



In Search of Better Health

KENYA MEDICAL RESEARCH INSTITUTE

REQUEST FOR THE PROVISION OF A MARKETING FIRM TO MARKET KEMRI PRODUCTS.

TENDER NO: KEMRI/HQ/RFP/005/2024-2025

DATE: TUESDAY 17TH JUNE 2025

CLOSING DATE: FRIDAY, 27TH JUNE 2025 AT 10.00AM

All correspondence to:

**THE DIRECTOR GENERAL/CEO
KENYA MEDICAL RESEARCH INSTITUTE
P.O. BOX 54840-00200
NAIROBI**

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***KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).
P.O BOX 54840- 00200***

NAIROBI.

REQUEST FOR THE PROVISION OF A MARKETING FIRM TO MARKET KEMRI PRODUCTS

TENDER NUMBER: KEMRI/RFP/005/2024-2025

1) NAME AND CONTACT ADDRESSES OF PROCURING ENTITY

Kenya Medical Research Institute

Off Raila Odinga Way. Nairobi, Kenya.

P.O BOX 54840-00200 NAIROBI

DIRECTOR GENERAL, TEL: 0733400003

Email: procurement@kemri.go.ke

2) Invitation to Tender (ITT) No *KEMRI/RFP/005/2024-2025*

Tender Name: **REQUEST FOR THE PROVISION OF A MARKETING FIRM TO MARKET
KEMRI PRODUCTS**

SECTION 1 (A) - REQUEST FOR PROPOSAL (RFP)

DATE; Tuesday 17th June 2025

REFERENCE NO; KEMRI/HQ/RFP/005/2024-2025

NAME OF ASSIGNMENT: **REQUEST FOR THE PROVISION OF A MARKETING FIRM TO MARKET KEMRI PRODUCTS**

The **KENYA MEDICAL RESEARCH INSTITUTE (KEMRI)** has set aside funds in its budget towards the cost of the subject.

1. KEMRI now invites proposals to provide **REQUEST FOR THE PROVISION OF A MARKETING FIRM TO MARKET KEMRI PRODUCTS**
2. This Request for Proposals (RFP) has been addressed to all eligible and interested marketing firms.
3. If the marketing firm is a Joint Venture (JV), the full name of the JV shall be used and all members, starting with the name of the lead member. Where marketing firms have been proposed, they shall be named. The maximum number of JV members shall be specified in the DS.
4. It is not permissible to transfer this RFP to any other firm.
5. A firm will be selected under Quality Based Selection Method (QBS) method and in a format as described in this RFP, in accordance with the Public Procurement and Asset Disposal Act 2015, a copy of which is found at the following website: www.ppra.go.ke.
6. The: Section 1: Letter of Request for Proposals
Section2: Instructions to the marketing firm and Data Sheet Section 3: Technical Proposal Standard Forms Section 4: Financial Proposal Standard Forms Section 5: Terms of Reference
Section 6: Standard Forms of Contract ([Select: Time-Based or Lump-Sum])
7. Details on the proposal's submission date, time and address are provided in the ITT17.7and ITT 17.9 of the Data Sheet.

SECTION 2. INSTRUCTIONS TO TENDERERS AND DATA SHEET

Section 2(a). Instructions to Tenderers (ITT)

A. GENERAL PROVISIONS

1. Meanings/Definitions

- a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the firm.
- b) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- c) “Procuring Entity” means the entity that is carrying out the marketing firm selection process and signs the Contract for the Services with the selected Marketing firm.
- d) “Contract” means a legally binding written agreement signed between KEMRI and the Marketing firm and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- e) “Data Sheet” means an integral part of the Instructions to Tenderers (ITT) Section 2 that is used to reflect specific assignment conditions to supplement, but not to over-write, the provisions of the ITT.
- f) “Day” means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- g) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel.
- h) “Government” means the Government of the Republic of Kenya.
- i) “In writing” means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by KEMRI with proof of receipt.
- j) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Marketing firm 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 KEMRI for the performance of the Contract.
- k) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the Marketing firm proposal.
- l) “ITT” (this Section 2 of the RFP) means the Instructions to Marketing firms that provides the Marketing firms with all information needed to prepare their Proposals.
- m) “Letter of RFP” means the letter of invitation being sent by KEMRI to the Marketing firm.
- n) “Non-Key Expert(s)” means an individual professional provided by the Marketing firm and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- o) “Proposal” means the Technical Proposal and the Financial Proposal of the Marketing firm.
- p) “Public Procurement Regulatory Authority (PPRA)” means the statutory authority of the Government of Kenya that is mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- q) “RFP” means the Request for Proposals to be prepared by KEMRI for the selection of Marketing Firm. .

- r) “Services” means the work to be performed by the Marketing firm pursuant to the Contract.
- s) “Sub-marketing firm” means an entity to whom the Marketing firm intends to subcontract any part of the Services while the Marketing firm remains responsible to KEMRI during the whole performance of the Contract.
- v) “Terms of Reference (TORs)” means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of KEMRI and the Marketing firm, and expected results and deliverables of the assignment.

2. Introduction

- 2.1 KEMRI named in the Data Sheet intends to select a Marketing firm from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the Data Sheet.
- 2.2 The Marketing firm are invited to submit a Technical Proposal and a Financial Proposal for marketing 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 Marketing firm.
- 2.3 The Marketing firm should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the Data Sheet. Attending any such pre-proposal conference is optional and is at the Marketing firm’s expense.
- 2.4 KEMRI will timely provide, at no cost to the Marketing firm, the relevant project data, and reports required for the preparation of the marketing firm Proposal as specified in the Data Sheet.

3. Conflict of Interest

- 3.1 The Marketing firm is required to provide professional, objective, and impartial advice, always holding KEMRI's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.
- 3.2 The Marketing firm has an obligation to disclose to KEMRI any situation of actual or potential conflict that impacts its capacity to serve the best interest of KEMRI. Failure to disclose such situations may lead to the disqualification of the Marketing firm or the termination of its Contract.
- 3.3 Without limitation on the generality of the foregoing, and unless stated otherwise in the Data Sheet, the Marketing firm shall not be hired under the circumstances set forth below:

i) Conflicting Activities

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

ii) Conflicting Assignments

Conflict among marketing assignments: A Marketing firm marketing firm (including its Experts marketing firm) or any of its Affiliates shall not be hired for any assignment that, by its nature, may conflict with another assignment of the Marketing firm marketing firm for the same or for another Procuring Entity.

(iii) Conflicting Relationships

Relationship with KEMRI's staff: the Marketing firm marketing firm (including its Experts marketing firm) that has a close business or personal relationship with senior management or professional staff of KEMRI who has the ability to influence the bidding process and: (i) are directly or indirectly involved in the preparation of the Terms of Reference for the

assignment,(ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from such relationship has been resolved in a manner that determines there is no conflict to affect this selection process.

iv) *Others*

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

4. Unfair Competitive Advantage

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

5. Corrupt and Fraudulent Practices

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

5.2 Collusive practices

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

6. Eligibility

- 6.1 In selection of Marketing firms, short-listing shall be composed of firms or individuals who belong to the same line of professional business and who are almost of the same capability.
- 6.2 Unless otherwise specified in the Data Sheet, KEMRI permits Marketing firms including proposed experts, joint ventures and individual members from all countries and categories to offer marketing services. The maximum number of members so far JV shall be specified in the TDS.
- 6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. AJV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke
- 6.4 Public Officers of KEMRI, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 6.5 It is the Marketing firm's responsibility to ensure that it's Experts, joint venture members, Sub-marketing firms, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.
- 6.6 As an exception to the foregoing ITC 6.1 and 6.2 above:

- a) Sanctions-A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
- b) Prohibitions-Firms and individuals of a country or goods in a country maybe ineligible if:
 - i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country;
or
 - ii) By an act of compliance with a decision of the United Nations Security Council taken under Chapter

VII of the Charter of the United Nations, Kenya prohibits any import of goods or services from that country or any payments to any country, person, or entity in that country.

- c) Restrictions for Government-owned Enterprises-Government-owned enterprises or institutions in Kenya shall be eligible only if they can establish that they
 - i) Are legally and financially autonomous,
 - ii) Operate under commercial law, and
 - iii) That they are not dependent agencies of KEMRI.
- d) Restrictions for public employees - Government officials and civil servants and employees of public institutions - shall not be hired for marketing contracts.

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

B. Preparation of Proposals

7. General Considerations

7.1 In preparing the Proposal, the Marketing firm 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 Marketing firm shall bear all costs associated with the preparation and submission of its Proposal, and KEMRI shall not be responsible for or liable for those costs, regardless of the conduct or outcome of the selection process. KEMRI is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to Contract award, without there by incurring any liability to the Marketing firm.

9. Language

9.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Marketing firm and KEMRI shall be written in the English language.

10. Documents Comprising the Proposal

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

10.2 The Marketing firm shall declare in the Financial Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid rigging.

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

11. Only One Proposal

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

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

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

12. Proposal Validity

a. Proposal for Validity Period

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

12.2 During this period, the Marketing firm 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 Marketing firm's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with IT C5.

b. Extension of Validity Period

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

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

12.6 The Marketing firm has the right to refuse to extend the validity of its Proposal in which case such Proposal is not further evaluated.

b. Substitution of Key Experts at Validity Extension

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

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

c. Sub-Contracting

12.9 The Marketing firm shall not subcontract the whole or part of the Services without reasonable justification and written approval of KEMRI.

