



**TOURISM RESEARCH INSTITUTE**

**TENDER NO. TRI/07/2019-2020**

**REQUEST FOR PROPOSALS**

**FOR**

**SELECTION OF A FIRM TO FACILITATE AND REPORT  
ON THE REGIONAL STAKEHOLDERS' DISSEMINATION  
AND RESEARCH NEEDS ANALYSIS ENGAGEMENT  
FORUMS**

**OPENING/CLOSING DATE 24<sup>TH</sup> MARCH, 2020**

**AT 11:00 AM**

## Table of Contents

<b>LETTER OF INVITATION .....</b>	<b>4</b>
<b>SECTION I: INFORMATION TO CONSULTANTS (ITC) .....</b>	<b>5</b>
1.1. Introduction .....	5
1.2 Clarification and Amendment of RFP Documents .....	6
1.3 Preparation of Technical Proposal.....	6
1.4 Preparation of Financial Proposal .....	7
1.5 Submission, Receipt, and Opening of Proposals .....	8
1.6 Proposal Evaluation General .....	9
1.7 Public Opening and Evaluation of Financial Proposal .....	9
1.8 Negotiations .....	10
1.9 Award of Contract .....	11
1.10 Confidentiality.....	12
1.11 Appendix to information to consultants.....	12
<b>SECTION II: TERMS OF REFERENCE .....</b>	<b>14</b>
2.1 Background.....	14
2.2 Our Vision .....	14
2.3 Our Mission.....	14
2.4 Rationale for Undertaking Tourism Stakeholders' Engagement Forums.....	15
2.5 Objectives.....	15
2.6 Key Tasks .....	16
2.7 Scope .....	16
2.8 Outputs .....	17
2.9 Deliverables .....	17
2.10 Estimated Consultancy Timeline .....	18
2.11 Payment of Professional Fees and Reimbursables .....	18
2.12 Supervision and Reporting Arrangements .....	19
2.13 Firm Qualification.....	19
2.14 Key Personnel/Required Qualifications and Experience .....	19
2.15 Evaluation Criteria .....	20
2.16 Stage 1: Preliminary/ Mandatory Evaluation Requirements.....	21
2.17 Stage 2: Evaluation of Technical Proposal .....	22
2.18 Stage 3: The Financial Evaluation (Quoted Prices, Liquidity) 20% .....	24
2.20 Stage 5: Due-Diligence (Mandatory and Scoring).....	25
2.21 Stage 3: Financial Evaluation.....	25
<b>SECTION III – STANDARDS FORMS OF CONTRACT .....</b>	<b>26</b>
3.1 Confidential Business Questionnaire Form .....	26

3.2	Form of Tender .....	28
3.3	Litigation History .....	29
3.4	Bank Guarantee for Advance Payment.....	30
3.5	Integrity Declaration Form.....	31
3.6	Letter of Notification of Award .....	32
3.7	List of Currently On-Going Projects .....	33
<b>SECTION IV: - FINANCIAL PROPOSAL.....</b>		<b>34</b>
4.1	Notes on preparation of Financial Proposal.....	34
4.2	Financial Proposal Submission Form.....	34
4.3	Summary of Costs .....	35
4.4	Breakdown of Price Per Activity .....	35
4.5	Breakdown of Remuneration Per Activity .....	36
4.6	Reimbursables Per Activity .....	36
4.7	Miscellaneous Expenses .....	37
<b>SECTION V – GENERAL CONDITIONS OF CONTRACT .....</b>		<b>38</b>
5.	General Provisions .....	38
6.	Commencement, Completion, Modification and Termination of Contract .....	40
7.	Obligations of the Consultant.....	43
	Consultant's Personnel .....	45
9.	Obligations of The TRI .....	46

## LETTER OF INVITATION



REPUBLIC OF KENYA

TOURISM RESEARCH INSTITUTE

---

### TENDER NOTICE: FOR CONSULTANCY SERVICE

Bids are invited from eligible and qualified firms for Tourism Research Institute **consultancy service for selection of a firm to facilitate and report on the regional stakeholders' dissemination and research needs analysis engagement forums.**

Interested bidders must meet all the conditions as indicated in the tender documents and can view or download the documents in the TRI website ([www.tri.go.ke](http://www.tri.go.ke)) and the link ([supplier.treasury.go.ke](http://supplier.treasury.go.ke)) **free of charge.**

Duly completed tender documents in plain sealed envelopes with tender number clearly marked at the right hand corner and bearing no indication of the identity of the tenderers should be addressed to: -

**Ag. Chief Executive Officer  
Tourism Research Institute  
P.O Box 42131-00100  
NAIROBI.**

And be placed in the tender Box located on the 7<sup>th</sup> Floor of Utalii House – so as to reach on or before 11.00 am on 24<sup>th</sup> March 2020 marked **“CONSULTANCY for selection of a firm to facilitate and report on the regional stakeholders' dissemination and research needs analysis engagement forums**

Submitted Tender document shall be opened publicly soon after the above stated closing date and time in the 7<sup>th</sup> Floor Boardroom. In the presence of all Tenderers or their representatives who choose to attend. Late Bids shall not be accepted or opened.

