

KENYA NATIONAL EXAMINATIONS COUNCIL



**INVITATION TO BID
FOR
MAINTENANCE OF AIR CONDITIONING EQUIPMENT**

TENDER NO –
KNEC/GT/2016/2017 - 039

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INTRODUCTION

- 1.1 This standard tender document for procurement of insurance services has been prepared for use by public entities in Kenya in the procurement of all types of insurance covers as per the Public Procurement and Asset Disposal Act 2015.
- 1.2 The following general directions should be observed when using the document;
 - (a) Specific details should be furnished in the invitation to tender notice and in the special conditions of contract. The final document to be provided to the tenderers should not have blank spaces or give options.
 - (b) The instructions to tenderers and the General conditions of contract should remain unchanged. Any necessary amendments to these parts should be made through the special conditions of contract and appendix to instructions to tenderers respectively.
- 1.3 (a) Information contained in the invitation to tender shall conform to the data and information in the tender documents to enable potential tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements.
 - (c) The invitation to tender shall be issued as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have expressed interest following an invitation for expression of interest for which the invitation is issued.
- 1.4 The cover of the tender document should be modified to include:
 - I. Tender number.
 - II. Tender name.
 - III. Name of procuring entity.

SECTION I: INVITATION TO TENDER

Date 4TH FEBRUARY 2017

Tender Ref No: KNEC/GT/2016/2017 - 039

Tender name: MAINTENANCE OF AIR CONDITIONING EQUIPMENT

- 1.1 The **Kenya National Examinations Council** invites sealed tenders from eligible candidates for provision of the above services.
- 1.2 Prices quoted should be inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for period of (90) days from the closing date of the tender.
- 1.3 Tender bids in plain sealed envelope indicating the tender number and bearing no indication of the Tenderer should be addressed to:

The Chief Executive Officer

Kenya National Examinations Council

P O Box 73598 – 00200

NAIROBI

Email: procurement@knec.ac.ke

- 1.4 And placed in the **Tender Box** on **6th Floor Monday, 20th February 2017 at 10.00 am.**
- 1.5 Submitted documents will be opened publicly in the **Conference Room** on **7th Floor, NHC Building** soon after the above stated closing date and time in the presence of the Tenderers or their representatives who choose to attend. Late bids will be returned unopened.
- 1.6 The contract will be effective for a period of twelve (12) months with an option of roll over subject to performance covering KNEC Premises in Nairobi. Offices are in four locations namely, NHC Building, Mitihani House along Dennis Pritt Road, Likoni Road and New Mitihani House at South C. Familiarize yourself with these location to assess how they will impact on your service delivery.
- 1.7 The Kenya National Examinations Council reserves the right to reject any tender without giving reasons for the rejection and does not bind itself to the lowest or any tender.

CHIEF EXECUTIVE OFFICER

INSTRUCTION TO TENDERERS

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SECTION II - INSTRUCTIONS TO TENDERERS

2.1. Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Appendix to Instructions to Tenderers. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2 The procuring entity's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.**
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.4 Tenderers involved in the corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of Tendering

- 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs. Regardless of the conduct or outcome of the tendering process
- 2.2.2 The price to be charged for the tender document shall not exceed Kshs.1,000/=. However, bidders are encouraged to download the tender document from the KNEC website for free.
- 2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

2.3 Contents of Tender Document

- 2.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.5 of these instructions to tenderers.

- (i) Instructions to Tenderer
- (ii) General Conditions of Contract
- (iii) Special Conditions of Contract
- (iv) Schedule of Requirements
- (v) Details of Insurance Cover
- (vi) Form of Tender
- (vii) Price Schedules
- (viii) Contract Form
- (ix) Confidential Business Questionnaire Form
- (x) Tender security Form
- (xi) Performance security Form
- (xii) Insurance Company's Authorization Form
- (xiii) Declaration Form
- (xiv) Request for Review Form

2.3.2 The Tenderer is expected to examine all instructions, forms, terms and specification in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

2.4 Clarification of Tender Documents

2.4.1 A Candidate making inquiries of the tender documents may notify the Procuring entity by post, fax or by email at the procuring entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of the tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all candidates who have received the tender documents.

2.4.2 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

2.4.3 Preference where allowed in the evaluation of tenders shall not exceed 15%

2.5 Amendment of Tender Documents

2.5.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.

2.5.2 All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

2.5.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.6 Language of Tenders

2.6.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language. Any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

2.7. Documents Comprising the Tender

2.7.1 The tender prepared by the tenderer shall comprise the following components:

- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 2.8, 2.9 and 2.10 below
- (b) Documentary evidence established in accordance with paragraph 2.1.2 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) Tender security furnished in accordance with paragraph 2.12 (if applicable)
- (d) Declaration Form.

