

**REPUBLIC OF KENYA  
COUNTY GOVERNMENT OF MOMBASA**



**REQUEST FOR PROPOSAL (RFP)  
FOR  
APPOINTMENT OF AN  
INDEPENDENT FINANCIAL EXPERT FOR THE URBAN RENEWAL AND  
REDEVELOPMENT OF OLD HOUSING ESTATES  
WITHIN  
MOMBASA COUNTY  
UNDER  
JOINT VENTURE PARTNERSHIP.**

**AUGUST 2018**

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## **DISCLAIMER**

The information contained in this Request for Proposal ("RFP") Document or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of the County or any of its employees or advisers, is provided to Bidders on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the County to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the County in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require.

This RFP may not be appropriate for all persons, and it is not possible for the County, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate

sources.

Information provided in this RFP to the Bidders is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The County accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The County, its employees and advisers make no representation or warranty and shall have no liability to any person including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Selection Process.

The County also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Bidder upon the statements contained in this RFP.

The County may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that the County is bound to select a Bidder or

to appoint the Selected Bidder, as the case may be, for the Consultancy and the County reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the County or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Bidder and the County shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

## **GLOSSARY**

<b>Additional Costs</b>	As in Item H of Form-2 of Appendix-II
<b>Agreement</b>	As defined in Schedule - 2
<b>Agreement Value</b>	As defined in Clause 6.1.2 of Schedule-2
<b>Applicable Laws</b>	As defined in Schedule-2
<b>Associate</b>	As defined in Clause 2.3.3
<b>Authorized Representative</b>	As defined in Clause 2.13.3
<b>County</b>	As defined in Clause 1.1.1
<b>Bidder</b>	As defined in Clause 2.1.1
<b>Bid Security</b>	As defined in Clause 2.21.1
<b>Joint Venture Agreement</b>	As defined in Clause 1.1.2
<b>Development Partner</b>	As defined in Clause 1.1.2
<b>Conditions of Eligibility</b>	As defined in Clause 2.2.1
<b>Conflict of Interest</b>	As defined in Clause 2.3.1
<b>Consultancy</b>	As defined in Clause 1.2
<b>Consultancy Team</b>	As defined in 2.1.4
<b>Consultant</b>	As defined in Clause 1.2
<b>CV</b>	Curriculum Vitae
<b>Documents</b>	As defined in Clause 2.12
<b>Effective Date</b>	As defined in Clause 2.1 of Schedule-2
<b>Eligible Assignments</b>	As defined in Clause 3.3.4
<b>Expatriate Personnel</b>	As defined in Clause 1.1.1(i) of Schedule-2
<b>Financial Proposal</b>	As defined in Clause 2.16.1
<b>Form of Agreement</b>	Form of Agreement as in Schedule-2
<b>Key Personnel</b>	As defined in Clause 2.1.4

<b>Ksh.</b>	Kenya Shilling(s)
<b>Lead Member</b>	As defined in Clause 2.1.1
<b>LOA</b>	Letter of Award
<b>Member</b>	As defined in Clause 2.3.3(a)
<b>Personnel</b>	As defined in Clause 1.1.1(n) of Schedule-2
<b>Professional Personnel</b>	As defined in Clause 2.15.7
<b>Prohibited Practices</b>	As defined in Clause 4.1
<b>Project</b>	As defined in Clause 1.1.1
<b>Project Manager</b>	As defined in Clause 4.6 of Schedule-2
<b>Proposal</b>	As defined in Clause 1.2
<b>Proposal Due Date or PDD</b>	As defined in Clauses 1.5 and 1.8
<b>Qualification Document</b>	As defined in Clause 2.14.1
<b>Resident Personnel</b>	As defined in Clause 1.1.1(o) of Schedule-2
<b>RFP</b>	As defined in Disclaimer
<b>Selected Bidder</b>	As defined in Clause 1.6
<b>Selection Process</b>	As defined in Clause 1.6
<b>Services</b>	As defined in Clause 1.1.1(q) of Schedule-2
<b>Sole Firm</b>	As defined in Clause 2.1.1
<b>Statement of Expenses</b>	As defined in Note 13, Form-2 of Appendix II
<b>Statutory Auditor</b>	An Auditor appointed under Applicable Laws
<b>Sub-Consultant</b>	As defined in Clause 1.1.1(r) of Schedule-2
<b>Support Personnel</b>	As defined in Clause 2.15.7
<b>Team Leader</b>	As defined in Clause 2.1.4
<b>Technical Proposal</b>	As defined in Clause 2.15.1
<b>TOR</b>	As defined in Clause 1.1.3



## SECTION I: INVITATION PROPOSAL

### 1. INTRODUCTION

#### 1.1 Background

1.1.1 The County Government of Mombasa (the “**County**”) has initiated an Urban Renewal Project to develop and redevelop old housing estates within the County (the “**Project**”) through Joint Venture Partnership basis. The Project involves development and redevelopment of approximately 25,000 modern and affordable housing units, market stalls, commercial and retail space and support trunk infrastructure and is spread across eleven Lots /Sites which comprise of:

- A. Lot No. 1 – Khadija Estate;
- B. Lot No. 2 – Miritini Greenfield;
- C. Lot No. 4 – Chagamwe Estate;
- D. Lot No. 5 - Tudor Estate;
- E. Lot No. 6 - Mzizima Estate;
- F. Lot No. 7 – Buxton Estate;
- G. Lot No. 8 – Likoni Estates;
- H. Lot No. 9 – Nyerere Estate;
- I. Lot No. 10 – Tom Mboya Estate;
- J. Lot No. 11 – Kaa Chonjo Estate; and

- 1.1.2 In this regard the County has executed a Joint Venture Agreement (the “**Joint Venture Agreement**”) with Development Partners to undertake the development of the Project on each of the aforementioned Sites on Joint Venture Partnership basis.
- 1.1.3 An Independent Financial Expert is to be appointed as per the provisions of the Joint Venture Agreement to provide independent financial management services to the parties under the Agreement in respect of the escrow account. In pursuance of the above, the County now wishes to competitively start the process of selection of an Independent Financial Expert who shall work in accordance with the Terms of Reference specified at Schedule 1 (the "TOR") of the RFP document.

