



# KenGen

**KENYA ELECTRICITY GENERATING COMPANY LIMITED**

**KGN-IT-08-2017**

**TENDER FOR UPGRADE OF  
MICROSOFT WINDOWS SERVER  
SOFTWARE & LICENSES  
*(Open national Tender)***

**Kenya Electricity Generating Company Limited  
Stima Plaza, Kolobot Road, Parklands  
P.O. Box 47936, 00100  
NAIROBI  
Website: [www.kengen.co.ke](http://www.kengen.co.ke)**

**July, 2017**

## SECTION A: INVITATION TO TENDER

The Company invites sealed tenders from eligible candidates to tender for **Tender for Upgrade of Microsoft Windows Server Software & Licenses** whose specifications are detailed in the Tender Documents. Interested eligible candidates may obtain further information from, and inspect the Tender Documents at the office of;

Supply Chain Director,  
Tel: (254) (020) 3666000  
Fax: (254) (020) 3666200  
Email: pyego@kengen.co.ke

Where the tender document may be collected upon payment of a non-refundable fee of **KShs.1,000.00** paid in cash or through a banker's cheque at any KenGen office. The document can also be viewed and downloaded from the website [www.kengen.co.ke](http://www.kengen.co.ke). Bidders who download the tender document must notify on the download through the email [tenders@kengen.co.ke](mailto:tenders@kengen.co.ke). Bidders are advised to be keen on the information provided under the Appendix to Instructions to Tenderers (.I.T.T.) and the Special conditions of the Contract (S.C.C.)

Tenders must be accompanied by a Bid Security in the form and amount specified in the tender documents, and must be delivered to:

Company Secretary, Legal & Corporate Affairs Director  
Kenya Electricity Generating Company Limited  
10<sup>th</sup> Floor, Pension Plaza II  
Kolobot Road, Parklands  
P O Box 47936 - 00100  
NAIROBI, KENYA

Tenders must be dropped in the tender box located on the ground floor of Stima Plaza III on or before **5<sup>th</sup> September 2017 at 2.00pm.**

Tenders will be opened on **5<sup>th</sup> September 2017 at 2.30pm** in the presence of the candidates' representatives who choose to attend at Pension Plaza , Ground floor , ground floor or at an alternative location to be communicated

**N/B:** KenGen adheres to high standards of integrity in its business operations. Report any unethical behavior immediately to the provided anonymous hotline service.

- 1) Call Toll Free: 0800722626
- 2) Free Fax: 00800 007788
- 3) Email: kengen@tip-offs.com
- 4) Website : www.tip-offs.com

## **SUPPLY CHAIN DIRECTOR**

## **SECTION B: INSTRUCTIONS TO BIDDERS**

### **1. Eligible Tenderers**

- 1.1 This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 1.2 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 1.3 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### **2. Eligible Service Agent**

- 2.1 All consumable materials and spares used under the contract shall have their origin in eligible source countries.
- 2.2 For purposes of this clause, “origin” means the place where the materials are mined, grown, or produced. Materials are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 2.3 The origin of materials is distinct from the nationality of the tenderer.

### **3. Cost of Tendering**

- 3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

## **The Tender Document**

### **4. Contents**

- 4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders.
  - i. Invitation for Tenders

- ii. General information
  - iii. General Conditions of Contract
  - iv. Special Conditions of Contract
  - v. Price, Schedule of Requirements
  - vi. Tender Forms
  - vii. Tender Security Form
  - viii. Contract Form
  - ix. Performance Security Form
  - x. Manufacturers Authorization Form
- 4.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

## **5. Clarification of Documents**

- 5.1 A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by facsimile at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than Seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender document.

## **6. Amendment of Documents**

- 6.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.
- 6.2 All prospective candidates who have received the tender documents will be notified of the amendment in writing or by facsimile, and such amendment will be binding on them.
- 6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

## **Preparation of Tenders**

### **7. Language of Tender**

- 7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## **8. Documents Comprising the Tender**

8.1 The tender prepared by the tenderer shall comprise the following components:

- a) Tender Forms and a Price Schedule completed in accordance with paragraph 9, 10 and 11 below.
- b) documentary evidence established in accordance with paragraph 12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- c) documentary evidence established in accordance with paragraph 13 that the materials and spares to be used by the tenderer for the services contract conform to the tender documents; and tender security furnished is in accordance with paragraph 14

## **9. Tender Forms**

9.1 The tenderer shall complete the Tender Forms and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed, a brief description of the materials and spares, their country of origin, quantity, and prices.

