



**Kenya Power**

**TENDER NO. KP1/9A.2/OT/41/CA&CS/19-20 FOR  
PROVISION OF LEGAL SERVICES**

DATE OF TENDER DOCUMENT, **MARCH 2020**

**ALL LAW FIRMS ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS ENTIRETY BEFORE SUBMITTING ANY BID**

(E-PROCUREMENT TENDER)

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## ABBREVIATIONS AND ACRONYMS

1.	CLE	Council of Legal Education
2.	CPS (K)	Certified Public Secretary of Kenya
2.	GCA	General Conditions of Appointment
3.	ICPAK	Institute of Certified Public Accountants of Kenya
4.	ICS	Institute of Certified Secretaries
5.	ITT	Instructions to Tenderers
6.	KRA	Kenya Revenue Authority
7.	KSh. / KES	Kenya Shillings
8.	KSL	Kenya School of Law
9.	LSK	Law Society of Kenya
10.	ODPP	Office of the Director of Public Prosecutions
11.	PPADA	Public Procurement and Asset Disposal Act, 2015
12.	PPRA	Public Procurement Regulatory Authority
13.	SA	Service Agreement
13.	PPARB	Public Procurement Administrative Review Board
14.	VAT	Value Added Tax

## INTRODUCTION

Dear Prospective Lawyer/ Law Firm,

### **1. Description of The Kenya Power & Lighting Company PLC and our Core Business**

- 1.1. The Kenya Power & Lighting Company PLC (KPLC) is a limited liability company registered under the Companies Act, Chapter 486 of the Laws of Kenya (repealed). It was incorporated in 1922 as the East African Power & Lighting Company Limited. KPLC was listed on the Nairobi Stock Exchange (NSE) in 1954. The Company changed to The Kenya Power & Lighting Company Limited in 1983 and The Kenya Power & Lighting Company PLC (KPLC) in August 2019.
- 1.2. Our shareholders include the Government of Kenya (GoK), institutions and individual persons. KPLC is a public company with GoK holding the majority block of shares. We are regulated by the State Corporations Act, Chapter 446 of the Laws of Kenya and the laws governing procurement by public bodies, mainly the Public Procurement and Asset Disposal Act, 2015 together with various regulations there-under and the Public Finance Management Act.
- 1.3. Our Core Business is bulk purchase of electrical energy; transmit; distribute; supply electrical energy and related customer services throughout Kenya.
- 1.4. Our Mission is *Powering people for better lives through innovative ideas securing Business Sustainability for the future.*
- 1.5. Our Values are developed to support the Company's Mission. These Values are Customer First, One Team, Passion, Integrity, Excellence and Accountability.

### **2. Legal and Regulatory Framework**

- 2.1. Our business is mainly governed by National Policy on Energy which was Sessional Paper No. 4 of 2004 on Energy and the Energy Act, 2019. The Energy Act, 2019 became effective on 28 March 2019 and effectively repealed the Energy Act, 2006. The Regulator for the sector is the Energy & Petroleum Regulatory Authority.

### **3. Organizational and Business Structure**

- 3.1. KPLC is structured into 12 Divisions, 1 Institute and 8 Main Regions. Our headquarters is referred to as the Central Office. It is located at Stima Plaza, Kolobot Road, Parklands, Nairobi. Amongst the 12 Divisions is the Corporate Affairs and Company Secretary (CA&CS) headed by the

General Manager, Corporate Affairs & Company Secretary. Within the CA&CS Division are several departments, including the Legal Services Department.

- 3.2. KPLC's operations are geographically split into Eight (8) Regions:
  - 3.2.1. **Nairobi** Region with its main office in Electricity House, Harambee Avenue, Central Business District Nairobi;
  - 3.2.2. **Central Rift** Region with the main office in Electricity House, Moi South Road, Nakuru;
  - 3.2.3. **Coast Region** with the main office in Electricity House, Nkrumah Road, Central Business District Mombasa;
  - 3.2.4. **Mount Kenya** Region with the main office in Stima House, Nyeri;
  - 3.2.5. **Western** Region with its main office in Electricity House, Station Road, Kisumu;
  - 3.2.6. **South Nyanza** Region with its main office in Kisii;
  - 3.2.7. **North Rift** Region has its main office at KVDA Plaza, Oloo Street Eldoret and finally
  - 3.2.8. **North Eastern** Region whose main office is in Thika.
- 3.3. To attain higher penetration and decentralization within the devolved governance system, KPLC has 49 County Offices throughout the 8 Regions traversing the 47 Counties of the Republic.
- 3.4. The County Offices are headed by County Business Managers. They are responsible for, and act as link persons for all affairs of the Company within their respective spheres of operation.
- 3.5. From the last quarter of 2017 the Company has also adopted Feeder Based Business Units. A Feeder can be commonly referred to as the "closest electric power line to the customer as is technically and viably possible for monitoring and operational purposes". FBBUs focus is on enhancing reliability and quality of power supply.
- 3.6. As part of our growth and transformation strategy, in 2009 the Company engaged in the process of rebranding in a programme dubbed "*Project Mwangaza*". A result of this was the change of our logo to one depicted as a bulb with the words "Kenya Power" at the bottom. However, the Company name remains the same i.e. **The Kenya Power and Lighting Company PLC** (abbreviated as KPLC).

#### **4. Nature and Scope of the Tender**

- 4.1. KPLC intends to enlist by way of Tender, the services of competent law firms and qualified lawyers (*hereinafter referred to as the lawyers*) –
  - 4.1.1. to provide legal services for the Financial Years 2020-2022 ending on 30 June 2022 or as may be extended.

- 4.1.2. to be called upon to offer a myriad of legal and associated consultancy services (hereafter referred to as the Services) as may from time to time be required over the period in question.
- 4.2. The scope of the Services includes the fields of Energy Law, Company and Commercial Law, Constitutional and Administrative Law; Construction and Engineering law; Conveyancing; Debt Recoveries; Employment and Labour laws; Health and Safety laws; law relating to Information Technology; Tax Law, Criminal Law, Land Law, Public-Private Partnership, Procurement law, Arbitration and other forms of Alternative Dispute Resolution; Environmental Law; Insurance law; associated civil litigation; criminal prosecutions; Devolution and Public Policy.
- 4.3. This will also include provision of expert advice and opinions on specific cases, transactions, events including projects. It may involve carrying out searches locally and abroad in land and company registries together with liaising with other relevant bodies and authorities.
- 4.4. The lawyers will be expected to primarily work closely and under the auspices of the General Manager, Corporate Affairs and Company Secretary in its Legal Services Department.

## **5. The Legal Services Department**

- 5.1. The Legal Services Department (*the Department*) is situated at our headquarters at Stima Plaza, 2<sup>nd</sup> Floor, Kolobot Road, Parklands, Nairobi. From its centralized offices, the Department provides services to the entire Company and it is primarily responsible for and coordinates KPLC's Legal Services.
- 5.2. The Department has 2 Sections namely:
- 5.2.1. Commercial Section, which primarily handles Contracts, Conveyancing, Compliance & Legislation.
- 5.2.2. Litigation and Prosecutions Section, which handles litigation disputes in both civil and criminal matters.
- 5.3. The Department has adopted robust, increased efficiency and timely response approaches in delivery of services. Each officer's performance is evaluated premised on each individual's Performance Contract entered into annually with KPLC. To meet higher expectations and address new challenges, each individual's Performance Contract is reviewed every year to ensure growth in success parameters.
- 5.4. KPLC has a sizable civil litigation portfolio as outlined below -
- 5.4.1. It is engaged in litigation in about 70% of all Magistrates Courts country-wide; 75% of all High Courts (this includes the Employment & Labour Relations Court), and some cases in the Court of Appeal.

It is yet to be engaged in litigation in the Supreme Court of Kenya. It also adopts Alternative Dispute Resolution processes which include, but are not limited to, Negotiation, Mediation and Arbitration.

- 5.4.2. Occasionally, some matters are before some Tribunals for instance the Public Procurement Administrative Review Board, the National Environmental Tribunal, the Energy & Petroleum Regulatory Authority, the Energy & Petroleum Tribunal and the Business Premises Rent Tribunal.
- 5.4.3. When need arises, the Department handles some insurable claims. However, insurance matters are mainly within the purview of its sister department i.e. Insurance and Integrity Department. The insured matters relate to personal injury claims, occupational injuries, motor and other road traffic accidents, electrocutions, damage to and attendant direct loss arising from electrical appliances and death due to electrical accidents.
- 5.5. The Department also handles criminal cases. This is in conjunction with KPLC's Security Services Department.
- 5.6. The Department carries out its role in the provision of Services either directly or through external lawyers on its Panel as follows: -
  - 5.6.1. Civil litigation is very nearly 100% out-sourced to the Panel
  - 5.6.2. Criminal prosecutions - 100% by the ODPP or its specially appointed prosecutors
  - 5.6.3. A portion of commercial and conveyancing work is out-sourced
  - 5.6.4. Debt collection through litigation is also outsourced.

## **6. The Objectives**

- 6.1. Over the years, the Kenyan electricity market has been evolving, as have been electricity markets all over the world. The demand for electricity has grown, technologies have changed and there is more emphasis on renewable source of energy. There is also the increased legislation and policy drive towards open access to electricity driven by the demand for quality supply and customers' heightened awareness. These and more changes and growth areas require a focused strategy for KPLC to maintain its competitive advantage and focus on being a market leader in this sector.
- 6.2. The expansion of operations within KPLC and other developments in the energy sector together with the changes in legislation affecting KPLC, necessitate extra vigilance and continuous review of our legal matters, operations and business. These may require the selected



lawyers to provide timely, up to date informed responses and recommendations to queries from the Department.

- 6.3. The Tender and enlisting on KPLC's Panel shall not constitute a retainer. KPLC does not bind itself to request for provision of any service. The performance of the enlisted lawyers will be assessed regularly. By participation in this tender, the successful law firms agree to be appraised by KPLC on the law firm's service standards and performance in the provision of the services.

## **7. Professionalism, Experience and Past Performance**

- 7.1. The lawyers should be adequately competent, possess substantial relevant experience and be able to promptly offer the Services and/or associated consultancy.
- 7.2. The lawyer shall always during the period of the engagement conduct him/herself in a manner suited to the best interests of KPLC. Any perceptions of conflict of interest are strongly undesirable and will be swiftly remedied. Law firms that KPLC establishes that are conflicted or that have filed advocate/client bills of costs against KPLC shall not be considered for enlisting.
- 7.3. The lawyer should demonstrate the capability of conducting presentations and/or providing training to staff on relevant legal aspects in various fields.
- 7.4. The enlisted lawyer should have good credentials in handling relevant Kenyan cases and matters. S/he should also have appropriate experience and/or international affiliations in developed or emerging markets including the East African Region. *(Such affiliation will be an added advantage).*

## **8. Requirements, Reports and Schedules (Service Agreements)**

- 8.1. It is expected that the selected lawyers may enter into discussion and agreement with KPLC on the approach and action plans to realize the objectives of their appointment.
- 8.2. Taking cognizance of the entrenched adoption of Performance Management in KPLC and the benefits accruing there-from, the law firms will be required to enter into Service Agreements with KPLC and will signify their acceptance by signing the Agreements. This will be among the mandatory basis for confirmation to the KPLC Panel.
- 8.3. The lawyers will be expected to give periodic reports and review of legal matters that they are handling and timely submission within specified Schedules. The various reports are mandatory and are submitted either monthly, quarterly, half-yearly and annually.

8.4. Lawyers/Law firms who have previously been removed from the KPLC Panel or had all matters transferred away from them will not be considered in this Tender Process.

## **9. The Evaluation and Selection Process**

9.1. The Evaluation and Selection Process of the lawyers will be conducted largely along the following lines:-

9.1.1. Desk evaluation of all submitted bid documents

9.1.2. Where deemed necessary, Confirmatory/Inspection visits of the lawyers premises or any other places deemed appropriate by the Evaluation Team.

9.2. All lawyers who participate by submission of their bids shall be deemed to have consented to this Process. KPLC therefore requests that participating lawyers and firms grant reasonable access and facilities to KPLC staff for these purposes.

## **10. Confirmation and Verification of Tender Documents**

10.1. All lawyers/law firms are strongly advised to:-

10.1.1. Conform to the information contained in the Tender Document in preparing and submitting its Tender.

10.1.2. Ensure that they verify accuracy, authenticity and validity of all documentation, certification or information obtained from third parties e.g. KRA, LSK, letters from referees that they intend to or submit to KPLC as part of their Tender.

10.1.3. Ensure that they comply with the E-procurement process. Any queries or assistance from the KPLC E-procurement or SRM Help Desk should be sought at least **twelve (12) calendar days before the closing date of submission of Tenders. Clarifications sought outside this time frame will not be responded to.**

10.2. The lawyers are also encouraged to demonstrate high degrees of integrity, fidelity and honesty in the information supplied to KPLC as part of their Tender. The information should be as clear and concise as possible.

10.3. KPLC advises the lawyers that any deviations from the contents of this paragraph may lead to automatic disqualification of such Tenderer.

Yours faithfully,

**FOR: THE KENYA POWER & LIGHTING COMPANY PLC**

**GENERAL MANAGER, CORPORATE AFFAIRS AND  
COMPANY SECRETARY.**

## SECTION I - INVITATION TO TENDER

**DATE: MARCH 2020**

**TENDER NO. KP1/9A.2/OT/41/CA&CS/19-20 FOR PROVISION OF LEGAL SERVICES**

### **1.1. Invitation and Contact Address**

The Kenya Power & Lighting Company PLC. (KPLC) invites eligible law firms to enlist on its Panel for the **Provision of Legal Services (hereinafter referred to as "the Services")**. Interested eligible law firms may obtain further information from the Supply Chain Manager (Procurement) through the electronic mail (email) address provided in the cover page of the Tender Document.

### **1.2. Obtaining Tender Documents**

The Tender documents detailing the requirements may be obtained from the KPLC E-Procurement Web Portal or downloaded from the KPLC website ([www.kplc.co.ke](http://www.kplc.co.ke)) beginning **31<sup>st</sup> March 2020**. All law firms will be required to e-mail their name, e-mail address, physical address and telephone contacts to the electronic mail (email) addresses provided in the cover page. Interested law firms are requested to do so to enable them to participate.