## 1.2 Request for Proposal

The County Invites Proposals (the "**Proposals**") for selection of an Independent Financial Expert (the "**Consultant**") who shall be engaged by both Parties to monitor the performance of the Special Purpose Vehicles (the “**Project Companies**”) and the operation of the Escrow Accounts under the Joint Venture Agreement in conformity with the TOR in the Agreement to be jointly signed by the County, Development Partners and the Consultant (the "**Consultancy Agreement**"). Both the County and representatives of the Development Partners shall be responsible for the evaluation of the proposals received from the consultants and in the selection of the most suitable Consultant to undertake the Project.

### 1.3 Due diligence by Bidders

Bidders are encouraged to familiarize themselves fully about the assignment and the local conditions before submitting the Proposal by enquiring from the County Department of Urban Renewal and Building Services about the Project by sending written queries to the County Executive Committee Member (CECM) in charge of the Department. The Bidders are also encouraged to familiarize themselves with the feasibility study report of the project.

### 1.4 RFP document

The RFP document can be obtained free of charge between 0800 hours and 1600 hours on all working days from the County Procurement Department. The RFP document can also be downloaded from the Official Website of Mombasa County [www.mombasa.go.ke](http://www.mombasa.go.ke).

### 1.5 Validity of the Proposal

The Proposal shall be valid for a period of ninety (90) days from the Proposal Due Date (the "**PDD**").

### 1.6 Brief description of the Selection Process

The County has adopted a single stage selection process (collectively the "**Selection Process**") in evaluating the Proposals comprising of the bidder's technical and financial bids to be submitted in two separate sealed envelopes. In the first stage, a technical evaluation will be carried

out as specified in Clause 2.5. Based on this technical evaluation, a list of short-listed Bidders shall be prepared as specified in Clause 2.5.

In the second stage, a financial evaluation will be carried out as specified in Clause 2.8. Proposals will finally be ranked according to their combined technical and financial scores. The first ranked Bidder (the "**Selected Bidder**") shall be selected for negotiation while the second ranked Bidder will be kept in reserve till a contract is signed with the first ranked bidder.

## **1.7 Currency conversion rate and payment**

- 1.7.1 For the purposes of technical and financial evaluation of Bids, the conversion rate of exchange shall be as published by Central Bank of Kenya at the time of evaluation.
- 1.7.2 All payments to the Consultant shall be made in KSH in accordance with the provisions of this RFP.

## **1.8 Schedule of Selection Process**

The County will endeavor to adhere to the following schedule:

<b>Event Description</b>	<b>Date</b>
1. Last date for receiving queries/clarifications	4 <sup>th</sup> September 2018.
2. Proposal due Date or PDD	11 <sup>th</sup> September, 2018
3. Opening of Proposals	On Proposal Due Date
4. Letter of Award (LOA)	Within 15 days of PDD
5. Signing of Agreement	Within 10 days of LOA
6. Validity of Proposals	90 days of PDD

## **1.9 Pre-Proposal inspection of data**

Prospective Bidders may visit the County offices and review any information regarding the project at any time prior to PDD. For this purpose, they will provide at least two days' notice to the County officer specified below:

Chief Officer,  
Department of Urban Renewal and Building Services  
BIMA Tower (Annex), 4<sup>th</sup> Floor  
Meru Road,  
P.O. Box 80133 - 80100  
Phone: .....  
Email: .....

## **1.10 Last date of receiving queries**

The Bidders may address their queries to the County officer specified below on or before 4<sup>th</sup> September, 2018.

Chief Officer,  
Department of Urban Renewal and Building Services  
BIMA Tower (Annex), 4<sup>th</sup> Floor  
Meru Road,  
P.O. Box 80133 - 80100  
Phone: .....  
Email: .....

## 1.11 Communications

All communications including the submission of Proposal should be addressed to:

Chief Officer,  
Department of Urban Renewal and Building Services  
BIMA Tower (Annex), 4<sup>th</sup> Floor  
Meru Road,  
P.O. Box 80133 - 80100  
Phone: .....  
Email: .....

1.11.1 The **Official Website** of the County is: <http://www.mombasa.go.ke>

1.11.2 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

**“RFP for Selection of Independent Financial Expert for the Urban Renewal and Redevelopment of Old Estates Project through joint Venture Partnership”**

## **SECTION II: - INFORMATION TO CONSULTANTS (ITC)**

### **2.0 Clause Reference**

**2.0.1** The name of the Client is: - **County Government of Mombasa**

**2.0.2** Method of selection is: **Experience and Cost Based Selection**

**2.0.3** Technical and Financial Proposals are requested:

The name, objectives, and description of the assignment are: **As per the Terms of Reference**

**2.0.4** Pre-proposal conference will be held: **No**

The name(s), address (es) and telephone numbers of the Client are:

**Chief Officer,**

Department of Urban Renewal and Building Services,

BIMA Tower (Annex), 4<sup>th</sup> Floor

Meru Road,

P.O. Box 80133 - 80100

**2.0.5** The Client will provide the following inputs:

(i) **Liaison Team**

(ii) **Relevant Documents**

(iii) **Relevant logistical arrangements.**

**2.0.6** The estimated number of professional staff months required for the assignment is; **to be Determined**

The minimum required experience of proposed professional staff is:

**a. Lead Consultant**

- At least a Master's degree in Business Administration, Commerce, Accounting, Finance or related field.
- A fully qualified accountant (CPA, ACCA or similar qualifications)
- A minimum of 10 years' experience in leading financial consultancy services.
- Demonstrated experience in the design and execution of reviews of internal control, risk assessment and fiduciary oversight assignments.
- Membership of relevant professional bodies

**b. 2 Key Consultants**

- At least a Bachelor's Degree in Business Administration, Commerce, Accounting, Finance or related field.
- Must be qualified professionals.
- A minimum of 5 years' experience in providing similar financial consultancy services, of which at least 3 years is demonstrated experience in coordination and conduct of similar consultancy services.



- Membership of relevant professional bodies

Full and detailed Curricula Vitae of proposed Lead Consultant and other consultants with relevant experience indicating project details, duration of engagement, tasks undertaken and achievements must be provided.

**2.0.7 Taxes: VAT OR OTHER TAXSES TO BE INDICATED SEPARATELY FROM THE PROFESSIONAL FEES**

**2.0.8** Consultants must submit an original and **one (1)** additional copies of each proposal.

**2.0.9** The proposal submission address is:

**Office of the Director of Supply Chain Management,  
County Government of Mombasa,  
2<sup>nd</sup> Floor, Procurement Office  
P.O. Box 80133 – 80100  
Mombasa, Kenya**

**2.0.10** Proposals must be submitted no later than the following date and time:  
**11th September, 2018 at 10.00 am.**

**2.0.11** The address to send information to the Client is:

**Chief Officer,**

Department of Urban Renewal and Building Services,

BIMA Tower (Annex), 4<sup>th</sup> Floor

Meru Road,

P.O. Box 80133 - 80100

**2.0.12** The minimum technical score required to pass: **70**

**2.0.13** The assignment is expected to commence on: - **immediately after signing of contract**

## **2.1 Clarification and Amendment of RFP Documents**

**2.1.1** Consultants may request a clarification of any of the RFP documents only up to three [3] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the County's address indicated in the "ITC". The County will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited consultants who intend to submit proposals.

**2.1.2** At any time before the submission of proposals, the County may for any reason, whether at our own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited consultants and will be binding on them.

The County may, at its discretion, extend the deadline for the submission of proposals.

## **2.2 Preparation of Technical Proposal**

**2.2.1** The Consultants proposal shall be written in English language

**2.2.2** In preparing the Technical Proposal, consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

**2.2.3** While preparing the Technical Proposal, consultants must give particular attention to the following:

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Consultants shall not associate with the other consultants invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or has an extended and stable working relationship with it.
- (iii) Proposed professional staff must as a minimum, have the experience indicated, preferably working under conditions similar to those prevailing in Kenya.
- (iv) Alternative professional staff shall not be proposed and only one

Curriculum Vitae (CV) may be submitted for each position.

**2.2.4** The Technical Proposal shall provide the following information using the attached Standard Forms;

(i) **Specific Experience of the firm related to the assignment**

The firm shall give a brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. Demonstrate working knowledge, competencies and experience in carrying out similar/related services. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.

(ii) **Understanding of and conformity to the terms of reference**

The firm will demonstrate their understanding of and conformity to the terms of reference and may give any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Client.

(iii) **Approach and Methodology for conducting the assignment**

The firm shall give a description of the methodology and work plan for performing the assignment, give details on the approach, strategies, design and methodology to ensure effectiveness of the assignment and a comprehensive time schedule for undertaking the assignment.

(iv) **Qualification and experience of key staff for the assignment**

- The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.
- CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments
- Estimates of the total staff input (professional and support staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- Any additional information

**2.2.5** The Technical Proposal shall not include any financial information.

## **2.3 Bid Security**

2.3.1 As part of its bid, the Bidder shall furnish to CGM a Bid Security of Kenya Shillings Ten Million (Kshs. 10,000,000) in the form of an Unconditional Bank Guarantee issued by one of the nationally recognized Banks in Kenya or an Approved Financial Institution or an Approved Insurance Company approved by CGM or from an internationally recognized bank.

2.3.2 The Bid Security shall be valid for at least One Hundred and Twenty (120) days from the date of Bid opening or from the extended date of Bid opening.

2.3.3 Any Bid not accompanied by an acceptable Bid Security will be rejected by CGM as non-responsive.

2.3.4 The Bid Securities of unsuccessful Bidders will be returned as promptly as possible but not later than **twenty eight (28) days** after notification whereas the Second Ranked Bidder the Bid Security will be returned after concluding the Contract execution and after a Performance Security has been furnished by the Successful Bidders to CGM. The Bid security of the Successful Bidder will be returned upon the Bidders executing the Contract and furnishing CGM with the required Performance Security.

2.3.5 CGK shall reserve the right to forfeit the Bid Security under the following circumstances:

- a) If the Bidder withdraws its Bid at any time during the stipulated period of Bid validity (or as may be extended).
- b) If the Bidder, for the period of Bid Validity, in CGM's opinion, commits material breach of any of the terms and / or conditions contained in the RFP Document and / or subsequent communication from CGM in this regard.
- c) In the case of a Successful Bidder, if he fails:
  - i. To accept the Letter of Acceptance, or
  - ii. To sign the Agreement
  - iii. To furnish the necessary Performance Security.