## **10. Tender Prices**

10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the services it proposes to provide under the contract.

10.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable:

10.3 Prices quoted by the tenderer shall be fixed during the Term of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 22.

## **11. Tender Currencies**

11.1 Prices shall be quoted in Kenya shillings or any other freely convertible currency.

## **12. Tenderers Eligibility and Qualifications**

12.1 Pursuant to paragraph 1 of section C, the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

12.2 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

**13. Materials' Eligibility Conformity to Tender Document.**

13.1 Pursuant paragraph 2 of this section, the tenderer shall furnish, as part of its tender, documents establishing the conformity to the tender documents of all software/materials which the tenderer proposes to use under the contract.

13.2 The documentary evidence of conformity may be in the form of literature, drawings, and data, and shall consist of:

- a) A detailed description of the essential technical and performance characteristics of the items to be supplied.
- b) A clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

**14. Tender Security**

14.1 The tenderer shall furnish, as part of its tender, a Tender Security for the amount specified in the appendix to instruction

14.2 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 14.7

14.3 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.

14.4 Any tender not secured in accordance with paragraph 14.1 and 14.3 will be rejected by the Procuring entity as nonresponsive, pursuant to paragraph 22.

14.5 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible, but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.

14.6 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 30, and furnishing the performance security, pursuant to paragraph 31.

14.7 The tender security may be forfeited:

- a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
- b) in the case of a successful tenderer, if the tenderer fails:
  - (i) to sign the contract in accordance with paragraph 30 or
  - (ii) to furnish performance security in accordance with paragraph 31.

## **15. Validity of Tenders**

15.1 Tenders shall remain valid for 90 days or as specified in the tender documents after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## **16. Format and Signing of Tender**

16.1 The tenderer shall prepare two copies of the tender, clearly marking each "**ORIGINAL TENDER**" and "**COPY OF TENDER,**" as appropriate. In the event of any discrepancy between them, the original shall govern.

16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.

16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **Submission of Tenders**

### **17. Sealing and Marking of Tenders**

17.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "**ORIGINAL**" and "**COPY.**" The envelopes shall then be sealed in an outer envelope.

17.2 The inner and outer envelopes shall:

a) Be addressed to the Procuring entity at the following address:

Company Secretary, Legal & Corporate Affairs Director  
Kenya Electricity Generating Company Limited  
10<sup>th</sup> Floor, Pension Plaza  
P.O. Box 47936-00100  
NAIROBI-Kenya

b) bear, the Tender Name and Tender reference number” the

Invitation for tenders

(IFT), and the words: “DO NOT OPEN BEFORE\_ **5<sup>th</sup> September 2017 at 2.00pm**”

17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

17.4 If the outer envelope is not sealed and marked as required by paragraph 17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

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

18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 17.2 not later than **5<sup>th</sup> September 2017 at 2.00pm**

18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

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

19.1 The tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring prior to the deadline prescribed for submission of tenders.

19.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 17. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

19.3 No tender may be modified after the deadline for submission of tenders.

19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer’s forfeiture of its tender security, pursuant to paragraph 14.7.



## **Opening and Evaluation of Tenders**

### **20. Opening of Tenders**

- 20.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **2.30pm ,5<sup>th</sup> September 2017**

Ground Floor, Pension Plaza  
Kolobot Road, Parklands

- 20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 20.3 The Procuring entity will prepare minutes of the tender opening.

### **21. Clarification of Tenders**

- 21.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.
- 21.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

### **22. Preliminary Examination**

- 22.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.
- 22.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

- 22.4 Prior to the detailed evaluation, pursuant to paragraph 23, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 22.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

### **23. Evaluation and Comparison of Tenders**

- 23.1 The Procuring entity will evaluate and compare the tenders, which have been determined to be substantially responsive, pursuant to paragraph 22.
- 23.2 The comparison shall be of the price to including all costs, as well as duties and taxes payable on all the materials to be used in the provision of the services.
- 23.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 23.4 and in the technical specifications:
- a) Work plan proposed in the tender;
  - b) Compliance with technical specifications.
  - c) Experience and capacity of the bidder to carry out the assignment;
- 23.4 Pursuant to paragraph 23.3 the evaluation committee, appointed by the client shall evaluate the bids on the following basis:

The Lowest evaluated bidder will be considered for award.

