



## **REQUEST FOR PROPOSALS**

### **REPUBLIC OF KENYA SCALING UP ENERGY ACCESS PROJECT**

**CREDIT FINANCING AGREEMENT No. CKE 1053 01 G**

**CFL DISTRIBUTION PROGRAM**

**RETROFITTING OF INCANDESCENT BULBS WITH COMPACT  
FLUORESCENT LAMPS**

**RFP NO. KP1/6A-2/PT/5/15/A44**

1. The Government of the Republic of Kenya has received funds from the Agence Française de Développement (the French Development Agency) towards the cost of Scaling up Energy Access Project. It is intended that part of the proceeds of these funds will be applied to eligible payments under the contract for services to retrofit existing Incandescent Lamps with Compact Fluorescent Lamps.
2. The Kenya Power & Lighting Company Limited now invites proposals from eligible bidders for the retrofitting of Incandescent Lamps with Compact Fluorescent Lamps in Kenyan households. (“the Services”).
3. Interested eligible bidders may obtain further information from the Kenya Power and Lighting Company Limited and inspect the bidding documents at the address given below from 09.00 to 16.00 hours, Monday to Friday excluding public holidays.

Address:

General Manager, Infrastructure development

Stima Sacco Building 2<sup>nd</sup> Floor  
Mushembi Road, Parklands  
P.O Box 30099-00100  
Nairobi.  
Tel. +254 20 3201980  
Email: [smutwiri@kplc.co.ke](mailto:smutwiri@kplc.co.ke)

4. Request For proposals can be electronically downloaded from the KPLC website free of charge. Bidders may also purchase a complete set of bidding documents upon payment of a non-refundable fee of KSh.1,000.00.
5. The provisions in the Instructions to Consultants and in the General Conditions of Contract are the provisions of the Agence Française de Développement's *Standard Bidding Documents: Selection of Consultants*.
6. Proposals must be delivered to the office below on or before 10.00 a.m on **5<sup>th</sup> January, 2016**. Bids must be submitted in HARDCOPY and 1 digital (CD or flash disk) format only. Bidders do not have the option of submitting their bids electronically.

The Company secretary  
The Kenya Power and Lighting Company Limited  
7<sup>th</sup> Floor, Stima Plaza, Kolobot Road,  
Nairobi, Kenya.

7. Proposals will be opened in the presence of bidders' representatives who choose to attend at 10.30a.m on **5<sup>th</sup> January, 2016** at the offices below.

*Stima Plaza, Auditorium, Ground floor  
Kolobot Road, Parklands.*

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# PART I – SELECTION PROCEDURES AND REQUIREMENTS

## Section 1. Instructions to Consultants

### A. GENERAL PROVISIONS

#### 1. Definitions

- (a) “**Affiliate(s)**” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- (b) “**Applicable law**” means the laws and any other instruments having the force of law in the Client’s country, or in such other country as may be specified in the **Data Sheet**, as they may be issued and in force from time to time.
- (c) “**Agency**” means the Agence Française de Développement
- (d) “**Client**” means the implementing agency that signs the Contract for the Services with the selected Consultant.
- (e) “**Consultant**” means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Client under the Contract.
- (f) “**Contract**” means a legally binding written agreement signed between the Client and the Consultant. It includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- (g) “**Data Sheet**” means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific country and assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- (h) “**Day**” means a calendar day.
- (i) “**Experts**” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
- (j) “**Government**” means the government of the Client’s country.
- (k) “**Joint Venture (JV)**” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
- (l) “**Key Expert(s)**” means an individual professional whose skills, qualifications, knowledge and experience are critical to the

performance of the Services under the Contract and whose CV is taken into account in the technical evaluation of the Consultant's proposal.

- (m) “**ITC**” (this Section 1 of the RFP) means the Instructions to Consultants that provide the shortlisted Consultants with all information they need to prepare their Proposals.
- (n) “**LOI**” means the Letter of Invitation being sent by the Client to the shortlisted Consultants.
- (o) “**Non-Key Expert(s)**” means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- (p) “**Proposal**” means the Technical Proposal and the Financial Proposal of the Consultant.
- (q) “**RFP**” means the Request for Proposals to be prepared by the Client for the selection of Consultants, based on the SRFP.
- (r) “**SRFP**” means the Standard Request for Proposals, which may be used by the Client as the basis for the preparation of the RFP.
- (s) “**Services**” means the work to be performed by the Consultant pursuant to the Contract.
- (t) “**Sub-consultant**” means an entity to whom the Consultant intends to subcontract any part of the Services while remaining responsible to the Client during the performance of the Contract.
- (u) “**TORs**” (this Section 7 of the RFP) means the Terms of Reference that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the assignment.

## 2. Introduction

2.1 The Client named in the **Data Sheet** intends to select a Consultant from those listed in the Letter of Invitation, in accordance with the method of selection specified in the **Data Sheet**.

2.2 The shortlisted Consultants are invited to submit a Technical Proposal and a Financial Proposal for consulting services required for the assignment named in the **Data Sheet**. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.

2.3 The Consultants should take into account the Applicable law in preparing their Proposals. They may attend a pre-proposal conference if one is specified in the **Data Sheet**. Attending any such pre-proposal conference is optional and is at the Consultants' expense.

2.4 The Client will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of

the Consultant's Proposal as specified in the **Data Sheet**.

**3. Conflict of Interest**

3.1 The Consultant is required to provide professional, objective, and impartial advice, at all times holding the Client's interests paramount, strictly avoiding conflicts with other assignments or its own corporate interests, and acting without any consideration for future work.

3.2 The Consultant has an obligation to disclose to the Client any situation of actual or potential conflict of interest that impacts its capacity to serve the best interest of its Client. Failure to disclose such situations may lead to the rejection of the Consultant's Proposal or the termination of its Contract.

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

**a. Conflicting activities**

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

**b. Conflicting assignments**

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

**c. Conflicting relationships**

(iii) Relationship with the Client's staff: a Consultant (including its Experts and Sub-consultants) that has a close business or family relationship with a professional staff of the Client who are directly or indirectly involved in any part of (i) the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Agency throughout the selection process and the execution of the Contract.

**4. Unfair Competitive Advantage**

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

other competing Consultants.

**5. Corrupt and Fraudulent Practices**

5.1 The Agency requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section 6.

5.2 In further pursuance of this policy, Consultant shall permit and shall cause its agents, Experts, Sub-consultants, sub-contractors, services providers, or suppliers to permit the Agency to inspect all accounts, records, and other documents relating to the submission of the Proposal and contract performance (in case of an award), and to have them audited by auditors appointed by the Agency.

**6. Eligibility**

6.1 The Agency's financing may benefit to consultants (firms, including Joint Ventures and their individual members) from all countries to offer consulting services for Agency-financed projects subject to compliance with the eligibility criteria specified in Section 5.

6.2 Furthermore, it is the Consultant's responsibility to ensure that its Experts, Joint Venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements as established by the Agency in the Section 5.

6.3 Government officials and civil servants of the Client's country are not eligible to be included as Experts in the Consultant's Proposal unless such engagement does not conflict with the Applicable law, and they

(i) are on leave of absence without pay, or have resigned or retired;

(ii) are not being hired by the same agency they were working for before going on leave of absence without pay, resigning, or retiring;

(iii) their hiring would not create a conflict of interest.

**B. PREPARATION OF PROPOSALS**

**7. General Considerations**

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

**8. Cost of Preparation of Proposal**

8.1. The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and the Client shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process.

**9. Language**

9.1. The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Consultant and the Client, shall be written in the language(s) specified in the **Data Sheet**.

**10. Documents Comprising the Proposal**

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

10.2. The Consultant shall furnish information on commissions,

gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution.

**11. Only One Proposal**

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

**12. Proposal Validity**

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

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

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

**a. Extension of Validity Period**

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

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

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

**b. Substitution of Key Experts in case of Extension of Validity Period**

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

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

**c. Sub-Contracting**

12.9. The Consultant shall not subcontract the whole of the Services.

**13. Clarification and**

13.1. The Consultant may request a clarification of any part of the RFP during the period indicated in the **Data Sheet** before the Proposals'



**Amendment of RFP**

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

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

13.1.2. If the amendment is substantial, the Client shall extend the proposal submission deadline to give the shortlisted Consultants reasonable time to take an amendment into account in their Proposals.

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

**14. Preparation of Proposals – Specific Considerations**

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

14.1.1. If a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture, it may do so with either (a) non-shortlisted Consultant(s), or (b) shortlisted Consultants if permitted in the **Data Sheet**. Association with a non-shortlisted Consultant shall be subject to approval of the Client. When associating with non-shortlisted firms in the form of a Joint Venture, the shortlisted Consultant shall be a lead member. If shortlisted Consultants associate with each other, any of them can be a lead member.

14.1.2. The Client may indicate in the **Data Sheet** the estimated Key Experts' time input (expressed in person-month) or the Client's estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the Consultant's own estimates for the same.

14.1.3. If stated in the **Data Sheet**, the Consultant shall include in its Proposal at least the same time input (in the same unit as indicated in the **Data Sheet**) of Key Experts, failing which the Financial Proposal will be rejected.

14.1.4. For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input is not disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the **Data Sheet**,

and the Financial Proposal shall not exceed this budget.

- 15. Technical Proposal Format and Content**
- 15.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.
- 15.1.1. Consultant shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.
- 15.1.2. Variations are not allowed.
- 15.2. The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP.
- 16. Financial Proposal**
- 16.1. The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration of Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the **Data Sheet**.
- a. Price Adjustment**
- 16.2. For assignments with a duration exceeding 18 months, a price adjustment provision of remuneration rates applies if so stated in the **Data Sheet**.
- b. Taxes**
- 16.3. The Financial Proposal should clearly estimate, as a separate amount, the taxes, duties, fees, levies and other charges imposed in the Client's country under the Applicable law, on the Consultants, the Sub-consultants, and their Experts (other than nationals or permanent residents of the Client's country). The Consultant and its Sub-consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the **Data Sheet**. Information on taxes in the Client's country is provided in the **Data Sheet**.
- c. Currency of Proposal**
- 16.4. The Consultant may express the price for its Services in the currency or currencies as stated in the **Data Sheet**. If indicated in the **Data Sheet**, the portion of the price representing local cost shall be stated in the national currency.
- d. Currency of Payment**
- 16.5. Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

### C. SUBMISSION, OPENING AND EVALUATION

- 17. Submission, Sealing, and Marking of Proposals**
- 17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with Clause 10 (Documents Comprising Proposal). The submission can be done by mail or by hand. If authorised in the **Data Sheet**, the Consultant may choose to submit its Proposals electronically.
- 17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposal and shall initial all pages of both. The authorization shall be in the form of a written

power of attorney attached to the Technical Proposal.

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

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

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

17.5 The original and all the copies of the Technical Proposal shall be placed inside of a sealed envelope clearly marked "**TECHNICAL PROPOSAL**", "[Name of the Assignment]", reference number, name and address of the Consultant, and with a warning "**DO NOT OPEN UNTIL TECHNICAL PROPOSAL OPENING.**"

17.6 Similarly, the original Financial Proposal shall be placed inside of a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" followed by the name of the assignment, reference number, name and address of the Consultant, and with a warning "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**"

17.7 The sealed envelopes containing the Technical and Financial Proposals shall be placed into one outer envelope and sealed. This outer envelope shall bear the submission address, RFP reference number, the name of the assignment, Consultant's name and the address, and shall be clearly marked "**DO NOT OPEN BEFORE TECHNICAL PROPOSAL OPENING.**"

17.8 If the envelopes and packages with the Proposal are not sealed and marked as required, the Client will assume no responsibility for the misplacement, loss, or premature opening of the Proposal.

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

## **18. Confidentiality**

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

with the process, until the publication of the Contract award information.

18.2 Any attempt by shortlisted Consultants or anyone on behalf of the Consultant to influence improperly the Client in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal.