### **1.3. Submission of Tender Documents**

Completed Tenders are to be saved as PDF documents marked **FOR TENDER NO. KP1/9A.2/OT/41/CA&CS/19-20 FOR PROVISION OF LEGAL SERVICES** and submitted in the appropriate KPLC E-procurement Web Portal found on the KPLC website ([www.kplc.co.ke](http://www.kplc.co.ke)) so as to be received on or before **10.00 a.m. on 20<sup>th</sup> April 2020**. **The tender is to be submitted ONLINE. No manual submission will be accepted.**

### **1.4. Prices and Validity**

Any charges or fees quoted should be in Kenya Shillings. The validity of the Tender shall be for **a hundred and eighty (180) days** from the closing date of this Tender Process.

### **1.5. Opening of Submitted Tenders**

Tenders will be opened electronically on **20<sup>th</sup> April 2020 at 10.30 am** in the presence of the law firm's or their representatives who choose to attend in Stima Plaza, Auditorium, Kolobot Road, Parklands, Nairobi.

## SECTION II – TENDER SUBMISSION CHECKLIST

This order/ arrangement shall be considered as the Tender Submission Format. The law firms shall tick against each item indicating that they have provided the document and also provide the page number(s).

No.	Item	Tick Where Provided	Indicate the Page
1.	Professional Indemnity Cover		
2.	Declaration Form		
3.	Duly completed Tender Form		
4.	Copy of law firm's Registration Certificate		
5. *	Copy of law firm's PIN Certificate OR law firm's PIN Number		
6. *	Copy of the law firm's Valid Tax Compliance or Clearance Certificate		
7.	Confidential Business Questionnaire (CBQ)		
8.	List with full contacts as well as physical addresses of law firm's clients		
9.	Curriculum Vitae of the lawyers		
10.	Admitted lawyers, employment contracts or Service Agreements (signed by the Partner and the lawyer in question)		
11.	Current (2020) Practicing Certificate issued by the Judiciary OR valid receipt issued by LSK in full payment for the 2020 Practicing Certificate.		
12.	Law Firm's profile		
13.	Evidence of physical address and premises		
14.	LSK's recognition		
15.	Quality Management System/ Standard Operating Procedures		
16.	Duly completed Conflict of Interest Form		
17.	Record of unsatisfactory or default in performance obligations in respect of any client		
18.	Copies of certificates: Notary Public; Commissioner for Oaths; Accredited Governance Auditor; Certified Legal Auditor; CPS(K) in Good Standing		
19.	Duly completed Application Form		
20.	Litigation/Arbitration History		

21.	Audited Financial Statements. The audited financial statements required must be those that are reported within eighteen (18) calendar months of the date of the tender document. <i>For law firms that are registered or incorporated within the last one calendar year of the date of the tender document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies shall be certified by the bank issuing the statements. The certification shall be original.</i>		
22.	Copy of the law firm's Valid Certificate of Registration for Access to Government Procurement Opportunities (AGPO), for the law firms under Reservation		
23.	Accepted Method of Charging for Services with amounts indicated therein		
24.	Any other document or item required by the Tender Document that is non-financial. <i>(The Law firm shall specify such other documents or items it has submitted)</i>		

**\*Notes to Law Firms on Tender Submission Checklist**

1. Valid TCC shall be one issued by KRA in respect of the law firm and not the individual lawyer's. It must have been valid at least as at 1<sup>st</sup> March 2020. For firms registered after this date, they should provide tax registration certificates that are valid as at the time of the tax registration.
2. All law firms are required to provide the Personal Identification Number Certificate (PIN Certificate) of the Firm or in the alternative the PIN Number of the firm. Please note that PINs belonging to individuals in the firm are discouraged as these may be a source of difficulty with KRA in future in case of appointment to the Panel.

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## SECTION III - INSTRUCTIONS TO TENDERERS (ITT)

### 3.1. Definitions

In this Tender Document, unless the context or express provision otherwise requires: -

- a) Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under
- b) **"Day"** means calendar day and **"month"** means calendar month
- c) **"Date of Tender Document"** shall begin with the first day and end on the last day of the month appearing on the cover page of the Tender Document
- d) **"Government"** wherever appearing in the Tender document shall include the National and/or County Governments and any lawfully recognized foreign government as the context may so deem fit
- e) **"Tender"** or the **"Tender Document"** includes its appendices and documents mentioned hereunder and any reference to this Tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time
- f) The expression **"law firm"** shall include "lawyers" and vice-versa and may be used interchangeably
- g) **"The law firm"** means the law firm submitting its Tender for enlisting to provide the Services in response to the Invitation to Tender. Where there are two or more persons included in the expression the "law firm", any act or default or omission by the law firm shall be deemed to be an act, default or omission by any one or more of such lawyers
- h) **"The Procuring Entity"** means The Kenya Power & Lighting Company PLC or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as '**KPLC**' or brand-referred to as **Kenya Power**)
- i) **"The Services"** refers to the myriad of legal and associated consultancy services
- j) Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender
- k) Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the "law firm" the covenants, agreements and obligations expressed to be made or performed by the law firm shall be deemed to be made or performed by such persons jointly and severally.

### **3.2. Eligible Law Firms**

- 3.2.1. All law firms that are duly registered in Kenya and recognized by LSK are eligible to participate in this Tender.
- 3.2.2. Successful law firms shall be eligible to provide the Services guided by this Tender and the ensuing Service Agreement as may be entered between the law firm and KPLC.
- 3.2.3. The classification, as defined by KPLC, shall be as follows:-
- a) Category A law firms – (Standard)
    - (i) Has a Professional Indemnity Cover of not less than KSh.5 Million.
    - (ii) Has one (1) or more admitted lawyers
  - b) Category B law firms – (New/Young Law Firms)
    - (i) Has a Professional Indemnity Cover of not less than KSh.2Million.
    - (ii) Has all its lawyers admitted not earlier than 1<sup>st</sup> March 2017.
- 3.2.4. For purposes of this categorization and the Tender Document-
- a) 'Admitted lawyers' shall mean qualified lawyers who have been admitted to the Bar and hold a valid year 2020 Practicing Certificate OR valid receipt issued by the Law Society of Kenya in full payment of the Year 2020 Practicing Certificate. It means all lawyers (including Partner(s)) in the law firm who will be responsible for and handling the KPLC docket and matters.
  - b) Documents for lawyers who will ordinarily or on a day to day basis not be handling or responsible for the KPLC docket need not be submitted in the Tender.
- 3.2.5. Law firms shall satisfy all relevant licensing and/or registration with LSK, the Office of the Attorney General of Kenya, any relevant County or other authority.
- 3.2.6. Law firms shall provide such evidence of their continued eligibility satisfactory to KPLC as KPLC may reasonably request.

### **3.3. Declarations of Eligibility**

- 3.3.1. Law firms shall not be under declarations of ineligibility for corrupt, fraudulent practices, conflict of interest or any other reasons prescribed by the PPADA or any other law.
- 3.3.2. Law firms who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XIV.
- 3.3.3. Those that are under the Declaration for corrupt, fraudulent practices or conflict of interest whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.



### 3.4. Pre-Bid Meeting

- 3.4.1. KPLC will not conduct a pre-bid meeting. This is on account of corona virus disease (COVID-19) pandemic.
- 3.4.2. The law firm is requested to submit any questions in writing by electronic mail (email) to reach KPLC through the Supply Chain Manager (Procurement) at the KPLC's address indicated in the cover page of this Tender. The questions are to reach KPLC at least **twelve (12) calendar days before the closing date of submission of Tenders. Questions submitted to KPLC outside this time frame will not be responded to.**

### 3.5. Cost of Tendering

- 3.5.1. The law firm shall bear all costs associated with the preparation and submission of its Tender. KPLC shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tender process.
- 3.5.2. There are no charges for the Tender Document.

### 3.6. Obtaining the Tender Document

- 3.6.1. The Tender documents detailing the requirements may be obtained by downloading online from the KPLC website ([www.kplc.co.ke](http://www.kplc.co.ke)). No Tender documents will be issued from any KPLC office.
- 3.6.2. Within twenty-four (24) hours of downloading the Tender document, the law firm shall send only by e-mail its **name, e-mail address(es) and telephone/mobile number** to the electronic mail (email) addresses provided in the cover page.

### 3.7. Contents of the Tender Document

- 3.7.1. The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.9 of these Instructions to law firms: -
- a) *Introduction*
  - b) *Invitation to Tender*
  - c) *Tender Submission Checklist*
  - d) *Instructions to Tenderers*
  - e) *Schedule of Requirements*
  - f) *Method of Charging for Services*
  - g) *Evaluation Criteria*
  - h) *Confirmation/Inspection Visits*
  - i) *Conditions of Appointment*
  - j) *Tender Form*
  - k) *Confidential Business Questionnaire Form*
  - l) *List of Law Firm's References*

- m) *Quality Management System/ Standard Operating Procedures*
- n) *Format of CV for Professional Staff*
- o) *Form of Conflict of Interest*
- p) *Declaration Form*
- q) *Draft letter of notification of award*
- r) *Draft letter of notification of regret*
- s) *Application Form*
- t) *Litigation/Arbitration History*
- u) *Service Agreement*

3.7.2. The law firm is expected to examine all instructions, forms, provisions, terms and specifications in the Tender Document. Failure to furnish all information required by the Tender Document or to submit an Tender not substantially responsive to the Tender Document in every respect will be at the law firm's risk and may result in the rejection of its Tender.

3.7.3. All recipients of the documents for the proposed engagement for the purpose of submitting a Tender (whether they submit a Tender or not) shall treat the details of the documents as "Private and Confidential".

### **3.8. Clarification of Documents**

3.8.1. A prospective law firm requiring any clarification of the Tender Document may notify the Supply Chain Manager (Procurement) in writing by electronic mail (email) at KPLC's email addresses indicated in the cover page of the Tender Document.

3.8.2. KPLC will respond in writing to any request for clarification of the Tender documents, which it receives not later than twelve (12) calendar days prior to the closing date of the submission of tenders, prescribed by KPLC.

### **3.9. Amendment of Documents**

3.9.1. At any time prior to the deadline for submission of Tenders, KPLC, for any reason, whether at its own initiative or in response to a clarification requested by a prospective law firm, may modify the Tender Documents by amendment.

3.9.2. All prospective law firms that have registered in the portal for the Tender will be notified of the amendment(s) (hereinafter referred to or otherwise known as addendum) in writing and the same will be binding on them.

3.9.3. In order to allow prospective law firms reasonable time in which to take the amendment into account in preparing their Tenders, KPLC, at its discretion, may extend the deadline for the submission of Tenders.

### **3.10. Language of Tender**

3.10.1. The Tender prepared by the law firm, as well as all correspondence and documents relating to the Tender, exchanged between the law firm and KPLC, shall be written in the English language.

3.10.2. Any printed literature furnished by the law firm may be written in another language so long as they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the law firm's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the law firm's stamp.

### **3.11. Documents Comprising the Tender**

3.11.1. The Tender prepared and submitted by the law firm shall include but not be limited to all of the following components: -

a) *Declaration Form, Tender Form, Application Form and a Method of Charging for Services completed in compliance with paragraphs 3.3, 3.12 and 3.13.*

b) *Documentary evidence established in accordance with paragraph 3.2 that the law firm is eligible to tender and is qualified to perform the Services when called upon to do so if its Tender is accepted.*

c) *Documentary evidence established in accordance with paragraph 3.15 that the Services that may be provided by the law firm conform to the Tender Document, and,*

d) *Professional Indemnity Cover furnished in accordance with paragraph 3.18.*

e) *For purposes of reference and evaluation, the law firm shall submit a list of at least six (6) names with details as per Section VI Evaluation Criteria, Part II, Sub-Part B, Table 6.2.2.*

### **3.12. Tender Form**

3.12.1. The Law firm shall complete and sign the Tender Form and all other documents furnished in the Tender Document, indicating the services to be performed, and Methodology of Charging for Services amongst other information required.

### **3.13. Charges for Services**

3.13.1. The law firm shall indicate on the appropriate table labelled as Method of Charging for Services the unit prices and rates (where applicable) when called upon to render such Services.

3.13.2. The rates and prices shall be of costs for the Services excluding VAT but inclusive of all other taxes and insurances payable. No other basis shall be accepted.

### **3.14. Currencies**

3.14.1. For Services that the law firm will provide from within or outside Kenya, the rates and prices shall be quoted in Kenya Shillings.

### **3.15. Law Firm's Competence and Qualifications**

3.15.1. Pursuant to paragraph 3.2, the law firm shall furnish, as part of its Tender, documents establishing the law firm's eligibility, competence to tender and its qualifications to perform well in any ensuing assignment if its Tender is accepted.

3.15.2. The documentary evidence of the law firm's qualifications to be appointed and perform well if its tender is accepted shall be established to KPLC's satisfaction are -

- a) *that the law firm has the financial capability necessary to perform the service agreement. The law firm shall be required to provide -*
  - i. *Audited Financial Statements (Audited Accounts) that are reported within eighteen (18) calendar months of the date of the tender document. The Statements must be stamped and signed. The Auditors must be currently registered by ICPAK.*
  - ii. *For law firms that are registered or incorporated within the last one calendar year of the date of the tender document, they shall submit certified copies of bank statements covering a period of at least six (6) months prior to the date of the tender document. The copies shall be certified by the bank issuing the statements. The certification shall be original.*
- b) *Valid and current Tax Compliance Certificate issued by KRA.*
- c) *That the law firm has the technical and professional capability necessary to be appointed and perform the Services well when called upon to do so.*
- d) *That the law firm is duly registered, recognized and is a current member of the body or institution accredited and or pertaining to the Services.*

3.15.3. The law firm will furnish KPLC with a copy of the registration certificate and LSK's recognition whether by hard copy letter or on the internet. KPLC reserves the right to subject the certificate and recognition to authentication.