A tender shall be rejected at this stage if it fails to achieve the minimum technical score.

### **24. Contacting the Procuring entity**

- 24.1 Subject to paragraph 21, no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.
- 24.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

## **Award of Contract**

### **25. Post-qualification**

- 25.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 25.2 The determination will take into account the tenderer financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 12.3, as well as such other information as the Procuring entity deems necessary and appropriate.
- 25.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

### **26. Award Criteria**

- 26.1 Subject to paragraph 10,23 and 28 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

### **27. Procuring entity's Right to Vary quantities**

- 27.1 The Procuring entity reserves the right at the time of contract award to increase or decrease the quantity of services originally specified in the Schedule of requirements without any change in unit price or other terms and conditions.

### **28. Procuring entity's Right to Accept or Reject Any or All Tenders**

- 28.1 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action.

### **29. Notification of Award**

- 29.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.
- 29.2 The notification of award will constitute the formation of the Contract.
- 29.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 14.

### **30. Signing of Contract**

- 30.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.
- 30.2 Within fifteen (15) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

### **31. Performance Security**

- 31.1 Within fifteen (15) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.
- 31.2 Failure of the successful tenderer to comply with the requirement of paragraph 30 or paragraph 31 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

## APPENDIX: INSTRUCTION TO TENDERERS

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

Instruction clause	Particulars of appendix to instructions to tenderers
Eligibility	The tender is open only to National suppliers registered in Kenya
Clarification requests	<p>Clarification period for bidders is not later than 5 days prior to tender closure.</p> <p>Clarification request should be sent to <a href="mailto:tenders@kengen.co.ke">tenders@kengen.co.ke</a> and copied to <a href="mailto:pmwanyika@kengen.co.ke">pmwanyika@kengen.co.ke</a> , <a href="mailto:jmusau@kengen.co.ke">jmusau@kengen.co.ke</a></p> <p>The client shall respond to clarification request not later than 3 days to tender closure</p> <p>Bidders are advised to be checking KenGen website from time to time for any uploaded information on the tender</p>
Tender Security	Tender security is <b>Ksh 200,000</b> payable in the form of cash, approved insurance companies or bank guarantee
Validity	The tender validity is 120 days
Submission of copies	Number of copies to be submitted is One Original and <b>two</b> copies
Tender closure	Deadline of tender submission is <b>5<sup>th</sup> September 2017 at 2.00pm</b>
23.4	<ul style="list-style-type: none"> <li>• <b>Preliminary Evaluation /Mandatory Requirements:</b></li> <li>• Certificate of Registration /Incorporation Certificate</li> <li>• Valid Tax Compliance Certificate</li> <li>• Valid business permit</li> <li>• Valid Tender Security in correct value</li> <li>• Authorized Partner for Microsoft products (Attach Manufacturers Authorization )</li> <li>• Duly signed tender form and price schedule</li> <li>• Duly filled and signed Mandatory Business Questionnaire as provided.</li> <li>• Submission of the required number of copies</li> <li>• Sequential pagination of all pages of the bid document.</li> </ul> <p style="text-align: center;"><i>Bidders must fulfill all the above requirements to be considered for Technical evaluation</i></p> <ul style="list-style-type: none"> <li>• <b>TECHNICAL EVALUATION</b></li> </ul> <p>The technical requirements which assessed by two stage:</p> <p><b>Technical Mandatory</b></p> <ul style="list-style-type: none"> <li>• The bidder must attach a write up on his understanding of the tender requirements</li> <li>• Attach methodology, work plan and implementation schedule.</li> <li>• Attach any descriptive literature /brochure to confirm technical conformance to the requirements</li> <li>• Evidence of experience of the firm – must have been in the industry at least for the last three years</li> </ul>