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

## **19. Opening of Technical Proposals**

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

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

## **20. Proposals Evaluation**

20.1 Subject to provision of Clause 15.1 of the ITC, the evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

20.2 The Consultant is not permitted to alter or modify its Proposal in any way after the proposal submission deadline except as permitted under Clause 12.7 of this ITC. While evaluating the Proposals, the Client will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

## **21. Evaluation of Technical Proposals**

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

## **22. Financial Proposals for QBS**

22.1 Following the ranking of the Technical Proposals, when the selection is based on quality only (QBS), the top-ranked Consultant is invited to negotiate the Contract. Only the Financial Proposal of the technically top-ranked Consultant is opened by the Client's evaluation committee. All other Financial Proposals are returned

unopened after the Contract negotiations are successfully concluded and the Contract is signed.

**23. Public Opening of Financial Proposals (for QCBS, FBS, and LCS methods)**

23.1 After the technical evaluation is completed, the Client shall notify those Consultants whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score (and shall provide information relating to the Consultant's overall technical score) that their Financial Proposals will be returned unopened after completing the selection process and Contract signing. The Client shall simultaneously notify in writing those Consultants that have achieved the minimum overall technical score and inform them of the date, time and location for the opening of the Financial Proposals. The opening date should allow the Consultants sufficient time to make arrangements for attending the opening. The Consultant's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the **Data Sheet**) is optional and is at the Consultant's choice.

23.2 The Financial Proposals shall be opened by the Client's evaluation committee in the presence of the representatives of those Consultants whose proposals have passed the minimum technical score. At the opening, the names of the Consultants, the overall technical scores, and the total prices shall be read aloud and recorded. Copies of the record shall be sent to all Consultants who submitted Proposals.

**24. Correction of Errors**

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

**a. Time-Based Contracts**

24.1.1 In the case of a Time-Based contract, the Client's evaluation committee will (a) correct any computational or arithmetical errors, and (b) adjust the prices if they fail to reflect all inputs included for the respective activities or items in the Technical Proposal. In case of discrepancy between (i) a partial amount (sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between words and figures, the former will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Client's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with the one indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

**b. Lump-Sum Contracts**

24.1.2 In the case of a Lump-Sum contract, the Consultant is deemed to have included all inputs that are necessary to perform the Services in the Financial Proposal, so neither arithmetical corrections nor price adjustments shall be made. The total price, net of taxes understood as per Clause ITC 25 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

24.2 If the Financial Proposal is significantly lower than the Client's estimate, the Client shall require the Consultants to produce detailed price analyses for any or all items of the Financial Proposal, to demonstrate the internal consistency of those prices with the methodology, resources and schedule proposed. If it turns out that the price is abnormally low, the Financial Proposal may be declared non-compliant and rejected.

## **25. Taxes**

25.1 The Client's evaluation of the Consultant's Financial Proposal shall exclude taxes and duties in the Client's country in accordance with the instructions in the **Data Sheet**.

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

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

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

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

27.1. In the case of QCBS, the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the **Data Sheet**. The Consultant achieving the highest combined technical and financial score will be invited for negotiations.

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

27.2. In the case of FBS, those Proposals that exceed the budget indicated in Clause 14.1.4 of the **Data Sheet** shall be rejected. The Client will select the Consultant that submitted the highest-ranked Technical Proposal, and invite such Consultant to negotiate the Contract.

### **c. Least-Cost Selection**

27.3. In the case of Least-Cost Selection (LCS), the Client will select the Consultant with the lowest evaluated total price among those consultants that achieved the minimum technical score, and invite such Consultant to negotiate the Contract.

## **D. NEGOTIATIONS AND AWARD**

## **28. Negotiations**

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

28.2. The Client shall prepare minutes of negotiations that are signed by the Client and the Consultant's authorized representative.

### **a. Availability of Key Experts**

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

28.4. Notwithstanding the above, the substitution of Key Experts at the negotiations may be considered if due solely to circumstances

outside the reasonable control of and not foreseeable by the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

**b. Technical negotiations**

28.5. The negotiations include discussions about the Terms of Reference (TORs), the proposed methodology, the Client’s inputs, the special conditions of the Contract, and finalizing the “Description of Services” part of the Contract. These discussions shall not substantially alter the original scope of services under the TORs or the terms of the Contract and shall not modify the ranking of the Proposals.

**c. Financial negotiations**

28.6. The negotiations include the clarification of the Consultant’s tax liability in the Client’s country and how it should be reflected in the Contract.

28.7. If the selection method included cost as a factor in the evaluation, the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

28.8. In the case of a Time-Based contract, unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts’ remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Client may ask for clarifications and, if the fees are very high, ask to change the rates.

**29. Conclusion of Negotiations**

29.1. The negotiations are concluded with a review of the finalized draft Contract, which then shall be initiated by the Client and the Consultant’s authorized representative.

29.2. If the negotiations fail, the Client shall inform the Consultant in writing of all pending issues and disagreements and provide a final opportunity to the Consultant to respond. If disagreement persists, the Client shall terminate the negotiations informing the Consultant of the reasons for doing so. The Client will invite the next-ranked Consultant to negotiate a Contract. Once the Client commences negotiations with the next-ranked Consultant, the Client shall not reopen the earlier negotiations.

29.3. The Client reserves the right to annul the RFP process and reject all Proposals at any time prior to contract award, without thereby incurring any liability to Consultants.

**30. Award of Contract**

30.1. After completing the negotiations the Client shall sign the Contract; if applicable, publish the award information; and promptly notify the other shortlisted Consultants.

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

## Section 2. Data Sheet

<b>A. General</b>	
<b>ITC 1 (b) Applicable law</b>	<b>The Republic of Kenya</b>
<b>ITC 2.1</b>	<b>Name of the Client: <u>Kenya Power &amp; Lighting Company Limited</u></b>  <b>Method of selection: <i>Selection based on consideration of quality and cost (QCBS).</i></b>  <b>Type of contract: Lump-sum Contract</b>
<b>ITC 2.2</b>	<b>The name of the assignment is: <i>Retrofitting of Incandescent Bulbs With Compact Fluorescent Lamps</i></b>
<b>ITC 2.3</b>	<b>NO pre-proposal conference will be held</b>
<b>ITC 2.4</b>	<b>The Client will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals:</b>  <u>The project data including the quantities of CFLs to be retrofitted in each region, county and Zone/ branch and the approximate distances from the KPLC Stores to the zones.</u>
<b>ITC 3.2.1 Conflict of Interest</b>	The following additional circumstances shall be considered as a conflict of interest: <i>N/A</i> The following additional circumstances shall not be considered as a conflict of interest: <i>N/A</i>
<b>ITC 4.1 Unfair Competitive Advantage</b>	<i>N/A</i>
<b>B. Preparation of Proposals</b>	
<b>ITC 9.1 Language</b>	<b>Proposals shall be submitted in English language.</b>  <b>All correspondence exchanges and documents shall be in English language.</b>
<b>ITC 10.1 Documents Comprising the Proposal</b>	<b>The Proposal shall comprise the following:</b>  <b>1<sup>st</sup> Inner Envelope with the Technical Proposal:</b> (1) Technical Proposal Submission Form (TECH 1) (2) Power of Attorney to sign the Proposal (3) Statement of Integrity (signed)



	<p>(4) Description of methodology, work plan and team composition (TECH-2, TECH-3, TECH-4 and TECH-5 are provided as indicative format)</p> <p>AND</p> <p><b>2d Inner Envelope with the Financial Proposal:</b></p> <p>(1) Financial Proposal Submission Form (FIN-1)</p> <p>(2) Summary of Costs (FIN-2)</p> <p>(3) Breakdown of Prices (FIN-3 and FIN-4, provided as indicative format in case of lump-sum contract)</p>
<b>ITC 11.1</b>	<p><b>Participation of Sub-consultants, Key Experts and Non-Key Experts in more than one Proposal is permissible.</b></p> <p>Bidders are required to submit one proposal which shall include the Lots they are bidding for. A bidder can be awarded one or several lots, but this does not imply that the bidder will be awarded all the lots they bid for.</p>
<b>ITC 12.1 Proposal Validity</b>	<p><b>Proposals must remain valid for 90</b> calendar days after the proposal submission deadline.</p>
<b>ITC 13.1 Clarification</b>	<p><b>Clarifications may be requested no later than <i>Fourteen (14)</i> days prior to the submission deadline.</b></p> <p>The contact information for requesting clarifications is:</p> <p><b>The Chief Engineer, DSM &amp; Metering Solutions</b></p> <p>Facsimile: _____ E-mail: <a href="mailto:mkanini@kplc.co.ke">mkanini@kplc.co.ke</a></p>
<b>ITC 14.1.1</b>	<p><b>Shortlisted Consultants may associate with non-shortlisted consultant(s)</b></p>
<b>ITC 14.1.2</b> (do not use for Fixed Budget method)	<p><b>Estimated input of Key Experts' time-input: Six (6) person-months.</b></p>
<b>ITC 14.1.3</b> for time-based contracts only	<p>N/A</p>
<b>ITC 14.1.4 and 27.2</b> use for Fixed Budget method	<p>N/A</p>
<b>ITC 16.1</b>	<p>If the Financial proposal is for several lots, the bidder shall indicate in the financial proposal the bid for each Lot.</p> <p><b>Reimbursable expenses include:</b></p>

	<p>(1) a per diem allowance, including hotel, for experts for every day of absence from the home office for the purposes of the Services;</p> <p>(2) cost of travel by the most appropriate means of transport and the most direct practicable route;</p> <p>(4) communications costs;</p> <p>(5) cost of reports production (including printing) and delivering to the Client;</p>
<b>ITC 16.2 Price Adjustment</b>	<p><b>A price adjustment provision applies to remuneration rates:</b></p> <p>N/A</p>
<b>ITC 16.3 Taxes</b>	<p><b>Information on the Consultant's tax obligations in the Client's country can be found on the following website: <a href="http://www.kra.go.ke">http://www.kra.go.ke</a></b></p>
<b>ITC 16.4 Currency of Proposal</b>	<p><b>The Financial Proposal shall be stated in the following currencies:</b></p> <p><b><i>KENYA SHILLING (KSHS)</i></b></p>
<b>C. Submission, Opening and Evaluation</b>	
<b>ITC 17.1</b>	<p><b>The Consultants <u>shall not</u> have the option of submitting their Proposals electronically.</b></p>
<b>ITC 17.4</b>	<p><b>The Consultant must submit:</b></p> <p>(a) <b>Technical Proposal:</b> one (1) original and <u>Two (2)</u> paper copies + one (1) digital copy (CD or flash disk);</p> <p>(b) <b>Financial Proposal:</b> one (1) original and <u>Two (2)</u> paper copies + one (1) digital copy (CD or flash disk).</p>
<b>ITC 17.9</b>	<p><b>The Proposals must be submitted no later than:</b></p> <p><b>Date:</b> <u>5/01/2016</u></p> <p><b>Time:</b> <u>10.00 a.m</u></p> <p><b>The Proposal submission address is: <u>Stima Plaza, 7<sup>th</sup> Floor</u> <u>Kolobot Road, Parklands.</u></b></p>
<b>ITC 19.1 Opening of Technical Proposals</b>	<p><b>An online option of the opening of the Technical Proposals is not offered.</b></p> <p><b>The opening shall take place at:</b></p> <p>Street Address: <b>Kolobot Road, Parklands</b> <b>Auditorium</b> City: <u>Nairobi</u> Country: <u>Kenya</u></p>

