



Open National Tender (ONT)

Tender Document

For the

Supply of Desktop and Laptop Computers

Invitation for Tender (IFT) Number: KEMSA/ONT 1/2017-2018

FRAMEWORK CONTRACTING

RESERVED FOR DISADVANTAGED GROUPS

**Tender Closing date: 14th November 2017
Time: -10.00 a.m.**

Invitation for Tenders (IFT)

Tender Reg. No. KEMSA/ONT 1/2017-2018

For

The supply of Desktop and Laptop Computers

Date: 10th October, 2017

1. The Kenya Medical Supplies Authority (KEMSA) has set aside funds for use in the procurement of Laptop and Desktop Computers during the financial year 2017/2018. It is intended that part of the proceeds of the funds will be used to cover eligible payments under contracts for Supply of these items.
2. KEMSA now invites sealed bids from eligible Suppliers for the supply of Laptop and Desktop Computers.
3. Bidding will be conducted through the procedures specified in the Public Procurement and Asset Disposal Act (PPADA) 2015 and is reserved for disadvantaged groups.
4. Interested eligible Bidders may obtain further information and inspect the Bidding Documents at the Procurement office situated at:

Kenya Medical Supplies Authority,

Commercial Street

P.O Box 47715-00100, Nairobi

Tel No: 254 20 3922000/ 0719033000/ 0733606600

Fax No: 254 20 3922400

Email: procure@kemsa.co.ke

5. On normal working days on Monday to Friday between 0900hrs and 1600hrs except on Public Holidays or download at the IFMIS Suppliers portal <https://supplier.treasury.go.ke>. Documents downloaded are free of charge and bidders are advised to register their bid documents at the Procurement Office or via email at procure@kemsa.co.ke. (Refer to registration form in the tender document)
6. A complete set of Bidding Document(s) in English may be purchased by interested Bidders on the submission of a written application to the address given under

paragraph 4 above and upon payment of a non-refundable fee of Kenya Shillings 1,000. The method of payment is i) cash or by banker's cheque payable to "Kenya Medical Supplies Authority" KEMSA and ii) By direct deposit to the following account;

Kenya Shillings Account

Account Name: Kenya Medical Supplies Authority

Bank Name and Branch: National Bank of Kenya, Harambee Avenue

Account Number: 01003-009125-00

7. Bidders are invited to a "Pre-Bid Conference" at 10.00 a.m. on Tuesday 24th October 2017 at the KEMSA Tender opening Hall where tender requirements will be clarified.
8. Completed serialized/paginated bidding documents **one original and a copy** in plain sealed envelopes clearly marked on top with the Tender Number and description and should be addressed to:

The Chief Executive Officer
Kenya Medical Supplies Authority
Commercial Street
P.O Box 47715-00100
Nairobi

And must be deposited in the Tender Box No. 1 marked GOK/ World Bank at the Reception on the Ground Floor KEMSA's Commercial Street Office in Nairobi on or before 10:00am Tuesday, 14th November, 2017. Bulky tenders can be handed over to KEMSA **Procurement Director's** office for registration and safe keeping till the tender opening date.

9. Bids will be opened promptly in public and in the presence of Bidders' and/ or representatives who choose to attend in the **opening at KEMSA Tender opening Hall at 10.00 a.m Local time on** Tuesday, 14th November, 2017.
10. Late bids, Electronic Bids, bids not opened and not readout in public at the bid open ceremony shall not be accepted for evaluation irrespective of circumstances

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Section I. Instructions to Tenderers

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Instructions to Tenderers

A. INTRODUCTION

- 1. Scope of Tender**
- 1.1 The Procuring entity, as specified in the Tender Data Sheet (TDS) and in the Special Conditions of Contract (SCC), invites tenders for the supply of Goods as specified in the TDS and described in the Schedule of Requirements. The name and identification number of the Contract is provided in the TDS and in the SCC.
- 1.2 Throughout these tender documents, the terms “in writing” means communicated in written form (e.g. by mail, e-mail fax or telex) with proof of receipt and “day” means calendar day. Singular also means plural.
- 2. Source of Funds**
2. KEMSA has set aside funds for the procurement of commodities name in the **Bid Data Sheet**
- 3. Fraud and Corruption**
- 3.1 It is the Purchaser’s policy to require that Tenderer’s / Suppliers /Contractors under the Purchaser’s financed contracts, observe the highest standard of ethics during the procurement and execution of such. In pursuance of this policy, the Government of Kenya defines, for the purposes of this provision, the terms set forth below as follows:
- (a) (i) “corrupt practice” means the offering, giving, receiving, or soliciting of any thing or any advantage of value to influence the action of a public official in the procurement process or in execution; and
- (a) (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a tender to the detriment of the Beneficiary it includes collusive practices among Tenderer’s (prior to or after tender submission) designed to establish tender prices at artificial, noncompetitive levels and to deprive the Beneficiary of the benefits of free and open competition
- and that the
- (b) Purchaser will reject a proposal for the award if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the tender in question.
- (c) purchaser will declare a firm ineligible, either

indefinitely or for a stated period of time, to be awarded a Purchaser's financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Purchaser's financed contract.