	<ul style="list-style-type: none"><li>• Evidence of experience in carrying out similar service in the last five (5) years (attach at least 1 purchase orders/contracts for either ongoing works or completed)</li></ul> <p>Attach at least three (3) recommendation letters from clients on similar scope work – <b>30 marks</b></p> <ul style="list-style-type: none"><li>• Attach CVs for Technical /professional staff who will be involved in the upgrade.<ul style="list-style-type: none"><li>- Certification in <b>MCSA Windows server 2008 or above</b> for the support engineers (Attach certification proof for at least two engineers)</li><li>- Certification in <b>Microsoft Exchange 2010 or above</b> for the support engineers (Attach certification proof for at least two engineers)</li></ul></li></ul> <ul style="list-style-type: none"><li>• <b>FINANCIAL EVALUATION</b></li><li>• Only those bids that passed the technical Requirements will be considered for financial evaluation.</li><li>• No partial pricing will be accepted. All the items in the price schedule must be priced.</li><li>• The Lowest evaluated bidder will be considered for award.</li></ul>
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## **SECTION C - GENERAL CONDITIONS OF CONTRACT**

### **1. Definitions**

1.1 In this Contract, the following terms shall be interpreted as indicated:

- a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- c) “The services” means services to be provided by the tenderer including materials and spare parts which the tenderer is required to provide to the Procuring entity under the Contract.
- d) “The Procuring entity” means the organization sourcing for the services under this Contract.
- e) “The tenderer” means the individual or firm providing the services under this Contract.

### **2. Application**

2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement of services.

### **3. Country of Origin**

3.1 For purposes of this Clause, “origin” means the place where the consumable materials used for the provision of services were produced.

3.2 The origin of Materials is distinct from the nationality of the tenderer.

### **4. Standards**

4.1 The services provided under this Contract shall conform to the standards mentioned in the Technical Specifications.

### **5. Use of Contract Documents and Information**

5.1 The Candidate shall not, without the Procuring entity’s prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

5.2 The tenderer shall not, without the Procuring entity’s prior written consent, make use of any document or information enumerated in paragraph 5.1 above.

5.3 Any document, other than the Contract itself, enumerated in paragraph 5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity.

## **6. Patent Rights**

6.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services or any part thereof in the Procuring entity's country.

## **7. Performance Security**

7.1 Within fifteen (15) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.

7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.

7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract.

## **8. Inspection and Tests**

8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the services to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.

8.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

8.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the services, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the Procuring entity.



8.4 Nothing in paragraph 8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

## **9. Packing**

9.1 9.1 The Supplier shall provide such packing of the goods and services as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

9.2 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract.

## **10. Delivery and Documents**

10.1 Delivery of the goods and services shall be made by the Supplier in accordance with the terms specified by the Purchaser in its request for quotation or tender document of Requirements and the Special Conditions of Contract.

## **11. Insurance**

11.1 The goods and services supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery.

11.2 Contract. Payments shall be made promptly by the Purchaser as specified in the contract.

## **12. Prices**

12.1 Prices charged by the tenderer for Services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

## **13. Assignment**

13.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent.

## **14. Subcontracts**

14.1 The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract.

## **15. Termination for Default**

- 15.1 The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part:
- a) if the tenderer fails to provide any or all of the services within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity.
  - b) if the tenderer fails to perform any other obligation(s) under the Contract.
  - c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- 15.2 In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar services.

## **16. Liquidated Damages**

- 16.1 If the tenderer fails to provide any or all of the services within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the price of the unperformed services up to a maximum deduction of 10% of the unperformed services. After this the procuring entity may consider termination of the contract.

## **17. Resolution of Disputes**

- 17.1 The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.
- 17.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute the provisions of the Arbitration Act of the Laws of Kenya shall apply.

## **18. Language and Law**

- 18.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

## **19. Force Majeure**

- 19.1 The tenderer shall not be liable for forfeiture of its performance security, or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

## SECTION D - SPECIAL CONDITIONS OF CONTRACT

### 1. **Application**

The following Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

### 2. **Definitions (Clause 1)**

- a) The "Procuring Entity" is **Kenya Electricity Generating Company Limited of Stima Plaza, Kolobot Road, Parklands, P.O. Box 47936 - 00100 GPO, Nairobi Kenya** and includes the employer's legal representatives successors or assigns.
- b) "The contract price" means the price payable to the tenderer under the contract for the full
- c) "DR" means Disaster Recovery

