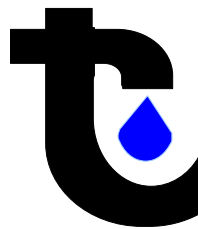


**TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY
(TARDA)**



REQUEST FOR PROPOSAL

TENDER NAME:

**CROP PRODUCTION VENTURE IN TARDA HELD
AGRICULTURAL LAND**

**TENDER NUMBER:
TARDA/RFP/107/2023-2024**

Employer:

TANA AND ATHI RIVERS
DEVELOPMENT AUTHORITY
7TH FLOOR QUEENSWAY HOUSE,
KAUNDA STREET,
P. O. Box 47309 -00100,
NAIROBI.

MAY 2024

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INVITATION TO TENDER

PROCURING ENTITY: TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY

P.O. BOX 47309 - 00100 NAIROBI.

TENDER NUMBER : TARDA/RFP/107/2023-2024

**TENDER NAME : CROP PRODUCTION VENTURE IN TARDA HELD
AGRICULTURAL LAND**

1. The Tana and Athi Rivers Development Authority (TARDA) is a State Corporation established by an Act of Parliament Cap 443 of the Laws of Kenya.
2. You were among the shortlisted firms by the Ministry of Agriculture and Livestock Development for the enhancement of food security on underutilized public lands of which you are being invited, under CROP PRODUCTION VENTURE IN TARDA HELD AGRICULTURAL LAND.
3. Invited bidders may obtain further information/clarification at TARDA Supply Chain Management Office between 8.00am and 5.00pm Kenyan Time, Monday to Friday except lunch time between 1.00pm to 2.00pm and on public holidays.
4. A complete set of tender documents containing detailed information may be downloaded from the PPIP website: www.tenders.go.ke or from TARDA website: www.tarda.go.ke at no cost.
5. A site visit for the proposed area at Masinga will be held on 10th May 2023 as at 10.00 a.m at Masinga Dam Resort.
6. Each Technical Proposal and Financial Proposal shall be marked “**ORIGINAL**” or “**COPY**” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.

The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “**TECHNICAL PROPOSAL**,” and the original and all copies of the Financial Proposal in a sealed envelope clearly marked “**FINANCIAL PROPOSAL**” and warning: “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**”. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix and be clearly marked, “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.**”

7. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
8. Tenders shall be quoted in Kenya Shillings and shall include all taxes.
9. All tenders must be accompanied with a Tender Security as specified against the lot in Schedule of requirements in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA) valid for 120 days from the date of tender opening in the format provided in the tender document.

Tender submission addresses is:

Managing Director
Tana and Athi Rivers Development Authority
Queensway House, Kaunda Street, 7th Floor
P. O. Box 47309-00100, NAIROBI.

10. Tenders will be opened immediately after the deadline date on **22nd May, 2024 at 10.00** a.m. in the presence of the candidates or their designated representatives who choose to attend the opening in the address in clause 9 above.
11. Electronic tenders will not be permitted.
12. Late Request for Proposal will not be accepted and will be returned unopened.

Liban Roba Duba
MANAGING DIRECTOR

PART 1 - TENDERING PROCEDURES

SECTION I: INSTRUCTIONS TO TENDERERS

A. General Provisions

1. Scope of Tender and Definitions

1.1 The Procuring Entity as defined in the Appendix to Conditions of Contract invites tenders for development of real estate facilities and related services incidental thereto, as specified **in the TDS**.

1.2 Throughout this tendering document:

a) The term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;

b) If the context so requires, “singular” means “plural” and vice versa;

“Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes official public holidays.

2. Fraud and Corruption

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

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

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

2.4 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender being tendered for. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided

consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

3. Eligible Tenderers

3.1 Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.6, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. A firm that is a Tenderer (either individually or as a JV member) may participate in more than one Tender, offering different items that meet the requirements of the Lease. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number members shall be specified in the TDS.

3.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

- a) Directly or indirectly controls, is controlled by or is under common control with another tenderer; or
- b) Receives or has received any direct or indirect subsidy from another tenderer; or
- c) Has the same legal representative as another tenderer; or
- d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process; or
- e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender; or
- f) any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as Engineer for the Contract implementation; or

- g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document or
- h) Has a close business or family relationship with a professional staff of the Procuring Entity
- i) are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or
- j) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.

3.4A Tenderer shall not be involved in corrupt, coercive, obstructive, collusive, or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.

3.5A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender.

3.6A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 3.8. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services.

3.7 Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are accredited by PPRA to be (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

- 3.9A Firms and individuals may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 3.10 For purposes of granting a margin of preference, a tender is considered a national tenderer if it is registered in Kenya, has more than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as national tenderers and eligible for national preference only if the individual member firms are registered in Kenya or have more than 51 percent ownership by nationals of Kenya, and the JV shall be registered in Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 3.11 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 Leases under this Invitation for tenders.
- 3.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke
- 3.13 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

4. Eligible Lease Items and Related Services

- 4.1 All the Lease Items and Related Services to be supplied under the Contract and financed by the Procuring Entity shall have their origin from Eligible Countries in accordance with ITT 3.8.
- 4.2 For purposes of this ITT, the term "Lease Items" includes, landed

properties, buildings and related accommodations, vessels (land, air and sea), vehicles, machinery, plant and equipment, “related services” including services such as insurance, installation, training, and maintenance.

- 4.3 The term “origin” means the country where the Lease Items have been sourced from, manufactured, processed, or assembled.
- 4.4 A lease item may be considered ineligible if it has items, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement

B. Contents of Tender Documents

5. Sections of Tender Document

- 5.1 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT 7.1.

PART 1 Tendering Procedures

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

PART 2 Supply Requirements

- i) Section V – Schedule of requirements

PART 3 Conditions of Contract and Contract Forms

- i) Section VI - General Conditions of Contract (GCC)
- ii) Section VII - Special Conditions of Contract (SC)
- iii) Section VIII - Contract Forms

- 5.2 The Specific Procurement Notice, Invitation to Tenders Notice, issued by the Procuring Entity is not part of this tendering document.
- 5.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 7. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.
- 5.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.

6. Clarification of Tendering Document

6.1 A Tenderer requiring any clarification of the tendering document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders within a period specified in the TDS. The Procuring Entity shall forward copies of its response to all Tenderers who have acquired the tendering document in accordance with ITT 5.3, including a description of the inquiry but without identifying its source. If so specified in the TDS, the Procuring Entity shall also promptly publish its response at the web page identified in the TDS. Should the clarification result in changes to the essential elements of the tendering document, the Procuring Entity shall amend the tendering document following the procedure under ITT7 and ITT 21.2.

7. Amendment of Tendering Document

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

7.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 7.1.

7.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 21.2.

C. Preparation of Tenders

8. Cost of Tendering

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

9. Language of Tender

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

10. Documents Comprising the Tender

10.1 The Tender shall comprise the following:

- 10.2 Form of Tender prepared in accordance with ITT 11;
- 10.3 Price Schedules: completed in accordance with ITT 11 and ITT 13;
- 10.4 Tender Security or Tender – Securing Declaration, in accordance with ITT 18.1;
- 10.5 Alternative Tender: if permissible, in accordance with ITT 12;
- 10.6 Authorization: written confirmation authorizing the signatory of the Tender to
 - commit the Tenderer, in accordance with ITT 29.4;
- 10.7 Qualifications: documentary evidence in accordance with ITT 16 establishing the
 - Tenderer qualifications to perform the Contract if its Tender is accepted;
- 10.8 Tenderer Eligibility: documentary evidence in accordance with ITT 16 establishing
 - the Tenderer eligibility to tender;
- 10.9 Eligibility of Lease Items and Related Services: documentary evidence in
 - accordance with ITT 15, establishing the eligibility of the Lease Items and Related Services to be supplied by the Tenderer;
- 10.10 Conformity: documentary evidence in accordance with ITT 15 and 28, that the
 - Lease Items and Related Services conform to the tendering document; and
- 10.11 Any other document required in the TDS.
- 10.12 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall
 - include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.
- 10.13 The Tenderer shall furnish in the Form of Tender information on
 - commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

11. Form of Tender and Price Schedules

- 11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize pages of all tender documents submitted.
- 11.2 Each item on the Schedule of Requirements must be priced separately in the Price Schedules and for full quantities required. Items not priced for full quantity on the Schedule of Requirements will be rejected. TENDERERS MAY QUOTE FOR ONE OR MORE OF THE ITEMS ON THE SCHEDULE OF REQUIREMENTS. Tenders will be evaluated and awarded on basis of each item.

11.3 Where tenders are being invited for individual Items/lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify so in their Tender the price reductions applicable to each Item or alternatively, to individual items. Discounts shall be submitted in accordance with ITT 13.1, provided the Tenders for all lots (contracts) are opened at the same time.