2.3.6 In the event that the bid is declared non-responsive, the Bid Security in such cases shall be returned to the respective Bidders within 30 days from such cessation without interest.

2.3.7 The Bid Security of the unsuccessful Bidders will be returned after 30 days without any interest.

2.3.8 The Bid Security of the Successful Bidder shall be required to be maintained till the signing of the Contract.

## **2.4 Performance Security**

2.4.1 The Bidder to provide a Performance Security not exceeding than 10% of the bid price. The Actual rate will be agreed upon at the time of executing the Contract

## **2.5 Preparation of Financial Proposal**

2.5.1 In preparing the Financial Proposal, consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment including; (a) remuneration for staff, and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation, services and equipment (vehicles, office equipment, furniture, and supplies), insurance, printing of documents, surveys. If appropriate these costs should be broken down by activity.

2.5.2 The Financial Proposal should clearly identify as a separate amount, the local taxes, fees, levies and other charges imposed under the law on the consultants, the sub-consultants and their personnel.

2.5.3 Consultants shall express the price of their services in Kenya Shillings.

2.5.4 Commissions and gratuities, if any, paid or to be paid by consultants and

related to the assignment will be listed in the Financial Proposal Submission Form.

2.5.5 The Proposal must remain valid for 90 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The County will make its best efforts to complete negotiations within this period. If we wish to extend the validity period of the proposals, the consultants shall agree to the extension.

## 2.5 Submission, Receipt, and Opening of Proposals

2.5.1 The original proposal (Technical Proposal and Financial Proposal) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.

2.5.2 For each proposal, the consultants shall prepare the required number of copies. 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 prevail.

2.5.3 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”**. Both envelopes shall be placed



into an outer envelope and sealed. This outer envelope shall bear the submission address and be clearly marked with request for proposal reference number.

2.5.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix “ITC”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.

2.5.5 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with the Director Supply Chain Management of the County.

## **2.6 Proposal Evaluation General**

2.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the County on any matter related to his proposal, he should do so in writing at the address indicated. Any effort by the firm to influence the County in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant’s proposal.

## **2.7 Evaluation of Technical Proposal**

2.7.1 The evaluation committee appointed by the County shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows:

## TECHNICAL EVALUATION RESPONSE FORM

CRITERIA		Maximum Points	Score
<b>PHASE ONE – PRELIMINARY EXAMINATION</b>			
<b>1</b>	<b>Mandatory/ Statutory Requirements</b>		
	i. Valid Registration Certificate-Attach certified copy of certificate of incorporation / other registration Certificates / documents ii. Attached certified copy of PIN, VAT certificates iii. Attached certified copy of valid Tax compliance certificate iv. Attached proof of valid Professional Indemnity Insurance for at least Kes 500million	Failure to submit all the documents required shall lead to rejection of the proposal	
<b>PHASE TWO – TECHNICAL EVALUATION</b>		Maximum	
<b>1</b>	<b>Firms Relevant Experience for the Assignment</b>		
a	Experience in Similar Assignments conducted in public and private sector with companies whose turnover exceed Kes 2.0 billion per annum (5 points for each client reference for a minimum of 4 clients). The firms must demonstrate experience of at least 10 years in financial consulting services. ( 5 points)	25	
<b>2</b>	<b>Methodology and Approach</b>		
a	Understanding the ToR Conformity to the ToR Consultant's initiatives and comments on the TOR	10	
b	Appropriateness of Methodology and work plan Completeness of description of methodology Effectiveness of the work plan and the time frames	20	
c	Project scheduling, manning, allocation of proposed staff and final report outline	5	
<b>3</b>	<b>Human Resource Capacity</b>		
a	Lead consultant's general education background, professional qualifications, training, length of experience both local and international, and duration with the firm as follows:		
	Minimum of Master's degree in business administration, commerce, accounting, finance or related field	5	
	A minimum of 10 years' experience in leading similar financial consultancy services.	5	
	Demonstrated experience in the design and execution of reviews of internal control, risk assessment and fiduciary oversight assignments.	5	
	CPA/ACCA Qualification and Membership to relevant professional bodies	5	
b	2 other professional staff: Education, experience, positions held and duration with the firm.		
	At least a Bachelor's degree in commerce, accounting, finance or related field. Membership to professional bodies	10	
	A minimum of 5 years' experience in providing similar financial consultancy services, of which at least 3 years is demonstrated experience in coordination and conduct of similar consultancy services.	10	
	<b>TOTAL</b>	<b>100</b>	

Each responsive proposal will be given a technical score ( $St$ ). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score.

**The minimum technical score for the technical evaluation shall be 70 marks and bidders who shall not have attained this mark shall not proceed to the next stage of the evaluation process.**

## 2.8 Evaluation of Financial Proposal

2.8.1 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.

2.8.2 The formulae for determining the Financial Score ( $Sf$ ) shall, be as follows: -

$Sf = 100 \times \frac{Fm}{F}$  where  $Sf$  is the financial score;  $Fm$  is the lowest priced financial proposal and  $F$  is the price of the proposal under consideration. Proposals will be ranked according to their combined technical ( $St$ ) and financial ( $Sf$ ) scores using the weights ( $T$ =the weight given to the Technical Proposal;  $P$  = the weight given to the Financial Proposal;  $T + p = 1$ ) indicated in the Appendix. The combined technical and financial score,  $S$ , is calculated as follows: -  $S = St \times T \%$

+  $S_f \times P$  %. The firm achieving the highest combined technical and financial score will be invited for negotiations.

