



**REPUBLIC OF KENYA  
NATIONAL LOTTERY BOARD  
P.O. BOX 30933-00100  
NAIROBI**

**REQUEST FOR PROPOSALS (RFP)**

**FOR**

**TRANSACTION ADVISORY SERVICES FOR THE PROCUREMENT OF A NATIONAL  
LOTTERY OPERATOR**

**RFP NO. NLB/RFP/01/2025-2026**

**ISSUED ON: 21<sup>ST</sup> APRIL, 2026**

**PRE-BID DATE: 28<sup>TH</sup> APRIL, 2026 AT 1100 HOURS (VIRTUAL)**

**CLOSING DATE: 6<sup>TH</sup> MAY, 2026 AT 1100 HOURS**

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## **PROPOSAL FOR SELECTION OF CONSULTING FIRM(S)**

- 1) **NAME AND CONTACT ADDRESSES OF PROCURING ENTITY**  
The Chief Executive Officer,  
National Lottery Board,  
P.O. Box 30933 – 00100, Nairobi, Kenya  
Email: [procurement@nlb.go.ke](mailto:procurement@nlb.go.ke)
  
- 2) RFP Number:  
NLB/RFP/01/2025-2026
  
- 3) Name of Assignment:  
**PROVISION OF TRANSACTION ADVISORY SERVICES FOR  
THE PROCUREMENT OF A NATIONAL LOTTERY OPERATOR**

## SECTION 1: LETTER OF REQUEST FOR PROPOSAL

**Date: 21<sup>st</sup> April, 2026**

**Reference No.: NLB/RFP/01/2025-2026**

Name of Assignment: TRANSACTION ADVISORY SERVICES FOR THE PROCUREMENT OF A NATIONAL LOTTERY OPERATOR

**TO: *[All Eligible and Qualified Consultants]***

Dear Messrs. \_\_\_\_\_

1. The National Lottery Board has set aside funds in its budget toward the cost of the subject consulting services.
2. The Procuring Entity now invites proposals to provide the following consulting services (here in after called "the services"): **Transaction Advisory Services for the Procurement of a National Lottery Operator** More details on the Services are provided in Section 5 Terms of Reference.
3. This Request for Proposals (RFP) is open to eligible and qualified consultants.
4. If a Consultant is a Joint Venture (JV), the full name of the JV shall be used and all members, starting with the name of the lead member. Where sub-consultants have been proposed, they shall be named. The maximum number of JV members shall be specified in the DS.
5. It is not permissible to transfer this RFP to any other firm.
6. A firm will be selected under [QCBS] method and in a format as described in this RFP, in accordance with the Public Procurement and Asset Disposal Act 2015, a copy of which is found at the following website: [www.ppra.go.ke](http://www.ppra.go.ke).
7. The: Section 1: Letter of Request for Proposals  
Section 2: Instructions to Consultants and Data Sheet  
Section 3: Technical Proposal Standard Forms  
Section 4: Financial Proposal Standard Forms  
Section 5: Terms of Reference  
Section 6: Standard Forms of Contract (**Lump-Sum**)
8. Please inform us within five days, in writing at the address below or by E-mail [procurement@nlb.go.ke](mailto:procurement@nlb.go.ke)
  - a) That you have received this Request for Proposals; and
  - b) Whether you intend to submit a proposal alone or intend to enhance your experience by requesting permission to associate with other firm(s) (if permissible under Section 2, Instructions to Consultants (ITC), Data Sheet 14.1.1).
9. Details on the proposal's submission date, time and address are provided in the ITC 17.7 and ITC 17.9 of the Data Sheet.

Yours sincerely,

Martin Talian, OGW, PhD  
Ag. Chief Executive Officer,  
National Lottery Board  
P.O BOX 30933-00100,  
Nairobi-Kenya.  
[procurement@nlb.go.ke](mailto:procurement@nlb.go.ke)

## ***SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET***

### ***A. GENERAL PROVISIONS***

#### ***1. Meanings/Definitions***

- a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- b) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- c) “Procuring Entity” means the entity that is carrying out the consultant selection process and signs the Contract for the Services with the selected Consultant.
- d) “Consultant” means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Procuring Entity under the Contract.
- e) “Contract” means a legally binding written agreement signed between the Procuring Entity and the Consultant and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- f) “Data Sheet” means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- g) “Day” means a calendar day unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- h) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant, or Joint Venture member(s).
- i) “Government” means the Government of the Republic of Kenya.
- j) “In writing” means communicated in written form such as by mail, e-mail, fax, including, if specified in the **Data Sheet**, distributed or received through the electronic- procurement system used by the Procuring Entity with proof of receipt.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the Consultant's proposal.
- m) “ITC” (this Section 2 of the RFP) means the Instructions to Consultants that provides the Consultants with all information needed to prepare their Proposals.
- n) “Letter of RFP” means the letter of invitation being sent by the Procuring Entity to the Consultants.

- o) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- p) “Proposal” means the Technical Proposal and the Financial Proposal of the Consultant.
- q) “Public Procurement Regulatory Authority (PPRA)” means the statutory authority of the Government of Kenya that mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- r) “RFP” means the Request for Proposals to be prepared by the Procuring Entity for the selection of Consultants.
- s) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- t) “Sub-consultant” means an entity to whom the Consultant intends to subcontract any part of the Services while the Consultant remains responsible to the Procuring Entity during the whole performance of the Contract.
- v) “Terms of Reference (TORs)” means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.

## **2. Introduction**

- 2.1 The Procuring Entity named in the **Data Sheet** intends to select a Consultant from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the **Data Sheet**.
- 2.2 The Consultant are invited to submit a Technical Proposal and a Financial Proposal, for consulting services required for the assignment named in the **Data Sheet**. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.
- 2.3 The Consultants should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the **Data Sheet**. Attending any such pre-proposal conference is optional and is at the Consultants' expense.
- 2.4 The Procuring Entity will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the Data Sheet.

## **3. Conflict of Interest**

- 3.1 The Consultant is required to provide professional, objective, and impartial advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.
- 3.2 The Consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its capacity to serve the best interest of the Procuring Entity. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract.

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

i) *Conflicting Activities*

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

ii) *Conflicting Assignments*

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

(iii) *Conflicting Relationships*

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

iv) *Others*

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

#### **4. *Unfair Competitive Advantage***

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

#### **5. *Corrupt and Fraudulent Practices***

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

## **5.2 Collusive practices**

- 5.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any Consultant found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Consultants shall be required to complete and sign the “Certificate of Independent Proposal Determination” annexed to the Proposal Form.
- 5.3 In further pursuance of this policy, Consultants shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

## **6. Eligibility**

- 6.1 In selection of Consultants, short-listing shall be composed of firms or individuals who belong to the same line of professional business and who are almost of the same capability.
- 6.2 Unless otherwise specified in the **Data Sheet**, the Procuring Entity permits Consultants including proposed experts, joint ventures and individual members from all countries and categories to offer consulting services. The maximum number of members so far JV shall be specified in the **Data Sheet**.
- 6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, 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](http://www.cak.go.ke)
- 6.4 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 6.5 It is the Consultant's responsibility to ensure that it's Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.
- 6.6 As an exception to the foregoing ITC 6.1 and 6.2 above:
- a) Sanctions-A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRa [www.ppra.go.ke](http://www.ppra.go.ke).

- b) Prohibitions-Firms and individuals of a country or goods in a country maybe ineligible if:
  - i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
  - ii) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or services from that country or any payments to any country, person, or entity in that country.
- c) Restrictions for Government-owned Enterprises-Government- owned enterprises or institutions in Kenya shall be eligible only if they can establish that they
  - i) Are legally and financially autonomous,
  - ii) Operate under commercial law, and
  - iii) That they are not dependent agencies of the Procuring Entity.
- d) Restrictions for public employees - Government officials and civil servants and employees of public institutions shall not be hired for consulting contracts.

6.7 Margin of Preference and Reservations-no margin of preference shall be allowed in the selection of consultants. Reservations may however be allowed to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the Data Sheets. A procuring entity shall ensure that the invitation to submit proposals specifically includes only businesses or firms belonging to one group.

## ***B. Preparation of Proposals***

### **7. General Considerations**

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

### ***8. Cost of Preparation of Proposal***

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

### ***9. Language***

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

### ***10. Documents Comprising the Proposal***

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

10.2 The Consultant shall declare in the Financial Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and

corruption including bribery, as well as against anti-competitive practices including bid rigging.

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

### **11. Only One Proposal**

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

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

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

### **12. Proposal Validity**

#### **a. Proposal Validity Period**

12.1 The **Data Sheet** indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.

12.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates, and the total price.

12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with ITC 6.

#### **b. Extension of Validity Period**

12.4 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

12.5 If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts, except as provided in ITC 12.7.

12.6 The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

**b. Substitution of Key Experts at Validity Extension**

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

12.8 If the Consultant fails to provide a substitute Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Procuring Entity, such Proposal will be rejected.

**c. Sub-Contracting**

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

**13. Clarification and Amendment of RFP**

13.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the **Data Sheet**. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all Consultants. Should the Procuring Entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below.

13.2 At any time before the proposal submission deadline, the Procuring Entity may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Consultants and will be binding on them. The Consultants shall acknowledge receipt of amendments in writing.

13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Consultants reasonable time to take an amendment into account in their Proposals.

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

**14. Preparation of Proposals Specific Considerations**

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

- (a) If a Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so with non-shortlisted Consultant(s), if permitted in the **Data Sheet**. In all such

cases a shortlisted Consultant must obtain the written approval of the Procuring Entity prior to the submission of the Proposal. A Consultant cannot associate with shortlisted Consultant(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-consultancy, the shortlisted/invited Consultant shall be a lead member. If shortlisted/invited Consultant associates with each other, any of them can be a lead member.

- (b) The Procuring Entity may indicate in the **Data Sheet** the estimated amount or Key Experts' time input (expressed in person-month), or the Procuring Entity's estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the Consultant's own estimates for the same. This clause shall not apply when using Fixed Budget selection method.
- (c) For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input shall not be disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the **Data Sheet**, and the Financial Proposal shall not exceed this budget.
- d) Key Experts shall not appear in more than one proposal unless so allowed in the **Data Sheet**. Invited firms must confirm and ensure their Key experts do not appear in proposal of other invited firms, otherwise proposals with Key experts appearing in other proposals will be rejected.

## **15. Technical Proposal Format and Content**

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

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

## **16. Financial Proposal**

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

### **a. Price Adjustment**

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

### **b. Taxes**

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

**c. Currency of Proposal**

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

**d. Currency of Payment**

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

**C. SUBMISSION, OPENING AND EVALUATION**

**17. Submission, Sealing, and Marking of Proposals**

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

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

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

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

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

**18. Sealing and Marking of Proposals**

18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to the Procuring Entity and a warning "DO NOT OPEN BEFORE THE TECHNICAL PROPOSAL SUBMISSION DATE". Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:

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

- i) in an envelope or package or container marked "ORIGINAL", all documents comprising the Technical Proposal, as described in ITC 10.1;
- ii) in an envelope or package or container marked "COPIES", all required copies of the Technical

Proposal;

- iii) in an envelope or package or container marked "ORIGINAL", all required copies of the Financial Proposal; and

18.3 The inner envelopes or packages or containers shall:

- i) Bear the name and address of the Procuring Entity.
- ii) Bear the name and address of the Firm; and
- iii) Bear the name and Reference number of the Assignment.

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

18.5 The Proposal or its modifications must be sent to the address indicated in the **Data Sheet** and received by the Procuring Entity no later than the deadline indicated in the **Data Sheet**, or any extension to this deadline. Any Proposal or its modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

## **19. Confidentiality/Canvassing**

19.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Procuring Entity on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

19.2 Any attempt by Consultants or any one on behalf of the Consultant to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.

19.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Consultant wishes to contact the Procuring Entity on any matter related to the selection process, it should do so only in writing.

## **20. Opening of Technical Proposals**

20.1 The Procuring Entity's opening committee shall conduct the opening of the Technical Proposals in the presence of the Consultants' authorized representatives who choose to attend (in person, or online if this option is offered in the **Data Sheet**). The opening date, time and the address are stated in the **Data Sheet**. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored by the Procuring Entity or with a reputable public auditor or independent authority until they are opened in accordance with ITC 23.

20.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the **Data Sheet**.

## **21. Proposals Evaluation**

21.1 Subject to provision of ITC 10.1, the evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after the Procuring Entity notifies all the Consultants in accordance with ITC 23.1.

21.2 The Consultant is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

## **22. Evaluation of Technical Proposals**

22.1 The eligibility and mandatory criteria to be used in preliminary examination of proposals are listed in the **Data Sheet**. Proposals that do not meet these requirements shall be disqualified and shall not be considered further in the technical evaluation of the proposals.

22.2 The Procuring Entity evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system specified in the **Data Sheet**. Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the **Data Sheet**.

## **23. Public Opening of Financial Proposals**

### **23.1 Unsuccessful Proposals**

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

### **23.2 Financial Proposals for QBS, CQS and Single Sourcing Selection**

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

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

### 23.3 Financial Proposals for QCBS, FBS, LCS

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

### 23.4 Opening of Financial Proposals

The opening date should allow the Consultants sufficient time to decide for attending the opening and shall be no less than five (5) Business Days from the date of notification of the results of the technical evaluation, described in ITC 23.1 to 23.3.

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

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

## 24. Correction of Errors

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

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

24.3 Lump-Sum Contracts. If a Lump-Sum contract form is included in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per

ITC 25 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

## **25. Taxes**

25.1 Subject to ITC 25.2, all taxes are deemed to be included in the Consultant's financial proposal as separate items, and, therefore, considered in the evaluation.

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

## **26. Conversion to Single Currency**

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

## **27. Abnormally Low Prices**

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

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

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

## **28. Abnormally High Prices**

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

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

- i) If the proposal price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the proposal depending on the Procuring Entity's

budget considerations.

- ii) If specifications, TOR, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, the Procuring Entity shall reject all proposals and may re-invite for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.

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

## **29. Combined Quality and Cost Evaluation**

### **a. Quality and Cost Based Selection (QCBS) Method**

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

### **b. Fixed Budget Selection (FBS) Method**

29.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1(c) of the Data Sheet shall be rejected. The Procuring Entity's evaluation committee will select the Consultant with the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP, notify and invite such Consultant to negotiate the Contract.

### **c. Least Cost Selection (LCS) Method**

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

### **d. Combined Technical and Evaluation Report**

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

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

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

- i) The name and address of the Consultant with whom the Procuring Entity successfully negotiated a contract;
- ii) the contract price of the successful Proposal;

- iii) a statement of the reasons why the recipient's Proposal was unsuccessful
- iv) the expiry date of the Standstill Period, and
- v) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

### **31. Standstill Period**

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

## **D. NEGOTIATIONS AND AWARD**

### **32. Negotiations**

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

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

#### **32.3 Availability of Key Experts**

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

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

#### **32.5 Technical negotiations**

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

#### **32.6 Financial negotiations**

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

32.7 If the selection method included cost as a factor in the evaluation (that is QCBS, FBS, LCS), the unit rates and the total price stated in the Financial Proposal for a Lump-Sum contract

shall not be negotiated.

- 32.8 Where QBS or CQS methods was used for a *Lump-sum Contract* as indicated in the RFP, the unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts or the professional practice. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QB Sand CQS; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant to open its financial proposal and negotiate the contract.
- 32.9 In the case of a *Time- Based contract*, negotiation of unit rates shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QBS and CQS; and (ii) clarifying remuneration rates 'structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations-Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant for negotiations.
- 32.10 Where SSS method was used as indicated in the RFP, both the unit rates and total price shall be negotiated. If the negotiations fail, the Procuring Entity shall terminate the Consultant selection process. In that event, the Procuring Entity shall review the consultancy requirements and market conditions prior to deciding to use an appropriate selection method to again procure the consulting services.

### **33. Conclusion of Negotiations**

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

### **34. Letter of Award**

- 34.1 Upon expiry of the Standstill Period, specified in ITC 31.1, after satisfactorily addressing any appeal that has been filed within the Standstill Period, and upon successful negotiations, the Procuring Entity shall send a Letter of Award to the successful Consultant. The letter shall confirm the Procuring Entity's award of Contract to the successful Consultant and requesting the Consultant to sign and return the draft negotiated Contract within Twenty-One (21) Days from the date of the Letter of Award.

### **35. Signing of Contract**

- 35.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITC 31.1 and upon satisfactorily

addressing any complaint that has been filed within the Standstill Period.

35.2 The Consultant is expected to commence the assignment on the date and at the location specified in the Data Sheet.

**36. Publication of Procurement Contract**

36.1 Within the period specified in the Data Sheet, the Procuring Entity shall publish the awarded Contract which shall contain, at a minimum, the following information: (a) name and address of the Procuring Entity; (b) name and reference number of the contract being awarded, (c) the selection method used; (d) names of the consultants that submitted proposals; (e) names of all Consultants whose Proposals were rejected or were not evaluated; (f) the name of the successful consultant, the final total contract price, the contract duration and a summary of its scope.

36.2 Consider carefully the information on Consultants to be published, particularly evaluation by the Procuring Entity, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:

36.3 The awarded Contract shall be published on the Procuring Entity's website with free access if available and in the official procurement tender portal.