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

12. Alternative Tenders

12.1 Unless otherwise specified in the TDS, alternative Tenders shall not be considered.

13. Tender Prices and Discounts

13.1 The prices and discounts quoted by the Tenderer in the Form of Tender and in the Price Schedules shall conform to the requirements specified below.

13.2 The price to be quoted in the Form of Tender in accordance with ITT 14.1 shall be the total price of all the items but the attachment of the Schedule of prices, excluding any discounts offered.

13.3 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender, in accordance with ITT 14.1.

13.4 Prices quoted by the Tenderer shall be fixed during the time of the Lease under the Contract and not subject to variation on any account, unless otherwise specified in the TDS. A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITT 29. However, if in accordance with the TDS, prices quoted by the Tenderer shall be subject to adjustment during the Lease under the Contract, a Tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

13.5 If so specified in ITT 1.1, Tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4 provided the Tenders for all lots (contracts) are opened at the same time.

13.6 Prices shall be quoted as specified in each Price Schedule included in

Section IV, Tendering Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by the Procuring Entity. This shall not in any way limit the Procuring Entity's right to contract on any of the terms offered. The Tenderer may obtain insurance services from any eligible country in accordance with ITT 3, Eligible Tenders. The tender shall include Related Services required to maintain the leased item as specified in the Schedule of Requirements (inclusive of any applicable taxes).

14. Currencies of Tender and Payment

14.1 The currency(ies) of the Tender and the currency(ies) of payments shall be the same. The Tenderer shall quote in Kenya shillings unless otherwise specified in the TDS.

15. Documents Establishing the Eligibility and Conformity of the Lease Items and Related Services.

1.1 To establish the eligibility of the lease items and Related Services in accordance with ITT 5, Tenderers shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Tendering Forms.

1.2 To establish the conformity of the Lease items and Related Services to the tendering document, the Tenderers shall furnish as part of its Tender the documentary evidence that the Lease Items conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.

1.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Lease Items and Related Services, demonstrating substantial responsiveness of the Lease Items and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.

1.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Lease Items during the period specified in the TDS following commencement of the use of the Lease Items by the Procuring Entity.

1.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

16. Documents Establishing the Eligibility and Qualifications of the

Tenderer

- 16.1 To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 16.2 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:
- 16.3 that, if required in the TDS, a Tenderer that does not own the Lease Items it offers shall submit the Owner's Authorization using the form included in Section IV, Tendering Forms to demonstrate that it has been duly authorized by the Owner of the Lease Items.
- 16.4 that, if required in the TDS, in case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out the related services of the leased items as obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
- 16.5 that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 16.6 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular lessor or group of lessors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 16.7 The purpose of the information described in ITT 16.3 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 16.8 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which in formation on any changes to the information which was provided by the tenderer under ITT 16.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may

reveal a conflict of interest in relation to the award or management of the contract.

- 16.9 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 16.10 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 16.11 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- 16.12 If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process.
- 16.13 If the contract has been awarded to that tenderer, the contract award will be set aside.
- 16.14 the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 16.15 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 16.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

17. Period of Validity of Tenders

- 17.1 Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 22.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 17.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period

of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 21.1, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 20.3.

18. Tender Security

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

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

18.3 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:

- (a) cash;
- (b) a bank guarantee;
- (c) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
- (d) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.

18.4 Any other form specified in the TDS.

18.5 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 20.2.

18.6 If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.

18.7 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the TDS. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined nonresponsive or a bidder declines to extend tender validity period.

- 18.8 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the TDS.
- 18.9 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- 18.10 if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension thereto provided by the Tenderer; or
- 18.11 if the successful Tenderer fails to:
- 18.12 sign the Contract in accordance with ITT 50; or
- 18.13 furnish a Performance Security and if required in the TDS, and any other documents required in the TDS.
- 18.14 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debar the Tenderer from participating in public procurement as provided in the law.
- 18.15 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.
- 18.16 A tenderer shall not issue a tender security to guarantee itself.

19. Format and Signing of Tender

- 19.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 15, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the TDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 19.2 Tenderers shall mark as "CONFIDENTIAL" all information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 19.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender.

The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

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

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

D. Submission and Opening of Tenders

20. Sealing and Marking of Tenders

20.1 The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

20.2 in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT11; and

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

20.4 if alternative Tenders are permitted in accordance with ITT 13, and if relevant:

20.5 an envelope or package or container marked "ORIGINAL", Tender; and

20.6 in the envelope or package or container marked "COPY", of the Tender.

20.7 The inner envelopes or packages or containers shall:

20.8 bear the name and address of the Procuring Entity.

20.9 Bear the name and address of the Tenderer; and

20.10 Bear the name and Reference number of the Tender.

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

21. Deadline for Submission of Tenders

21.1 Tenders must be received by the Procuring Entity at the address

specified in the TDS and no later than the date and time also specified in the TDS. When so specified in the TDS, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

21.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 7, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

22. Late Tenders

21.3 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 22. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

23. Withdrawal, Substitution, and Modification of Tenders

23.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

23.2 prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and

23.3 received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

23.4 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Tenderers.

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

24. Tender Opening

24.1 Except in the cases specified in ITT 23 and ITT 24.2, the Procuring Entity shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified in the TDS, in the presence of Tenderers' designated representatives who chooses to attend. Any specific electronic Tender opening procedures required if electronic

Tendering is permitted in accordance with ITT 22.1, shall be as specified in the TDS.

- 24.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.
- 24.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 24.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 24.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.
- 24.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening committee attending the opening. The number of representatives of the Procuring Entity to sign shall be specified in the TDS.
- 24.7 At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 23.1).
- 24.8 The Procuring Entity shall prepare minutes of the Tender Opening that shall include, as a minimum:
- 24.9 the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
- 24.10 the Tender Price, per lot (contract) if applicable, including any discounts;
- 24.11 any alternative Tenders;

- 24.12 the presence or absence of a Tender Security, if one was required.
- 24.13 number of pages of each tender document submitted.
- 24.14 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers upon request.

E. Evaluation and Comparison of Tenders

- 24.15 Confidentiality
- 24.16 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 40.
- 24.17 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.
- 24.18 Notwithstanding ITT 26.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.

25. Clarification of Tenders

- 25.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders, in accordance with ITT 31.
- 25.2 If a tenderer does not provide clarifications of its tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

26. Deviations, Reservations, and Omissions

- 26.1 During the evaluation of tenders, the following definitions apply:
- 26.2 "Deviation" is a departure from the requirements specified in the tender document;

26.3 "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tender document; and

26.4 "Omission" is the failure to submit part, or all of the information or documentation required in the Tender document.

27. Determination of Responsiveness

27.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tender itself, as defined in ITT 11.

27.2 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:

27.3 affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or

27.4 limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights or the tenderer's obligations under the proposed contract; or

27.5 if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.

27.6 The Procuring Entity shall examine the technical aspects of the tender submitted in accordance with ITT 17, to confirm that all requirements of Section VII, Schedule of Requirements ' Requirements have been met without any material deviation, reservation or omission.

27.7 If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

28. Non-material Non-conformities

28.1 Provided that a tender is substantially responsive, the Procuring Entity may waive any non-conformities in the tender.

28.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the tenderer submit the necessary information or documentation, within a reasonable period, to rectify non-material non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.

28.3 Provided that a tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS**.

29. Arithmetical Errors

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

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

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

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

29.5 if there is a discrepancy between words and figures, the amount in words shall prevail

30. Currency to single currency

30.1 No conversion to single currency is expected since all tenders will be in Kenya shillings. Tenderers quoting in currencies other than in Kenya shillings will be determined non-responsive and rejected.

31. Margin of Preference and Reservations

31.1 No Margin of Preference and Reservations shall be allowed in this tender.

32. Evaluation of Tenders

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

32.2 Substantially responsive to the tendering document; and

32.3 The highest evaluated cost.

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

32.5 Price adjustment due to discounts offered in accordance with ITT 14.4;

- 32.6 Price adjustment due to quantifiable non material non-conformities in accordance with ITT 30.3; and
- 32.7 The additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.
- 32.8 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of the Lease Contract, shall not be considered in Tender evaluation.
- 32.9 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.
- 32.10 The Procuring Entity's evaluation of a Tender will include and consider:
- 32.11 taxes, which will be payable on the Lease Items if a contract is awarded to the Tenderer;
- 32.12 any allowance for price adjustment during the period of the Lease contract, if provided in the Tender.
- 32.13 The Procuring Entity's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT 14. These factors may be related to the characteristics, performance, and terms and conditions of Lease and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Tenders, unless otherwise specified in the TDS from amongst those set out in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in ITT 34.2 (f).

33. Comparison of Tenders

- 33.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 32 to determine the Tender that has the lowest evaluated cost. The comparison shall be on the basis of total cost for all Lease Items, and related services, together with prices for any required installation, training, commissioning and other services.