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

2.8.4 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).

2.8.5 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price

2.8.6 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## 2.9 Negotiations

2.9.1 Negotiations will be held at an address to be notified to the successful bidder. The aim is to reach to an agreement on all points and sign a contract.

2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The County, Development Partners and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of

the Contract.

2.9.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).

## **2.10 Award of Contract**

2.10.1 The Contract will be awarded following negotiations. After negotiations are completed, the Client will promptly notify other consultants on the shortlist that they were unsuccessful and return the Financial Proposals of those consultants who did not pass the technical evaluation.

2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified.

2.10.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award.

2.10.4 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

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

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

- Shall not be debarred from participating in public procurement.

## **2.11 Confidentiality**

2.11.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.

## **2.12 Corrupt or fraudulent practices**

2.12.1 The procuring entity requires that the consultants observe the highest standards of ethics during the selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.12.2 The procuring entity will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

2.12.3 Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

## **SECTION III: - TECHNICAL PROPOSAL**

### **3.0 Notes on the preparation of the Technical Proposals**

- 3.1 In preparing the technical proposals the consultant is expected to examine all terms and information included in the RFP. Failure to provide all requested information shall be at the consultants own risk and may result in rejection of the consultant's proposal.
- 3.2 The technical proposal shall provide all required information and any necessary additional information and shall be prepared using the standard forms provided in this Section.
- 3.3 The Technical proposal shall not include any financial information unless it is allowed in the Appendix to information to the consultants or the Special Conditions of contract.

## **SECTION III - TECHNICAL PROPOSAL**

### **Table of Contents**

- 1. Technical proposal submission form**
- 2. Firms references**
- 3. Comments and suggestions of consultants on the Terms of reference and on data, services and facilities to be provided by the procuring entity**
- 4. Description of the methodology and work plan for performing the assignment**
- 5. Team composition and Task assignments**
- 6. Format of curriculum vitae (CV) for proposed Professional staff**
- 7. Time schedule for professional personnel**
- 8. Activity (work schedule)**



## 1. TECHNICAL PROPOSAL SUBMISSION FORM

[\_\_\_\_\_ *Date*]

To: \_\_\_\_\_ [*Name and address of Client*]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for \_\_\_\_\_  
\_\_\_\_\_ [*Title of consulting services*] in  
accordance with your Request for Proposal dated \_\_\_\_\_ [*Date*] and our  
Proposal. We are hereby submitting our Proposal, which includes this  
Technical Proposal, [and a Financial Proposal sealed under a separate  
envelope-*where applicable*].

We understand you are not bound to accept any Proposal that you receive.

Yours sincerely,

\_\_\_\_\_ [*Authorized Signature*]:

\_\_\_\_\_ [*Name and Title of Signatory*]

\_\_\_\_\_ [*Name of Firm*]

\_\_\_\_\_ [*Address:*]

## 2. FIRM'S REFERENCES

### Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

Using the format below, provide information on each assignment for which your firm either individually, as a corporate entity or in association, was legally contracted.

Assignment Name:		Country
Location within Country:		Professional Staff provided by Your Firm/Entity
Name of Client:		Clients contact person for the assignment.
Address:		No of Staff-Months; Duration of Assignment:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (KShs)
Name of Associated Consultants. If any:		No of Months of Professional Staff provided by Associated Consultants:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:		
Narrative Description of project:		
Description of Actual Services Provided by Your Staff:		

Firm's Name: \_

Name and title of signatory; \_\_\_\_\_

### 3. COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE CLIENT.

---

#### On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

#### On the data, services and facilities to be provided by the Client:

- 1.
- 2.
- 3.
- 4.
- 5.

#### 4. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

---

## 5. TEAM COMPOSITION AND TASK ASSIGNMENTS

### Professional staff

Name	Position	Task

### Support Staff

Name	Position	Task

## 6. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed Position: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of Staff \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with Firm: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Societies: \_\_\_\_\_

Detailed Tasks Assigned: \_\_\_\_\_

Key Qualifications:

***[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].***

Education:

***[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]***

---

Employment Record:

***[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]***

---

Certification:

**I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.**

\_\_\_\_\_ **Date** \_\_\_\_\_

***[Signature of staff member]***

\_\_\_\_\_ **Date;** \_\_\_\_\_

***[Signature of authorised representative of the firm]***

**Full name of staff member:** \_\_\_\_\_

**Full name of authorized representative:** \_\_\_\_\_



## 7. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

### Months (in the Form of a Bar Chart)

Name	Position	Reports Due/ Activities	1	2	Number of months

Reports Due: \_\_\_\_\_

Activities Duration: \_\_\_\_\_

Signature: \_\_\_\_\_

(Authorized representative)

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

# 8. ACTIVITY (WORK) SCHEDULE

(a). Field Investigation and Study Items

*[1<sup>st</sup>, 2<sup>nd</sup>, etc., are months from the start of assignment)*

	1 <sup>st</sup>	2 <sup>nd</sup>	
Activity (Work)			
<hr/>			
<hr/>			
<hr/>			
<hr/>			

## **(b). Completion and Submission of Reports**

<b>Reports</b>	<b>Date</b>
<b>1. Inception Report</b>	
<b>4. Progress Report</b> (a) <b>First Status Report</b> (b) <b>Second Status Report</b>	
<b>3. Draft Report</b>	
<b>4. Final Report</b>	