3.2 Furthermore, Tenderer's shall be aware of the provision stated in sub-clause 23.1 (d) of the GCC.

4. Eligibility

4.1 Except as provided in ITT sub-clauses 4.2 and 4.3, this tender process is

- a) Open to qualified eligible tenderer's (pre - qualified or not) as described in the **TDS**.
- b) All candidates as defined in the Public Procurement and Disposal Act 2005 and the Public Procurement and Disposal Regulation 2006, 2011 and 2013.

Successful tenderers shall complete the supply of goods by intended completion date as specified in the **TDS**

4.2 A firm declared ineligible in accordance with ITT sub-clause 3.1 (c) shall be ineligible to tender for a contract awarded by the Purchaser during the period of time determined by the Purchaser.

4.3 Pursuant to ITT sub-clause 14.1, the Tenderer shall furnish, as part of its tender, documents establishing, to the Purchaser's satisfaction, the Tenderer's eligibility to tender.

4.4 Tenderer' shall provide such evidence of their continued eligibility satisfactory to the Purchaser as the Purchaser shall reasonably request.

5. Eligible Goods and Services

5.1 Funds from the Purchaser are disbursed only on account of expenditures for the goods and services, provided by nationals of, and produced in or supplied from, eligible source countries as defined in the edition of the Public Procurement Regulations and Guidelines specified in the **TDS**.

5.2 For purposes of this clause, the nationality of the Tenderer is distinct from the country from where the goods and services are supplied.

5.3 For purposes of this clause,

(a) the term "Goods" includes any Goods that are the subject of this Invitation for Tenders and

(b) the term "services" includes related services such as

transportation, insurance, commissioning and training.

- 6. Documents Establishing Eligibility of Goods and Services and Conformity to Tender Documents**
- 6.1 Pursuant to ITT Clause 14, the Tenderer shall furnish, as part of its tender, documents establishing, to the Purchaser's satisfaction, the eligibility of the Goods and services to be supplied under the contract.
- 6.2 The documentary evidence of the eligibility of the Goods and services shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered that shall be confirmed by a Certificate of Origin, issued shortly before the time of shipment.
- 6.3 The documentary evidence of conformity of the Goods and services to the Tender Documents 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 goods;
 - (b) an item-by-item commentary on the Purchaser's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of (even allegedly minor) deviations and exceptions to the provisions of the Technical Specifications;
 - (c) Any other procurement-specific documentation requirement as stated in the **TDS**.
- 6.4 Unless the **TDS** stipulates otherwise, the Goods to be supplied under the contract shall be registered with the relevant authority in the Purchaser's country. A Tenderer who has already registered its goods by the time of tendering shall submit a copy of the Registration Certificate with its tender.
- 6.5 For purposes of the commentary to be furnished pursuant to ITT clause 6.3 (b) above, the Tenderer shall note that standards as well as references to brand names designated by the Purchaser in its Technical Specifications are intended to be descriptive only and not restrictive. The Tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Purchaser's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.
- 7. Qualifications of the Tenderer**
- 7.1 The Tenderer shall provide documentary evidence to establish to the Purchaser's satisfaction that:

- (a) The Tenderer has the financial and technical capability necessary to perform the contract, meets the qualification criteria specified in the **TDS**, and has a successful performance history in accordance with criteria specified in the **TDS**. If a prequalification process has been undertaken for the contract, the Tenderer shall, as part of its tender, update any information submitted with its application for prequalification.
- (b) in the case of a Tenderer offering to supply Health Sector Goods identified in the **TDS**, that the Tenderer did not manufacture or otherwise produce, the Tenderer has been duly authorized by the manufacturer or producer of such goods to supply the Goods in the Purchaser's country;
- (c) in the case of a Tenderer who is not doing business within the Purchaser's country (or for other reasons will not itself carry out service/maintenance obligations), the Tenderer is or will be (if awarded the contract) represented by a local service/maintenance provider in the Purchaser's country, equipped and able to carry out the Tenderer's warranty obligations prescribed in the Conditions of Contract and/or Technical Specifications.
- 8. One Tender per Tenderer** 8.1 A firm shall submit only one tender either individually or as a partner of a joint venture (other than in cases of alternatives pursuant to ITT clause 20). A firm that submits either individually or, as a member of a joint venture, more than one tender will cause all the proposals with the firm's participation to be disqualified.
- 9. Cost of Tendering** 9.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the Purchaser will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

B. THE TENDER DOCUMENTS

- 10. Content of Tender Documents** 10.1 The Tender Documents are those stated below and should be read in conjunction with any addendum issued in accordance with ITT clause 12.
- | | |
|--------------|---|
| Section I. | Instructions to Tenderers (ITT) |
| Section II. | Tender Data Sheet (TDS) |
| Section III. | General Conditions of Contract (GCC) |
| Section IV. | Special Conditions of Contract (SCC) |
| Section V. | Schedule of Requirements (SoR) |
| Section VI. | Technical Specifications (TS) |
| Section VII. | Sample Forms (including Contract |