**Ag. Chief Executive Officer  
TOURISM RESEARCH INSTITUTE**

## **SECTION I: INFORMATION TO CONSULTANTS (ITC)**

### **1.1. Introduction**

- 1.1.1 The TRI will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix. The method of selection shall be as indicated by the TRI.
- 1.1.2 The consultants are invited to submit a Technical Proposal and a Financial Proposal, as specified in the Appendix "ITC" for consulting services required for the assignment named in the said Appendix. A Technical Proposal only may be submitted in assignments where the TRI intends to apply standard conditions of engagement and scales of fees for professional services which are regulated as is the case with Building and Civil Engineering Consulting services. In such a case the highest ranked firm of the technical proposal shall be invited to negotiate a contract on the basis of scale fees. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.
- 1.1.3 The consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain firsthand information on the assignment and on the local conditions, consultants are encouraged to liaise with the TRI regarding any information that they may require before submitting a proposal and to attend a pre-proposal conference where applicable. Consultants should contact the officials named in the Appendix "ITC" to arrange for any visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 1.1.4 The TRI will provide the inputs specified in the Appendix "ITC", assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.
- 1.1.5 Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the TRI are not reimbursable as a direct cost of the assignment; and (ii) the TRI is not bound to accept any of the proposals submitted.
- 1.1.6 The TRI employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- 1.1.7 The price to be charged for the tender document shall not exceed Kshs. 5,000/=

1.1.8 The TRI shall allow the tenderer to review the tender document free of charge before purchase.

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

1.2.1 Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the TRI's address indicated in the Appendix "ITC". The TRI will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited consultants who intend to submit proposals.

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

## **1.3 Preparation of Technical Proposal**

1.3.1 The Consultants proposal shall be written in English language

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

1.3.3 While preparing the Technical Proposal, consultants must give particular attention to the following;

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Consultants shall not associate with the other consultants invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.

- (iv) Proposed professional staff must as a minimum, have the experience indicated in Appendix, preferably working under conditions similar to those prevailing in Kenya.
- (v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

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

- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate inter alia, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
- (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the TRI.
- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.
- (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.
- (vi) Estimates of the total staff input (professional and support staff staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- (vii) A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix "A" specifies training as a major component of the assignment.
- (viii) Any additional information requested in Appendix "A".

1.2.5 The Technical Proposal shall not include any financial information.

## **1.4 Preparation of Financial Proposal**

1.4.1 In preparing the Financial Proposal, consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The

- 1.4.2 Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate these costs should be broken down by activity.
- 1.4.3 The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the consultants, the sub-consultants and their personnel, unless Appendix "A" specifies otherwise.
- 1.4.4 Consultants shall express the price of their services in Kenya Shillings.
- 1.4.5 Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal Submission Form.
- 1.4.6 The Proposal must remain valid for 120 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The TRI will make his best effort to complete negotiations within this period. If the TRI wishes to extend the validity period of the proposals, the consultants shall agree to the extension.

## **1.5 Submission, Receipt, and Opening of Proposals**

- 1.5.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.
- 1.5.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix "A". Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 1.5.3 Bidders are required to serialize all the pages of the bid document submitted including any addendum, appendixes and attachments.
- 1.5.4 Proposals must be accompanied by a tender security of Ksh. 300,000. Valid for 120 days. Failure to attach the tender security will lead to automatic rejection of the tender
- 1.5.5 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL**," and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" and warning: "**DO NOT OPEN**

**WITH THE TECHNICAL PROPOSAL".** Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix "ITC" and be clearly marked, **"DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE."**

- 1.5.6 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix "ITC". Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
- 1.5.7 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the TRI department up to the time for public opening of financial proposals.

## **1.6 Proposal Evaluation General**

- 1.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the TRI on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix "ITC". Any effort by the firm to influence the TRI in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant's proposal.
- 1.6.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

## **1.7 Public Opening and Evaluation of Financial Proposal**

- 1.7.1 After Technical Proposal evaluation, the TRI shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The TRI shall simultaneously notify the consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those consultants who choose to attend. The opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.
- 1.7.2 The Financial Proposals shall be opened publicly in the presence of the consultants' representatives who choose to attend. The name of the consultant, the technical. Scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The TRI shall prepare minutes of the public opening.
- 1.7.3 The evaluation committee will determine whether the financial proposals are complete (i.e. Whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors.

- 1.7.4 The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.
- 1.7.5 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.
- 1.7.6 The tender evaluation committee shall evaluate the tender within 30 days of from the date of opening the tender.
- 1.7.7 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).
- 1.7.8 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price
- 1.7.9 Price variation requests shall be processed by the TRI within 30 days of receiving the request.