13. Clarification and Amendment of RFP

13.1 The Marketing firm may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to KEMRI's address indicated in the Data Sheet. KEMRI

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 Marketing firms. Should KEMRI deem it necessary to amend the RFP because of clarification, it shall do so following the procedure described below:

- 13.2 At any time before the proposal submission deadline, KEMRI may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Marketing firms and will be binding on them. The Marketing firms shall acknowledge receipt of amendments in writing.
- 13.3 If the amendment is substantial, KEMRI may extend the proposal submission deadline to give the Marketing firms reasonable time to take an amendment into account in their Proposals.
- 13.4 The Marketing firm 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 Marketing firm must give particular attention to the following:
 - (a) If a Marketing firm considers that it may enhance its expertise for the assignment by associating with other marketing firms in the form of a Joint Venture or as Sub-marketing firms, it may do so. Only one Proposal is submitted, in accordance with ITC 11. Above. A Marketing firm cannot associate with shortlisted Marketing firm(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-consultancy, the shortlisted/invited Marketing firm shall be a lead member. If the shortlisted/invited marketing firm associates with each other, any of them can be a lead member.
 - (b) KEMRI may indicate in the Data Sheet the estimated amount or Key Experts' time input (expressed in person-month), or KEMRI's estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the Marketing firm's own estimates for the same. This clause shall not apply when using Fixed Budget selection method.
 - (c) For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input shall not be disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the Data Sheet, and the Financial Proposal shall not exceed this budget.
 - (d) Key Experts shall not appear in more than one proposal unless so allowed in the Data Sheet. Invited firms must confirm and ensure their Key experts do not appear in proposal of other invited firms, otherwise proposals with Key experts appearing in other proposals will be rejected.

15. Technical Proposal Format and Content

- 15.1 The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP and shall comprise the documents listed in the Data Sheet under ITC 10.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.
- 15.2 Marketing firm shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.

16. Financial Proposal

- 16.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the Data Sheet. Irrespective of the marketing firm selection method, any marketing firm that does not submit an itemized and priced

financial proposal or merely refers KEMRI to other legal instruments for the applicable minimum remuneration fees shall be considered non-responsive.

a. Price Adjustment

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

b. Taxes

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

c. Currency of Proposal

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

d. Currency of Payment

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

C. SUBMISSION, OPENING AND EVALUATION

17. Submission, Sealing, and Marking of Proposals

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

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

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

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

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

18. Sealing and Marking of Proposals

18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to KEMRI and a warning “DO NOT OPEN BEFORE..... (The time and date for proposal opening date)”. Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:

18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the

following documents shall be closed and shall be addressed as follows:

- i) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Technical Proposal, as described in ITC11;
- ii) in an envelope or package or container marked “COPIES”, all required copies of the Technical Proposal;
- iii) in an envelope or package or container marked “ORIGINAL”, all required copies of the Financial Proposal; and

18.3 The inner envelopes or packages or containers shall:

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

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

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

19. Confidentiality/Canvassing

19.1 From the time the Proposals are opened to the time the Contract is awarded, the Marketing firm should not contact KEMRI 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 Marketing firms who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

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

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

20. Opening of Technical Proposals

20.1 KEMRI's opening committee shall conduct the opening of the Technical Proposals in the presence of the Marketing firms' authorized representatives who choose to attend (in person, or online if this option is offered in the Data Sheet). The opening date, time and the address are stated in the Data Sheet. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored by KEMRI or with a reputable public auditor or independent authority until they are opened in accordance with ITC 22.

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

21. Proposals Evaluation

21.1 Subject to provision of ITC 15.1, the valuers of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after KEMRI notifies all the Marketing firms in accordance with ITC 22.1.

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

22. Evaluation of Technical Proposals

- 22.1 KEMRI's evaluation committee shall evaluate the Technical Proposals that have passed the eligibility and mandatory criteria, on the basis of their responsiveness to the Terms of Reference and the RFP. The eligibility and mandatory criteria shall include the following and any other that may include in the Data sheet.
- a) Firm has submitted the required number of copies of the Technical Proposals.
 - b) Firm has submitted a sealed financial proposal.
 - c) The Proposal is valid for the required number of days.
 - d) The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
 - e) The Technical Proposal is complete with all the forms and required documentary evidence submitted.
 - f) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms.
 - g) Key Experts are from eligible countries.
 - h) Key Experts do not appear in more than one proposal, if so required.
 - i) A short-listed firm has not participated in more than one proposal, if so required.
 - j) The Marketing firm is not insolvent, in receivership, bankrupt or in the process of being wound up.
 - k) The Marketing firm, its sub-marketing firms and experts have not engaged in or been convicted of corrupt or fraudulent practices.
 - l) The Marketing firm is neither precluded from entering into a Contract nor debarred by PPRA.
 - m) The firm has not proposed employing public officials, civil servants and employees of public institutions.
 - n) The Marketing firm, its sub-marketing firms and experts have no conflicts of interest.
- 22.2 Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the Data Sheet.

23. Public Opening of Financial Proposals

23.1 Unsuccessful Proposals

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

23.2 Financial Proposals for QBS, CQS and SSS

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

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

23.3 Financial Proposals for QCBS, FBS, LCS

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

23.4 Opening of Financial Proposals

The opening date should allow the Marketing firms sufficient time to decide for attending the opening and shall be no less than five (5) Business Days from the date of notification of the results of the technical evaluation, described in ITC 22.1 and 22.2.

The Marketing firm'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 Marketing firm's choice.

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

24. Correction of Errors

- 24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.
- 24.2 Time-Based Contracts-If a Time-Based contract form is included in the RFP, in case of discrepancy between (i) a partial amount(sub-total) and the total amount, or (ii)between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between figures and words, the later will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and KEMRI's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.
- 24.3 Lump-Sum Contracts - If a Lump-Sum contract form is included in the RFP, the Marketing firm is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per ITC 24 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

25. Taxes

- 25.1 Subject to ITC 24.2, all taxes are deemed to be included in the Marketing firm's financial proposal as separate items, and, therefore, considered in the evaluation.
- 25.2 All local identifiable taxes levied on the contract in voices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and in come and withholding tax payable to Kenya on the remuneration of

non-resident Experts for the services rendered in Kenya are dealt with in accordance with the instructions in the Data Sheet.

26. Conversion to Single Currency

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

27. Abnormally Low Prices

- 27.1 An Abnormally Low Price is one where the financial price, in combination with other constituent elements of the proposal, appears unreasonably low to the extent that the price raises material concerns with KEMRI as to the capability of the marketing firm to perform the Contract for the offered price.
- 27.2 In the event of identification of a potentially Abnormally Low Price by the evaluation committee, KEMRI shall seek written clarification from the firm, including a detailed price analyses of its price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risk and responsibilities and any other requirements of the RFP document.
- 27.3 After evaluation of the price analyses, if KEMRI determines that the firm has failed to demonstrate its capability to perform the contract for the offered price, KEMRI shall reject the firm's proposal.

28. Abnormally High Prices

- 28.1 An abnormally high price is one where the proposal price, in combination with other constituent elements of the proposal, appears unreasonably too high to the extent that KEMRI is concerned that it (KEMRI) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Marketing firms is compromised.
- 28.2 In case of an abnormally high tender price, KEMRI shall make a survey of the market prices, check if the estimated cost of the contract is correct, and review the RFP to check if the specifications, TOR, scope of work and conditions of contract are contributory to the abnormally high proposals. KEMRI may also seek written clarification from the Marketing firms on the reason for the high proposal price. KEMRI shall proceed as follows:
- i) If the proposal price is abnormally high based on wrong estimated cost of the contract, KEMRI may accept or not accept the proposal depending on KEMRI's budget considerations.
 - ii) If specifications, TOR, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, KEMRI shall reject all proposals and may re-invite for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.
- 28.3 If KEMRI determines that the Proposal Price is abnormally too high because genuine competition between marketing firms is compromised (*often due to collusion, corruption or other manipulations*), KEMRI shall reject all Proposals and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before re-inviting for proposals.

29. Combined Quality and Cost Evaluation

a. Quality and Cost Based Selection (QCBS) Method

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

b. Fixed Budget Selection (FBS) Method

- 29.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1.4 of the Data Sheet shall be rejected. KEMRI's evaluation committee will select the Marketing firm with the highest-

ranked Technical Proposal that does not exceed the budget indicated in the RFP, notify and invite such Marketing firm to negotiate the Contract.

c. Least Cost Selection (LCS) Method

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

d. Combined Technical and Evaluation Report

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

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

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

- i) The name and address of the Marketing firm with whom KEMRI successfully negotiated a contract;
- ii) the contract price of the successful Proposal;
- iii) a statement of the reasons why the recipient's Proposal was unsuccessful
- iv) the expiry date of the Standstill Period, and
- v) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

31. Standstill Period

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

D. NEGOTIATIONS AND AWARD

32. Negotiations

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

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

32.3 Availability of Key Experts

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

32.4 Notwithstanding the above, the substitution Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Marketing firm, including but not limited to death or medical incapacity. In such case, the Marketing firm shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the

Contract, who shall have equivalent or better qualifications and experience than the original candidate.

32.5 Technical negotiations

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

32.6 Financial negotiations

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

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

33. Conclusion of Negotiations

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

34. Letter of Award

- 34.1 Upon expiry of the Standstill Period, specified in ITC 28.1, after satisfactorily addressing any appeal that has been filed within the Standstill Period, and upon successful negotiations, KEMRI shall send a Letter of Award to the successful Marketing firm. The letter shall confirm KEMRI's award of

Contract to the successful Marketing firm and requesting the Marketing firm to sign and return the draft negotiated Contract within Twenty-One (21) Days from the date of the Letter of Award.

35. Signing of Contract

- 35.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITC 28.1 and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.
- 35.2 The Marketing firm is expected to commence the assignment on the date and at the location specified in the Data Sheet.

36. Publication of Procurement Contract

- 36.1 Within the period specified in the Data Sheet, KEMRI shall publish the awarded Contract which shall contain, at a minimum, the following information: (a) name and address of KEMRI; (b) name and reference number of the contract being awarded, (c) the selection method used; (d) names of the marketing firms that submitted proposals; (e) names of all Marketing firms whose Proposals were rejected or were not evaluated; (f) the name of the successful marketing firm, the final total contract price, the contract duration and a summary of its scope.
- 36.2 Consider carefully the information on Marketing firms to be published, particularly evaluation by KEMRI, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:
- 36.3 The awarded Contract shall be published on KEMRI's website with free access if available and in the official procurement tender portal.