- Agreement)
- 10.2 The “Invitation for Tenders” (ITT) does not form part of the Tender Documents and is included as a reference only. In case of discrepancies between the ITT and the Tender Documents listed in 10.1 above, said Tender Documents will take precedence.
- 11. Clarification of Tender Documents**
- 11.1 A prospective Tenderer requiring any clarification of the Tender Documents shall contact the Purchaser in writing (for these ITT, the term “in writing” means communicated in written form (e.g. email, fax, telex) with proof of receipt at the entity’s address as indicated in the TDS. The Purchaser will respond in writing to any request for clarification received no later than Seven (7) calendar days prior to the deadline of submission of tenders. The content of the Purchaser’s response shall be sent to all prospective Tenderers including a description of the inquiry but without identifying the source of the inquiry.
- 12. Amendment of Tender Documents**
- 12.1 At any time prior to the deadline for submission of tenders, the Purchaser may amend the Tender Documents by issuing addenda/amendments.
- 12.2 Any addendum/amendment thus issued shall be part of the Tender Document pursuant to ITT sub-clause 10.1 and shall be communicated in writing to all purchasers of the Tender Documents and will be binding on them. Tenderers are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained in the addendum/amendment will have been taken into account by the Tenderer in its tender.
- 12.3 To give prospective Tenderers reasonable time in which to take addenda/amendments into account in preparing their tenders, the Purchaser may extend, at its discretion, the deadline for submission of tenders, in which case, the Purchaser will notify all Tenderers in writing of the extended deadline

C. PREPARATION OF TENDERS

- 13. Language of Tender**
- 13.1 The tender, as well as all correspondence and documents relating to the tender exchanged by the Tenderer and the Purchaser, shall be written in the language specified in the TDS. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the TDS, in which case, for purposes of interpretation of the

Tender, the translation shall govern.

14. Documents Constituting the Tender

14.1 The tender submitted by the Tenderer shall comprise the following:

- (a) duly filled-in Tender Form and Price Schedule, in accordance with the forms indicated in Section VII;
- (b) Signed Tender Securing Declaration.
- (c) written power of attorney, authorizing the named signatory of the tender to commit the Tenderer and showing the authorizing as well as the authorized person's function in the firm, name and signature;
- (e) in the absence of prequalification, documentary evidence in accordance with ITT sub-clause 4.4 establishing to the Purchaser's satisfaction the Tenderer's eligibility to tender including but not limited to documentary evidence that the Tenderer is legally incorporated in a territory of an eligible source country as defined under ITT clause 4;
- (f) documentary evidence establishing to the Purchaser's satisfaction, and in accordance with ITT clause 6 that the goods and ancillary services to be supplied by the Tenderer are eligible goods and services, pursuant to ITT clause 5, and that they conform to the Tender Documents;
- (g) Documentary evidence establishing to the Purchaser's satisfaction, and in accordance with ITT clause 7 that the Tenderer is qualified to perform the contract if its tender is accepted. In the case where prequalification of Tenderers has been undertaken, and pursuant to ITT clause 7.1 (a) the Tenderer must provide evidence on any changes in the information submitted as the basis for prequalification, or if there has been no change at all in said information, a statement to this effect;
- (h) Any other documentation as requested in the **TDS**.

15. Tender Form

15.1 The Tenderer shall complete the Tender Form and the Price Schedule furnished in the Tender Documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices. **Failure to comply with this requirement would lead to disqualification.**

16. Tender Prices

16.1 The Tenderer shall indicate in the Price Schedule, as applicable, the unit prices of each item, total prices of each item and lot, and the total tender price of the goods it proposes to supply under the contract. **The quoted prices**

should be typed in indelible ink and not hand written

- a) Prices indicated on the price schedule shall be entered separately in the following manner
 - i) The price of goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom or off-the - shelf as applicable), including all custom duties and sales and other taxes already paid or payable
 - ii) Charges for inland transportation, insurance and other local costs incidental to delivery of the goods to their final destinations
- 16.2 The trade terms EXW and CIP shall be governed by the rules prescribed in the current edition at the time of tender submission of the *Incoterms* published by the International Chamber of Commerce, Paris, added by any deviation if so specified in the **TDS**.
- 16.3 Unless otherwise specified in the **TDS**, prices quoted by the Tenderer shall be fixed during the Tenderer's performance 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 ITT clause 29.
- 16.4 Pursuant to sub-clause 16.1 above, and if so indicated in the **TDS**, tenders are being invited for all items or for individual contracts (lots). Each item offered must comprise the full quantity required under each item. Each lot shall comprise at least ninety percent (90%) of all items required under the lot. Tenderers wishing to offer any price reduction for the award of more than one contract (lot) shall specify in their tender the price reductions applicable to each package or, alternatively, to individual contracts within the package. Price reductions may be submitted as an amount or a percentage to be applied to the tender prices.
- 17. Currencies of Tender**
 - 17.1 The Tenderer may express the tender price of the Goods to be supplied entirely in any free convertible currency. If the Tenderer wishes to be paid in a combination of different currencies, it must quote its prices accordingly, but no more than three foreign currencies may be used. Tenderers expressing their foreign currency requirements in any of the national currencies should do so in accordance with the provisions of the **TDS**.
- 18. Period of Validity of Tenders**
 - 18.1 Tenders shall remain valid for the period stipulated in the **TDS** after the date of tender submission specified in ITT clause 23. A tender valid for a shorter period shall be

rejected by the Purchaser as non-responsive.