2.8. Form of Tender

2.8.1 The tenderer shall complete the Tender Form and the Price Schedule furnished in the tender documents, indicating the services to be provided.

2.9. Tender Prices

2.9.1 The tenderer shall indicate on the form of tender and the appropriate Price Schedule the unit prices and total tender price of the services it proposes to provide under the contract.

2.9.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable.

2.9.3 Prices quoted by the tenderer shall remain fixed during the Term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.20.5

2.10. Tender Currencies

2.10.1 Prices shall be quoted in Kenya Shillings

2.11. Tenderer Eligibility and Qualifications

2.11.1 Pursuant to paragraph 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if it's tender is accepted.

2.11.2 The documentary evidence of the tenderer's qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

2.12. Tender Security

2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Appendix to Instructions to Tenderers.

2.12.2 The tender security shall not exceed 2 per cent of the tender price.

2.12.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7

2.12.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form

- a) Cash.
- b) A bank guarantee.
- c) Such insurance guarantee approved by the Authority.
- d) Letter of credit.

2.12.5 Any tender not secured in accordance with paragraph 2.12.1. and 2.12.3 shall be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20.5

2.12.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity

2.12.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.29, and furnishing the performance security, pursuant to paragraph 2.30

2.12.8 The tender security may be forfeited:

- (a) If a tenderer withdraws its tender during the period of tender validity.
- (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 2.29 or
 - (ii) To furnish performance security in accordance with paragraph 2.30.
- (c) If the tenderer reject correction of an arithmetic error in the tender.

2.13. Validity of Tenders

2.13.1 Tenders shall remain valid for 90 days after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer granting the request will not be required nor permitted to modify its tender.

2.14. Format and Signing of Tenders

2.14.1 The tenderer shall prepare one copy of the tender, clearly marked with the tender name and tender numbers.

2.14.2 The tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.

2.14.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

2.15 Sealing and Marking of Tenders

2.15.1 The tenderer shall seal the bid document marking the envelope with the tender name and tender number.

2.15.2 The outer envelope shall:

- (a) Be addressed to the Procuring entity at the address given in the Invitation to Tender.

- (b) Bear tender number and name in the invitation to tender and the words, "DO NOT OPEN BEFORE **Monday 20th February 2017 at 10.00 A.M.**

2.15.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late".

2.15.4 If the outer envelope is not sealed and marked as required by paragraph 2.15.2, the Procuring entity will assume no responsibility for the tender's misplacement or premature opening.

2.16. **Deadline for Submission of Tenders**

- (c) Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 not later than **Monday 20th February 2017.**

2.16.1 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5.3 in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.16.2 Bulky tenders which will not fit the tender box shall be received by the procuring entity as provided for in the appendix.

2.17. **Modification and Withdrawal of Tenders**

2.17.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring entity prior to the deadline prescribed for submission of tenders.

2.17.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by fax or email but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

2.17.3 No tender may be modified after the deadline for submission of tenders.

2.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.7.

2.18. Opening of Tenders

- 2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at KNEC boardroom on **Monday 20th February 2017 at 10.00 a.m.** and in the location specified in the invitation for tenders. The tenderers' representatives who are present shall sign a register evidencing their attendance
- 2.18.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.18.3 The Procuring entity will prepare minutes of the tender opening, which will be submitted to tenderers that signed the tender opening register and will have made the request.

2.19 Clarification of Tenders

- 2.19.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.
- 2.19.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.20 Preliminary Examination and Responsiveness

- 2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.20.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures, the amount in words will prevail
- 2.20.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.20, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and

conditions of the tender documents without material deviations the Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

- 2.20.5 If a tender is not substantially responsive, it will be rejected by the procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

2.21. Conversion to single currency

- 2.21.1 Where other currencies are used, the Procuring entity will convert those currencies to Kenya

Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

2.22. Evaluation and Comparison of Tenders

- 2.22.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

- 2.22.2 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.3.

- (a) Operational plan proposed in the tender;
- (b) Deviations in payment schedule from that specified in the Special Conditions of Contract

- 2.22.3 Pursuant to paragraph 2.22.2. the following evaluation methods will be applied.

- (a) Operational Plan
 - (i) The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenders offering to perform longer than the procuring entity's required delivery time will be treated as non-responsive and rejected.
- (b) Deviation in payment schedule
 - (i) Tenderers shall state their tender price for the payment on schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price.

Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule.

The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

2.22.4 The tender evaluation committee shall evaluate the tender within 30 days from the date of opening the tender.

2.23. Contacting the Procuring entity

2.23.1 Subject to paragraph 2.19 no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

2.23.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderers' tender.

2.24 Post-qualification

2.24.1 The Procuring entity will verify and determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.24.2 The determination will take into account the tenderer financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.11.2 , as well as such other information as the Procuring entity deems necessary and appropriate

2.24.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination .

2.25 Award Criteria

2.25.1 Subject to paragraph 2.29 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be

the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

2.25.2 To qualify for contract awards, the tenderer shall have the following:-

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (d) Shall not be debarred from participating in public procurement.

2.26. Procuring entity's Right to accept or Reject any or all Tenders

2.26.1: The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action. If the Procuring entity determines that non of the tenders is responsive, the Procuring entity shall notify each tenderer who submitted a tender.

2.26.2 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.26.3 A tenderer who gives false information in the tender document about is qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

2.27 Notification of Award

2.27.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.

2.27.2 The notification of award will signify the formation of the contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.9. Simultaneously the other tenderers shall be notified that their tenders were not successful.

2.27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.29 the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

2.28 Signing of Contract

- 2.28.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.
- 2.28.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.
- 2.28.3 The contract will be definitive upon its signature by the two parties.
- 2.28.4 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.29 Performance Security

- 2.29.1 The successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in a form acceptable to the Procuring entity.
- 2.29.2 Failure by the successful tenderer to comply with the requirement of paragraph 2.29 or paragraph 2.30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated tender or call for new tenders.

2.30 Corrupt or Fraudulent Practices

- 2.30.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- 2.30.2 The Procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question
- 2.30.3 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public Procurement in Kenya.

Appendix to Instructions to Tenderers

Notes on the Appendix to the Instruction to Tenderers

- 1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to corresponding clause in the instructions to Tenderers included in Section II and has to be prepared for each specific procurement.

2. The procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the procuring of the procurement, and the tender evaluation criteria that will apply to the tenders.
3. In preparing the Appendix the following aspects should be taken into consideration;
 - (a) The information that specifies and complements provisions of Section II to be incorporated.
 - (b) Amendments and/or supplements if any, to provisions of Section II as necessitated by the circumstances of the specific procurement to be also incorporated.
4. Section II should remain unchanged and can only be amended through the Appendix to instructions to tenders.
5. Any clause to be included in the appendix to instructions to tenderers must be consistent with the applicable public procurement law and regulations.

Appendix to instructions to Tenderers

The following information for the procurement of Machines Servicing services shall complement, supplement, or amend, the provisions on the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

Instruction to tender reference	<i>Particulars of Appendix to instructions to tenderers</i>
2.1	<i>Indicate eligible tenderers</i>
2.15.2 (b)	<i>State day, date and time of tender closing</i>
2.16.1	<i>As 2.15.2 (b) above</i>
2.18.1	<i>As 2.15.2 (b) above</i>

(Complete as necessary)

SECTION III - GENERAL CONDITIONS OF CONTRACT

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SECTION III GENERAL CONDITIONS OF CONTRACT

3.1. Definitions

3.1.1 In this Contract, the following terms shall be interpreted as indicated:

- (a) "The Contract" means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) "The Contract Price" means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) "The Services" means services to be provided by the tenderer including any documents, which the tenderer is required to provide to the Procuring entity under the Contract.
- (d) "The Procuring entity" means the organization procuring the services under this Contract
- (e) "The Contractor" means the organization or firm providing the services under this Contract.
- (f) "GCC" mean the General Conditions of Contract contained in this section.
- (g) "SCC" means the Special Conditions of Contract
- (h) "Day" means calendar day

3.2. Application

3.2.1 These General Conditions shall apply to the extent that they are not superseded by provisions of other part of the contract

3.3. Standards

3.3.1 The services provided under this Contract shall conform to the standards mentioned in the schedule of requirements.

3.4. Use of Contract Documents and Information

3.4.1 The Contractor shall not, without the Procuring entity's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the contractor in the performance of the Contract.

3.4.2 The Contractor shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 2.4.1 above.

3.4.3 Any document, other than the Contract itself, enumerated in paragraph 2.4.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the contract's or performance under the Contract if so required by the Procuring entity.

3.5. Patent Rights

- 3.5.1 The Contractor shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services under the contract or any part thereof.