34. Abnormally Low and Abnormally High Tenders Abnormally Low

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

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

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

Abnormally High Tenders

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

34.5 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 Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

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

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

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

35. Qualifications of the Tenderer

35.1 The Procuring Entity shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the

qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

35.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 19. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the Tender document), or any other firm(s) different from the Tenderer. An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

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

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

F. Award of Contract

37. Award Criteria

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

38. Notice of Intention to enter into a Contract

38.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

38.2 The name and address of the Tenderer submitting the successful tender;

38.3 The Contract price of the successful tender;

38.4 a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;

38.5 the expiry date of the Standstill Period; and

38.6 instructions on how to request a debriefing and/or submit a complaint during the standstill period;

39. Standstill Period

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

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

40. Debriefing by the Procuring Entity

40.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

40.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

41. Letter of Award

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

42. Signing of Contract

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

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

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

43. Performance Security

43.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 18, using for that purpose the Performance Security Form included in Section X, Contract

Forms, or another Form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.

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

43.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings.

44. Publication of Procurement Contract

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

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

45. Procurement Related Complaints and Administrative Review

45.1 The procedures for making Procurement-related Complaints are as specified in the TDS.

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

SECTION II - TENDER DATA SHEET (TDS)

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

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	A. General
ITT 1.1	<p>The reference number of the Contract is TARDA/RFP/107/2023-2024</p> <p>The Procuring Entity is Tana and Athi Rivers Development Authority</p> <p>The name of the contract is CROP PRODUCTION VENTURE IN TARDA HELD AGRICULTURAL LAND</p> <p>Duration: Successful Bidders shall be contracted for a period as specified in the schedule of requirements</p>
	B. Contents of Tender Document
ITT 6	<p>For Clarification of tender purposes only, the Tenderer will submit any request for clarifications to Tana and Athi Rivers Development Authority in writing (Email in pdf format) at the following address,</p> <p style="text-align: center;">The Managing Director Tana and Athi Rivers Development Authority P.O Box 47309-00100 Nairobi.</p> <p>NB: To reach TARDA not later than 22nd May 2024 at 10.00 A.M.</p> <p>TARDA will respond in writing (e-mail in PDF format) to any request received at least Seven (7) days prior to the deadline for the submission of tender's.</p> <p>(b) TARDA shall publish its response for any enquiries/clarifications/questions/amendments relating to this tender at its website: www.tarda.go.ke & at PPIP Portal www.tenders.go.ke and tenderers are advised to be checking this website from time to time</p>
	C. Preparation of Tenders
ITT 10 (j)	The Tenderer shall submit the following additional documents in its Tender: <i>all duly completed and signed mandatory tendering forms under section IV</i>
ITT 12.1	Alternative Tenders " <i>shall not be</i> " considered.
ITT 13.4	<p>The following shall apply for the lot respectively.</p> <p>Prices quoted by the Tenderer shall be subject to a price escalation after every 5 years at 3% of the prevailing market value based on unimproved land. (<i>To be aligned to Tana and Athi Rivers Development Authority Policy</i>)</p>
ITT 14.1	Tenderers shall not tender in other currencies. All tenders shall

	be in Kenya Shillings
ITT 17.1	The Tender validity period shall be 120 days from the date of tender opening.
ITT 18.1	Tenderers shall be required to submit a Tender Security as specified in the schedule of requirements in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA) valid for 120 days from the date of tender opening in the format provided in the tender document.
ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 19.1	In addition to the original of the Tender, the number of copies is: one copy of original and one copy of the original
ITT 19.4	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: A Power of Attorney in Company's letterhead nominating a person to transact on behalf of the company duly signed by the Company's Director and witnessed by an advocate (Provide) <i>The Power of Attorney must show the name and specimen signature of the person authorized to sign the documents.</i> <i>This applies to only limited companies and Ventures.</i>
D. Submission and Opening of Tenders	
ITT 21.1	For <u>Tender submission purposes</u> only, the Procuring Entity's address is: The Managing Director Tana and Athi Rivers Development Authority P.O Box 47309- 00100 NAIROBI. Tender box is located at Queensway House, Kaunda Street ,7 th Floor in Nairobi
	The deadline for Tender submission is: Date: 22nd May 2024 Time: 10:00 am Tenderers shall not have the option of submitting their Tenders electronically. Electronic Tendering submission procedures shall be: Not Applicable

ITT 24.1	<p>Tender opening shall be at the Queensway House, Kaunda Street, 7th Floor Boardroom.</p> <p>Date: Wednesday 22nd May 2024</p> <p>Time: 10.00 am</p> <p>The Tender opening shall take place at the time and the address for Opening of Tenders provided below:</p> <p>Bulky tenders shall be received at the office of the Managing Director The receipt shall be acknowledged in a register opened for that purpose.</p> <p>The deadline for submission is 22nd May 2024 10.00 a.m.</p>
ITT 24.6	<p>The form of tender and price schedules shall be initiated by all members of the Tender Opening Committee and shall be numbered, any modification to the unit or total price shall be initiated by the Tender Opening Committee of the Procuring Entity</p>
E. Evaluation, and Comparison of Tenders	
ITT 34.6	<p>The factors selected and expressed in monetary terms to facilitate comparison of Tenders are to be based on the highest evaluated bidder</p>
A. AWARD OF CONTRACT	
36.1	<p>The most responsive bidder/highest evaluated</p>
38.1	<p>This clause is deleted and replaced with "The Procuring Entity shall award"</p>
ITT Reference	<p>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</p>
	<p>Contract to the successful tenderer/s whose tender has been determined to be the Highest Evaluated Tender for the entire lot subject to the reserve price.</p>
ITT 42	<p>The maximum percentage by which quantities may be increased is: N/A The maximum percentage by which quantities may be decreased is: N/A</p>
ITT 44	<p>The performance Security shall be in the form of one-year annual rent payable to a designated account as advised by TARDA</p>
ITT 46.1	<p>The procedures for making a Procurement-related Complaint are available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing to: complaints@ppra.go.ke</p> <p>In summary, a Procurement-related Complaint may challenge</p>

	<p>any of the following:</p> <ul style="list-style-type: none">(i) the terms of the Tender Documents; and(ii) the Procuring Entity's decision to award the contract.
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SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provisions

- 1.1 Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- a) For business turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amount for that year is to be converted) was originally established.
 - b) Value of single contract - Exchange rate prevailing on the date of the contract signature.
 - c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.
- 1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use the Standard Tender Evaluation Document for Goods and Works for evaluating Tenders.

1.3 Evaluation and Contract Award Criteria

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

2. Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. Tenders that do not pass the Preliminary Examination will be considered unresponsive and will not be considered further.

Evaluation of duly submitted tenders will be conducted in three main parts as follows:

Part I: Preliminary Evaluation Criteria, Mandatory requirements.

The following items are deemed to be mandatory;

No.	Item Description
1.	Table of contents page clearly indicating sections and page numbers

2.	All the entire tender document should be paginated from the first page to the last including all appendixes and attachments
3.	Shall be firmly bound and should not have any loose pages. Spiral binding and files (spring and box) are not acceptable
4.	Shall be submitted in one (1No) original plus one (1 No) copy of original
5.	Shall be signed (where signatures are required) by a duly authorized representative of the firm or any other officer appointed and evidenced by a Power of Attorney
6.	Duly filled signed and stamped form of tender
7.	Power of Attorney to sign the bid submission - ITT 19.4 (Mandatory for Limited Companies and Ventures).
8.	Copy of certificate of Registration/Incorporation or Venture deed to show that the applicant is a registered company and legally authorized to do business in Kenya .
9.	A copy of valid Tax Compliance Certificate from relevant Authorities where the business operations of tenderer are domiciled
10.	A copy of valid Business Permit
11.	A copy CR12 from Registrar of Companies or equivalent. N/B This requirement is not applicable to sole proprietorships and Ventures registered under Business Names. Provide copy of CR12 or equivalent from country of origin (in case of joint venture with a foreign company), providing a list of directors and shareholding status
12.	Name of Proprietor for Sole Proprietor and Names of Partners for Ventures
13.	Site visit certificate issued by the TARDA authorized representative
14.	Tenderers shall be required to submit a Tender Security/deposit As specified in the schedule of requirements for the lot in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA) valid for 120 days from the date of tender opening in the format provided in the tender document.
15.	All duly completed and signed mandatory tendering forms under section IV

NOTE: Failure to meet any of the above requirements will lead to disqualification and the bidder shall not be eligible for Technical evaluation

Part II: Technical Responsiveness Evaluation Criteria, ITT 36.