### 3. **Performance Security**

- 3.1 The Performance Security shall be in the amount of 10% of the total Contract Price
- 3.2 The Procuring Entity shall not be required to demonstrate the loss it has suffered.
- 3.3 Performance Security shall be valid for a minimum of 60 days after shipment in case of Foreign Suppliers and a minimum of 30 days after delivery in case of Local Suppliers.
- 3.4 Performance Security for Foreign Suppliers shall be discharged by the Procuring Entity and returned to the Suppliers not earlier than 60 days after the date of shipment. For Local Suppliers it shall be discharged after proof of satisfactory delivery and acceptance of the goods under the contract

### 4. **Notices:**

For the Purchaser:

The Company Secretary,  
Kenya Electricity Generating Company Limited

Stima Plaza Phase III, Kolobot Road, Parklands  
P.O Box 47936- 00100,  
NAIROBI.  
TEL: 3666706 FAX (254) (020) 3666200

For the Supplier:

## **5. Delivery Period**

- 5.1 The preferred delivery period shall be as stated in the technical specifications below and shall be from the date of signing the contract.
- 5.2 The preferred delivery period shall be as stated in the technical specifications below and shall be from the date of signing the contract.
- 5.3 Bidder shall indicate separately the delivery period of each item. Delivery period shall be one of the major criteria of the award

## **6. Payment Terms & Conditions**

6.1 The credit period shall be:-

- a) For local suppliers, Kenya Electricity Generating Company's payment terms are 30 days upon receipt of certified invoices and delivery notes confirming that the invoiced material has been delivered and is in accordance with the contract.
- b) For overseas suppliers, payments shall be effected upon presentation of a complete set of shipping documents to the advising bank as will be stipulated in the Letter of Credit (LC)

6.2 For Local Suppliers

- (i) Payment shall be made through Kenya Electricity Generating Company's cheque or telegraphic transfer for the amount of contract. The terms shall be:-
- (ii) Strictly Delivered and Duty Paid (DDP), to KenGen stores.

6.3 For Foreign Suppliers

Payment shall be through an LC under the following conditions:-

- (i) The supplier shall be required to meet all LC bank charges incurred in their country, while KenGen shall meet those incurred in Kenya
- (ii) Any extension and or amendment charges and other costs that may result from the Supplier's delays, requests, mistakes or occasioned howsoever by the Supplier shall be to the Beneficiary's account.

- (iii) The maximum number of LC extensions shall be limited to a maximum of two (2) only, but not exceeding one quarter (3 months) each, at the cost of the beneficiary.
- (iv) Should the Supplier require a confirmed LC, then all confirmation and any other related charges levied by both the Supplier's and Procuring Entity's bank shall be to the Beneficiary's account.
- (v) The LC shall be opened only for the specific Order within the validity period of the contract
- (vi) LCs shall be partial for partial deliveries or full for one delivery as per the contract.
- (vii) The Supplier shall be required to submit a proforma invoice for each lot or schedule for use in the placement of order and opening of the LC. The Proforma Invoice shall be on total Cost and Freight (CFR) basis showing the freight charges separately from the Free on Board (FOB) cost. KenGen will meet the Freight Insurance cost.
- (viii) A copy of the Performance Security, stamped and certified as authentic by the Procuring entity, whose expiry date should not be less than 30 days from the LC expiry date, shall form part of the documents to be presented to the Bank before any payment is made.

#### 6.4 Advance Payment

**Advance Payment is not applicable.**

### **Tax clauses**

"Taxes" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected, or withheld pursuant to any regulation having the force of law and "Taxation" shall be construed accordingly.

#### **1. Local Taxation**

- 1.1 Nothing in the Contract shall relieve the Contractor and/or his Sub-Contractors from their responsibility to pay any taxes, statutory contributions and levies that may be levied on them in Kenya in respect of the Contract. The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes.
- 1.2 The Contractor shall be deemed to be familiar with the tax laws in the Employer's Country and satisfied themselves with the requirements for all taxes, statutory contributions and duties to which they may be subjected during the term of the Contract.
- 1.2.1 In instances where discussions are held between the Employer and the Contractor regarding tax matters, this shall not be deemed to constitute competent advice and hence does not absolve the Contractor of their responsibility in relation to due diligence on the tax issue as per 1.2 above.