3.6 Performance Security

- 3.6.1 Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in SCC
- 3.6.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.6.3 The performance security shall be denominated in the currency of the Contract or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of:
- a) Cash.
 - b) A bank guarantee.
 - c) Such insurance guarantee approved by the Authority.
 - d) Letter of credit.
- 3.6.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Contractor's performance of obligations under the Contract, including any warranty obligations, under the Contract.

3.7. Delivery of services and Documents

- 3.7.1 Delivery of the services shall be made by the Contractor in accordance with the terms specified by the procuring entity in the schedule of requirements and the special conditions of contract

3.8. Payment

- 3.8.1. The method and conditions of payment to be made to the contractor under this Contract shall be specified in SCC.
- 3.8.2. Payment shall be made promptly by the Procuring entity, but in no case later than sixty (60) days after submission of an invoice or claim by the contractor

3.9. Prices

- 3.9.1 Prices charges by the contractor for Services performed under the Contract shall not, with the exception of any price adjustments authorized in SCC vary from the prices quoted by the tenderer in its tender or in the procuring entity's request for tender validity extension the case may be. No variation in or modification to the terms of the contract shall be made except by written amendments signed by the parties.

- 3.9.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 3.9.3 Where contract price variation is allowed the variation shall not exceed 10% of the original contract price
- 3.9.4 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

3.10. Assignment

- 3.10.1 The Contractor shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent.

3.11. Termination for Default

- 3.11.1 The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor terminate this Contract in whole or in part:
 - (a) If the Contractor fails to provide any or all of the services within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity.
 - (b) If the Contractor fails to perform any other obligation(s) under the Contract
 - (c) If the Contract in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the contract
- 3.11.2 In the event the Procuring entity terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those un-delivered, and the Contractor shall be liable to the Procuring entity for any excess costs for such similar services. However the contractor shall continue performance of the contract to extent not terminated.

3.12. Termination for Insolvency

- 3.12.1 The Procuring entity may at any time terminate the contract by giving written notice to the Contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

3.13. Termination for Convenience

- 3.13.1 The Procuring entity by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entities convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.
- 3.13.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor an agreed amount for partially completed services.

3.14 Resolution of Disputes

- 3.14.1 The procuring entity and the contractor shall make every effort to resolve amicably by direct informal negotiations and disagreement or disputes arising between them under or in connection with the contract
- 3.14.2 If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

3.15. Governing Language

- 3.15.1. The contract shall be written in the English language. All correspondence and other documents pertaining to the contract, which are exchanged by the parties, shall be written in the same language.

3.16. Applicable Law

- 3.16.1 The contract shall be interpreted in accordance with the laws of Kenya unless otherwise expressly specified in the SCC.

3.17 Force Majeure

- 3.17.1 The Contractor shall not be liable for forfeiture of its performance security, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

3.18 Notices

- 3.18.1 Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by Fax or Email and confirmed in writing to the other party's address specified in the SCC.
- 3.18.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

Notes on Special Conditions of Contract

1. The clauses in this section are intended to assist the procuring entity in providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract
2. The Provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the insurance cover required. In preparing Section IV, the following aspects should be taken into consideration.
 - (a) Information that complement provisions of Section III must be incorporated; and
 - (b) Amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the specific insurance cover required must also be incorporated.
3. Where there is a conflict between the provisions of the special conditions of contract and the provisions of the general conditions of contract, the provisions of the special conditions of contract shall prevail over the provisions of the general conditions of contract.
4. Any clause to be included in this section must be consistent with the applicable public procurement law and regulations.

SECTION IV – SPECIAL CONDITIONS OF CONTRACT

4.1. **MADATORY CONDITIONS TO BE MET BY THE BIDDERS**

4.1.1 Must submit valid certified copies of the following documents;

- (a) PIN Certificate.
- (b) Valid Tax Compliance Certificate.
- (c) VAT Registration Certificate
- (d) Certificate of Registration/Incorporation.
- (e) Single Business Permit
- (f) Audited Accounts for the immediate last three (3) years.
- (g) Bid Security of not less than Kshs. 50,000.00

4.2 Special Conditions of Contract as relates to the General Conditions of Contract

Reference of general conditions of contract	Special condition of contract
3.6 Performance security	Not applicable
3.7 Delivery of Services	(Specify as necessary)
3.8 Payment	(Specify as necessary)
3.9 Price adjustment	(Specify as necessary)
3.16 Applicable law	(Specify as necessary)
3.18 Notices	(indicate full address of the procuring entity)

SECTION V - SCHEDULE OF REQUIREMENTS

Notes for preparing Schedule of Requirements.