18.2 In exceptional circumstances, prior to expiry of the original tender validity period, the Purchaser may request that the Tenderers extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing. . Except as provided in ITT clause 18.3, a Tenderer agreeing to the request will not be required or permitted to modify its tender, but will be required to extend the validity of its tender.

18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding eighty-six (86) days beyond the tender validity specified in the **TDS**, the contract price may be increased by a factor that reflects changes in the cost of inputs.

**19. Tender-
Securing
Declaration
Form**

19.1 A dully filled and signed tender securing form shall be attached to the tender document.

**20. Alternative
Proposals by
Tenderers**

20.1 Unless specified in the **TDS**, alternative tenders shall not be accepted under any circumstance.

**21. Format and
Signing of
Tender**

21.1 The Tenderer shall prepare an original and the number of copies/sets of the tender indicated in the **TDS**, clearly marking each one as "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

21.2 Each tender shall contain a separate technical and financial proposal.

21.2.1 The technical proposal consists of: Technical Specifications, Schedule of Requirements, as well as other technical documentation.

21.2.2 The financial proposal consists of: Tender Form; Price Summary Sheet and Price Schedule(s) and Tender security as well as other financially relevant information like discounts etc.

21.3 The original and all copies of the tender, each consisting of the documents listed in ITT sub-clause 14.1, 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 authorization shall be indicated by written power of attorney, which pursuant to ITT sub-clause 14.1 (d) shall accompany the tender.

- 21.4 Any interlineations, erasure, or overwriting to correct errors made by the Tenderer shall be initialed by the person or persons signing the tender.
- 21.5 The Tenderer shall furnish in the Tender Form (a sample of which is provided in the Sample Forms Section of the tender documents) information regarding commissions or gratuities, if any, paid or to be paid to agents relating to this tender and to the execution of the contract if the Tenderer is awarded the contract.

D. SUBMISSION OF TENDERS

22. Sealing and Marking of Tenders

- 22.1 The Tenderer shall enclose the original and each copy of the tender including alternative tenders, if permitted in accordance with ITT clause 20, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes containing the original and copies shall then be enclosed in one outer envelope.

The Tenderer shall seal and mark the original and copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL and "COPY OF TENDER". The Original and Copy must be properly bound for ease of handling. The original and copy of the "Schedule of Prices" shall be sealed in separate envelopes, duly marking the envelopes as "Schedule of Prices - ORIGINAL", "Schedule of Prices - COPY". The envelopes shall then be sealed in an outer envelope

- 22.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Tenderer;
 - (b) be addressed to the Purchaser at the address given in the TDS;
 - (d) bear the specific identification of this Tender process indicated in the TDS, the Invitation for Tenders (IFT) title and number indicated in the TDS; and
 - (e) Bear a statement "DO NOT OPEN BEFORE Tuesday, 14th November, 2017" to be completed with the time and date specified in the TDS relating to ITT sub-clause 23.1.
- 22.3 If the outer envelope is not sealed and marked as required by ITT sub-clause 22.2, the Purchaser will assume no responsibility for the misplacement or premature opening of the tender.

- 22.4 The schedule of prices shall be typed and not handwritten. It shall contain no erasures or overwriting. Failure to comply with this requirement will lead to disqualification of the tender.
- 23. Deadline for Submission of Tenders**
- 23.1 Tenders must be received by the Purchaser at the address specified in the **TDS** relating to ITT sub-clause 22.2 (b) no later than the time and date specified in the **TDS**.
- 23.2 The Purchaser may, at its discretion, extend the deadline for the submission of tenders by amending the Tender Documents in accordance with ITT sub-clause 12.3, in which case all rights and obligations of the Purchaser and Tenderers previously subject to the deadline will thereafter be subject to the deadline as extended.
- 24. Late Tenders**
- 24.1 Any tender received by the Purchaser after the deadline for submission of tenders prescribed by the Purchaser in the **TDS** pursuant to ITT clause 23 will be rejected and returned unopened to the Tenderer.
- 25. Modification and Withdrawal of Tenders**
- 25.1 The Tenderer may modify or withdraw its tender after submission, provided that written notice of the modification, or withdrawal of the tenders duly signed by an authorized representative, is received by the Purchaser prior to the deadline prescribed for submission of tenders.
- 25.2 The Tenderer's modification shall be prepared, sealed, marked, and dispatched as follows:
- (a) The Tenderer shall provide an original and the number of copies specified in the **TDS** of any modifications to its tender, clearly identified as such, in two inner envelopes duly marked "TENDER MODIFICATION-ORIGINAL" and "TENDER MODIFICATION-COPIES." The inner envelopes shall be sealed in an outer envelope, which shall be duly marked "TENDER MODIFICATION."
- (b) Other provisions concerning the marking and dispatch of tender modifications shall be in accordance with ITT sub-clauses 22.2 and 22.3.
- 25.3 A Tenderer wishing to withdraw its tender shall notify the Purchaser in writing prior to the deadline prescribed for tender submission. A withdrawal notice shall be received prior to the deadline for submission of tenders. The notice of withdrawal shall:
- (a) be addressed to the Purchaser at the address named in the **TDS**,
- (b) bear the specific identification of the Tender process (Contract name), the IFT title and IFT number, and

