

15.1 The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP and shall comprise the documents listed in the Data Sheet under ITC 10.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.

15.2 Consultant shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.

16. Financial Proposal

16.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the Data Sheet. Irrespective of the consultant selection method, any Consultant that does not submit itemized and priced financial proposal, or merely refers the Procuring Entity to other legal instruments for the applicable minimum remuneration fees shall be considered non-responsive.

a. Price Adjustment

16.2 For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates apply if so, stated in the Data Sheet.

b. Taxes

16.3 The Consultant and its Sub-consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the Data Sheet. Information on

taxes in Kenya is provided in the Data Sheet.

c. Currency of Proposal

16.4 The Consultant may express the price for its Services in the currency or currencies as stated in the Data Sheet. If indicated in the Data Sheet, the portion of the price representing local cost shall be stated in Kenya Shillings.

d. Currency of Payment

16.5 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. SUBMISSION, OPENING AND EVALUATION

17. Submission, Sealing, and Marking of Proposals

17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITC 10 (Documents Comprising Proposal). Consultants shall mark as “CONFIDENTIAL” information in their Proposals which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the Data Sheet, the Consultant has the option of submitting its Proposals electronically.

17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposals and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.

17.3 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.

17.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.

17.5 The signed Proposal shall be marked “ORIGINAL”, and its copies marked “COPY” as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

18. Sealing and Marking of Proposals

18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to the Procuring Entity and a warning “DO NOT OPEN BEFORE..... (The time and date for proposal opening date)”. Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:

18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall be closed and shall be addressed as follows:

- i) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Technical Proposal, as described in ITC11;
- ii) in an envelope or package or container marked “COPIES”, all required copies of the Technical Proposal;
- iii) in an envelope or package or container marked “ORIGINAL”, all required copies of

the Financial Proposal; and

- 18.3 The inner envelopes or packages or containers shall:
- i) Bear the name and address of the Procuring Entity.
 - ii) Bear the name and address of the Firm; and
 - iii) Bear the name and Reference number of the Assignment.
- 18.4 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the proposal. Proposals that are misplaced or opened prematurely will not be accepted.
- 18.5 The Proposal or its modifications must be sent to the address indicated in the Data Sheet and received by the Procuring Entity no later than the deadline indicated in the Data Sheet, or any extension to this deadline. Any Proposal or its modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

19. Confidentiality/Canvassing

- 19.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Procuring Entity on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.
- 19.2 Any attempt by Consultants or any one on behalf of the Consultant to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.
- 19.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Consultant wishes to contact the Procuring Entity on any matter related to the selection process, it should do so only in writing.

20. Opening of Technical Proposals

- 20.1 The Procuring Entity's opening committee shall conduct the opening of the Technical Proposals in the presence of the Consultants' authorized representatives who choose to attend (in person, or online if this option is offered in the Data Sheet). The opening date, time and the address are stated in the Data Sheet. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored by the Procuring Entity or with a reputable public auditor or independent Council until they are opened in accordance with ITC 22.
- 20.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the Data Sheet.

21. Proposals Evaluation

- 21.1 Subject to provision of ITC 15.1, the valuers of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after the Procuring Entity notifies all the Consultants in accordance with ITC 22.1.
- 21.2 The Consultant is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

22. Evaluation of Technical Proposals

- 22.1 The Procuring Entity's evaluation committee shall evaluate the Technical Proposals that have passed the eligibility and mandatory criteria, on the basis of their responsiveness to the Terms of Reference and the RFP. The eligibility and mandatory criteria shall include the following and any other that may include in the Data sheet.
- a) Firm has submitted the required number of copies of the Technical Proposals.
 - b) Firm has submitted a sealed financial proposal.
 - c) The Proposal is valid for the required number of days.
 - d) The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
 - e) The Technical Proposal is complete with all the forms and required documentary evidence submitted.
 - f) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Council in accordance with ITT 3.14 for Kenyan firms.
 - g) Key Experts are from eligible countries.
 - h) Key Experts do not appear in more than one proposal, if so required.
 - i) A short-listed firm has not participated in more than one proposal, if so required.
 - j) The Consultant is not insolvent, in receivership, bankrupt or in the process of being wound up.
 - k) The Consultant, its sub-consultants and experts have not engaged in or been convicted of corrupt or fraudulent practices.
 - l) The Consultant is neither precluded from entering into a Contract nor debarred by PPRA.
 - m) The firm has not proposed employing public officials, civil servants and employees of public institutions.
 - n) The Consultant, its sub-consultants and experts have no conflicts of interest.
- 22.2 Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the Data Sheet.

23. Public Opening of Financial Proposals

23.1 Unsuccessful Proposals

After the technical evaluation is completed, the Procuring Entity shall notify those Consultants whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score, advising them the following: (i) their Proposal was not responsive to the RFP and TOR or did not meet the minimum qualifying technical score; (ii) provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion; (iii) their Financial Proposals will be returned unopened after completing the selection process and Contract signing; and (iv) notify them of the date, time and location of the public opening of the Financial Proposals and invite them to attend.

23.2 Financial Proposals for QBS, CQS and SSS

Following the ranking of the Technical Proposals, when the selection is based on QBS or CQS, the top-ranked Consultant is invited to negotiate the Contract. Only the Financial Proposal of the technically top-ranked Consultant is opened by the opening committee. All other Financial Proposals shall be returned unopened after the Contract negotiations are successfully concluded and the Contract is signed with the successful Consultant.

When the selection is based on the SSS method and if the invited Consultant meets the minimum technical score required passing, the financial proposal shall be opened and the Consultant invited to negotiate the contract.

23.3 Financial Proposals for QCBS, FBS, LCS

Following the ranking of the Technical Proposals, and after internal approvals, the Procuring Entity shall simultaneously notify in writing those Consultants whose Proposals were considered responsive to the RFP and TOR, and that have achieved the minimum qualifying technical score, advising them the following: (i) their Proposal was responsive to the RFP and TOR and met the minimum qualifying technical score; (ii) provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion; (iii) their Financial Proposal will be opened at the public opening of Financial Proposals; and (iv) notify them of the date, time and location of the public opening and invite them for the opening of the Financial Proposals.

23.4 Opening of Financial Proposals

The opening date should allow the Consultants sufficient time to decide for attending the opening and shall be no less than five (5) Business Days from the date of notification of the results of the technical evaluation, described in ITC 22.1 and 22.2.

The Consultant's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the Data Sheet) is optional and is at the Consultant's choice.

The Financial Proposals shall be opened publicly by the Procuring Entity's opening committee in the presence of the representatives of the Consultants and anyone else who chooses to attend. Any interested party who wishes to attend this public opening should contact the Procuring Entity as indicated in the Data Sheet. At the opening, the names of the Consultants, and the overall technical scores, including the break-down by criterion, shall be read aloud. The Financial Proposals will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copies of the record shall be sent to all Consultants who submitted Proposals.

24. Correction of Errors

24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.

24.2 Time-Based Contracts-If a Time-Based contract form is included in the RFP, in case of discrepancy between (i) a partial amount(sub-total) and the total amount, or (ii)between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between figures and words, the later will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Procuring Entity's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

24.3 Lump-Sum Contracts - If a Lump-Sum contract form is included in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per ITC 24 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

25. Taxes

25.1 Subject to ITC 24.2, all taxes are deemed to be included in the Consultant's financial proposal as separate items, and, therefore, considered in the evaluation.

25.2 All local identifiable taxes levied on the contract in voices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and in come and withholding tax payable to Kenya on the remuneration of non-resident Experts for the services rendered in Kenya are dealt with in

accordance with the instructions in the Data Sheet.

26. Conversion to Single Currency

26.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the Data Sheet.

27. Abnormally Low Prices

27.1 An Abnormally Low Price is one where the financial price, in combination with other constituent elements of the proposal, appears unreasonably low to the extent that the price raises material concerns with the Procuring Entity as to the capability of the Consulting firm to perform the Contract for the offered price.

27.2 In the event of identification of a potentially Abnormally Low Price by the evaluation committee, the Procuring Entity shall seek written clarification from the firm, including a detailed price analyses of its price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risk and responsibilities and any other requirements of the RFP document.

27.3 After evaluation of the price analyses, if the Procuring Entity determines that the firm has failed to demonstrate its capability to perform the contract for the offered price, the Procuring Entity shall reject the firm's proposal.

28. Abnormally High Prices

28.1 An abnormally high price is one where the proposal price, in combination with other constituent elements of the proposal, 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 Consultants is compromised.

28.2 In case of an abnormally high tender 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 RFP to check if the specifications, TOR, scope of work and conditions of contract are contributory to the abnormally high proposals. The Procuring Entity may also seek written clarification from the Consultants on the reason or the high proposal price. The Procuring Entity shall proceed as follows:

- i) If the proposal price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the proposal depending on the Procuring Entity's budget considerations.
- ii) If specifications, TOR, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, the Procuring Entity shall reject all proposals and may re-invite for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.

28.3 If the Procuring Entity determines that the Proposal Price is abnormally too high because genuine competition between Consultants is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Proposals and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before re-inviting for proposals.

29. Combined Quality and Cost Evaluation

a. Quality and Cost Based Selection (QCBS) Method

29.1 In the case of Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data Sheet. The Consultant that achieves the highest combined technical and financial score will be notified and invited for negotiations.

b. Fixed Budget Selection (FBS) Method

29.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1.4 of the Data Sheet shall be rejected. The Procuring Entity's evaluation committee will select the Consultant with the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP, notify and invite such Consultant to negotiate the Contract.

c. Least Cost Selection (LCS) Method

29.3 In the case of Least-Cost Selection (LCS), the Procuring Entity's evaluation committee will select the Consultant whose Proposal is the lowest evaluated total price among those Proposals that achieve the minimum technical score required to pass, notify the Consultant and invite the Consultant to negotiate the Contract.

d. Combined Technical and Evaluation Report

29.4 The evaluation committee shall prepare a combined technical and financial evaluation report, with specific recommendations for award or otherwise and subject to the required approvals within the Procuring Entity prior to notifications and invitation of Consultant for negotiations.

30. Notification of Intention to enter into a Contract/Notification of Award

30.1 The Procuring Entity shall send to each Consultant (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Consultant. The **Notification of Intention to enter into a Contract / Notification of Award** shall contain, at a minimum, the following information:

- i) The name and address of the Consultant with whom the Procuring Entity successfully negotiated a contract;
- ii) the contract price of the successful Proposal;
- iii) a statement of the reasons why the recipient's Proposal was unsuccessful
- iv) the expiry date of the Standstill Period, and
- v) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

31. Standstill Period

31.1 The Standstill Period shall be the number of days stated in the Data Sheet. The Standstill Period commences the day after the date the Procuring Entity has transmitted to each Consultant (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. The Contract shall not be signed earlier than the expiry of the Standstill Period. This period shall be allowed for aggrieved Consultants to lodge an appeal. The procedure for appeal and the Council to determine the appeal or complaint is as indicated in the Data Sheet.

D. NEGOTIATIONS AND AWARD

32. Negotiations

32.1 The negotiations will be held at the date and address indicated in the Data Sheet with the Consultant's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Consultant.

32.2 The evaluation committee shall prepare minutes of negotiations that are signed by the Accounting Officer and the Consultant's authorized representative.

32.3 Availability of Key Experts

The invited Consultant shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with ITC 12. Failure to confirm the Key Experts' availability may result in the rejection of the Consultant's Proposal and the Procuring Entity proceeding to negotiate the Contract with the next-ranked Consultant.

32.4 Notwithstanding the above, the substitution Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

32.5 Technical negotiations

The technical negotiations include discussions of the Terms of Reference (TORs), the proposed methodology, the Procuring Entity's inputs, the special conditions of the Contract, and finalizing the "Description of Services" part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, or the relevance of the initial evaluation be affected.

32.6 Financial negotiations

The financial negotiations include the clarification of the Consultant's tax liability in Kenya and how it should be reflected in the Contract. All applicable taxes shall be itemized separately and included in the contract price.

32.7 If the selection method included cost as a factor in the evaluation (that is QCBS, FBS, LCS), the unit rates and the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

32.8 Where QBS or CQS methods was used for a *Lump-sum Contract* as indicated in the RFP, the unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts or the professional practice. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QB and CQS; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant to open its financial proposal and negotiate the contract.

32.9 In the case of a *Time- Based contract*, negotiation of unit rates shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QBS and CQS; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations-Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant for negotiations.

32.10 Where SSS method was used as indicated in the RFP, both the unit rates and total price shall

be negotiated. If the negotiations fail, the Procuring Entity shall terminate the Consultant selection process. In that event, the Procuring Entity shall review the consultancy requirements and market conditions prior to deciding to use an appropriate selection method to again procure the consulting services.

33. Conclusion of Negotiations

- 33.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Accounting Officer and the Consultant's authorized representative and minutes prepared to record the outcome of the negotiations.
- 33.2 If the negotiations fail, the Procuring Entity shall inform the Consultant in writing of all pending issues and disagreements and provide a final opportunity to the Consultant to respond. If disagreement persists, the Procuring Entity shall terminate the negotiations informing the Consultant of the reasons for doing so. The Procuring Entity will invite the next-ranked Consultant to negotiate a Contract. Once the Procuring Entity commences negotiations with the next-ranked Consultant, the Procuring Entity shall not reopen the earlier negotiations.