37. Procurement Related Complaint and Administrative Review

- 37.1 The procedures for making Procurement-related Complaints shall be specified in the **TDS**.
- 37.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION 2 (B). DATA SHEET

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS												
A. General Provisions													
2.1	Name of the procuring entity is: KENYA MEDICAL RESEARCH INSTITUTE (KEMRI) The marketing firm selection method is: <table> <tr> <td>Quality and Cost Based Selection Method (QCBS)</td><td>[☒]</td></tr> <tr> <td>Quality Based Selection Method (QBS)</td><td>[☐]</td></tr> <tr> <td>Least Cost Selection Method (LCS)</td><td>[☐]</td></tr> <tr> <td>Consultant Qualification Selection Method (CQS)</td><td>[☐]</td></tr> <tr> <td>Fixed Budget Selection Method (FBS)</td><td>[☐]</td></tr> <tr> <td>Single Source Selection Method (SSS)</td><td>[☐]</td></tr> </table>	Quality and Cost Based Selection Method (QCBS)	[☒]	Quality Based Selection Method (QBS)	[☐]	Least Cost Selection Method (LCS)	[☐]	Consultant Qualification Selection Method (CQS)	[☐]	Fixed Budget Selection Method (FBS)	[☐]	Single Source Selection Method (SSS)	[☐]
Quality and Cost Based Selection Method (QCBS)	[☒]												
Quality Based Selection Method (QBS)	[☐]												
Least Cost Selection Method (LCS)	[☐]												
Consultant Qualification Selection Method (CQS)	[☐]												
Fixed Budget Selection Method (FBS)	[☐]												
Single Source Selection Method (SSS)	[☐]												
2.2	Financial Proposal to be submitted manually together with Technical Proposal in separate envelopes: Yes The name of the assignment is: Request for proposal for provision of a marketing firm to market KEMRI products.												
2.3	A pre-proposal conference will be held: No ☐												
2.4	KEMRI will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals: ☐ N/A												
3.3 (iv)	N/A												
4.1	N/A												
6.2	Maximum number of members in the Joint Venture (JV) shall be: N/A												
6.6 (a)	The list of debarred firms and individuals is available at the PPRA's website www.ppra.go.ke or email complaints@ppra.go.ke												
6.7	The business will be registered with N/A												
B. Preparation of Proposals													
10.1	The Proposal shall comprise the following: 1st Inner Envelope the Technical Proposal: Power of Attorney to sign the Proposal TECH-1: Technical Proposal Submission Form TECH-2: Marketing firm's Organization and Experience TECH-3: Comments and Suggestions TECH-4: Description of Approach, Methodology and Workplan TECH-5: Work Schedule and Planning for Deliverables TECH-6: Team Composition, Assignment, and Key Experts' Input												

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	TECH-7: Mandatory Documentary Evidence
11.1	Participation of Sub-marketing firms, and Key Experts in more than one Proposal is permissible: No _____
12.1	Proposals must remain valid for <i>180</i> days after the proposal submission deadline
13.1	Clarifications may be requested no later than three (3) days prior to the submission deadline. The contact information for requesting clarifications is: ____ E-mail: _____ procurement@kemri.go.ke
16.2	A price adjustment provision applies to remuneration rates: No _____
16.3	“Information on the Marketing firm’s tax obligations in KEMRI’s country can be found on the Kenya Revenue Authority website: www.kra.go.ke
16.4	The Financial Proposal shall be stated in the following currencies: Marketing firm may express the price for their Services in any fully convertible currency, singly or in combination of up to three foreign currencies. The Financial Proposal should state local costs in Kenya Shillings: Yes _____
C. Submission, Opening and Evaluation	
17.1	The Marketing firms shall not have the option of submitting their Proposals electronically. YES
17.5	The Marketing firm must submit: (a) Technical Proposal: one (1) original and one (1) copies; (b) Financial Proposal: one (1) original.
18.5	The Proposals must be submitted no later than: Date: _____ Tuesday 27th June 2025 Time: _____ 10:00 AM The Proposal submission address is: THE DIRECTOR GENERAL/CEO KENYA MEDICAL RESEARCH INSTITUTE, KEMRI HEADQUARTERS-ADMINISTRATION BLOCK GROUND FLOOR RECEPTION-MBAGATHI.-NAIROBI P.O. BOX 54840-00200 NAIROBI-KENYA
20.1	Manual opening of the Technical Proposals is offered: Yes The opening shall take place at: KENYA MEDICAL RESEARCH INSTITUTE, KEMRI HEADQUARTERS-ADMINISTRATION BLOCK GROUND FLOOR RECEPTION-MBAGATHI.-NAIROBI P.O. BOX 54840-00200

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	NAIROBI-KENYA Date: Tuesday 27th June 2025 Time: 10:00 AM
20.2	In addition, the following information will be read aloud at the opening of the Technical Proposals Name of the bidder
22.1	Other eligibility and mandatory criteria shall be: As prescribed
22.2	The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals: Total score-100 marks; pass mark 70 marks
23.4	An online option of the opening of the Financial Proposals is offered: No _____.
25.2	For the evaluation, KEMRI will include separate items of: (a) all local identifiable 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 experts. If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized using the itemized list and included in the Contract amount as a separate line, also indicating which taxes shall be paid by the Marketing firm and which taxes are withheld and paid by KEMRI on behalf of the Marketing firm.
26.1	The single currency for the conversion of all prices expressed in various currencies into a single one is: _____ <i>[indicate Kenya Shillings or another fully convertible foreign currency]</i> The official source of the selling exchange rate is: ____ The date of the exchange rate is: ____ <i>[The date may be the same as the that for deadline for submission of proposals, or a date that is five business days prior to the submission deadline]</i>
29.1 (QCBS only)	The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100. The formula for determining the financial scores (Sf) of all other Proposals is calculated as following: $Sf = 100 \times Fm / F$, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration. The weights given to the Technical (T) and Financial (P) Proposals are: T = ____ <i>[Insert weight between 0.70 and 0.85]</i>, and P = ____ <i>[Insert weight between 0.15 and 0.30]</i> 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: $S = St \times T\% + Sf \times P\%$.
31	The Standstill Period shall be: ____ days <i>[insert the minimum number of days legally allowed for appeals to Administrative Review Board]</i>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	The procedures for making a procurement related complaint are detailed in the Public Procurement and Asset Disposal Act and Regulations. If a Marketing firm wishes to make a procurement related complaint or appeal, the Marketing firm shall submit its complaint to the Public Procurement Administrative Review Board.
D. Negotiations and Award	
32.1	Expected date and address for contract negotiations: Date: _____ day/month/year Address: _____
35.2	Expected date for the commencement of the Services: Date: <i>[insert date, month and year]</i> at: _____ <i>[insert location]</i>
36.1	The publication of the contract award information following the completion of the contract negotiations and contract signing will be done as following: The publication will be done within _____ days after the contract signing <i>[Insert the legally recognised days for publishing the Contract Award Notice]</i>
37.1	The procedures for making a Procurement-related Complaints are detailed in the “Regulations” available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke . If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: For the attention: <i>[insert full name of person receiving complaints]</i> Title/position: <i>[insert title/position]</i> Procuring Entity: <i>[insert name of Procuring Entity]</i> Email address: <i>[insert email address]</i> In summary, a Procurement-related Complaint may challenge any of the following: (i) the terms of the Tender Documents; and (ii) KEMRI’s decision to award the contract.

SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

{Notes to Marketing firm shown in brackets {} throughout Section 3 provide guidance to the Marketing firm to prepare the Technical Proposal; they should not appear on the Proposals to be submitted.}

1. FORMTECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

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

Dear Sirs:

We, the undersigned, offer to provide the marketing services for *[Insert title of assignment]* in accordance

with your RFP dated *[Insert Date]* and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope.

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

OR

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

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by KEMRI or maybe sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- c) We have no conflict of interest in accordance with ITC3.
- d) We meet the eligibility requirements as stated in ITC6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITC5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.
- f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being wound up.
- g) The Marketing firm shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid-rigging.
- h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the "Certificate of Independent Proposal Determination" attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from *(specify website)* during the procurement process and the execution of any resulting contract.
- i) We, along with any of our sub-marketing firms are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA.
- e) Except as stated in the ITC12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause12 andITCClause29.3 and 29.4 may lead to the termination of Contract negotiations.

- (j) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- (k) We understand that KEMRI is not bound to accept any Proposal that it receives.

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

We remain,

Yours

sincerely,

Authorized Signature *{In full and initials}*: Name and Title of

Signatory:

Name of Marketing firm *(company's name or JV's name)*:

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}

2 CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to the _____

_____*[Name of Procuring Entity]*

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

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

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

Name _____

Title _____

Date

[Name, title and signature of authorized agent of Marketing firm and Date]

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

(Appendix shall not be modified)

Purpose

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

Requirements

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

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

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

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or

- recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii) “collusive practice” “is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v) “obstructive practice” is:
 - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
- “fraudulent practice” includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tenders submission designed to establish tender prices at artificial non-competitive levels and to deprive KEMRI of the benefits of free and open competition.
- c) Rejects a proposal or award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-marketing firms, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
 - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Marketing firms, Contractors, and Suppliers and their Sub-contractors, Sub-marketing firms, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
 - f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

¹For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in

A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated marketing firm, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and(ii) entering into an addendum or amendment introducing a material modification to any existing contract.

² Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by KEMRI to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

3. FORM TECH-2: MARKETING FIRM'S ORGANIZATION AND EXPERIENCE

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

A - Marketing firm's Organization

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

B - Marketing firm's Experience

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

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

3. FORMTECH-3: COMMENT SAND SUGGESTIONS

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

A - On the Terms of Reference

{Improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

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

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

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

{The structure of your Technical Proposal:

a) Technical Approach and Methodology

b) Work Plan

c) Organization and Staffing}

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

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

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

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

6. FORMT ECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS

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

1.For Key Experts, the input should be indicated individually for the same positions as required under the ITC Data Sheet 21.2

2.Months are counted from the start of the assignment/mobilization. One (1) month equals twenty-two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.

3“Home” means work in the office in the expert’s country of residence. “Field” work means work carried out in Kenya, or outside the normal residence of the Expert in Kenya or any other country outside the expert’s country of residence.



Full time input



Part time input

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

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

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

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

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

Membership in Professional Associations and Publications:_____

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

Adequacy for the Assignment:

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

Expert's contact information : (e-mail.....
phone.....) Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by KEMRI, and/or sanctions by the PPRA.