- a) *Registration is by the Republic's Attorney General's Office's Registrar of Business Names or Partnerships.*

- b) *Recognition is by listing at the LSK of the law firm as declared by the Partner(s) and, in the name of the law firm.*
  - c) *All lawyers in the firm must also be recognized by LSK as belonging to or being in that law firm by the Date of the Tender Document unless satisfactorily explained otherwise by the law firm.*
- 3.15.4. Law firms with a record of unsatisfactory or default in performance obligations in any contract or service delivery shall not be considered for evaluation or enlisting. For the avoidance of doubt, this shall include any law firm with unresolved case(s) in its obligations for more than four (4) months in any assignment or service delivery.
- 3.15.5. The law firm shall furnish, as part of its Tender, documents establishing the conformity to the Tender Document of all services that the law firm proposes its ability to perform if appointed to KPLC's Panel.
- 3.15.6. The documentary evidence of conformity to the Tender Document may be in the form of literature and drawings.
- 3.15.7. For purposes of the documentary and other evidence to be furnished the law firm shall note that standards for competence, professionalism, material, and equipment, designated by KPLC in its Evaluation Criteria are intended to be descriptive only and not restrictive. The law firm may adopt higher standards in its Tender, if it demonstrates to KPLC's satisfaction that the substitutions ensure substantial and/or higher equivalence to those designated in the Tender Document.

### **3.16. Deviations**

- 3.16.1. Where a law firm deems that it possesses competency that may not aptly fit into any of the evaluation criteria set out in the Tender document, it is at liberty to provide a statement of deviations from the Tender requirements on a separate sheet of paper clearly marked as "Statement of Deviations".
- 3.16.2. The Statement should include the following:-
- a) the specific Tender requirement
  - b) the deviation proposed by the law firm
  - c) the details of the deviation
  - d) justification or reason for the deviation
  - e) where possible, the law firm's cost of that deviation and the law firm's estimate of the cost of complying with KPLC's requirement without the deviation.

### **3.17. Demonstration(s), Inspection(s) and Test(s)**

- 3.17.1. Where required in the Tender, all law firms shall demonstrate ability of performance of the required service in conformity with the Details of Services.

- 3.17.2. KPLC or its representative(s) after giving reasonable notice to the law firm shall have the right to inspect/ test the law firm's capacity, equipment, premises, and to confirm their conformity to the Tender requirements. This shall include any quality management system. KPLC's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection/ test/visitation.
- 3.17.3. KPLC shall meet its own costs of the inspection/ test. Where conducted on the premises of the law firm(s), all reasonable facilities and assistance, including access to literature and documentation save for client's confidential information shall be furnished to the inspectors at no charge to KPLC.
- 3.17.4. Demonstration, Inspection/ Test/ Visitation Report(s) shall be completed by KPLC upon conclusion of the inspection/ tests/ visitations. This Report will be considered prior to enlisting.

### **3.18. Professional Indemnity Cover**

- 3.18.1. Law firms in Category A shall furnish, as part of its Tender, a Professional Indemnity Cover (*hereinafter referred to as the PI Cover*) of a minimum of Ksh.5 Million. Law firms in Category B and those under Preference & Reservation shall submit a PI Cover of a minimum of KSh.2 Million.
- 3.18.2. The PI Cover is required to demonstrate the law firm's commitment, ability to perform the Services together with its compliance with the law as well as guidelines regarding establishment and operation of law firms in Kenya.
- 3.18.3. The PI Cover shall be denominated in Kenya Shillings or in another freely convertible currency and shall be issued by an insurance firm registered by the Insurance Regulatory Authority and approved by PPRA. The insurance company must be located in Kenya.
- 3.18.4. The PI Cover shall be valid as at the closing date of the Tender.
- 3.18.5. KPLC shall seek authentication of the PI Cover from the issuing insurance company. It is the responsibility of the law firm to sensitize its issuing insurance company on the need to respond directly and expeditiously to queries from KPLC. The period for response may not exceed three (3) days from the date of KPLC's query. Should there be no conclusive response by the insurance company within this period, such law firm's PI Cover may be deemed as invalid and the bid rejected.
- 3.18.6. Any Tender not secured in accordance with this paragraph will be rejected by KPLC as non-responsive, pursuant to paragraph 3.27.

3.18.7. The successful law firm's PI Cover will be required to be updated and valid at all times for the period of engagement and rendering of services to KPLC.

### **3.19. Validity of Tenders**

3.19.1. Tenders shall remain valid for a hundred and eighty (180) days after the date of opening as specified in the Invitation to Tender or as otherwise may be prescribed by KPLC, pursuant to paragraph 3.22. A Tender that is valid for a shorter period shall be rejected by KPLC as non-responsive.

3.19.2. In exceptional circumstances, KPLC may extend the Tender validity period. The extension shall be made in writing. For the purposes of evaluation and enlisting/appointment, the PI Cover provided under paragraph 3.18 shall not be affected by any extension. A law firm shall not be required nor permitted to modify its Tender during the extended period.

### **3.20. Tender Format**

3.20.1. The Tender shall be divided clearly in descending order as listed in the Tender Submission Checklist. The divisions are for clear identification and marking of the respective documents or information that are serially numbered in the Checklist. The bid documents will be paginated consistent with the Checklist to facilitate ease of reference during evaluation.

3.20.2. The order and arrangement as indicated in the Tender Submission Checklist will be considered as the Tender Format. There will be only one document submitted on the e-procurement portal. Law firms shall ensure that they upload all the required documents in pdf format into the e-procurement portal. The bid documents shall be arranged according to the order in the Checklist.

3.20.3. Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPLC as non-responsive, pursuant to paragraph 3.27.

### **3.21. Preparation and Signing of the Tender**

3.21.1. The Tender shall be signed by any Partner(s) of the law firm. For purposes of this Tender, only a Partner can sign where a signature is required unless any other person is expressly permitted by the Tender document to do so.

3.21.2. The name of the Partner(s) must appear either in the Registration Certificate or the Change of Particulars Certificate (both issued by the

Office of the Attorney General and Department of Justice) or the law firm's Confidential Business Questionnaire Part 2 (a) or (b).

3.21.3. All pages of the Tender, including un-amended printed literature, shall be initialed by the Partner(s) signing the Tender and serially numbered.

3.21.4. The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the law firm, in which case such corrections shall be initialed by the Partner(s) signing the Tender.

3.21.5. KPLC will assume no responsibility whatsoever for the law firm's failure to comply with or observe the entire contents of this paragraph.

3.21.6. Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPLC as non-responsive, pursuant to paragraph 3.27.

### **3.22. Deadline for Submission of Tenders**

3.22.1. Tenders must be received by KPLC by the date and time and at the place specified in the Invitation to Tender.

3.22.2. KPLC may, at its discretion, extend this deadline for submission of Tenders by amending the Tender documents in accordance with paragraph 3.9, in which case all rights and obligations of KPLC and the law firm's previously subject to the initial deadline, will therefore be subject to the deadline as extended.

### **3.23. Modification and Withdrawal of Tenders**

3.23.1. The law firm may modify or withdraw its Tender after it has submitted it, provided that written notice of the modification, including substitution or withdrawal of the Tender is received by KPLC prior to the deadline prescribed for submission of Tenders.

3.23.2. The law firm's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of paragraphs 3.20, 3.21 and 3.22. A withdrawal notice may also be sent by electronic mail (email) but followed by an original signed confirmation copy, postmarked no later than the deadline for submission of Tenders.

3.23.3. No Tender may be modified after the deadline for submission of Tenders.

### **3.24. Opening of Tenders**

3.24.1. KPLC shall electronically open all Tenders promptly at the date and time specified in the KPLC e-procurement portal and at the location specified in the Invitation to Tender or as may otherwise be indicated.



- 3.24.2. The law firm's names, Tender modifications or withdrawals will be read out aloud at the opening.
- 3.24.3. KPLC shall assign an identification number to each Tender received.
- 3.24.4. The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

**3.25. Process to be Confidential**

- 3.25.1. After the opening of Tenders, information relating to the examination, clarification, evaluation and comparisons of Tenders and recommendations arising there-from shall not be disclosed to a law firm or other person(s) not officially concerned with such process until conclusion of that process.
- 3.25.2. Conclusion of that process shall be deemed to have occurred, by the date and time KPLC notifies the qualified law firm(s).
- 3.25.3. In any event, official disclosure by KPLC of any information upon conclusion of that process shall be on request by the law firm and only be in summary form to the extent permissible by law.
- 3.25.4. Any effort by a law firm to influence KPLC or any of its staff members in the process of examination, evaluation and comparison of Tenders and information or decisions concerning appointment to the Panel may result in the rejection of the law firm's Tender.

**3.26. Clarification of Tenders and Contacting KPLC**

- 3.26.1. To assist in the examination, evaluation and comparison of Tenders KPLC may, at its discretion, ask the law firm or any institution for a clarification of the law firm's Tender. The request for clarification and the response shall be in writing, and no change in the Method of Charging for Services or substance of the Tender shall be sought, offered, or permitted.
- 3.26.2. The law firm is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the law firm to provide in writing the clarification or substantiation which should reach KPLC within twenty-four hours (24hr) from the time of KPLC's query or any such period expressly indicated by KPLC. Such writing may include by electronic mail (email) or hand delivered mail. Should there be no conclusive response within this period, it may result in the law firm's disqualification.
- 3.26.3. Save as is provided in this paragraph and paragraph 3.25 above, no law firm shall contact KPLC on any matter related to its Tender, from the time of the Opening to the time the Appointment is declared.

3.26.4. Any effort by a law firm to influence KPLC in its decisions on evaluation, Tender recommendation(s) or appointment may result in the rejection of the law firm's Tender.

### **3.27. Preliminary Evaluation and Responsiveness**

3.27.1. Prior to the detailed Technical Evaluation, KPLC will determine the substantial responsiveness of each Tender. For purposes of this Tender, a substantially responsive Tender is one that materially conforms to the requirements of Preliminary Evaluation. KPLC's determination of an Tenderer's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.

3.27.2. KPLC will examine the Tenders to determine whether they conform to the Preliminary Evaluation Criteria set out in Section VI Evaluation Criteria. The requirements in the Preliminary Evaluation Criteria set out in Section VI Evaluation Criteria are mandatory. Those who do not meet the requirements will not be considered for further evaluation.

3.27.3. Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KPLC and cannot subsequently be made responsive by the law firm by correction of any non-conformity.

### **3.28. Minor Deviations, Errors or Oversights**

3.28.1. KPLC may waive any minor deviation in a Tender that does not materially depart from the requirements of the Services set out in the Tender Document.

3.28.2. Such minor deviation –

a) *shall be quantified to the extent possible*

b) *shall be considered in the evaluation process and comparison of Tenders, and*

c) *shall be applied uniformly and consistently to all qualified Tenders duly received by KPLC.*

3.28.3. KPLC may waive errors and oversights that can be corrected without affecting the substance of the Tender.

3.28.4. A material deviation or reservation is one –

a) *which affects in any substantial way the scope, quality, or ability of performance of the Services;*

b) *which limits in any substantial way, inconsistent with the Tender documents, KPLC's rights or the law firm's obligations under any ensuing engagement; or,*

c) *whose rectification would affect unfairly the competitive position of other law firms presenting responsive Tenders.*

### **3.29. Technical Evaluation and Comparison of Tenders**

3.29.1. KPLC will further evaluate and compare the Tenders that have been determined to be substantially responsive, in compliance to the Technical Evaluation Criteria as set out in the Tender Document.

### **3.30. Preferences & Reservation**

3.30.1. Reservation for the certified Youth, Women and Persons with Disabilities (Special Group) will be applied as per the PPADA.

### **3.31. Tender Process Evaluation Period**

3.31.1. The Evaluation Committee may conduct and complete evaluation of the Tender Process within thirty (30) days of the validity period.

### **3.32. Debarment of a law firm**

3.32.1. A law firm that gives false information in the Tender about its qualification or which refuses to enter into a contract after notification of appointment and acceptance of appointment shall be considered for debarment from participating in future public procurement.

### **3.33. Confirmation of Qualification for Appointment**

3.33.1. KPLC may confirm to its satisfaction whether a law firm that is selected as having submitted the highest compliant evaluated responsive Tender is qualified to be appointed and perform any eventual assignment satisfactorily.

3.33.2. The confirmation will take into account the law firm's technical and performance capabilities. It will be based upon an examination of the documentary evidence of the law firm's qualifications submitted by it pursuant to paragraphs 3.11 and 3.15 as well as confirmation of such other information as KPLC deems necessary and appropriate. This may include offices and other facilities inspection and audits; cleanliness, orderliness of its offices, and, general satisfaction and good welfare of its non-lawyer staff.

3.33.3. An affirmative confirmation will be a prerequisite for appointment of the law firm to the KPLC Panel. A negative confirmation will result in rejection of the law firm's Tender, in which event KPLC will proceed to fill in the available gap by the next available highest evaluated responsive Tender to make a similar confirmation of that law firm's capabilities to perform satisfactorily.

### **3.34. Notification of Appointment**

- 3.34.1. Prior to the expiration of the period of the Tender validity, KPLC shall notify the successful law firm(s) in writing that its Tender has been accepted.
- 3.34.2. Subject to paragraphs 3.34.3, 3.34.4 and 6.4, the successful law firms shall be those whose Tenders have been determined to be substantially responsive, compliant with the evaluation criteria and have been determined to be the highest evaluated Tender in the particular Category or in accordance with clauses 6.3.5 and 6.3.6, and further, where deemed necessary, that the law firms are confirmed to be qualified for appointment to the KPLC Panel of Lawyers.
- 3.34.3. The appointment of law firms shall take into account the need for KPLC to have appropriate representation in its Regions.
- 3.34.4. Appointment will be of upto 27 law firms who will be awarded as follows:-
- a) 1A, -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)
  - b) 1B,
  - c) 1C,
  - d) 1D,
  - e) 1E,
  - f) 1F -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)
  - g) 1G
  
  - h) 2A, -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)
  - i) 2B, -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)
  - j) 2C,
  - k) 2D
  - l) 2E,
  
  - m) 3A, -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)
  - n) 3B,
  - o) 3C, -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)
  - p) 3D,
  - q) 3E,

- r) 4A, -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)
- s) 4B,
- t) 4C,
- u) 4D -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)
- v) 4E,
- w) 5A, -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)
- x) 5B,
- y) 5C,
- z) 5D
- aa) 5E, -Reserved for Category B & Special Group, (paragraphs 3.2.3 and 3.30)

3.34.5. The notification of appointment shall not constitute the formation of any specific contract.

3.34.6. Simultaneously and without prejudice to the contents of paragraph 3.34.1, on issuance of Notification of Appointment to the successful law firms, KPLC shall formally notify each unsuccessful law firm.