34. Letter of Award

- 34.1 Upon expiry of the Standstill Period, specified in ITC 28.1, after satisfactorily addressing any appeal that has been filed within the Standstill Period, and upon successful negotiations, the Procuring Entity shall send a Letter of Award to the successful Consultant. The letter shall confirm the Procuring Entity's award of Contract to the successful Consultant and requesting the Consultant to sign and return the draft negotiated Contract within Twenty-One (21) Days from the date of the Letter of Award.

35. Signing of Contract

- 35.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITC 28.1 and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.
- 35.2 The Consultant is expected to commence the assignment on the date and at the location specified in the Data Sheet.

36. Publication of Procurement Contract

- 36.1 Within the period specified in the Data Sheet, the Procuring Entity shall publish the awarded Contract which shall contain, at a minimum, the following information: (a) name and address of the Procuring Entity; (b) name and reference number of the contract being awarded, (c) the selection method used; (d) names of the consultants that submitted proposals; (e) names of all Consultants whose Proposals were rejected or were not evaluated; (f) the name of the successful consultant, the final total contract price, the contract duration and a summary of its scope.
- 36.2 Consider carefully the information on Consultants to be published, particularly evaluation by the Procuring Entity, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:
- 36.3 The awarded Contract shall be published on the Procuring Entity's website with free access if available and in the official procurement tender portal.

37. Procurement Related Complaint and Administrative Review

- 37.1 The procedures for making Procurement-related Complaints shall be specified in the **TDS**.
- 37.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION 2 (B). DATA SHEET

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS
A. General Provisions	
1(j)	Electronic procurement system <i>SHALL NOT</i> be used
2.1	Name of the Procuring Entity: <i>KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL</i> The consultant selection method is: MINIMUM SCORE OF 70% OUT OF 100% AT TECHNICAL EVALUATION.
2.2	The name of the assignment is: <i>PRE-QUALIFICATION FOR THE PROVISION OF LEGAL SERVICES-FOR FY 2022-2025</i>
2.3	A pre-proposal conference will be held: <i>NO</i> Date of pre-proposal conference: <i>NOT APPLICABLE (NA)</i> Time: <i>NA</i> Address: <i>NA</i> Telephone: <i>+ 254 727666444 / 0111 052222</i> E-mail: <i>procurement@kmpdc.go.ke</i> Title of contact person: <i>HEAD OF SUPPLY CHAIN MANAGEMENT</i>
2.4	The Procuring Entity will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals: <i>NOT APPLICABLE</i>
3.3 (iv)	<i>[Insert any other conflicting relationships] NOT APPLICABLE</i>
4.1	<i>[If “Unfair Competitive Advantage” applies to the selection, explain how it is mitigated, including listing the reports, information, documents, etc. and indicating the sources where these can be downloaded or obtained by the Consultants]- NOT APPLICABLE</i>
6.2	The services subject of this tender shall be provided by <i>PRE-QUALIFIED LOCAL FIRMS</i> only.
6.6 (a)	The list of debarred firms and individuals is available at the PPRA’s website <i>www.ppra.go.ke</i> or email <i>complaints@ppra.go.ke</i>
6.7	The business will be registered with <i>NOT APPLICABLE</i>
B. Preparation of Proposals	
10.1	The Proposal shall comprise the following: 1 st Inner Envelope with the Technical Proposal:

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS
	Power of Attorney to sign the Proposal TECH-1: Technical Proposal Submission Form TECH-2: Consultant’s references TECH-3: Comments and Suggestions of consultant in the Terms of References. TECH-4: Description of Approach, Methodology and Work plan for performing the assignment TECH-5: Work Schedule and Planning for Deliverables TECH-6: Team Composition, Assignment, and Key Experts’ Input TECH-7: Mandatory Documentary Evidence.
11.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is <i>NOT PERMISSIBLE</i>
12.1	Proposals must remain valid for <i>150 DAYS</i> after the proposal submission deadline.
13.1	Clarifications may be requested no later than <i>SEVEN DAYS</i> prior to the submission deadline. The contact information for requesting clarifications is: <i>HEAD OF SUPPLY CHAIN MANAGEMENT</i> E-mail: <i>procurement@kmpdc.go.ke</i>
14 (b) (do not use for Fixed Budget method)	<i>[If not used, state “Not applicable”. If used, insert the following:</i> Estimated input of Key Experts’ time-input: _____NA_____person-months. <i>[OR]</i> Estimated total cost of the assignment: _____NA_____ <i>[Indicate only either time input (in person-month) or total cost, but not both!]</i>
14 (c) and 26.2 [use for Fixed Budget method]	<i>[If Fixed Budget Selection Method is <u>not</u> used, state “Not applicable”. If Fixed Budget Selection method is used, insert the following: - <i>NOT APPLICABLE</i></i> The total available budget for this Fixed-Budget assignment is: _____ <i>[insert currency]</i> <i>(choose one: inclusive or exclusive of taxes). Proposals exceeding the total available budget will be rejected.</i> <i>[If inclusive, indicate tax estimates separately]</i>
14 (d)	Key Experts shall not appear in more than one proposal: <i>YES</i>
C. Submission, Opening and Evaluation	
17.1	The Consultants <i>SHALL NOT</i> have the option of submitting their Proposals electronically.
17.5	The Consultant must submit: (a) Technical Proposal: one (1) original
18.5	The Proposals must be submitted no later than: Date: <i>16TH SEPTEMBER 2022</i> Time: <i>12:30PM EAST AFRICAN TIME</i> The Proposal submission address is: <i>THE CHIEF EXECUTIVE OFFICER</i> <i>KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL</i> <i>P. O. BOX 44839</i> <i>NAIROBI 00100</i>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS																						
20.1	<p>An online option of the opening of the Technical Proposals is offered: NOT OFFERED <i>[If yes, insert “The online opening procedure shall be: [describe the procedure for online opening of Technical Proposals.] - NOT APPLICABLE</i> The opening shall take place at: Street Address: KMPDC COMPLEX, WOODLANDS ROAD OF LENANA ROAD Floor Number: SECOND FLOOR Room number AT THE COMMITTEE ROOM City: NAIROBI County: NAIROBI Country: KENYA Date: 16TH SEPTEMBER 2022 Time: 12:30PM EAST AFRICAN TIME <i>[The time should be immediately after the time for the submission deadline stated in 17.7, as extended]</i></p>																						
20.2	<p>In addition, the following information will be read aloud at the opening of the Technical Proposals</p> <ol style="list-style-type: none"> 1. Tender security 2. Number of pages in the technical proposal 3. Number of copies received for both technical and un-opened financial proposals 																						
22.1	<p>PRELIMINARY AND MANDATORY EVALUATION CRITERIA A. Mandatory Requirements Applicable to Firms Applying for Provision of Legal Services</p> <table border="1" data-bbox="304 1189 1430 2123"> <thead> <tr> <th data-bbox="304 1189 384 1227">No.</th> <th data-bbox="384 1189 1251 1227">Requirement</th> <th data-bbox="1251 1189 1430 1227">Pass/Fail</th> </tr> </thead> <tbody> <tr> <td data-bbox="304 1227 384 1301">1.</td> <td data-bbox="384 1227 1251 1301">Attach copy of certificate of Registration/Incorporation or its equivalent</td> <td data-bbox="1251 1227 1430 1301"></td> </tr> <tr> <td data-bbox="304 1301 384 1375">2.</td> <td data-bbox="384 1301 1251 1375">Attach a copy of Valid Tax Compliance Certificate at the date of tender opening</td> <td data-bbox="1251 1301 1430 1375"></td> </tr> <tr> <td data-bbox="304 1375 384 1697">3.</td> <td data-bbox="384 1375 1251 1697"> Firm profile, providing the following information: <ul style="list-style-type: none"> • Period during which the law firm has been in operation • Number of partners • Number of associates • Number of paralegal staff • Number of support staff </td> <td data-bbox="1251 1375 1430 1697"></td> </tr> <tr> <td data-bbox="304 1697 384 1883">4.</td> <td data-bbox="384 1697 1251 1883">Bid Security of Kshs. 100,000.00 in form of a guarantee from a bank licensed by the Central Bank of Kenya (CBK) or International Bank or Insurance Company approved by the Insurance Regulatory Council (IRA) valid for 180 days after the date of tender closing.</td> <td data-bbox="1251 1697 1430 1883"></td> </tr> <tr> <td data-bbox="304 1883 384 1995">5.</td> <td data-bbox="384 1883 1251 1995">Copy of Valid professional indemnity insurance cover as indicated in table 1(1) (a) taken out with a reputable insurance firm.</td> <td data-bbox="1251 1883 1430 1995"></td> </tr> <tr> <td data-bbox="304 1995 384 2123">6.</td> <td data-bbox="384 1995 1251 2123">Copies of Current (2022) practicing certificates of the Partners and Associates with respect to each Advocate listed in the Confidential Business Questionnaire.</td> <td data-bbox="1251 1995 1430 2123"></td> </tr> </tbody> </table>		No.	Requirement	Pass/Fail	1.	Attach copy of certificate of Registration/Incorporation or its equivalent		2.	Attach a copy of Valid Tax Compliance Certificate at the date of tender opening		3.	Firm profile, providing the following information: <ul style="list-style-type: none"> • Period during which the law firm has been in operation • Number of partners • Number of associates • Number of paralegal staff • Number of support staff 		4.	Bid Security of Kshs. 100,000.00 in form of a guarantee from a bank licensed by the Central Bank of Kenya (CBK) or International Bank or Insurance Company approved by the Insurance Regulatory Council (IRA) valid for 180 days after the date of tender closing.		5.	Copy of Valid professional indemnity insurance cover as indicated in table 1(1) (a) taken out with a reputable insurance firm.		6.	Copies of Current (2022) practicing certificates of the Partners and Associates with respect to each Advocate listed in the Confidential Business Questionnaire.	
No.	Requirement	Pass/Fail																					
1.	Attach copy of certificate of Registration/Incorporation or its equivalent																						
2.	Attach a copy of Valid Tax Compliance Certificate at the date of tender opening																						
3.	Firm profile, providing the following information: <ul style="list-style-type: none"> • Period during which the law firm has been in operation • Number of partners • Number of associates • Number of paralegal staff • Number of support staff 																						
4.	Bid Security of Kshs. 100,000.00 in form of a guarantee from a bank licensed by the Central Bank of Kenya (CBK) or International Bank or Insurance Company approved by the Insurance Regulatory Council (IRA) valid for 180 days after the date of tender closing.																						
5.	Copy of Valid professional indemnity insurance cover as indicated in table 1(1) (a) taken out with a reputable insurance firm.																						
6.	Copies of Current (2022) practicing certificates of the Partners and Associates with respect to each Advocate listed in the Confidential Business Questionnaire.																						

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS														
	7.	Copies of current Certificates of Good Standing issued by the Law Society of Kenya with respect to each Advocate listed in the Confidential Business Questionnaire.													
	8.	Reference letters on client letterhead from three (3) major clients that the bidders are currently representing, and details of contact persons. The reference letters must be specifically addressed to the Chief Executive Officer of KMPDC through the address supplied in the Instructions to Tenderers.													
	9.	Audited accounts for the last three (3) years i.e 2018, 2019 and 2020.													
	10.	Duly filled, signed and stamped Confidential Business Questionnaire													
	11.	Duly filled, signed and stamped certificate of independent proposal determination													
	12.	Duly filled Form SD1 Self declaration confirming that the person/tenderer is not debarred in the matter by the Public Procurement And Asset Disposal Act 2015													
	13.	Duly filled Form SD2 Self Declaration confirming that the person/tenderer will not engage in corruption made pursuant to Section 62 of the Public Procurement and Asset Disposal Act, 2015 indicating that the firm or any of its partners, associates and/or employees will not engage in any corrupt or fraudulent practice and declaration that the firm or any of its partners, associates and/or employees are not debarred from participating in procurement proceedings.													
	<p>Note:</p> <p>Bid evaluation shall be on the basis of pass/fail and any bid failing in any of the general pre-qualification (mandatory requirements) will not proceed to the technical mandatory compliance evaluation stage.</p>														
22.2	<p>i. TECHNICAL CAPACITY EVALUATION</p> <p>The bidders that will qualify at the mandatory evaluation stage shall be subjected to the technical capacity evaluation. The maximum scores attainable at the technical capacity evaluation stage shall be one hundred (100) with a pass of 70. Bidders who attain Seventy (70) marks and above out of hundred (100) will be pre-qualified for the provision of legal services for the 2022-2025 financial years.</p> <p>TABLE 1: TECHNICAL EVALUATION MATRIX</p> <table border="1" data-bbox="304 1711 1474 2107"> <thead> <tr> <th></th> <th>Evaluation requirement</th> <th>Parameter</th> <th>Maximum Score</th> </tr> </thead> <tbody> <tr> <td>I.</td> <td colspan="3">Professional Indemnity Cover</td> </tr> <tr> <td>I(a)</td> <td>Value of Professional Indemnity Cover (attach evidence)</td> <td> <ul style="list-style-type: none"> A Professional Indemnity Cover of not less than KSh. 200 Million Has more than twelve (12) admitted lawyers. A Professional Indemnity Cover of not less than KSh. 100 Million but not equivalent to or more than </td> <td>10</td> </tr> </tbody> </table>				Evaluation requirement	Parameter	Maximum Score	I.	Professional Indemnity Cover			I(a)	Value of Professional Indemnity Cover (attach evidence)	<ul style="list-style-type: none"> A Professional Indemnity Cover of not less than KSh. 200 Million Has more than twelve (12) admitted lawyers. A Professional Indemnity Cover of not less than KSh. 100 Million but not equivalent to or more than 	10
	Evaluation requirement	Parameter	Maximum Score												
I.	Professional Indemnity Cover														
I(a)	Value of Professional Indemnity Cover (attach evidence)	<ul style="list-style-type: none"> A Professional Indemnity Cover of not less than KSh. 200 Million Has more than twelve (12) admitted lawyers. A Professional Indemnity Cover of not less than KSh. 100 Million but not equivalent to or more than 	10												