Technical Evaluation Criteria

No.	Requirements		Criteria
1.	Responsive ness of the proposed business	The proposed enterprise to be carried out on the designated land should be focused on Agribusiness, showing its potential to contribute to the TARDA's goals through a viable value chain. Applicants must illustrate how their proposed venture will enhance large-scale agricultural practices, research, value addition, and revenue generation, aligning with the TARDA's broader objective of supporting small-scale farmers: Demonstrable capability to absorb agricultural product with an annual value estimated at USD 10 million	
2.	Business Plan	<p>Before preparation of this part, Bidders must familiarize themselves with the land during the MANDATORY Site Visit as scheduled in the Invitation to Tender.</p> <p>Bidder must submit a Business Plan in a structured format and must contain the following standard parts:</p> <ol style="list-style-type: none"> 1. Title page. 2. Project summary. 3. Operator's description (Company Profile). 4. Service(s) description/ Business concept including proposed developments on the land. Bidder to describe the proposed business concept to be implemented. 5. Market analysis – Demonstrate demand for the business in the Country including projected revenues for the lease period 7. Production plans. 8. Personnel plan. 9. Organizational setup and 	<p>Experience and Capacity: Assess the firm's/partners'/consortia experience in handling the proposed business operations and that the proposed business adds value to TARDA core business. (Include at least two sites where they or their partners have undertaken similar operations)</p> <p>Compliance and Regulatory Requirements : Evaluate the firm's compliance with relevant regulatory and</p>

		<p>management.</p> <p>10. Financing plan.</p> <p>11. Risk analysis and mitigation plans</p> <p>12. Operational, Health, Sanitation, environmental and Performance Standard and Procedure.</p> <p>13. Financial Plan. Bidders to provide a Financial plan supported by an appropriate financial model (including a soft copy in PDF and open excel format) 15years projection estimates as part of the business plan</p>	<p>legal requirements, ensuring they possess the necessary licenses, permits, and certifications to operate the proposed business within TARDA and the current physical environment</p> <p>Financial Stability: Examine the financial strength and stability of the firms/ partners/ consortia, considering their ability to meet financial obligations, make necessary investments, directly or the ability to mobilize financial resources, and sustain long-term operations</p>
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3.	<p>Operational Plans and Methodology</p>	<p>Bidders to propose implementation/work plan for the proposed development after site handover including timelines. Any proposed development on the land must be undertaken on a substantial scale within the first 24 months of contract signing.</p>	<p>Operational Efficiency: Evaluate the plans and methodology for optimizing operational efficiency, including streamlined processes, utilization of advanced technologies, effective resource planning, automation, and performance monitoring an interaction with other TARDA activities in research and innovation</p> <p>Risk Management: Evaluate the plans and methodology for risk identification, assessment, and mitigation.</p> <p>Stakeholder Engagement: Assess the plans and methodology's approach to engaging and collaborating with relevant stakeholders, including, Government agencies, other farmers and customers</p>
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		<p>Flexibility and Scalability: Consider the plans and methodology's adaptability to changing market dynamics, emerging trends, and future growth opportunities.</p> <p>Safety and Security Measures: Safety protocols and procedures to be implemented - Security systems and surveillance measures, Emergency response capabilities , plans</p> <p>Environmental Concerns: Assess the firm's commitment to environmental sustainability, including their policies, procedures, and practices for waste management, pollution prevention, energy efficiency, and environmental impact mitigation.</p>
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NOTE:
Bidders that provide false information shall be automatically disqualified and recommended for debarment pursuant to section 41(d) of Public Procurement and Asset Disposal Act, 2015.

3. Price evaluation: in addition to the criteria listed in ITT 33.2 (a) – (c) the following criteria shall apply:

- a) Any additional evaluation factors as per ITT 33.2 (e) specified as follows: Financial evaluation shall entail verifying the financials and checking for arithmetical errors, omissions, and price comparison among the qualified tenderers in accordance with the evaluation criteria. Material deviations and errors shall be treated as non-responsiveness.
- b) The tender shall be awarded to the Highest evaluated responsive bidder per lot
- c) **Deviation in payment schedule:** The SCC stipulates the payment schedule specified by the Procuring Entity. If a Tender deviate from the schedule and if such deviation is considered acceptable to the Procuring Entity, the Tender will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the Tender as compared with those stipulated in the SCC, at the rate per annum [2%].

4. Multiple Contracts (ITT 32)

Multiple contracts will be permitted in accordance with ITT 32.9. Tenderers are evaluated on basis of the entire LOT and the Highest evaluated tenderer identified for each Lot.

If a tenderer wins, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot. (This shall be applicable)

If a tenderer wins more than one Lot, the tender will be awarded contracts for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the Lots. The tenderer will be awarded the combination of Lots for which the tenderer qualifies and the others will be considered for award to second lowest the tenderers. (This paragraph is not applicable)

5. Alternative Tenders - Not permitted.

6. Qualifications (ITT 35)

- 6.1 After determining the substantially responsive Tender which offers the highest-evaluated price in accordance with ITT 32, and, if applicable, the assessment of any Abnormally Low or high Tender (in accordance with ITT34) the Procuring Entity shall carry out the post-qualification of the tenderer in accordance with ITT35, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Tenderer qualifications.

6.2 For lease of infrastructural facilities (Real estate)

Bidder shall provide at least 2 sites where they or their partners/ Joint Venture members or proposed business associates (As per the proposed business plan

in relation to the specific business venture proposed) has undertaken or is currently undertaking the said business

The TARDA team shall Make a physical check to ensure that it demonstrates capacity to carry out the proposed business. Determine if the business is acceptable or not acceptable.

6.3 For lease of plant/equipment, vehicles (movable assets)- Not Applicable

6.4 In determining the substantially responsive Tender which offers the Highest-evaluated price meets the requirements in Items 6.2 and 6.3 above, the Procuring Entity shall carry out the post-qualification using the following criteria:

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

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

b) **Pending Litigation**

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

c) **Litigation History**

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

SECTION IV – TENDERING FORMS

- i) Form of Tender
- ii) Tenderer Information Form
- iii) Tenderer JV Members Information Form
- iv) Price Schedule -Schedule of Requirements (Lease Items).
- v) Form of Tender Security – Demand Guarantee
- vi) Form of Tender Security (Insurance Guarantee)
- vii) Form of Tender- Securing Declaration
- viii) Owner's Authorization

Other Forms to be completed

- i) Tenderer's Eligibility- Confidential Business Questionnaire
- ii) Certificate of Independent Tender Determination
- iii) Self-Declaration Form
- iv) Appendix 1- Fraud and Corruption

FORM OF TENDER (MANDATORY)

INSTRUCTIONS TO TENDERERS

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

Date of this Tender submission:

TENDER NUMBER. TARDA/RFP/107/2023-2024 FOR CROP PRODUCTION VENTURE IN TARDA HELD AGRICULTURAL LAND

To: **Tana and Athi Rivers Development Authority** [*insert complete name of Procuring Entity*]

- a) **No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;
- c) **Tender/Proposal- Securing Declaration:**

We have not been debarred by the Authority based on execution of a Tender-Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 3.7;

- d) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- e) **Conformity:** We offer to lease in conformity with the Tendering Document and in accordance with the lease periods, the Lease items specified in the Schedule below:

[Bidder to indicate specific as per schedule of requirements. Where more than one lot is tendered indicate all Lot tendered for]

- f) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is:

Option 1, in case of one lot: Total price is: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];*

or

Option 2, in case of lots: (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies];* and (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];*

- g) **Discounts:** The discounts offered and the methodology for their application are:
 - i) The discounts offered are: *[Specify in detail each discount offered.]*
 - ii) The exact method of calculations to determine the net price after application of discounts are shown below:
[Specify in detail the method that shall be used to apply the discounts];
- h) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 17.1 (120 days) from the date fixed for the Tender submission deadline specified in TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- i) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- j) **Suspension and Debarment:** We, along with any of our

subcontractors, Lessors, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Procuring Entity. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;

- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] [We are a state-owned enterprise or institution but meet the requirements of ITT 3.8];*
- l) **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity].*

Name of Recipient	Address	Reason	Amount

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

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Procuring Entity Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive; and
- o) **Fraud and Corruption:** We here by certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- p) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent Tender Determination” attached below.
- q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement

and Asset Disposal Activities in Kenya, copy available from www.pppra.go.ke during the procurement process and the execution of any resulting contract.

- (f) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
- i) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict of interest.
 - ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
 - iii) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
 - iv) Declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya,

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in “**Appendix 1- Fraud and Corruption**” attached to the Form of Tender.

Name of the tenderer: *[insert complete name of the tenderer]

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

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

signing the Tender] **Signature of the person named above:** [insert

signature of person whose name and capacity are shown above] **Date**

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

*: In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as tenderer.

** : Person signing the Tender shall have the power of attorney given by the tenderer. The power of attorney shall be attached with the Tender Schedules.