- the words "TENDER WITHDRAWAL NOTICE," and
- (c) be accompanied by a written power of attorney authorizing the signatory of the withdrawal notice to withdraw the tender.
- 25.4 Tenders requested to be withdrawn in accordance with ITT sub-clause 25.3, shall be returned unopened to the Tenderers.
- 25.5 No tender may be withdrawn in the interval between the tender submission deadline and the expiration of the tender validity period specified in ITT clause 18. Withdrawal of a tender during this interval may result in the forfeiture of the Tenderer's tender security, pursuant to ITT sub-clause 19.7.

E. OPENING AND EVALUATION OF TENDERS

- 26. Tender Opening**
- 26.1 The Purchaser will open all tenders, including withdrawal notices and modifications, in public, in the presence of Tenderers' representatives who choose to attend, at the time, on the date and at the place specified in the **TDS**. Tenderers' representatives shall sign a register as proof of their attendance.
- 26.2 Envelopes marked "WITHDRAWAL" shall be read out and the envelope with the corresponding tender shall not be opened but returned to the Tenderer. No tender withdrawal shall be permitted unless the corresponding withdrawal notice is read out at tender opening. Envelopes marked "MODIFICATION" shall be read out and opened with the corresponding tender.
- 26.3 Tenders shall be opened one at a time, reading out the name of the Tenderer and whether there is a modification; the tender price of each item or lot, as the case may be, including discounts and alternative offers, if allowed in the **TDS**; the presence or absence of a tender security, if required; the presence or absence of requisite powers of attorney; and any other such details as the Purchaser may consider appropriate. No tender shall be rejected at tender opening except for late tenders pursuant to sub-clause 24.1.
- 26.4 Tenders (and modifications sent pursuant to ITT sub-clause 25.2) that are not opened or read out at tender opening shall not be considered further for evaluation, irrespective of the circumstances.

- 26.5 The Purchaser will prepare minutes of the tender opening at the end of the opening session, including, as a minimum: the name of the Tenderer and whether there was a withdrawal or modification; the tender price; including any discounts or alternatives offered if permitted in the **TDS**; the presence or absence of a tender security; the presence or absence of requisite powers of attorney. The Tenderer's representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the content and effect of the minutes. The minutes should be distributed to all Tenderers who request them.
- 27. Clarification of Tenders**
- 27.1 During evaluation of the tenders, the Purchaser 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, except to correct arithmetic errors identified by the Purchaser in the evaluation of the tenders, in accordance with ITT Sub-Clause 30.1.
- 28. Confidentiality**
- 28.1 Information relating to the examination, clarification, evaluation, and comparison of tenders, and recommendations for the award of a Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the Notification of Contract award is made to all Tenderers.
- 28.2 Any effort by a Tenderer to influence the Purchaser in the Purchaser's tender evaluation, tender comparison, or contract award decisions may result in the rejection of the Tenderer's tender.
- 28.3 From the time of tender opening to the time of Contract award, if any Tenderer wishes to contact the Purchaser on any matter related to its tender, it should do so in writing.
- 29. Examination of Tenders and Determination of Responsiveness**
- 29.1 The Purchaser will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order. In the case where a prequalification process has been undertaken for the Contract(s) for which these tender documents have been issued, the Purchaser will ensure that each tender is from a prequalified Tenderer.
- 29.2 The Purchaser may waive any minor informality, nonconformity, or irregularity in a tender that does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer.
- 29.3 Prior to the detailed evaluation, pursuant to ITT Clause 32,

the Purchaser will determine whether each tender is of acceptable quality, is complete, and is substantially responsive to the tender documents. For purposes of this determination, a substantially responsive tender is one that conforms to all the terms, conditions, and specifications of the Tender Documents without material deviations, exceptions, objections, conditionalities or reservations. A material deviation, exception, objection, conditionality or reservation is one:

- (i) that limits in any substantial way the scope, quality, or performance of the goods and/or related services;
- (ii) that limits, in any substantial way that is inconsistent with the tender documents, the Purchaser's rights or the successful Tenderer's obligations under the Contract;

and

- (iii) The acceptance of which would unfairly affect the competitive position of other Tenderers who have submitted substantially responsive tenders.