## **1.8 Negotiations**

- 1.8.1 Negotiations will be held at the same address as “address to send information to the TRI” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.
- 1.8.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The TRI and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the TRI to ensure satisfactory implementation of the assignment.
- 1.8.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- 1.8.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the TRI expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the TRI will require assurances that the experts will be actually available. The TRI will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not

the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.

1.8.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the TRI and the selected firm will initial the agreed Contract. If negotiations fail, the TRI will invite the firm whose proposal received the second highest score to negotiate a contract.

1.8.6 The TRI shall appoint a team for the purpose of the negotiations.

## **1.9 Award of Contract**

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

1.9.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix "A".

1.9.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

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

1.9.5 The TRI shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

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

(a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.

(b) Legal capacity to enter into a contract for procurement

(c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.

(d) Shall not be debarred from participating in public procurement.

## 1.10 Confidentiality

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

1.10.2 Corrupt or fraudulent practices

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

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

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

## 1.11 Appendix to information to consultants

1.11.1 The following information for procurement of consultancy services and selection of consultants shall complement or amend the provisions of the information to consultants, wherever there is a conflict between the provisions of the information and to consultants and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the information to consultants.

1.11.2 Clause Reference

(a) The name of the TRI is: **TOURISM RESEARCH INSTITUTE**

(b) The method of selection is: **QUALITY AND COST BASED SELECTION (QCBS)**

(c) Technical and Financial Proposals are requested: **Yes**

(d) The name, objectives, and description of the assignment are: **AS ABOVE**

(e) A pre-proposal conference will be held: **NOT APPLICABLE**

(f) Consultants must submit an '**original**' and '**copy**', additional copies of each proposal.

(g) The proposal submission address is: **Ag Chief Executive Officer, Tourism Research Institute, P.O BOX 42131-001100 NAIROBI**

(h) Proposals must be submitted not later than 24<sup>th</sup> March 2020

- (i) The address to send information to the **Ag Chief Executive Officer, Tourism Research Institute, P.O BOX 42131-001100 NAIROBI**
- (j) The minimum technical score required to pass [Insert number of points]: **\_65%\_**
- (k) Alternative formulae for determining the financial scores is the following: **\_\_AS STATED IN THE DOCUMENTS\_**
- (l) The assignment is expected to commence on: **\_IMMEDIATE AFTER SIGNING THE CONTRACT\_**

## **SECTION II: TERMS OF REFERENCE**

### **TERMS OF REFERENCE FOR THE SELECTION OF A FIRM TO FACILITATE AND REPORT ON THE REGIONAL STAKEHOLDERS' DISSEMINATION AND RESEARCH NEEDS ANALYSIS ENGAGEMENT FORUMS**

#### **2.1 Background**

Tourism Research Institute is mandated to undertake and co-ordinate tourism research and analysis in the country. The Institute was established to ensure that the research and knowledge gaps that have always existed in the tourism sector are adequately addressed. The Institute is envisioned to undertake sound research so as to provide meaningful information and analysis to policy makers, tourism business owners and other players in the sector. In addition, the Institute is expected to coordinate tourism research with various stakeholders so as to maintain accepted standards and ensure objective and reliable research findings for the sector. Sound research that is meaningful to the sector's growth needs to be responsive to the current and emerging challenges the sector faces and its prioritised research needs. The Institute is also mandated to ensure effective dissemination of its research findings to both the public and private sector.

In the Institute's strategic plan 2018-2023, the Key Result Areas are; to undertake research, coordinate research and disseminate research. In view of this the Institute is planning on organizing stakeholders' forums across the country. These forums will be used to disseminate the findings of the already concluded research studies while also undertaking a research gaps analysis for Kenya's tourism sector. This will be in line with the Institute strategic plan on dissemination of research findings for awareness, understanding and action as well as undertaking a tourism research needs assessment which will be updated periodically.

#### **2.2 Our Vision**

To be The Institute that Drives Tourism Research for Innovation and Change

#### **2.3 Our Mission**

To Undertake, Coordinate and Disseminate Tourism Research for Sustainable Tourism Development

## **2.4 Rationale for Undertaking Tourism Stakeholders' Engagement Forums**

The Kenya tourism sector is a leading foreign exchange earner contributing about 10% to the GDP. The current tourism performance indicates that international tourist arrivals grew from 1,342,899 in 2016 to 2,048,834 in 2019. Domestic tourism also grew to a total of 4.9 million bed nights in 2019 compared to 3.5 million in 2016, a 31.1% growth. Earnings from the tourism sector improved by 39.04% to hit Ksh. 163.56 billion in 2019 compared to Ksh. 99.69 billion in 2016. This indicates that the sector has huge potential to reach optimum levels. Generally, the performance over the years shows gradual growth unlike our competing destinations whose performance has grown tremendously. It is apparent that the sector faces many challenges that need to be investigated and the opportunities for growth also need to be studied and documented. Sound tourism research is therefore paramount to guide policy as well as give insights to the private sector on global emerging trends. Undertaking stakeholders' engagement forums where various stakeholders can share their research needs is necessary.