1. The schedule of Requirements shall be included in the tender documents by the procuring entity and shall cover, at the minimum, a description of the insurance cover to be provided and full particulars of the same.
2. The objectives of the schedule of requirements is to provide sufficient information to enable tenderers to prepare their tenders comprehensively, efficiently and accurately. In particular the price schedule for which a form is provided in Section VI must be carefully completed.
3. In addition, the schedule of requirements together with the price schedule should serve as a basis in the event of services variation at the time of award of contract pursuant to instruction to tenderers paragraph 2.26

Evaluation and comparison of tenders.

- 2.1 The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive.
- 2.2 The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services.
- 2.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, technical specifications as outlined in the Evaluation criteria.
- 2.4 The tender evaluation committee shall evaluate the tender within 15 days from the date of opening the tender.
- 2.5 To qualify for contract awards, the tenderer shall have the following:-
 - (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
 - (b) Legal capacity to enter into a contract for procurement
 - (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing
 - (d) Shall not be debarred from participating in public procurement.

The Technical Evaluation Criteria shall therefore be as follows

ITEM	EVALUATION CRITERIA	WEIGHT
A.	MANDATORY REQUIREMENTS	
1.	Evidence of certified copy of certificate of incorporation / registration	Any bidder who fails to meet any of these items will be deemed non responsive
2.	Bid Security of not less than Kshs. 50,000.00	
3.	Evidence of certified copy of a current Tax Compliance certificate	
4.	Evidence of certified copy of PIN certificate	
5.	Evidence of VAT Registration/Exemption	
6.	Evidence of certified Valid Single Business Permit from the Local Authority	
7.	Evidence of certified copy of an Audited Financial Statement / Accounts for the last three years.	
B.	TECHNICAL CRITERIA	
8.	Evidence of physical address. Attached copies of title, lease or rental agreement	5
9.	Evidence of at least three references for relevant services- Prepare a schedule indicating the following: <ul style="list-style-type: none"> - Name of the client - Contract value - Contract period (attach certified copies of agreements/LPOs, contracts, reference letters as evidence)	45
10.	List at least four technical staff with relevant training (Minimum of a Diploma) who will be in charge of the contract implementation if awarded the contract (attach CV and Copies of Certificates)	24
11.	Methodology – work plan and methodology of contract execution if awarded	20
12.	Minimum of three year in service industry.	6
	GRAND TOTAL	100

NOTE: Youth, Women and Persons with Disabilities will be exempted on items 2 and 7 under mandatory requirements but MUST provide evidence of registration with the National Treasury on their respective categories.

Evaluation and Comparison of Tenders

The bidders will be subjected to the above technical evaluation and the pass mark shall be at 70%. Bidders who fail to meet the pass mark shall not proceed for financial proposal consideration.

The contract shall be awarded to the bidder with the lowest commercial proposal.

3.0 SERVICE SCOPE AND SPECIFICATIONS – REFER APPENDIX I

3.1 PRICE SCHEDULE SUMMARY FROM TABLES UNDER APPENDIX I

	PRICES	Cost in Kes (16% VAT Inclusive)
1	Table I	
2	Table II	
3	Table III	
4	Emergency Rate per Call	
	TOTAL QUOTED RATES CARRIED TRANSFERRED TO FORM OF TENDER	

SECTION VI - STANDARD FORMS

Notes on the standard Forms

1. **Form of TENDER** - The form of Tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.

2. **Price Schedule Form** - The price schedule form must similarly be completed and submitted with the tender.

3. **Contract Form** The contract form shall not be completed by the tenderer at the time of submitting the tender. The contract form shall be completed after contract award and should incorporate the accepted contract price.

4. **Confidential Business Questionnaire Form** This form must be completed by the tenderer and submitted with the tender documents.

5. **Tender Security Form** When required by the tender document the tenderer shall provide the tender security either in the form included hereinafter or in another format acceptable to the procuring entity

6. **Performance security Form** The performance security form should not be completed by the tenderer at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.

Form of Tender

To:

Name and address of procuring entity

Date

Tender No.

Tender Name

Gentlemen and/or Ladies:-

1. Having examined the Tender documents including Addenda No. (Insert numbers) the receipt of which is hereby duly acknowledged, we the undersigned, offer to provide the Services under this tender in conformity with the said Tender document for the sum of[Total Tender amount in words and figures]

or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the Services in accordance with the conditions of the tender.

3. We agree to abide by this Tender for a period of[number] days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract between us subject to the signing of the contract by both parties.