		KSh. 200 Million <ul style="list-style-type: none"> • Has between eight (8) and twelve (12) admitted lawyers 	
		<ul style="list-style-type: none"> • A Professional Indemnity Cover of not less than KSh. 50 Million but not equivalent to or more than KSh. 100 Million 	
		<ul style="list-style-type: none"> • Has between four (4) and seven (7) admitted lawyers 	
		<ul style="list-style-type: none"> • A Professional Indemnity Cover of not less than KSh. 10 Million but not equivalent to or more than KSh. 50 Million 	
		<ul style="list-style-type: none"> • ♣ Has between one (1) and three (3) admitted lawyers 	
2.	Capacity of the firm (Attach CVs of personnel proposed for administration and execution of legal briefs. The CVs should be prepared according to the format provided in this document)		
2(a)	Number of Partners	<ul style="list-style-type: none"> • 3 marks per Partner for a maximum of 3 Partners 	9
		<ul style="list-style-type: none"> • 0 mark for any Partner whose CV is not attached 	0
2(b)	Number of Associates	<ul style="list-style-type: none"> • 2 marks per Associate for a maximum of 6 Associates 	12
		<ul style="list-style-type: none"> • 0 mark for any Associate whose CV is not attached 	0
3.	Briefs handled: (Prepare a List and Brief Summary of each case indicating <i>the nature of briefs handled and attach evidence thereof</i>)		
3(a)	Complex Constitutional and Judicial Review matters	<ul style="list-style-type: none"> • 2 marks per brief with Summary and Evidence for a maximum of 5 briefs. 	10
		<ul style="list-style-type: none"> • 0 mark for any brief whose brief summary and evidence is not provided. 	0
3(b)	Health related legal briefs	<ul style="list-style-type: none"> • 2 marks per brief with Summary and Evidence for a maximum of 5 briefs. 	10
		<ul style="list-style-type: none"> • 0 mark for any brief whose brief summary and evidence is not provided. 	0
3(c)	Conveyancing briefs	<ul style="list-style-type: none"> • 2 marks per brief with Summary and Evidence for a maximum of 5 briefs. 	10
		<ul style="list-style-type: none"> • 0 mark for any brief whose brief summary and evidence is not provided. 	0
3(d)	Procurement and Disposal Law related briefs	<ul style="list-style-type: none"> • 2 marks per brief with Summary and Evidence for a maximum of 3 briefs. 	6

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS			
			<ul style="list-style-type: none"> • 0 mark for any brief whose brief summary and evidence is not provided. 	0
	3(e)	Commercial Law briefs	<ul style="list-style-type: none"> • 2 marks per brief with Summary and Evidence for a maximum of 3 briefs. 	6
			<ul style="list-style-type: none"> • 0 mark for any brief whose brief summary and evidence is not provided. 	0
	3(f)	Briefs by other regulatory bodies	<ul style="list-style-type: none"> • 2 marks per brief with Summary and Evidence for a maximum of 3 briefs. 	6
			<ul style="list-style-type: none"> • 0 mark for any brief whose brief summary and evidence is not provided. 	0
	3(g)	Experience in Legislative Drafting	<ul style="list-style-type: none"> • 2 marks per brief with Summary and Evidence for a maximum of 3 briefs. 	6
			<ul style="list-style-type: none"> • 0 mark for any brief whose brief summary and evidence is not provided. 	0
	3(h)	Experience in criminal law	<ul style="list-style-type: none"> • 2 marks per brief with Summary and Evidence for a maximum of 3 briefs. 	6
			<ul style="list-style-type: none"> • 0 mark for any brief whose brief summary and evidence is not provided. 	0
	4.	Facilities		
	4(a)	Demonstration of possession of a legal library or subscription to legal resources	<ul style="list-style-type: none"> • 3 marks for evidence of modern legal library. 	3
			<ul style="list-style-type: none"> • 0 mark if evidence of modern legal library is not provided. 	0
	4(b)	Demonstration of deployment of Health laws for improved service provision	<ul style="list-style-type: none"> • 3 marks for evidence of deployment of Health laws for improved service provision. 	3
			<ul style="list-style-type: none"> • 0 mark if evidence of deployment of ICTs for improved service provision is not provided. 	0
	5.	Current Reference Letters		
	5(a)	Provide reference letters addressed to the Council from three (3) main clients for whom similar services are offered.	<ul style="list-style-type: none"> • 1 mark for each reference letter attached up to a maximum of 3 letters 	3
			<ul style="list-style-type: none"> • 0 mark for any reference letter that does not comply with the requirements 	0

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS			
	<table border="1" style="width: 100%;"> <tr> <td style="width: 70%; text-align: center;">Total score</td> <td style="width: 30%; text-align: center;">100</td> </tr> </table>		Total score	100
Total score	100			
23.4	An online option of the opening of the Financial Proposals is offered: NOT OFFERED			
25.2	<p>For the evaluation, the Procuring Entity will include separate items of: (a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract's invoices; and (b) all additional local indirect tax on the remuneration of services rendered by experts.</p> <p>If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized using the itemized list and included in the Contract amount as a separate line, also indicating which taxes shall be paid by the Consultant and which taxes are withheld and paid by the Procuring Entity on behalf of the Consultant.</p>			
26.1	<p>The single currency for the conversion of all prices expressed in various currencies into a single one is: KENYA SHILLINGS</p> <p>The official source of the selling exchange rate is: NOT APPLICABLE IN THIS TENDER</p> <p>The date of the exchange rate is: NOT APPLICABLE</p>			
29.1 (QCBS only)	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following: $Sf = 100 \times Fm / F$, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are: T = 0.8 and P = 0.2</p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: $S = St \times T\% + Sf \times P\%$. THIS PART IS NOT APPLICABLE IN THIS TENDER</p>			
31	<p>The Standstill Period shall be: 14 DAYS</p> <p>The procedures for making a procurement related complaint are detailed in the Public Procurement and Asset Disposal Act and Regulations. If a Consultant wishes to make a procurement related complaint or appeal, the Consultant shall submit its complaint to the Public Procurement Administrative Review Board.</p>			
D. Negotiations and Award				
32.1	<p>Expected date and address for contract negotiations: Date: AS TO BE ADVISED BY THE COUNCIL Address: KMPDC COMPLEX, WOODLANDS AVENUE OF LENANA ROAD</p>			
35.2	Expected date for the commencement of the Services IS IMMEDIATELY AFTER CONTRACT SIGNING WITH THE CLIENT			
36.1	The publication of the contract award information following the completion of the contract negotiations and contract signing will be done as following:			

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS
	The publication will be done within 14 days after the contract signing
37.1	<p>The procedures for making a Procurement-related Complaints are detailed in the “Regulations” available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>For the attention: <i>DIRECTOR GENERAL</i></p> <p>Title/position: <i>CHIEF EXECUTIVE OFFICER</i></p> <p>Procuring Entity: <i>KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL</i></p> <p>Email address: <u><i>info@ppra.go.ke</i></u>; <u><i>complaints@ppra.go.ke</i></u></p> <p>In summary, a Procurement-related Complaint may challenge any of the following</p> <p>(i) the terms of the Tender Documents; and</p> <p>(ii) the Procuring Entity’s decision to award the contract.</p>

SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

{Notes to Consultant shown in brackets { } throughout Section 3 provide guidance to the Consultant to prepare the Technical Proposal; they should not appear on the Proposals to be submitted.}

1 FORMTECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: *[Name and address of Procuring Entity]*

Dear Sirs:

We, the undersigned, offer to provide the consulting services for *[Insert title of assignment]* in accordance with your RFP dated *[Insert Date]* and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal.

{If the Consultant is a joint venture, insert the following: We are submitting our Proposal in association/as a consortium/as a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: “of our letter of intent to form a joint venture” or, if a JV is already formed, “of the JV agreement”} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

OR

{If the Consultant's Proposal includes Sub-consultants, insert the following :} We are submitting our Proposal with the following firms as Sub-consultants: {insert a list with full name and address of each Sub-consultant.}

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity or maybe sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- c) We have no conflict of interest in accordance with ITC3.
- d) We meet the eligibility requirements as stated in ITC6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITC5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; 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 or anti-competitive practices.
- f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being of being wound up.

- g) The Consultant shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid-rigging.
- h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the “Certificate of Independent Proposal Determination” attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from _____ (*specify website*) during the procurement process and the execution of any resulting contract.
- l) We, along with any of our sub-consultants 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.
- e) Except as stated in the ITC12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause12 andITCClause29.3 and 29.4 may lead to the termination of Contract negotiations.
- j) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- k) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 32.2 of the Data Sheet.

We remain

yours

sincerely

Authorized Signature *{In full and initials}*: Name and Title
of Signatory:

Name of Consultant *(company's name or JV's name)*:

Contact information *(phone and e-mail)*:

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached}

2 CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to the _____

_____ [Name of Procuring Entity]

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

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

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

APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information)

(Appendix shall not be modified)

Purpose

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

Requirements

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

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

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

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

- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - 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:
 - i) 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 Council (PPRA) or any other appropriate Council 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
 - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed Council's inspection and audit rights provided for under paragraph 2.3e. below.
 - b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement process or 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 tenders 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 or 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 Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate Council (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
 - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate Council appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate Council appointed by

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

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.

² Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Council 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 thereof 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.

FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE

Form TECH-2: a brief description of the Consultant's organization and an outline of the recent experience of the Consultant that is most relevant to the assignment. In the case of a joint venture, information on similar assignments shall be provided for each partner. For each assignment, the outline should indicate the names of the Consultant's Key Experts and Sub-consultants who participated, the duration of the assignment, the contract amount (total and, if it was done in a form of a joint venture or a sub-consultancy, the amount paid to the Consultant), and the Consultant's role/involvement.

A - Consultant's Organization

Provide here a brief description of the background and organization of your company, and-in case of a joint venture-of each member for this assignment.

B - Consultant's Experience

- List only previous similar assignments successfully completed in the last [.....] years.
- List only those assignments for which the Consultant was legally contracted by the Procuring Entity as a company or was one of the joint venture partners. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant, or that of the Consultant's partners or sub-consultants, but can be claimed by the Experts themselves in their Curriculum Vitae (CV).
- The Consultant shall substantiate their claimed experience by presenting copies of relevant documents such as the form of contract (not the whole contract), purchase order, service order, performance certificate, etc.; which shall be included in the proposal as part of *Form Tech 7 Mandatory Documentary Evidence*.

Assignment name:	Approx. value of the contract [KES, US\$ etc.]:
Country:	Duration of assignment (months):
Name of Procuring Entity:	Total N ^o of staff-months of the assignment:
Contact Address: Email:	Approx. value of the services provided by your firm under the contract:
Start date (month/year): Completion date:	N ^o of professional staff-months provided by associated Consultants:
Role on Assignment: (E.g. <i>Lead Member in ABC JV, or Sole Consultant</i>):	Name of senior professional staff of your firm involved and functions performed:
Narrative description of Assignment:	
Description of actual services provided by your staff within the assignment:	
Name of Consulting Firm:	Name and Title of Signatory:

3 FORMTECH-3: COMMENTS AND SUGGESTIONS

Form TECH-3: The Consultant to provide comments and suggestions on the Terms of Reference, counterpart staff and facilities to be provided by the Procuring Entity that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Procuring Entity, including: administrative support, office space, local transportation, equipment, data, etc.

A - On the Terms of Reference

{Improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

{Include comments on counterpart staff and facilities to be provided by the Procuring Entity. For example, administrative support, office space, local transportation, equipment, data, background reports, etc., if any}

4 FORMTECH-4: DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN

Form TECH-4: a description of the approach, methodology and work plan in responding to the terms of reference for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{The structure of your Technical Proposal:

- a) Technical Approach and Methodology
- b) Work Plan
- c) Organization and Staffing}

- i) Technical Approach and Methodology. *{Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TOR's in here.}*
- ii) Work Plan. *{Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and tentative delivery dates of their parts. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.}*
- iii) Organization and Staffing. *{Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff.}*

5 FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES

N°	Deliverables ¹ (D-..)	Days												
		1	2	3	4	5	6	7	8	9	n	TOTAL	
D-1	{e.g., Deliverable #1: Report A													
	1) data collection													
	2) drafting													
	3) inception report													
	4) incorporating comments													
	5)													
	6) delivery of final report to Procuring Entity }													
D-2	{e.g., Deliverable #2:.....}													
N														

- 1 List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Procuring Entity's approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in a form of a bar chart.
- 4 Include a legend, if necessary, to help read the chart.