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

Instruction to Tenderer

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

(a) Tenderer's details

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

General and Specific Details

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

Name _____ in
 full _____ Age _____

 Nationality _____ Country of Origin _____
 _____ Citizenship _____

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

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

d) **Registered Company**, provide the following details. Private or public Company _____

State the nominal and issued capital of the Company

_____ Nominal Kenya Shillings

(Equivalent).

Issued Kenya Shillings

(Equivalent).....

Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

i) Are there any person/persons in..... (Name of Procuring Entity) who has/have an interest or relationship in this firm?

Yes/No.....

If yes, provide details as follows.

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

ii) Conflict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tenderer has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		

7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

f) Certification

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

Full Name_

Title or

Designation_

(Signature)

(Date)

1. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION(MANDATORY)

I, the undersigned, in submitting the accompanying Letter of Tender to the

_____ [Name of Procuring Entity] for:

_____ [Name and number of tender] in response to the request for tenders made by:

_____ [Name]

me of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

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

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

8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name _____ Title _____
 Date _____

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

2. SELF - DECLARATION FORMS

(MANDATORY) 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: -

b. 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.

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

d. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

.....

.....
 (Title) (Signature) (Date)
 Bidder Official Stamp

**FORM SD2
(MANDATORY)**

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

I, of P. O. Box

.....being
g a
resident of

..... in the Republic of do hereby
make

a statement as follows: -

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

.....
(Title)

.....
(Signature & Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS(MANDATORY)

I (person) on behalf of
**(Name of the Business/
Company/Firm)**

..... declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name

Sign.....

Date.....

APPENDIX 1- FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.
- 2.2 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 notolerance for such practices and behavior:
1. A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
 2. A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
 3. Without limiting the generality of the subsection (1) and (2), the person shall be—
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
 4. The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
 5. An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
 - a) Shall not take part in the procurement proceedings;
 - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract

was awarded, but the subcontractor appointed shall meet all therequirements of this Act.

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

2.3 In compliance with Kenya's laws, regulations and policies mentioned above, theProcuring 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 improperlythe 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 toavoid 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 partyto influence improperly the actions of a party;
 - v) “obstructive practice” is:

Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

Acts intended to materially impede the exercise of the PPRA's or theappointed authority's inspection and audit

rights provided for under paragraph 2.3 e. 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 or disposal 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 tender submission designed to establish tender prices at artificial non-

competitive levels and to deprive the procuring entity of the benefits of free and open competition.

- c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority (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 authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- 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

Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies 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 thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

5- TENDERER INFORMATION FORM (Mandatory)

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

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

Tender Name and Identification*[insert identification*

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: <i>[insert legal name of each member inJV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.1. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. <input type="checkbox"/> Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 1.13. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8 documents establishing: (i) Legal and financial autonomy (ii) Operation under commercial law 1. Establishing that the tenderer is not under the supervision of the Procuring Entity 2. Included are the organizational chart and a list of Board of Directors.

6- TENDERER'S JV MEMBERS INFORMATION FORM

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

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

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

Page _____ of _____ pages

1.	Tenderer's Name: <i>[insert Tenderer's legal name]</i>
2.	Tenderer's JV Member's name: <i>[insert JV's Member legal name]</i>
3.	Tenderer's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4.	Tenderer's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5.	Tenderer's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6.	Tenderer's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7.	Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.1 <input type="checkbox"/> Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 1.13. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.8.
8.	Included are the organizational chart and a list of Board of Directors,

7- LIST OF LEASE ITEMS AND PRICES

[The tenderer shall fill in this Price Schedule in accordance and insert in Form of Tender as instructed. The list of line items in Columns 1 and 2 of the Price Schedules shall coincide with the List of Lease Items and Related Services specified by the Procuring Entity in the Schedule of Requirements.]

Lease Item No.	Description of lease Item	Area (Acre)	Quantity and unit of issue	Location	Duration of lease (Years)	Reserve Price Rent Kes. /Annum	Total Tender Price per annum (Ksh) and proposed revenue share for
1	Masinga LR No /Block (37.5321766 ⁰ E, 0.8618139 ⁰ S)	3,400	HA	Embu County	15	A minimum return pegged on land lease reserve Price on lease : Ksh 3000 per acre	
					After 2 years upon development and operation of the farms.	Reserve Price Revenue Share on revenue set at 25% with proportionate attendant direct costs. (As demonstrated in the financial model)	

Name of Tenderer _____

Signed by the Tenderer _____

Dated _____

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

Beneficiary: _____

Request for Tenders No: _____

Date: _____

TENDER GUARANTEE No.: _____

Guarantor: _____

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

[signature(s)]

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

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]TENDER GUARANTEE No.: ____

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

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

Sealed with the Common Seal of the said Guarantor this _____ day of _____ 20_____.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:

a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or

b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the Procuring Entity's Tendering document.

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

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-

eight days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[Date]

[Signature of the Guarantor]

[Witness]

[Seal]

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

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

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

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

Tender No. *[insert number of tendering process]*

To:.....*[insert complete name of Purchaser]* I/We, the

undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we –
 - (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity,
 - (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
 - a) our receipt of a copy of your notification of the name of the successful Tenderer; or
 - b) thirty days after the expiration of our Tender.

4. I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....

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

Name:

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

Dated on day of..... *[Insert date of signing]* Seal or stamp

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

PART 2:
CROP PRODUCTION VENTURE IN TARDA HELD AGRICULTURAL LAND

SECTION VI - SCHEDULE OF REQUIREMENTS

1. SCHEDULE OF REQUIREMENTS (FULL DESCRIPTIONS OF LEASE ITEMS, RELATED SERVICES AND PRICE)

Lease Item N□	Description of Lease Item and Related Services.	Quantity and physical Unit (Acres)	Location of Use	Duration of Lease (in Years)	Full description of the item [to be completed by Procuring Entity]
No 1	Masinga LR/Block (37.5321766° E, 0.8618139° S)	HA	Embu County	15	Approximately 3,400 Acres. This land is suitable for Large scale Agricultural and Value Chain processing activities

2. Technical Specifications – Not Applicable

2.1 The purpose of the Technical Specifications (TS), is to define the technical characteristics of the Lease Items and Related Services required by the Procuring Entity. The Procuring Entity shall prepare the detailed TS consider that:

- i) The TS constitute the benchmarks against which the Procuring Entity will verify the technical responsiveness of Tenders and subsequently evaluate the Tenders. Therefore, well-defined TS will facilitate preparation of responsive Tenders by tenderers, as well as examination, evaluation, and comparison of the Tenders by the Procuring Entity.
- ii) The TS shall require that all Lease Items and materials to be incorporated in the Lease Items be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the contract.
- iii) The TS shall make use of best practices. Samples of specifications from successful similar procurements in the same country or sector may provide a sound basis for drafting the TS.
- iv) The PPRA encourages the use of metric units.
- v) Standardizing technical specifications may be advantageous, depending on the complexity of the Lease Items and the repetitiveness of the type of procurement. Technical Specifications should be broad enough to avoid restrictions on workmanship, materials, and equipment commonly used in manufacturing similar kinds of Lease Items.
- vi) Standards for equipment, materials, and workmanship specified in the Tendering document shall not be restrictive. Recognized international standards should be specified as much as possible. Reference to brand names, catalogue numbers, or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or substantially equivalent.” When other particular standards or codes of practice are referred to in the TS, whether from the Procuring Entity's or from other eligible countries, a statement should follow other authoritative standards that ensure at least a substantially equal quality, then the standards mentioned in the TS will also be acceptable.
- vii) Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable the words “or at least equivalent” shall always follow such references.
- viii) Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:
 - a) Standards of materials and workmanship required for the production and manufacturing of the Lease Items.
 - b) Any sustainable procurement technical requirements shall be clearly specified.

2.2 The requirements to be specified shall be specific enough to not demand evaluation based on rated criteria/merit point system. Tenderers may be invited to offer Lease Items that exceeds the specified minimum sustainable procurement requirements.

2.3 The TS shall specify all essential technical and performance characteristics and

requirements, including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the Procuring Entity shall include an additional ad-hoc Tendering form (to be an Attachment to the Letter of Tender), where the tenderer shall provide detailed information on such technical performance characteristics in respect to the corresponding acceptable or guaranteed values. When the Procuring Entity requests that the tenderer provides in its Tender a part or all of the Technical Specifications, technical schedules, or other technical information, the Procuring Entity shall specify in detail the nature and extent of the required information and the manner in which it has to be presented by the tenderer in its Tender.

- 2.4 If a summary of the Technical Specifications (TS) has to be provided, the Procuring Entity shall insert information in the table below. The tenderer shall prepare a similar table to justify compliance with the requirements.

Summary of Technical Specifications - The Lease Items and Related Services shall comply with following Technical Specifications and Standards:

3. Maintenance obligations and standards

All property will be maintained by the Contractor except where there are shared facilities where an SLA will be established and signed by the Parties (Contractor and TARDA) and shall form part of the lease agreement

4. Drawings – Not Applicable

This Tendering document includes..... *[insert “the following” or “no”]* drawings.