5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 2017

[Signature]

[In the capacity of]

Duly authorized to sign tender for and on behalf of _____

Contract Form

THIS AGREEMENT made the _____ day of _____ 20____ between [name of Procurement entity] of [country of Procurement entity] (hereinafter called “the Procuring entity”) of the one part and [name of tenderer] of [city and country of tenderer] (hereinafter called “the tenderer”) of the other part:

WHEREAS the Procuring entity invited tenders for services and has accepted a tender by the tenderer for the supply of the services in the sum of _____ [contract price in words in figures] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSTH AS FOLLOWS:-

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - (a) the Tender Form and the Price Schedule submitted by the tenderer;
 - (b) the Schedule of Requirements
 - (c) the General Conditions of Contract
 - (d) the Special Conditions of Contract; and
 - (e) the Procuring entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the Service and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

Signed, sealed, delivered by _____ the _____ (for the tenderer) in the presence of _____

CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2(c)

Whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.

Part _____ General:

Business Name

Location of business premises

Plot No. Street/Road

Postal Address Tel. No.Fax Email

Nature of business

Registration Certificate No.

Maximum value of business which you can handle at any one time Kshs.

Name of your bankers Branch

Part 2(a) – Sole Proprietor:

Your name in full Age

Nationality Country of origin

Citizenship details.....

Party 2(b) – Partnership

Give details of partners as follows

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

Part 2(c) – Registered Company:

Private or public

State the nominal and issued capital of the company –

Nominal Kshs.

Issued Kshs.....

Give details of all directors as follows

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

Date..... Signature of Tenderer

If a citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration

TENDER SECURITY FORM

Whereas [*name of Bidder*] (hereinafter called <the tenderer> has submitted its bid dated [*date of submission of bid*] for the provision of insurance services (hereinafter called <the tender?>

KNOW ALL PEOPLE by these presents that WE [*name of bank*] of [*name of country*], having our registered office at [*name of procuring entity*] (hereinafter called <the procuring entity> in the sum of [*state the amount*] for which payment well and truly to be made to the said procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of _____ 20 _____

THE CONDITIONS of this obligation are:-

1. If the tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Form; or
2. If the tender, having been notified of the acceptance of its tender by the procuring entity during the period of tender validity
 - (a) fails or refuses to execute the Contract Form, if required; or
 - (b) fails or refuses to furnish the performance security, in accordance with the Instructions to tenders.

We undertake to pay to the procuring entity up to the above amount upon receipt of its first written demand, without the procuring entity having to substantiate its demand, provided that in its demand the procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the conditions, specifying the occurred condition(s)

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

[Authorized Signatories and official stamp of the Bank]

(Amend accordingly if provided by Insurance Company)

PERFORMANCE SECURITY FORM

To:
[Name of procuring entity]

WHEREAS [name of tenderer]

(Hereinafter called "the tenderer") has undertaken, in pursuance of Contract No. _____
[reference number of the contract] dated _____ 20 _____ to _____ supply
.....

[description of insurance services] (Hereinafter called "the Contract")

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for a sum specified therein as security for compliance with the Tenderer's performance obligations in accordance with the Contract

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of

[amount of the guarantee in words and figures], and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum of money within the limits of [Amount of guarantee] as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of _____ 20 ____

Signature and seal of the Guarantors

[Name of bank of financial institution)

[Address].....

[Date].....

(Amend accordingly if provided by Insurance Company)

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

-
1. Please acknowledge receipt of this letter of notification signifying your acceptance.
 2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
 3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

APPENDIX I

SPECIFICATIONS FOR SERVICING AND MAINTENANCE OF AIR CONDITIONERS

THE SERVICE

This contract covers service labour, spares and any parts that may be required to be replaced when necessary and charged at the contract prices in the following schedules:

2.1 ORDINARY AIR CONDITIONERS

Table I

Item	Size of AC machine of any make	General Service Rate (Kes.)	Gas refilling	Blower Unblocking	Replacement of Parts							
					Compressor	Motor	PCB Board Replacement	Power Surge Protector	Drain Pump	Fan Blade	Capillary Tube	Sensors
2.1.1	10,000 - 15,000 BTU											
2.1.2	16,000 - 20,000 BTU											
2.1.3	21,000 - 25,000 BTU											
2.1.4	26,000 - 30,000 BTU											
2.1.5	31,000 - 35,000 BTU											
2.1.6	36,000 - 40,000 BTU											