Name of Expert _____ Signature _____ Date _____
{day / month/year}

Name of authorized _____ Signature. _____ Date _____

Representative of the

Marketing firm (the same

who signs the Proposal

8. FORM TECH-7: MANDATORY SUPPORT DOCUMENTS

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

- a) Certificate of Incorporation/Certificate of Registration
- b) Certified Copy of Valid Tax Compliance Certificate
- c) Valid Single Business Permit
- d) Pin Certificate
- e) Submission of original and one copy of the tender documents shall be required. One marked “Original” and the other one marked “copy of the original”
- f) Detailed Company Profile with Directors and Key Staff

FORM TECH - 8: SELF-DECLARATION FORMS

FORM SD1

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

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

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

.....

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

Bidder Official Stamp

FORM SD2

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

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

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

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

Bidder Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

Telephone..... E-

mail.....

.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name

Sign.....

Date.....

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

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

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

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

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

I/We, the undersigned, declare that:

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

Signed:

.....

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

..... Name:

.....

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

Tenderer] Dated on day of [Insert date of signing]

Seal or stamp

SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS

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

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

FIN-1 Financial Proposal Submission

Form FIN-2 Summary of Costs

FIN-3 Breakdown of

Remuneration FIN-4

Reimbursable expenses

FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM

..... {Location, Date}
To: [Name and address of Procuring Entity]

Dear Sirs:

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

Our attached Financial Proposal is for the amount of..... {Indicate the corresponding to the amount currency} {Insert amounts in words and figures}, including of all taxes in accordance with ITC24.2 in the Data Sheet. The estimated amount of local taxes is..... {Insert currency} {Insert amount in words and figures}.

{Please note that all amounts shall be the same as in Form FIN-2}.

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

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

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

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

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

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

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

FORM FIN-2: SUMMARY OF COSTS

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

FORM FIN-3A: BREAKDOWN OF REMUNERATION

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

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

FORM FIN 3B: MARKETING FIRM'S REPRESENTATIONS REGARDING COSTS AND CHARGES

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

Marketing firm:Country:

Assignment:Date:

We hereby confirm that:

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

..... [Name of Marketing firm]

Signature of Authorized Representative

Name:

.....

.

Title:

Date:

FORM 3C: FORM FOR MARKETING FIRM'S REPRESENTATIONS REGARDING COSTS AND CHARGES

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

(Expressed in {insert name of currency*})

Personnel		1	2	3	4	5	6	7	8
Name	Position	Basic Remuneration Rate per Working Month/Day/Y ear	Social Charge s ¹	Overhe ad ¹	Subtota l	Profit ²	Away from Home Office Allowance	Proposed Fixed Rate per Working Month/Day/Ho ur	Proposed Fixed Rate per Working Month/Day/Ho ur ¹
Home Office									
Procuring	Entity's								

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

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

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

1. Review of Remuneration Rates

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

2 Rate details are discussed below:

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

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

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

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

- (v) Overheads are the Marketing firm's business costs that are not directly related to the execution of the assignment and shall not be reimbursed as separate items under the Contract. Typical items are home office costs (non-billable time, time of senior Marketing firm's staff monitoring the project, rent of headquarters' office, support staff, research, staff training, marketing, etc.), the cost of Marketing firm's personnel not currently employed on revenue-earning projects, taxes on business activities, and business promotion costs. During negotiations, audited financial statements, certified as correct by an independent auditor and supporting the last three years' overheads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. KEMRI does not accept an add-on margin for social charges, overhead expenses, etc. for Experts who are not permanent employees of the Marketing firm. In such case, the Marketing firm shall be entitled only to administrative costs and a fee on the monthly payments charged for sub-contracted Experts.
- (vi) Profit is normally based on the sum of the Salary, Social costs, and Overheads. If any bonuses paid on a regular basis are listed, a corresponding reduction shall be made in the profit amount.

Profit shall not be allowed on travel or any other reimbursable expenses.

- (vii) *Away from Home Office Allowance or Premium or Subsistence Allowances* Some Marketing firms pay allowances to Experts working away from headquarters or outside of the home office. Such allowances are calculated as a percentage of salary (or a fee) and shall not draw over heads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately.

FORM FIN-4 BREAKDOWN OF REIMBURSABLE

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 Marketing firm for possible additional services requested by KEMRI. This form shall not be used as a basis for payments under Lump-Sum contracts. This form shall be filled for Time-Based Contracts to form the basis of contract negotiations.

B. Reimbursable Expenses___								
Nº	Type of Reimbursable Expenses	Unit	Unit Cost	Quantity	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency# 3- as in FIN-2}	{Local Currency- as in FIN-2}
	{e.g., Per diem	{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 KEMRI's personnel – if required in TOR}							
Total Costs								

Legend:

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

SECTION 5. TERMS OF REFERENCE

REQUEST FOR PROPOSAL FOR PROVISION OF MARKETING FIRM TO MARKET KEMRI PRODUCTS

1.0 Introduction and Background

The Kenya Medical Research Institute (KEMRI), established in 1979 under Legal Notice No. 35 of March 2021, is Kenya's leading national body for human health research. KEMRI has grown to become a regional and global leader, dedicated to improving human health and quality of life through research, capacity building, innovation, and service delivery.

KEMRI operates a robust production facility that manufactures a range of health products. To enhance market reach and optimize revenue, KEMRI seeks to engage a **professional and experienced marketing firm** to strategically market these products. The primary goal is to significantly **increase sales revenue and grow market share**.

The key products to be marketed include, but are not limited to: **KEMrub®**, **TBcide®**, **HepCell®**, **KEMVTM®**, **assorted types of Ready To Use Culture Media (plates and tubes)**, **SAFIKEM®**, and **PLASMOCHECK**.

2.0 Marketing and Sales Objectives

The selected marketing firm will be instrumental in achieving the following core objectives:

- **Increase Sales Revenue:** Drive substantial growth in sales revenue for KEMRI products.
- **Expand Market Share:** Achieve a demonstrable increase in market share across relevant sectors.
- **New Market Penetration:** Successfully introduce KEMRI products into new markets, specifically excluding existing channels such as public healthcare facilities, KEMSA, MEDS, and KNH.
- **Enhance Brand Awareness:** Significantly boost the recognition and visibility of KEMRI products in target markets.

3.0 Scope of Work

The selected marketing firm will be responsible for a comprehensive suite of activities, including:

- **Market Expansion and Business Development:** Identifying and aggressively pursuing new business opportunities, as well as expanding KEMRI's presence in identified growth markets for its products.
- **Marketing Plan Development and Implementation:** Creating and executing data-driven, comprehensive marketing and sales plans tailored for KEMRI products.
- **Strategic Guidance:** Providing expert marketing and distribution strategies designed to optimize the sales and reach of KEMRI products.
- **Resource Mobilization** Allocate human and financial resources to support aggressive marketing and sales efforts for KEMRI products.
- **Performance Reporting:** Submitting detailed monthly sales reports that include sales data, in-depth market trends analysis, and future sales projections.

4.0 Roles and Responsibilities

4.1 KEMRI's Responsibilities:

- Supply products for sale and distribution.
- Pay commission for the sales made by the firm
- Provide necessary product information and technical specifications.

- Offer strategic oversight and guidance.
- Review and approve marketing plans and materials.
- Periodical evaluation on the performance of the marketing firm.

4.2 Marketing Firm's Responsibilities: The marketing firm shall be solely responsible for:

- **Strategy Implementation:** Executing all approved marketing and sales plans and strategies in the marketplace on behalf of KEMRI.
- **Reporting and Analysis:** Preparing and submitting comprehensive marketing and sales performance reports, along with current market trends and competitive analysis reports to KEMRI.
- **Logistics and Property Handling:** Efficiently managing product movement from KEMRI's warehouse to the marketplace and managing customer property.
- **Human Resources Management:** Independently managing all human resources, including recruitment, training, compensation, and related legal/statutory obligations for its personnel engaged in this assignment.
- **Financial Obligation:** Covering all costs associated with marketing, sales, logistics, and operational activities.

5.0 Key Deliverables

The successful marketing firm is expected to consistently deliver the following:

- **Identified New Business Opportunities:** Concrete proposals and actionable plans for new market segments and sales channels.
- **Achieved Sales Targets:** Consistent attainment or exceeding of mutually agreed-upon sales targets.
- **Regular Performance Reports:** Timely submission of comprehensive monthly reports on sales, market trends, and accurate forecasts.

6.0 Evaluation Criteria

Proposals will be rigorously evaluated based on the following weighted criteria:

- **Experience and Market Reach:** The firm's overall experience in the health/medical products sector and its demonstrated reach within the target market(s).
- **Marketing Plan and Sales Strategy:** Quality, innovativeness, and feasibility of the proposed marketing plan and sales strategy, including a clear implementation matrix.
- **Proven Track Record:** Demonstrated profitability and success in undertaking similar marketing assignments, supported by verifiable past performance.
- **Ability to Meet Sales Targets:** The firm's proposed methodology and confidence in achieving aggressive sales targets within stipulated timelines.
- **Professionalism and Adequacy of Approach:** The level of professionalism, organizational capability, and the suitability of the firm's overall approach to the assignment.
- **Financial Capacity:** The firm's financial capability and stability to undertake and sustain the assignment effectively.
- **Commission rates:** The firm's financial proposal for the commission for sales

7.0 Proposal Submission Requirements

The selection process will adhere to the following mandatory requirements for all proposed firms:

7.1 Firm Experience and Registration

- **Firm Registration/Experience:** The firm must demonstrate **not less than five (5) years** of continuous registration and operational experience in sales and marketing.
- **Client References:** Provide verifiable references from at least **five (5) clients** for whom the firm has successfully marketed medical consumption products.

7.2 Key Personnel Qualifications

- **Director/CEO:** Must be a trained marketer, preferably holding an MBA.
- **Other Managers:** Must possess a Bachelor of Commerce, Business Administration, or Marketing degree.
- **Operational/Sales Staff:** Must hold a Diploma in Marketing.
- **Support Team:** The team must include personnel with a **biomedical background** to ensure product understanding.

7.3 Financial and Compliance Documentation

- **Financial Audited Reports:** Submission of audited financial reports for the **past three (3) consecutive years**.
- **Business Turnover:** Proof of business turnover for the **past three (3) consecutive years**.
- **Litigation Status:** A formal declaration confirming **no current or past litigation**.
- **Conflict of Interest Declaration:** A formal declaration affirming no conflict of interest related to this engagement.