6. FORMT ECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS
(NOT APPLICABLE)

N°	Name	Expert's input (in person/month) per each Deliverable (listed in TECH-5)										Total time-input (in Months)			
		Position		D-1	D-2	D-3	D-...				Home	Field	Total	
KEY EXPERTS															
K-1	{e.g., Mr. Abbbb}	[Team Leader]	[Home]	[2 month]	[1.0]	[1.0]									
			[Field]	[0.5 m]	[2.5]	[0]									
K-2															
K-3															
N															
											Subtotal				
NON-KEY															
N-1			[Home]												
			[Field]												
N-2															
N															
											Subtotal				
											Total				

1.For Key Experts, the input should be indicated individually for the same positions as required under the ITC Data Sheet 21.2

2.Months are counted from the start of the assignment/mobilization. One (1) month equals twenty-two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.

3“Home” means work in the office in the expert’s country of residence. “Field” work means work carried out in Kenya, or outside the normal residence of the Expert in Kenya or any other country outside the expert’s country of residence.

 Full time input  Part time input

7. FORM TECH-6B: CURRICULUM VITAE (CV)

Position Title and No.	{e.g., K-1, Team Leader}
Name of Expert:	{Insert full name}
Date of Birth:	{day/month/year}
Country of Citizenship	

Education: {List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained}

Employment record relevant to the assignment: {Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous Procuring Entity's and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}

Period	Employing organization and your title/position. Contact Infor for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2011-present]	[e.g., Ministry of, advisor/consultant to... For references: Tel...../e-mail.....; Mr. Bbbbbb, deputy manager]		

Membership in Professional Associations and Publications: _____

Language Skills (indicate only languages in which you can work): _____

Adequacy for the Assignment:

Detailed Tasks Assigned on Consultant's Team of Experts:	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
{List all deliverables/tasks as in TECH- 5 in which the Expert will be involved)	

Expert's contact information: (e-mail.....phone.....)

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Procuring Entity, and/or sanctions by the PPRA.

Name of Expert.....Signature _____ Date _____
{ day / month/year }

Name of authorized _____ Signature. _____ Date _____

Representative of the

Consultant (the same who

signs the Proposal

8. FORMTECH-7: MANDATORY SUPPORT DOCUMENTS

[The Consultant shall use this form to submit all the required support documentary evidence as required in the RFP, especially the mandatory and eligibility criteria specified in the Data Sheet ITC 21.1]

- a) Certificate of Incorporation/Certificate of Registration

{Insert here a copy of certificate of incorporation or registration}

- b) Tax Compliance Certificate

{Consultant to insert a copy of the tax compliance certificate from Kenya Revenue Council or similar body in the case of foreign consulting firms}

- c) Practice License or Certificate for the Firm

{If required, Consultant to insert a copy of the firm's practice license or registration certificate issued by the professional body specified under Data Sheet ITC 21.1}

- d) Similar Consulting Assignments Experience

{Consultant to insert here copies of the form of contract, purchase order, service order, and performance certificate or similar evidence of similar assignments carried out by the firm. The assignments shall be the same as those provided under FORM TECH 2B}

- e) Academic Certificates

{Consultant to insert copies of the required relevant academic certificates relevant to the assignment for all the key experts}

- f) Professional Certificates

{Consultant to insert copies of professional certificates and relevant short-term trainings to demonstrate professional qualifications for all the key experts}

- g) Professional Membership of Key Experts

{If applicable, Consultant to insert copies of professional membership certificate for its key experts}

- h) Certificate of Independent Proposal Determination

(The Form is available on Tech FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM).

FORM TECH - 8: SELF-DECLARATION FORMS

FORM SD1

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

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

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of (Insert name of the Company) who is a Bidder in respect of **Tender No.** for (Insert tender title/description) for (Insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

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

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 here by 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.....

FORM TECH - 9: 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 or 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

SECTION 4. FINANCIAL PROPOSAL

The Advocates Remuneration Order, 2014 shall govern the legal fees chargeable by the Consultant.

SECTION 5. TERMS OF REFERENCE

TERMS OF REFERENCE FOR PRE-QUALIFICATION OF LAWYERS FOR PROVISION OF LEGAL SERVICES

TERMS OF REFERENCE FOR THE LEGAL SERVICES

The legal services subject of this procurement shall be in respect of, but not limited to, defending and/or pursuing the Council interests in the following areas of assignment that are relevant to the Council:

Introduction

The Kenya Medical Practitioners and Dentists Council is a statutory Council established under Cap 253 Laws of Kenya to regulate the training, practice and licensing of medicine, dentistry and healthcare institutions that include private & mission hospitals, medical, dental centers & clinics, nursing and maternity homes and standalone funeral homes, in the country.

Specific Requirements

The successful law firms will be expected to undertake legal consultancy services on points of law as instructed relating to the mandate of the Medical Council, the Constitution of Kenya (2010) and Cap 253 Laws of Kenya,

Specific outputs:

The Council shall expect the successful service provider is expected to do the following: -

- (i) To the utmost of their ability and skill act on behalf of the client and treat all matters handled on behalf of the client confidentially;
- (ii) To represent the Council in contentious matters and/or litigation wherein the Council is a party or has been sued before Court or any Tribunal on matters arising from decisions by any of its Committees or the Full Council/Tribunal or any other suits against the Council;
- (iii) Provide legal services, identify appropriate laws, judicial decisions, legal articles and other material that are relevant to assigned cases;
- (iv) Assist the Council Secretary in the review of the Medical Practitioners and Dentists Act (CAP 253 Laws of Kenya) and its respective subsidiary legislation;
- (v) Prepare written legal opinions on matters affecting the Council on needs arise basis;
- (vi) Researching on areas identified by the Client and drafting applicable review of the Rules under the Medical Practitioners and Dentists Act and advising the client appropriately; and,
- (vii) Preparing for and attending stakeholders' meetings and any such meetings on amendment to the Rules and Code and advising the Client appropriately;
- (viii) attending such meetings, conferences and/ or sessions on behalf of the client for presentation of the Rules and/or undertaking trainings
- (ix) Preparation and submission of monthly progress reports;
- (x) Attendance of relevant meetings as may be required;
- (xi) Conveyancing;
- (xii) Commercial Transactions;
- (xiii) Civil Litigation and Dispute Resolution;
- (xiv) Criminal Prosecutions;
- (xv) Public Procurement and Asset Disposal Law;
- (xvi) Employment and Labour Relations matters;
- (xvii) Drafting and interpretation of statutes and international legal instruments;

- (xviii) Providing legal advisories in respect of matters involving the Council core mandate; and
- (xix) Providing Advisories on regulatory impact assessments on regulatory interventions and instruments

Duration of the assignment

2 years effective from the date of contract agreement. However, either party may Terminate the contract as per the agreed procedure.

The foregoing areas of assignment shall be provided in the following clusters by all the prequalified firms on the panel;

1. *Dispute Resolution*

This cluster of assignments shall entail:

- (a) Legal representation of the Council in litigation as well as Alternative Dispute Resolution in contentious disputes and/or proceedings arising out of any of the foregoing areas of assignment including formulation of case strategies, research for, drafting and filing of pleadings, receipt and perusal of opposing pleadings, attendance to hearings and mentions, due diligence in the provision of the said service as well as other tasks ancillary to the foregoing.
- (b) Provision of legal advice to the Council in litigation as well as Alternative Dispute Resolution in contentious disputes and/or proceedings arising out of any of the foregoing areas of assignment.

2. *Commercial Services*

This cluster of assignments shall include:

- (a) Legal representation of the Council in transactional aspects of Conveyancing, Mergers and Acquisitions, Intellectual Property and Commercial Contracts relevant to the Council's execution of its mandate.
- (b) Provision of legal advice to the Council in transactional aspects of Conveyancing, Mergers and Acquisitions, Intellectual Property and Commercial Contracts relevant to the Council's execution of its mandate.

3. *Expert Legal Advisory Services*

This cluster of assignments shall entail provision of expert advise in matters of a complex nature involving or relevant to the Council's core mandate, legislative drafting and Regulatory Impact Assessments for statutory instruments requiring such an assessment.

4. *Senior Counsel*

This cluster of assignments shall comprise Senior Counsel who are Advocates upon whom the President of the Republic of Kenya has conferred the rank of Senior Counsel as defined in Section 2 of the Advocates Act, Cap. 16, Laws of Kenya. Senior Counsel, once procured, shall be engaged by the Council as and when required in respect of litigation matters in line with the Council's applicable policy.

The Council will pre-qualify successful bidders for provision of legal services from among those who submit their pre-qualification applications, in accordance with the pre-qualification requirements, to undertake the assignments described herein for the period herein before stated.

The firms will be instructed to handle assignments as and when the need for such instructions arise or emanate from a process that is fair, equitable, transparent, competitive and cost-effective in line with the requirements of the Constitution of Kenya 2010, the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Asset Disposal Regulations, 2020, as well as other applicable laws, Government Circulars and Internal Policies. The legal fees applicable upon issuance of such instructions and execution thereof shall be subject to the requirements of the Advocates Act, Cap. 16 Laws of Kenya and the Advocates Remuneration Order in place from time to time.

CONTRACT FOR CONSULTANT'S SERVICES

Lump-Sum Contract

Consulting Services for:

Contract No.: _____

Contract Description: _____

Between

_____ *[Name of the Procuring Entity]*

and

_____ *[Name of the Consultant]*

Date:

I. FORM OF CONTRACT - LUMP-SUM

This CONTRACT (herein after called the "Contract") is made the [number] day of the month of [month], [year], between, on the one hand, [name of Procuring Entity] (herein after called the "Procuring Entity") and, on the other hand, [name of Consultant] (herein after called the "Consultant").

[If the Consultant consists of more than one entity, the above should be partially amended to read as follows: "... (hereinafter called the "Procuring Entity") and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Procuring Entity for all the Consultant's obligations under this Contract, namely, [name of member] and [name of member] (herein after called the "Consultant").]

WHEREAS

- a) The Procuring Entity has requested the Consultant to provide certain consulting services as defined in this Contract (herein after called the "Services");
 - b) the Consultant, having represented to the Procuring Entity that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
 - c) the Procuring Entity has set aside a budget and funds toward the cost of the Services and intends to apply a portion of these funds towards payments under this Contract;
- NOW THEREFORE the parties hereto hereby agree as follows:

- 1. The following documents attached here to shall be deemed to form an integral part of this Contract:
 - a) The General Conditions of Contract;
 - b) The Special Conditions of Contract;
 - c) Appendices:
 - Appendix A: Terms of Reference
 - Appendix B: Key Experts
 - Appendix C: Breakdown of Contract Price
 - Appendix D: Form of Advance Payments Guarantee

In the event of any inconsistency between the documents, the following order of precedence shall prevail: The Special Conditions of Contract; the General Conditions of Contract; Appendix A; Appendix B; Appendix C; Appendix D. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

- 2. The mutual rights and obligations of the Procuring Entity and the Consultant shall be asset for thin the Contract, in particular:
 - a) The Consultant shall carryout the Services in accordance with the provisions of the Contract; and
 - b) the Procuring Entity shall make payments to the Consultant in accordance with the provisions of the Contract.

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

For and on behalf of..... [Name of Procuring Entity] [Authorized Representative of the Procuring Entity–name, title and signature]

For and on behalf of..... [Name of Consultant or Name of a Joint Venture] [Authorized Representative of the Consultant–name and signature]

[Note: For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]

For and on behalf of each of the members of the Consultant..... [Insert the Name of the Joint Venture] [Name of the lead member]

[Authorized Representative on behalf of a Joint Venture] [Add signature blocks for each member if all are signing]

SECTION 7: GENERAL CONDITIONS OF CONTRACT

A. General Provisions

1. Definitions

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

- a) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- b) “Consultant” means a legally-established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- c) “Contract” means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- d) “Procuring Entity” means the Procuring Entity that signs the Contract for the Services with the selected Consultant.
- e) “Day” means a working day unless indicated otherwise.
- f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- g) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- h) “Foreign Currency” means any currency other than the currency of Kenya.
- i) “GCC” mean these General Conditions of Contract.
- j) “Government” means the government of Kenya.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the Council to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal.
- m) “Local Currency” means the Kenya Shillings, the currency of Kenya.
- n) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part here of under the Contract.
- o) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both of them.
- p) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- q) “Services” means the work to be performed by the Consultant pursuant to this Contract, as

described in Appendix A hereto.

- r) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (t) “Third Party” means any person or entity other than the Government, the Procuring Entity, the Consultant or a Sub-consultant.