<b>ITC 19.2</b>	<b>In addition, the following information will be read aloud at the opening of the Technical Proposals - N/A</b>
<b>ITC 21.1 Evaluation of Technical Proposals</b>	<p>Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals:</p> <p style="text-align: right;"><u>Points</u></p> <p>(i) <b>Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):</b> <span style="float: right;"><b>50</b></span>  <i>{Notes to Consultant: the Client will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skills mix; and the work plan has right input of Experts}</i></p> <p>(ii) <b>Key Experts' qualifications and competence for the Assignment:</b>  <i>{Notes to Consultant: each position number corresponds to the same for the Key Experts in Form TECH-4 to be prepared by the Consultant}</i></p> <p style="margin-left: 40px;">a) <i>Position K-1: Project Manager (Team Leader)</i> <span style="float: right;">25</span>  b) <i>Position K-2: Field Supervisors</i> <span style="float: right;">10</span>  c) <i>Data Entry Specialist</i> <span style="float: right;">5</span></p> <p style="text-align: right;"><b>Total points for criterion (iii): 40</b></p> <p>The number of points to be assigned to each of the above positions shall be determined considering the following three sub-criteria and relevant percentage weights:</p> <p>1) General qualifications (general education, training, and experience): <u>20%</u></p> <p>2) Adequacy for the Assignment (relevant education, training, experience in the sector/similar assignments) : <u>75%</u></p> <p>3) <i>[If relevant to the task, add the 3d sub-criterion: Relevant experience in the region (working level fluency in local language(s)/knowledge of local culture or administrative system, government organization, etc.): <u>5%</u></i>  Total weight: <span style="float: right;">100%</span></p> <p>(v) <b>Participation by nationals among proposed Key Experts</b> <span style="float: right;"><b>10</b></span>  <i>[not to exceed 10 points] [Sub-criteria shall not be provided. Calculated as a ratio of the national Key Experts' time-input (in person-months) to the total number of Key Experts' time-input (in person-months) in the Consultant's Technical Proposal]</i></p> <p style="text-align: right;"><b>Total points for the five criteria: 100</b></p> <p style="text-align: right;"><b>The minimum technical score (St) required to pass is: <u>70</u></b></p>
<b>ITC 23.1</b>	<b>An online option of the opening of the Financial Proposals is not offered</b>
<b>ITC 25.1</b>	[For the purpose of the evaluation, the Client will exclude: (a) all local identifiable

<b>Taxes</b>	<p>indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract's invoices; and (b) all additional local indirect tax on the remuneration of services rendered by non-resident experts in the Client's country. If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized (using the itemized list as a guidance but not limiting to it) and added to the Contract amount as a separate line, also indicating which taxes shall be paid by the Consultant and which taxes are withheld and paid by the Client on behalf of the Consultant.]</p> <p>OR</p> <p>[In exceptional cases only, in particular, in case of sub-national lending, when indirect taxes cannot be fully identified, replace the text above with: "For evaluation purposes, such taxes are deemed included in the Consultant's financial proposal.]</p>
<b>ITC 26.1</b>	<p><b>The single currency for the conversion of all prices expressed in various currencies into a single one is: <u>KENYA SHILLING</u></b></p> <p><b>The official source of the selling (exchange) rate is:</b> <b><u>The Central Bank of Kenya</u></b></p> <p><b>The date of the exchange rate is the date of the deadline for submission.</b></p>
<b>ITC 27.1 Combined Quality and Cost Evaluation (QCBS only)</b>	<p><b>Evaluation for each Lot will be done on the basis of the Technical and Financial score specific to that Lot. For one proposal, there could be a sole Technical methodology for several lots and therefore a sole Technical score that will be combined with the specific Financial score for each Lot.</b></p> <p><b>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</b></p> <p><b>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:</b></p> <p>Sf = 100 x Fm/ F, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration.</p> <p><b>The weights given to the Technical (T) and Financial (P) Proposals are:-</b></p> <p><b>T = _____ 70</b></p> <p>and</p> <p><b>P = _____ 30</b></p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: S = St x T% + Sf x P%.</p>

<b>D. Negotiations and Award</b>	
<b>ITC 28.1</b>	<b>Expected date and address for contract negotiations:</b> <b>Date:</b> [REDACTED] January 2016 <b>Address:</b> [REDACTED] Stima Plaza, Kolobot Road, Parklands
<b>ITC 30.2</b>	<b>Expected date for the commencement of the Services:</b> <b>Date:</b> January 2016 <b>at:</b> <u>All regions</u>

## Section 3. Technical Proposal – Standard Forms

### Form TECH-1 (format not be altered)

#### TECHNICAL PROPOSAL SUBMISSION FORM

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{Location, Date}

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To: *[Name and address of Client]*

Dear Sirs:

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

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

{OR

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

We hereby declare that:

- (a) All the information and statements made in this Proposal are true and we accept that any misrepresentation contained in this Proposal may lead to the rejection of our Proposal by the Client.
- (b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- (c) We have no conflict of interest in accordance with ITC 3.
- (d) Except as stated in the Data Sheet, Clause 12.1, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause 12 and ITC Clause 28.4 may lead to the termination of Contract negotiations.
- (e) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 30.2 of the Data Sheet.

We acknowledge and agree that the Client reserves the right to annul the selection process and reject all Proposals at any time prior to Contract award, without thereby incurring any liability to us.

We remain,

Yours sincerely,

Authorized Signature {In full and initials}: \_\_\_\_\_

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

Name of Consultant (company's name or JV's name): \_\_\_\_\_

In the capacity of: \_\_\_\_\_

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

Contact information (phone and e-mail): \_\_\_\_\_

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

**APPENDIX TO TECHNICAL PROPOSAL SUBMISSION FORM**  
**(format not to be altered)**

**Statement of Integrity, Eligibility and Social and  
Environmental Responsibility**

Reference name of the RFP: **KP1/6A-2/PT/5/15/A44**

("Contract")

To:

("Contracting Authority")

1. We recognise and accept that *Agence française de développement* ("AFD") only finances projects of the Contracting Authority subject to its own conditions which are set out in the Financing Agreement which it has entered into with the Contracting Authority. As a matter of consequence, no legal relationship exists between AFD and our company, our joint venture or our subcontractors. The Contracting Authority retains exclusive responsibility for the preparation and implementation of the contract procurement and its subsequent performance.
2. We hereby certify that neither we nor any other member of our joint venture or any of our subcontractors are in any of the following situations:
  - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by the courts, having entered into receivership, reorganisation or being in any analogous situation arising from any similar procedure;
  - 2.2) having been convicted, within the past five years by decision of a court decision, which has the force of *res judicata* in the country where the project is implemented, of one of the acts mentioned in sections 6.1 to 6.4 below or of any other offense committed during the procurement or performance of a contract<sup>1</sup>;
  - 2.3) being listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight-against-terrorist financing or threat to international peace and security;
  - 2.4) having committed serious professional misconduct within the past five years during the procurement or performance of a contract;
  - 2.5) not having fulfilled our obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of either the country where we are established or the Contracting Authority's country;
  - 2.6) having been convicted, within the past five years by a court decision, which has the force of *res judicata*, of one of the acts mentioned in sections 6.1 to 6.4 below or of any other offense committed during the procurement or performance of an AFD-financed contract;

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<sup>1</sup> In the event of such conviction, you may attach to this Statement of Integrity supporting information showing that this conviction is not relevant in the context of this AFD-financed contract.



- 2.7) being subject to an exclusion decision of the World Bank since 30 May 2012, and being listed on the website <http://www.worldbank.org/debarr><sup>2</sup>;
- 2.8) having committed misrepresentation in documentation requested by the Beneficiary as part of the contract procurement procedure.
3. We hereby certify that neither we, nor any of the members of our joint venture or any of our subcontractors are in any of the following situations of conflict of interest:
- 3.1) being an affiliate controlled by the Contracting Authority or a shareholder controlling the Contracting Authority, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
- 3.2) having a business or family relationship with a Contracting Authority's staff involved in the selection procedure or the supervision of the resulting contract, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
- 3.3) being controlled by or controlling another bidder or being under common control with another bidder, or receiving from or granting subsidies directly or indirectly to another bidder, having the same legal representative as another bidder, maintaining direct or indirect contacts with another bidder which allows us to have or give access to information contained in the respective bids, influencing them or influencing decisions of the Contracting Authority;
- 3.4) being engaged in a consultancy activity, which, by its nature, may be in conflict with the assignments that we would carry out for the Contracting Authority;
- 3.5) in the case of a works or goods procurement procedure:
- i. having prepared or having been associated with a consultant who prepared specifications, drawings, calculations and other documentation that are subject of the bid;
  - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this contract;
4. If we are a government-owned entity, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the Contracting Authority, which will inform AFD, any change in situation with regard to points 2 to 4 here above.
6. In the context of procurement and performance of the contract:
- 6.1) We have not and we will not engage in any dishonest conduct (act or omission) deliberately indented to deceive others, to intentionally conceal items, to violate or vitiate someone's consent, to make them circumvent legal or regulatory requirements and/or to violate their internal rules in order to obtain illegitimate profit.
- 6.2) We have not and we will not engage in any dishonest conduct (act or omission) contrary to our legal or regulatory obligations or our internal rules in order to obtain illegitimate profit.
- 6.3) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to (i) any person who holds a legislative, executive, administrative or judicial mandate within the State of the Contracting Authority regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the

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<sup>2</sup> In the event of such exclusion, you may attach to this Statement of Integrity supporting information showing that this exclusion is not relevant in the context of this AFD-financed contract.

hierarchical level the person occupies, (ii) any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service, or (iii) any other person defined as a public officer by the national laws of the Contracting Authority, an undue advantage of any kind, for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.

6.4) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to any private person who occupies an executive position in a private sector entity or works for such an entity, regardless of the nature of his/her capacity, any undue advantage of any kind, for himself or another person or entity for such private person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.

6.5) We have not and we will not engage in any practice likely to influence the contract award process to the detriment of the Contracting Authority and, in particular, in any anti-competitive practice having for object or for effect to prevent, restrict or distort competition, namely by limiting access to the market or the free exercise of competition by other undertakings.

6.6) Neither we nor any of the members of our joint venture or any of our subcontractors shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or France.

6.7) We commit ourselves to comply with and ensure that all of our subcontractors comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties,. Moreover, we shall implement environmental and social risks mitigation measures such as specified in the environmental and social management plan or, if appropriate, in the environmental and social impact assessment notice provided by the Contracting Authority.

7. We, as well as members of our joint venture and our subcontractors authorise AFD to inspect accounts, records and other documents relating to the procurement and performance of the Contract and to have them audited by auditors appointed by AFD.

Name: \_\_\_\_\_ In the capacity of \_\_\_\_\_

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

Duly empowered to sign the proposal in the name and on behalf of<sup>3</sup> \_\_\_\_\_

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<sup>3</sup> In case of joint venture, insert the name of the joint venture. The person who will sign the proposal on behalf of the members shall attach a power of attorney from all members.

## TECHNICAL PROPOSAL (FORM TECH-2)

{Below is a suggested structure of the Technical Proposal }

### A - Consultant's Structure and Experience

{Provide here a brief description of the background and organization of your company, and – in case of a joint venture – of each member that will be participating in this assignment, including an organizational chart, a list of Board of Directors, and beneficial ownership. }

### B - Description of Approach, Methodology, and Work Plan in accordance with the Terms of Reference

- a) ***Technical Approach and Methodology.*** {Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Include here your comments and suggestions on the TORs and comments on counterpart staff and facilities provided by the Client if any. Please do not repeat/copy the TORs in here. }
- b) ***Work Plan.*** {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TORs and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The Work Schedule Form (Form TECH-3) may be used for that purpose. }

### C - Consultant's Organization and Staffing

{Please describe the structure and composition of your team, including a list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff, and staffing for training, if the Terms of Reference specify training as a specific component of the assignment. Experts' inputs should be specified and should be consistent with the proposed methodology and the TORs requirements. Form TECH-4 may be used for that purpose. CVs of all experts shall be provided (Form TECH-5 may be used for that purpose)}

**FORM TECH-3 (INDICATIVE FORMAT)**



**WORK SCHEDULE AND PLANNING FOR DELIVERABLES**

N°	Deliverables <sup>1</sup> (D-..)	Months <sup>2,3</sup>												
		1	2	3	4	5	6	7	8	9	....	n	TOTAL	
<b>D-1</b>	Deliverables expected per Lot													
	1) Data detailing the beneficiaries, Number and wattage of CFLs issued, number and wattage of ICLs recovered in hard copy and electronically													
	2) ICL returns equivalent to the CFLs issued													
	3) Daily Progress reports detailing the number of beneficiaries, the number of CFLs issued													
	4) Weekly progress reports													
	5) Monthly progress reports													
	6) A final project report for all the areas allocated.....													
<b>n</b>														