#### **2. Tax Deduction**

- 2.1 If the Employer is required to make a tax deduction by Law, then the deduction shall be made from payments due to the Contractor and paid directly to the Kenya Revenue Authority. The Employer shall upon remitting the tax to Kenya Revenue Authority furnish the Contractor with the relevant tax deduction certificates.
- 2.2 Where the Contractor is paid directly by the Financiers and the Employer is not able to deduct tax, then the Contractor will be required to pay the tax deduction to Kenya Revenue Authority in the name of the Employer and furnish the Employer with an original receipt thereof as evidence of such payment. In absence of the said evidence, the Employer will not process any subsequent payments to the Contractor.
3. Tax Indemnity
  - 3.1 The Contractor shall indemnify and hold the Employer harmless from and against any and all liabilities, which the Employer may incur for any reason of failure by the Contractor to comply with any tax laws arising from the execution of the Contract whether during the term of the Contract or after its expiry.
  - 3.2 The Contractor warrants to pay the Employer (within fourteen (14) days of demand by the Employer), an amount equal to the loss, liability or cost which the Employer determines has been (directly or indirectly) suffered by the Employer for or on account of the Contractor's Tax liability arising from the Contract.
    - 3.2.1 Where the amount in 3.2 above remains unpaid after the end of the fourteen (14) days moratorium, the Employer shall be entitled to compensation for financing charges.

## SECTION E - TECHNICAL SPECIFICATIONS

### GENERAL SPECIFICATIONS

1. These specifications describe the basic requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc. for the products they intend to supply.
2. Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
3. All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any, shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The procuring entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
4. The tenderers are requested to present information along with their offers as follows:
  - i) Shortest possible delivery period of each product.
  - ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

### SUPPLY & INSTALLATION OF MICROSOFT OPERATING SYSTEM LICENSES

#### 1. Licenses:

Item	REQUIREMENTS / SPECIFICATIONS	TENDERER'S OFFER
Licenses Specifications	<ul style="list-style-type: none"> <li>• Windows 2016 Data Centre Edition + associated CALs for 8 Blade servers, 4 * 10 Cores each</li> <li>• Windows 2016 Standard Edition + associated CALs for 14 servers, 2 * 6 Cores each</li> <li>• Windows 2012 Standard Edition + associated CALs for One blade, 2 * 6 Cores</li> <li>• Exchange Server 2016 Enterprise Edition for Six servers</li> <li>• 3000 Standard Plus Enterprise CALs</li> </ul>	

#### 2. Training

Item	REQUIREMENTS / SPECIFICATIONS	TENDERER'S OFFER
Microsoft Training	Training for five (5) technical staff in a Microsoft certified training center on the following modules: <ul style="list-style-type: none"> <li>• <u>MCSA Windows server 2016</u> Installation, Storage, and Compute with Windows Server 2016 Networking with Windows Server 2016 Identity with Windows Server 2016</li> <li>• <u>Microsoft Exchange 2016</u> Administering Microsoft Exchange Server 2016 Designing and Deploying Microsoft Exchange Server 2016</li> </ul>	

#### 3. Migration

Upgrade the current 2008 AD to 2016 AD

Upgrade the current Exchange 2010 to Exchange 2016

Migrate the mailboxes to Exchange 2016

## SECTION F – PRICE & SCHEDULE OF REQUIREMENTS

### DETAILED PRICE SCHEDULE

#	Item	Quantity	Unit Price	VAT (If any)	Total
01	Windows 2016 Data Centre Edition + associated CALs	8 Blade servers, 4 * 10 Cores each			
02	Windows 2016 Standard Edition + associated CALs	14 servers, 2 * 6 Cores each			
03	Windows 2012 Standard Edition + associated CALs	One blade, 2 * 6 Cores			
04	Exchange Server 2016 Enterprise Edition	6			
05	Standard Plus Enterprise CALs	3000			
06	Microsoft Training	5			
<b>GRAND TOTAL</b>					

\*This price schedule acts as a guide of format for comparison purposes only. It is a requirement for bidders to provide detailed price schedule, in line with KenGen’s requirements and their detailed bill of materials. The company reserves the right to disqualify bidders on the basis of lack of a comprehensive price schedule.