2. Relationship between the Parties

- 1.1 Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Procuring Entity and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

3. Law Governing Contract

- 1.2 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws of Kenya.

4. Language

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

5. Headings

- 5.1 The headings shall not limit, alter or affect the meaning of this Contract.

6. Communications

- 6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the English Language. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.
- 6.2 A Party may change its address for notice here under by giving the other Party any communication of such change to the address specified in the SCC.

7. Location

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

8. Council of Member in Charge

- 8.1 In case the Consultant is a Joint Venture, the members hereby authorize them ember specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.

9. Authorized Representatives

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

10. Corrupt and Fraudulent Practices

10.1 The government requires compliance with its policy regarding corrupt and fraudulent/prohibited practices as set forth in its laws and policies.

10.2 Commissions and Fees-The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to a gents or any other party with respect to the selection 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. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by the PPRA.

B. Commencement, Completion, Modification and Termination of Contract

11 Effectiveness of Contract

11.1 This Contract shall come into force and effect on the date (the “Effective Date”) of the Procuring Entity's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

12 Termination of Contract for Failure to Become Effective

12.1 If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty-two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect there to.

13 Commencement of Services

13.1 The Consultant shall confirm availability of Key Experts and begins carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

14 Expiration of Contract

14.1 Unless terminated earlier pursuant to Clause GCC19hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

15 Entire Agreement

15.1 This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has Council to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

16 Modifications or Variations

16.1 Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

17 Force Majeure

a. Definition

17.1 For the purposes of this Contract,“ Force Majeure” means event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.

17.2 Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract and avoid or overcome in the carrying out of its obligations here under.

17.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required here under.

b. No Breach of Contract

17.4 The failure of a Party to fulfill any of its obligations here under shall not be considered to be a breach of, or default under, this Contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be taken

17.5 A party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

- a) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- b) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Procuring Entity, shall either:
- c) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Procuring Entity, in reactivating the Services; or
- d) Continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.7 In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 44 & 45.

18 Suspension

18.1 The Procuring Entity may, by written notice of suspension to the Consultant, suspend all payments to the Consultant here under if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

19 Termination

19.1 This Contract may be terminated by either Party as per provisions set up below:

a. By the Procuring Entity

19.1.1 The Procuring Entity may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence, the Procuring

Entity shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in(a)through(d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days 'written notice in case of the event referred to in (f):

- a If the Consultant fails to remedy a failure in the performance of its obligations here under, as specified in a notice of suspension pursuant to Clause GCC 18;
- b If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go in to liquidation or receivership whether compulsory or voluntary;
- c If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;
- d If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- e If the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- f If the Consultant fails to confirm availability of Key Experts as required in Clause GCC13.

19.1.2 Furthermore, if the Procuring Entity determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practices, in competing for or in executing the Contract, then the Procuring Entity may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract.

b. By the Consultant

- a) The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Procuring Entity, in case of the occurrence of any of the events specified in paragraphs(a)through(d)of this Clause.
- b) If the Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC45.1withinfifty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- c) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- d) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC45.1.
- e) If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

c. Cessation of Rights and Obligations

19.1.3 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC14, all rights and obligations of the Parties here under shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC22, (iii) the Consultant's obligation to permit in section, copying and auditing of their accounts and records set forth in Clause GCC25, and (iv) any right which a Party may have under the Applicable Law.

d. Cessation of Services

19.1.5. Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by Clauses GCC27 or GCC28.

e. Payment up on Termination

19.1.6 Up on termination of this Contract, the Procuring Entity shall make the following payments to the Consultant:

- a) Payment of Services satisfactorily performed prior to the effective date of termination; and
- b) In the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. Obligations of the Consultant

16. General

a. Standard of Performance

20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with the third parties.

20.2 The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.

20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Procuring Entity. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

b. Law Applicable to Services

20.4. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

20.5 Throughout the execution of the Contract, the Consultants 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.

20.6. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21 Conflict of Interests

21.1 The Consultant shall hold the Procuring Entity's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

a Consultant Not to Benefit from Commissions, Discounts, etc.

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations here under, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, the Consultant shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.

b Consultant and Affiliates Not to Engage in Certain Activities

21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

c Prohibition of Conflicting Activities

21.1.4 The Consultant shall not engage and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

d Strict Duty to Disclose Conflicting Activities

21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Procuring Entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.

22 Confidentiality

22.1 Except with the prior written consent of the Procuring Entity, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or because of, the Services.

23 Liability of the Consultant

23.1 Subject to additional provisions, if any, set for in the SCC, the Consultant's liability under this Contract shall be as determined under the Applicable Law.

24 Insurance to be taken out by the Consultant

24.1 The Consultant (i) shall take out and maintain and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC13.

25 Accounting, Inspection and Auditing

25.1 The Consultant shall keep and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.

25.2 The Consultant shall permit and shall cause its Sub-consultants to permit, the PPRA and/ or persons appointed by the PPRA to inspect the Site and /or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Consultant's attention is drawn to Clause GCC10 which provides, interlaid, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this ClauseGCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the PPRA's prevailing sanctions procedures.)

26 Reporting Obligations

26.1 The Consultant shall submit to the Procuring Entity the reports and documents specified in Appendix A, in the form, in the numbers and within the time periods set forth in the said Appendix.

27 Proprietary Rights of the Procuring Entity in Reports and Records

27.1 Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Procuring Entity in the course of the Services shall be confidential and become and remain the absolute property of the Procuring Entity. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Procuring Entity.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Procuring Entity's prior written approval to such agreements, and the Procuring Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

28 Equipment, Vehicles and Materials

28.1 Equipment, vehicles and materials made available to the Consultant by the Procuring Entity or purchased by the Consultant wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Procuring Entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into Kenya for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. Consultant's Experts and Sub-consultants

29 Description of Key Experts

29.1 The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the Consultant's Key Experts are described in Appendix B.

30 Replacement of Key Experts

30.1 Except as the Procuring Entity may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forth with provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31 Removal of Experts or Sub-consultants

31.1 If the Procuring Entity finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Procuring Entity determine that Consultant's Expert or Sub consultant have engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practice while performing the Services, the Consultant shall, at the Procuring Entity's written request, provide a replacement.

31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity, specifying the grounds therefore, may request the Consultant to provide a replacement.

31.3 Any replacement of the removed Experts or Sub consultants shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.

31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

E. Obligations of the Procuring Entity

32 Assistance and Exemptions

- 32.1 Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to:
- a Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
 - b Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in Kenya while carrying out the Services under the Contract.
 - c Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Expert and their eligible dependents.
 - d Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.

- e Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Kenya according to the applicable law in Kenya
- f Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Kenya, of bringing in to Kenya reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
- g Provide to the Consultant any such other assistance as may be specified in the SCC.

33 Access to Project Site

- 33.1 The Procuring Entity warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Procuring Entity will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

34 Change in the Applicable Law Related to Taxes and Duties

- 34.1 If, after the date of this Contract, there is any change in the applicable law in Kenya with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Contract price amount specified in Clause GCC 39.1

35 Services, Facilities and Property of the Procuring Entity

- 35.1 The Procuring Entity shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (Appendix A) at the times and in the manner specified in said Appendix A.

36 Counterpart Personnel

- 36.1 The Procuring Entity shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Procuring Entity with the Consultant's advice, if specified in Appendix A.
- 36.2 Professional and support counterpart personnel, excluding Procuring Entity's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work as assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

37 Payment Obligation

- 37.1 In consideration of the Services performed by the Consultant under this Contract, the Procuring Entity shall make such payments to the Consultant for the deliverables specified in Appendix A and in such manner as is provided by GCCF below.

F. Payments to the Consultant

38 Contract Price

- 38.1 The Contract price is fixed and is set forth in the SCC. The Contract price breakdown is provided in Appendix C.
- 38.2 Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in Appendix A.

39 Taxes and Duties

- 39.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC. Currency of Payment
- 39.2 Any payment under this Contract shall be made in the currency (ies) of the Contract.

40 Mode of Billing and Payment

- 40.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 40.2 The payments under this Contract shall be made in lump-sum installments against deliverables specified in Appendix A. The payments will be made according to the payment schedule stated in the SCC.
- 40.2.1 *Advance payment:* Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to the Procuring Entity in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (I) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in Appendix D, or in such other form as the Procuring Entity shall have approved in writing. The advance payments will be set off by the Procuring Entity in equal portions against the lump-sum installments specified in the SCC until said advance payments have been fully set off.
- 40.2.2 *The Lump-Sum Installment Payments.* The Procuring Entity shall pay the Consultant within sixty (60) days after the receipt by the Procuring Entity of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Procuring Entity does not approve the submitted deliverable(s) as satisfactory in which case the Procuring Entity shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.
- 40.2.3 *The Final Payment:* The final payment under this Clause shall be made only after the final report has been submitted by the Consultant and approved as satisfactory by the Procuring Entity. The Services shall then be deemed completed and finally accepted by the Procuring Entity. The last lump-sum installment shall be deemed approved for payment by the Procuring Entity within ninety (90) calendar days after receipt of the final report by the Procuring Entity unless the Procuring Entity, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.
- 40.2.4 All payments under this Contract shall be made to the accounts of the Consultant specified in the SCC.
- 40.2.5 With the exception of the final payment under 40.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the Consultant of any obligations here under.

41 Interest on Delayed Payments

- 41.1 If the Procuring Entity had delayed payments beyond thirty (30) days after the due date stated in Clause GCC 41.2.2, interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the SCC.

G. Fairness and Good Faith

42 Good Faith

- 42.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

H. Settlement of Disputes

43 Amicable Settlement

- 43.1.2 The Parties shall seek to resolve any dispute amicably by mutual consultation.

- 43.1.3 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 45.1 shall apply.

44 Dispute Resolution

- 44.1.2 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the SCC.

SECTION 8: SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of KENYA
4.1	The language is: ENGLISH
6.1 and 6.2	The addresses are <i>[fill in at negotiations with the selected firm]</i> : Procuring Entity: KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL Attention: HEAD OF SUPPLY CHAIN MANAGEMENT Facsimile: NOT APPLICABLE E-mail: procurement@kmpdc.go.ke Consultant: _____ Attention: _____ Facsimile: _____ E-mail: _____
8.1	<i>[If the Consultant consists only of one entity, state "N/A";</i> OR <i>If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]</i> The Lead Member on behalf of the JV is _____ <i>[insert name of the member]</i>
9.1	The Authorized Representatives are: For the Procuring Entity: CHIEF EXECUTIVE OFFICER/LEGAL SERVICES For the Consultant: <i>[name, title]</i> __
11.1	The contract shall be effective from 1 st October 2022. The Consultant is expected to sign the Contract before the said date. A notice on effective date shall therefore not be applicable.
12.1	The legal services subject of this Contract shall be provided on a need basis from the commencement date of the Contract meaning the contract will automatically be effective from that date. Therefore, the duration within which the contract is to become effective is not applicable.
13.1	Confirmation of Key Experts' availability to start the Assignment shall be submitted to the Procuring Entity in writing as a written statement signed by each Key Expert before execution of the Contract.
14.1	Expiration of Contract: The time period shall be THREE (3) YEARS

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
21.1.3.	<p>The Procuring Entity reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3</p> <p>Yes</p>
23.1	<p>(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Procuring Entity’s property, shall not be liable to the Procuring Entity:</p> <ul style="list-style-type: none"> (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds two times the total value of the Contract; <p>(b) This limitation of liability shall not</p> <ul style="list-style-type: none"> (i) affect the Consultant’s liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services; (ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable Law. <p><i>The Procuring Entity does not accept a provision to the effect that the Procuring Entity shall indemnify and hold harmless the Consultant against Third Party claims, except, of course, if a claim is based on loss or damage caused by a default or wrongful act of the Procuring Entity to the extent permissible by the law applicable in Kenya.]</i></p>
24.1	<p>The insurance coverage against the risks shall be as follows:</p> <p><i>[Delete what is not applicable except (a)].</i></p> <p>(a) Professional liability insurance, with a minimum coverage of not less than Kshs._30 Million</p> <p>(b) employer’s liability and workers’ compensation insurance in respect of the experts and Sub-consultants in accordance with the relevant provisions of the Applicable Law in Kenya, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and</p> <p>(c) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant’s property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.</p>
27.1	<p>The additional rights to the use of the documents are:</p> <p><i>[If applicable, insert any exceptions to proprietary rights provisions] NOT APPLICABLE</i></p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
27.2	<p><i>[If there is to be no restriction on the future use of these documents by either Party, this Clause SCC 27.2 should be indicated as Not Applicable.</i></p> <p><i>If the Parties wish to restrict such use, any of the following options, or any other option agreed to by the Parties, could be used: NOT APPLICABLE</i></p> <p><i>[The Consultant shall not use these [insert what applies..... documents and software....] for purposes unrelated to this Contract without the prior written approval of the Procuring Entity.]</i></p> <p><i>[OR]</i></p> <p><i>[The Procuring Entity shall not use these [insert what applies..... documents and software.....] for purposes unrelated to this Contract without the prior written approval of the Consultant.]</i></p> <p><i>[OR]</i></p> <p><i>[Neither Party shall use these [insert what applies..... documents and software.....] for purposes unrelated to this Contract without the prior written approval of the other Party.]</i></p>
32.1 (a) through (f)	<p><i>[List here any changes or additions to Clause GCC 32.1. If there are no such changes or additions, indicate Not Applicable.] NOT APPLICABLE</i></p>
32.1(g)	<p><i>[List here any other assistance to be provided by the Procuring Entity. If there is no such other assistance, indicate Not Applicable for this Clause SCC 32.1(g).] NOT APPLICABLE</i></p>
38.1	<p>Legal Fees shall be payable in line with the Advocates Remuneration Order as from time to time in force.</p>
40.2	<p>The pre-qualified firms will be instructed to handle assignments as and when the need for such instructions arise or emanate from a process that is fair, equitable, transparent, competitive and cost-effective in line with the requirements of the Constitution of Kenya 2010, the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Asset Disposal Regulations, 2020, as well as other applicable laws, Government Circulars and Internal Policies. The legal fees applicable upon issuance of such instructions and execution thereof shall be subject to the requirements of the Advocates Act, Cap. 16 Laws of Kenya and the Advocates Remuneration Order in place from time to time.</p>
40.2.1	<p>ADVANCE PAYMENT NOT ALLOWED</p>
40.2.4	<p>The accounts are: TO BE PROVIDED BY THE CONSULTANT</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
41.1	The interest rate is: <i>THERE SHALL BE NO INTEREST IN OVERDUE AMOUNTS PAYABLE TO THE CONSULTANT.</i>
44.1	Dispute Resolution shall be undertaken in accordance with the dispute resolution clause included in the respective Service Level Agreement applicable to the Consultants

SECTION 9: APPENDICES

Appendix A – Terms of Reference

This Terms of Reference under Section 5 of this Tender Document and the Service Level Agreement (SLA) below shall constitute the terms of this Appendix.