**FORM TECH-4 (INDICATIVE FORMAT)  
TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS**

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

- 1 For Key Experts, the input should be indicated individually for the same positions as required under the Data Sheet ITC21.1.
  - 2 Months are counted from the start of the assignment/mobilization. One (1) month equals twenty two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.
  - 3 "Home" means work in the office in the expert's country of residence. "Field" work means work carried out in the Client's country or any other country outside the expert's country of residence.
-  Full time input  
 Part time input

## FORM TECH-5 (INDICATIVE FORMAT)

### CURRICULUM VITAE (CV)

<b>Position Title and No.</b>	{e.g., K-1, TEAM LEADER}
<b>Name of Expert:</b>	{Insert full name}
<b>Date of Birth:</b>	{day/month/year}
<b>Country of Citizenship/Residence</b>	

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

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

<b>Period</b>	<b>Employing organization and your title/position. Contact info for references</b>	<b>Country</b>	<b>Summary of activities performed relevant to the Assignment</b>
[e.g., May 2005-present]	[e.g., Name of the firm, position...  For references: Tel...../e-mail.....; Mr. Hbbbb, deputy minister]		

**Membership in Professional Associations and Publications:**

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

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## Section 4. Financial Proposal - Standard Forms

### FORM FIN – 1 (format not to be altered)

### FINANCIAL PROPOSAL SUBMISSION FORM

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{Location, Date}

To: [Name and address of Client]

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Dear Sirs:

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

Our attached Financial Proposal is for the amount of {Indicate the corresponding to the amount(s) currency(ies)} {Insert amount(s) in words and figures}, [Insert “including” or “excluding”] of all indirect local taxes in accordance with Clause 25.1 in the Data Sheet. The estimated amount of local indirect taxes is {Insert currency} {Insert amount in words and figures} which shall be confirmed or adjusted, if needed, during negotiations. {Please note that all amounts shall be the same as in Form FIN-2}.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Clause 12.1 of the Data Sheet.

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

We remain,

Yours sincerely,

Authorized Signature {In full and initials}: \_\_\_\_\_

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

In the capacity of: \_\_\_\_\_

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

E-mail: \_\_\_\_\_

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

**FORM FIN-2 SUMMARY OF COSTS**

**LUMP SUM CONTRACT**

Item	Cost
	KES
<b>Lump Sum Cost of the Financial Proposal (excluding taxes)</b>	
LOT 1 - RETROFITTING OF ICLs WITH CFLs IN CENTRAL RIFT	
LOT 2 - RETROFITTING OF ICLs WITH CFLs IN MT KENYA	
LOT 3 – RETROFITTING OF ICLs WITH CFLs IN NAIROBI NORTH	
LOT 4 – RETROFITTING OF ICLs WITH CFLs IN NAIROBI SOUTH	
LOT 5 – RETROFITTING OF ICLs WITH CFLs IN NAIROBI WEST	
LOT 6 – RETROFITTING OF ICLs WITH CFLs IN COAST	
LOT 7 – RETROFITTING OF ICLs WITH CFLs IN NORTH EASTERN	
LOT 8 – RETROFITTING OF ICLs WITH CFLs IN NORTH RIFT	
LOT 9 – RETROFITTING OF ICLs WITH CFLs IN WEST KENYA	
...	
<b><u>Total Cost of the Financial Proposal (excluding taxes):</u></b> {Should match with the amount in Form FIN-1 }	
<b>Local Tax Estimates – to be discussed and finalized at the negotiations if the Contract is awarded</b>	
<u>Total Estimate for Local Taxes:</u>	

**Footnote: Payments will be made in the currency(ies) expressed above (Reference to ITC 16.4)**

**FORM FIN-3 BREAKDOWN OF REMUNERATION (INDICATIVE FORMAT FOR LUMP-SUM CONTRACT)**

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

No.	Name	Position (as in TECH-4)	Person-month Remuneration Rate (excluding taxes)	Time Input in Person/Month (from TECH-4)	{Local Currency- as in FIN-2}
<b>Key Experts</b>					
K-1			[Home]		
			[Field]		
K-2					
K-3					
<b>Non-Key Experts</b>					
N-1			[Home]		
N-2			[Field]		
Total Costs (excl. tax)					

**FORM FIN-4 BREAKDOWN OF OTHER EXPENSES (INDICATIVE FORMAT FOR LUMP-SUM CONTRACT)**

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

<b>B. Other Expenses</b>						
<b>N<sup>o</sup></b>	<b>Type of Other Expenses (specify LS or reimbursable for each item)</b>	<b>Unit</b>	<b>Unit Cost (tax excl.)</b>	<b>Quantity</b>	<b>{Foreign Currency- as in FIN-2}</b>	<b>{Local Currency- as in FIN-2}</b>
	{e.g., Per diem	{Day}				
—	{e.g., International flights}	{Ticket		_____		
—	{e.g., In/out airport transportation}	{Trip}				
	{e.g., Communication costs between Insert place and Insert place}				_____	
	{ e.g., reproduction of					
	{e.g., Office rent}					
	.....					
	{Training of the Client's personnel – if required in TOR}				_____	
<b>Total Costs (excl. tax)</b>						

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

## Section 5. Eligibility Criteria

### Eligibility in Agency-Financed Procurement

1. Financing allocated by the Agency has been entirely untied since 1<sup>st</sup> January 2002. To the exception of any equipment or any sector which is subject to an embargo by the United Nations, the European Union or France, all goods and services are eligible for the Agency financing regardless of the country of origin of the supplier, contractor, provider or sub-contractors, inputs or resources used in the implementation processes.
2. Natural or legal persons (including all members of a joint venture or any of their subcontractors) shall not be awarded an Agency-financed contract if, on the date of submission of an application or of a bid or on the date of award of a contract, they:
  - (i) are bankrupt or being wound up or ceasing their activities, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from a similar procedure;
  - (ii) have been convicted within the past five years by court decision, which has the force of *res judicata* in the country where the project is implemented, of fraud or corruption or any other offence committed during the procurement or performance of a contract, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to Letter of Bid) which shows that this conviction is not relevant in the context of this Agency-financed project;
  - (iii) are listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight against terrorist financing or threat to international peace and security;
  - (iv) have committed serious professional misconduct within the past five years during the procurement or performance of a contract, as evidenced by any means by the Employer;
  - (v) have not fulfilled their obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where they are established or the Employer's country;
  - (vi) have been convicted within the past five years by court decision, which has the force of *res judicata* of fraud or corruption or any other offence committed in the context of an Agency-financed contract procurement or performance ;
  - (vii) Are subject to an exclusion decision of the World Bank, since 30 May 2012, and are listed on the website <http://www.worldbank.org/debarr>, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to Letter of Bid) which shows that this exclusion is not relevant in the context of this Agency-financed project
  - (viii) have committed misrepresentation in documentation requested by the Employer as part of the contract procurement procedure;
3. Bidders that are Government-owned enterprises or institutions may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law. To be eligible, a government-owned enterprise or institution shall establish to the Agency's satisfaction, through all relevant documents, including its Charter and other information the

Agency may request, that it: (i) is a legal entity separate from their government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

## **Section 6. Agency Policy – Corrupt and Fraudulent Practices – Social and Environmental Responsibility**

### **1. Corrupt and Fraudulent Practices**

The Employer, the Implementing Agency and the contractors, suppliers or consultants must observe the highest standard of ethics during contract procurement and performance.

By signing the Statement of Integrity (form available as Appendix to Letter of Bid) the contractor, supplier or consultant declares that (i) *“it did not engage in any practice likely to influence the contract award process to the Employer's detriment, and that it did not and will not get involved in any anti-competitive practice”*, and that (ii) *“the negotiation, the procurement and the performance of the contract did not and shall not give rise to any act of corruption or fraud”*.

Moreover, the Agency requires including in the Bidding Documents and Agency-financed contracts a provision requiring that bidders and contractors, suppliers and consultants will permit the Agency to inspect their accounts and records relating to the procurement and performance of the Agency-financed contract, and to have them audited by auditors appointed by the Agency.

The Agency reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- reject a proposal for a contract award if it is established that during the selection process the bidder that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- declare misprocurement when it is established that, at any time, the Employer, the contractor, the supplier, the consultant or its representatives have engaged in acts of corruption, fraud or anti-competitive practices during the contract procurement or performance without the Employer having taken appropriate action in due time satisfactory to the Agency to remedy the situation, including by failing to inform the Agency at the time they knew of such practices.

The Agency defines, for the purposes of this provision, the terms set forth below as follows:

(a) Corruption of a public officer means:

- the act of promising, offering or giving to a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity; or
- the act by which a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.

(b) A *“public officer”* shall be construed as meaning:

- any person who holds a legislative, executive, administrative or judicial mandate (within the State of the Employer) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;
- any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
- any other person defined as a public officer by the national laws of the Employer.

(c) Corruption of a private person means:

- the act of promising, offering or giving to any person other than a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or
- the act by which any person other than a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.

(d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.

(e) Anti-competitive practices means:

- any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply.
- any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it.
- any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

## 2. Social and Environmental Responsibility

In order to promote sustainable development, the Agency seeks to ensure that internationally recognised environmental and social standards are complied with. Candidates for Agency-financed contracts shall consequently undertake in the Statement of Integrity to:

- i) comply with and ensure that all their subcontractors comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the Project, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties;
- ii) adopt any environmental and social risk mitigations measures as defined in the environmental and social management plan or in the environmental and social impact notice issued by the Employer.



## Section 7. Terms of Reference

### 1. Background

The Kenya Power & Lighting Company Limited, on behalf of the Government of Kenya, is embarking on a large-scale residential Demand Side Management initiative to retrofit a total of three (3) million Incandescent Lamps with an equivalent number of Self Ballasted Compact Fluorescent Lamps (energy saving bulbs) in all parts of the country targeting low income households. This Project is being undertaken within the UNFCCC's Clean Development Mechanism (CDM) structures for Small Scale program activities and as such has a number of specific compliance needs during the retrofit exercise.

The project has been structured in to nine (9) lots along KPLC's regional boundaries and the consultant will be required to quote the cost of retrofitting per Lot as follows:

LOT	REGION	NO. OF CFLS
LOT 1	CENTRAL RIFT	273,700
LOT 2	MT KENYA	329,300
LOT 3	NAIROBI NORTH	446,600
LOT 4	NAIROBI SOUTH	426,920
LOT 5	NAIROBI WEST	350,440
LOT 6	COAST	279,940
LOT 7	NORTH EASTERN	427,700
LOT 8	NORTH RIFT	178,400
LOT 9	WESTERN	287,000

**2. Objective(s) of the Assignment:** To promote sustainable use of energy in Kenyan homes and to reduce peak demand

### 3. Scope of Services, Tasks (Components) and Expected Deliverables

The consultant will be required to collect the CFLs (energy saving bulbs) from the respective KPLC stores, transport the CFLs to sites allocated and carry out the actual retrofitting of the existing incandescent light bulbs with the CFLs in Kenyan homes. The consultant will then recover the incandescent bulbs and return to the store from where the CFLs were issued. The Compact Fluorescent lamps will be provided packaged in cartons, and bidders will be expected to take ultimate care to prevent breakages. The packages which contained the CFLs will be brought back packed with the retrofitted incandescent bulb.

The Key tasks of the assignments are:-

- The Consultant's field supervisors will be issued with CFLs and the Project data collection forms at the KPLC stores for allocation to the install teams.