**37. Procurement Related Complaint and Administrative Review**

37.1 The procedures for making Procurement-related Complaints shall be specified in the **Data Sheet**

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

## SECTION 2 (B). DATA SHEET

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>A. General Provisions</b>	
1(j)	<p>Electronic procurement system shall be used: <b>(a) NO</b></p> <p>The Electronic Procurement System: The Procuring Entity shall use the following electronic-procurement system to manage this Request for Proposal (RFP) process: <b>N/A</b></p> <p>The electronic-procurement system shall be used to manage the following part of the RFP process: <b>N/A</b></p>
2.1	<p>Name of the Procuring Entity: <b>The National Lottery Board</b></p> <p>The consultant selection method is: <b>Quality-Cost Based Selection (QCBS)</b></p>
2.2	<p>Financial Proposal to be submitted together with Technical Proposal in separate envelopes: <b>Yes</b></p> <p>The name of the assignment is: <b>TRANSACTION ADVISORY SERVICES FOR THE PROCUREMENT OF A NATIONAL LOTTERY OPERATOR</b></p>
2.3	<p>A pre-proposal conference will be held: <b>Yes</b></p> <p>Date of pre-proposal conference: <b>28<sup>th</sup> April, 2026</b></p> <p>Time: <b>1100 Hours</b></p> <p>Address: <b>Virtual</b></p> <p>Meeting link:</p> <p>NLB/RFP/01/2025-2026 Pre-Proposal Conference Meeting</p> <p>28 April 2026</p> <p>11:00 - 12:00 (EAT)</p> <p><a href="https://teams.live.com/joinmeeting/9338900773249?p=oGl8HNytPZAXbRWgMG">https://teams.live.com/joinmeeting/9338900773249?p=oGl8HNytPZAXbRWgMG</a></p> <p>Telephone:</p> <p>E-mail: <a href="mailto:procurement@nlb.go.ke">procurement@nlb.go.ke</a></p> <p>Title of contact person: <b>Procurement Expert</b></p>
2.4	<p>The Procuring Entity will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals: <b>Terms of Reference</b></p>
3.3 (iv)	<p>The Consultants shall not be hired under the circumstances in conflicting activities; Public officers or other civil servants in Kenya.</p>
4.1	<p>If “Unfair Competitive Advantage” applies to the selection, explain how it is mitigated, including listing the reports, information, documents, etc. and indicating the sources where these can be downloaded or obtained by the Consultants: <b>N/A</b></p>
6.2	<p>Maximum number of members in the Joint Venture (JV) shall be: <b>Two (2)</b></p>
6.6 (a)	<p>The list of debarred firms and individuals is available at the PPRA’s website <b>www.ppra.go.ke</b> or email <b>complaints@ppra.go.ke</b></p>

6.7	The business will be registered with <b>NOT APPLICABLE</b>
<b>Reference to ITC Clause</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
<b>B. Preparation of Proposals</b>	
10.1	<p>The Proposal shall comprise the following:</p> <p>1<sup>st</sup> Inner Envelope with the Technical Proposal:</p> <p>Power of Attorney to sign the Proposal  TECH-1: Technical Proposal Submission Form  TECH-2: Consultant’s Organization and Experience  TECH-3: Comments and Suggestions  TECH-4: Description of Approach, Methodology and Workplan  TECH-5: Work Schedule and Planning for Deliverables  TECH-6: Team Composition, Assignment, and Key Experts’ Input  TECH-7: Mandatory Documentary Evidence</p> <p>AND</p> <p>2<sup>nd</sup> Inner Envelope with the Financial Proposal:</p> <p>(1) FIN-1: Financial Proposal Submission Form  (2) FIN-2: Summary of Costs  (3) FIN-3: Breakdown of Remuneration  (4) FIN-4: Breakdown of Reimbursable Expenses</p>
11.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is permissible: <b>NO</b>
12.1	Proposals must remain valid for <b>180 days</b> after the proposal submission deadline.
13.1	<p>Clarifications may be requested no later than <b>Seven (7) days</b> prior to the submission deadline.</p> <p>The contact information for requesting clarifications is: E-mail: <a href="mailto:procurement@nlb.go.ke">procurement@nlb.go.ke</a></p>
14 (b) (do not use for Fixed Budget Method)	Estimated total cost of the assignment:
14 (c) and 26.2 [use for Fixed Budget method]	The total available budget for this Fixed-Budget assignment is: <i>[insert currency]</i> ( <i>choose one</i> : inclusive or exclusive of taxes). Proposals exceeding the total available budget will be rejected- <b>N/A</b>
14 (d)	Key Experts shall not appear in more than one proposal: <b>Yes</b>
16.1(b)	<p>The Financial Proposal will include (but not limited to) the following reimbursable expenses:</p> <ol style="list-style-type: none"> <li>1. a per diem allowance, including hotel, for experts for every day of absence from the home office for the purposes of the Services;</li> <li>2. cost of travel by the most appropriate means of transport and the most direct practicable route;</li> </ol>

	<p>3. cost of office accommodation, including overheads and back-stop support;</p> <p>4. communications <i>costs</i>;</p>
	<p>5. cost of purchase or rent or freight of any equipment required to be provided by the Consultants;</p> <p>6. cost of reports production (including printing) and delivering to the Procuring Entity;</p> <p>7. other allowances where applicable and provisional or fixed sums (if any)</p> <p>8. Any other charges, if applicable</p>
16.2	A price adjustment provision applies to remuneration rates: <b>No</b>
16.3	<p>The Procuring Entity has <b>NOT</b> obtained an exemption for the Consultant from payment of taxes in Kenya as per <i>the KRA website</i></p> <p>Information on the Consultant's tax obligations in the Procuring Entity's country can be found on the Kenya Revenue Authority website: <b>www.kra.go.ke</b></p>
16.4	The Financial Proposal shall be stated in the following currencies: Local currency or any foreign freely convertible currency
<b>C. Submission, Opening and Evaluation</b>	
17.1	The Consultant <b>SHALL NOT</b> have the option of submitting his Proposal electronically.
17.5	<p>The Consultant must submit:</p> <p>(a) Technical Proposal: One (1) Original and one (1) copy;</p> <p>(b) Financial Proposal: One (1) Original and one (1) copy;</p> <p>(c) One (1) electronic copy of the Proposal (Technical &amp; Financial) in PDF format on a flash disk. The Financial Proposal folder shall be password protected and shall remain inaccessible until the financial opening stage. <i>The password shall be submitted only upon written request after completion of the technical evaluation and at financial opening.</i></p> <p><b>Tender documents must be paginated/serialized and bound with a table of contents. All bidders are required to submit their documents paginated in a continuous ascending order from the first page to the last in this format; (i.e. 1, 2, 3... n where n is the last page). The numbering MUST be sequential, Sec.74.1(i) of the Public Procurement and Assets Disposal Act, 2015.</b></p>
18.5	<p>The Proposal must be submitted no later than:</p> <p>Date: <b>Wednesday, 6<sup>th</sup> May, 2026</b></p> <p>Time: <b>1100 Hours</b></p> <p>The Proposal Submission Address is;</p> <p><b>The Chief Executive Officer</b>  <b>National Lottery Board</b>  <b>P.O. BOX 30933-00100</b>  <b>Nairobi.</b>  <b>Attention: Procurement Expert</b>  <b>25th Floor at the UAP Old Mutual Building, Nairobi, Kenya</b></p>

20.1	An online option of the opening of the Technical Proposals is offered: , <b>NO</b> the access link will be shared with participating firms. <b>N/A</b>																												
20.2	<p>In addition, the following information will be read aloud at the opening of the Technical Proposals:</p> <p>(I) Name and the country of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members;</p> <p>(ii) the presence or absence of a duly sealed envelope with the Financial Proposal;</p> <p>(iii) any modifications to the Proposal submitted prior to proposal submission deadline;</p>																												
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	<table border="1"> <thead> <tr> <th data-bbox="400 600 483 678">S/No.</th> <th data-bbox="488 600 1214 678">Mandatory Requirements</th> <th data-bbox="1219 600 1449 678">Complied</th> </tr> </thead> <tbody> <tr> <td data-bbox="400 678 483 864">1.</td> <td data-bbox="488 678 1214 864">Provide a certified copy of Certificate of Incorporation or Certificate of Registration or equivalent for International Firms. For joint ventures the same shall be provided for each member.</td> <td data-bbox="1219 678 1449 864">Must Comply</td> </tr> <tr> <td data-bbox="400 864 483 1010">2.</td> <td data-bbox="488 864 1214 1010">Provide a certified copy of Current Tax Compliance Certificate or equivalent for International Firms. For joint ventures the same shall be provided for each member.</td> <td data-bbox="1219 864 1449 1010">Must Comply</td> </tr> <tr> <td data-bbox="400 1010 483 1234">3.</td> <td data-bbox="488 1010 1214 1234">Provide a certified copy of Certificate of Confirmation of Directors and Shareholding (CR 12) or equivalent for International Firms (Issued within the last 12 Months to Tender Opening Date). For joint ventures the same shall be provided for each member.</td> <td data-bbox="1219 1010 1449 1234">Must Comply</td> </tr> <tr> <td data-bbox="400 1234 483 1379">4.</td> <td data-bbox="488 1234 1214 1379">Provide Power of Attorney giving the name of the person who should be signing the bid, authorizing him to submit / execute the agreement as a bidding document</td> <td data-bbox="1219 1234 1449 1379">Must Comply</td> </tr> <tr> <td data-bbox="400 1379 483 1491">4.</td> <td data-bbox="488 1379 1214 1491">Attendance to the Pre – Bid Conference- proof of email sent to NLB, minutes of pre-bid meeting</td> <td data-bbox="1219 1379 1449 1491">Must Comply</td> </tr> <tr> <td data-bbox="400 1491 483 1637">5.</td> <td data-bbox="488 1491 1214 1637">Copy of a valid Business Permit Certificate of Registration or equivalent for International Firms. For joint ventures the same shall be provided for each member.</td> <td data-bbox="1219 1491 1449 1637">Must Comply</td> </tr> <tr> <td data-bbox="400 1637 483 1928">6.</td> <td data-bbox="488 1637 1214 1928"> <p>Provide evidence of regulatory authorisation or licensing in lottery or gaming operations, where applicable.</p> <p>Where such licensing is not required in the bidder’s jurisdiction, the bidder shall demonstrate relevant experience supporting licensed lottery or gaming operators or regulators.</p> </td> <td data-bbox="1219 1637 1449 1928">Must Comply</td> </tr> <tr> <td data-bbox="400 1928 483 2078">7.</td> <td data-bbox="488 1928 1214 2078">Where applicable, bidders shall provide evidence of regulatory authorisation or licensing in lottery or gaming operations. Where such licensing is not applicable, bidders</td> <td data-bbox="1219 1928 1449 2078">Must Comply</td> </tr> </tbody> </table>	S/No.	Mandatory Requirements	Complied	1.	Provide a certified copy of Certificate of Incorporation or Certificate of Registration or equivalent for International Firms. For joint ventures the same shall be provided for each member.	Must Comply	2.	Provide a certified copy of Current Tax Compliance Certificate or equivalent for International Firms. For joint ventures the same shall be provided for each member.	Must Comply	3.	Provide a certified copy of Certificate of Confirmation of Directors and Shareholding (CR 12) or equivalent for International Firms (Issued within the last 12 Months to Tender Opening Date). For joint ventures the same shall be provided for each member.	Must Comply	4.	Provide Power of Attorney giving the name of the person who should be signing the bid, authorizing him to submit / execute the agreement as a bidding document	Must Comply	4.	Attendance to the Pre – Bid Conference- proof of email sent to NLB, minutes of pre-bid meeting	Must Comply	5.	Copy of a valid Business Permit Certificate of Registration or equivalent for International Firms. For joint ventures the same shall be provided for each member.	Must Comply	6.	<p>Provide evidence of regulatory authorisation or licensing in lottery or gaming operations, where applicable.</p> <p>Where such licensing is not required in the bidder’s jurisdiction, the bidder shall demonstrate relevant experience supporting licensed lottery or gaming operators or regulators.</p>	Must Comply	7.	Where applicable, bidders shall provide evidence of regulatory authorisation or licensing in lottery or gaming operations. Where such licensing is not applicable, bidders	Must Comply	
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8.	<p>Provide Original Tender Security of Kenya Shillings Two Million Only (Kshs. 2 million) from a reputable Bank in Kenya valid for 28 days beyond the Tender Validity period ((in case of international firms the bid security shall be confirmed by a correspondent local bank). (To be attached in the Technical Proposal). The Tender validity period shall be 180 days from the tender closing date.</p> <p>The tender security to be submitted by the Prime or Lead Tenderer in case of a joint venture.</p>	Must Comply
9.	Provide a Joint Venture Agreement/Teaming Agreement which clearly describes the responsibility of each party in the assignment in case of a joint venture.	Must Comply
10.	Submission of audited financial statements for the last three (3) years. Copies of Audited Accounts for the last three (3) consecutive years.	Must Comply
11.	Provide duly filled, signed and stamped Confidential Business Questionnaire. For joint ventures the same shall be provided for each member in case of a joint venture.	Must Comply
12.	Provide a duly filled, signed and stamped Self-Declaration Form that the Tenderer is Not Debarred from doing business with the Government of Kenya or any international organization or has not been declared ineligible through a decision of the UN Security Council taken under chapter VII of the charter of the United Nations. For joint ventures the same shall be provided for each member.	Must Comply
13.	Provide duly filled, signed and Stamped Self Declaration form that the Tenderer will not engage in any Corrupt or Fraudulent Practice. For joint ventures the same shall be provided for each member.	Must Comply
14.	Duly filled, signed, and stamped Technical Proposal Submission Form.	Must Comply
15.	Duly filled, signed, and stamped Commitment to the Code of Ethics Form (in the prescribed format).	Must Comply
16.	Duly filled, signed, and stamped Certificate of Independent Proposal Determination Form (in the prescribed format).	Must Comply
17.	Duly filled, signed, and stamped Litigation History form in the tender Document.	Must Comply
18.	Price schedule form duly filled, signed and stamped and submitted in a sealed separate envelope as financial proposal.	Must Comply

19.	Duly filled, signed, and stamped Form of Tender, with an acceptable tender validity period of 180 days, to be submitted together with the financial proposal in a separate envelope.	Must Comply
20.	The bid document “Original” and “Copies” must be chronologically serialized in accordance with Section 74 of the Act.	Must Comply
21.	Submitted the required number of copies required in the tender i.e. One (1) original, one (1) Copy and One (1) electronic copy of the Proposal (Technical & Financial) in PDF format on a flash disk. The Financial Proposal folder shall be password protected and shall remain inaccessible until the financial opening stage. The password shall be submitted only upon written request after completion of the technical evaluation and at financial opening.	Must Comply

**NOTE: All copies provided should be certified by a Commissioner of Oaths or Notary Public**

**Pursuant to Section 80 of Public Procurement and Assets Disposal Act, 2015 any tender not meeting the mandatory and other eligibility criteria will not proceed to Technical Evaluation Stage.**

Failure to submit any item under this section shall lead to automatic disqualification.

Only responsive submissions shall proceed to Technical Evaluation.

**TECHNICAL EVALUATION**

The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals:

<b>No.</b>	<b>Criteria</b>	<b>Max Points</b>
1	<p><b>Core Business and Years in Operation (2 Points):</b> The firm shall be duly registered/incorporated and demonstrate relevant experience in transaction advisory services, including public-private partnerships (PPPs), concessions, or procurement of operators in regulated sectors such as lottery, gaming, financial services, infrastructure, or similarly complex environments.</p> <p>Scoring Criteria:</p> <ul style="list-style-type: none"> <li>● 2 Points: Submission of a valid certificate of incorporation/registration demonstrating at least fifteen (15) years of operation.</li> <li>● 0 Points: Certificate of incorporation/registration submitted but demonstrating less than fifteen (15) years of operation, or failure to submit.</li> </ul> <p>Additional Requirement (Mandatory – Not Scored): The firm shall provide a valid licence, authorisation, or certification issued by a competent regulatory authority to operate, manage, or support lottery or regulated gaming operations in any jurisdiction, where such licensing is required.</p>	2 points
2.	<p><b>Evidence of Similar Assignments (4 Points):</b> The firm shall demonstrate that it has successfully executed and completed at least one (1) assignment of similar nature, scope, and complexity within the last ten (10) years, specifically involving the procurement and successful onboarding of a National Lottery Operator under a concession structure, within a comparable operating environment. Details of each assignment shall be provided, including client name and address, scope of services, contract value, contact persons, and implementation period.</p> <p>Scoring Criteria:</p> <p>i. Evidence of Engagement (2 Marks): Submission of at least one (1) LSO/LPO, award letter, or signed contract document demonstrating engagement in a qualifying assignment – 2 Marks Failure to provide – 0 Marks.</p> <p>ii. Evidence of Completion and Performance (2 Marks): Submission of reference or completion letters from at least three (3) clients and/or regulators, or verifiable documentation/links</p>	4 points

	evidencing successful delivery of similar assignments – 2 Marks Partial or no submission – 0 Marks.	
3.	<p><b>Technical and Managerial Capability (4 Points):</b> The firm shall demonstrate that it possesses the requisite technical and managerial capacity to undertake the assignment, including appropriate tools, systems, methodologies, and organisational structures.</p> <p>Scoring Criteria:</p> <p>i. Company Profile (2 Marks): Submission of a comprehensive company profile detailing organisational structure, core competencies, and relevant experience – 2 Marks Failure to provide – 0 Marks.</p> <p>ii. Technical Expertise (2 Marks): Submission of CVs of proposed key technical personnel demonstrating relevant qualifications and experience aligned to the assignment – 2 Marks Failure to provide or inadequate evidence – 0 Marks.</p>	4 points

## 2. Team and Key Experts — 38 Points

### Key Evaluation Factors

The transaction advisor shall provide well-qualified and experienced professionals as required and appropriate for completion of the assignment.