7.4 Strategic and Operational Commitments

- **Comprehensive Business/Marketing Plan:** Submission of a detailed business plan/marketing plan with a clear implementation matrix and proposed timelines.
- **Confidentiality Agreements:** Willingness to sign KEMRI's standard confidentiality agreements.
- **Intellectual Property Protection:** A strong commitment to respecting and protecting KEMRI's intellectual property rights.
- **Non-handling of Competitor Products:** A formal declaration that the firm does not currently, and will not during the engagement period, handle competitor products of a similar nature to KEMRI's product portfolio.

8.0 Budget and Payment Terms

- **Cost Incurrence:** KEMRI shall **not incur any direct costs** for the sales and marketing activities undertaken by the marketing firm. All marketing and operational expenses are the sole responsibility of the firm.
- **Product Release:** Products will be released to the marketing firm strictly on a **Cash on Delivery (COD) basis**.
- **Sales Targets and Performance-Based Payment:** Specific sales targets will be jointly set for each product portfolio. The marketing firm's commission shall be **paid only after sales have been successfully made and payment has been received by KEMRI**.

9.0 Engagement Timeline and Performance Review

This engagement will be governed by a formal contractual agreement for an initial period of **one (1) year renewable subject to successful performance**. Performance will be rigorously and continuously monitored and evaluated through:

- **Monthly Reports:** As detailed in Section 3.0.
- **Mid-Term Review:** A comprehensive performance review meeting halfway through the contract term.
- **End-of-Contract Evaluation:** A final performance assessment upon the conclusion of the one-year period, which will inform any potential renewal.

1. MANDATORY EVALUATION CRITERIA (YES/NO)

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

- a) Certificate of Incorporation/Certificate of Registration
- b) Certified Copy of Valid Tax Compliance Certificate
- c) Valid Single Business Permit
- d) Pin Certificate
- e) Submission of original and one copy of the tender documents shall be required. One marked “Original” and the other one marked “copy”
- f) Detailed Company Profile with Directors and Key Staff

2. TECHNICAL EVALUATION

	CRITERIA	Marks
1.	RELEVANT EXPERIENCE OF THE CONSULTANCY AND TECHNICAL CAPABILITIES TO CARRY OUT THE ASSIGNMENT	
a.	Firm Experience and Registration Firm Registration/Experience: The firm must demonstrate not less than five (5) years of continuous registration and operational experience in marketing. (5marks) Client References: Provide verifiable references from at least five (5) clients for whom the firm has successfully marketed medical consumption products. (10marks)	15
b	Key Personnel Qualifications Director/CEO: Must be a trained marketer, preferably holding an MBA. (3marks) Other Managers: Must possess a Bachelor of Commerce, Business Administration, or Marketing degree. (3marks) Operational/Sales Staff: Must hold a Diploma in Marketing. (3marks) Support Team: The team must include personnel with a biomedical background to ensure product understanding. (3marks)	12
c	Financial and Compliance Documentation Financial Audited Reports: Submission of audited financial reports for the past three (3) consecutive years. (10marks) Business Turnover: Proof of business turnover for the past three (3) consecutive years. (5marks) Litigation Status: A formal declaration confirming no current or past litigation. (4marks) Conflict of Interest Declaration: A formal declaration affirming no conflict of interest related to this engagement. (4marks)	23

d	Strategic and Operational Commitments Comprehensive Business/Marketing Plan: Submission of a detailed business plan/marketing plan with a clear implementation matrix and proposed timelines. (15marks) Confidentiality Agreements: Willingness to sign KEMRI's standard confidentiality agreements. (5marks) Intellectual Property Protection: A strong commitment to respecting and protecting KEMRI's intellectual property rights. (5marks) Non-handling of Competitor Products: A formal declaration that the firm does not currently, and will not during the engagement period, handle competitor products of a similar nature to KEMRI's product portfolio. (5marks)	30
e	Ability to Meet Sales Targets. The firm's proposed methodology and confidence in achieving aggressive sales targets within stipulated timelines. (20marks)	15
f	Commission rates The firm's financial proposal for the commission for sales	5
	GRAND TOTAL	100

Pass Mark: 70marks

Bidders shall be expected to score **at least 70%** of the allocated points to qualify in the technical evaluation and proceed to the financial evaluation stage. Tenderers who fail to achieve a minimum score will be disqualified from further evaluation.

2.3 Financial Evaluation Requirements/Criteria:

This will be based on compliance to the following criteria by tenderers.

- i. Checking completeness of financial bids (All items in the price schedule must be quoted for completeness). Incomplete price schedule shall lead to disqualification.
- ii. No correction of arithmetic errors - The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.
- iii. The bidder is required to propose a commission structure that will be payable upon the successful sale of the products.
- iv. The award will be based on the lowest evaluated bid.

SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS

Preface

1. This Section includes two types of standard contract forms for: A Lump-Sum Contract and a Time-Based Contract. Each type includes General Conditions of Contract (“GCC”) that shall not be modified, and Special Conditions of Contract (“SCC”). The SCC includes clauses specific to each contract to supplement, but not over- write or otherwise contradict, the General Conditions of Contract.
2. Lump-Sum Contract. This type of contract is used mainly for assignments in which the scope and the duration of the Services and the required output of the Marketing firm are clearly defined. Payments are linked to outputs (deliverables) such as draft or final reports, drawings, bill of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due to clearly specified outputs and milestones. Nevertheless, quality control of the Marketing firm's outputs by KEMRI is paramount.
3. Time-Based Contract. This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the marketing firms required for attaining the objectives of the assignment is difficult to assess. In time-based contracts the Marketing firm provides services on a timed basis according to quality specifications, and Marketing firm's remuneration is determined on the basis of the time actually spent by the Marketing firm in carrying out the Services and is based on (i) agreed upon unit rates for the Marketing firm'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 KEMRI to closely supervise the Marketing firm and to be involved in the daily execution of the assignment.
4. The templates are designed for use in assignments with marketing firms and should not be used for contracting individual experts. In some consultancy assignments such as design and construction supervision, both Lump- Sum and Time-Based Contracts are used and signed with the Marketing firm. In that case, the Lump-Sum Contract would apply for the design part of the Services while the construction supervision part would be based on a Time- Based Contract. In such an event, both types of contracts shall be signed at the same time.

CONTRACT FOR MARKETING FIRM'S SERVICES

Lump-Sum Contract

Marketing Services for:

Contract No.: _____

Contract Description: _____

Between

_____ *[Name of KEMRI]*

and

_____ *[Name of the Marketing firm]*

Date:

I. FORM OF CONTRACT - LUMP-SUM

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

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

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

WHEREAS

- a) KEMRI has requested the Marketing firm to provide certain marketing services as defined in this Contract (herein after called the “Services”);
 - b) the Marketing firm, having represented to KEMRI 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) KEMRI has set aside a budget and funds toward the cost of the Services and intends to apply a portion of these funds towards payments under this Contract;
- NOW THEREFORE the parties hereto hereby agree as follows:

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

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

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

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

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

For and on behalf of..... *[Name of Marketing firm or Name of a Joint Venture]* *[Authorized Representative of the Marketing firm–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 Marketing firm..... *[Insert the Name of the Joint Venture]* *[Name of the lead member]*

[Authorized Representative on behalf of a Joint Venture] [Add signature blocks for each member if all are signing]

SECTION 7: GENERAL CONDITIONS OF CONTRACT

A. General Provisions

1. Definitions

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

- a) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- b) “Marketing firm” means a legally-established professional marketing firm or entity selected by KEMRI to provide the Services under the signed Contract.
- c) “Contract” means the legally binding written agreement signed between KEMRI and the Marketing firm and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- d) “Procuring Entity” means KEMRI that signs the Contract for the Services with the selected Marketing firm.
- e) “Day” means a working day unless indicated otherwise.
- f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- g) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Marketing firm, Sub-marketing firm or JV member(s) assigned by the Marketing firm to perform the Services or any part thereof under the Contract.
- h) “Foreign Currency” means any currency other than the currency of Kenya.
- i) “GCC” mean these General Conditions of Contract.
- j) “Government” means the government of Kenya.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to KEMRI 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 Curriculum Vitae (CV) was taken into account in the technical evaluation of the Marketing firm's proposal.
- m) “Local Currency” means the Kenya Shillings, the currency of Kenya.
- n) “Non-Key Expert(s)” means an individual professional provided by the Marketing firm or its Sub-marketing firm to perform the Services or any part here of under the Contract.
- o) “Party” means KEMRI or the Marketing firm, as the case may be, and “Parties” means both of them.
- p) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- q) “Services” means the work to be performed by the Marketing firm pursuant to this Contract, as described in Appendix A hereto.

- r) “Sub-marketing firms” means an entity to whom/which the Marketing firm subcontracts any part of the Services while remaining solely liable for the execution of the Contract.

- (t) “Third Party “means any person or entity other than the Government, KEMRI, the Marketing firm or a Sub-marketing firm.

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 KEMRI and the Marketing firm. The Marketing firm, subject to this Contract, has complete charge of the Experts and Sub-marketing firms, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

3. Law Governing Contract

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

4. Language

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

5. Headings

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

6. Communications

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

7. Location

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

8. Authority of Member in Charge

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

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 KEMRI or the Marketing firm may be taken or executed by the officials specified in the SCC.

10. Corrupt and Fraudulent Practices

- 10.1 The government requires compliance with its policy regarding corrupt and fraudulent/prohibited practices as set forth in its laws and policies.
- 10.2 **Commissions and Fees-**KEMRI requires the Marketing firm to disclose any commissions, gratuities or fees that may have been paid or are to be paid to a gents or any other party with respect to the

selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by KEMRI and/or sanctions by the PPRA.