- Each Install Team moves on to install the CFLs to qualifying residences within the area in turn. The install teams will only be required to fit the CFLs in households with existing Incandescent Lamps.
- The Install teams will then return to their stock to their Supervisor who will submit Installation (data) forms and return ILs to KPLC Logistics team and in turn replenish CFLs.
- KPLC Project Supervisors will verify the content of the IL boxes match with the data entry forms and will sign off for new stock to be issued.
- The Consultant will enter the data from the data collection forms into a database and transmit electronically to the KPLC central database.
- During the retrofitting exercise, the install teams will be required to record beneficiary data and other details on forms to be issued by KPLC. The information to be captured includes:-
  - The name and electricity account/ meter number of the beneficiary
  - Telephone number of the customer
  - Number and wattage of each of Incandescent Lamps retrofitted
  - Number and wattage of each of the CFLs installed
  - Date of retrofit
  - Signature of the customer
  - Name, ID and signature of the personnel carrying out the exercise.
- In addition, the consultant will be required to prepare and submit daily, weekly and monthly progress reports and submit to KPLC. A final project report will be submitted at the end of the exercise for the area/s allocated. The standard format of the weekly and monthly reports will be provided to the qualifying bidders.
- The CFLs issued will be tallied with the Incandescent Lamps brought back to the stores for accountability purposes. Each of the incandescent lamps will be returned to the stores packaged in the same carton/ package that had the CFL that replaced it. The incandescent lamps returned will be required to be in working condition and tests will be done at the stores to verify this.
- Bidders shall ensure that the quantity of incandescent bulbs retrofitted and returned to the respective stores are the same as the number of the bulbs issued from the same stores without any breakages.
- The installers shall ensure that the CFLs fitted are in working condition. Any CFLs found not working after installation shall be returned to the KPLC store where it was issued for replacement and warranty claims. The CFLs returned for replacement must be in the same condition they were issued.
- Installers will be required to take ultimate care to avoid breakage of the lamps during transportation and handling. This applies to both CFLs and Incandescent

Lamps. It is the responsibility of the consultant to ensure the security of the bulbs (both CFLs and ILBs). All the CFLs issued and the ILs recovered must be accounted for.

- KPLC will conduct audits to verify the correctness of the data and information provided by the contractors and certify that the all the requirements have been met before any payments are made.

The personnel assigned to the field campaign (installation works) will be issued with a with personal identification tags provided by KPLC. The identification must be displayed and visible at all times during the performance of the field activities. Only the trained and authorized personnel shall be allowed to perform the works.

The security of the bulbs is very critical as the bidder will be required to account for all the bulbs collected from KPLC stores and those recovered from the customers. The bidder is therefore required to demonstrate in their proposal how this will be achieved.

The work shall be completed within 6 months after contract signing. This period considers the start- up activities, the training of project staff by KPLC project team and the complete installation services. It is expected that the consultant will form adequate number of teams to finalise the assignment within the given timelines.

As a guide, the following assumptions can be made:

- Each team retrofit average of 60-70 homesteads (assuming a maximum of 3 CFLs per household) in urban areas and 40-50 homesteads in rural areas. It is to be noted that some homesteads will have only one (1) bulb for retrofit.

For each Lot, the County, and their respective Branches/ Zones where the project will be implemented, the number of CFLs to be distributed and the approximate distances from the stores are provided below:-

Section 7. Terms of Reference

DESCRIPTION	REGION	COUNTY	Branch/ZONE	APPROXIMATE DISTANCE FROM THE STORE IN KM	NO OF CFLs	STORAGE LOCATION
LOT 1	CENTRAL RIFT	BARINGO	ELDAMA RAVINE	60	8,640	NAKURU STORES (LANET)
			KABARNET	139	8,070	NAKURU STORES (LANET)
			<b>BARINGO Total</b>		<b>16,710</b>	
		BOMET	BOMET	184	7,100	NAKURU STORES (LANET)
			SOTIK	157	3,340	NAKURU STORES (LANET)
			<b>BOMET Total</b>		<b>10,440</b>	
		KERICHO	KERICHO	107	26,400	NAKURU STORES (LANET)
			SONDU	170	1,330	NAKURU STORES (LANET)
			<b>KERICHO Total</b>		<b>27,730</b>	
		NAKURU	GILGIL	31	9,440	NAIVASHA STORES
			MOLO	60	15,170	NAKURU STORES (LANET)
			NAIVASHA	10	28,000	NAIVASHA STORES
			NAKURU/ENVIRONS	10	119,800	NAKURU STORES (LANET)
			<b>NAKURU Total</b>		<b>172,410</b>	
		NAROK	KILGORIS	220	1,230	NAKURU STORES (LANET)
			NAROK	123	15,260	NAIVASHA STORES
			<b>NAROK Total</b>		<b>16,490</b>	
NYANDARUA	ENGINEER	83	12,950	NAKURU STORES (LANET)		
	NYAHURURU	70	16,970	NAKURU STORES (LANET)		
	<b>NYANDARUA Total</b>		<b>29,920</b>			
<b>LOT 1</b>	<b>CENTRAL RIFT Total</b>				<b>273,700</b>	

Section 7. Terms of Reference

DESCRIPTION	REGION	COUNTY	Branch/ZONE	APPROXIMATE DISTANCE FROM THE STORE IN KM	NO OF CFLs	STORAGE LOCATION	
LOT 2	MT KENYA	EMBU	EMBU	10	30,650	EMBU STORES	
			KAMBURU	50	1030	EMBU STORES	
		<b>EMBU Total</b>				<b>31,680</b>	
		ISIOLO	ISIOLO	52	5670	MERU STORES	
			MERTI	237	1150	MERU STORES	
		<b>ISIOLO Total</b>				<b>6820</b>	
		KIRINYAGA					
			KERUGOYA	30	33080	EMBU STORES	
			MWEA	34	8690	EMBU STORES	
		<b>KIRINYAGA Total</b>				<b>41770</b>	
		LAIKIPIA					
			NANYUKI	60	14720	NYERI STORES	
			NYAHURURU-LAIKIPIA	102	12740	NYERI STORES	
		<b>LAIKIPIA Total</b>				<b>27460</b>	
		MARSABIT	MARSABIT	310	2870	MERU STORES	
		<b>MARSABIT Total</b>				<b>2870</b>	
		MOYALE	MOYALE	555	2650	MERU STORES	
		<b>MOYALE Total</b>				<b>2650</b>	
		MERU	MAUA	50	7400	MERU STORES	
			MERU	10	46560	MERU STORES	
		<b>MERU Total</b>				<b>53960</b>	
		MURANGA					
			KANGARI	77	8970	NYERI STORES	
			KENOL	90	16040	NYERI STORES	
			MURANGA	62	40070	NYERI STORES	
		<b>MURANGA Total</b>				<b>65080</b>	
		NYERI	KARATINA	27	17600	NYERI STORES	
			NYERI/ENVIRONS	10	43520	NYERI STORES	
			OTHAYA	20	18350	NYERI STORES	
		<b>NYERI Total</b>				<b>79470</b>	
SAMBURU							
	MARALAL	258	2390	NYERI STORES			
<b>SAMBURU Total</b>				<b>2390</b>			
THARAKA NITHI	CHUKA	44	15150	EMBU STORES			
<b>THARAKA NITHI Total</b>				<b>15150</b>			
<b>LOT 2</b>	<b>MT KENYA Total</b>				<b>329,300</b>		

DESCRIPTION	REGION	COUNTY	Branch/ZONE	APPROXIMATE DISTANCE FROM THE STORE IN KM	NO OF CFLs	STORAGE LOCATION	
LOT 3	NAIROBI NORTH	NAIROBI NOR	DANDORA/KARIOBANGI	20	135,500	RUARAKA STORE	
			EASTLEIGH/NAIROBI NC	10	71,720	RUARAKA STORE	
			JERICHO/BURU BURU	15	65,770	RUARAKA STORE	
			NGARA	5	35,280	RUARAKA STORE	
			WESTLANDS/KANGEMI	15	5,000	RUARAKA STORE	
			ZIMMERMAMAN/MWIKI	15	133,330	RUARAKA STORE	
<b>NAIROBI NORTH Total</b>					<b>446600</b>		
<b>LOT 3</b>	<b>NAIROBI NORTH Total</b>				<b>446,600</b>		
DESCRIPTION	REGION	COUNTY	Branch/ZONE	APPROXIMATE DISTANCE FROM THE STORE IN KM	NO OF CFLs	STORAGE LOCATION	
LOT 4	NAIROBI SOUTH	MACHAKOS	KAMBURU-NS	60	3,300	GENERATION STORE	
			MACHAKOS/MAKUENI	123	33,500	MACHAKOS STORE	
			MAVOKO	10	31,550	MLOLONGO STORE	
			TALA	30	14,900	GENERATION STORE	
		<b>MACHAKOS Total</b>				<b>83,250</b>	
		MAKUENI	EMALI/SULTAN HAMUD	71	16,540	MACHAKOS STORE	
			MTITO ANDEI RES NAIR	193	1,580	MACHAKOS STORE	
		<b>MAKUENI Total</b>				<b>18,120</b>	<b>MACHAKOS STORE</b>
		NAIROBI SOUTH	DONHOLM/KAYOLE/RUA	10	101,600	GENERATION STORE	
			INDUSTRIAL AREA/EMB	10	143,750	MLOLONGO STORE	
UMOJA/KOMAROCK/NJI	10		80,200	GENERATION STORE			
<b>NAIROBI SOUTH Total</b>				<b>325,550</b>			
<b>LOT 4</b>	<b>NAIROBI SOUTH Total</b>				<b>426,920</b>		

Section 7. Terms of Reference

DESCRIPTION	REGION	COUNTY	Branch/ZONE	APPROXIMATE DISTANCE FROM THE STORE IN KM	NO OF CFLs	STORAGE LOCATION	
LOT 6	COAST	KILIFI	KILIFI	60	11,420	MALINDI STORES	
			MALINDI	10	25,380	MALINDI STORES	
			MARIAKANI	40	8,550	MBARAKI STORES	
			MTWAPA	15	16,220	MBARAKI STORES	
		<b>KILIFI Total</b>				<b>61,570</b>	
		LAMU	LAMU	250	3,980	MALINDI STORES	
			MPEKETONI	200	1,770	MALINDI STORES	
			<b>LAMU Total</b>				<b>5,750</b>
		TANA RIVER	HOLA	180	1,740	MALINDI STORES	
			<b>TANA RIVER Total</b>				<b>1740</b>
		KWALE	KWALE/UKUNDA	40	19,040	MBARAKI STORES	
			<b>KWALE Total</b>				<b>19,040</b>
		MOMBASA	LIKONI	5	21,480	MBARAKI STORES	
			CHANGAMWE	10	34,670	MBARAKI STORES	
			NYALI/RIBE	10	75,940	MBARAKI STORES	
			MOMBASA ISLAND	10	42,200	MBARAKI STORES	
			<b>MOMBASA Total</b>				<b>174,290</b>
		TAITA TAVETA	TAVETA	200	3,000	MBARAKI STORES	
			VOI	170	9,750	MBARAKI STORES	
			WUNDANYI	230	4,800	MBARAKI STORES	
<b>TAITA TAVETA Total</b>				<b>17550</b>			
<b>LOT 6</b>	<b>COAST Total</b>			<b>279,940</b>			
DESCRIPTION	REGION	COUNTY	Branch/ZONE	APPROXIMATE DISTANCE FROM THE STORE IN KM	NO OF CFLs	STORAGE LOCATION	
LOT 5	NAIROBI WEST	KAJIADO	KITENGELA/NAIROBI WE	38	41,010	DAGORETTI STORE	
			LOITOKTOK RES NAIRO	232	5,840	DAGORETTI STORE	
			MASHURU RES- KAJIAD	123	450	DAGORETTI STORE	
			NAMANGA	169	4,240	DAGORETTI STORE	
			RONGAI	20	39,160	DAGORETTI STORE	
		<b>KAJIADO Total</b>				<b>90,700</b>	
		NAIROBI WES	DAGORETTI	10	56,930	DAGORETTI STORE	
			LANGATA/KIBERA	10	125,100	DAGORETTI STORE	
RIRUTA/KAWANGWARE	10		77,710	DAGORETTI STORE			
<b>NAIROBI WEST Total</b>				<b>259,740</b>			
<b>LOT 5</b>	<b>NAIROBI WEST Total</b>			<b>350,440</b>			