**Table 2: Expertise & Qualifications Table**

S/NO.	Position	Evaluation Criteria	Score Allocation
1.	Team Leader / Lead Transaction Advisor	Master’s degree in finance, Economics, Law, or related field. Registered with relevant professional body (CFA, CISI, ICPAK, Law Society of Kenya, or equivalent) (1 Mark)	8 Marks
		Minimum 15 years’ experience in transaction advisory, PPPs, or concessions (3 Marks)	

		Demonstrated experience leading at least one comparable transaction (preferably lottery, gaming, or regulated sector) (2 Marks)	
		Experience in public sector or government-led transactions. (2 Marks)	
2.	Lottery Operations Specialist	Bachelor's degree in business management or a related field (1 Mark)	5 Marks
		Minimum 10 years' experience in lottery or regulated gaming operations, including system design and implementation lottery or regulated gaming operations.  Experience in the public sector or regulated environments. (2 marks)	
		8 years' experience in lottery design, draw systems, and distribution models (retail and digital) (1 mark)	
		5 years' experience in operational performance and integrity frameworks (1 mark)	
3.	Financial Modelling & Risk Expert	Bachelor's & master's degree in finance, Economics, or related  Registered with relevant professional bodies. (1 Mark)	5 Marks
		Minimum 12 years' experience in financial modelling and PPP/concession transactions  Experience in public sector or regulated environments. (2 Marks)	
		Experience in Value-for-Money and fiscal structuring (1 Mark)	
		Experience in revenue modelling and risk analysis (1 Mark)	

4.	Technical Systems & Cybersecurity Expert	Bachelor's degree in ICT/Computer Science or related field and relevant professional certifications (e.g. CISSP, CISM, or equivalent) (1Mark)	5 Marks
		Minimum 12 years' experience in complex ICT systems, architecture and platform integration (2 Marks)	
		10 year's experience in cybersecurity and data governance (1 Mark)	
		8 year's experience in DR/BCP and system resilience (1 Mark)	
5.	Legal Expert	Bachelor and Master of Law (LLB), Admission to the Bar. Registered with relevant professional body (Law Society of Kenya, or its equivalent) (1 Mark)	5 Marks
		Minimum 12 years' experience in complex commercial transactions and PPP/concession advisory, drafting launch service contracts.  Experience in public sector or regulated environments  (2 Marks)	
		Experience in assisting clients acquire launch and entry licenses. (1 Mark)	
		Experience in project-finance transactions. (1Mark)	
6.	Stakeholder Engagement & Communications Expert	Bachelor's degree in communications, Public Policy, Business, or related field  (1 Mark)	5 Marks

		<p>Minimum 10 years' experience in stakeholder engagement and large-scale project communications.</p> <p>Experience managing consultations in large or sensitive projects</p> <p>(1 Mark)</p>	
		<p>Experience in stakeholder engagement and market sounding</p> <p>(1 Mark)</p>	
		<p>Experience in public sector or regulated environments (1 Mark)</p>	
7.	Procurement Expert	<p>Bachelor's and Master's degree in Procurement, Business, or related field (2 Marks)</p>	5 Marks
		<p>Minimum 12 years' experience in public procurement, with demonstrated experience in complex or concession-based procurements.</p> <p>Experience in public sector or regulated environments</p> <p>(2 Marks)</p>	
		<p>Professional certification (e.g. CIPS, KISM or equivalent) (1 Mark)</p>	
	<b>Total: 38 Points</b>		

**Evaluator Scoring Notes**

- CVs must be signed and dated by the proposed experts.
- The bidder shall provide certified copies of academic and professional certificates for each proposed expert.
- Availability declarations must be submitted for all key experts.
- Substitution of key experts' post-submission shall require prior approval by the NLB.
- Higher scores shall be awarded for direct experience in lottery, gaming, or concession-based transactions in regulated markets.

### 3. Methodology and Work Plan — 20 Points

The Transaction Advisor shall demonstrate a clear, structured, and practical approach to delivering the assignment, including:

- **Understanding of the Assignment Scope (6 Points):**  
Demonstrates a clear understanding of the objectives, scope, complexity, and key success factors of the National Lottery Operator procurement.
- **Structured Procurement and Transaction Approach (6 Points):**  
Provides a well-defined, logical, and defensible approach to managing the end-to-end procurement process, including strategy, evaluation, negotiation, and contract finalisation.
- **Deliverables Planning and Management (5 Points):**  
Presents a clear work plan with realistic timelines, sequencing of deliverables, and alignment with the proposed transaction roadmap.
- **Risk Identification and Mitigation Framework (3 Points):**  
Demonstrates a robust approach to identifying and mitigating key legal, financial, operational, procurement, and reputational risks associated with the transaction.

### 4. Financial Capability and Transfer of Knowledge — 32 Points

#### (a) Financial Capability — 12 Points

The Tenderer shall demonstrate financial capacity to undertake the assignment:

#### 1. Audited Financial Statements 5 points:

Submission of audited financial statements for the last three (3) consecutive years to demonstrate financial soundness and sustainability.

#### 2. Profitability (2 Points):

Return on Assets (ROA) = (Net Profit / Total Assets) × 100

- ROA ≥ 10% → 2 Points
- ROA < 10% → 0 Points

*(For Joint Ventures, a simple average shall apply.)*

#### 3. Turnover (3 Points):

Minimum average annual turnover over the last three (3) years:

- ≥ 2 times the tender price → 3 Points
- ≥ 1 time the tender price → 1 Point
- < 1 time the tender price → 0 Points

#### 4. Liquidity (2 Points):

Liquidity Ratio = Current Assets / Current Liabilities

- ≥ 1.0 → 2 Points
- 0.75 – 0.99 → 1 Point

	<ul style="list-style-type: none"> <li>● &lt; 0.75 → 0 Points</li> </ul> <p><b>(b) Transfer of Knowledge and Local Participation — 20 Points</b></p> <ul style="list-style-type: none"> <li>● <b>Participation by Kenyan Key Experts (10 Points):</b> Demonstrated inclusion and meaningful participation of Kenyan experts, based on proportion of time input relative to total expert input.</li> <li>● <b>Training Approach and Methodology (5 Points):</b> Clarity, structure, and practicality of the proposed capacity-building and knowledge transfer approach.</li> <li>● <b>Capacity Building of NLB Staff (5 Points):</b> Demonstrated approach to on-the-job and workshop-based training, including development of tools, manuals, and long-term institutional capacity.</li> </ul> <p><b>NOTE:</b></p> <p>Each responsive proposal will be given a technical score (TS). 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 evaluation indicated in the Appendix “ITC”.</p> <p><b>The minimum aggregate/average pass mark for the scored criterion above is: 70 points out of 100 points.</b></p>
23.4	An online option of the opening of the Financial Proposals is offered: <b>No</b> , the access link will be shared with participating firms in advance. <b>N/A</b>
25.2	<p>For evaluation purposes, financial proposals shall be assessed based on bid amounts exclusive of taxes.</p> <p>The Procuring Entity will include separate items of:</p> <p>(a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract’s invoices; and</p>
	<p>(b) all additional local indirect tax on the remuneration of services rendered by experts.</p> <p>Therefore, bidders must indicate/itemize in their financial forms separate items of all local identifiable and applicable taxes including Withholding Taxes (WHT) and VAT to be levied.</p> <p>If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized using the itemized list and included in the Contract amount as a separate line, also indicating which taxes shall be paid by the Consultant and which taxes are withheld and paid by the Procuring Entity on behalf of the Consultant.</p>

26.1	<p>The single currency for the conversion of all prices expressed in various currencies into a single one is <b>Kenya Shillings</b></p> <p>The official source of the selling exchange rate is: <b>Central Bank of Kenya</b></p> <p>The date of the exchange rate is <b>Deadline for submission of proposals</b></p>
29.1 (QCBS only)	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:</p> <p><math>Sf = 100 \times Fm / F</math>, in which “Sf” is the financial score, “Fm” is the lowest price, and “F” the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are:</p> <p>T = 0.80, and P = 0.20</p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: <math>S = St \times T\% + Sf \times P\%</math>.</p>
31	<p>The Standstill Period shall be: <b>14 days</b></p> <p>The procedures for making a procurement related complaint are detailed in the Public Procurement and Asset Disposal Act and Regulations. If a Consultant wishes to make a procurement related complaint or appeal, the Consultant shall submit its complaint to the Public Procurement Administrative Review Board.</p>
<b>D. Negotiations and Award</b>	
32.1	<p>Expected date and address for contract negotiations:</p> <p>Date: <b>To be communicated with the recommended firm</b></p> <p>Address: <b>To be communicated with the recommended firm</b></p>
35.2	<p>Expected date for the commencement of the Services:</p> <p>Date: <b>To be advised upon contract signing with the recommended firm.</b></p>
36.1	<p>The publication of the contract award information following the completion of the contract negotiations and contract signing will be done as following:</p> <p>The publication will be done within <b>30 days</b> after the contract signing</p>

37.1	<p>The procedures for making a Procurement-related Complaints are detailed in the “Regulations” available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a>. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>For the attention: The Secretary</p> <p>Title/position: <i>The Board Secretary</i></p> <p>Procuring Entity: <i>Public Procurement Administrative Review Board</i></p> <p>Email address: <a href="mailto:info@ppra.go.ke">info@ppra.go.ke</a></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ul style="list-style-type: none"><li>(i) the terms of the Tender Documents; and</li><li>(ii) the Procuring Entity’s decision to award the contract.</li></ul>
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### SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

#### a. FORMTECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

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

Dear Sirs:

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

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

OR

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

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity or may be sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- c) We have no conflict of interest in accordance with ITC 3.
- d) We meet the eligibility requirements as stated in ITC 6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITC5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.
- f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being wound up.
- g) The Consultant shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid- rigging.
- h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the "Certificate of Independent Proposal Determination" attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public

Procurement and Asset Disposal Activities in Kenya, copy available from **PPRA** during the procurement process and the execution of any resulting contract.

- (l) We, along with any of our sub-consultants are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA.
- (e) Except as stated in the ITC12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause12 andITCClause29.3 and 29.4 may lead to the termination of Contract negotiations.
- (j) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- (k) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.

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

We remain,

Yours

sincerely,

Authorized Signature *{In full and initials}*:  
 Name and Title of Signatory:  
 Name of Consultant *(company's name or JV's name)*:  
 Contact information *(phone and e-mail)*:  
 Stamp.....

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

**b. CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION**

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to the \_\_\_\_\_  
\_\_\_\_\_ [Name of Procuring Entity]

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

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

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

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

*(Appendix shall not be modified)*

**Purpose**

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

**Requirements**

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

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

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

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

- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
    - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
    - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly  
Or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
    - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
    - iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
    - v) "obstructive practice" is:
      - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory 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
      - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
  - b) Defines more specifically, in accordance with the 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 or award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
  - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate 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 inspect<sup>2</sup> 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.

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<sup>1</sup>For 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.

<sup>2</sup> 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 there of as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

**3. FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE**

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

**A - Consultant's Organization**

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

**B - Consultant's Experience**

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

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

### 3. FORMTECH-3: COMMENTS AND SUGGESTIONS

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

#### A - On the Terms of Reference

*{Improvements to the Terms of Reference, if any}*

#### B - On Counterpart Staff and Facilities

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

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

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

*{The structure of your Technical Proposal:*

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

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

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

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

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

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

*[Name, title and signature of authorized agent of Consultant and Date]*

FORMTECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS

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

1. For Key Experts, the input should be indicated individually for the same positions as required under the ITC Data Sheet 21.2
2. Months are counted from the start of the assignment/mobilization. One (1) month equals twenty-two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.
3. "Home" means work in the office in the expert's country of residence. "Field" work means work carried out in Kenya, or outside the normal residence of the Expert in Kenya or any other country outside the expert's country of residence.

 Full time input
  Part time input

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

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

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

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

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

Membership in Professional Associations and Publications: \_\_\_\_\_

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

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Adequacy for the Assignment:

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

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

phone ..... )



## 8. FORMTECH-7: MANDATORY SUPPORT DOCUMENTS

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

- a) Certificate of Incorporation/Certificate of Registration

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

- b) Tax Compliance Certificate

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

- c) Practice License or Certificate for the Firm

*{If required, Consultant to insert a copy of the firm's practice license or registration certificate issued by the professional body specified under Data Sheet ITC 21.1} -Not Applicable*

- d) Similar Consulting Assignments Experience

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

- e) Academic Certificates

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

- f) Professional Certificates

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

- g) Professional Membership of Key Experts

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

- h) Certificate of Independent Proposal Determination

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

**FORM TECH - 8: SELF-DECLARATION FORMS**

**FORM SD1**

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

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

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

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder Official Stamp

9. FORM SD2

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

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

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

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

Bidder Official Stamp

**10. DECLARATION AND COMMITMENT TO THE CODE OF ETHICS**

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

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

Telephone..... E-mail ..... Name of the

Firm/Company.....

Date.....

*(Company Seal/ Rubber Stamp where applicable)*

Witness

Name .....

Sign.....

Date.....

## 11. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

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

#### a) Tenderer's details

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

#### General and Specific Details

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

Name in full \_\_\_\_\_ Age \_\_\_\_\_

Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_

Citizenship \_\_\_\_\_

b) **Partnership**, provide the following details

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

i) Private or public Company \_\_\_\_\_

ii) State the nominal and issued capital of the Company: -

Nominal Kenya Shillings (Equivalent) \_\_\_\_\_

Issued Kenya Shillings (Equivalent) \_\_\_\_\_

iii) Give details of Directors as follows.

	<b>Names of Director</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

d) **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.

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

e) **Conflict of interest disclosure**

	<b>Type of Conflict</b>	<b>Disclosure YES OR NO</b>	<b>If YES provide details of the relationship with Tenderer</b>
1	Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of		

	<b>Type of Conflict</b>	<b>Disclosure YES OR NO</b>	<b>If YES provide details of the relationship with Tenderer</b>
	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

Bidder Official Stamp

**FORM TECH - 9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}**

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

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

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

To .....[insert complete name of Purchaser]

I/We, the undersigned, declare that:

1. I / We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I /We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser or the period of time of **180 days** starting on proposal submission deadline, if we are in breach of our obligation (s)under the bid conditions, because we-(a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity,(i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I / We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer (s), upon the earlier of:
  - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
  - b) Thirty days after the expiration of our Tender.
4. I/We understand that if I am /we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:

.....

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

Name: .....

Duly authorized to sign the bid for and on behalf of ..... [insert complete

name of Tenderer] Dated on ..... day of ..... [Insert date of

signing]

Seal or stamp

## **SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS**

*{Notes to Consultant shown in brackets {...} provide guidance to the Consultant to prepare the Financial Proposals; they should not appear on the Financial Proposals to be submitted.}*

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided in Section 2.

FIN-1 Financial Proposal Submission Form FIN-2 Summary of Costs

FIN-3 Breakdown of Remuneration FIN-4 Reimbursable expenses

**FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM**

..... {Location, Date}

To..... [Name and address of Procuring Entity]

Dear Sirs:

We, the undersigned, offer to provide the consulting services for ..... [Insert title of assignment] in accordance with your Request for Proposal dated..... [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of ..... {Indicate the corresponding to the amount currency} {Insert amounts in words and figures}, including of all taxes in accordance with ITC24.2 in the Data Sheet. The estimated amount of local taxes is ..... {Insert currency} {Insert amount in words and figures}. {Please note that all amounts shall be the same as in Form FIN-2}.

Our Financial Proposal shall be valid and remain binding upon us, subject to the modifications resulting from Contract negotiations, for the period of time specified in the ITC12.1 Datasheet.

We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.

Commissions and gratuities paid or to be paid by us to an agent or any third party relating to preparation or submission of this Proposal and Contract execution, paid if we are awarded the Contract, are listed below:

Name and Address, Amount and Purpose of Commission of Agents, Currency or Gratuity

{If no payments are made or promised, add the following statement: "No commissions or gratuities have been or are to be paid by us to agents or any third party relating to this Proposal and Contract execution."}

We understand you are not bound to accept any Proposal you receive. We remain,  
Yours sincerely,

Signature..... (of Consultant's authorized representative) {In full and initials}: Full name: ..... {insert full name of authorized representative} Title: ..... {insert title/ position of authorized representative}  
Name of Consultant..... (company's name or JV's name): Capacity ..... {insert the person's capacity to sign for the Consultant} Physical Address..... {insert the authorized representative's address}  
Phone ..... {insert the authorized representative's phone and fax number, if applicable}  
Email: ..... {insert the authorized representative's email address}  
Bidder Official Stamp.....

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

**12. FORM FIN-2: SUMMARY OF COSTS**

Item	Cost			
	{Consultant must state the proposed Costs in accordance with ITC 16.4 of the Data Sheet; delete columns which are not used}			
	{Insert Foreign Currency # 1}	{Insert Foreign Currency# 2, if used}	{Insert Foreign Currency# 3, if used}	{Insert Local Currency, if used and/or required (16.4
Cost of the Financial Proposal				
Including:				
(1) Remuneration				
(2) Reimbursables				
<b>Subtotal exclusive of taxes [Remuneration+ Reimbursables]</b>				
Taxes:				
{insert type of tax: e.g., VAT or sales tax}				
{e.g., withholding tax on experts' remuneration}				
{insert type of tax}				
Total Taxes				
<b>Total Cost of the Financial Proposal: {Should match the amount in Form FIN-1}</b>				

**FORM FIN-3A: BREAKDOWN OF REMUNERATION**

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for the calculation of the Contract's ceiling amount; to calculate applicable taxes at contract negotiations; and, if needed, to establish payments to the Consultant for possible additional services requested by the Procuring Entity. This Form shall not be used as a basis for payments under Lump-Sum contracts.