29.4 If a tender is not substantially responsive, it will be rejected by the Purchaser and cannot subsequently be made responsive by the Tenderer by correction of the nonconformity. The Purchaser's determination of a tender's responsiveness is to be based on the contents of the tender itself, and any written clarification submitted by the Tenderer in accordance with ITT sub-clause 27.1.

30. Correction of Errors

30.1 Arithmetical errors will be rectified as follows. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and the quantity, the unit or subtotal price shall prevail. If there is a discrepancy between subtotals and the total price, the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. If a Tenderer does not accept the correction of errors, its tender will be rejected and its tender security may be forfeited.

31. Conversion to Single Currency

31.1 To facilitate evaluation and comparison, the Purchaser will convert all tender prices expressed in the various currencies in which they are payable to either:

- (a) the currency of the Purchaser's country at the selling exchange rate established for similar transactions by the Central Bank or a commercial bank in the Purchaser's country

or

- (b) any other freely convertible currency at the selling rate of exchange published in the international press for the

amount payable in foreign currency; and at the selling exchange rate established for similar transactions by the Central Bank in the Purchaser's country for the amount payable in the currency of the Purchaser's country

32. Evaluation and Comparison of Tenders

31.2 The currency selected for converting tender prices to a common base for the purpose of evaluation, along with the source and date of the exchange rate, are specified in the **TDS**.

32.1 The Purchaser will evaluate and compare the tenders that have been determined to be substantially responsive, pursuant to ITT clause 29.

32.2 The Purchaser's evaluation of a tenders will exclude and not take into account:

- (a) in the case of goods manufactured in the Purchaser's country or goods of foreign origin already located in the Purchaser's country: sales and other similar taxes, that will be payable on the goods if a contract is awarded to the Tenderer;
- (b) in the case of goods of foreign origin offered from abroad: customs duties and other similar import taxes that will be payable on the goods if the contract is awarded to the Tenderer; and
- (c) Any allowance for price adjustment during the period of execution of the Contract, if not provided for in the **TDS**.

32.3 The comparison shall be between the EXW (ex-factory/ex-warehouse/off-the-shelf) price of the Goods offered from within the Purchaser's country plus local transportation, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the Goods, and the CIP named place of destination price of the Goods offered from outside the Purchaser's country, plus local transportation.

32.4 The Purchaser's evaluation of a tender will take into account one or more of the following factors as specified in the **TDS**, and quantified in ITT sub-clause 32.5:

- (i) delivery schedule offered in the tender;
- (ii) deviations in payment schedule from that specified in the **SCC**;
- (iii) Other specific criteria indicated in the **TDS** and/or in the Technical Specifications.

32.5 For factors retained in the **TDS** pursuant to ITT sub-clause

32.4, one or more of the following quantification methods will be applied, as detailed in the **TDS**:

(a) Delivery schedule.

- (i) The Purchaser requires that the Health Sector Goods under these Tender Documents shall be delivered (shipped) at the time specified in the Schedule of Requirements. A delivery “adjustment” will be calculated for and added to each tender by applying a percentage, specified in the **TDS**, of the CIP price for each week of delay beyond the requested time of shipment/delivery specified in the Schedule of Requirements for evaluation purposes. No credit shall be given to early delivery.

or

- (ii) The Goods covered under these Tender Documents are required to be delivered (shipped) within an acceptable range of weeks specified in the Schedule of Requirements. No credit will be given to earlier deliveries, and tenders offering delivery beyond this range may be treated as non-responsive. Within this acceptable range, an adjustment per week, as specified in the **TDS**, will be added for evaluation to the tender price of tenders offering deliveries later than the earliest delivery period specified in the Schedule of Requirements.

or

- (iii) The Goods covered under this invitation are required to be delivered (shipped) in partial shipments, as specified in the Schedule of Requirements. Tenders offering deliveries earlier or later than the specified deliveries will be adjusted in the evaluation by adding to the tender price a factor equal to a percentage, specified in the **TDS**, of CIP price per week of variation from the specified delivery schedule.

(b) Deviation in payment schedule.

- (i) Tenderers shall state their tender price for the payment schedule outlined in the **SCC**. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The

Purchaser may consider the alternative payment schedule offered by the selected Tenderer.

or

- (ii) The **SCC** stipulates the payment schedule offered by the Purchaser. If a tender deviates from the schedule and if such deviation is permitted in the **TDS**, the tender will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the tender as compared with those stipulated in this invitation, at the rate per annum specified in the **TDS**.

(c) Past performance:

Tenderers need a satisfactory record of performance:

- (i) Those who have previously been awarded contracts to supply similar commodities, failed to deliver as per the contracts terms or delivered and commodities recalled for quality issues and failed to replace the same shall be disqualified if designated for an award
 - (ii) Those who are or have been seriously deficient in current or recent contract performance when the number of contracts and the extent of deficiencies each are considered (in the absence of evidence to the contrary or circumstances properly beyond their control) shall be presumed to be unable to meet this requirement and shall be disqualified if designated for a contract award
- (c) Other specific additional criteria to be considered in the evaluation and the evaluation method shall be detailed in the **TDS** and/or in the Technical Specifications.