### **3.35. Termination of Tender Proceedings**

3.35.1. KPLC may at any time terminate the Tender proceedings before Notice of Appointment or Rejection and shall not be liable to any person for the termination.

3.35.2. KPLC shall give prompt notice of the termination to the law firms.

### **3.36. Acceptance of Appointment**

3.36.1. At the same time as KPLC notifies the successful law firm that its Tender has been accepted, KPLC will send the law firm the Service Agreement together with any other necessary documents incorporating all agreements between the Parties.

3.36.2. Within two (2) working days of the date of notification of appointment, the successful law firm shall indicate its acceptance by –

- a) writing a formal acceptance letter to KPLC,
- b) returning (a) to KPLC within that period of two (2) working days.

3.36.3. Subject to paragraph 3.36.4, KPLC shall sign and date the Service Agreement in the period between not earlier than fourteen (14) days from the date of notification of appointment and not later than thirty (30) days after this date.

- 3.36.4. KPLC shall sign the Service Agreement and include the name of the law firm on its Panel unless a law firm fails to provide a valid Professional Indemnity Cover.
- 3.36.5. Appointment to the Panel shall be annulled for failure of the successful law firm to sign the Service Agreement AND provide the Professional Indemnity Cover where it is required by KPLC to do so, in which event KPLC may notify the next available highest evaluated responsive law firm that its Tender has been accepted.
- 3.36.6. Paragraph 3.34 together with the provisions of this paragraph 3.36 will apply with necessary modifications with respect to the law firm notified under sub-paragraph 3.36.5.

### **3.37. Corrupt or Fraudulent Practices**

- 3.37.1. KPLC requires that law firms observe the highest standard of ethics during the procurement process and execution of contracts. When used in the Regulations, the following terms are defined as follows: -
- a) *"Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution;*
  - b) *"Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KPLC and includes collusive practice among law firms (prior to or after Tender submission) designed to establish prices or other content at artificial non-competitive levels and to deprive KPLC of the benefits of free and open competition.*
- 3.37.2. KPLC will reject a Tender if it determines that the law firm recommended for appointment has engaged in corrupt or fraudulent practices in its bidding.
- 3.37.3. Further, a law firm which is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

### **3.38. Conflict of Interest**

- 3.38.1. A law firm bidding for provision of Legal Services shall ensure that it does not have any conflict of interest with respect to KPLC.
- 3.38.2. For purposes of this paragraph, a conflict of interest with respect to KPLC includes, but is not limited to circumstances, where the law firm, after thirty (30) days of the law firm's acceptance of KPLC's Appointment to its Panel, is still a provider of professional services to a party with conflicting interests to KPLC.

3.38.3. The law firm shall be required to state in the prescribed form, details of any case or assignment in which on its own behalf or it has acted on behalf of a party with conflicting or adverse interests to KPLC within the last ten (10) years of the Date of the Tender Document.

**3.39. Litigation/Arbitration History**

3.39.1. A law firm bidding for provision of Legal Services shall disclose details of all past (last ten years) or pending litigation or arbitration filed against the law firm and briefly describe the nature of the litigation or arbitration.

3.39.2. The law firm shall disclose details of all past (last ten years) or pending litigation or arbitration the firm has against KPLC and briefly describe the nature of the litigation or arbitration. The disclosure shall include details of any advocate/client bills of costs filed by the law firm against either KPLC or any other State Corporation.

3.39.3. The details shall be in the format set out in Section XIX Litigation/Arbitration History. Where there are no such litigations/arbitrations, the firm to state as much. The Law firm shall complete and sign the Litigation/Arbitration History Form.

## SECTION IV - SCHEDULE OF REQUIREMENTS

### 4. Brief Schedule of Services Required

- 4.1. KPLC requires legal services with the assignments spread across the country and are organized administratively as indicated in table 4.5.1. Assignments are categorized as indicated in table 4.3.1. The scope of the Services includes the fields of Energy Law, Company and Commercial Law, Constitutional & Administrative Law; Construction and Engineering law; Conveyancing; Debt Recoveries; Employment and Labour laws; Health and Safety laws; law relating to Information Technology; Tax Law, Criminal Law, Land Law; Intellectual & Trademarks Copyright law, Land Law, Public-Private Partnership, Procurement law, Arbitration and Alternative Dispute Resolution; Environmental Law; Insurance law; Public Policy; associated civil litigation and criminal prosecutions.
- 4.2. Representation may be at the Magistrates Court, High Court, Employment & Labour Relations Court, Environment & Land Court, Court of Appeal, Supreme Court, Tribunals, Review Boards or Arbitral or Mediation or Conciliation fori.
- 4.3. The Services to be rendered by the successful law firms are as categorized in Tables 4.3.1 and 4.5.1:

**Table 4.3.1**

<b>CATEGORIES</b>	<b>KPLC REQUIREMENTS (as and when required)</b>
A.	Representation in electricity supply disputes including billing, damages, disconnection, health and safety, electrical installations, interruptions, metering, new connections and extensions, reconnections, quality of service, quality of supply, tariffs, supply and use of electrical energy, charges and application of any deposit.
B.	Representation in disputes involving wayleaves, easements, rights of way, trespass and damages. Representation in land disputes including ownership disputes, lease disputes and damages. Representation in tenancies and rent disputes.
C.	Representation in contractual disputes. Provision of debt recovery services. Conveyancing and drafting and follow up on execution of agreements, contracts and MoU.
D.	Representation in employment and labour relations matters.
E.	Representation in judicial reviews matters, constitutional and



	human rights petitions, personal injury claims, claims of malicious prosecution, defamation, succession matters, children maintenance matters, criminal matters, traffic matters.
F.	Representation in supply chain matters.
G.	Provision of expert advice and opinion on specific matters, transactions, events and on provisions of law. Training. Policy and law review. Legislative Drafting. Compliance and Legislation. Updates from Kenya Gazette. Representation in taxations of advocates/client bill of costs; taxation of auctioneers' bill of costs; insolvency matters; mergers & acquisition; incorporation; restructuring; share offering; share transfer; company secretarial; tax disputes; and in matters before agencies and or tribunals such as Energy & Petroleum Regulatory Authority, National Environment Management Authority, Competition Authority of Kenya, Communication Authority of Kenya, National Environmental Tribunal, Energy & Petroleum Tribunal, Sports Disputes Tribunal. Carrying out searches locally and abroad in land and company registries and liaising with other relevant bodies and authorities.

4.4. Tenderers are required to **CHOOSE TO SERVE IN ONLY ONE (1) OF THE CATEGORIES**. The Tenderer shall indicate the Category it would wish to provide the Services. The Tenderer shall be required to check/tick only one category in Table 4.5.1 and fill the same in paragraph (a) of the Declaration Form (Section XV). **Checking/ticking more than one (1) category shall result in the rejection of the Tenderer's Tender as non-responsive.**

4.5. Categories **1A, 1F, 2A, 2B, 3A, 3C, 4A, 4D, 5A and 5E** are reserved for Tenderers under Special Group (Youth, Women & Persons with Disability) and New/Young Law Firms.

**Table 4.5.1**

COUNTIES WITHIN THE REGION	CATEGORY OF SERVICES	TICK/SELECT ONE (1)
Nairobi	1A	
	1B	
	1C	
	1D	
	1E	
	1F	
	1G	

Kiambu, Kitui, Machakos, Makueni and Kajiado.	2A	
	2B	
	2C	
	2D	
	2E	
Meru, Tharaka-Nithi, Embu, Nyandarua, Nyeri, Kirinyaga, Murang'a, Garissa, Wajir, Mandera, Marsabit and Isiolo.	3A	
	3B	
	3C	
	3D	
	3E	
Kilifi, Kwale, Lamu, Mombasa, Taita/Taveta and Tana River.	4A	
	4B	
	4C	
	4D	
	4E	
Kakamega, Vihiga, Bungoma, Busia, Siaya, Kisumu, Homa Bay, Migori, Kisii, Nyamira, Turkana, West Pokot, Samburu, Trans Nzoia, Uasin Gishu, Elgeyo/Marakwet, Nandi, Baringo, Laikipia, Nakuru, Narok, Kericho and Bomet.	5A	
	5B	
	5C	
	5D	
	5E	

## SECTION V – METHOD OF CHARGING FOR SERVICES

### PART A

#### **5.1. The Advocates (Remuneration)(Amendment) Order, 2014 under the Advocates Act, CAP 16 (or as may be amended)**

- 5.1.1. KPLC recognizes that as per the PPADA, fees and remuneration payable to lawyers is regulated by the Advocates Act. Hence, the contents of Section V Parts A and B are for informative and not evaluation purposes. It will be used as a guide when considering fees payable at the appropriate time.
- 5.1.2. KPLC's appointment will consider firm's that offer the right balance of value for money as measured by the quality of legal service rendered. Law firms will be expected to identify ways in which legal costs for any significant or complex cases may be mitigated.
- 5.1.3. KPLC expects that legal fees and charges payable shall be in accordance with the Order as applicable to the specific matter.
- 5.1.4. The mode of billing shall be considered on a case by case basis and subject to agreement between KPLC and the firm. Should there be a difference on this, then KPLC and the law firm may refer the issue to Taxation with each Party bearing their own costs for the Taxation.

### PART B

#### **5.2. The Advocates (Remuneration) (Amendment) Order, 2014 (Schedule V) under the Advocates Act, CAP 16 (or as may be amended)**

- 5.2.1. Without prejudice to the contents of paragraph 5.1, KPLC recognizes that the present 5<sup>th</sup> Schedule of the Order provides for an hourly billing system or an amount fixed by agreement between KPLC and the firm.
- 5.2.2. Law firms are required to fill in the table below (*Hourly Billing Table*). If and when, the issue of hourly billing arises from the performance of services instructed within the Financial Years, where KPLC consents, the Parties will refer to the Table 5.2.2 below as a basis for discussion and determination of fees payable.

**Table 5.2.2**

Sr. No.	Name of Professional Staff	Position ( <i>Partner or Associate or Assistant</i> )	Hourly Remuneration Rate (KSh.)
1.			
2.			

3.			
4.			
5.			

**Notes to Law Firms on Method of Charging for Services**

**1.Reimbursable Costs**

- 1.1.KPLC's proposed payments for subsistence and accommodation shall be as follows:-
  - 1.1.1.For matters or assignments in Nairobi, Mombasa and Kisumu – KSh. 7,000/= per night out.
  - 1.1.2.For matters or assignments in Malindi, Kilifi, Lamu, Kwale and Naivasha – KSh. 6,000/= per night out.
  - 1.1.3.For matters or assignments in all other towns – KSh. 5,000/= per night out.
- 1.2.The above is payable on reimbursement basis; as part of a fee note and with demonstrable proof of the necessity and occurrence.
- 1.3.KPLC may revise these figures where circumstances permit.
- 1.4.The figures apply only where the law firm does not have an office or ordinarily practice in that town.
- 1.5.This excludes other disbursements incurred in the normal course of rendering the Services.

## **SECTION VI - EVALUATION CRITERIA**

Evaluation of duly submitted Tenders will be conducted as follows: -

### **6.1. Part 1 - Preliminary Evaluation under Paragraph 3.27 of the ITT. These are mandatory requirements and shall include confirmation of the following:**

- 6.1.1. Submission of copy of a valid Professional Indemnity Cover
- 6.1.2. Submission of Declaration Form(s) duly completed and signed
- 6.1.3. Submission and considering that Tender Form is duly completed and signed
- 6.1.4. Submission and considering the following: -
  - a) Firm's Registration Certificate
  - b) PIN Certificate or Taxpayer's Registration Certificate issued by KRA
  - c) Valid Tax Compliance or Clearance Certificate issued by KRA
  - d) Firm profile
  - e) Valid Certificate of Registration for Access to Government Procurement Opportunities (AGPO), for the law firms under Preference & Reservation
- 6.1.5. That the Tender is valid for the period required
- 6.1.6. Submission of evidence of physical address and premises through e.g. copy of utility bills i.e. electricity, water, telephone; copy of title deed; lease or tenancy agreement etc. (For detailed requirements please see the relevant Notes)
- 6.1.7. Submission and considering the Confidential Business Questionnaire:
  - a) Is filled
  - b) That details correspond to the related information in the bid
  - c) That the law firm is not ineligible as per paragraphs 3.2 and 3.3 of the ITT.
- 6.1.8. Letter of recognition of the law firm by LSK (excluding the law firm's own statement to this effect).
- 6.1.9. Submission of list of clients as evidence of the law firm's performance and experience on legal matters in the last three years from the Date of the Tender Document.
- 6.1.10. Submission of copies of the following documents in respect of 1 to 3 law firm's qualified Advocates who will be engaged on a day to day basis in providing services if successful –
  - a) Curriculum Vitae (C.V.) as provided in the sample format.
  - b) For Partners - Letter of the law firm signed as prescribed in the relevant notes in the Tender Document.

- c) All other admitted lawyers, employment contracts or Service Agreements, whichever exists, signed by the Partner and the lawyer in question.
  - d) Current (2020) Practicing Certificate issued by the Judiciary OR valid receipt issued by LSK in full payment for the 2020 Practicing Certificate.
- 6.1.11. Submission and considering the details on the Conflict of Interest Form and the Litigation/Arbitration History Form.
- 6.1.12. Record of unsatisfactory or default in performance obligations in respect of any client shall be considered. This shall include any law firm with unresolved disputes with any client in its obligations for more than four (4) months. This excludes any dispute before a competent judicial or quasi-judicial or adjudicatory body or any dispute on fees.
- 6.1.13. Submission of copies of the following documents in respect of 1 to 3 law firm's qualified Advocates who will be engaged on a day to day basis in providing services if successful:-
- a) Notary Public.
  - b) Commissioner for Oaths.
  - c) Accredited Governance Auditor.
  - d) Certified Legal Auditor.
  - e) CPS(K) in Good Standing.
- 6.1.14. Submission and considering that Application Form is duly completed and signed
- 6.1.15. Checking submission and considering the audited financial statements required which must be those that are reported within eighteen (18) calendar months of the date of the tender document and confirming the auditors practicing license number (**NB: Law firms must clearly indicate the auditors' ICPAK practicing license registration number in the audited financial statements report**); OR for law firms that are registered or incorporated within the last one calendar year of the date of the tender document, checking submission of certified copies of bank statements covering a period of at least six (6) months prior to the date of the tender document. The copies shall be certified by the bank issuing the statements. The certification shall be original.