## **SECTION IV: - FINANCIAL PROPOSAL**

### **4.0 Notes on preparation of Financial Proposal**

- 4.1 The Financial proposal prepared by the consultant should list the costs associated with the assignment. These costs normally cover remuneration for staff, subsistence, transportation, services and equipment, printing of documents, surveys etc. as may be applicable. The costs should be broken down to be clearly understood by the procuring entity.
- 4.2 The financial proposal shall be in Kenya Shillings or any other currency allowed in the request for proposal and shall take into account the tax liability and cost of insurances specified in the request for proposal.
- 4.3 The financial proposal should be prepared using the Standard forms provided in this part
- 4.4 Bidders should propose a costing model that provides best value to the Joint Ventures

## **SECTION IV - FINANCIAL PROPOSAL STANDARD FORMS**

### **Table of Contents**

- 1. Financial proposal submission Form**
- 2. Summary of costs**
- 3. Recurring operational and management costs**
- 4. Breakdown of implementation costs per activity**
- 5. Breakdown of remuneration per activity**
- 6. Reimbursable per activity**
- 7. Miscellaneous expenses**

## 1. FINANCIAL PROPOSAL SUBMISSION FORM

\_\_\_\_\_ [ Date]

To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for (\_\_\_\_\_) [Title of consulting services] in accordance with your Request for Proposal dated (\_\_\_\_\_) [Date] and our Proposal. Our attached Financial Proposal is split into a one-time implementation cost of KShs (if applicable) and management and operational costs as follows (indicate how any operational costs will be determined)

(\_\_\_\_\_) [All Amounts should be indicated in words and figures] clearly indicating all applicable taxes.

We remain,

Yours sincerely,

\_\_\_\_\_ [Authorized Signature]:  
\_\_\_\_\_ [Name and Title of Signatory]:  
\_\_\_\_\_ [Name of Firm]  
\_\_\_\_\_ [Address]

## 2. SUMMARY OF COSTS

*NOTE:*

It is expected that project costs will largely be operational given the nature of the assignment. Bidders should therefore note the following when preparing their financial proposals:

1. Separately indicate any one-time implementation costs where applicable
2. Full disclosure of the proposed operational and management costs and how these are computed. The bidder should also indicate any additional transaction fees payable to a third party service provider. Any such costs should be included in the proposal cost
3. Bidders should propose a costing model that provides best value to the Joint Ventures

Costs	Currency	Amount(s)
Implementation Costs		
Operational and Management costs		
<b>Subtotal</b>		
Taxes		
<b>Total Amount of Financial Proposal</b>		

### 3. RECURRING OPERATIONAL AND MANAGEMENT COSTS

(Please indicate the applicable costs and how these are determined)



#### 4. BREAKDOWN OF IMPLEMENTATION COSTS PER ACTIVITY

Activity NO.: _____	Description: _____
Price Component	Amount(s)
Remuneration	
Reimbursables	
Miscellaneous Expenses	
Subtotal	_____

## 5. BREAKDOWN OF REMUNERATION PER ACTIVITY

Activity No. _____ Name: _____				
Names	Position	Input	Remuneration Rate	Amount
Regular staff				
(i)				
(ii)				
Consultants				
Grand Total				

## 6. REIMBURSABLES PER ACTIVITY

Activity No: \_\_\_\_\_

Name: \_\_\_\_\_

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Air travel	Trip			
2	Road travel	Kms			
3.	Rail travel	Kms			
4.	Subsistence Allowance	Day			
	Grand Total				

## 7. MISCELLANEOUS EXPENSES

Activity No. \_\_\_\_\_ Activity Name: \_\_\_\_\_

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Communication costs____  _____ (telephone, telegram, telex)				
2.	Drafting, reproduction of reports				
3.	Equipment: computers etc.				
4.	Software				
	Grand Total				_____

## **SECTION V: - TERMS OF REFERENCE**

### **(a) Background,**

The Client and the Joint Venture Partners require to engage a reputable and well established firm of consultants that will provide high quality services to the Project to monitor the performance of the Special Purpose Vehicles (the “**Project Companies**”) and the operation of the Escrow Accounts under the Joint Venture Agreement. The Consultant is expected to have at least 10 years’ experience working with Companies whose turnover exceeds Kes 2 billion per annum. In addition, they must also have financial consultancy experience in public sector institutions.

### **(b) The Assignment**

1. Conduct continuous reviews of the operating systems to evaluate the strengths and weaknesses of internal controls on financial management of the Project and propose improvements.
2. Advise on the Project Company’s Risk Management processes
3. Evaluate and advise on the Project Company’s Corporate Governance Practices.
4. Ensure that the Project Company’s designs, implements and maintains internal controls relevant to the preparation and presentation of appropriate reports and financial statements that

comply with IFRS that are timely and accurate.

5. Operate the Escrow Account together with the Joint Venture Partners in accordance with the Joint Venture Agreement
6. Act as the Security Agent

### **(c) Outputs and Deliverables**

The Project Companies and Joint Venture Partners will expect the following reports at intervals to be agreed:-

1. Reports on the adequacy of the Project Companies Internal Control systems in safeguarding the Project Companies' resources
2. Reports on the integrity, viability and accuracy of the accounting processes and procedures in use.
3. Reports giving insights into control weaknesses and general controls within the Project Companies ICT Systems.
4. Reports on the movement of funds in the Escrow Account
5. Reports on the status of securities and titles and subleases held in custody.
6. Reports on Corporate Governance Practices in the Project

Companies.

7. Reports on material non-compliance with laws and regulations and the Joint Venture Agreements and recommendations for remedy.