A. Remuneration _____								
No	Name	Position (as in TECH-6)	Person-month Remuneration Rate	Time Input in Person/Month (From TECH-6)	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency# 3- as in FIN-2}	{Local Currency- as in FIN-2}
Key Experts								
K-1			[Home]					
			[Field]					
K-2								
Non-Key								
N-1			[Home]					
N-2			[Field]					
Total Costs								

**13. FORM FIN 3B: CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES**

*{This Form FIN 3B shall be used for Time-Based contracts only. If Lumpsum Contract is used, the Procuring Entity shall delete the FORMFIN-3B, FORM FIN-3C and FORM FIN-3D from the RFP before issuance to Consultants}*

Consultant: .....

Country: .....

Assignment: .....

Date: .....

We hereby confirm that:

- a) The basic fees indicated in the attached table are taken from the firm's pay roll records and reflect the current rates of the Experts listed which have not been raised other than within the normal annual pay increase policy as applied to all the Consultant's Experts;
- b) attached are true copies of the latest pay slips of the Experts listed;
- c) the away-from-home office allowances indicated below are those that the Consultant has agreed to pay for this assignment to the Experts listed;
- d) the factors listed in the attached table for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and
- e) said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.

.....  
*[Name of Consultant]*

Signature of Authorized Representative

Name: .....

Title: .....

Date: .....

**FORM 3C: FORM FOR CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES**

*{This Form FIN 3C shall be used for Time-Based contracts only}*

(Expressed in {insert name of currency\*})

Personnel		1	2	3	4	5	6	7	8
Name	Position	Basic Remuneration Rate per Working Month/Day/Year	Social Charge % <sup>1</sup>	Overhead % <sup>1</sup>	Subtotal	Profit % <sup>2</sup>	Away from Home Office Allowance	Proposed Fixed Rate per Working Month/Day/Hour	Proposed Fixed Rate per Working Month/Day/Hour <sup>1</sup>
Home Office									
Procuring Entity's									

**{\* If more than one currency is used, use additional table(s), one for each currency}**

- 1. Expressed as percentage of 1**
- 2. Expressed as percentage of 4**

## FORM FIN 3D: BREAKDOWN OF REMUNERATION RATES [FOR TIME BASED CONTRACTS ONLY]

### 1. Review of Remuneration Rates

- 1.1 The remuneration rates are made up of salary or base fee, social costs, overheads, profit, and any premium or allowance that may be paid for assignments away from headquarters or a home office. Form FIN3 C can be used to provide a breakdown of rates.
- 1.2 The Form FIN 3C shall be completed and attached to the Financial Form-3. As agreed at the negotiations, breakdown sheets shall form part of the negotiated Contract and included in its Appendix D or C.
- 1.3 At the negotiations the firm shall be prepared to disclose its audited financial statements for the last three years, to substantiate its rates, and accept that its proposed rates and other financial matters are subject to scrutiny. The Procuring Entity is charged with the custody of government funds and is expected to exercise prudence in the expenditure of these funds.

### 2 Rate details are discussed below:

- (i) Salary is the gross regular cash salary or fee paid to the individual in the firm's home office. It shall not contain any premium for work away from headquarters or bonus, except where these are included by law or government regulations.
- (ii) Bonuses are normally paid out of profits. To avoid double counting, any bonuses shall not normally be included in the "Salary" and should be shown separately. Where the Consultant's accounting system is such that the percentages of social costs and overheads are based on total revenue, including bonuses, those percentages shall be adjusted downward accordingly. Where national policy requires that 13 months' pay be given for 12 months' work, the profit element need not be adjusted downward. Any discussions on bonuses shall be supported by audited documentation, which shall be treated as confidential.
- (iii) Social Charges are the costs of non-monetary benefits and may include, inter alia, social security (including pension, medical, and life insurance costs) and the cost of a paid sick and/or annual leave. In this regard, a paid leave during public holidays or an annual leave taken during an assignment if no Expert's replacement has been provided is not considered social charges.
- (iv) Cost of Leave The principles of calculating the cost of total days leave per annum as a percentage of basic salary is normally calculated as follows:

$$\text{Leave cost as percentage of salary} = \frac{\text{total days leave} \times 100}{[365 - w - ph - v - s]}$$

Where w = weekends, ph = public holidays, v = vacation, and s = sick leave.

Please note that leave can be considered as a social cost only if the Procuring Entity is not charged for the leave taken.

- (v) Overheads are the Consultant's business costs that are not directly related to the execution of the assignment and shall not be reimbursed as separate items under the Contract. Typical items are home office costs (non-billable time, time of senior Consultant's staff monitoring the project, rent of headquarters' office, support staff, research, staff training, marketing, etc.), the cost of Consultant's personnel not currently employed on revenue-earning projects, taxes on business activities, and business promotion costs. During negotiations, audited financial statements, certified as correct by an independent auditor and supporting the last three years overheads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. The Procuring

Entity does not accept an add-on margin for social charges, overhead expenses, etc. for Experts who are not permanent employees of the Consultant. In such case, the Consultant shall be entitled only to administrative costs and a fee on the monthly payments charged for sub-contracted Experts.

- (vi) *Profit* is normally based on the sum of the Salary, Social costs, and Overheads. If any bonuses paid on a regular basis are listed, a corresponding reduction shall be made in the profit amount. Profit shall not be allowed on travel or any other reimbursable expenses.
- (vii) *Away from Home Office Allowance or Premium or Subsistence Allowances* Some Consultants pay allowances to Experts working away from headquarters or outside of the home office. Such allowances are calculated as a percentage of salary (or a fee) and shall not draw over heads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately.

**FORM FIN-4 BREAKDOWN OF REIMBURSABLE EXPENSES**

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for calculation of the Contract ceiling amount, to calculate applicable taxes at contract negotiations and, if needed, to establish payments to the Consultant for possible additional services requested by the Procuring Entity. This form shall not be used as a basis for payments under Lump- Sum contracts. This form shall be filled for Time-Based Contracts to form the basis of contract negotiations.

B. Reimbursable Expenses_____								
N°	Type of Reimbursable Expenses	Unit	Unit Cost	Quantity	{Currency# 1- as in FIN-2}	{Currency# 2- as in FIN-2}	{Currency# 3- as in FIN-2}	{Local Currency- as in FIN-2}
	{e.g., Per diem allowances**}	{Day}						
	{e.g., International flights}	{Ticket}						
	{e.g., In/out airport transportation}	{Trip}						
	{e.g., Communication costs between Insert place and Insert place}							
	{e.g., reproduction of reports}							
	{e.g., Office rent}							
	.....							
	{Training of the Procuring Entity's personnel – if required in TOR}							
Total Costs								

**Legend:**

“Per diem allowance” is paid for each night the expert is required by the Contract to be away from his/her usual place of residence. Procuring Entity can set up a ceiling.

## SECTION 5. TERMS OF REFERENCE (TOR)

### PROVISION OF TRANSACTION ADVISORY SERVICES FOR THE PROCUREMENT OF A NATIONAL LOTTERY OPERATOR

#### KEY TERMS AND DEFINITIONS

For purposes of this Terms of Reference (TOR), the following terms shall have the meanings assigned to them below:

- **NLB (National Lottery Board)** – The statutory body established under the National Lottery Act, responsible for overseeing, regulating, and stewarding the establishment and operation of Kenya’s National Lottery.
- **National Lottery (NL)** – The State-sanctioned lottery operated as a national development instrument to generate revenue for Good Causes in Kenya.
- **NLO (National Lottery Operator)** – The entity to be procured by the NLB to design, finance, implement, and operate the National Lottery on behalf of the Board under a concession or operator agreement.
- **TA (Transaction Advisor)** – The firm or consortium of firms engaged by the NLB to provide multidisciplinary advisory services to structure, manage, and support the procurement of the National Lottery Operator.
- **GRA (Gambling Regulatory Authority)** – The statutory regulator responsible for licensing, supervision, and enforcement of compliance within the gambling sector in Kenya, including the National Lottery.
- **PPADA (Public Procurement and Asset Disposal Act)** – The legal framework governing public procurement and asset disposal processes in Kenya.
- **EOI (Expression of Interest)** – The initial stage of the procurement process used to identify and shortlist qualified bidders for participation in the Request for Proposals stage.
- **RFP (Request for Proposals)** – The formal procurement document issued to shortlisted bidders inviting detailed technical and financial proposals for selection of the National Lottery Operator.
- **RFI (Request for Information)** – A structured document used to gather market insights and feedback from potential bidders prior to formal procurement.
- **Operator Agreement** – The legally binding contract between the NLB and the selected National Lottery Operator outlining roles, responsibilities, performance obligations, and commercial terms.
- **DDR (Digital Data Room)** – A secure, access-controlled digital platform used to store, manage, and share procurement documents, facilitate bidder interactions, and maintain audit trails throughout the procurement process.
- **Good Causes** – Public benefit areas designated under the National Lottery framework, including but not limited to social development, sports, arts and culture, heritage, and other national priorities.

- **Commercial Close** – The stage at which all contractual terms between the NLB and the recommended bidder are agreed, negotiated, and executed.
- **Financial Close** – The stage at which all conditions precedent is satisfied, financing arrangements are confirmed, and the Operator Agreement becomes fully effective.
- **Value-for-Money (VfM)** – An assessment of the optimal combination of cost, risk, and quality to ensure maximum public value from the National Lottery concession.
- **Probity Framework** – A structured set of principles and procedures to ensure integrity, transparency, fairness, and accountability throughout the procurement process.
- **Project Implementation Team (PIT)** – The designated team within NLB responsible for supporting the Transaction Advisor and overseeing implementation of the assignment.
- **Contract Implementation Team (CIT)** – The team responsible for ongoing contract management and oversight of the National Lottery Operator post-award.
- **DR/BCP (Disaster Recovery and Business Continuity Planning)** – A framework of policies, systems, and procedures designed to ensure the continuity of critical National Lottery operations in the event of disruptions. This includes Disaster Recovery (DR), which focuses on the restoration of IT systems, data, and infrastructure within defined recovery time and recovery point objectives, and Business Continuity Planning (BCP), which ensures that essential business functions, including draw operations, ticket sales, and prize payments, can continue or be rapidly resumed during and after a disruption.

## 1. BACKGROUND

The National Lottery Board (NLB), established under the National Lottery Act, Cap 131A, is mandated to oversee, regulate, and steward the establishment and operation of Kenya’s National Lottery as a national development instrument.

The National Lottery is designed to serve as a structured, transparent, and sustainable mechanism for mobilising domestic resources to support Good Causes across key sectors including social development, sports, arts and culture, heritage, and other national priorities. As such, the National Lottery represents a critical component of Kenya’s broader fiscal and socio-economic development architecture, complementing traditional revenue sources while ensuring ring-fenced funding for public benefit.

To operationalise this mandate, the Board intends to procure a single National Lottery Operator through a competitive, transparent, and legally compliant public procurement process in accordance with all applicable sector laws and regulations in Kenya.

The acquisition of a National Lottery Operator is a complex, high-value concession involving:

- Multi-billion-shilling revenue flows and long-term fiscal implications
- Advanced digital and retail gaming infrastructure
- Stringent regulatory, integrity, and responsible gambling requirements
- High public scrutiny and reputational sensitivity
- Cross-cutting stakeholder interests spanning government, regulator, and the public.

Given the scale, complexity, and strategic importance of this transaction, the Board seeks to engage an independent, multidisciplinary Transaction Advisor with demonstrated global experience in national lottery procurement, concession structuring, and/or regulated gaming markets.

The Transaction Advisor will support the Board in structuring and executing a procurement process that not only ensures compliance and transparency, but also secures an operator capable of delivering:

- Sustainable revenue generation
- Optimal Good Causes returns
- Robust operational and technical capability
- High standards of integrity, security, and responsible play
- Long-term public trust and legitimacy

This assignment is therefore central to the successful launch and long-term credibility of Kenya's first National Lottery.

## **2. SITUATIONAL ANALYSIS**

Under the National Lottery Act, Cap 131A, the National Lottery Board (NLB) is legally empowered to either directly operate the National Lottery or appoint a National Lottery Operator (NLO) to run the lottery on its behalf under its oversight. Kenya, despite having several private lottery and gaming operators in the market, has never had a State-run National Lottery. The establishment of the National Lottery therefore, marks a significant policy and institutional shift, introducing a structured, government-led mechanism for mobilising resources for Good Causes.

Having assessed the scale, technical complexity, and specialised nature of modern lottery operations, the Board has elected to adopt a concession model and procure a single NLO to design, finance, implement, and operate the National Lottery. This approach enables the Board to leverage global expertise and private sector efficiency while retaining strategic oversight and public accountability.

This decision reflects the reality that a successful National Lottery today requires capabilities that extend beyond traditional public sector functions, including advanced gaming systems, nationwide retail and digital distribution networks, real-time data management, cybersecurity infrastructure, and specialised expertise in draw integrity and player protection. It also requires strong commercial capabilities to optimise revenues and ensure sustained contributions to Good Causes over the long term.

Institutionally, the National Lottery Board operates as the steward of the National Lottery, responsible for policy oversight, contract management, and safeguarding public interest, while the broader gambling sector, including the National Lottery, is regulated by the Gambling Regulatory Authority (GRA). This distinction ensures separation between operational stewardship and regulatory oversight, with the NLB accountable for delivery of the National Lottery mandate and the GRA responsible for licensing, compliance, and sector-wide regulation.

At the same time, the Board retains full responsibility for stewardship, regulatory alignment, and protection of public interest. This creates a dual imperative: securing a technically and commercially capable operator, while ensuring that the structure of the concession safeguards transparency, accountability, and long-term value for the State.

Given this context, the procurement of an NLO is not a standard acquisition but a complex, high-stakes transaction involving long-term contractual commitments, significant financial flows, and heightened public scrutiny. The Board currently does not possess the full spectrum of specialised transaction, financial, technical, and market-facing expertise required to structure and execute such a process to international standards.

The engagement of a Transaction Advisor is therefore critical. The Advisor will provide the multidisciplinary expertise needed to guide the Board through the design and execution of a robust, competitive procurement process, structure a bankable and commercially sound concession, and ensure that the selected operator is capable of delivering a secure, efficient, and high-performing National Lottery.

The Transaction Advisor will play a central role in positioning the National Lottery for credibility, sustainability, and meaningful impact in funding national development priorities, while delivering a commercially sound, operationally viable, and institutionally robust National Lottery model.

### **3. OBJECTIVE OF THE ASSIGNMENT**

The objective of this assignment is to provide Transaction Advisory services to the National Lottery Board to ensure a transparent, competitive, legally compliant, and commercially optimal procurement process that results in the successful selection and contracting of a National Lottery Operator aligned with national development priorities and international best practice.

The Transaction Advisor shall ensure that the procurement structure maximises long-term public value, fiscal returns, regulatory enforceability, and operational sustainability, while safeguarding national security, data sovereignty, and player protection interests.

The specific objectives of this assignment include:

1. Structure a credible and competitive procurement process that attracts qualified National Lottery operators while ensuring transparency, fairness, and full compliance with applicable legal and regulatory frameworks.
2. Structure a commercially optimal and bankable National Lottery model that maximises long-term revenue generation, Good Causes funding, and overall Value-for-Money for the State.
3. Establish a robust legal, regulatory, and contractual framework that ensures enforceability, clear risk allocation, and effective oversight of the National Lottery Operator.
4. Define a secure, resilient, and future-ready technical and operational architecture that upholds draw integrity, cybersecurity, data sovereignty, and system reliability.
5. Safeguard public interest and institutional integrity through strong responsible gambling provisions, transparent governance mechanisms, and alignment with national development priorities.

The Transaction Advisor shall be a firm or a consortium of firms collectively covering the full range of expertise required to deliver the assignment, including but not limited to:

- **Team Leader** – overall transaction leadership, coordination, and delivery accountability
- **Procurement Expert** – expertise in public procurement frameworks (including PPADA), tender design, evaluation methodologies, probity, and management of complex concession-based procurement processes.
- **Legal Expert**- expertise in public procurement law, concession and contract structuring, gambling and regulatory frameworks, AML/CFT and data protection compliance, and drafting/review of legally robust and enforceable transaction and operator agreements
- **Lottery Operations Specialist** – expertise in lottery design, operations, distribution models, and draw systems.

- **Financial Modelling & Risk Expert** – financial modelling, revenue optimisation, fiscal structuring, and Value-for-Money analysis
- **Technical Expert** – gaming systems, cybersecurity, data governance, and platform architecture
- **Stakeholder & Communications Expert** – stakeholder engagement, market interface, and public interest alignment

#### **4. SCOPE OF SERVICES**

The Transaction Advisor shall provide fully integrated, end-to-end services across legal, procurement, financial, commercial, technical, integrity, and stakeholder engagement workstreams to support the successful design, execution, and closure of the National Lottery Operator procurement process.

The services shall include, but not be limited to;

##### **4.1 Project Mobilisation and Inception**

- Support the preparation of an Inception Report, for review and approval by the National Lottery Board, outlining the proposed methodology, detailed work plan, timelines, reporting structures, and risk management framework.
- In collaboration with the National Lottery Board, undertake stakeholder mapping and participate in inception meetings with key stakeholders, contributing to the development of agreed engagement protocols.
- Support the development and operationalisation of a Transaction Probity Framework, subject to NLB review and approval, covering confidentiality controls, conflict of interest disclosures, bidder communication protocols, and audit trails.
- Work with the National Lottery Board to define and document a transaction governance structure, including approval hierarchies, escalation channels, and deliverable sign-off processes.
- In coordination with the National Lottery Board, design and operationalise a secure, access-controlled Digital Data Room (DDR) as the central platform for document management, including version control and monitored user activity.
- Establish and administer, under the oversight of the National Lottery Board, a bidder clarification and Question & Answer (Q&A) module within the DDR to ensure transparent, traceable, and equitable access to information.
- Support the development of a comprehensive procurement roadmap for the National Lottery Operator, for validation and approval by the National Lottery Board, covering all key stages including tender preparation, evaluation, due diligence, negotiations, contract finalisation, and initial implementation support.