The forums will bring out challenges the sector faces, research needs and in addition the Institute will disseminate past research works which is part of its mandate. By undertaking the forums, tourism research priorities will be identified to inform current and future policies so as to enhance the tourism sector in Kenya. This will guide the Institute's future research areas which will be industry driven.

## **2.5 Objectives**

The objectives of the stakeholders' forums are to:

- Disseminate research findings
- Identify and understand the challenges the sector faces in various regions
- Identify and document the research needs in each region
- Document and give a national prioritization of tourism research needs
- Develop a National Tourism Research Agenda in line with the timelines of the TRI Strategic Plan
- Develop a policy briefing paper on tourism research.

## 2.6 Key Tasks

TRI is seeking for prospective consulting firms to carry out stakeholders' engagement forums to gain an understanding of the challenges they face and research needs by undertaking the following tasks:

- i. Reviewing previous tourism research studies on destination Kenya.
- ii. Developing a suitable approach and a methodology for conducting the exercise so as to effectively capture the required information.
- iii. Conducting a countrywide stakeholder mapping and analysis.
- iv. Preparing the programmes for the forums and the necessary tools for engagement of stakeholders and for gathering the required information.
- v. Mapping out the country into regions and mobilising stakeholders for seven (7) workshops across the country.
- vi. Facilitating, rapporteuring and documenting the deliberations of each forum.
- vii. Preparing and presenting a report of the workshops proceedings and outcomes.
- viii. Reviewing and analysing the information collected and producing and presenting a Tourism Research Needs Report which captures among others:
  - Issues and challenges facing tourism in each region
  - Tourism research needs for each region
  - Concretised account of tourism research needs nationally
  - Prioritized documentation of tourism research needs and areas
- ix. Preparing and presenting The National Tourism Research Agenda in line with the timelines of the TRI Strategic Plan
- x. Preparing and presenting a policy briefing paper on tourism research.

## 2.7 Scope

The engagement forums will be undertaken in 7 regions covering all tourism stakeholders in the country with the venues as follows;

1. Nairobi metropolis region - Nairobi
2. Coast region - Mombasa
3. Western region - Kisumu
4. Central region - Nanyuki
5. North Rift region - Eldoret
6. South Rift region - Nakuru

## 7. Eastern region - Kitui

### 2.8 Outputs

1. Stakeholders analysis report.
2. A detailed report on previous tourism research studies undertaken on destination Kenya.
3. A stakeholders mapping and analysis report.
4. A detailed Work Plan to execute the assignment which should be produced within **10 days** from the start of the contract.
5. A detailed methodology and approach including programmes for the forums and the necessary tools for engagement of stakeholders and for gathering the required information.
6. A tourism stakeholders' engagement report.
7. A tourism research needs analysis report.
8. A National Tourism Research Agenda.
9. A Policy briefing paper on tourism research.

### 2.9 Deliverables

**Inception Report:** To be submitted to TRI within 10 days after the date of contracting. As a minimum, the Inception Report will provide a detailed explanation of the approach that will be undertaken including: An understanding of the objectives and expected results of the assessment; The methodology to be applied; a comprehensive analysis of tourism stakeholders; An expected framework for the outputs to be produced and the proposed structure of the final reports and documents.

**A tourism stakeholders' engagement report:** to be submitted to TRI within **35 days** after signing of the contract.

Drafts of the **Tourism Research Needs Analysis Report, National Tourism Research Agenda** and the **policy briefing paper on tourism research** to be submitted to TRI within **35 days** after signing of the contract.

Finalized **Tourism Research Needs Analysis Report, National Tourism Research Agenda** and **policy briefing paper on tourism research** to be submitted to TRI within

**45 days** after signing of the contract with all the outputs indicated in the Terms of Reference.

### **2.10 Estimated Consultancy Timeline**

The task is estimated to take 45 days considering the statutory requirements and reasonable time for the execution of the task. The consultant shall advise the client on any delays that affect achievement of the objectives on time in writing. All reports shall be in English and prepared on A4 size paper

On closure of the assignment, the consultant shall surrender all reports and other documents to the client. All documents submitted by the Consultant shall become and remain the property of the Client and the Bidder shall not later than upon termination or expiration of this Contract deliver all such documents and software to the Client together with a detailed inventory thereof. The Bidder may retain a copy of such documents and software. The documents of the report are solely the property TRI and may be used by TRI without reference to the Bidder. However, the Bidder shall not use any such reports without the prior approval of TRI.