**Tenders will proceed to the Technical Evaluation stage only if they qualify in compliance with Part 1 above, Preliminary Evaluation under paragraph 3.27.**

## **6.2. Part II – Technical Evaluation under Paragraph 3.29 of the ITT.**

### **Sub-Part A - Verification of Information and Documentation**

1. Relevant requested certificates and or documents

2. Any other details required in the Tender document

### **Sub-Part B - Detailed Evaluation**

1. Technical requirements in the Tender will be evaluated using the tables and criteria below.
2. To assist the law firms in responding, the law firms may be guided, use or adopt the Tables below when responding to Sub-Part B.
3. In any event, where the law firm adopts any other mode of responding, the format and content of its response should be in summary; specific to the criterion in question; avoid as far as possible extensive use of prose, unnecessary literature or marketing material.

### **4. General Notes/Guidelines to Sub-Part B**

- 4.1. These notes (in bold below) apply generally across the board to all the Tables below.
- 4.2. They are in addition to the specific notes/guidelines for each Table.

### **5. Certification/ Certified copies**

- 5.1. Wherever certified copies are requested or acceptable to KPLC, it is preferable for the certification to be original.
- 5.2. However copies whether from electronic scanning, photocopying or other means of reproduction of an original may be accepted.
- 5.3. Any lawyer who is also a Commissioner for Oaths in the Tenderer law firm may certify any document on behalf of his/her own law firm, which documents, the law firm intends to submit.

### **6. Curriculum Vitae (CV)**

- 6.1. Some lawyers may have long chequered careers and experience. However, all lawyers are strongly advised to furnish their CV's in the format provided and which should not be more than two (2) single sided A4 size pages at font 12 Century Gothic with spacing 1.2.
- 6.2. Any information in the CV that is beyond the 2 pages may stand disregarded for purposes of evaluation. (The 2 pages includes the signing portions).
- 6.3. Any CV that is not signed by both the owner of the CV and the person authorized to sign the Tender may be disregarded. Where the owner and authorized person are the same, the signature by such same person will suffice.

### **7. Definition of Partner**

- 7.1. Partner where used in Technical Evaluation and its attendant Tables shall mean Senior or Managing Partner. This Partner shall be s/he who has equity in the law firm AND shares its profits as well as losses. All other definitions of "Partner" however styled or of whatever nature shall be excluded from the definition of Partner.
- 7.2. Where a law firm has both a Senior and Managing Partner in different persons, it has a discretion to use any one of them whom it deems would more advance and enhance its bid in this Tender Process.
- 7.3. Conversely, where a law firm has only one Partner, that Partner shall be considered the Managing or Senior Partner for purposes of this Tender Process.

## **8. Combining Information in Single Document**

- 8.1. KPLC recognizes that there could be several letters which are required to be authored by the law firm whereas the information may be combined in one document or letter. Where the law firm feels that the information may be adequately contained in one letter or document, the law firms may do so. The law firm must state that the information variously requested is in the submitted single letter or document and identify that document or letter.
- 8.2. Where the law firm exercises this option of combining, care must be taken to ensure that all the information required of the several separate documents is included in the composite letter or document.
  - 8.2.1. No information sought should be omitted at all
  - 8.2.2. The requirements as to several signatures and certifications in the different documents may be dispensed with. Instead a single signature (*and co-signature where required*) together with a single certification, all on each printed page of the letter or document may suffice.

## **9. Staff Nature of Engagement with the Law Firm**

- 9.1. It is recommended that the staff (including lawyers who are not Partners) be permanent employees or at least have an extended and stable relationship with the law firm.

## **10. Qualification and Scoring**

- 10.1. To qualify for further evaluation and any appointment, law firms scores will be as follows: -
  - 10.1.1. Categories A - minimum of 67 marks from the Tables.
  - 10.1.2. Category B and firms that are eligible under Reservation (Special Group) - minimum of 41 marks from the Tables.



10.2. To earn any mark,

10.2.1 the law firm should satisfy the tenets of each criterion to obtain the full award or marks

10.2.2 where any single material tenet is not fulfilled for any criterion, the marks may not be awarded. For instance, where a law firm submits the correct document but lacks a signature or fails in certification or absence of letter, the firm may lose the full marks for that criterion.

10.3. Where after completion of all calculations and the Grand Total in the tables is obtained that contains a decimal mark, such decimal will be rounded off to the nearest whole. Where the decimal mark is nought decimal five (0.5), this shall be treated as a full mark upwards.

### 11. **Third Party Documents**

11.1. Where any document is required unless expressly permitted, the law firm's own letters or documents originating from it may not be reckoned for purposes of evaluation.

## Tables, Criteria and Scores

### 1. **Physical Presence and Networking**

**Maximum awardable marks are 12** broken down as per the table below

Table 6.2.1 Sub –Part B

Sr. No.	Criteria	KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Main Office in Nairobi, Mombasa, Nakuru, Kisumu, Eldoret, Nyeri, Kisii, (State location; attach proof)	7 marks For any irrespective of whether the firm has more than one main office in any of these towns.		
2.	Main office in any other town. (State location; attach proof)	6 marks For any irrespective of whether the firm has more than one main office in that town.		

3.	Branches in major towns i.e. Nairobi, Mombasa, Nakuru, Kisumu, Eldoret, Nyeri, Kisii. (State location; attach proof)	5 mark Whether firm has one or more branches in one or more towns		
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Law Firm's total score for Table 6.2.1 Sub-Part B is \_\_\_\_\_

Notes to Table 6.2.1 Sub-Part B

1. Evidence of main office and branches shall be through -
  - 1.1 if building/premise is not owned by the law firm, a signed lease or tenancy agreement for a period exceeding three (3) months beyond the Date of the Tender Document.
  - 1.2 if building/premise is owned by the law firm, the firm's own statement to that effect in its separate cover letter, together with:-
    - a) a copy of the title document, and,
    - b) a valid utility (*electricity or water or telephone or cable television*) bill that is not more than three (3) months prior to the Date of the Tender Document.
  - 1.3 if acquired but ownership documents are yet to be obtained or not easily available, then a registered sale agreement or other registered document or other confirmatory proof of ownership of the building/ premise eg. letter from a bank or financial institution if the title is charged or mortgaged.
  - 1.4 Tender shall be manifested by necessary stamping or lodging at the relevant registry at the Ministry of Lands or National Land Commission.
2. If the lease/tenancy is set to or has expired within three (3) months of the Date of the Tender Document –
  - 2.1 where the lease is renewable, the law firm should submit a copy of that lease/tenancy agreement together with a letter from the owner/manager of the building/premise confirming that the tenancy/lease is renewable or has been renewed.
  - 2.2 where the law firm is moving to another premises, a letter from the proposed new premises confirming such intention.
3. Where a law firm has more than one office in the same town, that other office shall not be considered as a branch for purposes of evaluation.

**2. Representation in Legal Matters in the Last Three Years**

**Maximum awardable marks are 18** broken down as per the table below.

*Table 6.2.2 Sub –Part B*

Sr. No.	Criteria	KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Give two (2) clients with above KSh. 5 Billion annual turnover.	Maximum marks are 8. 4 marks for each		
2.	Give two (2) clients with above KSh. 100 Million but not more than KSh. 5 Billion annual turnover.	Maximum marks are 6. 3 marks for each		
3.	Give two (2) clients with between KSh. 10-100 Million annual turnover.	Maximum marks are 4. 2 marks for each		

Law Firm's total score for Table 6.2.2 Sub-Part B is \_\_\_\_\_

Notes to Table 6.2.2 Sub-Part B

1. Evidence of Representation in Legal Matters in the Last Three Years shall be through the following –
  - 1.1 List prepared by the law firm giving the full names of the clients.
  - 1.2 The List shall contain the current full physical, postal, facsimile (if available) and website (if any) and e-mail address of the client. It should also include the contact person or office and his/her e-mail address.
  
2. Representation in “running down” cases or issues will be accepted only if the eventual final Award or Judgment exceeded KSh. 1.5 Million in a single case or series of cases arising from the same incident. The law

firm shall provide evidence of such final Judgement or Award from which there has been no or no further Appeal.

3. For lawyers who have been in private practice for no more than 18 months from the Date of the Tender Document, but were previously employed as in-house counsel (*by whatever description*) for any organization(s) or Government for a continuous period of two years, before venturing into private practice, evidence of Representation shall take into account any organisation or customer or client of their employer(s) that s/he was directly responsible for during his/her period of employment. This shall include his/her employer itself.

**3. Satisfactory Resolution of Legal Matters from any Four out of the Six Clients Above**

**Maximum awardable marks are 12** broken down as per the table below.

Table 6.2.3 Sub –Part B

Sr. No.	Criteria	KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Client no. 1 (State name of client; attach proof)	3 marks		
2.	Client no. 2 (State name of client; attach proof)	3 marks		
3.	Client no. 3 (State name of client; attach proof)	3 marks		
4.	Client no. 4 (State name of client; attach proof)	3 marks		

Law Firm's total score for Table 6.2.3 Sub-Part B is \_\_\_\_\_

Notes to Table 6.2.3 Sub-Part B

1. Please give four clients who had serious or manifestly important matters that your firm handled competently and professionally in the best interests of the client. This can be past or ongoing matters.
2. Evidence of satisfactory handling and acceptance shall be through-
  - 2.1 a one-page letter outlining/stating the following-
    - a) competence and professionalism in the handling of the matter
    - b) a very brief or general statement of the matter or issue eg. "successfully negotiated a syndicated loan agreement involving five lenders on behalf of ABCD Ltd (the client)" or "obtained an injunction (not ex parte) in favour of XYZ

*against loss of land due to fraudulent sale or encroachment by unauthorized persons."*

- 2.2 the letter shall be done on the letterhead of the Tenderer.
3. Serious or important is defined as:-
  - 3.1 in terms of pecuniary value, a liability that the client faced of no less than KSh. 1 Million should the client have had an adverse Judgment or Award against the client. The Judgment should be the final in the matter. Proof of the Judgment or Award will be required.
  - 3.2 where the pecuniary value cannot be determined at face value, the main issue would have had far reaching adverse consequences on the client and/or other organizations/firms/ persons who can be in a similar predicament.
  - 3.3 where the pecuniary value cannot be determined at face value, the main issue had far reaching consequences on the client and/or other organizations/firms/persons who were in a similar predicament.
  - 3.4 In commercial or non-litigious transactions involving a sum of KSh. 2 Million and above. Commercial transactions include all conveyancing of immoveable property where the amount involved is KSh. 2 Million and above (*excluding lawyers professional fees*).
4. The handling may include through the law firm's advisory opinions; acting in mergers & acquisitions; litigation; share offering; restructuring, transfer of assets and liabilities between two or more organizations but does not include the conventional or traditional conveyancing of selling, buying or leasing land or other immovable property, except as provided above.
5. For lawyers who have been in private practice for no more than 18 months from the Date of the Tender Document but were previously employed as in-house counsel (*by whatever description*) for any person/ organization(s) or Government for a continuous period of two years before venturing into private practice, evidence of satisfactory resolution shall take into account any organisation or customer or client of their employer(s) that s/he was responsible for during his/her period of employment. This shall include his/her employer itself.

**4. Valid evidence of Partner's Appropriate Qualification, Experience and Degree of Responsibility**

**Maximum awardable marks are 21** broken down as per the table below

Table 6.2.4 Sub –Part B

Sr. No.	Criteria	KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Level in the firm must be Senior or Managing Partner. (Give full name of Partner; attach or indicate source of proof)	2 marks		
2.	Years of legal experience (State number; attach or indicate source of proof)	Maximum marks are 5 ½ mark for each full year of legal experience. (Maximum marks in this parameter is attained irrespective of whether the Partner has actually more than ten years' experience)		
3.	Professional Membership(s) {CPS(K); Accredited Governance Auditor; Certified Legal Auditor; Notary Public; Commissioner for Oaths attach or indicate source of proof}	Maximum marks are 3 1 mark for CPS(K)  ½ mark for each i.e. Governance Auditor; Legal Auditor, Notary Public, Commissioner for Oaths		
4.	Professional Membership (CIArb; attach or indicate source of proof)	Maximum marks are 2 a) 2 marks for Fellow b) 1 mark for Member		
5a.	Degree of Responsibility (State organizations or clients	Maximum marks are 9 3 marks each for each		

	where responsibility as Lead Counsel or Lead Lawyer was in 3 completely different assignments with at least once each, being in respect of an organization or client or Government with above KSh. 5 Billion and another between KSh. 10–100 Million annual turnover; attach proof), OR	different assignment		
5b.	Degree of Responsibility (State organization or client or Government where responsibility as Lead Counsel or Lead Lawyer was in less than 3 completely different assignments; attach proof)	Maximum marks are 6 2 marks each for each different assignment		

Law Firm's total score for Table 6.2.4 Sub-Part B is \_\_\_\_\_

Notes to Table 6.2.4 Sub-Part B

1. Evidence of Partner's position shall be through –
  - 1.1 where the firm is a sole proprietorship the firm's letter to that effect.
  - 1.2 where the firm has more than one Partner a letter to that effect by the firm and such letter co-signed by any other Partner in that firm.

*Please see definition of Partner and other Lawyers under General Clarifications.*
2. Evidence of the Partner's years of legal experience shall be taken from the year of admission to the Bar as reflected and recorded by the Partner's admission number at LSK. Any period prior to this shall not be reckoned.
3. Evidence of Partner's professional membership or status shall be through-
  - 3.1 a letter on the letterhead of the professional organization confirming the Partner's membership or status



- 3.2 the letter shall not be more than eleven (11) months old prior to the Date of the Tender Document.
- 3.3 Or in lieu of 3.1 above, a copy of a valid/current certificate of membership or status in that professional organization.
- 3.4 Or in lieu of 3.1 and 3.3 above, where such membership or status can be confirmed through the organization's website or other relevant independent website -
  - a) a printed extract of that where the Partner's name appears together with the address of the website, or,
  - b) a statement by the law firm stating the website where that membership or status of the Partner may be confirmed.
4. Evidence of Partner's degree of responsibility shall be through an appointment or confirmation or recommendation or congratulatory letter, contract or other document, either which way, from the organization or client or Government in respect of which such responsibility was shouldered and performed. Any of the documents must clearly show that the Partner acted as such Lead Counsel in that assignment.
5. For lawyers who have been in private practice for no more than 18 months from the Date of the Tender Document, but were previously employed as in-house counsel (*by whatever description*) for any organization(s) or client or Government for a continuous period of two years, before venturing into private practice, evidence of Partner's appropriate qualification, experience and degree of responsibility shall take into account any organisation or customer or client of their employer(s) that s/he was responsible for during his/her period of employment. This shall include his/her employer itself.