##### **4.2 Legal, Regulatory and Compliance Services**

- Review and refine the National Lottery Operator (NLO) Terms of Reference (TORs) to ensure clarity, completeness, and alignment with the Board's mandate.

- Review and strengthen all procurement instruments, including the Operator Agreement, to ensure legal robustness and commercial coherence.
- Ensure full compliance with applicable laws, as well as relevant policies and guidelines.
- Integrate responsible gambling obligations, Good Causes requirements, and reporting safeguards into all legal and contractual instruments.

#### **4.3 Procurement Strategy and Process Design**

- Review and optimise the NLO procurement strategy, in line with Kenyan laws, including methodology, timelines, evaluation approach, and risk management controls.
- Propose detailed evaluation methodologies, scoring frameworks, and evaluation procedures to ensure consistency, fairness, and auditability of the procurement process.
- Structure a procurement process that is transparent, competitive, and aligned with Kenyan law and international best practice for concession-based National Lottery transactions.
- The TA will compile all documentation required for NLB to obtain the necessary approvals to begin the procurement process.
- Development of the transaction documents, tender process organization, and support on transaction implementation through to Financial Close. This includes digital data room design and documentation; preparation of bid documentation, including bid advertising; implementation of the bid process and support for bidders' consultations; RFP evaluation support, including preparation of evaluation reports in the form and content sufficient to secure approval; assisting in the preparation of defence positions on any procurement-related litigation; supporting NLB to obtain necessary procurement and Committee approvals; supporting contract negotiations post-award with the Preferred Bidder; and supporting the phase between commercial and financial close.
- Coordinate the entire procurement process, including, together with NLB, identifying and managing the tasks of all parties required for successful procurement implementation.
- Embed public interest considerations, including Good Causes optimisation, fairness, and accountability mechanisms across the process.

#### **4.4 Accelerated Market Sounding**

- Conduct targeted market sounding to assess market appetite, bankability of the proposed transaction structure, capability, and readiness of potential operators.
- Prepare a concise Market Sounding Report outlining key risks, delivery models, commercial structures, and indicative concession approaches for Board consideration.
- Design and circulate structured Requests for Information (RFI) to selected stakeholders and synthesise findings into actionable recommendations.

#### **4.5 Business, Operating and Financial Modelling**

- Assess and recommend optimal operating and concession frameworks suited to the Kenyan context.

- Develop robust financial models covering revenue projections, cost structures, and lifecycle performance of the National Lottery.
- Model revenue share arrangements, minimum guarantees, and projected Good Causes contributions under various scenarios.
- Conduct sensitivity analysis and Value-for-Money assessments to support evidence-based decision-making.

#### **4.6 Technical and Systems Requirements**

The services shall include, but not be limited to;

- Define the end-to-end technical architecture for lottery operations, including digital and retail systems.
- Support the development of a bidder communication strategy, in collaboration with the National Lottery Board, including bidder conferences, dialogue sessions, and structured mechanisms for receiving and addressing bidder queries and feedback. This shall be facilitated through a secure Digital Data Room (DDR), hosted on the NLB website and proprietary to the NLB, with the Transaction Advisor supporting its day-to-day administration under NLB oversight, including defined access and control rights.
- Specify minimum standards for draw integrity, system certification, cybersecurity, and fraud prevention.
- Define Disaster Recovery (DR) and Business Continuity Planning (BCP) requirements to ensure operational resilience.
- Establish data governance frameworks, including data sovereignty, regulator access, reporting, and audit requirements.

#### **4.7 Evaluation Support and Due Diligence**

- Support the Board in conducting structured, transparent, and defensible technical and financial evaluations.
- Apply detailed evaluation methodologies and scoring frameworks to ensure consistency and fairness.
- Identify risks and provide advisory recommendations to support final selection decisions.
- In collaboration with the National Lottery Board, support the conduct of comprehensive due diligence on bidders, covering legal, financial, operational, technical, reputational, and integrity aspects, for review and determination by the Board.

#### **4.8 Negotiation and Contract Finalisation**

- Provide strategic and technical support during negotiations with preferred bidders.
- Manage the relationship with the second bidder, including managing bid bonds and ongoing discussions to prepare in case of withdrawal of the preferred bidder.

- Advise on commercial terms, risk allocation, and performance obligations within the Operator Agreement.
- Providing legal opinions as required.
- Define key performance indicators (KPIs), service levels, and compliance obligations for inclusion in the Operator Agreement.
- Finalise the Operator Agreement and all supporting schedules to ensure clarity, enforceability, and alignment with regulatory requirements.
- Support negotiations on revenue share, minimum revenue guarantees, and key contractual protections for the Board.
- The final terms of the NLO Agreement, as negotiated with the preferred bidder, shall be in accordance with the requirements of the Gambling Control Act, 2025. The Transaction Advisor shall support the preparation and compilation of the necessary documentation and submissions for the National Lottery Board to seek and obtain the requisite approvals and operating licence.
- Support preparation for Commercial Close, including finalisation of all contractual, legal, and approval requirements with recommended bidder.

#### **4.9 Implementation Oversight, Financial Close and Handover**

- Support the transition from Commercial Close to Financial Close, including verification of conditions precedent, funding arrangements, and contractual effectiveness requirements, for confirmation by the National Lottery Board.
- Prepare, for NLB review and approval, a Financial Close Report confirming satisfaction of all conditions precedent and readiness for contract effectiveness.
- In collaboration with the National Lottery Board, review the operator's mobilisation plans and assess readiness against contractual obligations.
- Support the transition from procurement to implementation, including the establishment of early-stage oversight and governance structures under NLB direction.
- Identify implementation risks and support the development of mitigation measures to ensure a smooth rollout.
- Support the design of a contract management framework, aligned with the Agreement and risk management structure, providing the National Lottery Board with a clear and practical guide for oversight and implementation of the NLO.
- Support the National Lottery Board in meeting its statutory disclosure obligations by compiling and organising NLO project and procurement information as required under applicable laws.
- Design and implement, in collaboration with the National Lottery Board, a structured knowledge transfer framework to build internal capacity for ongoing oversight. Outputs shall include function-specific manuals, guidelines, norms, and practices across key areas such as Governance, Lottery Operations, Technical Systems, and Financial Modelling.

- Support the handover of the Digital Data Room (DDR), including transfer of full administrative control, access credentials, system documentation, and a comprehensive close-out report, ensuring full ownership by the National Lottery Board.
- Compile, for submission to the National Lottery Board, a confidential case study documenting the procurement process, implementation experience, and key lessons learned up to the sale of the first ticket.

#### **4.10 Function-Based Learning (to run concurrently with Initiation and Procurement of NLO)**

- To ensure effective knowledge and skills transfer, the Transaction Advisor shall provide a combination of classroom-based and on-the-job capacity building to a cohort of at least ten (10) NLB public officials comprising the Project Implementation Team at critical stages of the project preparation and procurement process.
- Bidders shall be required to clearly articulate a structured and deliberate approach for transferring knowledge and skills to both the NLB and the Contract Implementation Team (CIT), ensuring sustained institutional capacity beyond the assignment.
- A detailed Training Programme shall be included in the TA's Technical Proposal, outlining workshop-based training aligned to key assignment deliverables, as well as practical contract management training for the Project Implementation Team. The Transaction Advisor shall bear all personnel and facilitation costs associated with the training, while the NLB shall be responsible for training venues and related logistical support for participating staff.

### **5. KEY DELIVERABLES**

The Consultant shall submit the following reports and outputs, including but not limited to:

#### **Phase 1: Inception and Mobilisation**

- Inception Report
- Detailed Procurement & Transaction Roadmap
- Digital Data Room (DDR) Established

#### **Phase 2: Pre-Procurement Design and Structuring**

- NLO Procurement Strategy
- Market Sounding Report
- Technical and Systems Requirements Specification Document
- Financial Model (Base Case and Sensitivity Scenarios)
- Value-for-Money and Commercial Structuring Report
- Lottery Risk Management Framework

#### **Phase 3: Procurement Documentation and Launch**

- Draft and Final Procurement Documents
- Regulatory Submission Pack for NLO Licensing (aligned with GRA requirements)

#### **Phase 4: Evaluation and Due Diligence**

The Transaction Advisor shall support the procurement committees and prepare the following reports for submission to and consideration by the appointed procurement committees:

- Draft Evaluation Report
- Final Evaluation and Recommendation Report
- Due Diligence Reports

#### **Phase 5: Negotiation and Contract Finalisation**

- Negotiation Report
- Draft and Final Operator Agreement

#### **Phase 6: Financial Close and Implementation Readiness**

- Financial Close Report (including confirmation of compliance with conditions precedent)
- Contract Management and Oversight Framework

#### **Phase 7: Implementation Support, Handover and Close-Out**

- Handover and Close-Out Report (including DDR handover and documentation)
- Capacity-building workshop reports and function-specific manuals
- Case Study Report (documenting process, lessons learnt, and key insights up to launch)

#### **Key Milestone**

- Sale of First Ticket (National Lottery Launch)

#### **Post-Launch Transition Support (Within Contract Period)**

Support to the National Lottery Board during the initial operational phase following launch, including:

- Monitoring operator performance against contractual obligations
- Advisory support on early-stage operational, technical, and compliance matters
- Support in stabilisation of systems, reporting, and governance structures
- Structured knowledge transfer and capacity building to NLB teams to ensure sustained oversight, including practical guidance, on-the-job support, and refinement of internal processes and tools.

## 6. REPORTING AND GOVERNANCE

The Transaction Advisor shall report to the NLB Accounting Officer and work in close collaboration with the National Lottery Board’s management and designated committees throughout the assignment. All activities and outputs shall be undertaken in consultation with the NLB, with the Board retaining oversight and decision-making authority.

Progress reports shall be submitted on a bi-monthly basis, highlighting key activities undertaken, milestones achieved, emerging issues, and proposed next steps for discussion and guidance.

All deliverables shall be subject to review and approval by the Accounting Officer, and where applicable, relevant NLB structures, prior to finalisation and issuance.

**Table 1: Reporting Requirements & Indicative Timelines (6-Month Delivery Window)**

The timelines below reflect the core procurement phase (first 6 months), followed by extended implementation support up to Month 15 as outlined in Section 8.

<b>Phase</b>	<b>Outputs / Reports</b>	<b>Timeline After Contract Start</b>	<b>Format</b>
<b>Phase 1: Inception and Mobilisation</b>	Inception Report	Week 2	2 hard copies + soft copy
	Detailed Procurement & Transaction Roadmap	Week 2	Soft copy
	Digital Data Room (DDR) Established	Week 2–3	Soft copy + system demonstration
<b>Phase 2: Pre-Procurement Design and Structuring</b>	NLO Procurement Strategy	Week 3	3 hard copies + soft copy
	Market Sounding Report	Week 4	3 hard copies + soft copy
	Technical & Systems Requirements Specification Document	Week 5	3 hard copies + soft copy
	Financial Model (Base Case + Sensitivity Scenarios)	Week 5	Soft copy (editable) + summary report
	Value-for-Money & Commercial Structuring Report	Week 6	3 hard copies + soft copy
	Lottery Risk	Week 6	3 hard copies + soft

	Management Framework		copy
<b>Phase 3: Procurement Documentation and Launch</b>	Draft & Final Procurement Documents (incl. RFP & Operator Agreement)	Week 6–8	3 hard copies + soft copy
	Regulatory Submission Pack (GRA Alignment)	Week 8	Soft copy
<b>Phase 4: Evaluation and Due Diligence (Core Procurement Completion)</b>	Draft Evaluation Report	Week 10	3 hard copies + soft copy
	Final Evaluation & Recommendation Report	Week 11	3 hard copies + soft copy
	Due Diligence Reports	Week 11	3 hard copies + soft copy
<b>Phase 5: Negotiation and Contract Finalisation</b>	Negotiation Report	Week 12	3 hard copies + soft copy
	Draft & Final Operator Agreement	Week 12	3 hard copies + soft copy
<b>Core Procurement Milestone</b>	Completion of NLO Procurement (Contract Award)	End of Month 3 (Week 12)	—
<b>Phase 6: Financial Close and Implementation Readiness</b>	Financial Close Report (incl. conditions precedent)	Month 5–6	3 hard copies + soft copy
	Contract Management & Oversight Framework	Month 5–6	3 hard copies + soft copy
<b>Phase 7: Implementation Support, Handover and Close-Out</b>	Capacity-building workshop reports & manuals (by function)	Ongoing (final by Month 9)	Soft copy + compiled manuals
	Handover & Close-Out Report (incl. DDR handover)	Month 9–10	3 hard copies + soft copy
	Case Study Report	Month 10–12	Soft copy
<b>Key Milestone</b>	Sale of First Ticket	Within Contract	Letter + soft copy

	(National Lottery Launch)	Period (Target: Month 9–12)	
<b>Post-Launch Transition Support</b>	Operational support, performance monitoring, stabilisation and knowledge transfer	Post-launch to Month 15	Reports + advisory notes

## 7. APPLICABLE LEGAL AND REGULATORY FRAMEWORK

The Transaction Advisor shall ensure compliance and alignment with all relevant legal, policy, and regulatory instruments including but not limited to:

- Constitution of Kenya (2010)
- Public Procurement and Asset Disposal Act (PPADA), CAP 412 C and its attendant Regulations.
- National Lottery Act, CAP 131 A
- Gambling Policy, 2023
- Gambling Control Act, No. 14, 2025
- Competition Act, CAP 504
- Public Finance Management Act, CAP 412 A
- ICT & Cybersecurity Guidelines (KE-CIRT, CAK)
- Data Protection Act, CAP 411 C
- Proceeds of Crime and Anti-Money Laundering Act, CAP 59 A
- International lottery standards including those issued by the World Lottery Association (WLA)

## 8. DURATION

The assignment shall run for a total duration of up to 15 months. The core transaction advisory services (procurement, evaluation, and contract award) shall be completed within the first 6 months, followed by implementation support, financial close, and post-award advisory services.

## 9. REQUIRED TEAM COMPOSITION

The Transaction Advisor shall provide a multidisciplinary team including:

- **Lead Transaction Advisor / Team Leader** – overall transaction leadership, coordination, and delivery accountability.
- **Procurement Expert** – public procurement frameworks, tender design, evaluation methodologies, and probity management

- **Legal Expert** – procurement law, concession structuring, regulatory compliance, and contract drafting.
- **Lottery Operations Specialist** – lottery design, operations, distribution, and draw systems.
- **Financial Modelling & Risk Expert** – financial structuring, revenue optimisation, risk modelling, and Value-for-Money analysis
- **Technical Systems & Cybersecurity Expert** – gaming systems, platform architecture, cybersecurity, and data governance
- **Stakeholder Engagement & Communications Expert** – stakeholder management, bidder interface, and public interest communication

**Table 2: Expertise & Qualifications**

<b>Position</b>	<b>Expertise</b>	<b>Minimum Qualification</b>
<b>Team Leader / Lead Transaction Advisor</b>	Transaction structuring, PPPs/concessions, complex procurement management, stakeholder coordination	Masters degree in Finance, Economics, Law, or related field. Registered with relevant professional body (CFA, CISI, ICPAK, Law Society of Kenya, or its equivalent in international jurisdictions) + minimum 15 years' international experience, including leading large-scale transaction advisory assignments
<b>Procurement Expert</b>	Public procurement frameworks, tender design, evaluation methodologies, probity management, concession procurement	Bachelor's and Master's degree in Procurement, Business, or related field. Professional certification (e.g. CIPS, KISM or equivalent). Minimum 12 years' experience in public procurement, with demonstrated experience in complex or concession-based procurements. Experience in public sector or regulated environments
<b>Legal Expert</b>	Public procurement law, PPP/concession structuring, contract drafting, regulatory compliance (gambling, AML/CFT, data protection), dispute	Bachelor of Laws (LLB), Admission to the Bar, Master's degree in Law (LLM). Registered with relevant professional body ( Law Society of Kenya, or

<b>Position</b>	<b>Expertise</b>	<b>Minimum Qualification</b>
	resolution	equivalent) + minimum 12 years' experience in complex commercial transactions and PPP/concession advisory
<b>Lottery Operations Specialist</b>	Lottery design, gaming operations, retail & digital distribution, draw systems, operational performance frameworks	Bachelor's degree in relevant field + minimum 12 years' experience in lottery or regulated gaming operations, including system design and implementation
<b>Financial Modelling &amp; Risk Expert</b>	Financial modelling, Value-for-Money analysis, revenue optimisation, fiscal structuring, risk analysis	Bachelor's & Master's degree in Finance, Economics, or related. Registered with relevant professional bodies (CFA, CISI, ICPAK, Law Society of Kenya, or equivalent) + minimum 12 years' experience in financial modelling and PPP/concession transactions
<b>Technical Systems &amp; Cybersecurity Expert</b>	Gaming systems architecture, cybersecurity, data governance, digital platforms, system integration, DR/BCP	Bachelor's degree in ICT/Computer Science or related + relevant professional certifications (e.g. CISSP, CISM, or equivalent) + minimum 12 years' experience in complex ICT systems
<b>Stakeholder Engagement &amp; Communications Expert</b>	Market sounding, stakeholder engagement, bidder communication, public sector communications, reputation management	Bachelor's degree in Communications, Public Policy, Business, or related + minimum 10 years' experience in stakeholder engagement and large-scale project communications

## 10. ETHICS, CONFLICT OF INTEREST AND CONFIDENTIALITY

The Transaction Advisor shall:

- Comply with all applicable laws, regulations, and guidelines.
- Declare any actual, potential, or perceived conflicts of interest promptly.