DESCRIPTION	REGION	COUNTY	Branch/ZONE	APPROXIMATE DISTANCE FROM THE STORE IN KM	NO OF CFLs	STORAGE LOCATION
LOT 7	NORTH EASTERN	GARISSA	GARISSA	20	16,870	GARISSA STORE
			<b>GARISSA Total</b>		<b>16,870</b>	
		KIAMBU	GATUNDU	30	20,400	THIKA STORE
			GITHUNGURI	50	26,140	THIKA STORE
			KIAMBU	40	45,510	THIKA STORE
			KIKUYU	60	20,580	THIKA STORE
			LIMURU	10	47,030	LIMURU STORE
			RUIRU	20	96,900	THIKA STORE
			THIKA	10	77,920	THIKA STORE
			WANGIGE	30	47,770	LIMURU STORE
			<b>KIAMBU Total</b>		<b>382,250</b>	
		KITUI	KITUI		11,650	THIKA STORE
			MWINGI		6,470	THIKA STORE
			<b>KITUI Total</b>		<b>18,120</b>	
		MANDERA	EL WAK	498	1,020	GARISSA STORE
			MANDERA	712	4,160	GARISSA STORE
			<b>MANDERA Total</b>		<b>5,180</b>	
WAJIR	HABASWENI	203	1,080	GARISSA STORE		
	WAJIR	322	4,200	GARISSA STORE		
	<b>WAJIR Total</b>		<b>5,280</b>			
<b>LOT 7</b>	<b>NORTH EASTERN Total</b>			<b>427,700</b>		

DESCRIPTION	REGION	COUNTY	Branch/ZONE	APPROXIMATE DISTANCE FROM THE STORE IN KM	NO OF CFLs	STORAGE LOCATION
LOT 8	NORTH RIFT	ELGEYO MARAKWET	50	8,920	ELDORET STORE	
			<b>ELGEYO MARAKWET Total</b>		<b>8,920</b>	
		NANDI	KAPSABET/LONDIANI	50	24,300	ELDORET STORE
			<b>NANDI Total</b>		<b>24,300</b>	
		TRANS NZOIA	KITALE	10	37,570	KITALE STORE
			<b>TRANS NZOIA Total</b>		<b>37,570</b>	
		TURKANA	LODWAR	300	2,680	KITALE STORE
			<b>TURKANA Total</b>		<b>2,680</b>	
		UASIN GISHU	ELDORET TOWN/ENVIRONMENT	10	100,780	ELDORET STORE
			<b>UASIN GISHU Total</b>		<b>100,780</b>	
WEST POKOT	KAPENGURIA	40	4,150	KITALE STORE		
	<b>WEST POKOT Total</b>		<b>4,150</b>			
<b>LOT 8</b>	<b>NORTH RIFT Total</b>			<b>178,400</b>		



DESCRIPTION	REGION	COUNTY	Branch/ZONE	APPROXIMATE DISTANCE FROM THE STORE IN KM	NO OF CFLs	STORAGE LOCATION	
LOT 9	WEST KENYA	BUNGOMA	BUNGOMA	40	16,050	KAKAMEGA STORE	
			WEBUYE	90	12,800	KAKAMEGA STORE	
		<b>BUNGOMA Total</b>				<b>28,850</b>	
		BUSIA	BUSIA	90	20,850	KAKAMEGA STORE	
			<b>BUSIA Total</b>				<b>20,850</b>
		HOMABAY	HOMA BAY	60	14,500	KISII STORE	
			<b>HOMABAY Total</b>				<b>14,500</b>
		KAKAMEGA	KAKAMEGA	10	36,100	KAKAMEGA STORE	
			<b>KAKAMEGA Total</b>				<b>36,100</b>
		KISII	KISII	10	38,300	KISII STORE	
			<b>KISII Total</b>				<b>38,300</b>
		KISUMU	KATITO	35	3,700	KISUMU STORE	
			KISUMU/ENVIRONS	10	69,350	KISUMU STORE	
			MUHORONI	50	4,050	KISUMU STORE	
		<b>KISUMU Total</b>				<b>77,100</b>	
		MIGORI	MIGORI	60	14,650	KISII STORE	
			<b>MIGORI Total</b>				<b>14,650</b>
		NYAMIRA	NYAMIRA	30	16,550	KISII STORE	
			<b>NYAMIRA Total</b>				<b>16,550</b>
		SIAYA	BONDO	50	7,250	KISUMU STORE	
			SIAYA	50	8,760	KISUMU STORE	
			UGUNJA	65	4,430	KISUMU STORE	
		<b>SIAYA Total</b>				<b>20,440</b>	
VIHIGA	MBALE	15	19,660	KISUMU STORE			
	<b>VIHIGA Total</b>				<b>19,660</b>		
<b>LOT 9</b>	<b>WEST KENYA Total</b>				<b>287,000</b>		

***Expected Deliverables:***

The Consultant will be required to deliver the following:

- Stores returns of an equivalent number of Incandescent Lamps to the CFLs issued
- Details of the beneficiaries of the CFLs issued, in hard copy and electronically
- Daily progress reports detailing the number of beneficiaries, the number of CFLs, etc
- Weekly and monthly progress reports
- A final project report for the areas allocated.

***4. Team Composition & Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the Key Experts under Data Sheet 21.1)***

The team is composed of the following Key experts:

No.	Position	Total Work Experience (years)	In Similar Works Experience (years)
1	<b>Project Manager (1 per Region/Lot):</b> Minimum Bachelor's degree in any discipline and experience in Contract Management.	5	2
2	<b>Field Supervisor (1 supervisor per five (5) teams):</b> Minimum Form 4 level of education with at least a diploma in any discipline. Supervisory skills	1	1

	training will be an added advantage. A certificate of good conduct will be a mandatory requirement.		
3	<b>Data entry specialist</b> (1 Per county) Minimum Form 4 level of education and IT qualifications with proficiency in MS Project, MS Excel and MS Access.	1	1
4	<b>Field Installers (2 per team)</b> Minimum Form 4 level of education. A certificate of good conduct for each installer will be a mandatory requirement.	0	0

### 5. Reporting Requirements and Time Schedule for Deliverables

- a) Daily Reports giving the following information:  
Region, County, Branch, Location, Date, number of beneficiaries, Nr of customer accounts, number of CFLs installed and wattage, and number of ICLs recovered wattage. The daily reports shall be submitted electronically to KPLC Regional coordinator.
- b) Weekly reports consolidating the daily reports for that week shall be submitted in soft copy every Friday of the week to the KPLC regional coordinator.
- c) The Consultant will be required to submit a monthly progress report to the Central Office and hard copies of the data collection forms detailing the beneficiaries' data.
- d) For each Contract, a Final report shall be delivered in CD ROM in addition to 5 Hard copies. The final report shall be submitted to the Central Office Project Engineer.

### 6. Client's Input and Counterpart Personnel

- (a) Services, facilities and property to be made available to the Consultant by the Client:-
  - Issuing the Compact Fluorescent Lamps (CFLs) to the contractors
  - Provision of data collection forms
  - Branding the contractors' project vehicles and provide the branding uniform and identification tags to the project staff.
  - Carrying out a Project Awareness Campaigns
  - To coordinate the whole retrofit programmes in various branches/zones in liaison with the contractor in an orderly and sequential manner.
  - To identify the customers (neighbourhoods) per branch/zone in which the retrofit exercise shall be undertaken.
  - Training of the contractor's installation personnel on project requirements.
- (b) Professional and support counterpart personnel to be assigned by the Client to the Consultant's team:-

1. A regional project coordinator for coordination of the project in the Particular Region
2. County Supervisor for project supervision in the county
3. Field Supervisor for supervision of the project in each branch

7. \_\_\_\_\_]

## **PART II – CONDITIONS OF CONTRACT AND CONTRACT FORMS**

### **Section 8. Conditions of Contract and Contract Forms**

## CONTRACT FOR CONSULTANT'S SERVICES

**Project Name** \_\_\_\_\_

**Contract No.** \_\_\_\_\_

**between**

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

**and**

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

**Dated:** \_\_\_\_\_

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## I. FORM OF CONTRACT

*(Text in brackets [ ] is for guidance purpose and should be deleted in the final text)*

This CONTRACT (hereinafter called the “Contract”) is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Client]* (hereinafter called the “Client”) and, on the other hand, *[name of Consultant]* (hereinafter called the “Consultant”).

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

### WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the “Services”);
- (b) the Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) the Client has received *[or has applied for]* funds from the Agence Française de Développement (the “Agency”) toward the cost of the Services and intends to apply a portion of these funds to eligible payments under this Contract, it being understood that (i) payments by the Agency will be made only at the request of the Client and upon approval by the Agency; (ii) such payments will be subject, in all respects, to the terms and conditions of the agreement between the Client and the Agency providing for the funds, and (iii) no party other than the Client shall derive any rights from the agreement or have any claim to the funds proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

- 1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (a) The General Conditions of Contract (including Attachment 1 “Agency Policy – Corrupt and Fraudulent Practices – Social and Environmental Responsibility);
  - (b) The Special Conditions of Contract;
  - (c) Appendices:
    - Appendix A: Terms of Reference
    - Appendix B: Consultant’s Technical Proposal (including methodology and Experts)
    - Appendix C: Contract Price(s)
    - Appendix D: Form of Advance Payment Guarantee

In the event of any inconsistency between the documents, the following priority order shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendix B; Appendix C and Appendix D. Any

reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:
  - (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

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

For and on behalf of *[Name of Client]*

\_\_\_\_\_  
*[Authorized Representative of the Client – name, title and signature]*

For and on behalf of *[Name of Consultant or Name of a Joint Venture]*

\_\_\_\_\_  
*[Authorized Representative of the Consultant – name and signature]*

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

For and on behalf of each of the members of the Consultant [insert the name of the Joint Venture]

*[Name of the lead member]*

\_\_\_\_\_  
*[Authorized Representative on behalf of a Joint Venture]*

*[add signature blocks for each member if all are signing]*



## II. GENERAL CONDITIONS OF CONTRACT

### A. GENERAL PROVISIONS

#### 1. Definitions

- 1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- (a) “**Applicable law**” means the laws and any other instruments having the force of law in the Client’s country, or in such other country as may be specified in the **Special Conditions of Contract (SCC)**, as they may be issued and in force from time to time.
  - (b) “**Agency**” means the Agence Française de Développement (AFD).
  - (c) “**Client**” means the implementing agency that signs the Contract for the Services with the Selected Consultant.
  - (d) “**Consultant**” means a legally-established professional consulting firm or entity selected by the Client to provide the Services under the signed Contract.
  - (e) “**Contract**” means the legally binding written agreement signed between the Client and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
  - (f) “**Day**” means a calendar day unless indicated otherwise.
  - (g) “**Effective Date**” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
  - (h) “**Experts**” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
  - (i) “**Foreign Currency**” means any currency other than the currency of the Client’s country.
  - (j) “**GCC**” means these General Conditions of Contract.
  - (k) “**Government**” means the government of the Client’s country.
  - (l) “**Joint Venture (JV)**” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
  - (m) “**Key Expert(s)**” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the

Consultant's proposal.

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

**2. Relationship between the Parties**

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

**3. Law Governing Contract**

3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable law.

**4. Language**

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

**5. Headings**

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

**6. Communications**

6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be made in writing in the language specified in Clause GCC 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the **SCC**.

6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.

**7. Location**

7.1. The Services shall be performed at such locations as are specified in **Appendix A** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.

**8. Authority of Member in Charge**

8.1. In case the Consultant is a Joint Venture, the members hereby authorize the lead member specified in the **SCC** to act on their behalf in exercising all the Consultant's rights and obligations towards the Client

under this Contract, including without limitation the receiving of instructions and payments from the Client.

**9. Authorized Representatives**

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

**10. Corrupt and Fraudulent Practices, and Social and Environmental Responsibility**

10.1. The Agency requires compliance with its policy in regard to corrupt and fraudulent practices, social and environmental responsibility as set forth in **Attachment 1** to the GCC.

**B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

**11. Effectiveness of Contract**

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

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

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

**13. Commencement of Services**

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

**14. Expiration of Contract**

14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the **SCC**.

**15. Entire Agreement**

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

**16. Modifications or Variations**

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

16.2. In cases of substantial modifications or variations, the prior written consent of the Agency is required.

**17. Force Majeure**

**a. Definition**

17.1. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible

under the circumstances, and subject to those requirements. It includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.