5. **The 1 to 3 law firm's qualified Advocates who shall be engaged on a day to day basis in providing services if successful**  
**Maximum awardable marks are 9** broken down as per the table below.

Table 6.2.5 Sub –Part B

Sr. No.	Criteria	KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
	Years of legal experience (Give names of all lawyers; each lawyer's years of experience; attach or indicate source of proof)	(Maximum marks in this parameter is 9 marks irrespective of whether all the lawyers have over 10 years of legal experience)		
1.	Over 10 years	3 marks for each admitted lawyer.		
2.	Between 5 & 10 years	2.5 marks for each admitted lawyer.		
3	Less than 5 years	2 Marks for each admitted lawyer.		

Law Firm's total score for Table 6.2.5 Sub-Part B is \_\_\_\_\_

Notes to Table 6.2.5 Sub-Part B

1. The Team should be composed of the lawyers in the firm who shall be handling KPLC matters on a day to day basis. For the avoidance of doubt, this should not include other lawyers who will not be deployed to handle the KPLC docket.
2. To score, the years of legal experience for each admitted lawyer in the firm will be legal experience whether gained in the employment/service of the Tenderer firm or elsewhere.
3. Years of legal experience of each lawyer shall be by confirming that each lawyer is engaged in the law firm through –
  - 3.1 employment/appointment letters or contract/service agreement of the lawyer in the law firm.
  - 3.2 the letter shall be on the law firm's letterhead and signed by the Partner and acknowledged/received by signing of the letter by the lawyer in question.

- 3.3 the agreement shall be signed by both the Partner and the lawyer.
4. The years will then be computed based on the admission number at LSK.
  5. For firms in which there is only a sole admitted lawyer, the firm will be entitled to only the minimum of 2 marks under this criterion. Where the sole lawyer has been in active practice for more than 10 years, such firm will be entitled to 3 marks only, provided it meets the criterion.

**6. Companies or Organizations or Clients Offered Legal Training by the Law Firm in the last Three Years of the Tender Document**  
**Maximum awardable marks are 6** broken down as per the table below.

Table 6.2.6 Sub –Part B

Sr. No.	Criteria	KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Companies/organizations/clients and numbers trained in each company/organization/client (Provide list with complete contact addresses incl. website of each company/organization/client; attach proof)	Maximum marks are 3 1 mark will be given for each company or firm or organization or client.		
2.	Training material for each company/ organization/client (Attach or give source of proof)	Maximum marks are 3 1 mark for the manual or material or other training document or part thereof per each company or firm or organization or client		

Law Firm's total score for Table 6.2.6 Sub-Part B is \_\_\_\_\_

Notes to Table 6.2.6 Sub-Part B

1. List prepared by the law firm giving the full names of the companies or firms or clients or organisations. The List shall contain the current full physical, postal, website (if any) and e-mail address of the organization or client. It should also include the contact person or office for that training.
2. The List shall also spell out the total number of persons in each company or firm or organization or client who were given the training.

3. A letter from the organisation, company or firm or client confirming that the training was performed by the law firm.
4. The letter shall be done on the letterhead of that company or firm or organization or client and signed by its authorized representative who shall give his/her full names and designation in that company or firm or organization or client together with his/her full contact details. The letters not to be more than a month old from the tender opening date.
5. Copies of relevant legal training manuals or documents or materials that were issued or imparted to the participants or companies or firms or organisations or client during or after the training.
6. The training includes any that was done for or on behalf of the CLE, ICPAK, ICS, KSL, LSK, or any other continuous professional development program. It includes any training in human rights, children's rights, family law, refugee or military law/issues.
7. For lawyers who have been in private practice for no more than the last 18 months from the Date of the Tender Document, but were previously employed as in-house counsel (by whatever description) for any organization(s) or Government for a continuous period of two years, before venturing into private practice, evidence of such training shall take into any organisation or customer or client of their employer(s) that s/he was responsible for during his/her period of employment. This shall include his/her employer itself.

**7. Appropriateness of Law Firm's Quality Management System/ Standard Operating Procedures (QMS/SOP) including File Management.**  
**Maximum awardable marks are 12** broken down as per the table below.

Table 6.2.7 Sub –Part B

Sr. No.	Criteria	KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Overview/Mission of QMS/SOP	Maximum marks - 2		
2.	File Management - Orderliness and Flow (Should contain ascertainable details)	Maximum marks - 1		
3.	File Management -Flexibility (Should contain ascertainable details)	Maximum marks - 1		
4.	File Management -Achievability (Should contain ascertainable details)	Maximum marks - 1		
5.	File Management -Soundness (Should contain ascertainable details)	Maximum marks - 1		
6.	File Management-Comprehensive (Should contain ascertainable details)	Maximum marks - 1		
7.	Client Handling Methodology- Orderliness and Flow (Should contain ascertainable details)	Maximum marks - 1		
8.	Client Handling Methodology-Soundness (Should contain ascertainable details)	Maximum marks - 1		
9.	Client Handling Methodology-Flexibility (Should contain ascertainable details)	Maximum marks - 1		

10.	Client Handling Methodology-Dispute Handling Mechanism (Should contain ascertainable details)	Maximum marks - 2		
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Law Firm's total score for Table 6.2.7 Sub-Part B is \_\_\_\_\_

Notes to Table 6.2.7 Sub-Part B

1. File Management refers to the handling of any matter including litigation, commercial, conveyancing, contractual, advisory, as an Arbiter, Mediator etc.
2. This should be furnished using the format provided in the Tender Document.
3. Law firms are advised to furnish all the information regarding this criterion in not more than three (3) single-sided A4 size pages at font 12 Century Gothic with spacing at 1.2.
4. This information may also be contained in the Firm Profile.

**8. Law Firm's Facilities, Systems & Adequacy of Support Staff**

**Maximum awardable marks are 10** broken down as per the table below.

Table 6.2.8 Sub –Part B

Sr. No.	Criteria	KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Library facilities (Indicate proof)	<p><i>Maximum marks are 4</i></p> <p>a) 1 mark for two complete book shelves/ cabinets of four levels each or their equivalent</p> <p>b) 2 marks for four complete bookshelves/ cabinets of four levels each or their equivalent</p> <p>c) 4 marks for a complete independent room of more than (b) above</p>		
2.	Modern Computer and IT Systems (Indicate proof)	<p><i>Maximum marks are 3</i></p> <p>a) 1 mark for modern computers and systems including at least one laptop</p> <p>b) 2 marks for (a) above but with at least two laptops and a smartphone/blackberry (or its equivalent for ease and speed of communication)</p> <p>c) 3 marks for (a) above but with at least three laptops and 2 smartphones/blackberry or an I-Pad/tablet in lieu of a blackberry</p>		
3.	Adequacy of Support Staff (Give names and designations of staff; indicate proof)	<p><i>Maximum marks are 3 for each category</i></p> <p>a) Category A law firms</p> <p>(i) Above 12 lawyers: minimum 20 support staff</p> <p>(ii) Between 8 and 12 lawyers: minimum 15 support staff</p> <p>(iii) Between 4 and 7 lawyers: minimum 9 support staff</p> <p>(iv) Between 1 and 3 lawyers: minimum between 2-4 support staff</p>		



		b) Category B and Special Group law firms (i.) 1 lawyer: minimum 2 support staff (ii.) Between 2 or 3 lawyers: minimum 3 support staff		
--	--	--	--	--

Law Firm's total score for Table 6.2.8 Sub-Part B is \_\_\_\_\_

Notes To Table 6.2.8 Sub-Part B

**Indicate the total number of the advocates in the law firm**

1. This should be contained in the Firm Profile. *(Please note that if any usual/standard/pre-printed marketing material is used, these specific requirements should be clearly and completely discernible).*
2. It may be confirmed during an office and other facilities visit by KPLC staff nominated for that purpose.
3. Law firms should note that any information or documentation that is found to have been false or misrepresented may lead to automatic disqualification or removal from the Panel, if appointed, irrespective of any prior findings.
4. Support staff includes pupils whose engagement with the bidding firm is through a formal document. That formal document should be attached to the bid. The engagement should be at least within a period of three months prior to the Date of the Tender Document.
5. Where the law firm has less than the minimum number of support staff, the score will be 1 mark. Where the law firm has no support staff, the score will be zero.

**6.3 Successful Law Firms**

- 6.3.1 The successful law firms eligible for appointment shall be the ones who attain the highest passes in compliance with the Evaluation Criteria above until the available numbers in each category are filled.
- 6.3.2 The law firms with the highest overall scores shall be considered for appointment subject to Confirmation/Inspection visits where such visits are deemed necessary.
- 6.3.3 In case of a tie, KPLC shall opt for the firm which provides added value over and above what is set out. The added value will be determined based on: -
  - a) Achievability of the Value Add (2 marks)

- b) Relevance of the Value Add to KPLC (2 marks); and
- c) Cost of the Value Add. *The lower the cost the more advantageous the value add* (2 marks).

6.3.4 In the event that more than one law firm have qualified in one particular category by obtaining the minimum marks, but they have not been the successful law firm in that particular category, KPLC is at liberty to allocate such law firm a category that has remained vacant due to unresponsiveness, in the order obtained in the highest scores.

6.3.5 Subject to paragraphs 6.3.1 and 6.3.4, in a category where there are no successful Tenderers, KPLC reserves the right to allocate such categories to the law firms who have attained the highest scores in other categories.

6.3.6 In the event that a category remains vacant due to non-responsiveness, KPLC reserves the right to allocate such a category to a successful law firm notwithstanding that such a law firm did not bid for such category.

6.3.7 The law firm's acceptance or otherwise of such allocation shall be indicated in the letter of acceptance under paragraph 3.36 ITT.

## **SECTION VII - CONFIRMATION/INSPECTION VISITS**

- 7.1 KPLC may conduct a confirmatory/inspection visit to ascertain that details match with that provided in the Tender submitted and comply with the confirmation requirements.
- 7.2 KPLC may also conduct proposed Service Agreement discussions after determining the successful law firms. These will be held at KPLC's headquarters at Stima Plaza or otherwise as may be advised. The discussions will additionally touch on Quality Management System and on Method of Charging for Services.
- 7.3 The purpose of the discussions is to reach clarity and agreement on all items. The discussions will conclude with the signing of the Service Agreement. If the discussions are not fruitful, KPLC shall at its sole discretion terminate any further discussions with that law firm and may notify the next firm whose Tender received the next available highest score in that category of its appointment and invite it for similar discussions.

## TABLE OF CLAUSES ON GENERAL CONDITIONS OF APPOINTMENT

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## **SECTION VIII – GENERAL CONDITIONS OF APPOINTMENT**

The General Conditions of Appointment shall form part of the Service Agreement in accordance with the law and KPLC's guidelines, practices, procedures and working circumstances. The provisions in the GCA will apply unless an alternative solution or amendment is made under other parts of the Conditions including the Service Agreement.

### **8.1 Definitions**

In these Conditions the following terms shall be interpreted as follows:-

- a) *"Day" means calendar day and "month" means calendar month.*
- b) *"The Conditions" means the agreements entered into between KPLC and the law firm, as recorded in the Main Form signed by the Parties, including all attachments and appendices thereto and all documents incorporated by reference therein.*
- c) *"The Charges" means the rates and fees of which the appointed law firm is entitled to for the proper performance of its obligations as and when it is called upon by KPLC to do so.*
- d) *"The Services" means services or part thereof that may from time to time be duly provided by the law firm and includes all the materials and incidentals, which the law firm is required to perform and provide to KPLC as part of its assignment.*
- e) *"The Procuring Entity" means The Kenya Power and Lighting Company PLC or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KPLC).*
- f) *"The law firm" or the lawyer" or the Consulting firm" means the individual or firm providing the Services consequent to the appointment. For the avoidance of doubt this shall mean the Successful Law firm(s) or lawyer(s) pursuant to this Tender Process.*

### **8.2 Application**

These General Conditions of Appointment shall apply to the extent that the provisions of other parts of the Conditions do not supersede them.

### **8.3 Standards**

The Services supplied under the contract shall conform to the professional ethics and standards applicable to lawyers under the Advocates Act, Cap. 16 (as may be amended or replaced) together with the Service Agreement entered between KPLC and the law firm.

## **8.4 Use of Documents and Information**

- 8.4.1 The law firm and each and every individual lawyer therein shall not, without KPLC's prior written consent, disclose the contents of the service agreement, the Conditions, or any provision thereof or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of KPLC in connection therewith, to any person other than a person employed by the law firm in the performance of any assignment arising out of this appointment.
- 8.4.2 The law firm shall not, without KPLC's prior written consent, make use of any document or information enumerated in sub-clause 8.4.1 above.
- 8.4.3 Any document, other than the service agreement itself, enumerated in sub-clause 8.4.1 shall remain the property of KPLC and shall be returned (including all copies) to KPLC on completion of the law firm's performance of any assignment which may be given to and accepted by it, where so required by KPLC.