5. Inspections and Tests – Not Applicable

The following inspections and tests shall be performed:

PART III - CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VII - GENERAL CONDITIONS OF CONTRACT

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- a) "Contract" means the Contract Agreement entered into between the Contractor and the Procuring Entity, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- b) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.
- c) "Contract Price" means the price payable to the Procuring Entity as specified in the Contract Agreement, subject to such additions and adjustments thereto or deduction therefrom, as may be made pursuant to the Contract.
- d) "Day" means calendar day.
- e) "Completion" means the fulfillment of the Related Services by the Lessee in accordance with the terms and conditions set forth in the Contract.
- f) "GCC" means the General Conditions of Contract.
- g) "Lease Items" means all of the infrastructural facilities/land or such other physical items the Procuring Entity is required to lessor to the Lessee/Contractor under the Contract.
- h) "Procuring Entity" means the **Tana and Athi Rivers Development Authority** as specified in the SCC.
- i) "Related Services" means the services incidental to the supply of the Lease Items, such as insurance, installation, developments, training and initial maintenance and other such obligations of the Lessee under the Contract.
- j) "SCC" means the Special Conditions of Contract.
- k) "Subcontractor" means any person, private or government entity, or a combination of the above, to whom any part of the Lease Items to be supplied or execution of any part of the Related Services is subcontracted by the Lessee.
- l) "Lessor" means the Procuring Entity and is named as such in the Contract Agreement.
- m) "Lessee" means the Contractor whose Tender for the Lease Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement".

2. Contract Documents

2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. Fraud and Corruption

3.1 The Government of Kenya requires compliance with anti-corruption laws and guidelines and its prevailing sanctions policies and procedures as set forth in Laws of Kenya.

3.2 The Procuring Entity requires the Lessor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

4. Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Entire Agreement- The Contract constitutes the entire agreement between the Procuring Entity and the Lesser. and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

4.3 Amendment

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

4.4 Non-waiver

a. Subject to GCC Sub-Clause 4.5 (b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

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

4.5 Severability

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

5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Lessor and the Procuring Entity, shall be written in the **English Language**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the **English Language**, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Lessor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Lessor.

6. Joint Venture, Consortium or Association

6.1 If the Lessor is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring Entity.

7. Eligibility

7.1 The Lessor and its Subcontractors shall have the nationality of an eligible country. A Lessor or Sub-Lessor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

8. Notices

- 8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term "in writing" means communicated in written form with proof of receipt.
- 8.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

9. Governing Law

The Contract shall be governed by and interpreted in accordance with the laws of Kenya. Throughout the execution of the Contract, the Lessor shall comply with the import of Lease Items and services prohibitions in Kenya:

- 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 Lease Items from that country or any payments to any country, person, or entity in that country.

10. Settlement of Disputes

- 10.1 The Procuring Entity and the Lessor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, neither the Procuring Entity or the Lessor may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Lease Items under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **SCC**.
- 10.3 Notwithstanding any reference to arbitration herein,
- a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - b) the Procuring Entity shall pay the Lessor any monies due the Lessor.

11. Inspections and Audit by the Procuring Entity

- 11.1 The Lessor shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Lease Items in such form and details as will clearly identify relevant time changes and costs.
- 11.2 Pursuant to paragraph 2.2 e. of Appendix to the General Conditions the Lessor shall permit and shall cause its subcontractors and sub consultants to permit, the Procuring Entity and/or persons appointed by the Procuring Entity or by other statutory bodies of the Government to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution,

and to have such accounts and records audited by auditors appointed by the Procuring Entity. The Lessor's and its Subcontractors' and sub consultants' attention is drawn to Sub-Clause 3.1 which provides, *inter alia*, that acts intended to materially impede the exercise of the Procuring Entity's inspection and audit rights constitute a prohibited practice subject to contract termination, as well as to a determination of ineligibility.

12. Scope of Lease Supply

12.1 The Lease Items and Related Services to be supplied shall be as specified in the Schedule of Requirements.

13. Delivery and Documents

13.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Lease Items and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of Lease and other documents to be furnished by the Lessee are specified in the **SCC**.

14. Lessor's Responsibilities

14.1 The Lessor shall supply the Lease Items and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.

15. Contract Price

15.1 Prices charged by the Lessor for the Lease Items supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Lessee in its Tender, with the exception of any price adjustments authorized in the **SCC**.

16. Terms of Payment

16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified below and in the SCC. The currencies in which payments shall be made to the Lessor under this Contract shall be those in which the Tender price is expressed.

16.2 The lessee shall pay to Lessor the advance payment stated in the SCC upon or before taking possession of the property. Thereafter, the Lessee shall pay the Lessor the sum of stated in the SCC on or before the day of each month as stated in the SCC until the expiration of this lease.

16.3 If the Lessee fails to pay all amounts due within the number of days specified in the SCC of their due dates, then the Lessor may terminate the contract under this lease and take back possession and control of the Lease Item(s). In the event of termination for non-payment, the Lessee shall remain liable for the balance due under this lease.

16.4 If the Lessee fails to make a payment on or before its due date, a late fee of an amount specified in the SCC shall be due and payable immediately to Lessor.

16.5 In the event that the Lessee fails to pay the Lessor any payment by its due date or within the period set forth in the SCC, the Lessee shall pay to the Lessor interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

17. Taxes and Duties

17.1 The Lessee shall be responsible for paying all taxes levied in Kenya.

18. Performance Security (YEARLY BASIS)

18.1 If required as specified in the SCC, the Lessee shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.

18.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Lessee's failure to complete its obligations under the Contract.

18.3 As specified in **the SCC**, the Performance Security, if required, shall be denominated in Kenya Shillings; and shall be in one of the formats stipulated by the Procuring Entity in **the SCC**, or in another form acceptable to the Procuring Entity.

18.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Lessee not later than twenty-eight (28) days following the date of Completion of the Lessee's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

19. Copyright

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Lessee herein shall remain vested in the Lessee, or, if they are furnished to the Procuring Entity directly or through the Lessee by any third party, including Lessee's of materials, the copyright in such materials shall remain vested in such third party.

20. Confidential Information

20.1 The Procuring Entity and the Lessee shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Lessor may furnish to its Sub-Lessor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Sub Lessor to perform its work under the Contract, in which event the Lessor shall obtain from such Sub Lessor an undertaking of confidentiality similar to that imposed on the Lessor under GCC Clause 20.

20.2 The Procuring Entity shall not use such documents, data, and other information received from the Lessee for any purposes unrelated to the contract. Similarly, the Lessee shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the performance of the Contract.

20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- a. the Procuring Entity or the Lessee need to share with other arms of Government or other bodies participating in the financing of the Contract; such parties shall be disclosed in the **SCC**;
- b. now or hereafter enters the public domain through no fault of that party;
- c. can be proven to have been possessed by that party at the time of disclosure

and which was not previously obtained, directly or indirectly, from the other party;
or

- d. otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties here to prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

21. Subcontracting

21.1 The Lessee shall notify the Procuring Entity in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Lessee from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

22. Specifications and Standards

Technical Specifications and Drawings

- a) The Lease Items and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Lease Items' country of origin.
- b) The Lessor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Procuring Entity.
- c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 33.

23. Packing and Documents

No packing services and documents are needed, and if any, they are specified in the **SCC**, and in any other instructions ordered by the Procuring Entity.

24. Insurance

24.1 Unless otherwise specified in the **SCC**, the Lease Items supplied under the Contract shall be fully insured by the Lessee - in a freely convertible currency from an eligible country
- against loss or damage incidental to use, transportation, storage, and delivery, in a manner specified in the **SCC**.

25. Transportation and Incidental Services

25.1 The Lessee may be required to provide any or all of the following services, including additional services, if any, specified in **SCC**:

- a) Performance or supervision of on-site assembly and/or start-up of the supplied Lease Items;
- b) Furnishing of tools required for assembly and/or maintenance of the supplied Lease Items;
- c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Lease Items;
- d) performance or supervision or maintenance and/or repair of the supplied Lease Items, for a period of time agreed by the parties, provided that this service shall not relieve the Lessor of any warranty obligations under this Contract; and
- e) training of the Procuring Entity's personnel, at the Lessor's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Lease Items.

25.2 Prices charged by the Lessor for incidental services, if not included in the Contract Price for the Lease Items, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessor for similar services

26. *Inspections and Tests*

26.1 The Lessor shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Lease Items and Related Services as are specified in the **SCC**.

26.2 The inspections and tests may be conducted on the premises of the Lessor or its Subcontractor, at point of delivery, and/or at the Lease Items' final destination, or in another place in Kenya as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Lessor or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.