32.6 Contacting the purchaser

- (a) Subject to paragraph 28, no tenderer shall contact the purchaser on any matter relating to its tender from the time of tender opening to the time of contract award
- (b) Any effort by a tenderer to influence the purchaser in its decision on tender evaluation, tender comparison, or contract award shall result in the rejection of the tenderer's tender

F. AWARD OF CONTRACT

- 33. Post qualification** 33.1 In the absence of prequalification, the Purchaser 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, in accordance with the criteria listed in ITT sub-clause 7.1 and any additional post qualification criteria stated in the **TDS**. If a prequalification process was undertaken for the Contract(s) for which these tender documents were issued, the Purchaser will determine in the manner described above that no material changes have occurred after the prequalification that negatively affect the ability of the Tenderer that has submitted the lowest evaluated tender to perform the Contract.
- 33.2 The determination will evaluate the Tenderer's financial, technical, production capabilities and tenderer's past performance. It will be based on an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT sub-clause 7.1, as well as other information the Purchaser deems necessary and appropriate.
- 33.3 An affirmative post qualification determination will be a prerequisite for award of the contract to the lowest evaluated Tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Purchaser will proceed to the next-lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.
- 34. Award Criteria** 34.1 Pursuant to ITT clauses 32, 33 and 38, the Purchaser will award the Contract to the 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, pursuant to ITT clause 34

- 35. Purchaser's Right to Accept Any Tender and to Reject Any or All Tenders** 35.1 The Purchaser reserves the right to accept or reject any tender, or to annul the Tender process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected Tenderer(s).
- 36. Purchaser's Right to Vary Quantities at Time of Award** 36.1 The Purchaser reserves the right at the time of contract award or during the life of the contract to increase or decrease, by the percentage indicated in the TDS, the quantity of goods and services beyond that originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions, except the delivery schedule.
- 37. Notification of Award** 37.1 Prior to the expiration of the period of tender validity, the Purchaser will notify the successful Tenderer in writing that its tender has been accepted, the receipt of which must be confirmed in writing.
- 37.2 A written contract will constitute the formation of the Contract, *subject to "no appeal"* from unsuccessful tenderers' within the period of fourteen (14) days from the date of Notification of Award.
- 37.3 At the same time as the successful tenderer is notified of the award, the unsuccessful tenderer(s) shall be notified that their tender(s) were unsuccessful.
- 37.4 Upon the successful Tenderer's furnishing of the signed Contract Form and performance security pursuant to ITT clause 39, the Purchaser will promptly discharge the tender security of each unsuccessful Tenderer(s), pursuant to ITT clause 19.
- 38. Signing of Contract** 38.1 Promptly after the Purchaser notifies the successful Tenderer that its tender has been accepted, the Purchaser will; after fourteen days (14days) but within twenty one days (21days) invite the successful tenderer to sign contract .
- 39. Performance Security** 39.1 Within twenty-one (21) days of the receipt of Notification of Award from the Purchaser, the successful Tenderer shall furnish the Performance Security in accordance with the Conditions of Contract, using the Performance Security Form provided in the Tender documents, or in another form acceptable to the Purchaser.

39.2 Failure of the successful Tenderer to comply with the requirement of ITT clause 38 or ITT sub-clause 39.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Purchaser may make the award to the next-lowest evaluated tenderer or call for new tenders.

Section II. Tender Data Sheet

Tender Data Sheet

The following specific data for the goods to be procured shall complement, supplement or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions in the Tender Data Sheet (TDS) shall prevail over those in the ITT.

A. GENERAL

B. THE TENDER DOCUMENTS

ITT 11.1	<p>Purchaser's address:</p> <p>Kenya Medical Supplies Authority (KEMSA)</p> <p>Office address: The Chief Executive Officer Kenya Medical Supplies Authority (KEMSA) Commercial Street, Industrial Area Nairobi/Kenya</p> <p>Postal address: P.O.Box: 47715 00100 Nairobi Kenya</p> <p>Tel: (+254-0)20-3922000 Fax: (+254-0)20-392200 E- mail info@kemsa.co.ke</p> <p>For clarifications on the Tender document please contact :</p> <p>Director Procurement P. O. Box 47715 00100 Nairobi/Kenya</p> <p>Tel: (+254-0)20-3922000 Fax: (+254-0)20-392200 E- mail info@kemsa.co.ke Cc: procurement@kemsa.co.ke</p>
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C. PREPARATION OF TENDERS

ITT 13.1	The language of all correspondence and documents related to the tender is English. Moreover, the key passages of all accompanying printed literature in any other language must be translated into English.
ITT 14.1 (h)	In addition to the documents stated in Paragraphs 14.1 (a) through

	(g), the following documents must be included with the Tender: The Form(s) "Technical Specification" (Section VI) shall be completed by the tenderer with the required "Relative Information", duly signed and submitted with the Tender. The general indication "compliance" shall not be rendered sufficient; each regarding technical feature detail needs to be answered to. Even allegedly minor deviations need to be indicated.
ITT 16.2	The trade term CIP shall be added by the stipulation that the Seller shall be responsible and shall bear the costs for the customs clearance procedure
ITT 16.3	Prices are fixed
ITT 16.4	Tenders are being invited for individual contracts (one or more items). Tenderers shall quote 100% of the entire quantity for each item quoted, as per Purchaser's Price Schedule.
ITT 18.1	The tender validity period shall be 90 days after the deadline for tender submission, as specified below in reference to ITT clause 23. accordingly, each tender shall be valid through -----
ITT 20.1	Alternative offers not allowed
ITT 21.1	Required number of copies of the tender: 1 original and 1 copy of the tender shall be submitted.