## **8.5 Professional Indemnity Cover**

- 8.5.1 Within fourteen (14) days of the date of notification of appointment from KPLC, the successful law firm shall furnish KPLC with a valid PI Cover.
- 8.5.2 The Professional Indemnity Cover shall be issued by an insurance company registered by the Insurance Regulatory Authority and approved by PPRA. The insurer must be located in Kenya.
- 8.5.3 The successful law firms shall furnish the PI Cover as set out in the paragraph 3.2.3. PROVIDED THAT law firms qualified under Category B shall furnish KPLC with a valid PI Cover in no less than Kenya Shillings Two Million (KSh.2 Million). Firms under Category A and Category B will be required to progressively uprate the PI Cover. At the expiry of nine (9) months from the date of notification of appointment, the PI Cover by firms qualified under Category A and Category B should be in no less than Kenya Shillings Ten Million (KSh. 10 Million).
- 8.5.4 The law firm shall ensure that the PI Cover remains valid throughout the period of Appointment and where KPLC engages it in any assignment upto the conclusion of that assignment.
- 8.5.5 The PI Cover is required to protect KPLC against the risk of the law firm's conduct during the performance of Services which would warrant the PI Cover's forfeiture or part thereof.
- 8.5.6 KPLC shall seek authentication of the PI Cover from the issuing Insurer. It is the responsibility of the successful law firm to sensitize its issuing Insurer on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed five (5) days from the date of

KPLC's query. Should there be no conclusive response by the Insurer within this period, such successful law firm's PI Cover may be deemed as invalid.

- 8.5.7 Failure of the successful law firm to furnish an authentic PI Cover, the appointment shall stand annulled.
- 8.5.8 The law firm shall provide such evidence of the continued existence and validity of the PI Cover as KPLC may reasonably and from time to time request.

## **8.6 Demonstration(s), Inspection(s) and Test(s)**

- 8.6.1 The law firm will be required to demonstrate dexterity, diligence, skill and professionalism in the performance of Services when called upon to do so right from receipt of instructions to conclusion of the assignment which is by closure of the file or matter by agreement between KPLC and the law firm except in cases of earlier cessation of instructions.
- 8.6.2 KPLC or its representative(s) shall have the right to inspect and confirm this demonstration of the law firm's performance, capacity, equipment, premises, and to confirm their conformity to the Conditions of Appointment. This shall include any Quality Management System.
- 8.6.3 KPLC shall meet its own costs of the inspections/ visits. These may be done at the law firm's offices, courts or any other place at the discretion of KPLC.
- 8.6.4 Where conducted on the premises of the law firm(s), all reasonable facilities and assistance, including access to literature and documentation save for other client's confidential information shall be furnished to KPLC representative(s) at no charge to KPLC.
- 8.6.5 A Demonstration/Visitation Report(s) may be completed by KPLC upon conclusion of the inspection/ visitation. This Report where done shall be considered during periodical review with the law firm for purposes of improvement in the engagement between the Parties, performance, analysis and continued empanelling or re-appointment at the end of the Period.
- 8.6.6 Nothing in this clause 8.6 shall in any way be construed as a Waiver of any kind whatsoever or release the law firm from any of its obligations under the Advocates Act as and when it is engaged in any matter by KPLC.

## **8.7 Nature of the Conditions**

- 8.7.1 The Tender and enlisting of the law firm on KPLC's Panel shall not constitute a retainer or contract.

8.7.2 KPLC does not bind itself to request the law firm for provision of any Service during any time in which the law firm is on its Panel.

## **8.8 Interest**

8.8.1 Where the law firm is instructed by KPLC on any assignment or matter, it is hereby agreed that interest payment by KPLC is inapplicable on any charges or fees accruing to the law firm.

## **8.9 Fees and Rates**

8.9.1 Where professional fees, charges or payments of any kind are due and owing to the law firm, the guide for payment shall be the relevant Advocates (Remuneration)(Amendment) Order except as stated for Schedule V thereon.

8.9.2 The billing shall be considered on a case by case basis and subject to agreement between KPLC and the law firm. Should there be a difference on this, then KPLC and the law firm, may by agreement, refer the issue to Taxation with each Party bearing their own costs for the Taxation.

8.9.3 The Parties recognize that the present 5<sup>th</sup> Schedule of the Advocates (Remuneration) (Amendment) Order, 2014 under the Advocates Act, Cap. 16 provides for an hourly billing system or an amount fixed by agreement between KPLC and the firm. Where fees or charges are due and owing to the law firm and it is agreed prior thereto between the law firm and KPLC that the same should be paid on the basis of Schedule V, then and in that event, the Parties shall discuss the quantum thereof with regard to the figures indicated by the law firm in its Tender at Section V – 'Method of Charging for Services'.

## **8.10 Assignment**

8.10.1 The law firm shall not assign or in whole or in part its appointment by virtue of its being on the Panel or assign or sub-contract its obligations to perform when instructed by KPLC except as may be prescribed.

8.10.2 In the event that a sub-contract is permissible and the law firm sub-contracts its role, the responsibility and onus over the instructions given to the law firm shall rest with the law firm that is appointed by KPLC.

## **8.11 Resolution of Disputes**

8.11.1 KPLC and the law firm may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with its appointment to the Panel or during the performance of any services rendered by the firm.



8.11.2 Where the Parties are of the opinion that direct informal negotiation has been unable to amicably resolve the dispute, or, that it is not appropriate either Party may resort to resolution before a recognized local forum for the resolution of disputes where circumstances permit.

### **8.12 Language and Law**

8.12.1 The language of the GCA and the law governing any ensuing contract shall be the English language and the laws of Kenya respectively unless otherwise stated.

### **8.13 Waiver**

8.13.1 Any omission or failure by KPLC to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the law firm shall in no way, manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of KPLC's powers and rights as expressly provided in and as regards the GCA and any ensuing contract.

### **8.14 Force Majeure**

8.14.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:-

- a) *war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;*
- b) *ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;*
- c) *rebellion, revolution, insurrection, military or usurped power & civil war;*
- d) *riot, commotion or disorder except where solely restricted to employees servants or agents of the parties;*
- e) *un-navigable storm or tempest at sea.*

8.14.2 Notwithstanding the provisions of the GCA, neither Party shall be considered to be in default or in breach of its obligations under the GCA or any ensuing contract to the extent that performance of such obligations is prevented by any circumstances of *force majeure* which arise after the GCA.

- 8.14.3 If either Party considers that any circumstances of *force majeure* are occurring or have occurred which may affect performance of its obligations it shall promptly notify the other Party and provide reasonable proof of such circumstances.
- 8.14.4 Upon the occurrence of any circumstances of *force majeure*, the law firm shall endeavour to continue to perform its obligations so far as is reasonably practicable. The law firm shall notify KPLC of the steps it proposes to take including any reasonable alternative means for performance, which is not prevented by *force majeure*. The law firm shall not take any such steps unless directed so to do by KPLC.
- 8.14.5 If the law firm incurs additional costs in complying with KPLC's directions under sub clause 8.14.4, then notwithstanding the provisions of the GCA and any ensuing contract, the amount thereof shall be agreed upon with KPLC and added to the fees and charges payable.
- 8.14.6 If circumstances of *force majeure* have occurred and shall continue for a period of twenty-one (21) days then, notwithstanding that the law firm may by reason thereof have been granted an extension of time for performance of the services, either Party shall be entitled to serve upon the other seven (7) days' notice to terminate the instructions. If at the expiry of the period of twenty-eight (28) days, *force majeure* shall still continue, the services at the option of either Party shall terminate.

## **8.15 Confidentiality**

- 8.15.1 The Law Firm hereby acknowledges that during the performance of this Agreement, the Law Firm may learn or receive confidential business information and therefore the Law Firm hereby confirms that all such information relating to KPLC's business shall be kept confidential by the Law Firm and its personnel.

"Confidential Information" shall, for the purposes of this Agreement, include without limitation any financial, strategic, technical, commercial, geological and scientific information, know-how, trade secrets and data in whatever form, communicated to the Law Firm or acquired from KPLC during the course of the Law Firm carrying out its duties as contemplated in this Agreement.

- 8.15.2 The Law Firm agrees that it will not, during the course of carrying out its duties as contemplated in this Agreement or thereafter into perpetuity disclose the Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of KPLC, save in accordance with the provisions of this Agreement.

- 8.15.3 The Law Firm agrees not to utilize, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement and the terms of any subsequent agreement made by Parties, for any purpose whatsoever without the prior written consent of KPLC.
- 8.15.4 The Law Firm undertakes not to use the Confidential Information for any purpose other than:
- 8.15.4.1 that for which it is disclosed; and
  - 8.15.4.2 in accordance with the provisions of this Agreement and any subsequent agreement made by the Parties.
- 8.15.5 The Law Firm shall be held liable for disclosing confidential information unless it proves that:
- 8.15.5.1 Such information and data was in the public domain prior to such disclosure,
  - 8.15.5.2 Such information and data has become part of the public domain through no fault of the Law Firm, or
  - 8.15.5.3 Such disclosure was required by any written Kenyan law.
- 8.15.6. The Law Firm undertakes to keep confidential any information, documents and all other matters that may come to its attention in connection with this Agreement, and not at any time or for any reason whatsoever to disclose them or permit them to be disclosed to any third party except with the express consent of KPLC. The Law Firm agrees that they shall protect the Confidential Information disclosed pursuant to the provisions of this Agreement, using the same standard of care that they apply to safeguard their own proprietary, secret or Confidential Information and that the Confidential Information shall be stored and handled in such a way as to prevent any unauthorized disclosure thereof.
- 8.15.7 The Law Firm shall comply with the security and Data protection obligations equivalent to those imposed on them in terms of the applicable Data protection legislation and practices in Kenya, and failing such legislation and practices, they shall take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Confidential Information disclosed by KPLC and in its possession and to protect such Confidential Information against

unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.

8.15.8 This clause shall survive the termination, cessation of Services rendered by the Law Firm or in any future partnership or law practice that any of the Law Firm in the current Law Firm may be a part of.

## **8.16 Termination**

8.16.1. This Agreement may be terminated at any time by either Party by giving the other Party thirty [30] days' notice in writing.

8.16.2. Notwithstanding the foregoing and without any prejudice to any remedy that KPLC may have against the Law Firm for breach or non-performance or gross negligence under any of the terms of this Agreement, KPLC may without incurring any liability terminate this Agreement forthwith at any time with a notice to the Law Firm in writing to that effect in any of the following events:-

8.16.2.1. If the Law Firm fails to provide any or all of the Services within the period[s] specified in the Agreement, or within any extension thereof granted by KPLC

8.16.2.2. If the Law Firm fails to perform any of its obligation[s] under the Agreement;

8.16.2.3. If the Law Firm's conduct of the Services agreed hereunder, consistently fall below the standard expected while conducting such business;

8.16.2.4. If the Law Firm makes any breach of the Law Firm's obligation herein contained;

8.16.2.5. If it is demonstrated that the Law Firm lacks human resources capacity to handle any of the matter assigned;

8.16.2.6. If the Law Firm is declared bankrupt or enter into arrangement with or for the benefit of his creditors or for the liquidation of his debts by composition or otherwise;

8.16.2.7. If the Law Firm and/or any of the Law Firm's personnel shall be involved in fraud, theft or any malpractice against KPLC;

8.16.2.8. If the Law Firm's Practising License is cancelled or not renewed;

8.16.2.9. If the Law Firm fails to maintain the Professional Indemnity Cover as stipulated in the Agreement;

- 8.16.2.10. If the Law Firm, in the judgment of KPLC has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement;
- 8.16.2.11.If the Advocate is suspended or struck-off the Roll of Advocates.
- 8.16.2.12.If there is a split in the Law Firm.
- 8.16.2.13.If it is established by KPLC that the Law Firm and/or Advocate has a conflict of interest against KPLC.
- 8.16.2.14.If the Law Firm has filed an advocate/client bill of costs against KPLC.
- 8.16.3. In the event KPLC terminates the Agreement in whole or in part as set out in clause 15.2 above, KPLC may procure, upon such terms and in such manner as it deems appropriate, the Services similar to those undelivered, and the Law Firm shall be liable to KPLC for any excess costs for such similar Services.
- 8.16.4. Termination of this Agreement for whatever reason shall not affect the accrued rights of the Parties arising out of this Agreement as at the date of termination and, in particular but without limitation, the right to recover damages against the other and all provisions which are expressed to survive this Agreement shall remain in force and effect.
- 8.16.5. Notwithstanding the above, the Law Firm shall be bound by the terms of this Agreement as relates to cases in which instructions have already been issued to the Law Firm by KPLC, as relates to cases and instructions still being handled by the Law Firm and as relates to provisions which survive this Agreement.

## **SPECIAL CONDITIONS OF APPOINTMENT TO THE PANEL OF LAWYERS**

The Special Conditions of Agreement *hereinafter abbreviated as SCA* shall form part of the Conditions of Agreement. They are made in accordance with the law and KPLC's guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GCA. The clauses in this section need not therefore, be completed but must be completed by KPLC if any changes to the GCA provisions are deemed necessary. Whenever there is a conflict between the GCA and SCA, the provisions of the SCA shall prevail over those in the GCA.

<b>No</b>	<b>GCC Reference Clause</b>	<b>Particulars of SCC</b>
1	8.7 Nature of the conditions	8.7.2 This entire Agreement is not a guarantee of work and instructions shall be issued by KPLC at its sole discretion on a case by case basis and as and when available.
2	8.10 Assignment	The law firm shall not assign in whole or in part its appointment by virtue of its being on the Panel or assign or sub-contract its obligations to perform when instructed by KPLC except with KPLC's prior written consent.
3	8.16.2 Termination	The notice period for termination of contract shall be thirty days.

## SECTION IX – TENDER FORM

Date:

Tender No.

**To:**

The Kenya Power & Lighting Company PLC,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi, Kenya.

Ladies and Gentlemen,

1. Having read, examined and understood the Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned law firm, offer to render and perform **Legal Services** in accordance and conformity with the said tender document and in particular the **Method of Charging for Services** that are made part of this Tender.
2. We undertake, if our Tender is accepted, to perform and provide the Services in accordance with the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the Professional Indemnity Cover insurance from a reputable insurance company in a sum that is no less than that which we submitted for purposes of evaluation in the Tender.
4. We agree to abide by this Tender for a period of **180 days** from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Tender, together with your written acceptance thereof and your notification of appointment shall not constitute a contract, between us. The contract shall be formed between us when KPLC duly issues instructions to us on any specific matter or assignment.

6. We understand that you are not bound to accept and prequalify any Tender you may receive.

Yours sincerely,

---

Full name of law firm

---

Signature of duly authorised person signing the Tender

---

Name and Capacity of duly authorised person signing the Tender

---

Stamp of the law firm

**\*NOTES:**

1. KPLC requires a validity period of at least one hundred and eighty (180) days.
2. This form must be duly signed and stamped.