#### **NOTE:**

The consultant shall submit an electronic copy of all final reports in MS Word (Office 2010), (PDF) and CAD, where applicable.

### **2.11 Payment of Professional Fees**

The Client shall make payments of fees and reimbursable expenses after approval of deliverables as indicated below:

<b>No</b>	<b>Milestone</b>	<b>Amount Payable</b>
1.	Inception Report	30%
	Draft/Interim	
2.	Reports/Documents	30%
3.	Final Reports/Documents	40%

## **2.12 Supervision and Reporting Arrangements**

The consultancy firm shall work closely with a technical team at TRI under the direct supervision of the Chief Executive Officer.

All soft and hard copies of reports indicated as deliverables shall be signed off by the Team Leader of the firm and submitted officially to the Chief Executive Officer of TRI. Approved deliverables shall be the basis for payments under this assignment.

## **2.13 Firm Qualification**

In order to accomplish the assigned tasks, TRI is looking for a consultancy firm with both effective and vast experience in the Tourism and Hospitality research and Tourism Statistics areas, the overall qualification of the firm will be as follows;

- a) Knowledge of the Kenyan Tourism sector.
- b) 5 years of working experience in Tourism Research and Data collection
- c) Expertise to conduct needs assessment surveys in the formal and informal sector.
- d) Experience in effectively facilitating and documenting stakeholders' engagement processes
- e) Regional and International Experience is an added advantage

## **2.14 Key Personnel/Required Qualifications and Experience**

The Lead Consultant should possess wide range of experience and should have the following profile;

- a) At least a master's degree in any of the following Tourism Management, Statistics, Economics, Social Sciences, Strategic Management, Public Policy or a related field.
- b) Relevant experience of not less than 7 years in similar assignments demonstrating ability to concretize various research needs into broad research themes.
- c) Proven experience in working with the public sector and private sector especially in Research and advisory assignments is highly required.
- d) Previous experience in Tourism sector assignment or Statistical Project is highly desirable.
- e) Proof in accomplishing similar assignments will be required.

**Required qualifications for other members of the Support team should be as follows;**

- a) Each Individual consultant must possess at least a Master's degree in any of the following core specializations, Tourism, Statistics, Economics, Social Sciences or a related field.
- b) Relevant experience of not less than 5 years with experience in comparative analysis and needs assessments assignments
- c) Part of the team should have skills and experience in effectively facilitating and documenting stakeholders' engagement processes.

**2.15 Evaluation Criteria**

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

- (i) **STAGE 1:** Compliance with Mandatory/ Preliminary Requirements;
- (ii) **STAGE 2:** The Technical Evaluation- Capacity to Deliver the Service totaling to 80% distributed as follows: Technical scoring
- (iii) **STAGE 3** The Financial Evaluation (quoted prices, liquidity)
- (iv) **STAGE 4:** Ranking of the bidders using the formula
- (v) **STAGE 5:** Due-diligence (Mandatory and scoring)

## 2.16 Stage 1: Preliminary/ Mandatory Evaluation Requirements

The mandatory Preliminary requirements will be on a yes/no basis and if a bidder fails in any of them, he/she will not proceed to stage 2.

S/No	Requirement	Complied	Yes/No.
1.	Copy of <b>Valid</b> certificate of Registration/Incorporation	Must Comply	
2.	Copy of <b>Valid</b> Tax Compliance certificate	Must Comply	
3.	Copies of Certified Audited Accounts for any of the last 3 (Three) consecutive years <b>2017/2018/2019</b>	Must Comply	
4.	Bidders MUST Fill, Sign and Stamp their Form of Tender Technical Submission	Must Comply	
5.	Copy of Certified CR 12 Clearly indicating the List of Directors	Must Comply	
6.	Must provide a Contact address: Physical, postal, telephone and Email address of the firm (Confidential Business Questionnaire) <b>Clearly indicating the list of Directors or Partners as applicable.</b>	Must Comply	
7.	Provide evidence of availability of key project team members and commitment of their availability throughout the project lifecycle- <b>Provide a written statement on availability of Key staff listed</b>	Must Comply	
8.	Provide Tender Security ( <b>Kshs.300,000.00</b> )	Must Comply	
9.	Litigation History filled, signed and stamped in <b>Litigation History form in the tender Document.</b>	Must Declare	
10.	Bidder MUST fill, sign and stamp the integrity Declaration Forms provided in the Tender Document.	Must Comply	

11.	Bidders should have their documents paginated (serialized) to ensure compliance with section 74 (1) (i) of the Public Procurement and Asset Disposal Act,2015. (In format 1,2,3,4..... last page) Indicate pages submitted on the bid Document cover page.	Must Comply	
-----	--	-------------	--

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

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

### 2.17 Stage 2: Evaluation of Technical Proposal

The evaluation committee appointed by the Client shall evaluate the Technical proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows;