26.3 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Procuring Entity bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

- 26.4 Whenever the Lessee is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Procuring Entity. The Lessee shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Procuring Entity or its designated representative to attend the test and/or inspection.
- 26.5 The Procuring Entity may require the Less to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Lease Items comply with the technical specification codes and standards under the Contract, provided that the Lessor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Lessor's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Lessee shall provide the Procuring Entity with a report of the results of any such test and/or inspection.
- 26.7 The Procuring Entity may reject any Lease Items or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Lessee shall either rectify or replace such rejected Lease Items or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Lessee agrees that neither the execution of a test and/or inspection of the Lease Items or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub- Clause 26.6, shall release the Lessee from any warranties or other obligations under the Contract.

27. Liquidated Damages

- 27.1 Except as provided under GCC Clause 32, if the Lessee fails to take over any or all of the Lease Items by the Date(s) of delivery or perform the Related Services within the periods specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, an amount equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Lease Items or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35.

28. Warranty

- 28.1 The Lessor warrants that all the Lease Items are in conformity with the specifications of the Lease Items and are in good condition for use under the Lease agreement.
- 28.2 The Procuring Entity will be entitled to refuse acceptance of any Lease Items not meeting the warranty under ITT 28.1 and demand for replacements.

29. Patent Indemnity

- 29.1 The Lessor shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including

attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- a) The installation of the Lease Items by the Lessee or the use of the Lease Items in the country where the Site is located; and

- b) the sale in any country of the products produced by the Lease Items.

Such indemnity shall not cover any use of the Lease Items or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Lease Items or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Lessor, pursuant to the Contract.

- 29.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 29.1, the Procuring Entity shall promptly give the Lessee a notice thereof, and the Lessee may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Lessee fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.
- 29.4 The Procuring Entity shall, at the Lessee's request, afford all available assistance to the Lessee in conducting such proceedings or claim, and shall be reimbursed by the Lessee for all reasonable expenses incurred in so doing.
- 29.5 The Procuring Entity shall indemnify and hold harmless the Lessee and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Lessee may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity.

30. Limitation of Liability

- 30.1 Except in cases of criminal negligence or willful misconduct,
 - a) The Lessee shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Lessee to pay liquidated damages to the Procuring Entity, and
 - b) The aggregate liability of the Lessee to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Lessee to indemnify the Procuring Entity with respect to patent infringement.

31. Change in Laws and Regulations

- 31.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Kenya (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased

or decreased, to the extent that the Lessee has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

32. Force Majeure

- 32.1 The Lessee shall not be liable for forfeiture of its Performance Security, liquidated damages, 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.
- 32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Lessee that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Lessee. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 32.3 If a Force Majeure situation arises, the Lessee shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Lessee shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

33. Change Orders and Contract Amendments

- 33.1 The Procuring Entity may at any time order the Lessee through notice in accordance with GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- a) drawings, designs, or specifications, where Lease Items to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
 - b) the method of shipment or packing;
 - c) the place of delivery; and
 - d) the Related Services to be provided by the Lessee.
- 33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Lessee's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Lessee for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Lessee's receipt of the Procuring Entity's change order.
- 33.3 Prices to be charged by the Lessor for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessor for similar services.
- 33.4 **Value Engineering:** The Lessee may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

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

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

- a) accelerates the delivery period; or
- b) Increases the Contract value to the Procuring Entity; or
- c) improves the quality, efficiency or sustainability of the Lease Items; or
- d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.

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

- e) a reduction of the Contract Price; the amount to be paid to the Lessor shall be the percentage specified **in the SCC** of the reduction in the Contract Price; or
- f) an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in
- g) to (d) above, the amount to be paid to the Lessor shall be the full increase in the Contract Price.

33.6 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

34. Extensions of Time

34.1 If at any time during performance of the Contract, the Lessee or its subcontractors should encounter conditions impeding timely delivery of the Lease Items or completion of Related Services pursuant to GCC Clause 13, the Lessor shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Lessee's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Lessee's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Lessee in the performance of its Delivery and Completion obligations shall render the Lessee liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

35. Termination

35.1 Termination for Default

- a) The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Lessee, may terminate the Contract in whole or in part:
 - i. if the Lessee fails to deliver any or all of the Lease Items within the

- periods specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 34;
- ii. if the Lessee fails to perform any other obligation under the Contract; or
 - iii. if the Lessee, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a of the Appendix to the GCC, in competing for or in executing the Contract.
- b) In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Lease Items or Related Services similar to those undelivered or not performed, and the Lessor shall be liable to the Procuring Entity for any additional costs for such similar Lease Items or Related Services. However, the Lessor shall continue performance of the Contract to the extent not terminated.

35.2 Termination for Insolvency.

The Procuring Entity may at any time terminate the Contract by giving notice to the Lessee if the Lessee becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Lessee, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Procuring Entity.

35.3 Termination for Convenience.

- a) The Procuring Entity, by notice sent to the Lessee, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall

specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Lessor under the Contract is terminated, and the date upon which such termination becomes effective.

- b) The Lease Items that are complete and ready for shipment within twenty-eight (28) days after the Lessee's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Lease Items, the Procuring Entity may elect:
 - i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - ii) to cancel the remainder and pay to the Lessor an agreed amount for partially completed Lease Items and Related Services and for materials and parts previously procured by the Lessor.

36. Assignment

36.1 Neither the Procuring Entity nor the Lessee shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

37. Import Restrictions

37.1 Notwithstanding any obligation under the Contract to complete all import formalities, any import restrictions attributable to the Procuring Entity, to Kenya, or to the use of the products/Lease Items, systems or services to be supplied, which arise from trade regulations from a country supplying those products/Lease Items, systems or services, and which substantially impede the Lessee from meeting its obligations under the Contract, shall release the Lessee from the obligation to provide deliveries or services, always provided, however, that the Lessor can demonstrate to the satisfaction of the Procuring Entity that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the import of the products/Lease Items, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Procuring Entity's convenience pursuant to Sub-Clause 35.3.

SECTION IX - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	The Procuring Entity is Tana and Athi Rivers Development Authority

GCC 1.1(h)	<p>Clause 1(l) and (m) are amended to read as follows</p> <p>l) “Lessor” means the Procuring Entity and is named as “The Contractor” in the Contract Agreement. “Contractor or lessee ” means the Contractor whose Tender for the Contract has been accepted by the Procuring Entity and is named “the Contractor” in the Contract Agreement”.</p>
GCC 4.2	<p>The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties thereunder shall not be as prescribed by Incoterms, they shall be as prescribed by Kenyan law</p>
	<p>The version edition of Incoterms shall be <i>INCOTERMS 2015</i></p>
GCC 8.1	<p>For <u>notices</u>, the Procuring Entity’s address shall be:</p> <p>Attention: The Managing Director Tana and Athi Rivers Development Authority P.O BOX 47309-00100 NAIROBI. E-mail: info@tarda.go.ke</p>
GCC 10.2	<p>The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows</p> <p>(a) Contract with foreign Contractor GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p>(b) Contracts with Contractor who is a national of Kenya:</p> <p>In the case of a dispute between the Procuring Entity and a Contractor who is a national of Kenya, the dispute shall be referred to arbitration in accordance with the laws of Kenya. The rules shall be the Nairobi Center for International Arbitration rules and the seat of arbitration shall be Kenya</p>
GCC 15.1	<p>The prices charged for the Lease Items supplied and the related Services performed <i>shall</i> be adjustable based on the escalation rates stipulated in the TDS.</p>
Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 16.2	<p>The Procuring Entity may terminate the contract if the Contractor fails to pay all amounts due within _____ 180 _____ days.</p>

GCC 34.3	This clause is inserted. The lease and Contract period shall be automatically renewed upon the end of the first term and at the end of each subsequent terms unless notified otherwise by the Procuring Entity within 180 days before the end of the preceding term
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SECTION X - CONTRACT FORMS

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful tenderer after contract award.

Table of Forms

- 1) Notification of Intention to Award
- 2) Request for Review
- 3) Letter of Award
- 4) Contract Agreement
- 5) Performance Security
- 6) Advance Payment Security
- 7) Beneficial Ownership Disclosure

FORM No 1: NOTIFICATION OF INTENTION TO AWARD.

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

FORMAT

- 1. For the attention of Tenderer's Authorized Representative
 - i) Name: *[insert Authorized Representative's name]*
 - ii) Address *[insert Authorized Representative's Address]*
 - iii) Telephone:..... *[insert Authorized Representative's telephone/fax numbers]*
 - iv) Email Address..... *[insert Authorized Representative's email address]*

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

- possible.