8. Reports on Risk Assessment and Management

**The County and the Development Partners will provide the following inputs:**

- 1) Liaison team,
- 2) Relevant Documents
- 3) Relevant logistical arrangements.

# CONTRACT FOR CONSULTANT'S SERVICES

**Between**

---

***[Name of the Client]***

**AND**

---

***[Name of the Consultant]***

**Dated: \_\_\_\_\_ *[date]***



## 1. FORM OF CONTRACT

This Agreement (hereinafter called the “Contract”) is made on the day\_\_\_\_\_ of the month of \_\_\_\_\_[*month*], [*year*], between\_ \_\_\_\_\_, [*name of client*] of \_\_\_\_\_ [or whose registered office is situated at\_\_\_\_\_[*location of office*] (hereinafter called the “Client”) of the one part

AND

\_\_\_\_\_ [*name of consultant*] of [or whose registered office is situated at\_\_\_\_\_ [*location of office*] (hereinafter called the “Consultant”) of the other part.

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);
- (b) the Consultant, having presented to the Client that he has the required professional skills and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the Parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (a) The General Conditions of Contract;
  - (b) The Special Conditions of Contract;
  - (c) The following Appendices: *[Note: If any of these Appendices are not used, they should be deleted from the list]*
    - Appendix A: Description of the Services
    - Appendix B: Reporting Requirements
    - Appendix C: Key Personnel and Sub consultants
    - Appendix D: Breakdown of Contract Price
    - Appendix E: Services and Facilities Provided by the Client
2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:
  - (a) The Consultant shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) The Client shall make payments to the Consultant in accordance with the provisions of the Contract.

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

For and on behalf of \_\_\_\_\_ *[name of client]*

*[Full Names of the Client's representative\_*

*[Title]*\_\_\_\_\_

*[Signature]*\_\_\_\_\_

*[Date]*\_\_\_\_\_

For and on behalf of \_\_\_\_\_*[name of consultant]*

*[Full name of Consultant's Authorized representative]*\_\_

*[title]*\_\_\_\_\_

*[signature]*\_\_\_\_\_

*[date]*\_\_\_\_\_

## 2. GENERAL CONDITIONS OF CONTRACT

### 1. GENERAL PROVISIONS

#### 1.1 Definitions

Unless the context otherwise requires, the following Terms whenever used in this Contract shall have the following meanings:

- (a) **“Applicable Law”** means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) **“Contract”** means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (c) **“Contract Price”** means the price to be paid for the performance of the Services in accordance with Clause 6 here below;
- (d) **“Foreign Currency”** means any currency other than the Kenya Shilling;
- (e) **“GC”** means these General Conditions of Contract;

- (f) **“Government”** means the Government of the Republic of Kenya;
- (g) **“Local Currency”** means the Kenya Shilling;
- (h) **“Member”**, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; **“Members”** means all these entities, and **“Member in Charge”** means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards the Client under this Contract;
- (i) **“Party”** means the Client or the Consultant, as the case may be and **“Parties”** means all of them;
- (j) **“Personnel”** means persons hired by the Consultant or by any Sub consultant as employees and assigned to the performance of the Services or any part thereof;
- (k) **“SC”** means the Special Conditions of Contract by which the GC may be amended or supplemented;

- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and
- (m) “Sub consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

**1.2 Law Governing the Contract** This Contract, its meaning and interpretation and the relationship between the Parties shall be governed by the Laws of Kenya.

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

**1.4 Notices** Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.

**1.5 Location** The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as the Client may approve.

**1.6 Authorized Representative's** Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SC.

**1.7 Taxes and Duties** The Consultant, Sub consultant[s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

## **2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

**2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both Parties and such other later date as may be stated in the SC.

**2.2 Commencement of Services** The Consultant shall begin carrying out the Service thirty (30) days after the date the Contract becomes effective or at such other date as may be specified in the SC.

**2.3 Expiration of this Contract** Unless terminated earlier pursuant to Clause 2.6 of this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.

**2.4 Modification** Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.

**2.5 Force Majeure**

**2.5.1 Definition** for the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

**2.5.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure,



provided that the Party affected by such an event

- (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

### **2.5.3 Extension Of Time**

Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

### **2.5.4 Payments**

During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## **2.6 Termination**

### **2.6.1 By the Client** the Client may terminate this Contract by not less

than Thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

- a) if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing;
- b) if the Consultant becomes insolvent or bankrupt;
- c) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Consultant, in the judgement of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

**“Corrupt practice”** means the offering, giving, receiving or soliciting of anything of value to

influence the action of a public official in the selection process or in Contract execution.

**“fraudulent practice”** means a misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of the Client, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

- e) if the Client in his sole discretion decides to terminate this Contract.

**2.6.2 By the Consultant** The Consultant may terminate this Contract by not less than thirty (30) days' written notice to the Client, such notice to be given after the occurrence of any of the following events;

- a) if the Client fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after receiving written notice from the Consultant that such payment is overdue;

or

- b)** if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

### **2.6.3 Payment**

**Upon Termination** Upon termination of this Contract pursuant to

Clauses 2.6.1 or 2.6.2, the Client shall make the following payments to the Consultant:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a) and (b) of Clause 2.6.1, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

### 3. OBLIGATIONS OF THE CONSULTANT

**3.1 General** The Consultant shall perform the Services and carry Out his obligations with all due diligence, efficiency and economy in accordance with generally accepted professional techniques and practices and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client and shall at all times support and safeguard the Client’s legitimate interests in any dealing with Sub consultants or third parties.