- Maintain objectivity, independence, and professional neutrality throughout the assignment.
- Adhere to the applicable Procurement Code of Ethics and probity standards.
- Exercise due diligence, sound professional judgment, and the highest standard of care in the execution of its duties.

In addition, the Transaction Advisor shall maintain the highest standards of data protection, privacy, and confidentiality throughout the duration of the assignment and thereafter, and shall:

- Treat all information, documentation, data, systems, and materials obtained or accessed in the course of the assignment as strictly confidential and use such information solely for the purposes of executing this assignment.
- Comply fully with the Data Protection Act, CAP 411C of the Laws of Kenya, and any other applicable data protection, privacy, and cybersecurity laws, regulations, and guidelines.
- Implement and maintain appropriate technical and organisational measures to safeguard all data and information against unauthorised access, disclosure, alteration, or loss.
- Ensure that all its personnel, subcontractors, and agents engaged in the assignment are bound by written confidentiality and non-disclosure obligations consistent with this TOR.
- Restrict access to confidential information strictly to authorised personnel on a need-to-know basis and maintain audit trails of access where applicable, including within the Digital Data Room (DDR).
- Not disclose any information relating to the assignment, the National Lottery Board, bidders, or the procurement process to any third party without prior written approval of the National Lottery Board.
- Ensure secure handling, storage, transmission, and eventual return or destruction of all confidential information upon completion or termination of the assignment, as directed by the National Lottery Board.
- Remain bound by confidentiality obligations even after completion or termination of the assignment.

## 11. PERFORMANCE STANDARDS

Performance of the Transaction Advisor shall be assessed based on the following criteria:

- **Probity and Integrity Assurance** – adherence to the approved probity framework, including transparency, fairness, auditability, and absence of conflicts of interest throughout the procurement process.
- **Quality and Completeness of Deliverables** – accuracy, clarity, technical soundness, and alignment of all outputs with the TOR requirements and international best practice
- **Timeliness of Deliverables** – ability to meet agreed timelines and milestones, including responsiveness to feedback and revision cycles
- **Compliance with TOR and Legal Frameworks** – full adherence to the Terms of Reference, applicable laws, regulatory requirements, and procurement guidelines
- **Professionalism and Ethical Conduct** – demonstrated integrity, independence, accountability, and high standards of professional behaviour.

- **Capacity Building and Knowledge Transfer** – effectiveness of training, quality of manuals and tools developed, and demonstrated transfer of skills to NLB personnel.
- **Value-for-Money and Commercial Soundness** – robustness of financial modelling, commercial structuring, and optimisation of long-term fiscal returns and Good Causes contributions
- **Fiscal Impact and Financial Modelling Quality** – credibility, transparency, and usability of financial projections and scenario analyses
- **Risk Identification and Mitigation** – comprehensiveness of risk frameworks and effectiveness of proposed mitigation strategies across legal, financial, operational, and reputational risks.
- **Technical and Operational Robustness** – adequacy of technical specifications, system integrity requirements, cybersecurity standards, and operational feasibility
- **Defensibility of Procurement Process** – strength, transparency, and auditability of evaluation methodologies, documentation, and decision-making processes
- **Stakeholder and Process Management** – effectiveness in managing bidder interactions, stakeholder coordination, and maintaining process credibility.
- **Successful Operator Selection and Contracting** – completion of a competitive procurement process resulting in selection and contracting of a qualified and compliant National Lottery Operator
- **Readiness for Implementation** – quality of handover, contract management framework, and operator mobilisation readiness
- **Achievement of Key Milestones** – including completion of procurement, financial close, and readiness towards the sale of the first ticket

## **BIDDING PROCESS AND EVALUATION CRITERIA**

### **12. EVALUATION CRITERIA AND SCORING**

#### **BID EVALUATION CRITERIA**

The selection method shall be quality and cost-based. The evaluation committee shall evaluate the proposals on the basis of their compliance and responsiveness to ToR's.

**Bidders shall submit separate envelopes of Technical and Financial proposals.**

**The received bids will be evaluated in five stages as detailed below:**

- (i) **STAGE 1:** Compliance with Mandatory/ Preliminary Requirements.
- (ii) **STAGE 2:** The Technical Evaluation - Quality of the service weighting 80% with the pass mark being 70%
- (iii) **STAGE 3** The Financial Evaluation weighting 20%
- (iv) **STAGE 4:** Ranking of the bidders using the formula
- (v) **STAGE 5:** Due diligence on the lowest evaluated bidder (Mandatory and scoring)

## 12.1 Mandatory Responsiveness (Pass / Fail)

Bidders must satisfy the following Mandatory requirements failure to which their proposals shall be rejected:

### Mandatory Requirements

S/No.	Mandatory Requirements	Complied
1.	Provide a certified copy of Certificate of Incorporation or Certificate of Registration or equivalent for International Firms. For joint ventures the same shall be provided for each member.	Must Comply
2.	Provide a certified copy of Current Tax Compliance Certificate or equivalent for International Firms. For joint ventures the same shall be provided for each member.	Must Comply
3.	Provide a certified copy of Certificate of Confirmation of Directors and Shareholding (CR 12) or equivalent for International Firms (Issued within the last 12 Months to Tender Opening Date). For joint ventures the same shall be provided for each member.	Must Comply
4.	Provide Power of Attorney giving the name of the person who should be signing the bid, authorizing him to submit / execute the agreement as a bidding document	Must Comply
4.	Attendance to the Pre – Bid Conference- proof of email sent to NLB, minutes of pre-bid meeting	Must Comply
5.	Copy of a valid Business Permit Certificate of Registration or equivalent for International Firms. For joint ventures the same shall be provided for each member.	Must Comply
6.	Provide evidence of regulatory authorisation or licensing in lottery or gaming operations, where applicable.  Where such licensing is not required in the bidder's jurisdiction, the bidder shall demonstrate relevant experience supporting licensed lottery or gaming operators or regulators.	Must Comply
7.	Where applicable, bidders shall provide evidence of regulatory authorisation or licensing in lottery or gaming operations. Where such licensing is not applicable, bidders shall demonstrate relevant experience supporting licensed lottery or gaming operators or regulators.	Must Comply

8.	Provide Original Tender Security of Kenya Shillings Two Million Only (Kshs. 2 million) from a reputable Bank in Kenya valid for 28 days beyond the Tender Validity period ((in case of international firms the bid security shall be confirmed by a correspondent local bank). (To be attached in the Technical Proposal). The Tender validity period shall be 180 days from the tender closing date.  The tender security to be submitted by the Prime or Lead Tenderer in case of a joint venture.	Must Comply
9.	Provide a Joint Venture Agreement/Teaming Agreement which clearly describes the responsibility of each party in the assignment in case of a joint venture.	Must Comply
10.	Submission of audited financial statements for the last three (3) years. Copies of Audited Accounts for the last three (3) consecutive years.	Must Comply
11.	Provide duly filled, signed and stamped Confidential Business Questionnaire. For joint ventures the same shall be provided for each member in case of a joint venture.	Must Comply
12.	Provide a duly filled, signed and stamped Self-Declaration Form that the Tenderer is Not Debarred from doing business with the Government of Kenya or any international organization or has not been declared ineligible through a decision of the UN Security Council taken under chapter VII of the charter of the United Nations. For joint ventures the same shall be provided for each member.	Must Comply
13.	Provide duly filled, signed and Stamped Self Declaration form that the Tenderer will not engage in any Corrupt or Fraudulent Practice. For joint ventures the same shall be provided for each member.	Must Comply
14.	Duly filled, signed, and stamped Technical Proposal Submission Form.	Must Comply
15.	Duly filled, signed, and stamped Commitment to the Code of Ethics Form (in the prescribed format).	Must Comply
16.	Duly filled, signed, and stamped Certificate of Independent Proposal Determination Form (in the prescribed format).	Must Comply
17.	Duly filled, signed, and stamped Litigation History form in the tender Document.	Must Comply
18.	Price schedule form duly filled, signed and stamped and submitted in a sealed separate envelope as financial proposal.	Must Comply

19.	Duly filled, signed, and stamped Form of Tender, with an acceptable tender validity period of 180 days, to be submitted together with the financial proposal in a separate envelope.	Must Comply
20.	The bid document “Original” and “Copies” must be chronologically serialized in accordance with Section 74 of the Act.	Must Comply
21.	Submitted the required number of copies required in the tender i.e. One (1) original, one (1) Copy and One (1) electronic copy of the Proposal (Technical & Financial) in PDF format on a flash disk. The Financial Proposal folder shall be password protected and shall remain inaccessible until the financial opening stage. The password shall be submitted only upon written request after completion of the technical evaluation and at financial opening.	Must Comply

**NOTE: All copies provided should be certified by a Commissioner of Oaths or Notary Public**

**Pursuant to Section 80 of Public Procurement and Assets Disposal Act, 2015 any tender not meeting the mandatory and other eligibility criteria will not proceed to Technical Evaluation Stage.**

Failure to submit any item under this section shall lead to automatic disqualification.

Only responsive submissions shall proceed to Technical Evaluation.

## **12.2 Technical Evaluation — 100 Points**

### **1. Consultant(s) Experience — 10 Points**

#### **Key Evaluation Factors**

The shortlisting criteria shall be as follows:

<b>No.</b>	<b>Criteria</b>	<b>Max Points</b>
1	<p><b>Core Business and Years in Operation (2 Points):</b> The firm shall be duly registered/incorporated and demonstrate relevant experience in transaction advisory services, including public-private partnerships (PPPs), concessions, or procurement of operators in regulated sectors such as lottery, gaming, financial services, infrastructure, or similarly complex environments.</p> <p>Scoring Criteria:</p> <ul style="list-style-type: none"> <li>● 2 Points: Submission of a valid certificate of incorporation/registration demonstrating at least fifteen (15) years of operation.</li> </ul>	2 points

No.	Criteria	Max Points
	<ul style="list-style-type: none"> <li>● 0 Points: Certificate of incorporation/registration submitted but demonstrating less than fifteen (15) years of operation, or failure to submit.</li> </ul> <p>Additional Requirement (Mandatory – Not Scored): The firm shall provide a valid licence, authorisation, or certification issued by a competent regulatory authority to operate, manage, or support lottery or regulated gaming operations in any jurisdiction, where such licensing is required.</p>	
2.	<p><b>Evidence of Similar Assignments (4 Points):</b> The firm shall demonstrate that it has successfully executed and completed at least one (1) assignment of similar nature, scope, and complexity within the last ten (10) years, specifically involving the procurement and successful onboarding of a National Lottery Operator under a concession structure, within a comparable operating environment. Details of each assignment shall be provided, including client name and address, scope of services, contract value, contact persons, and implementation period.</p> <p>Scoring Criteria:</p> <p>i. Evidence of Engagement (2 Marks): Submission of at least one (1) LSO/LPO, award letter, or signed contract document demonstrating engagement in a qualifying assignment – 2 Marks Failure to provide – 0 Marks.</p> <p>ii. Evidence of Completion and Performance (2 Marks): Submission of reference or completion letters from at least three (3) clients and/or regulators, or verifiable documentation/links evidencing successful delivery of similar assignments – 2 Marks Partial or no submission – 0 Marks.</p>	4 points
3.	<p><b>Technical and Managerial Capability (4 Points):</b> The firm shall demonstrate that it possesses the requisite technical and managerial capacity to undertake the assignment, including appropriate tools, systems, methodologies, and organisational structures.</p> <p>Scoring Criteria:</p> <p>i. Company Profile (2 Marks): Submission of a comprehensive company profile detailing organisational structure, core competencies, and relevant</p>	4 points

No.	Criteria	Max Points
	experience – 2 Marks Failure to provide – 0 Marks.  ii. Technical Expertise (2 Marks): Submission of CVs of proposed key technical personnel demonstrating relevant qualifications and experience aligned to the assignment – 2 Marks Failure to provide or inadequate evidence – 0 Marks.	

## 2. Team and Key Experts — 38 Points

### Key Evaluation Factors

The transaction advisor shall provide well-qualified and experienced professionals as required and appropriate for completion of the assignment.

**Table 2: Expertise & Qualifications Table**

S/NO.	Position	Evaluation Criteria	Score Allocation
1.	Team Leader / Lead Transaction Advisor	Master’s degree in finance, Economics, Law, or related field. Registered with relevant professional body (CFA, CISI, ICPAK, Law Society of Kenya, or equivalent) (1 Mark)	8 Marks
		Minimum 15 years’ experience in transaction advisory, PPPs, or concessions (3 Marks)	
		Demonstrated experience leading at least one comparable transaction (preferably lottery, gaming, or regulated sector) (2 Marks)	
		Experience in public sector or government-led transactions (2 Marks)	
2.	Lottery Operations Specialist	Bachelor’s degree in business management or a related field (1 Mark)	5 Marks

<b>S/NO.</b>	<b>Position</b>	<b>Evaluation Criteria</b>	<b>Score Allocation</b>
		<p>Minimum 10 years' experience in lottery or regulated gaming operations, including system design and implementation lottery or regulated gaming operations.</p> <p>Experience in the public sector or regulated environments.</p> <p>(2 marks)</p>	
		8 years' experience in lottery design, draw systems, and distribution models (retail and digital) (1 mark)	
		5 years' experience in operational performance and integrity frameworks (1 mark)	
3.	Financial Modelling & Risk Expert	<p>Bachelor's &amp; master's degree in finance, Economics, or related</p> <p>Registered with relevant professional bodies. (1 Mark)</p>	5 Marks
		<p>Minimum 12 years' experience in financial modelling and PPP/concession transactions</p> <p>Experience in public sector or regulated environments</p> <p>(2 Marks)</p>	
		Experience in Value-for-Money and fiscal structuring (1 Mark)	
		Experience in revenue modelling and risk analysis (1 Mark)	
4.	Technical Systems & Cybersecurity Expert	Bachelor's degree in ICT/Computer Science or related field and relevant professional certifications (e.g. CISSP, CISM, or equivalent) (1Mark)	5 Marks

<b>S/NO.</b>	<b>Position</b>	<b>Evaluation Criteria</b>	<b>Score Allocation</b>
		Minimum 12 years' experience in complex ICT systems, architecture and platform integration (2 Marks)	
		10 year's experience in cybersecurity and data governance (1 Mark)	
		8 year's experience in DR/BCP and system resilience (1 Mark)	
5.	Legal Expert	Bachelor and Master of Law (LLB), Admission to the Bar. Registered with relevant professional body (Law Society of Kenya, or its equivalent) (1 Mark)	5 Marks
		Minimum 12 years' experience in complex commercial transactions and PPP/concession advisory, drafting launch service contracts.  Experience in public sector or regulated environments  (2 Marks)	
		Experience in assisting clients acquire launch and entry licenses. (1 Mark)	
		Experience in project-finance transactions. (1Mark)	
6.	Stakeholder Engagement & Communications Expert	Bachelor's degree in communications, Public Policy, Business, or related field  (1 Mark)	5 Marks
		Minimum 10 years' experience in stakeholder engagement and large-scale project communications.  Experience managing consultations in large or sensitive projects (1 Mark)	

S/NO.	Position	Evaluation Criteria	Score Allocation
		Experience in stakeholder engagement and market sounding (1 Mark)	
		Experience in public sector or regulated environments (1 Mark)	
7.	Procurement Expert	Bachelor's and Master's degree in Procurement, Business, or related field (2 Marks)	5 Marks
		Minimum 12 years' experience in public procurement, with demonstrated experience in complex or concession-based procurements.  Experience in public sector or regulated environments  (2 Marks)	
		Professional certification (e.g. CIPS, KISM or equivalent) (1 Mark)	
	<b>Total: 38 Points</b>		

### Evaluator Scoring Notes

- CVs must be signed and dated by the proposed experts.
- The bidder shall provide certified copies of academic and professional certificates for each proposed expert.
- Availability declarations must be submitted for all key experts.
- Substitution of key experts' post-submission shall require prior approval by the NLB.
- Higher scores shall be awarded for direct experience in lottery, gaming, or concession-based transactions in regulated markets.

### 3. Methodology and Work Plan — 20 Points

The Transaction Advisor shall demonstrate a clear, structured, and practical approach to delivering the assignment, including:

- **Understanding of the Assignment Scope (6 Points):**  
Demonstrates a clear understanding of the objectives, scope, complexity, and key success factors of the National Lottery Operator procurement.
- **Structured Procurement and Transaction Approach (6 Points):**  
Provides a well-defined, logical, and defensible approach to managing the end-to-end procurement process, including strategy, evaluation, negotiation, and contract finalisation.
- **Deliverables Planning and Management (5 Points):**  
Presents a clear work plan with realistic timelines, sequencing of deliverables, and alignment with the proposed transaction roadmap.
- **Risk Identification and Mitigation Framework (3 Points):**  
Demonstrates a robust approach to identifying and mitigating key legal, financial, operational, procurement, and reputational risks associated with the transaction.

#### 4. Financial Capability and Transfer of Knowledge — 32 Points

##### (a) Financial Capability — 12 Points

The Tenderer shall demonstrate financial capacity to undertake the assignment:

##### 1. Audited Financial Statements 5 points:

Submission of audited financial statements for the last three (3) consecutive years to demonstrate financial soundness and sustainability.