B. Commencement, Completion, Modification and Termination of Contract

11 Effectiveness of Contract

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

12 Termination of Contract for Failure to Become Effective

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

13 Commencement of Services

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

14 Expiration of Contract

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

15 Entire Agreement

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

16 Modifications or Variations

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

17 Force Majeure

a. Definition

- 17.1 For the purposes of this Contract, “Force Majeure” means event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.
- 17.2 Force Majeure shall not include (i) any event which has caused by the negligence or intentional action of a Party or such Party's Experts, Sub-marketing firms or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract and avoid or overcome in the carrying out of its obligations hereunder.
- 17.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

b. No Breach of Contract

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

c. Measures to be taken

- 17.5 A party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- 17.6 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- a) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
 - b) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Marketing firm, upon instructions by KEMRI, shall either:
 - c) demobilize, in which case the Marketing firm shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by KEMRI, in reactivating the Services; or
 - d) Continue with the Services to the extent reasonably possible, in which case the Marketing firm shall continue to be paid under the terms of this Contract and be reimbursed or additional costs reasonably and necessarily incurred.
- 17.7 In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 44 & 45.

18 Suspension

- 18.1 KEMRI may, by written notice of suspension to the Marketing firm, suspend all payments to the Marketing firm here under if the Marketing firm 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 Marketing firm to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Marketing firm 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 KEMRI

- 19.1.1 KEMRI 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, KEMRI shall give at least thirty (30) calendar days' written notice of termination to the Marketing firm in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):
- a If the Marketing firm fails to remedy a failure in the performance of its obligations here under, as specified in a notice of suspension pursuant to Clause GCC 18;
 - b If the Marketing firm becomes (or, if the Marketing firm consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go in to liquidation or receivership whether compulsory or voluntary;
 - c If the Marketing firm fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;
 - d If, as the result of Force Majeure, the Marketing firm is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;

- e If KEMRI, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- f If the Marketing firm fails to confirm availability of Key Experts as required in Clause GCC13.

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

b. By the Marketing firm

- a) The Marketing firm may terminate this Contract, by not less than thirty (30) calendar days' written notice to KEMRI, in case of the occurrence of any of the events specified in paragraphs(a)through(d)of this Clause.
- b) If KEMRI fails to pay any money due to the Marketing firm pursuant to this Contract and not subject to dispute pursuant to Clause GCC45.1withinforty-five (45) calendar days after receiving written notice from the Marketing firm that such payment is overdue.
- c) If, as the result of Force Majeure, the Marketing firm is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- d) If KEMRI fails to comply with any final, decision reached as a result of arbitration pursuant to Clause GCC45.1.
- e) If KEMRI 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 Marketing firm may have subsequently approved in writing) following the receipt by KEMRI of the Marketing firm's notice specifying such breach.

c. Cessation of Rights and Obligations

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

d. Cessation of Services

19.1.5. Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Marketing firm shall immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Marketing firm and equipment and materials furnished by KEMRI, the Marketing firm shall proceed as provided, respectively, by Clauses GCC27or GCC28.

e. Payment up on Termination

19.1.6 Up on termination of this Contract, KEMRI shall make the following payments to the Marketing firm:

- a) Payment or Services satisfactorily performed prior to the effective date of termination; and
- b) In the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. Obligations of the Marketing firm

16. General

a. Standard of Performance

20.1 The Marketing firm shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices,

and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Marketing firm shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to KEMRI, and shall at all times support and safeguard KEMRI's legitimate interests in any dealings with the third parties.

- 20.2 The Marketing firm shall employ and provide such qualified and experienced Experts and Sub-marketing firms as are required to carry out the Services.
- 20.3 The Marketing firm may subcontract part of the Services to an extent and with such Key Experts and Sub-marketing firms as may be approved in advance by KEMRI. Notwithstanding such approval, the Marketing firm shall retain full responsibility for the Services.

b. Law Applicable to Services

- 20.4. The Marketing firm 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-marketing firms, comply with the Applicable Law.
- 20.5 Throughout the execution of the Contract, the Marketing firms shall comply with the import of goods and services prohibitions in Kenya when
- a As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - b by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.
- 20.6. KEMRI shall notify the Marketing firm in writing of relevant local customs, and the Marketing firm shall, after such notification, respect such customs.

21 Conflict of Interests

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

a. Marketing firm Not to Benefit from Commissions, Discounts, etc.

- 21.1.1 The payment of the Marketing firm pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Marketing firm's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Marketing firm shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations here under, and the Marketing firm shall use its best efforts to ensure that any Sub-marketing firms, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

- 21.1.2 Furthermore, if the Marketing firm, as part of the Services, has the responsibility of advising KEMRI on the procurement of goods, works or services, the Marketing firm shall at all times exercise such responsibility in the best interest of KEMRI. Any discounts or commissions obtained by the Marketing firm in the exercise of such procurement responsibility shall be for the account of KEMRI.

b. Marketing firm and Affiliates Not to Engage in Certain Activities

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

c. Prohibition of Conflicting Activities

- 21.1.4 The Marketing firm shall not engage and shall cause its Experts as well as its Sub-marketing firms 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 Marketing firm has an obligation and shall ensure that its Experts and Sub-marketing firms shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Procuring Entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Marketing firm or the termination of its Contract.

22 Confidentiality

- 22.1 Except with the prior written consent of KEMRI, the Marketing firm 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 Marketing firm and the Experts make public the recommendations formulated in the course of, or because of, the Services.

23 Liability of the Marketing firm

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

24 Insurance to be taken out by the Marketing firm

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

25 Accounting, Inspection and Auditing

- 25.1 The Marketing firm shall keep and shall make all reasonable efforts to cause its Sub-marketing firms to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.
- 25.2 The Marketing firm shall permit and shall cause its Sub-marketing firms to permit, the PPRA and/ or persons appointed by the PPRA to inspect the Site and /or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Marketing firm's attention is drawn to Clause GCC10 which provides, interlaid, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this ClauseGCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of in eligibility under the PPRA's prevailing sanctions procedures.)

26 Reporting Obligations

- 26.1 The Marketing firm shall submit to KEMRI 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 KEMRI 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 Marketing firm for KEMRI in the course of the Services shall be confidential, become and remain the absolute property of KEMRI. The Marketing firm shall, not later than upon termination or expiration of this Contract, deliver all such documents to KEMRI, together with a detailed inventory thereof. The Marketing firm 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 KEMRI.
- 27.2 If license agreements are necessary or appropriate between the Marketing firm and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Marketing firm shall obtain KEMRI's prior written approval to such agreements, and KEMRI 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 Marketing firm by KEMRI or purchased by the Marketing firm wholly or partly with funds provided by KEMRI, shall be the property of KEMRI and shall be marked accordingly. Upon termination or expiration of this Contract, the Marketing firm shall make available to KEMRI an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with KEMRI's instructions. While in possession of such equipment, vehicles and materials, the Marketing firm, unless otherwise instructed by KEMRI in writing, shall insure them at the expense of KEMRI in an amount equal to their full replacement value.
- 28.2 Any equipment or materials brought by the Marketing firm or its Experts into Kenya for the use either for the project or personal use shall remain the property of the Marketing firm or the Experts concerned, as applicable.

D. Marketing firm's Experts and Sub-marketing firms

29 Description of Key Experts

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

30 Replacement of Key Experts

- 30.1 Except as KEMRI 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 Marketing firm's written request and due to circumstances outside the reasonable control of the Marketing firm, including but not limited to death or medical incapacity. In such case, the Marketing firm shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31 Removal of Experts or Sub-marketing firms

- 31.1 If KEMRI finds that any of the Experts or Sub-marketing firm has committed serious misconduct or has been charged with having committed a criminal action, or shall the Procuring Entity determine that Marketing firm's Expert or Sub marketing firm have engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practice while performing the Services, the Marketing firm shall, at KEMRI's written request, provide a replacement.
- 31.2 In the event that any of Key Experts, Non-Key Experts or Sub-marketing firms is found by KEMRI to be incompetent or incapable in discharging assigned duties, KEMRI, specifying the grounds therefore, may request the Marketing firm to provide a replacement.
- 31.3 Any replacement of the removed Experts or Sub marketing firms shall possess better qualifications and experience and shall be acceptable to KEMRI.
- 31.4 The Marketing firm shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

E. Obligations of KEMRI

32 Assistance and Exemptions

- 32.1 Unless otherwise specified in the SCC, KEMRI shall use its best efforts to:

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

33 Access to Project Site

- 33.1 KEMRI warrants that the Marketing firm shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. KEMRI will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Marketing firm 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 Marketing firm or any Sub-marketing firms or the Experts of either of them.

34 Change in the Applicable Law Related to Taxes and Duties

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

35 Services, Facilities and Property of KEMRI

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

36 Counterpart Personnel

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

37 Payment Obligation

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

F. Payments to the Marketing firm

38 Contract Price

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

39 Taxes and Duties

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

40 Mode of Billing and Payment

- 40.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 40.2 The payments under this Contract shall be made in lump-sum installments against deliverables specified in Appendix A. The payments will be made according to the payment schedule stated in the SCC.
- 40.2.1 Advance payment: Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to KEMRI in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in Appendix D, or in such other form as KEMRI shall have approved in writing. The advance payments will be set off by KEMRI in equal portions against the lump-sum installments specified in the SCC until said advance payments have been fully set off.
- 40.2.2 The Lump-Sum Installment Payments. KEMRI shall pay the Marketing firm within sixty (60) days after the receipt by KEMRI of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if KEMRI does not approve the submitted deliverable(s) as satisfactory in which case KEMRI shall provide comments to the Marketing firm within the same sixty (60) days period. The Marketing firm shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.
- 40.2.3 The Final Payment: The final payment under this Clause shall be made only after the final report has been submitted by the Marketing firm and approved as satisfactory by KEMRI. The Services shall then be deemed completed and finally accepted by KEMRI. The last lump-sum installment shall be deemed approved for payment by KEMRI within ninety (90) calendar days after receipt of the final report by KEMRI unless KEMRI, within such ninety (90) calendar day period, gives written notice to the Marketing firm specifying in detail deficiencies in the Services, the final report. The Marketing firm shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.
- 40.2.4 All payments under this Contract shall be made to the accounts of the Marketing firm specified in

the SCC.