Evaluation Criteria	Points
<p><b>Technical Adequacy of the bidding firm;</b></p> <ol style="list-style-type: none"> <li>1. Demonstrate knowledge of the Kenyan Tourism Sector (5mrks).</li> <li>2. 5 years of recent experience working in Tourism Research and Data collection (10 mrks)</li> <li>3. Expertise to conduct needs assessment surveys in the formal and informal sector. (15mrks)</li> <li>4. Experience in effectively facilitating and documenting stakeholders' engagement processes (10marks)</li> </ol>	40
<p><b>Team competence, relevant minimum experience and qualifications</b></p> <ol style="list-style-type: none"> <li><b>1. Lead consultant</b> <ul style="list-style-type: none"> <li>• At least a master's degree in any of the following Tourism Management, Statistics, Economics, Social Sciences, Strategic Management, Public Policy or a related field. (3mrks)</li> </ul> </li> </ol>	40

<ul style="list-style-type: none"> <li>• Recent and relevant experience of not less than 5 years in similar assignments demonstrating ability to concretize various research needs into broad research themes (10mrks)</li> <li>• Proven experience in conducting research and advisory assignments. (5mrks)</li> <li>• Previous experience in Tourism Sector assignments or statistical projects. (5mrks)</li> <li>• Proof of accomplished similar assignments for reputable organisations. (2mrks)</li> </ul> <p><b>2. Other members of the support team</b></p> <ul style="list-style-type: none"> <li>○ Each individual consultant must possess at least a degree in any of the following; tourism management, statistics, economics, social sciences, strategic management, public policy or a related field. (3mrks)</li> <li>○ Recent experience of not less than 3 years in comparative analysis and needs assessments assignments (6mrks)</li> <li>• Part of the team should have skills and experience in effectively facilitating and documenting stakeholders' engagement processes (6marks)</li> </ul>	
<b>TOTAL SCORE</b>	<b>80</b>

Each responsive proposal will be given a technical score (TS). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of reference or if it fails to achieve the minimum technical score indicated in the Appendix "ITC".

**The minimum aggregate/average pass mark for the scored criterion above is: 65% out of 80%.**

## 2.18 Stage 3: The Financial Evaluation (Quoted Prices, Liquidity) 20%

The Bidders who scores 80% and above will be deemed to be technically responsive and will be evaluated for responsiveness. Only the Financial Bids of those who have technically qualified shall be opened for further evaluation.

Scores will be allocated for, liquidity, fully itemized costs, filling of the relevant forms. The score out of 20 for each bidder will be recorded.

## 2.19 Stage 4: Ranking of The Bidders Using the Formula

1. The individual technical scores of the technically qualified Bidders, will be normalized as per the formula below:

$$T_n = (T_b/T_{max}) \times 80/100$$

**where:**

$T_n$  = Normalized technical score for the Bidder under consideration

$T_b$  = Absolute technical score for the Bidder under consideration

$T_{max}$  = Maximum absolute technical score obtained by any Bidder

2. The commercial scores will be calculated as per formula given below:

$$F_n = (F_{min}/F_b) * X/100$$

**where:**

$X$  = The financial score for individual bidders

$F_n$  = Normalized financial score for the Bidder under consideration

$F_b$  = The commercial bid value of the Bidder under consideration

$F_{min}$  = Minimum commercial Value bid

3. The overall score will be calculated as per the formula given below:

$$B_n = T_n + F_n$$

**where:**

$B_n$  = Overall score of the Bidder under consideration

$T_n$  = Normalized technical score of the Bidder under consideration

$F_n$  = Normalized financial score of the Bidder under consideration

Final Selection of Bidder will be done based on added individual score achieved by the Bidder in techno-commercial evaluation. The Bid with the highest Evaluated Bid Score (B) among responsive bids shall be termed the Lowest Evaluated Bid and is

eligible for Contract award. The final scores would be rounded off to two decimals and in case of a tie, the bidder with lower financial quote will be selected.

### **2.20 Stage 5: Due-Diligence (Mandatory and Scoring)**

Due-diligence will be conducted on the bidder who will have emerged a winner. In case the report is not positive the second lowest responsive bidder will be considered for due diligence.

### **2.21 Stage 3: Financial Evaluation**

The financial evaluation will consist of a maximum of 20 points and these will be allocated using the following formulae: -

$$\text{Financial Score} = 20 \times (\text{Pm}/\text{P});$$

**where: -**

**Pm:** Lowest priced financial proposal

**P:** Total bid price of the bid under consideration.

Both technical and financial scores will be combined and the firm achieving the highest combined technical and financial score will be considered for award of the tender.

**SECTION III – STANDARDS FORMS OF CONTRACT**

**3.1 Confidential Business Questionnaire Form**

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

*Part 1 – General:*

Business Name

.....

Location of business premises.

.....

Plot No..... Street/Road

.....

Postal Address ..... Tel No/Mobile. ....E mail

.....