SERVICE LEVEL AGREEMENT

THIS AGREEMENT (hereinafter referred to as the “SLA”) is entered into this day of
.....2022 between the **KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL** (hereinafter referred to as the “Council”) having its principal place of business along Woodland Avenue of Lenana Road, Nairobi and of P.O. Box 44839 00100, Nairobi of the One part and [*Name of Law Firm*] (hereinafter referred to as “the Advocates”) having its principal place of business located at [*Insert physical and postal address of the firm*] of the other part.

WHEREAS:

- a. The Council has listed the Advocates on its panel of lawyers and has engaged them to provide legal services (in dispute resolution) (hereinafter referred to as the “Services”) from time to time;
- b. The parties wish to set service performance standards to meet the dynamics of the law, increasing awareness of society, professional practice and procedure;
- c. This SLA is intended to ensure timely and effective management of briefs and it is contingent upon the Advocates knowing and fulfilling their responsibilities and generating an environment conducive to the achievement and maintenance of targeted service levels.
- d. The parties recognize that professional and diligent performance are part of ethics and tenets of the legal profession and the need for promotion of benefits that accrue from such experience;

NOW THIS SLA WITNESSETH AS FOLLOWS:

PART A – GENERAL			
1.	Definitions and Meanings	and	<p>1.1 In this SLA, words and expressions shall have the meanings as are respectively assigned to them and defined herein.</p> <p>1.2 In this SLA where the context so admits –</p> <p>1.2.1 Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.</p> <p>1.2.2 Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “Advocates” the covenants, agreements obligations expressed to be made or performed by the Advocates shall be deemed to be made or performed by such persons jointly and severally as the case may be,</p> <p>1.2.3 Where there are two or more persons included in the expression the “Advocates” any act default or omission by the Advocates or any person working under, on behalf of or through them shall be deemed to be an act default or omission by any one or more of such persons.</p>

2.	Contents of this Agreement	<p>The following shall form part of this SLA: -</p> <p>a) This SLA;</p> <p>b) The tender document and all the relevant procurement documents as per the provisions of Section 135(6) of the Public Procurement and Asset Disposal Act, 2015; and</p> <p>c) The Professional Indemnity Cover;</p>
3.	Confirmation and Terms of Engagement	<p>3.1 The Council hereby confirms the engagement of the Advocates to provide the Services and the Advocates confirm their provision of the said Services on the basis of the recitals hereinabove, remedy any defects and make good all claims made by the Council in conformity in all respects with the provisions of this SLA; Public Procurement and Asset Disposal Act, 2015, the Advocates Act (as may be amended or replaced from time to time) and on the terms and conditions as hereinafter appearing.</p> <p>3.2 Where there is a conflict or any inconsistency between any of the documents mentioned above, the SLA will prevail.</p> <p>3.3 This SLA supersedes any agreement, express or implied, that may be existing between the parties. For all intents and purposes it will be treated as the sole SLA between the Council and the Advocates.</p>
4.	Standards	<p>4.1 Notwithstanding any of the provisions, terms, conditions and stipulations of this SLA, the services provided by the Advocates shall conform to the highest standards as is required and/or reasonably expected from the legal profession.</p> <p>4.2 Grounds for cessation of the Advocates engagement by the Council will include poor performance, prejudicial conflict of interest on the Advocates' part and substandard quality of work by the Advocate including but not limited to failure to deliver services within prescribed turn-around times.</p>
5.	Confidentiality	<p>5.1 The Advocates shall not, without the Council's prior written consent, disclose the contents of this SLA, or any provision thereto or any specification, or information furnished by or on behalf of the Council in connection therewith, to any person other than a person directly in the employ of the Council in the performance of this SLA or save and except in so far as the requirements regarding the performance by the Advocates of the services is required.</p> <p>5.2 This Clause shall survive termination of this SLA; cessation of Services rendered by the Advocates or in any future partnership or law practice that any of the Advocates in the current law firm may be a part of.</p>
6.	Visitation	<p>6.1 The Council or its representative(s) shall be at liberty to visit the offices or premises, tools and equipment of the Advocates to confirm their conformity for the performance of this SLA and compliance with the provisions of the Advocates Act.</p>

		<p>6.2 The visit conducted for the purposes of this SLA whether on the premises of the Advocates or otherwise, must be accorded all-reasonable facilities and assistance to the Council, including access to the Council's files, cases or matters.</p> <p>6.3 Where the Council wishes to conduct this at the court registry for purposes of viewing the files and obtaining any information therein, the Advocates shall render all assistance, facilities and make appropriate representations whether written or otherwise to such court registries, as and when requested by the Council, in order to give this provision full meaning and effect.</p>
7.	Quarterly Reports	<p>7.1 The Advocates shall prepare Quarterly Status Reports for all cases and any other matters that they shall handle on behalf of the Council. The Report shall be prepared and submitted after end of every quarter as aligned with the Government Financial Year (i.e. Period running from 1st July of every year to 30th June of the following year).</p> <p>7.2 Unless specifically requested by the Council, the contents of the respective Status Reports shall be as set out in Clause 8.</p> <p>7.3 The Reports shall be required to be sent and received by the Council on or before the 5th day of the month preceding every quarter and in any event by 4 p.m. of the last date. For avoidance of doubt, no Report should be sent outside this period nor will any Report be accepted outside these periods.</p> <p>7.4 The quarterly reports shall also contain the status of the legal fees payable in the matter and other financial details relating to each matter.</p>
8.	Contents of Status Report	<p>8.1 Details of the Civil Litigation Report shall contain:</p> <ul style="list-style-type: none"> 8.1.1 Parties to the proceedings 8.1.2 Brief statement of the claim, and counterclaim, if any. 8.1.3 Brief statement of the Defense. 8.1.4 Brief of any interlocutory orders given by the court. 8.1.5 Present position of the case. 8.1.6 Date of Judgment or when Judgment is scheduled to be delivered. 8.1.7 If Judgment is to be delivered on notice, dates when you have visited the Court to enquire about that. This should be coupled with conclusive proof of such enquiry. 8.1.8 Status of Legal fees. <p>8.2 Conveyance Reports shall include the following details:</p> <ul style="list-style-type: none"> 8.2.1 Particulars of the member of Staff. 8.2.2 The type of transaction. 8.2.3 The current status. 8.2.3 Status of legal fees payable by Council's member of Staff.

		<p>8.3 Reports in respect of briefs on Mergers and Acquisitions shall include the following details:</p> <p>8.3.1 Parties to the Mergers and Acquisitions; 8.3.2 Details of the Transaction(s); 8.3.3 Current Status of Transaction; 8.3.4 Status of Legal Fees; and 8.3.5 Any Other Relevant Detail(s).</p> <p>8.4 Reports in respect of briefs on Intellectual Property shall include the following details:</p> <p>8.4.1 Details of the Intellectual Property Transaction or Issue; 8.4.2 Current Status of Transactions 8.4.3 Status of Legal Fees; and 8.4.4 Any Other Relevant Detail(s).</p> <p>8.5 Reports on Commercial Contracts handled shall include the following</p> <p>8.5.1 Parties to the Commercial Contracts; 8.5.2 Details of the Transaction(s); 8.5.3 Current Status of Transaction; 8.5.4 Status of Legal Fees; and 8.5.5 Any Other Relevant Detail(s).</p> <p>8.6 Reports on Commercial Contracts handled shall include the following</p> <p>8.6.1 Nature of the issue and summary of firm’s opinion. 8.6.2 The current status. 8.6.3 Status of legal fees payable by the Council.</p>
--	--	---

PART B - LITIGATION MATTERS

<p>9.</p>	<p>Mode of Conducting Court Matters</p>	<p>9.1 Appearance</p> <p>9.1.1 Upon receipt of instructions from the Council, unless circumstances dictate otherwise, the Advocates shall file the Memorandum of Appearance, Notice of Appointment not later than two (2) days before expiry of the period required for filing the Appearance or Appointment.</p> <p>9.1.2 The above applies where the Council is yet to furnish the Advocates with the documentation necessary to file together with the Defence.</p> <p>9.1.3 Within a maximum of three (3) days of filing the Memo of Appearance or Notice of Appointment of Advocates, the Advocates shall furnish the Council with the list of documents that the Advocates may require from the Council for purposes of filing the Defence.</p> <p>9.1.4 The Advocates shall before filing and serving of the relevant Responses, to the parties and the Court/Tribunal/Board, forward the draft responses to the Council for concurrence.</p>
------------------	--	--

<p>10.</p>	<p>Defence</p>	<p>10.1 Whenever the Council's Defence is required to be filed, unless circumstances dictate otherwise, the Advocates should file the same in good time and in any case not later than two (2) days before expiry of the period required for filing the Defence.</p> <p>10.2 The above applies where the Council is yet to furnish the Advocates with the documentation necessary to file together with the Defence.</p> <p>10.3 Upon filing the Defence, the Advocates shall furnish the Council with the following:</p> <p>10.3.1 Copies of witness statements as recorded by the Advocates. The statements should show a clear understanding of the Council's case and present as strong a defence as possible in the circumstances.</p> <p>10.3.2 List of documents that have been filed.</p> <p>10.3.3 Any further documents that the Advocates think they will require from the Council to support the Council's case and/or counter the opposing side's case.</p> <p>10.3.4 A legal Opinion of the suit facing the Council which should show:</p> <ul style="list-style-type: none"> a) Strengths and weakness of all sides. b) The Opinion should include at least three (3) citations of relevant Authorities to support it. c) The Advocates view with reasons for its adoption. d) The Opinion shall be sent by e-mail followed by hard copy within seven (7) days of filing the Defence.
<p>11.</p>	<p>Affidavits</p>	<p>11.1 Where Affidavits are filed on the Council's behalf, the Advocates shall furnish the Council with a copy of that affidavit within three (3) days of filing.</p> <p>11.2 The Council emphasises the position that the Advocates should read through the affidavit before filing. This is in an effort to avoid realizing later that the Council (through the affidavit) has given away information, which, in totality, is unnecessary or prejudicial to the Council.</p> <p>11.3 Where the Advocates have sent to the Council an affidavit for signature and the same has not been returned to the Advocates within three (3) days of delivery, the Advocates will prompt the Council to have the same finalized and returned in good time.</p> <p>11.4 Where affidavits are non-technical in nature or are required to be sworn, the Council's legal department will advise the Advocates the suitable person to swear the Affidavit.</p>
<p>12.</p>	<p>Counter-claims</p>	<p>12.1 No counter-claim shall be filed without Council's prior instruction.</p>