##### 2. Profitability (2 Points):

Return on Assets (ROA) = (Net Profit / Total Assets) × 100

- ROA ≥ 10% → 2 Points
- ROA < 10% → 0 Points

*(For Joint Ventures, a simple average shall apply.)*

##### 3. Turnover (3 Points):

Minimum average annual turnover over the last three (3) years:

- ≥ 2 times the tender price → 3 Points
- ≥ 1 time the tender price → 1 Point
- < 1 time the tender price → 0 Points

##### 4. Liquidity (2 Points):

Liquidity Ratio = Current Assets / Current Liabilities

- ≥ 1.0 → 2 Points
- 0.75 – 0.99 → 1 Point
- < 0.75 → 0 Points

## **(b) Transfer of Knowledge and Local Participation — 20 Points**

- **Participation by Kenyan Key Experts (10 Points):**  
Demonstrated inclusion and meaningful participation of Kenyan experts, based on proportion of time input relative to total expert input.
- **Training Approach and Methodology (5 Points):**  
Clarity, structure, and practicality of the proposed capacity-building and knowledge transfer approach.
- **Capacity Building of NLB Staff (5 Points):**  
Demonstrated approach to on-the-job and workshop-based training, including development of tools, manuals, and long-term institutional capacity.

### **NOTE:**

Each responsive proposal will be given a technical score (TS). 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 evaluation indicated in the Appendix "ITC".

**The minimum aggregate/average pass mark for the scored criterion above is: 70 points out of 100 points.**

### **12.3 Financial Evaluation — 20 Points**

The Bidders who score 70% and above will be deemed to be technically responsive and will be evaluated for responsiveness. Only the Financial Bids of those who have technically qualified shall be opened for further evaluation.

Bidders shall submit a detailed financial proposal clearly outlining the cost breakdown, pricing structure, assumptions, and completeness of the proposed fees in the required format.

Financial proposals shall be evaluated based on:

- The number of financial proposals submitted (one original and two copies).
- Duly filled signed and stamped financial proposal form
- The Financial Proposals "Original" and "Copies" must be sequentially paginated / serialized.

Failure to provide a detailed and complete financial proposal may result in disqualification.

The lowest evaluated responsive financial proposal shall be awarded the maximum score of 20 points, with other financial proposals scored proportionately using the formula specified under Section 12.5.

The Evaluation Committee reserves the right to seek clarifications on any financial proposal, including where a bid appears abnormally low or inconsistent with the technical proposal.

### **12.4 Due Diligence (Mandatory)**

The Evaluation Committee shall conduct due diligence on the highest ranked bidder prior to contract award, in accordance with Section 83 of the Public Procurement and Asset Disposal Act, 2015.

Due diligence will include:

- Verification of submitted project references and client confirmations
- Validation of key personnel qualifications and experience
- Review of financial capacity and supporting documentation
- Confirmation of legal, regulatory, and compliance status

Where due diligence findings are unsatisfactory, the Evaluation Committee may disqualify the bidder and proceed to the next ranked bidder.

### **12.5 Award Method**

The procurement shall be conducted using the Quality and Cost Based Selection (QCBS) method.

Only bidders who attain a minimum technical score of 70% shall be considered for financial evaluation.

The combined evaluation score shall be calculated based on:

- Technical Score (St) – 80% weighting
- Financial Score (Sf) – 20% weighting

#### Financial Score Calculation

The financial score shall be determined using the following formula:

$$Sf = \frac{Fm}{F} \times 100$$

Where:

- Sf = Financial Score
- Fm = Lowest evaluated financial proposal
- F = Financial proposal under consideration

The lowest evaluated financial proposal shall receive the maximum financial score of 20, with other proposals scored proportionately.

#### Combined Score Calculation

$$S = (St \times 80\%) + (Sf \times 20\%)$$

Where:

- S = Combined Score
- St = Technical Score

● **Sf = Financial Score**

The bidder or joint venture achieving the highest combined technical and financial score shall be recommended for award, subject to successful due diligence.

Any bidder found to have provided false, misleading, or incomplete information shall be disqualified and may be subject to debarment in accordance with applicable laws.

**13. Proposed Payment Schedule**

<b>Phase</b>	<b>Deliverables</b>	<b>Timeframe</b>	<b>% Payment</b>
<b>Phase 1: Inception &amp; Mobilisation</b>	Inception Report (including Work Plan & Methodology)  Detailed Procurement & Transaction Roadmap	Month 1	<b>10%</b>
<b>Phase 2: Probity &amp; Pre-Procurement Structuring</b>	Probity Framework  Digital Data Room (DDR) Setup  Procurement Strategy  Market Sounding Report  Technical & Systems Requirements  Financial Model  Value-for-Money Report  Risk Management Framework	Month 2-4	<b>20%</b>
<b>Phase 3: Procurement Execution, Evaluation &amp; Contract Award (Core Transaction Completion)</b>	Draft & Final EOI and RFP Documents  Bid Process Management and Support  Bidders' Engagement (EOI & RFP stages, including bidder conferences and clarifications)  EOI Evaluation Report (Shortlisting)	Month 2-6	<b>20%</b>

	<p>RFP Evaluation Reports (Technical &amp; Financial)</p> <p>Regulatory Submission Pack (for NLO Licensing)</p> <p>Due Diligence Reports</p> <p>Negotiation Report</p> <p>Final Operator Agreement (Preferred Bidder Selected)</p>		
<p><b>Phase 4: Financial Close &amp; Implementation Readiness</b></p>	<p>Financial Close Report (including conditions precedent)</p> <p>Contract Management &amp; Oversight Framework</p> <p>Capacity Building Outputs (training, manuals, and tools)</p>	<p>Month 5–8</p>	<p><b>10%</b></p>
<p><b>Phase 5: Handover, Close-Out, Final Outputs &amp; Launch Milestone</b></p>	<p>Handover &amp; Close-Out Report (including DDR handover and documentation)</p> <p>Case Study Report (process, lessons learnt, and key insights)</p> <p>Final Capacity Building Outputs (training reports, manuals, and tools)</p> <p>Operationalisation Oversight of the National Lottery, including support to the setup and readiness of systems, processes, and governance structures in line with the Operator Agreement</p> <p>Sale of First Ticket Confirmation (National Lottery Launch)</p>	<p>Month 8–15</p>	<p><b>40%</b></p>

## Notes

1. Only bidders attaining a minimum technical score of 70% shall proceed to financial evaluation.
2. The NLB reserves the right to conduct site visits and due diligence on referenced assignments and client engagements provided in the proposal.

3. The NLB shall conduct due diligence on the proposed key experts, including verification of qualifications, experience, and availability.
4. This is an international tender. Bidders are encouraged to demonstrate local participation, including through joint ventures or partnerships with local firms. Where a joint venture is proposed, bidders shall clearly define the roles, responsibilities, and scope of work for each member, and all parties shall be jointly and severally liable for the execution of the assignment. Any changes to the joint venture arrangement during contract execution shall require prior approval by the Accounting Officer / NLB.
5. For joint ventures, the reference projects and CVs submitted shall correspond to the specific roles and responsibilities assigned to each consortium member.
6. Substitution of key experts after submission shall only be permitted with prior approval of the Accounting Officer / NLB, and any replacement shall meet or exceed the minimum qualification and experience requirements specified in the TOR.
7. Copies of documents submitted by foreign bidders shall be certified by a Commissioner of Oaths or Notary Public in the relevant jurisdiction.
8. Margin of Preference shall apply as applicable, in accordance with Regulation 164 of the Public Procurement and Asset Disposal Regulations, 2020.

### **Institutional Arrangements and Counterpart Assistance**

The National Lottery Board (NLB) shall:

- Provide the Transaction Advisor with all available relevant data, documentation, and previous studies necessary for the execution of the assignment.
- Facilitate coordination with relevant government agencies, regulators, and stakeholders to enable access to information, subject to applicable laws and confidentiality requirements.

The Transaction Advisor (TA) shall:

- Be solely responsible for the remuneration, compensation, insurance, and all statutory obligations relating to its personnel, subcontractors, and agents engaged in the assignment, and shall ensure timely and full payment throughout the duration of the project. The National Lottery Board shall bear no liability whatsoever in respect of such personnel.
- Provide all necessary facilities, equipment, and logistical support required for the execution of the assignment, including office space, transport, communication tools, and operational resources.
- Deploy all required administrative, technical, professional, and support personnel necessary to deliver the assignment in accordance with the TOR.
- Be responsible for all costs associated with the execution of the assignment, except where explicitly stated otherwise in the TOR.

## **SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS**

### **Preface**

1. This Section includes two types of standard contract forms for: A Lump-Sum Contract and a Time-Based Contract. Each type includes General Conditions of Contract (“GCC”) that shall not be modified, and Special Conditions of Contract (“SCC”). The SCC includes clauses specific to each contract to supplement, but not over- write or otherwise contradict, the General Conditions of Contract.
2. Lump-Sum Contract. This type of contract is used mainly for assignments in which the scope and the duration of the Services and the required output of the Consultant are clearly defined. Payments are linked to outputs (deliverables) such as draft or final reports, drawings, bill of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified out puts and milestones. Never the less, quality control of the Consultant's outputs by the Procuring Entity is paramount.
3. Time-Based Contract. This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant's remuneration is determined on the basis of the time actually spent by the Consultant in carrying out the Services and is based on (i) agreed upon unit rates for the Consultant's experts multiplied by the actual time spent by the experts in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Procuring Entity to closely supervise the Consultant and to be involved in the daily execution of the assignment.
4. The templates are designed for use in assignments with consulting firms and shall not be used for contracting of individual experts. In some consultancy assignments such as design and construction supervision, both Lump- Sum and Time-Based Contracts are used and signed with the Consultant. In that case, the Lump-Sum Contract would apply for the design part of the Services while the construction supervision part would be based on a Time- Based Contract. In such event, both types of contracts shall be signed at the same time.

**CONTRACT FOR CONSULTANT'S SERVICES**

Lump-Sum Contract

Consulting Services

for:

Contract No.: \_\_\_\_\_

Contract Description: \_\_\_\_\_

Between

\_\_\_\_\_ *[Name of the Procuring Entity]*

and

\_\_\_\_\_ *[Name of the Consultant]*

Date:

## FORM OF CONTRACT - LUMP-SUM

*(Text in brackets [ ] is optional; all notes should be deleted in the final text)*

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

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

### WHEREAS

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

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

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

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

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

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

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

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

For and on behalf of each of the members of the Consultant..... *[Insert the Name of the Joint Venture] [Name of the lead member]*  
*[Authorized Representative on behalf of a Joint Venture] [Add signature blocks for each member if all are signing]*

## **SECTION 7: GENERAL CONDITIONS OF CONTRACT**

### **A. General Provisions**

#### **1. Definitions**

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

- a) "Applicable Law" means the laws and any other instruments having the force of law in Kenya.
- b) "Consultant" means a legally-established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- c) "Contract" means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- d) "Procuring Entity" means the Procuring Entity that signs the Contract for the Services with the selected Consultant.
- e) "Day" means a working day unless indicated otherwise.
- f) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- g) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- h) "Foreign Currency" means any currency other than the currency of Kenya.
- i) "GCC" mean these General Conditions of Contract.
- j) "Government" means the government of Kenya.
- k) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) "Key Expert(s)" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal.
- m) "Local Currency" means the Kenya Shillings, the currency of Kenya.

- n) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part here of under the Contract.
- o) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both of them.
- p) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- q) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- r) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (t) “Third Party” means any person or entity other than the Government, the Procuring Entity, the Consultant or a Sub-consultant.

## **2. Relationship between the Parties**

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

## **3. Law Governing Contract**

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

## **4. Language**

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

## **5. Headings**

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

## **6. Communications**

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

## **7 Location**

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

## **8 Authority of Member in Charge**

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

## **9 Authorized Representatives**

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

## **10 Corrupt and Fraudulent Practices**

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

10.2 **Commissions and Fees**-The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by the PPRA.

## **B. Commencement, Completion, Modification and Termination of Contract**

### **11 Effectiveness of Contract**

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

### **12 Termination of Contract for Failure to Become Effective**

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

### **13 Commencement of Services**

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

### **14 Expiration of Contract**

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

## **15 Entire Agreement**

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

## **16 Modifications or Variations**

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

## **17 Force Majeure**

### **a. Definition**

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

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

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

### **b. No Breach of Contract**

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

### **c. Measures to be taken**

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

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

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

shall continue to be paid under the terms of this Contract and be reimbursed or additional costs reasonably and necessarily incurred.

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

## **18 Suspension**

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

## **19 Termination**

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

### **a. By the Procuring Entity**

19.1.1 The Procuring Entity may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence, the Procuring Entity shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

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

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

- a) The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Procuring Entity, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.
- b) If the Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC45.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- c) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.

- d) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC45.1.
- e) If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

**c. Cessation of Rights and Obligations**

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

**d. Cessation of Services**

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

**e. Payment up on Termination**

- 19.1.6 Up on termination of this Contract, the Procuring Entity shall make the following payments to the Consultant:
- a) Payment or Services satisfactorily performed prior to the effective date of termination; and
  - b) In the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

**C. Obligations of the Consultant**

**16. General**

**a. Standard of Performance**

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

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

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

**b. Law Applicable to Services**

- 20.4. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.
- 20.5 Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in Kenya when
- a As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
  - b by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.
- 20.6. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

**21 Conflict of Interests**

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

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

- 21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations here under, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.
- 21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, the Consultant shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.

**b. Consultant and Affiliates Not to Engage in Certain Activities**

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

**c. Prohibition of Conflicting Activities**

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

**d. Strict Duty to Disclose Conflicting Activities**

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

## **22 Confidentiality**

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

## **23 Liability of the Consultant**

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

## **24 Insurance to be taken out by the Consultant**

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

## **25 Accounting, Inspection and Auditing**

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

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

## **26 Reporting Obligations**

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

## **27 Proprietary Rights of the Procuring Entity in Reports and Records**

27.1 Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Procuring Entity in the course of the Services shall be confidential and become and remain the absolute property of the Procuring Entity. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof.

The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Procuring Entity.

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

## **28 Equipment, Vehicles and Materials**

- 28.1 Equipment, vehicles and materials made available to the Consultant by the Procuring Entity or purchased by the Consultant wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Procuring Entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.
- 28.2 Any equipment or materials brought by the Consultant or its Experts into Kenya for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

## **D. Consultant's Experts and Sub-consultants**

### **29 Description of Key Experts**

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

### **30 Replacement of Key Experts**

- 30.1 Except as the Procuring Entity may otherwise agree in writing, no changes shall be made in the Key Experts.
- 30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forth with provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

### **31 Removal of Experts or Sub-consultants**

- 31.1 If the Procuring Entity finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Procuring Entity determine that Consultant's Expert or Sub consultant have engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practice while performing the Services, the Consultant shall, at the Procuring Entity's written request, provide a replacement.
- 31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity, specifying the grounds therefore, may request the Consultant to provide a replacement.

- 31.3 Any replacement of the removed Experts or Sub consultants shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.
- 31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

## **E. Obligations of the Procuring Entity**

### **32 Assistance and Exemptions**

- 32.1 Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to:
- a Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
  - b Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in Kenya while carrying out the Services under the Contract.
  - c Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Expert and their eligible dependents.
  - d Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
  - e Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Kenya according to the applicable law in Kenya
  - f Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Kenya, of bringing in to Kenya reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
  - g Provide to the Consultant any such other assistance as may be specified in the SCC.

### **33 Access to Project Site**

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

### **34 Change in the Applicable Law Related to Taxes and Duties**

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

### **35 Services, Facilities and Property of the Procuring Entity**

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

## **36 Counterpart Personnel**

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

## **37 Payment Obligation**

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

### **F. Payments to the Consultant**

## **38 Contract Price**

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

## **39 Taxes and Duties**

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

## **40 Mode of Billing and Payment**

- 40.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 40.2 The payments under this Contract shall be made in lump-sum installments against deliverables specified in Appendix A. The payments will be made according to the payment schedule stated in the SCC.
- 40.2.1 Advance payment: Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to the Procuring Entity in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in Appendix D, or in such other form as the Procuring Entity shall have approved in writing. The advance payments will be set off by the Procuring Entity in equal portions against the lump-sum installments specified in the SCC until said advance payments have been fully set off.

40.2.2 *The Lump-Sum Installment Payments.* The Procuring Entity shall pay the Consultant within sixty (60) days after the receipt by the Procuring Entity of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Procuring Entity does not approve the submitted deliverable(s) as satisfactory in which case the Procuring Entity shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

40.2.3 *The Final Payment:* The final payment under this Clause shall be made only after the final report has been submitted by the Consultant and approved as satisfactory by the Procuring Entity. The Services shall then be deemed completed and finally accepted by the Procuring Entity. The last lump-sum installment shall be deemed approved for payment by the Procuring Entity within ninety (90) calendar days after receipt of the final report by the Procuring Entity unless the Procuring Entity, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

40.2.4 All payments under this Contract shall be made to the accounts of the Consultant specified in the SCC.

40.2.5 With the exception of the final payment under 40.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the Consultant of any obligations here under.