Nature of

Business,.....

Registration Certificate No. ....VAT Reg. No

.....

Maximum value of business which you can handle at any one time – Kshs.

.....

Name of your bankers ..... Branch .....Bank Account

.....

**Part 2 (a) – Sole Proprietor**

Your name in full ..... Age .....

Nationality ..... Country of origin .....

No. of employees ..... ID/Passport No.

.....

Citizenship details

.....

---

**Part 2 (b) Partnership**

Given details of partners as follows:

Name NationalityCitizenship DetailsShares%ID/Passport

No.

1. ....

2. ....

3. ....

4. ....  
No. of employees .....

---

Part 2 (c ) – Registered Company

---

Private or  
Public

.....  
State the nominal and issued capital of company-

Nominal Kshs. ....

Issued Kshs. ....

Given details of all directors as follows;

Name	Nationality	Citizenship	Details	Shares%
------	-------------	-------------	---------	---------

ID/Passport
-------------

No.
-----

1.....
--------

2. ....
---------

.....
-------

3. ....
---------

.....
-------

4. ....
---------

.....
-------

No. of employees .....

Date ..... Signature of Candidate

.....

If a Kenya Citizen, indicate under "Citizenship Details" whether by Birth, Naturalization or registration.

### 3.2 Form of Tender

WHEREAS .....(hereinafter called "the Tenderer") has submitted his tender dated ..... for the construction of .....  
..... (name of Contract)

KNOW ALL PEOPLE by these presents that WE ..... having our registered office at .....(hereinafter called "the Bank"), are bound unto .....(hereinafter called "the Employer") in the sum of Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this ..... Day of .....20.....

THE CONDITIONS of this obligation are:

1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers  
Or
2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
  - (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the said date.

_____	_____
[date]	[signature of the Bank]
_____	_____
[witness]	[seal]



### 3.4 Bank Guarantee for Advance Payment

To: \_\_\_\_\_ [name of Employer] \_\_\_\_\_ (Date)  
\_\_\_\_\_ [address of Employer]

Gentlemen,

Ref: \_\_\_\_\_ [name of Contract]

In accordance with the provisions of the Conditions of Contract of the above-mentioned Contract, We, \_\_\_\_\_ [name and Address of Contractor] (hereinafter called "the Contractor") shall deposit with \_\_\_\_\_ [name of Employer] a bank guarantee to guarantee his proper and faithful performance under the said Contract in an amount of Kshs. \_\_\_\_\_ [amount of Guarantee in figures] Kenya Shillings \_\_\_\_\_ [amount of Guarantee in words].

We, \_\_\_\_\_ [bank or financial institution], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to \_\_\_\_\_ [name of Employer] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding Kshs. \_\_\_\_\_ [amount of Guarantee in figures] Kenya Shillings \_\_\_\_\_ [amount of Guarantee in words], such amount to be reduced periodically by the amounts recovered by you from the proceeds of the Contract.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between \_\_\_\_\_ [name of Employer] and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until \_\_\_\_\_ (name of Employer) receives full payment of the same amount from the Contract.

Yours faithfully,

Signature and Seal \_\_\_\_\_

Name of the Bank or financial institution \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

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

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

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

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

### 3.5 Integrity Declaration Form

Date \_\_\_\_\_

To \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The tenderer i.e. (name and address) \_\_\_\_\_  
\_\_\_\_\_ declare the following:

- a) Has not been debarred from participating in public procurement.
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

(To be signed by authorized representative and officially stamped)

**3.6 Letter of Notification of Award**

Address of Procuring Entity

---

---

To: \_\_\_\_\_

---

---

RE: Tender No \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

---

---

Please acknowledge receipt of this letter of notification signifying tender acceptance.

The contract/contracts shall be signed by the parties within 30days of the date of this letter but not earlier than 14 days from the date of the letter.

You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL ARTICULARS) \_\_\_\_\_



## SECTION IV: - FINANCIAL PROPOSAL

### 4.1 Notes on preparation of Financial Proposal

4.1.1 The Financial proposal prepared by the consultant should list the costs associated with the assignment. These costs normally cover remuneration for staff, subsistence, transportation, services and equipment, printing of documents, surveys etc as may be applicable. The costs should be broken down to be clearly understood by the procuring entity.

4.1.2 The financial proposal shall be in Kenya Shillings or any other currency allowed in the request for proposal and shall take into account the tax liability and cost of insurances specified in the request for proposal.

4.1.3 The financial proposal should be prepared using the Standard forms provided in this part

### 4.2 Financial Proposal Submission Form

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

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ [Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for (\_\_\_\_\_) [Title of consulting services] in accordance with your Request for Proposal dated (\_\_\_\_\_) [Date] and our Proposal. Our attached Financial Proposal is for the sum of (\_\_\_\_\_) [Amount in words and figures] inclusive of the taxes.