		<p>12.2 Where any counter-claim is desired, the Council will confirm in writing instructions to file the same within seven (7) days prior to the expiry period of filing of the same.</p> <p>12.3 Where it is established that any counter-claim is filed without adhering to the relevant expiry period, it will be deemed that the counter-claim is bereft of the Council's instructions howsoever. In such instances, the Council will assume no liability or responsibility for that Counter-claim including costs that may arise therefrom.</p>
13.	Contempt Proceedings	<p>13.1 Where any contempt application is filed against the Council, the application must be brought to the Council's attention within two (2) days of service upon the Advocates.</p> <p>13.2 The Advocates must furnish the Council with a clear copy of the complete application together with any annexures thereon.</p> <p>13.3 The Advocates shall also advise the Council of the following:</p> <p>13.3.1 Measures that the Advocates have already taken to oppose that application with proof of such measures;</p> <p>13.3.2 Issues or measures that the Council should take in the interim to address the application.</p>
14.	Personal Attendance in Court	<p>14.1 During any substantive appearance in Court:</p> <p>14.1.1 At all times only lawyers in the Advocates firm should attend in court on Council's behalf.</p> <p>14.1.2 Where the Advocates deem it necessary that another lawyer holds the Advocates brief, only a lawyer from a law firm that is presently active on the Council's panel shall hold such brief. In such instances, the lawyer holding brief must ensure that his/her name together with the full name of his/her law firm appears in the court record as holding the Advocates brief.</p> <p>14.1.3 Where 14.1.1 or 14.1.2 is not possible, the Advocates will obtain the Council's express instructions to have any other lawyer hold the Advocates brief. The lawyer must be disclosed to the Council by name and law firm. Satisfactory reason for the necessity of holding brief must also be disclosed to the Council.</p> <p>14.1.4 Where the Council orally consents to 14.1.3 that consent together with the reasons will be reduced in writing by the Advocates within seven (7) working days of the instruction. The Council will confirm this within seven (7) working days.</p> <p>14.2 The above shall apply in all instances except non-contentious routine appearances where no substantive order can be issued at all.</p> <p>14.3 Where it is established that this was not adhered to, then the measures in Clause 21 below will apply.</p>

		<p>14.4 The Advocates may engage the services of a suitable Lead Counsel, in the event that the firm does not have a Senior Counsel on its panel, if the firm deems the engagement to be in the interest of the Council provided that all the costs of the Lead Counsel will be borne by the Advocates, and provided the Council's prior approval of such engagement is sought and obtained. For avoidance of doubt, the Advocates shall be responsible for all the necessary instructions including the legal fees to the Lead Counsel engaged under this provision and such lead counsel shall not have any contractual relationship with the Council.</p>
15.	Consents	<p>15.1 No Consent shall be entered without the Council's prior instruction on any of the following issues:</p> <ul style="list-style-type: none"> a) Judgment, b) Stay of execution, unless in favour of the Council, b) Liability, c) Extension of an injunction after the initial grant, d) Confirmation of an injunction, e) Taxation. In particular, the principal items on a Bill, or any other form of Taxation, which are the instruction fees, any increase by half of that instruction fee, getting-up fees and advocate-Council costs, f) Any other matter that may place the Council at a disadvantage. <p>15.2 Where it is established that any of the above i.e. (a) through to (f) above was done without prior instruction, then the measures in Clause 21 below will apply.</p> <p>15.3 Instructions to enter into any consent shall be issued by the Council in writing.</p>
16.	Court Orders	<p>Where any court orders are issued against the Council and served upon the Advocates, the Advocates shall avail to the Council a copy of that Order within Twenty-Four (24) hours of service upon the Advocate together with the Advocates advice in respect of the said order.</p>
17.	Judgment against the Council	<p>17.1 If judgment has been entered against the Council, such entry with particulars shall be communicated to the Council within forty-eight (48) hours by all the following means:</p> <ul style="list-style-type: none"> a) Telephone call. b) E-mail c) Letter to the Council. <p>17.2 The Advocates shall also give the Council an analysis of that Judgment; the Advocates view on whether the Council should appeal against it or not with reasons in both scenarios.</p> <p>17.4 Within not more than five (5) working days of entry and delivery of that judgment, the Advocates shall avail to the Council a copy of the said decision.</p>

<p>18.</p>	<p>Judgment in favour of the Council</p>	<p>18.1 Where judgment has been entered in favor of the Council, such entry with particulars shall be communicated to the Council within forty-eight (48) hours by both the following means:</p> <ul style="list-style-type: none"> a) Telephone call. b) E-mail c) Letter to the Council <p>18.2 In this case, the Advocates shall also inform the Council within seven (7) calendar days of the steps the Advocates are taking to execute for the Council's costs, accompanied by proof of those steps.</p> <p>18.3 Where the Advocates have failed to take action according to Clause 18.2, the Advocates shall promptly give the Council the reasons thereof.</p> <p>18.4 The Advocates shall also give the Council their analysis of that Judgment, the Advocates view on whether the Council should appeal against any part of the decision thereof.</p>
<p>19.</p>	<p>Stay of Execution</p>	<p>19.1 Where judgment has been entered against the Council, the Advocates must apply and take all measures to obtain a Stay of execution from the trial Court immediately and in any event not more than forty-eight (48) hours after such entry. A copy of the stay Order should be extracted and served on the opposing side.</p> <p>19.2 Where an oral application for stay is denied by the trial court or the Appeal Court, then an application under Certificate of Urgency shall be made in the said Court within Twenty-four (24) hours of such denial.</p> <p>19.3 In the event the application is not successful in the said Court, an application for stay of execution must be made to the appellate Court within seventy-two (72) hours of such denial.</p> <p>19.4 The Advocates shall set in motion and avail to the Council the protection from execution pending appeal as provided under Section 21 of the Government Proceedings Act, where applicable.</p> <p>19.5 The above shall not apply, where the Council instructs otherwise in writing.</p>
<p>20.</p>	<p>Proclamations and Attachment</p>	<p>20.1 Where proclamation is carried out despite all the above, the Advocates shall give the Council a detailed explanation as to why such proclamation occurred and all steps taken by the Advocates to lift the proclamation or otherwise stay further execution.</p> <p>20.2 The detailed explanation in writing shall be required to be given to the Council within forty-eight (48) Hours of such proclamation.</p> <p>20.3 Any attachment of the Council's property whether regularly or irregularly done shall be considered serious dereliction of</p>

		<p>services unless the Advocates promptly give compelling reasons as to how, why and when such occurrence took place.</p> <p>20.4 The explanation should clearly demonstrate absence of negligence on the Advocates part and that the Advocates had carried out all due and reasonable diligence to avoid that attachment.</p>
21.	Failure to adhere leading to actual Proclamation and/or Attachment	<p>21.1 Should the Advocates fail to adhere to the above and a proclamation is done against the Council or any of Council's staff member's property the following at Council's discretion will apply:</p> <p>a) The Council may withdraw all instructions from the said Advocates including instructions on all other files being handled by the said Advocates.</p> <p>b) The Advocates shall be liable to the Council and shall be liable for the loss and damage as per the terms and conditions of the professional indemnity cover.</p> <p>21.2 In this regard, the Advocates shall:</p> <p>21.2.1 Furnish the Council with the requisite Professional Indemnity Cover.</p> <p>21.2.2 By the time of signing this SLA confirm that its insurer has been fully notified of this clause. Such notification will be confirmed by the Advocates furnishing the Council with an extract of this whole clause without any alterations duly stamped and dated by that insurer.</p> <p>21.2 Any withdrawal of cases will not prejudice the Advocates obligation to avert any further adverse action in the instant case where proclamation or attachment has been done.</p> <p>21.3 Should the Advocates fail to adhere to the above and an attachment is done against the Council in addition to the measures in Clause 21, the Council shall be at liberty to cease issuing the Advocates with any new cases or matters and withdraw all pending matters with the Advocates.</p>
22.	Court documents	<p>22.1 In all instances not expressly covered by any of the other titled issues, the Advocates shall promptly furnish the Council and in any event within seven (7) days of all court documents filed by all parties in the suit from inception until conclusion of the suit which shall include those filed on the Council's behalf.</p> <p>22.2 The Advocates shall also furnish the Council with proof of service of the documents that the Advocates have served.</p> <p>22.3 The above excludes other correspondence that the Advocates may engage in the normal course of handling the file or matter unless that correspondence is necessary for the Council.</p> <p>22.4 The Advocates shall participate in all pre-trial directions and conferences and shall further promptly advise the Council of any directions on discovery and interrogatories as may be</p>

		applicable. Such advice shall be given to the Council within three (3) days from the date of the directions.
23.	Criminal Proceedings	<p>23.1 The Council may instruct the Advocates to undertake proceedings of a criminal nature including applications for Search Warrants, undertaking of prosecutions on pursuant to Medical Practitioners and Dentists Act (CAP 253 Laws of Kenya) and other briefs of criminal nature.</p> <p>23.2 As far as it is reasonably practicable, the Advocates shall observe the document preparation and reporting timelines, representation or attendance requirements applicable to proceedings of civil nature outlined hereinabove for criminal proceedings.</p> <p>23.3 The Council shall reserve the discretion to prescribe other service level applicable to each brief of a criminal nature as the case may be and when the need arises.</p>
24.	Payment of Fees	<p>24.1 The fees payable to the Advocates shall be computed in line with the applicable Advocates Remuneration Order as promulgated from time to time.</p> <p>24.2 Payment of deposit on legal fees, 50% of the total legal fees payable, may take place at the inception of instructions or during the progress of a case. This notwithstanding, unless acceptable to the Council, no fees will be payable until a Defence or a Reply is filed where one is necessary.</p> <p>24.3 Where the nature of the instructions do not require preparation and/or filing or a document at any registry and/or with any government agency, the total legal fees shall be payable when the action so required in the instructions is completed.</p> <p>24.4 The Advocates will not be entitled to payment of final fees until a matter is concluded. For purposes of payment fees, a matter will be deemed to be concluded when final decision/Judgment thereon is delivered and all post-judgment applications disposed of.</p>
PART C - COMMUNICATION AND CLOSURE OF FILES		
25.	Routine Communication	<p>25.1 Without prejudice to any of the above, the Advocates shall routinely communicate with the Council by letter or e-mail whenever there is a change in the status of the matter.</p> <p>25.2 Such routine communication will not cease unless -</p> <ol style="list-style-type: none"> a) The Council indicates to the Advocates otherwise. b) The matter is kept in abeyance with the Council's consent c) The file or case or matter is closed.
26.	Closure of files	<p>26.1 Files should be closed in the following circumstances: -</p> <ol style="list-style-type: none"> a) The Council consents expressly to the Advocates that the file is closed, b) The case, if it was in court, should have a copy of a final extracted Order indicating that the matter is settled, c) There is a Decree and Certificate of Costs or Certificate of Taxation that - <ol style="list-style-type: none"> (i.) Has been fully satisfied if against the Council

		<p>(ii) Has been acknowledged by the Council and the Council has either accepted letting execution lie or has received payment in satisfaction of the same.</p> <p>d) The Advocates have expressly communicated to the Council that all issues have been settled. In such instance, the Council shall not be liable for any pecuniary issues that may arise unless the issue is obviously novel.</p> <p>e) The Advocates shall keep the closed file in safe custody and good order and the same shall not be destroyed except as provided for in the relevant laws and regulations.</p>
--	--	---

PART D -GENERAL REMEDIAL MEASURES AND RESPONSIBILITIES

27.	General Remedial Measures	<p>27.1 Where no remedial measure is specified to be taken by the Council in all the above, the Council shall be at liberty to take any measures or recourse that it deems fit in the circumstances not limited to and including those specifically stated in Clause 21.</p> <p>27.2 Any specified measures that may be taken by the Council shall not prejudice or derogate from its sole discretion general power and control over any and all of its matters that the Advocates are handling on its behalf.</p>
28.	Responsibility	<p>28.1 Notwithstanding all the above, in any issue or any legal matter howsoever regarding the Legal Services Department, Director/Legal Services (or any person acting on his or her behalf) continues to have overriding and general power, responsibility and Council to issue any instructions, directions, advise or communication whatsoever.</p> <p>28.2 Without prejudice to Clause 28.1, the Council’s structure for the management of its Litigation (Civil and Criminal) portfolio and liaising with the Advocates will be as follows: -</p> <ul style="list-style-type: none"> a) Designated Head of litigation will be responsible for day-to-day operations of litigation section i.e. civil and criminal b) Working under and with the instructions and guidance of the designated head of commercial law in Clause 28.2 (a) above will be the Council’s Legal Officers in charge of litigation.