**SECTION X - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

All law firms are requested to give the particulars indicated in Part 1 and either Part 2 (a) or 2 (b), whichever applies to your type of business. You are advised that it is a serious offence to give false information on this form.

**Part 1 – General**

Business Name.....

Location of business premises.....

Plot No. ....Street/ Road .....

Postal Address ..... Postal Code .....

Tel. No.....

Mobile and/ or CDMA No.....

E-mail:.....

Nature of your business .....

Registration Certificate No.....

Name of your Bankers .....Branch... ..

\*Names of law firm's contact person(s) .....

Designation/ capacity of the law firm's contact person(s).....

Address, Tel, Fax and E-mail of the law firm's contact person(s).....

**Part 2 (a) Sole Proprietor**

Your name in full .....  
Citizenship including whether by birth, marriage, registration or naturalisation.....

**Part 2 (b) Partnership**

Give details of partners as follows: -

Names	Shares
1.....	
2.....	
3.....	
4.....	
5.....	

Give citizenship of each Partner including whether by birth, marriage, registration or naturalisation.....

Name of duly authorized person to sign for and on behalf of the law firm  
.....

Capacity of the duly authorized person.....

Signature of the duly authorized person.....

Notes to the Law Firms on the Questionnaire

1. *The address and contact person of the Law firm provided above shall at all times be used for purposes of this Tender.*
2. *The details on this Form are essential and compulsory for all law firms. **Failure to provide all the information requested may lead to the law firm's disqualification.***

**SECTION XI – LIST OF LAW FIRM'S REFERENCES.**

The law firm is requested to provide the list of its references. Please refer to the Tender Document including ITT paragraph 3.7 and Evaluation Criteria Table 6.2.2

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp of the law firm

**SECTION XII – QUALITY MANAGEMENT SYSTEM/ STANDARD OPERATING PROCEDURES**

The law firm is requested to give details of its Quality Management System (QMS) or Standard Operating Procedures (SOP). Please refer to the Tender Document including ITT paragraph 3.17.2 and Evaluation Criteria Table 6.2.7

***Overview of law firm's QMS***

***Description of File Management System or Handling of any Matter***

***Description of Client Handling Methodology***

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp of the law firm

**SECTION XIII – FORMAT OF CURRICULUM VITAE FOR PROFESSIONAL STAFF.**

Full name of lawyer: \_\_\_\_\_ Position in firm i.e. Partner or Associate: .

Years and or months with law firm: \_\_\_\_\_ Membership (and status) in Professional Bodies: \_\_\_\_\_

**Key Qualifications:**

*[Give an outline of lawyer's key experience and training most pertinent to the Services going not more than five years prior to the Date of the Tender Document. Indicate degree of responsibility held by the lawyer on relevant previous assignments and give dates and locations. For experience in last six years, also give types of activities performed and client references, where appropriate].*

**Preferred areas of practice if appointed to KPLC panel:**

*[Give an outline of lawyer's preferred areas of practice relevant to the Services and any two outstanding achievements in that area going not more than five years prior to the Date of the Tender Document. Give client references, where possible].*

**Employment Record:**

*[Starting with present position, list in reverse order every employment held in the last ten years. List all positions held by the lawyer giving dates, names of employing organizations, titles of positions held, and locations of assignments].*

**Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, the information above correctly describes me, my qualifications, and my experience.

\_\_\_\_\_  
*[Signature of lawyer]* Date: \_\_\_\_\_  
Day/Month/Year

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

---

Name and Capacity of duly authorised person signing the Tender

---

Stamp of the law firm

**SECTION XIV – FORMAT OF CONFLICT OF INTEREST FORM**

1. Full name of lawyer(s) involved in the matter
2. Name of third party involved in the matter
3. Nature of the matter  
(E.g. Claim for negligence; personal injury; damage to property; electricity billing, commercial transaction)
4. Brief Details  
(Including when and where the dispute arose; amount involved or the commercial transaction)
5. Case Number (where applicable)
6. Date of commencement of the matter where there was/is litigation
7. Present position of the matter

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp of the law firm

**SECTION XV - DECLARATION FORM**

Date \_\_\_\_\_

To:

The Kenya Power & Lighting Company PLC,  
Stima Plaza, Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi,  
KENYA.

Ladies and Gentlemen,

The law firm i.e. (give full name of firm) \_\_\_\_\_ declares the following:-

- a) That pursuant to Table 4.5.1, we have selected to serve in Category \_\_\_\_\_
- b) That I/ We have not been debarred from participating in public procurement by any body, institution or person.
- c) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- d) That I/We or any partner and/or other lawyer of the firm is not a person within the meaning of paragraph 3.3 of ITT.
- e) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- f) That I/We are have not been found guilty of any violation of fair employment laws and practices.
- g) That I/ We are not associated with any other Tenderer participating in this Tender Process.
- h) That I/We do hereby confirm that all the information given in this Tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender



---

Name and Capacity of duly authorised person signing the Tender

---

Stamp of the law firm

**SECTION XVI- DRAFT LETTER OF NOTIFICATION OF APPOINTMENT**

**To:**

*(Name and full address of the selected law firm) .....*

Dear Sirs/ Madams,

**RE: NOTIFICATION OF AWARD OF TENDER NO KP1/9A.2/OT/41/CA&CS/19-20  
FOR PROVISION OF LEGAL SERVICES**

We refer to your Tender dated..... and are pleased to inform you that following evaluation, your firm has been selected for appointment for provision of legal services for the Financial Years 2020-2022 ending on 30 June 2022 in Category .....

This notification does not constitute a contract. A contract shall only arise when KPLC instructs you on any particular assignment. The confirmation of appointment (*i.e. commencement*) shall be given upon expiry of fourteen (14) days from the date hereof pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 (*or as may be amended or replaced*).

Enclosed, please find the Service Agreement for your perusal and acceptance. Kindly sign and stamp the Agreement. Further, initial and stamp on all pages of the documents forming the Conditions of Appointment that are forwarded to you with this letter and that are in your possession. Thereafter return the signed and stamped documents together with a copy of the valid Professional Indemnity Cover within two (2) working days of the date hereof for our further action.

We congratulate you and look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

**FOR: THE KENYA POWER & LIGHTING COMPANY PLC**

**GENERAL MANAGER, SUPPLY CHAIN**

Enclosures

**SECTION XVII – DRAFT LETTER OF NOTIFICATION OF REGRET**

**Date:**

**To:** *(Name and full address of the Unsuccessful law firm).....*

Dear Sirs/ Madams,

**RE: NOTIFICATION OF REGRET IN RESPECT OF TENDER NO  
KP1/9A.2/OT/41/CA&CS/19-20 FOR PROVISION OF LEGAL SERVICES**

We refer to your Tender dated..... and regret to inform you that following evaluation, your Tender is unsuccessful. It is therefore not accepted. The brief reasons are as follows:-

1. ....
2. ....
3. .... etc.

Notwithstanding the above, we take the early opportunity to thank you for the interest shown in participating in this Tender Process and wish you well in all your future endeavors.

Yours faithfully,

**FOR: THE KENYA POWER & LIGHTING COMPANY PLC**

**GENERAL MANAGER, SUPPLY CHAIN**

**SECTION XVIII – APPLICATION FORM**

Date:

Tender Number and Name:

To: The Kenya Power & Lighting Company PLC,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi, Kenya.

Dear Sirs and Madams,

Having read, examined and understood the Tender Document including all Addenda, receipt of which we hereby acknowledge, we, the undersigned law firm, bid to be enlisted to provide Legal Services for the sums as may be ascertained in accordance with the Method of Charging for Services accepted and inserted by me/ us above.

Yours sincerely,

Full name of law firm

---

Name and Capacity of authorized person signing the Tender

---

Signature of authorized person signing the Tender

---

Stamp of the law firm

---

**SECTION XIX – LITIGATION/ARBITRATION HISTORY**

The law firm shall provide information of any history of litigation or arbitration and briefly describe the nature of the litigation/arbitration (Instructions to Tenders, paragraph 3.39). Where the law firm has no litigation/arbitration history, the firm to indicate as much.

<u>Year filed</u>	<u>Award FOR or AGAINST the law firm</u>	<u>Name of Client</u>	<u>Cause of litigation/arbitration (matter in dispute)</u>	<u>Disputed amount (Current value in Ksh.)</u>

The law firm i.e. (give full name of firm) \_\_\_\_\_ declares that the information provided above is the full and complete history of litigation/arbitration of the law firm pursuant to paragraph 3.39 ITT.

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp of the law firm

## SECTION XX – SERVICE AGREEMENT

**THIS AGREEMENT** made this.....day of.....**20....** **BETWEEN THE KENYA POWER & LIGHTING COMPANY PLC**, a public limited liability company duly incorporated under the Companies Act, Chapter 486 of the Laws of Kenya, with its registered office situated at Stima Plaza, Kolobot Road, Parklands, Nairobi in the Republic of Kenya and of Post Office Box Number 30099-00100, Nairobi in the Republic aforesaid (*hereinafter referred to as the "KPLC"*) of the one part,

**AND**

..... (*law firm's full name and principal place of business*) a duly registered law firm according to the Registration of Business Names Act, Chapter \_\_\_ of the laws of Kenya and of Post Office Box Number.....(*full address i.e. e-mail, physical and postal of law firm*) in the Republic aforesaid, (*hereinafter referred to as the "law firm"*) of the other part;

**WHEREAS** KPLC invited tenders for certain services, that is to say for provision of **Legal Services** under Tender Number **KP1/9A.2/OT/41/CA&CS/19-20**.

**AND WHEREAS** KPLC has accepted the Tender by the law firm for Appointment to render the Services as and when called upon to do so;

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -**

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Service Agreement and the Tender Document.
2. Unless the context or express provision otherwise requires: -
  - a) reference to "this Agreement" includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
  - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.

- c) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
  - d) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the "*law firm*" or "*the lawyer*" or "*the Consulting firm*" or "*the Successful law firm*" the covenants, agreements obligations expressed to be made or performed by the law firm shall be deemed to be made or performed by such persons jointly and severally.
  - e) where there are two or more persons included in the expression the "*law firm*" or "*the lawyer*" or "*the Consulting firm*" or "*the Successful law firm*" any act default or omission by the law firm or the lawyer or the Consulting firm or the Successful Law firm shall be deemed to be an act default or omission by any one or more of such persons.
3. In consideration of the payments to be made by KPLC to the law firm, the law firm hereby covenants with KPLC to perform and provide the Services and remedy any defects thereon in conformity in all respects with the provisions of these Conditions.
4. KPLC hereby covenants to pay the law firm in consideration of the proper performance and provision of the services and the remedying of defects therein, the sum as may become payable under the provisions of any ensuing Contract.
5. The following documents shall constitute the Conditions between KPLC and the law firm and each shall be read and construed as an integral part of these Conditions: -
- a) This Service Agreement
  - b) Special Conditions of Appointment
  - c) General Conditions of Appointment
  - d) Method of Charging for Services submitted by the Law Firm and agreed upon with KPLC
  - e) Details of Service/ Technical Specifications
  - f) Schedule of Requirements
  - g) Schedules
  - h) **KPLC's Notification of Appointment dated .....**
  - i) Professional Indemnity Cover
  - j) Declaration Form signed by the Law Firm
  - k) Tender Form signed by the Law Firm

- l) Partners and Team Composition
- m) The Quality Management System submitted by the law firm
- n) Any other documents listed in the Schedules to the Agreement as forming part of the Agreement

6. In the event of any ambiguity or conflict between the documents listed above, the order of precedence shall be the order in which the documents are listed in 5 above except where otherwise mutually agreed in writing.
7. The period of appointment shall begin from the Confirmation date and end on 30th June 2022, or, such other date as KPLC may signify to the law firm. This Agreement shall take effect from the date mentioned above. So far as possible and as instructed by KPLC, it shall affect all briefs where files have not been closed. This means past, present and any future briefs. Save as expressly provided, the duration of this Agreement is for as long as the law firm continues to provide the Services to KPLC on any brief. The law firm shall provide the Services for the term of the Agreement until the file has been closed, unless terminated earlier as provided in the Conditions of Appointment.
8. Any amendment, change, addition, deletion or variation howsoever to this Agreement shall only be valid and effective where expressed in writing and signed by both parties.
9. It shall be the responsibility of the Law Firm to ensure that its Professional Indemnity Cover is valid at all times during the Term of the Agreement and further is in full amount as contracted.
10. No failure or delay to exercise any power, right or remedy by KPLC shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
11. Notwithstanding proper completion of the services or parts thereof, all the provisions of the Agreement and Conditions shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise agreed upon by both parties.
12. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail (email) and



facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service.

13. For the purposes of Notices, the contacts of KPLC shall be Manager, Legal Services, The Kenya Power & Lighting Company PLC, 2<sup>nd</sup> Floor, Stima Plaza, Kolobot Road, Post Office Box Number 30099-00100, Nairobi, Kenya, Facsimile + 254-20-3751225/ 3514485, e-mail: [LitigationProsecutionsSection@kplc.co.ke](mailto:LitigationProsecutionsSection@kplc.co.ke). The contacts for the law firm shall be the law firm's contacts as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

**IN WITNESS** whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya the day and year first above written.

SIGNED FOR and on BEHALF of  
**THE KENYA POWER AND LIGHTING COMPANY PLC**

\_\_\_\_\_  
GENERAL MANAGER, CORPORATE AFFAIRS  
AND COMPANY SECRETARY

In the presence of: -

\_\_\_\_\_  
Ag. CHIEF LEGAL OFFICER, COMMERCIAL

SIGNED BY AND ON BEHALF OF THE LAW FIRM	)	
	)	
<b>NAME:</b> .....	)	.....
	)	sign
	)	stamp
<b>NAME:</b> .....	)	.....
T/A	)	sign
..... & CO. ADVOCATES	)	
	)	
In the presence of: -	)	
	)	

**ADVOCATE**

)  
)  
)  
)

DRAWN BY: -

.....

**Advocate,**

C/o The Kenya Power & Lighting Company PLC,  
7<sup>th</sup> Floor, Stima Plaza,  
Kolobot Road, Parklands,  
P. O. Box 30099-00100,

**NAIROBI**

**END**