2.1.7	41,000 - 45,000 BTU											
2.1.8	46,000 - 50,000 BTU											
2.1.9	51,000 - 55,000 BTU											
2.1.10	56,000 - 60,000 BTU											
2.1.11	61,000 - 65,000 BTU											
2.1.12	66,000 - 70,000 BTU											
2.1.13	71,000 - 75,000 BTU											
2.1.14	76,000 - 80,000 BTU											
2.1.15	81,000 - 100,000 BTU											
2.1.16	TOTALS											

2.1.2 AIR CONDENSERS

Table II

Item	General Service Rate	Replacement of Parts								
		Compressor	Motor	Fan	Coil	Filter	Gas	Circuit Board	Blowing	Interface
Rate in KES										
Total per Condenser										

2.1.3 AIR EXTRACTORS

Table III

Item	General Service Rate	Replacement of Parts						
		Grills	Ducts	Switch	Sensor	Kits	Brackets	Fan
Rate in KES								
Total per extractor system								

- 3.1 The contract is specific to the Client and for the specific Air Conditioner set itemized above and may not be otherwise assigned without prior written consent from **the Vendor**
 - 3.2 **The Vendor** shall have no liability for any failure to perform to the contract due to circumstances beyond its control (including, but not limited to, strikes, riots, or acts of God)
 - 3.3 **Payment terms:** The Client would be liable to payment of any invoices raised and whose works have been confirmed delivered whether for emergency or routine maintenance within 30days from the invoice date.
 - 3.4 **VAT:** VAT must be paid together with the invoice principle amount unless the vendor submits exemption certificate from the relevant authority on or before payment of the principle invoice value. Any change in the VAT act effective by the time of payment shall apply.
 - 3.5 **Validity:** Prices shall remain firm but subject to review in case of economy inflation. In case of inflation rates adjustment, **the Vendor** will write to the Client informing of the same and receive a formal acceptance/ approval before charging any new rate.
 - 3.6 **Duration:** This contract agreement will remain valid for one year w.e.f to.....
 - 3.7 **General:** All additional services required and emergency repairs plus any replacement parts used in the course of the maintenance period will be charged extra to the above schedule service price.
 - 3.8 The schedule of work will be carried out during normal working hours.
 - 3.9 The contractor shall not cart away from site any equipment whether in whole or in part unless with written approval from the client. The contractor shall seek such approvals from the client in writing explaining the basis of such movements, the kind of service/parts to be installed and the duration the service is anticipated to take.
- This contract provides for the replacement of consumable items used during servicing at the rates in item 2.0 above. Such parts must be genuine and installed to manufacturers written instructions. All warranties and guarantees will be null and void in the event of abuse or misuse of the equipment.
- 3.10 In the event of an abortive visit taking place at the request of the customer, costs relating to that visit will be charged to the customer. The contractor shall charge KES..... for emergency calls. Such calls must be responded to withinhours of calls.

- 3.11 Reasonable access will be provided to facilitate the provision of the service. The contractor may charge for abortive visits as provided for in schedule 3.11 above
- 3.12 Drawings and instruction manuals must be retained on site.
- 3.13 Damaged parts will be quoted and a go ahead to be given before replacement. Any replaced part shall be handed over to the client for consequent disposal.

4.0 Service

Services will be carried out on site to all units **4 times for the year.**

- 4.1 Clean off dirt build up on the indoor and outdoor unit coils.
- 4.2 Lubrication of all moving parts e.g. fans motors, louvers and other metallic part.
- 4.3 Checking of running pressure and correct where necessary.
- 4.4 Clean condensate drain pan.
- 4.5 Measure the air flow over the heat exchangers and correct where necessary
- 4.6 Pump down, Removal and disassembly of units from site.
- 4.7 Washing and disinfecting the indoor and outdoor unit coils and realignment of fins.
- 4.8 Checking of running pressure and correct where necessary.
- 4.9 Clean test and reinstall drain pump.
- 4.10 Removal Clean and disinfect condensate drain systems and tubes
- 4.11 Measure the air flow over the heat exchangers and correct where necessary

5.0 COMMUNICATION PROTOCOL

- 5.1 Any notice or other communication whatsoever which a party hereto is required or authorized by this agreement to give or make to the other party shall only be valid if given or made either by registered post or hand delivery or any other mode where a clear delivery trail is left as evidence of receipt by the addressee.
- 5.2 For purposes of this Agreement, the addresses noted in point 1 above shall in all cases be deemed to be the actual addresses unless communicated otherwise in writing.
- 5.3 Only documents or letters signed by designated staff (in the case of letters coming from KNEC) and by the Directors of the VENDOR (in the case of letters coming from

vendor shall be accepted as formal communication between the parties to this agreement.