PART E -THE PROFESSIONAL INDEMNITY COVER

29.	Professional Indemnity Cover	<p>29.1 The Advocates shall provide the Council with the requisite copy of the Advocates Professional Indemnity Cover (the Cover).</p> <p>29.1.1 Category A law firms – (Super-size) Has a Professional Indemnity Cover of not less than KSh. 200 Million Has more than twelve (12) admitted lawyers</p> <p>29.1.2 Category B law firms – (Large) Has a Professional Indemnity Cover of not less than KSh. 100 Million but not equivalent to or more than KSh. 200 Million Has between eight (8) and twelve (12) admitted lawyers 9.2.3</p> <p>29.1.3 Category C law firms – (Medium) Has a Professional Indemnity Cover of not less than KSh. 50 Million but not equivalent to or more than KSh. 100 Million Has between four (4) and seven (7) admitted lawyers 9.2.4</p> <p>29.1.4 Category D law firms – (Standard) Has a Professional Indemnity Cover of not less than KSh. 10 Million but not equivalent to or more</p>
------------	-------------------------------------	---

		<p>than KSh. 50 Million Has between one (1) and three (3) admitted lawyers</p> <p>29.2 Should the Advocates be unable to meet this, then the Council will immediately thereafter commence to seek alternative representation in all the Council's matters or cases or files that the Advocates are handling on the Council's behalf. That will only cease when the Advocates furnish the Council with the Cover or the Council completes transfer of the matters or cases or files, whichever comes earlier.</p> <p>29.3 Notwithstanding, the preceding proceeds of the Cover shall be payable to the Council as part compensation resulting from the Advocates failure to observe, perform and complete its obligations under and arising from this SLA and without prejudice to the Advocates Act, Chapter 16 of the laws of Kenya (as may be amended from time to time or replaced).</p>
--	--	---

PART F - COMPLIANCE WITH LAWS

30.	Permits and Licenses	<p>30.1 The Advocates shall be responsible and shall obtain all permits, observe and comply with all the laws, regulations, rules, by-laws and requirements necessary and required in the performance and in connection with this SLA.</p> <p>30.2 The above shall include valid, up-dated registration of the Advocates firm with the Law Society of Kenya (or its successor) and any of its branches if the Advocates practice in any such branches.</p> <p>30.3 The Advocates shall ensure that they and any lawyer they engage in the firm or who holds their brief at any substantive time has a valid current practicing certificate at all times that the Advocates or such lawyer handles any of the Council's cases or files or matters.</p> <p>30.4 The Advocates undertake to produce, if and when lawfully required, the Registration Certificate in circumstances so necessitating such production.</p>
------------	-----------------------------	--

31.	Language and Law	The language of the SLA as well as all correspondence and documents relating to and arising from this SLA or exchanged between the Parties shall be written in the English Language and the laws governing this SLA shall be the laws of Kenya.
------------	-------------------------	---

PART G –TERM OF SERVICE LEVEL AGREEMENT

32.	Effective Date and Duration of the Agreement	<p>32.1 This SLA shall be effective from 1st October 2022 to 30th September 2025.</p> <p>32.2 This SLA shall affect all cases and/or transactions commenced during the period mentioned in Clause 32.1 above until the conclusion of any such cases.</p>
------------	---	--

PART H – DISPUTE RESOLUTION

<p>33.</p>	<p>Dispute Resolution</p>	<p>33.1 The parties shall use their best efforts to resolve amicably all disputes arising out of this SLA.</p> <p>33.2 It is hereby duly agreed that the Council may at its own discretion withdraw any instructions from the Advocates and shall thereof be at liberty to instruct any other firm of advocates of its choice to take over the conduct of any matter and shall not require any concurrence or consent by the Advocates to withdraw the instructions.</p> <p>33.3 Upon such withdrawal of instructions, the Advocates shall cease further conduct of the matter and shall thereof forward all the files, evidence, correspondence and any other document or information in their custody related to the matter to the Council or to the Council’s new Advocates.</p> <p>33.4 The Advocates shall promptly release and forward the files and other documents referred to in Clause 33.3 above to the Council or to the Council’s new Advocates irrespective of whether the legal fees will have been settled in full at the time of withdrawal of instructions. Such files shall be released and forwarded to the Council or to its new Advocates within five (5) days from the date of written notification to release the same.</p> <p>33.5 For the avoidance of doubt, it is hereby agreed that the Advocates shall not hold the files as a lien for the payment of any legal fees that may be outstanding at the time of withdrawal of instructions.</p> <p>33.2 Where the parties are unable to agree on the legal fees to be paid for the work done at the time of withdrawal of instructions or for any other reasons, the fees payable to the Advocates shall be calculated on the lower scale in accordance with the applicable Advocates Remuneration Order. The parties will use their best endeavors to amicably agree on the fees and shall only result to taxation as a last resort.</p>
-------------------	----------------------------------	--

PART I – FORCE MAJEURE

<p>34.</p>	<p><i>Force Majeure</i></p>	<p>34.1 If after commencement of this SLA the rights or obligations of the Advocates or of the Council herein are wholly or substantially diminished or the performance thereof rendered wholly or substantially impossible by reasons beyond the parties’ reasonable control, including, but not limited to an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military Council, (a “<i>Force Majeure Event</i>”) then the obligations of both parties shall cease forthwith except that the Council shall pay to the Advocates all the fees and expenses then owing to the Advocates. Provided that this shall exclude any expenses of or caused by or arising out of such termination.</p> <p>34.2 If a <i>Force Majeure</i> Event arises, the Advocates shall promptly notify the Council in writing of such condition and the cause thereof. Unless otherwise directed by the Council in writing, the Advocates shall continue to perform its obligations under this SLA as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the <i>Force</i></p>
-------------------	------------------------------------	---

PART J – TERMINATION

35. Termination

35.1 Termination for Cause

If any party herein shall be in serious and/or repeated breach of its obligation herein, or act in a manner as to render performance of the Services under this SLA by the non-defaulting party wholly or substantially impossible, and such material default is not cured within thirty (30) days after written notice thereof, this SLA may be terminated by the non-defaulting party for cause as of the date specified in the notice and the non-defaulting party's obligations shall cease forthwith.

35.2 Termination for Insolvency

Either party may terminate this SLA immediately should the other party:

- (a) Admit in writing its inability to pay its debts generally as they become due;
- (b) Make a general assignment for the benefit of its creditors;
- (c) Commence against it, proceedings under any bankruptcy, insolvency, debtor's relief law, or any equivalent proceeding under applicable law; and/or;
- (d) Be liquidated or dissolved.

35.3 Termination for Default

The Council may, without prejudice to any other remedy for breach of SLA, by written notice of default sent to the Advocates, terminate this SLA in whole or in part:

- (a) If the Advocates fails to perform any obligation(s) under the SLA.
- (b) If the Advocates, in the judgment of the Council, has engaged in corrupt or fraudulent practices in competing for or in executing this SLA.

35.4 Effect of Termination:

On termination of the SLA, both parties shall be relieved of their obligations under the SLA save for those that shall survive termination. Where the default is caused by the Advocates, the Council shall be entitled to withhold any payment due to the Advocates as at the date of termination as penalty for default. However, where the default is caused by the Council, the Advocates shall be entitled to the sums for services actually provided in accordance with this SLA.

PART K – NOTICES

36.	Notice	36.1 Any notice by either party to the other under this SLA shall be in writing and shall be addressed as set forth below, provided, however, that if either party shall have designated a different address by written notice to the other, then such notice shall be provided to the last address so designated. In the event that either party changes its mailing address or phone number(s), such party shall provide the other party with a five (5) day advance written notice of such change. 36.2 If to the Council, notice shall be addressed to: Chief Executive Officer Kenya Medical Practitioners and Dentists Council Woodland Avenue P.O Box 44839 - 00100 Nairobi, Kenya 36.3 If to the Advocates, notice shall be addressed to <i>[Details of the firm to be inserted here]</i>
------------	---------------	---

IN WITNESS WHEREOF the parties have executed this Service Level Agreement the day and year first hereinbefore written.

FOR THE COUNCIL

FOR THE ADVOCATES

Signed by: Dr.Daniel M Yumbya EBS

Signed by:

Title: Chief Executive Officer

Title: Managing Director

WITNESSED BY:

WITNESSED BY:

Name:

Name:

Title: Asst. Director Supply Chain Management

Title: Corporation Secretary

.....

Appendix B - Key Experts

[Insert a table based on Form TECH-6 of the Consultant's Technical Proposal and finalized at the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]

SECTION 10. NOTIFICATION FORMS

1. NOTIFICATION OF INTENTION TO AWARD

Procuring Entity: _____ *[insert the name of the Entity]* Contract title: _____ *[insert the name of the contract]* RFP No: _____ *[insert RF Preference number]*

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 Proposal, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

The successful Consultant

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

i) Short listed Consultants

[INSTRUCTIONS: insert names of all short-listed Consultants and indicate which Consultant submitted Proposals. Where the selection method requires it, state the price offered by each Consultant as readout, and as evaluated. Include overall technical scores and scores assigned for each criterion and sub-criterion.]

	Submitted Proposal	Overall score	technical	Financial Proposal Price	Evaluated Financial Proposal Price (If applicable)	Combined Score and ranking (if applicable)
[insert name]	[yes/no]	Criterion (i): [insert score]	(i): [insert score]	[Proposal price]	[evaluated price]	<u>Combined Score:</u> [combined score]
		Criterion (ii): [insert score]	(ii): [insert score]			<u>Ranking:</u> [ranking]
		Criterion (iii): [insert score]	(iii): [insert score]			
		<u>Sub-criterion a:</u>				
		1: [insert score]				
		2: [insert score]				
		3: [insert score]				
		<u>Sub-criterion b:</u>				
		1: [insert score]				
		2: [insert score]				
		3: [insert score]				
		<u>Sub-criterion c:</u>				
	etc.				
		Criterion (iv): [insert score]	(iv): [insert score]			
		Criterion (v): [insert score]	(v): [insert score]			
		Total score: [insert score]				
[insert name]	[yes/no]	Criterion (i): [insert score]	(i): [insert score]	[Proposal price]	[evaluated price]	<u>Combined Score:</u> [combined score]
		Criterion (ii): [insert score]	(ii): [insert score]			<u>Ranking:</u> [ranking]
		Criterion (iii): [insert score]	(iii): [insert score]			
		<u>Sub-criterion a:</u>				
		1: [insert score]				
		2: [insert score]				
		3: [insert score]				
		<u>Sub-criterion b:</u>				
		1: [insert score]				
		2: [insert score]				
		3: [insert score]				
		<u>Sub-criterion c:</u>				
	etc.				
		Criterion (iv): [insert score]	(iv): [insert score]			
		Criterion (v): [insert score]	(v): [insert score]			
		Total score: [insert score]				
[insert name]	[yes/no]	Criterion (i): [insert score]	(i): [insert score]	[Proposal price]	[evaluated price]	<u>Combined Score:</u> [combined score]
		Criterion (ii): [insert score]	(ii): [insert score]			

Criterion (iii): [insert score]

Ranking:
[ranking]

Sub-criterion a:

1: [insert score]

2: [insert score]

3: [insert score]

Sub-criterion b:

1: [insert score]

2: [insert score]

3: [insert score]

Sub-criterion c:

.....etc.

Criterion (iv): [insert score]

Criterion (v): [insert score]

Total score: [insert score]

[insert name]

.....

- (ii) **Reason/s why your Proposal was unsuccessful** [*Delete if the combined score already reveals the reason*].

[INSTRUCTIONS; State the reason/s why this Consultant's Proposal was unsuccessful. Do NOT include: (a) a point by point comparison with another Consultant's Proposal or (b) information that is marked confidential by the Consultant in its Proposal.]

- iii) **How to request a debriefing** [*This applies only if your proposal was unsuccessful as stated under point (3) above*].

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 Proposal. If you decide to request a debriefing your written request must be made within five (5) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Consultant, 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 5 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 fourteen (14) Business Days from the date of publication of the Contract Award Notice.

(iv) 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 Consultant, 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]

Fax number: [insert fax number] delete if not used

[At this point in the procurement process] [Upon receipt of this notification] 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.

In summary, there are four essential requirements:

You must be an ‘interested party’. In this case, that means a Consultant who has submitted a Proposal in this selection process and is the recipient of a Notification of Intention to Award.

The complaint can only challenge the decision to award the contract.

You must submit the complaint within the deadline stated above.

You must include, in your complaint, all of the information required by the Procuring Entity.

(v) Standstill Period

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

The Standstill Period lasts ---- (specify the number of business days as per Data Sheet 30.1) Business Days as specified in the Data Sheet 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 _____ [insert the name 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

[use letterhead paper of the Procuring Entity] [date]_____To: _____ [name and address of the winning Consultant] Subject: Notification of Award Contract No.....

This is to notify you that your Proposal dated _____*[insert date]* for consulting services for *[name of the assignment]* as negotiated with you on _____ for the contract amount of _____*[Insert amount in numbers and words and name of currency]* is here by accepted by our agency.

You are requested to:(i) sign and return the draft negotiated Contract attached here with within eight (8) Business Days from the date of receipt of this notification; and (ii) furnish the additional information on beneficial ownership in accordance with the Data Sheet of ITC 32.1 within eight (8) days using the Beneficial Ownership Disclosure Form, included in Section 7 of the Request of Proposals.

Authorized Signature:_____

Name and Title of Signatory:_____

Name of Agency:_____

Attachment: Draft Negotiated Contract

4 BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful Consultant. In case of joint venture, the Consultant 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 Consultant is any natural person who ultimately owns or controls the Consultant by meeting one or more of the following conditions:

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

Request for Proposal Reference No.: _____ [insert identification no] Name of the Assignment: _____ [insert name of the assignment] to: _____ [insert complete name of Procuring Entity]

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

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

Details of beneficial ownership

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

OR

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

OR

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

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

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

Name of the Consultant:[insert complete name of the Consultant]___*

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

Title of the person signing the Proposal: [insert complete title of the person signing the Proposal]

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

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

** In the case of the Proposal submitted by a Joint Venture specify the name of the Joint Venture as Consultant. In the event that the Consultant is a Joint venture, each reference to “Consultant” in the Beneficial Ownership Disclosure Form (including this Introduction there to) shall be read to refer to the joint venture member.*

*** Person signing the Proposal shall have the power of attorney given by the Consultant. The power of attorney shall be attached with the Proposal Schedules.*