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

41 Interest on Delayed Payments

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

G. Fairness and Good Faith

42 Good Faith

42.1 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

43 Amicable Settlement

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

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

44 Dispute Resolution

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

SECTION 8: SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of Kenya <i>[Where the Parties may designate the law of another country, in which case the name of the respective country should be inserted, and the name of Kenya should be removed.]</i>
4.1	The language is: English
6.1 and 6.2	The addresses are <i>[fill in at negotiations with the selected firm]</i> : Procuring Entity: _____ Attention: _____ Facsimile: _____ E-mail: _____

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	Marketing firm: Attention: _____ Facsimile: _____ E-mail: _____
8.1	<i>[If the Marketing firm consists only of one entity, state “N/A”;</i> OR <i>If the Marketing firm is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]</i> The Lead Member on behalf of the JV is _____ <i>[insert name of the member]</i>
9.1	The Authorized Representatives are: For KEMRI: <i>[name, title]</i> ____ For the Marketing firm: <i>[name, title]</i>
11.1	The effectiveness conditions are the following: <i>[Note: If there are no effectiveness conditions, state “N/A”]</i> OR <i>List here any conditions of effectiveness of the Contract, e.g., receipt by the Marketing firm of an advance payment, and by KEMRI of an advance payment guarantee (see Clause SCC45.1(a)), etc.]</i>
12.1	Termination of Contract for Failure to Become Effective: The time period shall be ____ <i>[insert time period, e.g.: four months]</i> .
13.1	Commencement of Services: The number of days shall be _____ <i>[e.g.: ten]</i> . Confirmation of Key Experts’ availability to start the Assignment shall be submitted to KEMRI in writing as a written statement signed by each Key Expert.
14.1	Expiration of Contract: The time period shall be ____ <i>[insert time period, e.g.: twelve months]</i> .
21.1.3.	KEMRI reserves the right to determine on a case-by-case basis whether the Marketing firm should be disqualified from providing goods, works or non-marketing services due to a conflict of a nature described in Clause GCC 21.1.3 Yes:_____ No: _____

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
23.1	No additional provisions. <i>[OR</i> The following limitation of the Marketing firm’s Liability towards KEMRI can be subject to the Contract’s negotiations: “Limitation of the Marketing firm’s Liability towards KEMRI: (a) Except in the case of gross negligence or willful misconduct on the part of the Marketing firm or on the part of any person or a firm acting on behalf of the Marketing firm in carrying out the Services, the Marketing firm, with respect to damage caused by the Marketing firm to KEMRI’s property, shall not be liable to KEMRI: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds two times the total value of the Contract; (b) This limitation of liability shall not (i) affect the Marketing firm’s liability, if any, for damage to Third Parties caused by the Marketing firm or any person or firm acting on behalf of the Marketing firm in carrying out the Services; (ii) be construed as providing the Marketing firm with any limitation or exclusion from liability which is prohibited by the Applicable Law. <i>[Notes to KEMRI and the Marketing firm:]</i> <i>Any suggestions made by the Marketing firm in the Proposal to introduce exclusions/limitations of the Marketing firm’s liability under the Contract should be carefully scrutinized by KEMRI <u>prior to accepting any changes</u> to what was included in the issued RFP.</i> <i>To be acceptable to KEMRI, any limitation of the Marketing firm’s liability should at the very least be reasonably related to (a) the damage the Marketing firm might potentially cause to KEMRI, and (b) the Marketing firm’s ability to pay compensation using its own assets and reasonably obtainable insurance coverage. The Marketing firm’s liability shall not be limited to less than a multiplier of the total payments to the Marketing firm under the Contract for remuneration and reimbursable expenses. <u>A statement to the effect that the Marketing firm is liable only for the re-performance of faulty Services is not acceptable to KEMRI.</u> Also, the Marketing firm’s liability should never be limited for loss or damage caused by the Marketing firm’s gross negligence or willful misconduct.</i> <i>KEMRI does not accept a provision to the effect that KEMRI shall indemnify and hold harmless the Marketing firm against Third Party claims, except, of course, if a claim is based on loss or damage caused by a default or wrongful act of KEMRI to the extent permissible by the law applicable in Kenya.]</i>
24.1	The insurance coverage against the risks shall be as follows: <i>[Delete what is not applicable except (a)].</i> (a) Professional liability insurance, with a minimum coverage of _____ <i>[insert amount and currency which should be not less than</i>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<i>the total ceiling amount of the Contract</i>]; (b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in KEMRI's country by the Marketing firm or its Experts or Sub-marketing firms, with a minimum coverage of <i>[insert amount and currency or state "in accordance with the applicable law in KEMRI's country"]</i>; (c) Third Party liability insurance, with a minimum coverage of <i>[insert amount and currency or state "in accordance with the applicable law in Kenya"]</i>; (d) employer's liability and workers' compensation insurance in respect of the experts and Sub-marketing firms in accordance with the relevant provisions of the Applicable Law in Kenya, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and (e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Marketing firm's property used in the performance of the Services, and (iii) any documents prepared by the Marketing firm in the performance of the Services.
27.1	The additional rights to the use of the documents are: <i>[If applicable, insert any exceptions to proprietary rights provisions]</i>
27.2	<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 indicated as Not Applicable. 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> <i>[The Marketing firm shall not use these [insert what applies..... documents and software....] for purposes unrelated to this Contract without the prior written approval of KEMRI.]</i> <i>[OR]</i> <i>[KEMRI shall not use these [insert what applies..... documents and software.....] for purposes unrelated to this Contract without the prior written approval of the Marketing firm.]</i> <i>[OR]</i> <i>[Neither Party shall use these [insert what applies... documents and software.....] for purposes unrelated to this Contract without the prior written approval of the other Party.]</i>
32.1 (a) through (f)	<i>[List here any changes or additions to Clause GCC 32.1. If there are no such changes or additions, indicate Not Applicable.]</i>
32.1(g)	<i>[List here any other assistance to be provided by KEMRI. If there is no such other assistance, indicate Not Applicable for this Clause SCC 32.1(g).]</i>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
38.1	The Contract price is: _____ <i>[insert amount and currency for each currency as applicable]</i> <i>[indicate: inclusive or exclusive]</i> of local taxes. Any local taxes chargeable in respect of this Contract for the Services provided by the Marketing firm shall <i>[insert as appropriate: “be paid” or “reimbursed”]</i> by KEMRI <i>[insert as appropriate: “for “or “to”]</i> the Marketing firm. The amount of such taxes is _____ <i>[insert the amount as finalized at the Contract’s negotiations on the basis of the tax amounts provided by the Marketing firm in Form FIN-2 of the Marketing firm’s Financial Proposal.</i>
39.1 and 39.2	<i>[KEMRI, depending on the source of funds and tax exemptions already granted by the Government, shall decide whether the Marketing firm (i) should be exempted from local tax, or (ii) should be reimbursed by KEMRI for any such tax they might have to pay (or that KEMRI would pay such tax on behalf of the Marketing firm)]</i> KEMRI warrants that <i>[choose one applicable option consistent with the ITC 16.3 and the outcome of the Contract’s negotiations (Form FIN-2)]</i> <i>If ITC16.3 indicates a tax exemption status, include the following: “the Marketing firm, the Sub-marketing firms and the Experts shall be exempt from”</i> <i>OR</i> <i>If ITC16.3 does not indicate the exemption and, depending on whether KEMRI shall pay the withholding tax or the Marketing firm has to pay, include the following:</i> <i>“KEMRI shall pay on behalf of the Marketing firm, the Sub-marketing firms and the Experts,” OR “KEMRI shall reimburse the Marketing firm, the Sub-marketing firms and the Experts”]</i> any taxes, duties, fees, levies and other impositions imposed, under the applicable law in KEMRI’s country, on the Marketing firm, the Sub-marketing firms and the Experts in respect of: (a) any payments whatsoever made to the Marketing firm, Sub-marketing firms and the Experts (other than nationals or permanent residents of Kenya), in connection with the carrying out of the Services; (b) any equipment, materials and supplies brought into Kenya by the Marketing firm or Sub-marketing firms for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them; (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by KEMRI and which is treated as property of KEMRI; (d) any property brought into Kenya by the Marketing firm, any Sub-marketing firms or the Experts (other than nationals or permanent residents of Kenya), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from KEMRI’s country, provided that: (i) the Marketing firm, Sub-marketing firms and experts shall follow the usual customs procedures of Kenya in importing property into Kenya; and (ii) if the Marketing firm, Sub-marketing firms or Experts do not withdraw but dispose of any property in KEMRI’s country upon which customs duties and taxes have been exempted, the Marketing firm, Sub-marketing firms or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of Kenya, or (b) shall reimburse them to KEMRI if they were paid by KEMRI at the time the property in question was brought into KEMRI’s country.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
40.2	The payment schedule: <i>[Payment of installments shall be linked to the deliverables specified in the Terms of Reference in Appendix A]</i> 1st payment: <i>[insert the amount of the installment, percentage of the total Contract price, and the currency. If the first payment is an advance payment, it shall be made against the bank guarantee for the same amount as per GCC 41.2.1]. E.g. "Twenty (20) percent of the lump sum contract price shall be paid upon submission and approval of the Inception Report</i> 2nd payment: Example: Sixty (60) percent of the lump sum Contract Price shall be paid upon submission of an acceptable Draft Report. 3rd and Final Payment: Example: Twenty (20) percent of the lump sum Contract Price shall be paid upon submission and approval of the Final Report. <i>[Total sum of all installments shall not exceed the Contract price set up in SCC38.1. Every Payment shall be subject to (i) submission to KEMRI of the prerequisite Report and/or payment request documents, and, (ii) approval and acceptance of the said reports and documents by KEMRI]</i>
40.2.1	<i>[The advance payment could be in either the foreign currency, or the local currency, or both; select the correct wording in the Clause here below. The advance bank payment guarantee should be in the same currency(ies)]</i> The following provisions shall apply to the advance payment and the advance bank payment guarantee: (1) An advance payment [of <i>[insert amount]</i> in foreign currency] [and of <i>[insert amount]</i> in Kenya Shillings] shall be made within <i>[insert number]</i> days after the receipt of an advance bank payment guarantee by KEMRI. The advance payment will be set off by KEMRI in equal portions against [list the payments against which the advance is offset]. (2) The advance bank payment guarantee shall be in the amount and in the currency of the currency (ies) of the advance payment. (3) The bank guarantee will be released when the advance payment has been fully set off.
40.2.4	The accounts are: for foreign currency: <i>[insert account]</i>. for local currency: <i>[insert account]</i>.
41.1	The interest rate is: <i>[insert rate]</i>.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
44.1	Disputes shall be settled by arbitration in accordance with the following provisions: 1. <u>Selection of Arbitrators.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions: (a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to <i>[name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland]</i> for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, <i>[insert the name of the same professional body as above]</i> shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute. (b) Where the Parties do not agree that the dispute concerns a technical matter, KEMRI and the Marketing firm shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]</i>. (c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>[name the same appointing authority as in said paragraph (b)]</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.
	2. <u>Rules of Procedure.</u> Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract. 3. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator. 4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Marketing firm's home country <i>[If the Marketing firm consists of more than one entity, add: or of the home country of any of their members or Parties]</i> or of the Government's country. For the purposes of this