We remain,

Yours sincerely,

\_\_\_\_\_ [Authorized Signature]

:

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

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

\_\_\_\_\_ [Address]

#### 4.3 Summary of Costs

Costs	Currency(ies)	Amount(s)
<b>Subtotal</b>		
Taxes		
Total Amount of Financial Proposal		_____

#### 4.4 Breakdown of Price Per Activity

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

#### 4.5 Breakdown of Remuneration Per Activity

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

Names	Position	Input (Staff months, days or hours as appropriate.)	Remuneration Rate	Amount
Regular staff				
(i)				
(ii)				
Consultants				
<b>Grand Total</b>				_____

#### 4.6 Reimbursables Per Activity

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

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

#### 4.7 Miscellaneous Expenses

Activity No. \_\_\_\_\_

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

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

## SECTION V – GENERAL CONDITIONS OF CONTRACT

### 5. General Provisions

#### 5.1 Definitions

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

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (c) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 here below;
- (d) “Foreign Currency” means any currency other than the Kenya Shilling;
- (e) “GC” means these General Conditions of Contract;
- (f) “Government” means the Government of the Republic of Kenya;
- (g) “Local Currency” means the Kenya Shilling;
- (h) “Member”, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards the TRI under this Contract;
- (i) “Party” means the TRI or the Consultant, as the case may be and “Parties” means both of them;

- (j) "Personnel" means persons hired by the Consultant or by any Subconsultant as employees and assigned to the performance of the Services or any part thereof;
- (k) "SC" means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (l) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and
- (m) "Sub consultant" means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

5.2 Law Governing the Contract	This Contract, its meaning and interpretation and the relationship between the Parties shall be governed by the Laws of Kenya.
5.3 Language	This Contract has been executed in English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
5.4 Notices	Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.
5.5 Location	The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as the TRI may approve.
5.6 Authorized Representatives	Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the TRI or the Consultant may be taken or executed by the officials specified in the SC.

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

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

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

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

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

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

### 6.5 Force Majeure

#### 6.5.1 Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

#### 6.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

### 6.5.3 Extension Of Time

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

### 6.5.4 Payments

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

## 6.6 Termination

### 6.6.1 By the TRI

The TRI may terminate this Contract by not less than thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

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

For the purpose of this clause;

“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the selection process or in Contract execution.

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

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

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

- (a) if the TRI fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after receiving written notice from the Consultant that such payment is overdue; or
- (b) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

6.6.3 Payment Upon termination of this Contract pursuant to Clauses upon 2.6.1 or 2.6.2, the TRI shall make the following Termination payments to the Consultant:

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

## 7. Obligations of the Consultant

### 7.1 General

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

### 7.2 Conflict of Interests

#### 7.2.1 Consultant Not to Benefit from Commissions, Discounts, Etc.

- (i) The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.
- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised the TRI on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (iii) Where the Consultant as part of the Services has the responsibility of advising the TRI on the procurement of goods, works or services, the Consultant will comply with any applicable

procurement guidelines and shall at all times exercise such responsibility in the best interest of the TRI. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the TRI.

7.2.2 Consultant and Affiliates Not to be Otherwise Interested in Project

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

7.2.3 Prohibition of Conflicting Activities

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

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

7.3 Confidentiality

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

7.4 Insurance to be Taken Out by the Consultant

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

7.5 Consultant's  
Actions Requiring  
TRI's prior

The Consultant shall obtain the TRI's prior approval in writing before taking any of the following Approval

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the personnel not listed by name in Appendix C ("Key Personnel and Sub consultants").

7.6 Reporting  
Obligations

The Consultants shall submit to the TRI the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.

7.7 Documents

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

## **8. Consultant's Personnel**

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

8.2 Removal  
and/or  
Replacement  
Of Personnel

(a) Except as the TRI may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.

- (b) If the TRI finds that any of the Personnel have
  - (i) committed serious misconduct or have been charged with having committed a criminal action, or
  - (ii) the TRI has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the TRI's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the TRI.
- (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

**9.Obligations of The TRI**

9.1 Assistance and Exemptions

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

9.2 Change in the Applicable Law

If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties and corresponding adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be.

9.3 Services and Facilities

The TRI shall make available to the Consultant the Services and Facilities listed under Appendix F.

**10. Payments to the Consultant**

10.1 Lump-Sum Remuneration

The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub-consultants' costs,

printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the

Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.

10.2 Contract Price

(a) The price payable in foreign currency is set forth in the SC.

(b) The price payable in local currency is set forth in the SC.

10.3 Payment for Additional Services

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

10.4 Terms and Conditions of Payment

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

10.5 Interest on Delayed Payment

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

## 11. Settlement of Disputes

11.1 Amicable Settlement

The Parties shall use their best efforts to settle

amicably all disputes arising out of or in connection with this Contract or its interpretation.

#### 11.2 Dispute Settlement

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

**-END-**