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

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

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

**c. Measures to be Taken** 17.5. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

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

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

17.8. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

- (a) cease its activities and demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, the costs related to the reactivation of the Services; or
- (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.9. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 48 & 49.

**18. Suspension**

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

**19. Termination**

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

**a. By the Client**

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

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;
- (b) If the Consultant becomes (or, if the Consultant consists of a Joint Venture, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 49.1;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days;
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (f) If the Consultant fails to confirm availability of Key Experts.

19.1.2 Furthermore, if the Client determines that the Consultant has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, then the Client is entitled, after giving fourteen (14) days written notice to the Consultant, to terminate the Consultant's employment under the Contract.

**b. By the Consultant**

19.1.3 The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to

Clauses GCC 49.1 within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.

- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 49.1.
- (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.

**c. Cessation of Rights and Obligations**

19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable law.

**d. Cessation of Services**

19.1.5 Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to the documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.

**e. Payment upon Termination**

19.1.6 Upon termination of this Contract, the Client shall make the following payments to the Consultant:

- (a) remuneration for Services satisfactorily performed prior to the effective date of termination, other expenses incurred and, for unit prices (time-based), reimbursable expenditures for expenditures actually incurred prior to the effective date of termination; and pursuant to Clause 42;
- (b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

## **C. OBLIGATIONS OF THE CONSULTANT**

### **20. General**

- a. Standard of** 20.1 The Consultant shall perform the Services and carry out the

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

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

20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services. The Consultant shall not subcontract the whole of the Services.

**b. Law Applicable to Services** 20.4 The Consultant shall perform the Services in accordance with the Contract and the Applicable law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable law.

20.5 Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in the Client's country when as a matter of law or official regulations, the Client's country prohibits commercial relations with that country.

20.6 The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

## **21. Conflict of Interests**

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

**a. Consultant Not to Benefit from Commissions, Discounts, etc.** 21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 41 through 46) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Client's applicable regulations, and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.

**b. Consultant and Affiliates Not to** 21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with

**Engage in Certain Activities** the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the **SCC**.

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

**d. Strict Duty to Disclose Conflicting Activities** 21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose such situations may lead to the termination of its Contract.

**22. Confidentiality** 22.1 Except with the prior written approval of the Client, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.

**23. Liability of the Consultant** 23.1 Subject to additional provisions, if any, set forth in the **SCC**, the Consultant's liability under this Contract shall be as determined under the Applicable law.

**24. Insurance to be Taken out by the Consultant** 24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the **SCC**, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.

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

25.2. The Consultant shall permit and shall cause its Sub-consultants to permit, the Agency and/or persons appointed by the Agency to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Agency if requested by the Agency. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the Agency's inspection and audit rights provided for under this Clause GCC25.2 constitute a prohibited practice subject to contract termination.

**26. Reporting Obligations** 26.1 The Consultant shall submit to the Client the reports and documents specified in **Appendix A**, in the form, in the numbers and within the time



periods set forth in the said Appendix.

**27. Proprietary Rights of the Client in Reports and Records**

27.1 Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.

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

**28. Equipment, Vehicles and Materials**

28.1 Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into the Client's country for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

**D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS**

**29. Description of Key Experts**

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

29.2 In case of unit prices (time-based) and if required to comply with the provisions of Clause GCC 20a, adjustments with respect to the estimated time-input of Key Experts set forth in **Appendix B** may be made by the Consultant by a written notice to the Client, provided (i) that such adjustments shall not alter the original time-input estimates for any individual by more than 10% or one week, whichever is larger; and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GCC 41.1.

29.3 In case of unit prices (time-based) and if additional work is required beyond the scope of the Services specified in **Appendix A**, the estimated time-input for the Key Experts may be increased by written

agreement between the Client and the Consultant. In case where payments under this Contract exceed the ceilings set forth in Clause GCC 41.1, the Parties shall sign a Contract amendment.

**30. Replacement of Key Experts**

30.1 Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

**31. Approval of Additional Key Experts**

31.1 If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Client a copy of their Curricula Vitae (CVs) for review and approval. If the Client does not object in writing (stating the reasons for the objection) within twenty two (22) days from the date of receipt of such CVs, the additional Key Experts shall be deemed approved by the Client.

31.2 In case of unit price (time-based) contract, the rate of remuneration payable to such new additional Key Experts shall be based on the rates for other Key Experts position which require similar qualifications and experience.

**32. Removal of Experts or Sub-consultants**

32.1 If the Client finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or if the Client determines that one of the Consultant's Experts or Sub-consultants have engaged in corrupt or fraudulent practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.

32.2 In the event that any of the Key Experts, Non-Key Experts or Sub-consultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.

32.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Client.

**33. Replacement/ Removal of Experts – Impact on Payments**

33.1 In case of unit price (time-based) Contract, except as the Client may otherwise agree, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Experts provided as a replacement shall not exceed the remuneration which would have been payable to the Experts replaced or removed.

33.2 In case of lump-sum Contract, the Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

**34. Working Hours, Overtime, Leave, etc. (time-based contract)**

34.1 Working hours and holidays for Experts are set forth in **Appendix A**. To account for travel time to/from the Client's country, Experts carrying out Services inside the Client's country shall be deemed to have

**only)** commenced or finished work in respect of the Services such number of days specified in Appendix A before their arrival in, or after their departure from, the Client's country.

34.2 The Experts shall neither be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in **Appendix A**, and the Consultant's remuneration shall be deemed to cover these items.

34.3 Any taking of leave by the Experts shall be subject to the prior approval of the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact an adequate supervision of the Services.

## **E. OBLIGATIONS OF THE CLIENT**

### **35. Assistance and Exemptions**

35.1 Unless otherwise specified in the **SCC**, the Client shall use its best efforts to:

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

### **36. Access to Project Site**

36.1 The Client warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required

for the performance of the Services. The Client will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

**37. Change in the Applicable Law Related to Taxes and Duties**

37.1 If, after the date of this Contract, there is any change in the Applicable law in the Client's country with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and other expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC 41.1

**38. Services, Facilities and Property of the Client**

38.1 The Client shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix A**) at the times and in the manner specified in the above mentioned **Appendix A**.

38.2 In case that such services, facilities and property shall not be made available to the Consultant as and when specified in **Appendix A**, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GCC 41.

**39. Counterpart Personnel**

39.1 The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in **Appendix A**.

39.2 If counterpart personnel are not provided by the Client to the Consultant as and when specified in **Appendix A**, the Client and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Client to the Consultant as a result thereof pursuant to Clause GCC 41.

39.3 Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.

**40. Payment Obligation**

40.1 In consideration of the Services performed by the Consultant under this Contract, the Client shall make such payments to the Consultant and in such manner as provided by GCC F below.

**F. PAYMENTS TO THE CONSULTANT**

**41. Ceiling Amount**

41.1 In case of unit price (time-based) Contract, an estimate of the cost of

- (time-based) or Contract Price (lump-sum)** the Services is set forth in **Appendix C** (Contract Price(s)). Payments under this Contract shall not exceed the ceilings in foreign currency and in local currency specified in the **SCC**. For any payments in excess of the ceilings, an amendment to the Contract shall be signed by the Parties referring to the provision of this Contract that evokes such amendment.
- 41.2 In case of a lump-sum Contract, the Contract price is fixed and is set forth in the **SCC**. The Contract price breakdown is provided in **Appendix C**. Any change to the Contract price can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in **Appendix A**.
- 42. Remuneration and Reimbursable Expenses (unit price – time-based only)**
- 42.1 The Client shall pay to the Consultant (i) remuneration that shall be determined on the basis of the time actually spent by each Expert in the performance of the Services after the commencement date of the Services or after any other date as the Parties shall agree in writing; and (ii) other expenses including reimbursable expenses that are actually and reasonably incurred by the Consultant in the performance of the Services.
- 42.2 All payments shall be at the rates set forth in **Appendix C**.
- 42.3 Unless the **SCC** provides for the price adjustment of the remuneration rates, said remuneration shall be fixed for the duration of the Contract.
- 42.4 The remuneration rates shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Experts as well as factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Experts' list in **Appendix B**, (iii) the Consultant's profit, and (iv) any other cost unless otherwise specified in the **SCC**.
- 43. Taxes and Duties**
- 43.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the **SCC**.
- 43.2 As an exception to the above and as stated in the **SCC**, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Client on behalf of the Consultant.
- 44. Currency of Payment**
- 44.1 Any payment under this Contract shall be made in the currency(ies) of the Contract.
- 45. Mode of Billing and Payment**
- 45.1 Billings and payments in respect of the Services shall be made as follows:
- (a) *Advance payment.* Within the number of days after the Effective Date, the Client shall pay to the Consultant an advance payment as specified in the **SCC**. Unless otherwise indicated in the **SCC**, an advance payment shall be made against the submission of a bank guarantee acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the **SCC**. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Appendix D**, or in any other form that

the Client shall have approved in writing. The advance payments will be set off by the Client in installments as specified in the SCC until the said advance payments have been fully set off.

- (b) The Itemized Invoices (unit price – time-based). As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, or after the end of each time interval otherwise indicated in the SCC, the Consultant shall submit to the Client, in duplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable pursuant to Clauses GCC 44 and GCC 45 for such interval, or for any other period indicated in the SCC. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration and other expenses (including reimbursable expenses) separately. The Client shall pay the Consultant's invoices within sixty (60) days from the receipt by the Client of such itemized invoices and of the supporting documents. Only the portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized, the Client may add or subtract the difference from any subsequent payments.
- (c) The Lump-Sum Installment Payments. The Client shall pay the Consultant within sixty (60) days after the receipt by the Client of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Client does not approve the submitted deliverable(s) as satisfactory in which case the Client shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated.
- (d) The Final Payment. The final payment under this Clause shall be made only after the final report and a final invoice, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final invoice shall be deemed approved by the Client as satisfactory ninety (90) calendar days after receipt of the final report and final invoice by the Client unless the Client, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount that the Client has paid or has caused to be paid in accordance with this Clause in excess of the amounts payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of notice thereof. Such claim for reimbursement shall be made by the Client within twelve (12) calendar months after receipt by the Client of the final report and the final invoice that the Client has approved in accordance with the above.
- (e) All payments under this Contract shall be made to the accounts of the

Consultant specified in the **SCC**.

- (f) With the exception of the final payment under (d) above, payments neither constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

**46. Interest on Delayed Payments and Damages**

46.1 Interest on delayed payments: If the Client had delayed payments beyond fifteen (15) days after the due date stated in Clause GCC 45.1 (b) or (c), interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the **SCC**.

46.2 Damages: If the Consultant fails to comply with the Contract requirements, the Client shall be entitled to apply damages as stated in the **SCC**. The total amount of the damages shall not exceed 10% of the Contract amount.

**G. FAIRNESS AND GOOD FAITH**

**47. Good Faith**

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

**H. SETTLEMENT OF DISPUTES**

**48. Amicable Settlement**

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

48.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days from receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days from the response of that Party, Clause GCC 49.1 shall apply.

**49. Dispute Resolution**

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

## **Attachment 1: Agency’s Policy – Corrupt and Fraudulent Practices – Social and Environmental Responsibility**

### **1. Corrupt and Fraudulent Practices**

The Client, the Implementing Agency and the contractors, suppliers or consultants must observe the highest standard of ethics during contract procurement and performance.

By signing the Statement of Integrity, the contractor, supplier or consultant declares that (i) “*it did not engage in any practice likely to influence the contract award process to the Employer's detriment, and that it did not and will not get involved in any anti-competitive practice*”, and that (ii) “*the negotiation, the procurement and the performance of the contract did not and shall not give rise to any act of corruption or fraud*”.

Moreover, the Agency requires including in the Bidding Documents and Agency-financed contracts a provision requiring that bidders and contractors, suppliers and consultants will permit the Agency to inspect their accounts and records relating to the procurement and performance of the Agency-financed contract, and to have them audited by auditors appointed by the Agency.