2. Date of transmission [email]_____ on.....[date](local time) This Notification is sent by (Name and designation)
-

Notification of Intention to Award

- i) Procuring Entity [insert the name of the Procuring Entity]
- ii) Project: [insert name of project]
- iii) Contract title: [insert the name of the contract]
- iv) Country [insert country where ITT is issued]
- v) ITT No [insert ITT reference number from Procurement Plan]

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

4. Request a debriefing in relation to the evaluation of your tender

Submit a Procurement-related Complaint in relation to the decision to award the contract.

- a) The successful tenderer
 - i) Name of successful Tender
-

- ii) Address of the successful Tender
-

- iii) Contract price of the successful Tender Kenya Shillings(in words)

b) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as readout. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

Lease Item N□	Description of Lease Item and Related Services.	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why not Evaluated
1				
2				
3				

(Note a) State NE if not evaluated

5. How to request a debriefing

- a) DEADLINE: The deadline to request a debriefing expires at midnight on *[insert date] (local time)*.
- b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
 - i) Attention: *[insert full name of person, if applicable]*
 - ii) Title/position: *[insert title/position]*
 - iii) Agency: *[insert name of Procuring Entity]*
 - iv) Email address: *[insert email address]*
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) 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 (3) 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.
- e) 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.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

6. How to make a complain

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date] (local time)*.
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
 - i) Attention: *[insert full name of person, if applicable]*
 - ii) Title/position: *[insert title/position]*
 - iii) Agency: *[insert name of Procuring Entity]*
 - iv) Email address: *[insert email address]*
- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the

Standstill Period ends.

- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website www.ppra.go.ke or email complaints@ppra.go.ke.

You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
 - i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
 - ii) The complaint can only challenge the decision to award the contract.
 - iii) You must submit the complaint within the period stated above.
 - iv) You must include, in your complaint, all of the information required to support your complaint.

7. Standstill Period

- i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*](local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Procuring Entity:

Signature: _____ **Name:** _____

Title/position: _____ **Telephone:** _____

Email: _____

**FORM NO. 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) of dated 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

FORM NO 3: LETTER OF AWARD

[letter head paper of the Procuring Entity]

.....*[date]*

To:..... *[name and address of the Contractor]*

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

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature:

Name and Title of Signatory:

Name of Procuring Entity:

Attachment: *Contract Agreement*

FORM NO. 4 LETTER OF AWARD

[use letterhead paper of the Procuring Entity]

.....*[date]*

To: *[name and address of the Lessor]*

Subject: **Notification of Award Contract No.**.....

This is to notify you that your Tender dated *[insert date]* for the Lease Items on the list below is hereby accepted by our Agency.

OFFERED ITEMS AND PRICES

1	2	3
Lease Item N^o	Description of Lease Item and Related Services.	Tender Price
1		
2		
3		
Total Tender Price		XXXX

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section X, Contract Forms, of the Tendering document.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

FORM NO 5 - CONTRACT AGREEMENT

[The successful tenderer shall fill in this form in accordance with the instructions indicated]

THIS AGREEMENT made the *[insert: **number**]* day of *[insert:*

month], *[insert: **year**]*. BETWEEN

- (1) *[insert complete name of Procuring Entity* and having its principal place of business at *[insert: address of Procuring Entity]* (herein after called “ProcuringEntity”), of the one part;
and
- (2) *[insert name of Leases]*, a corporation incorporated under the laws of *[insert: country of Leases]* and having its principal place of business at *[insert: address of Lessor]* (herein after called “the Contractor”), of the otherpart.
3. WHEREAS the Procuring Entity invited Tenders for CROP PRODUCTION VENTURE IN TARDA HELD AGRICULTURAL LAND and has accepted a Tender by the *Leases* for the given period, the Procuring Entity and the *Leases* agree as follows:
 - i) In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
 - ii) The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
 - a) the Letter of Acceptance
 - b) the Letter of Tender
 - c) the Addenda Nos. *_(if any)*
 - d) Special Conditions of Contract
 - e) General Conditions of Contract
 - f) the Specification (including Schedule of Requirements and Technical Specifications)
 - g) the completed Schedules (including Price Schedules)
 - h) any other document listed in GCC as forming part of the Contract
 - iii) In consideration of the payments to be made by the Contractor to the Procuring Entity as specified in this Agreement, the Contractor hereby covenants with the Procuring Entity to provide the Lease Items and Services and to remedy defects the rein inconformity in all respects with the provisions of the Contract.
4. The *Leases* hereby covenants to pay the Procuring Entity in consideration of the provision of the Lease Items and 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.
5. IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya on the day, month and year indicated above.

For and on behalf of the Procuring Entity

Signed: *[insert signature]* in the capacity of

..... *[insert title or other appropriate designation]*

In the presence of *[insert identification* of official
witness]

For and on behalf of the Lessor Signed *[insert signature of*

authorized representative(s) of the Lessor]

in the capacity of *[insert title or other appropriate*
designation]

in the presence of *[insert identification of official witness]*

FORM NO. 6 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: _____ *[insert name and*

Address of Procuring Entity] Date: _____ *[Insert date of*

issue]

Guarantor: *[Insert name and address of place of issue, unless indicated in the letter head]*

1. We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. ___ dated _____ with *(name of Procuring Entity)* _____ (the Procuring Entity as the Beneficiary), for the execution of _____ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *(in words)*,¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the..... Day of..... , 2², and any demand for payment under it must be received by us at the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

[Name of Authorized Official, signature(s) and seals/stamps]

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

¹The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.

²Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procurement Entity should note that in the event of an Extension of this date for completion of the Contract, the Procurement Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

FORM No. 7 - PERFORMANCE SECURITY [Option 2– Performance Bond]

[Note: Procuring Entities are advised to use Performance Security–Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: _____ *[insert name and Address of Procuring Entity]* **Date:** ___ *[Insert date of issue]*

PERFORMANCE BOND No.: _____

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond _____ as Principal (hereinafter called "the Contractor") and _____] as Surety (hereinafter called "the Surety"), are held and firmly bound unto] as Obligee (hereinafter called "the Procuring Entity") in the amount of _____ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the _____ day of _____, 20____, for in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default, or shall promptly:
 - 1) complete the Contract in accordance with its terms and conditions; or
 - 2) obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring

Entity to Contractor; or

- 3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking - Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.
6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day of _____
20_____.

SIGNED ON _____ on

behalf of by _____ in

the capacity of in the presence of

SIGNED ON _____

on behalf of by _____ in

the capacity of in the presence of

FORM NO. 8 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: _____ *[Insert name and Address of
Procuring Entity]*

Date: _____ *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: _____ *[Insert guarantee
referencenumber]*

Guarantor: *[Insert name and address of place of issue, unless
indicated in the letter head]*

1. We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum _____ (in words _____) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (in _____ words) ¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
 - (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
 - (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contract or on its account number at.....
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as

specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been

certified for payment, or on the day of _____, ², ² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

[Name of Authorized Official, signature(s) and seals/stamps]

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

¹*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

²*Insert the expected expiration date of the Time for Completion. The Procurement Entity should note that in the event of an extension of the time for completion of the Contract, the Procurement Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE

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

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

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a

Tender Reference No.: _____ [insert identification no]

Name of the Tender Title/Description: _____ [insert name of the assignment]

To: _____ [insert complete name of Procuring Entity]

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

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

Details of beneficial ownership

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
1.	Full Name		Directly---- -----% of shares	Directly...% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No----	1. Exercises significant influence or control over the Company body of the Company (tenderer)
	National identity card number or Passport number		Indirectly-- ----- % of shares	Indirectly--- -----% of voting rights		
	Personal Identification Number					

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
	(where applicable)				2. Is this right held directly or indirectly?:	Yes ---- No----
	Nationality				Direct.....	2. Is this influence or control exercised directly or indirectly?
	Date of birth [dd/mm/yyyy]				Direct.....
	Postal address				Indirect.....
	Residential address				...	Indirect.....
	Telephone number			
	Email address					
	Occupation or profession					
2.	Full Name		Directly---- -----% of shares	Directly.....% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ----No----	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ---- No.....
	National identity card number or Passport number		Indirectly-- ----- % of shares	Indirectly--- -----% of voting rights	2. Is this right held directly or indirectly?:	2. Is this influence or control exercised directly or indirectly?
	Personal Identification Number (where applicable)				Direct.....	
	Nationality (ies)				
	Date of birth [dd/mm/yyyy]				Indirect.....	
	Postal address				...	
	Residential address				...	

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
	Telephone number					Direct.....
	Email address					Indirect.....
	Occupation or profession					
3.						
e.t						
.c						

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020. (Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;

(c) holds a right, directly or indirectly, to appoint or remove a director of the company; or

(d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

*Name of the Tenderer *[insert complete name of the Tenderer]*

Name of the person duly authorized to sign the Tender on behalf of the Tenderer:

*** [insert complete name of person duly authorized to sign the Tender]*

Designation of the person signing the Tender:..... [insert complete title of the person signing the Tender]

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

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

Bidder Official Stamp