6.0 CONFIDENTIALITY

- 6.1 The parties to this agreement and their staff, who are directly or indirectly involved in provision of these services hereby undertake that they shall:-
- (a) Keep confidential and shall only use confidential information for the purposes for which it was so disclosed or came into their possession under this Agreement;
 - (b) Not disclose any confidential information to any third party;
 - (c) Take all necessary precautions to ensure that confidential information is disclosed only to such of their respective employees or agents who have a need to know the confidential information.
- 6.2 Confidential information shall include the fact that the assignment is being carried out, and any information that comes to the attention of the staff, who are directly or indirectly involved in provision of these services during the normal course of their work.

8.0 DISPUTE RESOLUTION PROCEDURE

- 8.1 If there is any dispute between the parties arising out of this Agreement, the parties will use their reasonable endeavours to resolve the dispute in accordance with this clause. All disputes between the parties arising out of or relating to this agreement shall be dealt with in the following way:-
- (a) The party alleging contravention of the clauses of this agreement shall communicate in writing to the other party clearly stating the specific clauses that have been violated and the proposed remedy.
 - (b) The party accused of breaching this agreement shall respond in a period of not more than seven working days clearly stating its position and shall in its reply propose an appropriate date for a dispute resolution meeting.
 - (c) The two parties shall meet to discuss the matters in contention and shall use their reasonable endeavours to resolve the dispute.
- 8.2 In the event that the parties fail to resolve the dispute, the matter (s) shall be referred to arbitration under the Rules of the Chartered Institute of Arbitrators (Kenya Branch).

9.0 FORCE MAJEURE

- 9.1 Force Majeure shall not be construed to be a breach of contract in any way.
- 9.2 No party shall in any circumstances be liable to the other under this agreement for any loss, any damages, whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations which is due to force majeure.
- 9.3 Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of such obligations hereunder for the duration of such force majeure event.
- 9.4 If any party shall become aware of circumstances of force majeure which give rise to or which are likely to give rise to any failure or delay on its part, it shall with immediate effect notify the other party to this agreement by the most expeditious method then available and shall inform the other party to the period for which it is estimated that such failure or delay shall continue.
- 9.5 Either party may terminate at any time before commencement of the assignment by formal notice to terminate from the date of such notice.
- 9.6 In the event of any condition of force majeure subsisting for a period of six (6) months or more, the party to this agreement not affected by the event of force majeure may, forthwith by notice to the other party, terminate this agreement.

10.0 ENTIRE AGREEMENT

- 10.1 This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

11.0 SEVERABILITY

- 11.1 If any provision of this agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions thereof shall continue in full force and effect as if this agreement had been executed

with the invalid, illegal or unenforceable provision eliminated. The invalid, illegal or unenforceable term shall be replaced by a valid and enforceable term which is as close as possible to the economic effect of his original term.

12.0 TERMINATION

12.1 Should the Service Provider in the sole judgment of the Council;

12.1.1 Fail to provide satisfactory performance of this agreement

12.1.2 Fail to fulfill any of its obligations hereunder, or

12.1.3 Be declared bankrupt or make an arrangement or composition with creditors or have a winding –up petition made against it, or have a liquidator or receiver appointed or enter into liquidation either voluntary or compulsory, then the Council shall be entitled to:

Either party may terminate this agreement by giving seven days notice in writing to the Service Provider or to the receiver or liquidator or to any other person in whom this agreement may become vested;

Or

Grant such receiver, liquidator or any other person the option of providing services under the terms of this agreement subject only to his producing an adequate guarantee or performance bond for the due and faithful performance of this agreement.

If this agreement is so terminated by the Council, the Service Provider shall not be entitled to payment of any costs, damages or of anticipated profits incurred after the effective date of termination.

12.2 The Service Provider shall be entitled to terminate this agreement by giving thirty (30) days notice in writing to the Council;

12.2.1 In the event of any substantial breach or substantial default by the Council of any terms or conditions hereof the Council shall have failed to remedy or taken steps to remedy such breach or default within 30 (thirty) days of the Service Provider having served notice in writing requiring such breach or default to be remedied,

Or

12.2.2 If either party shall make any arrangements or composition with creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against the Council or if the Council is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver or administrator of the company's assets or undertaking or any part thereof shall be appointed.

12.2 The termination of this agreement for any reason whatsoever shall not in any way affect the liability of the Council for any sums of money accrued and payable prior to the date such termination becomes effective and shall be without prejudice to the rights of either party to claim in respect of any antecedent breach of obligation by the other party or rights and obligations that may have arisen prior to the termination.