The Agency reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- a) reject a proposal for a contract award if it is established that during the selection process the bidder that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- b) declare misprocurement when it is established that, at any time, the Client, the contractor, the supplier, the consultant or its representatives have engaged in acts of corruption, fraud or anti-competitive practices during the contract procurement or performance without the Client having taken appropriate action in due time satisfactory to the Agency to remedy the situation, including by failing to inform the Agency at the time they knew of such practices.

The Agency defines, for the purposes of this provision, the terms set forth below as follows:

(a) Corruption of a public officer means:

- the act of promising, offering or giving to a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity; or
- the act by which a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.

(b) A “*public officer*” shall be construed as meaning

- any person who holds a legislative, executive, administrative or judicial mandate (within the State of the Employer) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;
- any other person who performs a public function, including for a State institution or a



State-owned company, or who provides a public service;

- any other person defined as a public officer by the national laws of the Client.
- (c) Corruption of a private person means:
- the act of promising, offering or giving to any person other than a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or
  - the act by which any person other than a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.
- (d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.
- (e) Anti-competitive practices means:
- any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply.
  - any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it.
  - any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

## **2. Social and Environmental Responsibility**

In order to promote sustainable development, the Agency seeks to ensure that internationally recognised environmental and social standards are complied with. Contractors, suppliers and consultants shall consequently undertake to:

- i) comply with and ensure that all their subcontractors comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the Project, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties;
- ii) adopt any environmental and social risk mitigations measures as defined in the environmental and social management plan or in the environmental and social impact notice issued by the Employer.

### III. SPECIAL CONDITIONS OF CONTRACT

*[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]*

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a) and 3.1 Applicable law	The Contract shall be construed in accordance with the law of The Republic Of Kenya
4.1 Language	The language is: English.
6.1 and 6.2 Communications	<p>The addresses are:</p> <p>Client : The Kenya Power &amp; Lighting Company Limited Stima Plaza, Kolobot Road, Parklands. P.O Box 30099 – 00100 Nairobi.</p> <p>Attention : <b>The Chief Procurement Officer, Projects</b> Facsimile : _____ E-mail (where permitted): <u>mkihara@kplc.co.ke or mkanini@kplc.co.ke</u></p> <p>Consultant : _____ _____ Attention : _____ Facsimile : _____ E-mail (where permitted) : _____</p>
8.1 Authority of Member in Charge	<p><i>[Note: If the Consultant consists only of one entity, state “N/A”;</i> <i>OR</i> <i>If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here. ]</i></p> <p><b>The Lead Member on behalf of the JV is</b> _____ _____ <i>[insert name of the member]</i></p>
9.1 Authorized Representatives	<p><b>The Authorized Representatives are:</b></p> <p><b>For the Client:</b> <b>The General Manager, Corporate Affairs and Company Secretary</b></p> <p><b>For the Consultant:</b> <i>[name, title]</i> _____</p>
11.1 Effectiveness of Contract	The Contract shall come into force at the date of Contract signature. There is no effectiveness condition.
12.1	Not applicable
13.1 Commencement of Services	Commencement of Services: the Services shall start on Date of Contract signature

<p><b>14.1 Expiration of Contract</b></p>	<p><b>The time period shall be Six Months</b></p>
<p><b>20.5 Law Applicable to Services</b></p>	<p>The Consultant shall not provide services or goods originating from a country subject to an embargo from France, the European Union, or the United Nations.</p>
<p><b>23.1 Liability of the Consultant</b></p>	<p><b>No additional provisions.</b></p> <p><i>[OR:</i></p> <p>The following limitation of the Consultant’s Liability towards the Client can be subject to the Contract’s negotiations:</p> <p><b>Limitation of the Consultant’s Liability towards the Client:</b></p> <p><b>(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client’s property, shall not be liable to the Client:</b></p> <p style="padding-left: 40px;"><b>(i) for any indirect or consequential loss or damage; and</b></p> <p style="padding-left: 40px;"><b>(ii) for any direct loss or damage that exceeds [insert a multiplier, e.g.: one, two, three] times the total value of the Contract;</b></p> <p><b>(b) This limitation of liability shall not</b></p> <p style="padding-left: 40px;"><b>(i) affect the Consultant’s liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services;</b></p> <p style="padding-left: 40px;"><b>(ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable law.</b></p>
<p><b>24.1 Insurance to be Taken out by the Consultant</b></p>	<p><b>The insurance coverage against the risks shall be as follows:</b></p> <p><i>[Note: Delete what is not applicable except (a)].</i></p> <p><b>(a) Professional liability insurance, with a minimum coverage of [the total amount of the Contract] [insert amount and currency which should be not less than the total ceiling amount of the Contract];</b></p> <p><b>(b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Client’s country by the Consultant or its Experts or Sub-consultants, with a minimum coverage In accordance with the applicable law.</b></p> <p><b>(c) Third Party liability insurance, with a minimum coverage of in accordance with the applicable law.</b></p> <p><b>(d) Employer’s liability and workers’ compensation insurance for the</b></p>

	<p>Consultant's Experts and Sub-consultants in accordance with the relevant provisions of the Applicable law in the Client's country, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and</p> <p>(e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.</p>
<p><b>27.1 Proprietary Rights in Reports and Records</b></p>	<p>N/A</p>
<p><b>27.2</b></p>	<p><i>[If there is to be no restriction on the future use of these documents by either Party, this Clause SCC 27.2 should be deleted. If the Parties wish to restrict such use, any of the following options, or any other option agreed to by the Parties, could be used:</i></p> <p><b>The Consultant shall not use these <i>documents and software</i> for purposes unrelated to this Contract without the prior written approval of the Client.]</b></p>
<p><b>41 Ceiling Amount or Contract Price</b></p>	<p><b>The contract is: a lump-sum price contract</b>  <i>[If the Contract is divided into phases, it may be possible to specify a different type of contract for each phase]</i>  <i>[In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant's remuneration is determined on the basis of the time actually spent by the Consultant in carrying out the Services and is based on (i) agreed upon unit rates for the Consultant's Experts multiplied by the actual time spent by the Experts in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Client to closely supervise the Consultant and to be involved in the daily execution of the assignment.</i>  <i>In lump-sum contracts, payments are linked to outputs (deliverables) such as reports, drawings, bill of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones. Nevertheless, quality control of the Consultant's outputs by the Client is paramount.]</i></p> <p><b>The Contract price (lump-sum) is as follows per Lot:</b></p> <p>_____ <i>[insert amount and currency for each currency]</i>  <i>[indicate: inclusive or exclusive] of local indirect taxes.</i></p> <p><b>The amount of such taxes is</b> _____ <i>[insert the amount as finalized at the Contract's negotiations on the basis of the estimates provided by the Consultant in Form FIN-2 of the Consultant's Financial Proposal.]</i></p>
<p><b>42.1 Remuneration</b></p>	<p>N/A</p>

<p><b>and Reimbursable Expenses (not applicable to lump-sum contract)</b></p>	
<p><b>42.3</b></p>	<p><b>Price adjustment on the remuneration does not apply</b></p>
<p><b>43.1 and 43.2 Taxes and Duties</b></p>	<p><b>The Consultant, the Sub-consultants and the Experts shall be exempt from:</b></p> <p><i>[insert list of tax exemptions consistent with ITC 16.3, for instance:</i></p> <p><i>any indirect taxes, duties, fees, levies and other impositions imposed, under the Applicable law in the Client’s country, on the Consultant, the Sub-consultants and the Experts in respect of:</i></p> <ul style="list-style-type: none"> <li><i>(a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of the Client’s country), in connection with the carrying out of the Services;</i></li> <li><i>(b) any equipment, materials and supplies brought into the Client’s country by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them;</i></li> <li><i>(c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client;</i></li> <li><i>(d) any property brought into the Client’s country by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of the Client’s country), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client’s country, provided that:</i> <ul style="list-style-type: none"> <li><i>(i) the Consultant, Sub-consultants and experts shall follow the usual customs procedures of the Client’s country in importing property into the Client’s country; and</i></li> <li><i>(ii) if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Client’s country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of the Client’s country, or (b) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into the Client’s country.]</i></li> </ul> </li> </ul>
<p><b>45.1(a) Mode of Billing and Payment</b></p>	<p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <ul style="list-style-type: none"> <li>(1) An advance payment of 20% of the Contract price or ceiling</li> </ul>

	<p>respectively in foreign currency and in local currency shall be made within 30 days after the Contract signature.</p> <p>(2) The advance bank payment guarantee shall be issued for the same amount and in the same currency(ies) as the advance payment. The bank guarantee shall be released when the advance payment has been fully set off.</p> <p>(3) Repayment of the advance payment:</p> <p>Lump-Sum Contract: The advance payment will be set off by deducting half of the advance payment amount from all the subsequent payments.</p>
<b>45.1(b)</b> <b>(time-based)</b>	N/A
<b>45.1 (c)</b> <b>(lump-sum)</b>	<p><b>The payment schedule:</b></p> <p><b>1<sup>st</sup> payment:</b> _____</p> <p><b>2<sup>nd</sup> payment:</b> _____</p> <p><b>3<sup>rd</sup> Payment:</b> _____</p> <p><b>4<sup>th</sup> Payment:</b> _____</p> <p><b>Final payment:</b> _____</p> <p><i>[Total sum of all installments should amount to the Contract price set up in SCC 41.]</i></p>
<b>45.1(e)</b>	<p><b>The accounts are:-</b></p> <p>for foreign currency: <i>[insert account]</i>.</p> <p>for local currency: <i>[insert account]</i>.</p>
<b>46.1 Interest on Delayed Payments</b>	<b>The interest rate is:</b> <i>[insert rate]</i> .
<b>46.2 Damages</b>	<p><b><i>[insert amount, for example 200 €] per Day for late delivery of each expected Deliverable shall be due by the Consultant as Delay Damages.</i></b></p> <p><i>The Total amount of damages shall be 10% of the contract value if the bidder fails to comply with the contract requirements.</i></p>
<b>49. Dispute Resolution</b>	Disputes not amicably settled shall be referred to a Competent Nairobi court

## **IV. APPENDICES**

### **APPENDIX A – TERMS OF REFERENCE**

*[This Appendix shall include the final Terms of Reference (TORs) (on the basis of Section 7 of the RFP) worked out by the Client and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements; Client's input, including counterpart personnel assigned by the Client to work on the Consultant's team; specific tasks that require prior approval by the Client.]*

### **APPENDIX B – CONSULTANT'S TECHNICAL PROPOSAL INCLUDING METHODOLOGY AND KEY EXPERTS**

*[Insert the Consultant's Technical Proposal and finalized during the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]*

### **APPENDIX C – CONTRACT PRICE(S)**

*[Insert the tables with the Contract Price(s). The tables shall be based on Forms FIN-2, FIN-3 and FIN-4 of the Consultant's Financial Proposal and shall reflect any changes agreed at the Contract negotiations, if any.]*

*For time-based contract, all reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount. Conditions and allowance for reimbursable expenses to be eligible for payment may be specified here consistently with SCC 42.1]*

## APPENDIX D - FORM OF ADVANCE PAYMENT GUARANTEE

[See Clause GCC 45.1 (a) and SCC 45.1(a)]

### Bank Guarantee for Advance Payment

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

**Beneficiary:** \_\_\_\_\_ [Name and Address of Client]

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

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

We have been informed that \_\_\_\_\_ [name of Consultant or a name of the Joint Venture, same as appears on the signed Contract] (hereinafter called "the Consultant") has entered into Contract No. \_\_\_\_\_ [reference number of the contract] dated \_\_\_\_\_ with you, for the provision of \_\_\_\_\_ [brief description of Services] (hereinafter called "the Contract").

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

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

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made full repayment of the amount of the advance payment, or on the \_\_ day of \_\_\_\_\_, 2\_\_\_\_,<sup>2</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

<sup>2</sup> Insert the expected expiration date. In the event of an extension of the time for completion of the Contract, the Client would need to request an extension of this guarantee from the Guarantor. Such request must be made in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Client might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Client's written request for such extension presented to the Guarantor before the expiry of the guarantee. Such an extension will be granted only once."



This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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*[signature(s)]*

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