#### **3.2 Conflict of Interests**

##### **3.2.1 Consultant not to benefit from commissions, Discounts, Etc.**

- i. The remuneration of the Consultant pursuant to Clause 6 Shall constitute the Consultant’s sole remuneration in connection with this contract or the services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with

activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration

- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised the Client on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (iii) Where the Consultant as part of the Services has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant will comply with any applicable procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the Client.

**3.2.2 Consultant and Affiliates Not to be Otherwise Interested in Project**

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and his affiliates, as well as any Sub consultant and any of his affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the project.

**3.2.3 Prohibition of Conflicting Activities**

Neither the Consultant nor his sub consultant[s] nor their personnel shall engage, either directly or indirectly in any of the following activities:

- a) During the term of this Contract any or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or
- (b) after the termination of this Contract, such other activities as may be specified in the SC.

### **3.3 Confidentiality**

The Consultant, his sub consultant[s] and the Personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

### **3.4 Insurance to be**

#### **Taken Out by the Consultant**

The Consultant (a) shall take out and maintain and shall cause any sub consultant[s] to take out and maintain, at his (or the sub consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

### **3.5 Consultant's**

#### **Actions Requiring Client's Prior**

The Consultant shall obtain the Client's prior approval in writing before taking any of the following actions;



## **Approval**

(a) entering into a subcontract for the performance of any part of the Services,

(b) appointing such members of the personnel not listed by name in Appendix C (“Key Personnel and Sub consultants”).

**3.6 Reporting Obligations** The Consultants shall submit to the Client the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.

**3.7 Documents prepared by the Consultant to Be the Property of the Client** All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and remain the property of the Client and the Consultant shall, not later than upon termination or expiration of Contract, deliver all such documents and software to the Client together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

#### 4. CONSULTANT'S PERSONNEL

- a) Description of Personnel**      The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub consultants listed by title as well as by name in Appendix C are hereby approved by the Client.

##### 4.2 Removal

- a) Except as the Client may otherwise agree, no changes and/or Replacement of Personnel shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better Qualification
- b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) the Client has reasonable cause to be dissatisfied with

the performance of any of the Personnel, then the Consultant shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.

- c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## **5. OBLIGATIONS OF THE CLIENT**

**5.1 Assistance and Exemptions** The Client shall use his best efforts to ensure that he provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract.

**5.2 Change in the Applicable Law** If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be

increased or decreased accordingly by agreement between the Parties and corresponding adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be.

**5.3 Services and Facilities** the Client shall make available to the

Consultant the Services and Facilities listed under Appendix F.

**6. PAYMENTS TO THE CONSULTANT**

**6.1 Remuneration** The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with

Clause 2.4.

**6.2 Contract Price**

- a) The price payable in foreign currency is set forth in the SC.
- b) The price payable in local currency is set forth in the SC.

**6.3 Payment for Additional Services** For the purposes of determining the remuneration due to additional services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E

**6.4 Terms and Conditions of Payment** Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to the Client Specifying the amount due

**6.5 Interest on Delayed Payment** Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

## **7. SETTLEMENT OF DISPUTES**

**7.1 Amicable Settlement** The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

**7.2 Dispute Settlement** Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred by either Party to the arbitration and final decision of a person to be agreed between the Parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.

### 3. SPECIAL CONDITIONS OF CONTRACT

Number of GC Amendments of and Supplements to Clauses in the

Clause

General Conditions of Contract

---

**1.1(i)**      **The Member in Charge is \_\_\_\_\_ [name of**  
**Member]**

**1.4**      **The addresses are:**

**Client:** \_\_\_\_\_

**Attention:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**Consultant:** \_\_\_\_\_

**Attention:** \_\_\_\_\_

**Telephone;** \_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**1.6**      **The Authorized Representatives are:**

**For the Client:** \_\_\_\_\_

**For the Consultant:** \_\_\_\_\_

**2.1**      **The date on which this Contract shall come**  
**into effect is (\_\_\_\_\_) [date].**



**2.2** The date for the commencement of Services is\_\_\_\_[*date*]

**2.3** The period shall be\_\_\_\_[*length of time*].

(i) The risks and coverage shall be:

(ii) Professional Liability

\_\_\_\_\_

(iii) Loss of or damage to equipment and property \_

**6.2(a)** The amount in foreign currency or currencies is\_\_\_\_\_

*[Insert amount]*.

**6.2(b)** The amount in local Currency is\_\_\_\_\_

*[Insert amount]*

**6.4** Payments shall be made according to the following schedule:

## SECTION IV - APPENDICES

### APPENDIX A – DESCRIPTION OF THE SERVICES

***Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Client, etc.***

### APPENDIX B – REPORTING REQUIREMENTS

***List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”***

### APPENDIX C– KEY PERSONNEL AND SUBCONSULTANTS

***List under:***

***C-1 Titles [and names, if already available], detailed job descriptions***

***and minimum qualifications of Personnel and staff-***

***C-2 List of approved Sub consultants (if already available); same information with respect to***

## APPENDIX D – BREAKDOWN OF CONTRACT PRICE IN FOREIGN CURRENCY

***List here the elements of cost used to arrive at the breakdown of the lump-sum price – foreign currency portion:***

- 1. Monthly rates for Personnel (Key Personnel and other Personnel).***
- 2. Reimbursable expenditures.***

## APPENDIX E – BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY

***List here the elements of cost used to arrive at the breakdown of the lump-sum price – local currency portion.***

- 1. Monthly rates for Personnel (Key Personnel and other Personnel).***
- 2. Reimbursable expenditures.***