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	Clause, “home country” means any of: (a) the country of incorporation of the Marketing firm <i>[If the Marketing firm consists of more than one entity, add: or of any of their members or Parties];</i> or (b) the country in which the Marketing firm’s [or any of their members’ or Parties’] principal place of business is located; or (c) the country of nationality of a majority of the Marketing firm’s [or of any members’ or Parties’] shareholders; or (d) the country of nationality of the Sub-marketing firms concerned, where the dispute involves a subcontract.
	5. <u>Miscellaneous</u>. In any arbitration proceeding hereunder: (a) proceedings shall, unless otherwise agreed by the Parties, be held in <i>[select a country which is neither KEMRI’s country nor the Marketing firm’s country];</i> (b) the <i>[type of language]</i> language shall be the official language for all purposes; and (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

SECTION 9: APPENDICES

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

Appendix B - Key Experts

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

Appendix C – Breakdown of Contract Price

{Insert the table with the unit rates to arrive at the breakdown of the lump-sum price. The table shall be based on [Form FIN-3andFIN-4] of the Marketing firm's Proposal and reflect, any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [FormFIN-3andFIN-4] at the negotiations or state that none has been made.}

Appendix D - Form of Advance Payment Guarantee

[Note: See Clause GCC 41.2.1 and SCC 41.2.1]

Bank Guarantee for Advance Payment_____ [Bank's Name and Address of Issuing Branch or Office] Beneficiary:_____ [Name and Address of Procuring Entity]
Date:_____

ADVANCEPAYMENTGUARANTEE No.:_____

We have been informed that_____ [name of Marketing firm or a name of the Joint Venture, same as appears on the signed Contract] (herein after called" the Marketing firm") has entered into Contract No. _____ [Reference number of the contract] dated_____ with you, for the provision of _____ [brief description of Services] (herein after 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 Marketing firm, we_____ [name of bank] here by irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] () [amount in words]¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Marketing firm are in b reach of their obligation under the Contract because the Marketing firm 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 Marketing firm 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 Marketing firm 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 Marketing firm has made Full repayment of the amount of the advance payment, or on the day of _____, ² whichever is earlier.

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

[Signature]

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

PREFACE

This Section includes a Time-Based Contract. It includes General Conditions of Contract (“GCC”) that shall not be modified, and Special Conditions of Contract (“SCC”). The SCC include clauses specific to each contract to supplement, but not over-write or otherwise contradict, the General Conditions of Contract.

Time-Based Contract. This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the marketing firms required for attaining the objectives of the assignment is difficult to assess. In time-based contracts the Marketing firm provides services on a timed basis according to quality specifications, and Marketing firm's remuneration is determined on the basis of the time actually spent by the Marketing firm in carrying out the Services and is based on (i) agreed upon unit rates for the Marketing firm'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 KEMRI to closely supervise the Marketing firm and to be involved in the daily execution of the assignment.

The template is designed for use in assignments with marketing firms and shall not be used for contracting of individual experts. In some consultancy assignments such as design and construction supervision, both Lump Sum and Time- Based Contracts are used and signed with the Marketing firm. In that case, the Lump-Sum Contract would apply for the design part of the Services while the construction supervision part would be based on a Time-Based Contract. In such event, both types of contracts shall be signed at the same time.

In case a Time-Based Contract is not used, please delete the contract template for time-based contract before issuance of the RFP to Marketing firms.

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

² *Insert the expected expiration date. In the event of an extension of the time for completion of the Contract KEMRI would need to request an extension of*

This guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, KEMRI might consider adding the following text to the form, at the end of the pen ultimate 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 KEMRI's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

CONTRACT FOR MARKETING FIRM'S SERVICES

II. TIME-BASED CONTRACT

Marketing Services for:

Contract No.: _____

Contract Description: _____

between

[Name of KEMRI]

and

[Name of the Marketing firm]

Date:

II: FORM OF CONTRACT-TIME-BASED

(Text in brackets [] is optional; all notes 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 Procuring Entity]* (herein after called the “Procuring Entity”) and, on the other hand, *[name of Marketing firm]* (hereinafter called the “Marketing firm”).

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

WHEREAS

- a) KEMRI has requested the Marketing firm to provide certain marketing services as defined in this Contract (hereinafter called the “Services”);
- b) the Marketing firm, having represented to KEMRI 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) KEMRI has set aside a budget and funds towards the cost of the services and intends to apply a portion of the funds to eligible payments under the Contract.

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached here to shall be deemed to form an integral part of this Contract:
 - a) The General Conditions of Contract;
 - b) The Special Conditions of Contract;
 - c) Appendices:
 - Appendix A: Terms of Reference
 - Appendix B: Key Experts
 - Appendix C: Remuneration Cost Estimates
 - Appendix D: Reimbursable Cost Estimates
 - Appendix E: Form of Advance Payments Guarantee
2. ThemutualrightsandobligationsoftheProcuringEntityandtheMarketing firmshallbeassetforthintheContract, in particular:
 - a) The Marketing firm shall carryout the Services in accordance with the provisions of the Contract; and
 - b) KEMRI shall make payments to the Marketing firm in accordance with the provisions of the Contract.

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

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

For and on behalf of _____ *[Name of Procuring Entity] [Authorized Representative of KEMRI–name title and signature]*

For and on behalf of _____ *[Name of Marketing firm or Name of a Joint Venture] [Authorized Representative of the Marketing firm–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 Marketing firm..... *[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]

BREAKDOWN OF AGREED FIXED RATES IN MARKETING FIRM'S CONTRACT

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

(Expressed in [insert name of currency]) *

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

Expressed as percentage of 1

1 Expressed as percentage of 4

* If more than one currency, add a table

Signature _____ Date _____

Name and Title: _____

APPENDIX D: REIMBURSABLE EXPENSES COST ESTIMATES

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

APPENDIX E: FORM OF ADVANCE PAYMENTS GUARANTEE

[Note: See Clause GCC 41.2 and

SCC41.2] Bank Guarantee for

Advance Payment

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

Beneficiary: _____ [Name and Address of Procuring

Entity] Date: _____

ADVANCE PAYMENT GUARANTEE No. _____

We have been informed that _____ [name of Marketing firm or a name of the Joint Venture, same as appears on the signed Contract] (herein after called "the Marketing firm") 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 Marketing firm, 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]¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Marketing firm are in breach of their obligation under the Contract because the Marketing firm 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 Marketing firm 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 Marketing firm 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 Marketing firm has made Full repayment of the amount of the advance payment, or on the day of _____, 2____, ² whichever is earlier.

Consequently, any demand for payment *under* this guarantee must be received by us at this office on or

before that date. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication

No.758.

[Signature (s)]

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

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

²Insert the expected expiration dates. In the event of an extension of the time for completion of the Contract, KEMRI would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, KEMRI 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 KEMRI's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

SECTION 10. NOTIFICATION FORMS

1. NOTIFICATION OF INTENTION TO AWARD

Procuring Entity:_____ *[insert the name of the Entity]* Contract title:_____ *[insert the name of the contract]* RFP No:_____ *[insert RF Preference number]*

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

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

The successful Marketing firm

Name:	<i>[insert name of successful Marketing firm]</i>
Address:	<i>[insert address of the successful Marketing firm]</i>
Contract price:	<i>[insert contract price of the successful Marketing firm]</i>

i) Short listed Marketing firms

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

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

		1: [insert score] 2: [insert score] 3: [insert score] <u>Sub-criterion c:</u> <u>...etc.</u> Criterion (iv): [insert score] Criterion (v): [insert score] Total score: [insert score]			
[insert name]					

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

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

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

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

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

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

Title/position: [insert title/position]

Agency: [insert name of Procuring Entity]

Email address: [insert email address]

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

If your request for a debriefing is received within the 5 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end. The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

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

(iv) How to Make a Complaint

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

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

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

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

Agency: *[insert name of Procuring Entity]*

Email address: *[insert email address]*

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

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

In summary, there are four essential requirements:

You must be an 'interested party'. In this case, that means a Marketing firm who has submitted a Proposal in this selection process and is the recipient of a Notification of Intention to Award.

The complaint can only challenge the decision to award the contract.

You must submit the complaint within the deadline stated above.

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

(v) Standstill Period

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

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

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

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

On behalf of _____ *[insert the name of KEMRI]*: Signature:

Name: _____

Title/position: _____

Telephone: _____

Email: _____

2 REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (Procuring Entity)

Request for review of the decision of the..... (Name of KEMRI ofdated the...day of20.....in the matter of Tender No.....of20..... for(Tender description).

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box No..... Tel. No.....Email, hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

- 1.
- 2.

By this memorandum, the Applicant requests the Board for an order/orders that:

- 1.
- 2.

SIGNED(Applicant) Dated on.....day of/...20.....

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of20.....

SIGNED

Board Secretary

3. LETTER OF AWARD

[use letterhead paper of KEMRI] [date] _____ To: _____ [name and address of the winning Marketing firm] Subject: Notification of Award Contract No.....

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

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

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Draft Negotiated Contract

4 BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful Consultant. In case of joint venture, the Consultant must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Consultant is any natural person who ultimately owns or controls the Consultant by meeting one or more of the following conditions:

- Directly or indirectly holding 25% or more of the shares.*
- Directly or indirectly holding 25% or more of the voting rights.*
- Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Consultant.*

Request for Proposal Reference No.: _____ [insert
identification no] Name of the Assignment: _____ [insert name of the
assignment] to: _____ [insert complete name of Procuring Entity]

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

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

Details of beneficial ownership

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

OR

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

OR

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

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

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

*Name of the Marketing firm: *[insert complete name of the Marketing firm]*

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

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

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

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

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

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