TENDER’S NAME: \_\_\_\_\_

TENDERER’S SIGNATURE: \_\_\_\_\_

COMPANY’S RUBBER STAMP: \_\_\_\_\_



## **SECTION G: STANDARD FORMS**

1. Form of Tender
2. Contract Form
3. Confidential Questionnaire Form
4. Tender Security Form
5. Performance Security Form

1. FORM OF TENDER

Date \_\_\_\_\_

Tender No. \_\_\_\_\_

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

\_\_\_\_\_  
[name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. .... [insert numbers].the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide the services ( ..... (insert service description) in conformity with the said tender documents for the sum of ..... (total tender amount in words and figures) or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide the services in accordance with the service delivery schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to \_\_\_ \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract in the form prescribed by .....( Procuring entity).
4. We agree to abide by this Tender for a period of **NINETY (90) days** from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us, subject to signing of the Contract by the parties.
6. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[in the capacity of]

Duly authorized to sign tender for an on behalf of \_\_\_\_\_

**Note:** In accordance with **Clause 82** of the **Public Procurement and Asset Disposal Act 2015**

**“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.**

2. CONTRACT FORM

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 20..... between.....[name of procurement entity] of .....[country of Procurement entity](hereinafter called “KenGen”) of the one part and .....[name of tenderer] of .....[city and country of tenderer](hereinafter called “the Supplier”) of the other part.

WHEREAS the procuring entity invited tenders for certain Services. Viz.....[brief description of services] and has accepted a tender by the tenderer for the provision of those services in the sum of .....[contract price in words and figures]

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this agreement, viz.:
  - a) The tender form and price schedule submitted by the tenderer
  - b) The schedule of requirements
  - c) The technical specifications
  - d) The General Conditions of Contract
  - e) The Special Conditions of Contract, and
  - f) The procuring entity’s Notification of award and the bidders acceptance
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the materials and spares and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the materials and spares and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity)

Signed by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer)

In the presence of \_\_\_\_\_.

3. MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE

(Must be filled by all applicants or Tenderers' who choose to participate in this tender)

Name of Applicant(s).....

You are requested to give the particulars in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. Part 2 (d) to part 2 (i / j) must be filled. You are advised that giving wrong or false information on this Form will lead to automatic disqualification/termination of your business proposal at your cost.

Part 1 – General

Business Name:.....Certificate of Incorporation / Registration No. ....
Location of business premises:
Country ..... Physical address .....
Town ..... Building .....
Floor ..... Plot No. ....
Street / Road ..... Postal Address .....
Postal / Country Code ..... Telephone No's .....
Fax No's ..... E-mail address .....
Website .....
Contact Person (Full Names) ..... Direct / Mobile No's .....
Title ..... Power of Attorney (Yes / No)
If yes, attach written document.
Nature of Business (Indicate whether manufacturer, distributor, etc) .....

(Applicable to Local suppliers only)

Local Authority Trading License No. .... Expiry Date .....
Value Added Tax No. ....
Value of the largest single assignment you have undertaken to date (USD/KShs) .....
Was this successfully undertaken? Yes / No. .... (If Yes, attach reference)
Name (s) of your banker (s)
Branches ..... Tel. No's .....

Part 2 (a) – Sole Proprietor (if applicable)

Full names .....
Nationality ..... Country of Origin .....
Company Profile ..... (Attach brochures or annual reports in case of public company)

Part 2 (b) – Partnerships (if applicable)

Give details of partners as follows:

Full Names Nationality Citizenship Details Shares

1. ....
2. ....
Company Profile ..... (Attach brochures)

Part 2 (c) – Registered Company (if applicable - as per the CR12 form)

Private or public .....
Company Profile ..... (Attach brochures or annual reports in case of public companies)
State the nominal and issued capital of the Company
Nominal KShs .....
Issued KShs .....

List of top ten (10) shareholders and distribution of shareholding in the company. Give details of all directors as follows: -

**Full Names Nationality Citizenship Details Shares**

1.....  
2.....

**Part 2 (d) – Debarment**

I/We declare that I/We have not been debarred from any procurement process and shall not engage in any fraudulent, corrupt, coercive and obstructive acts with regard to this or any other tender by the KENGEN and any other public or private institutions.