#### 40.3 **Interest on Delayed Payments**

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

### **G. Fairness and Good Faith**

#### **41 Good Faith**

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

### **H. Settlement of Disputes**

#### **42 Amicable Settlement**

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

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

#### **43 Dispute Resolution**

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

**SECTION 8: SPECIAL CONDITIONS OF CONTRACT**

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of Kenya
4.1	The language is: English
6.1 and 6.2	<p>The addresses are <i>[fill in at negotiations with the selected firm]</i>:</p> <p><b>For Procuring Entity</b></p> <p style="padding-left: 40px;">The Chief Executive Officer, National Lottery Board 25<sup>th</sup> Floor at the UAP Old Mutual Building, P.O. Box 30933 – 00100 Nairobi -Kenya. Email: <a href="mailto:procurement@nlb.go.ke">procurement@nlb.go.ke</a></p> <p><b>For the Service Provider</b></p> <p>Consultant: _ Attention: _ Facsimile: _____ E-mail:</p>
8.1	<p><i>[If the Consultant consists only of one entity, state "N/A";</i> <i>OR</i> <i>If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]</i> The Lead Member on behalf of the JV is _____ <i>[insert name of the member](to be included during contract perpetration)</i></p>
9.1	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity: <b><i>The Chief Executive Officer,</i></b> <b><i>The National Lottery Board</i></b></p> <p>For the Consultant: <i>[name, title] (to be included during contract perpetration)</i></p>
11.1	The effectiveness conditions are the following: N/A
12.1	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be 1 Month</p>

13.1	<p>Commencement of Services:</p> <p>The number of days shall be: <b>Ten (10) days</b></p> <p>Confirmation of Key Experts' availability to start the Assignment shall be submitted to the Procuring Entity in writing as a written statement signed by each</p>
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Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	Key Expert.
14.1	Expiration of Contract:  The time period shall be: <b>15 Months from contract signing date</b>
21.1.3.	The Procuring Entity reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3: <b>Yes</b>
23.1	The following limitation of the Consultant's Liability towards the Procuring Entity can be subject to the Contract's negotiations:  "Limitation of the Consultant's Liability towards the Procuring Entity: (a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Procuring Entity's property, shall not be liable to the Procuring Entity: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds two times the total value of the Contract; (b) This limitation of liability shall not (i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services; (ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable Law.
24.1	The insurance coverage against the risks shall be as follows: <b><u>to be included during contract perpetration</u></b>  <i>[Delete what is not applicable except (a)].</i>  (a) Professional liability insurance, with a minimum coverage of _____ <i>[insert amount and currency which should be not less than the total ceiling amount of the Contract];</i>
27.1	The additional rights to the use of the documents are: <b>This shall be done under applicable laws</b>
27.2	The Consultant shall not use these <i>[insert what applies..... documents and software.... ]</i> for purposes unrelated to this Contract without the prior written approval of the Procuring Entity.] <b><u>to be included during contract perpetration</u></b>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p><i>[OR]</i></p> <p>[The Procuring Entity shall not use these <i>[insert what applies..... documents and software.....]</i> for purposes unrelated to this Contract without the prior written approval of the Consultant.]</p> <p><i>[OR]</i></p> <p>[Neither Party shall use these <i>[insert what applies..... documents and software.....]</i> for purposes unrelated to this Contract without the prior written approval of the other Party.]</p>
32.1 (a) through (f)	<i>[List here any changes or additions to Clause GCC 32.1. If there are no such changes or additions, indicate Not Applicable.] NOT APPLICABLE</i>
32.1 (g)	<i>[List here any other assistance to be provided by the Procuring Entity. If there is no such other assistance, indicate Not Applicable for this Clause SCC 32.1(g).] NOT APPLICABLE</i>
38.1	<p>The Contract price is: _____ <i>[insert amount and currency for each currency as applicable] [indicate: inclusive or exclusive] of local taxes. <u>to be included during contract perpetration</u></i></p> <p>Any local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall <i>[insert as appropriate: "be paid" or "reimbursed"]</i> by the Procuring Entity <i>[insert as appropriate: "for "or "to"]</i> the Consultant.</p> <p>The amount of such taxes is _____ <i>[insert the amount as finalized at the Contract's negotiations on the basis of the tax amounts provided by the Consultant in Form FIN-2 of the Consultant's Financial Proposal. <u>to be included during contract perpetration</u></i></p>
39.1 and 39.2	<p>The Procuring Entity warrants that <i>[choose one applicable option consistent with the ITC 16.3 and the outcome of the Contract's negotiations (Form FIN-2]</i></p> <p><i>If ITC16.3 indicates a tax exemption status, include the following: "the Consultant, the Sub-consultants and the Experts shall be exempt from"</i></p> <p><i>OR</i></p> <p><i>If ITC16.3 does not indicate the exemption and, depending on whether the Procuring Entity shall pay the withholding tax or the Consultant has to pay, include the following: "the Procuring Entity shall pay on behalf of the Consultant, the Sub-consultants and the Experts," OR "the Procuring Entity shall reimburse the Consultant, the Sub-consultants and the Experts"]</i></p> <p>any taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Procuring Entity's country, on the Consultant, the Sub-consultants and the Experts in respect of:</p> <p>(a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of Kenya), in connection with the carrying out of the Services;</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>(b) any equipment, materials and supplies brought into Kenya by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them;</p> <p>(c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Procuring Entity and which is treated as property of the Procuring Entity;</p> <p>(d) any property brought into Kenya by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of Kenya), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Procuring Entity's country, provided that:</p> <p>(i) the Consultant, Sub-consultants and experts shall follow the usual customs procedures of Kenya in importing property into Kenya; and</p> <p>(ii) if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Procuring Entity's country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of Kenya, or (b) shall reimburse them to the Procuring Entity if they were paid by the Procuring Entity at the time the property in question was brought into the Procuring Entity's country.</p>
40.2	<p>The payment schedule: <b><u>to be included during contract perpetration</u></b></p> <p><i>[Payment of installments shall be linked to the deliverables specified in the Terms of Reference in as detailed in this bid document]</i></p> <p>1<sup>st</sup> payment: <i>[insert the amount of the installment, percentage of the total Contract price, and the currency. If the first payment is an advance payment, it shall be made against the bank guarantee for the same amount as per GCC 41.2.1]. E.g., "Twenty (20) percent of the lumpsum contract price shall be paid upon submission and approval of the Inception Report</i></p> <p>2<sup>nd</sup> payment: Example: Sixty (60) percent of the lumpsum Contract Price shall be paid upon submission of an acceptable Draft Report.</p> <p>3<sup>rd</sup> and Final Payment: Example: Twenty (20) percent of the lumpsum Contract Price shall be paid upon submission and approval of the Final Report.</p> <p><i>[Total sum of all installments shall not exceed the Contract price set up in SCC38.1. Every Payment shall be subject to (i) submission to the Procuring Entity of the prerequisite Report and/or payment request documents, and, (ii) approval and acceptance of the said reports and documents by the Procuring Entity]</i></p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
40.2.1	<p><i>[The advance payment could be in either the foreign currency, or the local currency, or both; select the correct wording in the Clause here below. The advance bank payment guarantee should be in the same currency(ies)]</i></p> <p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <p>(1) An advance payment [of <i>[insert amount]</i> in foreign currency] [and of <i>[insert amount]</i> in Kenya Shillings] shall be made within <i>[insert number]</i> days after the receipt of an advance bank payment guarantee by the Procuring Entity. The advance payment will be set off by the Procuring Entity in equal portions against [list the payments against which the advance is offset]. <b>Not Applicable</b></p> <p>(2) The advance bank payment guarantee shall be in the amount and in the currency of the currency (ies) of the advance payment.</p> <p>(3) The bank guarantee will be released when the advance payment has been fully set off.</p>
40.2.4	<p>The accounts are: <b><u>to be included during contract perpetration</u></b></p> <p>For foreign currency: <i>[insert account]</i>. for local currency: <i>[insert account]</i>.</p>
41.1	<p>The interest rate is: <i>[insert rate]</i>.</p>

44.1

Disputes shall be settled by arbitration in accordance with the following provisions:  
Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:

Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to *[name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland]* for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, *[insert the name of the same professional body as above]* shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.

Where the Parties do not agree that the dispute concerns a technical matter, the Procuring Entity and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by *[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]*.

( c ) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the *[name the same appointing authority as in said paragraph (b)]* to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

2. Rules of Procedure. Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.

3. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>4. <u>Nationality and Qualifications of Arbitrators</u>. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country <i>[If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties]</i> or of the Government's country. For the purposes of this Clause, "home country" means any of:</p> <p>(a) the country of incorporation of the Consultant <i>[If the Consultant consists of more than one entity, add: or of any of their members or Parties]</i>; or</p> <p>(b) the country in which the Consultant's [or any of their members' or Parties'] principal place of business is located; or</p> <p>(c) the country of nationality of a majority of the Consultant's [or of any members' or Parties'] shareholders; or</p> <p>(d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.</p>
	<p>5. <u>Miscellaneous</u>. In any arbitration proceeding hereunder:</p> <p>(a) proceedings shall, unless otherwise agreed by the Parties, be held in <i>[select a country which is neither the Procuring Entity's country nor the Consultant's country]</i>;</p> <p>(b) the <i>[type of language]</i> language shall be the official language for all purposes; and</p> <p>(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</p>

## SECTION 9: APPENDICES

### Appendix A – Terms of Reference

[Note: This Appendix shall include the final Terms of Reference (TORs) worked out by the Procuring Entity and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements and list of deliverables against which the payments to the Consultant will be made; Procuring Entity's input, including counterpart personnel assigned by the Procuring Entity to work on the Consultant's team; specific tasks or actions that require prior approval by the Procuring Entity.

Insert the text based on the Section 5 (Terms of Reference) of the ITC in the RFP and modified based on the Forms TECH-1 through TECH-5 of the Consultant's Proposal. Highlight the changes to Section 5 of the RFP]

.....  
.....

### Appendix B - Key Experts

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

.....

### Appendix C – Remuneration Cost Estimates

#### 1 Monthly rates for the Experts:

[Insert the table with the remuneration rates. The table shall be based on [Form FIN-3] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-3] at the negotiations or state that none has been made.]

#### 2 *[When the Consultant has been selected under Quality-Based Selection method, or the Procuring Entity has requested the Consultant to clarify the breakdown of very high remuneration rates at the Contract's negotiations also addthe following:*

*“The agreed remuneration rates shall be stated in the attached Form: Breakdown of Agreed Fixed Rates in Consultant's Contract. This form shall be prepared on the basis of Appendix A to Form FIN-3 of the RFP “Consultants' Representations regarding Costs and Charges” submitted by the Consultant to the Procuring Entity prior to the Contract's negotiations.*

*Should these representations be found by the Procuring Entity (either through inspections or audits pursuant to Clause GCC 25.2 or through other means) to be materially in complete or in accurate, the Procuring Entity shall be entitled to introduce appropriate modifications in the remuneration rates affected by such materially in complete or inaccurate representations. Any such modification shall have retroactive effect and, in case remuneration has already been paid by the Procuring Entity before any such modification,(i) the Procuring Entity shall be titled to offset any excess payment against the next monthly payment to the Consultants, or (ii) if there are no further payments to be made by the Procuring Entity to the Consultants, the Consultants shall reimburse to the Procuring Entity any excess payment with in thirty (30)days of receipt of a written claim of the Procuring Entity. Any such claim by the Procuring Entity for reimbursement must be made within twelve (12) calendar months after receipt by the Procuring Entity of a final report and a final statement approved by the Procuring Entity in accordance with Clause GCC45. 1(d) of this Contract.”*

## BREAKDOWN OF AGREED FIXED RATES IN CONSULTANT'S CONTRACT

We hereby confirm that we have agreed to pay to the Experts listed, who will be involved in performing the Services, the basic fees and away from the home office allowances (if applicable) indicated below:

(Expressed in [insert name of currency]) \*

Experts		1	2	3	4	5	6	7	8
Name	Position	Basic Remuneration rate per Working Month/Day/Year	Social Charges <sup>1</sup>	Overhead <sup>1</sup>	Subtotal	Profit <sup>2</sup>	Away from Home Office Allowance	Agreed Fixed Rate per Working Month/Day/Hour	Agreed Fixed Rate per Working Month/Day/Hour <sup>1</sup>
Home									
Work in Kenya									

Expressed as percentage of 1

1 Expressed as percentage of 4

\* If more than one currency, add a table

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name and Title: \_\_\_\_\_

### Appendix D: Reimbursable Expenses Cost Estimates

- {Insert the table with the Reimbursable Expenses rates. The table shall be based on [Form FIN- 4] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The foot note shall list such changes made to [FormFIN-4] at the negotiations or state that none has been made.}
- All reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount.
- Appendix E: Form Of advance Payments Guarantee

[Note: See Clause GCC 41.2 and

SCC41.2] Bank Guarantee for Advance

Payment

\_\_\_\_\_ [Bank's Name and Address of Issuing Branch or Office]

Beneficiary: \_\_\_\_\_ [Name and Address of

Procuring Entity] Date: \_\_\_\_\_

**ADVANCE PAYMENT GUARANTEE No. \_\_\_\_\_**

We have been informed that \_\_\_\_\_ [name of consultant or a name of the Joint Venture, same as appears on the signed Contract] (herein after called " the Consultant") has entered into Contract No.

\_\_\_\_\_ [Reference number of the contract] dated \_\_\_\_\_ with you, for the provision of \_\_\_\_\_ [brief description of Services] (hereinafter called " the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of \_\_\_\_\_ [Amount in figures] () [amount in words] is to be made against an advance payment guarantee.

At the request of the Consultant, we \_\_\_\_\_ [name of bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ [amount in figures] () [amount in words]<sup>1</sup> upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultant are in breach of their obligation under the Contract because the Consultant have used the advance payment for purposes other than toward providing the Services under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on their account number \_\_\_\_\_ at \_\_\_\_\_ [name and address of bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made full repayment of the amount of the advance payment, or on the day of \_\_\_\_\_, 20\_\_\_\_, earlier.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No.758.

[Signature (s)]  
\_\_\_\_\_

**Note:** All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product

<sup>1</sup>The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency (ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.

<sup>2</sup>Insert the expected expiration dates. In the event of an extension of the time for completion of the Contract, the Procuring 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. In preparing this guarantee, the procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: "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 Procuring Entity's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

**SECTION 10. NOTIFICATION FORMS**

**1 NOTIFICATION OF INTENTION TO AWARD**

Procuring Entity: \_\_\_\_\_ [insert the name of the Entity]  
 Contract title: \_\_\_\_\_ [insert the name of the contract]  
 RFP No: \_\_\_\_\_ [insert RFP reference number]

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

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

The successful Consultant

Name:	[insert name of successful Consultant]
Address:	[insert address of the successful Consultant]
Contract price:	[insert contract price of the successful Consultant]

i) Short listed Consultants

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

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

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

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

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

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

**DEADLINE:** The deadline to request a debriefing expires at midnight on *[insert date]* (local time). You may request a debriefing in relation to the results of the evaluation of your Proposal. If you decide to request a debriefing your written request must be made within five (5) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Consultant, contact details; and address the request for debriefing as follows:

Attention: *[insert full name of person, if applicable]*

Title/position: *[insert title/position]*

Agency: *[insert name of Procuring Entity]* Email

address: *[insert email address]*

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

If your request for a debriefing is received within the 5 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fourteen (14) Business Days from the date of publication of the Contract Award Notice.

#### **(iv) How to Make a Complaint**

**DEADLINE:** The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, *[insert date]* (local time).

Provide the contract name, reference number, name of the Consultant, contact details; and address the Procurement-related Complaint as follows:

Attention: *[insert full name of person, if applicable]* Title/position:

*[insert title/position]*

Agency: *[insert name of Procuring Entity]* Email

address: *[insert email address]*

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

[At this point in the procurement process] [Upon receipt of this notification] you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

In summary, there are four essential requirements:

You must be an 'interested party'. In this case, that means a Consultant who has submitted a Proposal in this selection process and is the recipient of a Notification of Intention to Award. The complaint can only challenge the decision to award the contract.

You must submit the complaint within the deadline stated above.

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

#### **(v) Standstill Period**

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

The Standstill Period lasts (specify the number of business days as per Data Sheet 30.1) Business Days as specified in the Data Sheet after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens, we will notify you of the extension.

If you have any questions regarding this Notification, please do not hesitate to contact us.

On behalf of \_\_\_\_\_ [*insert the name of the Procuring*

*Entity*]: Signature: \_\_\_\_\_

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

\_\_\_\_\_ Title/position: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**2 REQUEST FOR REVIEW**

**FORM FOR REVIEW (r.203(1))**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO..... OF.....20.....**

**BETWEEN**

..... **APPLICANT**

**AND**

.....**RESPONDENT (Procuring Entity)**

Request for review of the decision of the..... (Name of the Procuring Entity of .....dated the...day of .....20.....in the matter of Tender No .....of .....20..... 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 of .....20.....

**SIGNED**

**Board Secretary**

**LETTER OF AWARD**

*[use letterhead paper of the Procuring Entity] [date]\_To: \_\_\_\_\_[name and address of the winning Consultant] Subject: Notification of Award Contract No.....*

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

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

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

Name and Title of Signatory:\_\_\_\_\_

Name of Agency:\_\_\_\_\_

**Attachment:** *Draft Negotiated Contract*

## BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

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

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.*

Tender Reference No.: \_\_\_\_\_ [insert

identification no] Name of the Tender Title/Description: \_\_\_\_\_

\_\_\_\_\_ [insert name of the assignment] to:

\_\_\_\_\_ [insert complete name of Procuring

Entity]

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

l) 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)
Full Name		Directly--- ----- %	Directly..... ..... % Of voting	1.Having the right to appoint a majority of the	1.Exercises significant influence or
National identity card number or		of shares		the	influence or
Details of all Beneficial Owners		% Of	% of voting	Whether a person	Whether a

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


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

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

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

Name of the Consultant ..... \*[insert complete name of the Consultant] \_

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

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

Signature of the person named above..... [insert signature of person whose name and Capacity are shown above]

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

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

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

Request for Proposal Reference No.: \_\_\_\_\_

\_\_\_\_\_ [insert identification no] Name of the

Assignment: \_\_\_\_\_ [insert name of

the assignment] to: \_\_\_\_\_ [insert complete name of Procuring

Entity]

In response to your notification of award dated \_\_\_\_\_ [insert date of notification of award] to furnish additional information on beneficial ownership: \_ [select one option as

*applicable and delete the options that are not applicable]*

V) We here by provide the following beneficial ownership information

Details of beneficial ownership

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

OR

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

OR

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