Full Names .....  
Signature .....  
Dated this .....day of .....20.....  
In the capacity of .....  
Duly authorized to sign Tender for and on behalf of .....

**Part 2 (e) – Bankruptcy / Insolvency / receivership.**

I/We declare that I/We have not been declared bankrupt or insolvent by the competent Authorities in Kenya and neither are we under receivership:

Full Names .....  
Signature .....  
Dated this .....day of .....20.....  
In the capacity of .....  
Duly authorized to sign Tender for and on behalf of .....

**Part 2 (f) – Criminal Offence**

I/We, (Name (s) of Director (s)):-

- a) .....
- b) .....

Have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed .....  
For and on behalf of M/s .....  
.....  
In the capacity of .....  
.....  
Dated this .....day of .....20.....  
Suppliers’ / Company’s Official Rubber Stamp  
.....

**Part 2 (g) – Conflict of Interest**

I/We, the undersigned state that I / We have no conflict of interest in relation to this procurement:

- a) .....
- b) .....

For and on behalf of M/s .....  
In the capacity of .....  
Dated this .....day of .....20.....  
Suppliers’ / Company’s Official Rubber Stamp  
.....

**Part 2 (h) – Interest in the Firm:**

Is there any person/persons in KENGEN or any other public institution who has interest in the Firm? Yes/No  
..... (Delete as necessary) Institution .....

*(Title) (Signature) (Date)*

**Part 2(i) – Experience:**

Please list here below similar projects accomplished or companies / clients you have supplied with similar items or materials in the last **5 years**.

	Company Name	Country	Contract/Order No.	Value	Contact person (Full Names)	E-mail address	Cell phone No.
1							
2							

**Part 2(j or k) – Declaration**

I / We, the undersigned state and declare that the above information is correct and that I / We give KENGEN authority to seek any other references concerning my / our company from whatever sources deemed relevant, e.g. Office of the Registrar of Companies, Bankers, etc.

Full names

.....

Signature.....

For and on behalf of M/s .....

In the capacity of .....

Dated this ..... day of .....20.....

Suppliers' / Company's Official Rubber Stamp

.....

**TENDER SECURITY FORM**

(To be on Bank’s Letterhead)

Whereas..... [Name of the contractors]  
(Hereinafter called “the contractors”) has submitted its tender dated .....[date of  
submission of tender] for \_\_\_\_\_(hereinafter  
called “the Tender”).....

KNOW ALL PEOPLE by these presents that WE.....  
Of..... Having our registered office at  
..... (Hereinafter called “the Bank”), are bound unto Kenya Electricity Generating  
Company (KenGen. hereinafter called “the Procuring entity”) in the sum of  
.....

For which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its  
successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_\_  
day of \_\_\_\_\_2017.

THE CONDITIONS of this obligation are:

- 1. If the contractors withdraws its Tender during the period of tender validity specified by the contractors on the Tender Form; or
- 2. If the contractors, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
  - (a) Fails or refuses to execute the Contract Form, if required; or
  - (b) Fails or refuses to furnish the performance security, in accordance with the Instructions to Contractors;

We undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, 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 above date.

[Signature of the bank]

**PERFORMANCE SECURITY FORM**

To: Kenya Electricity Generating Company Limited  
Stima Plaza Phase III, Kolobot Road, Parklands  
P.O. Box 47936-00100  
NAIROBI, KENYA

WHEREAS ..... [Name of contractors]  
(Hereinafter called “the contractors”) has undertaken, in pursuance of Contract  
No. \_\_\_\_\_ [reference number of the contract] dated \_\_\_\_\_ 2017 to supply of  
\_\_\_\_\_  
(Hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the contractors shall furnish  
you with a bank guarantee by a reputable bank for the sum specified therein as security for  
compliance with the Contractor’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the contractors a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the  
contractors, up to a total of.....  
[amount of the guarantee in words and figures], and we undertake to pay you, upon your first written  
demand declaring the contractors to be in default under the Contract and without cavil or argument,  
any sum or sums within the limits of.....  
[Amount of guarantee] as aforesaid, without your needing to prove or to show grounds or reasons for  
your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

Signature and seal of the Guarantors

[Name of bank or financial institution]

[Address]

[Date]

N/B This performance security should be in the letterhead of the guaranteeing Bank