D. SUBMISSION OF TENDERS

ITT 22.2 (b)	<p>The address for tender submission is:</p> <p>Kenya Medical Supplies Authority</p> <p>Office address: Chief Executive Officer Kenya Medical Supplies Authority (KEMSA) Commercial Street, Industrial Area Nairobi/Kenya</p> <p>Postal address: P. O. Box 47715 00100 Nairobi/Kenya</p>
ITT 22.2 (c) & (d)	<p>See the above data for ITT 1.1 for the name of the Contract.</p> <p>The Invitation for Tenders title and number are: Desktop and Laptop Computers IFT No.: KEMSA-ONT 1-2016/2017</p> <p>See the below data for ITT sub-clause 23.1 for the deadline for tender submission.</p>
ITT 23.1	See the above data for ITT sub-clause 22.2 (b) for the address and

	<p>deadline for tender submission.</p> <p>Deadline for tender submission is: 10:00a.m. Tuesday, 14th November, 2017</p>
ITT 24.1	See the above data for ITT sub-clause 23.1 for the deadline for tender submission.
ITT 25.2 (a)	The required number of copies of tender modifications is the same as the number of copies of the original tender specified above in the data for ITT sub-clause 21.1.
ITT 25.3 (a)	See the above data for ITT Paragraph 22.2 (b) for the address to use for submission of a tender withdrawal notice.

E. TENDER OPENING AND EVALUATION

ITT 26.1	<p>Time, date, and place for tender opening are: 10:00a.m. Tuesday, 14th November, 2017 At : Kenya Medical Supplies Authority (KEMSA) Commercial Street, Industrial Area Nairobi/Kenya</p>
ITT 31.2	<p>The currency chosen for the purpose of converting to a common currency is Kenya Shillings (KSHS)</p> <p>The source of exchange rate is the Central Bank of Kenya, Nairobi</p> <p>The date of exchange rate determination is the rate on the day of tender opening</p>
ITT 32.3	<p>The evaluation will take into account:</p> <p>For Goods offered from within the Purchaser's country, the cost for inland transportation, insurance, and other incidental costs for delivery of the goods to the final destination, as indicated in ITT 16.2 has to be indicated separately for each item in the Price Schedule for Goods offered from within the Country (A & B bid). The above cost is added to the price EXW to the total unit price for bid evaluation.</p> <p>For Goods offered from outside the Purchaser's country, the cost for inland transportation, insurance, and any other incidental costs for handling and delivery of the goods to the final destination, as indicated in the Tender Data Sheet has to be indicated separately for each item in the relevant Price Schedule for Goods offered from Abroad (C bid). The above cost is included in the price for CIP KEMSA warehouse, Commercial Street, Industrial Area, Nairobi, total unit price for bid evaluation.</p>
ITT 32.5 (a) (i)	<p>Delivery schedule</p> <p>The adjustment per week for delivery for each week of delay beyond the requested time of shipment/delivery specified in the</p>

	Schedule of Requirements is one-half.
ITT 32.5 (b) (ii)	The Purchaser will not accept deviations from the payment schedule as stipulated in the SCC.
ITT 32.5 (d)	<p>Evaluation criteria for items/lots</p> <p>Tenderers shall bid for one or more items in the Price Schedule. Bids will be evaluated item by item:</p> <p style="padding-left: 40px;">(a) Tenderers shall quote for one, more or all items and the entire quantity for each item quoted, as per Purchaser's Price Schedule;</p> <p style="padding-left: 40px;">and</p> <p style="padding-left: 40px;">(b) The items offered as per Purchaser's Price Schedule must be responsive to the Tender Document.</p> <p>Tendered items not complying with (a) and (b) above shall be treated as non-responsive.</p> <p>Tender evaluation will be made on individual item basis and contract award(s) on individual item basis or combined as one contract for all items awarded to individual successful bidder's</p>

F. AWARD OF CONTRACT (LOOK AT THIS SECTION IN ENTIRETY)

ITT 36.1	Percentage for increase or decrease of quantity of goods and services originally specified: 10% during the life of the contract as stipulated under ITT 38.3.
ITT 38.1	Prior to the expiration of the period of tender validity, the Purchaser will notify the successful Tenderer in writing that its tender has been accepted.
ITT 38.2	Within five (5) days of the invitation to sign and date the contract, the successful Tenderer shall send an authorized signatory to sign the Contract at the purchaser's premises.

Section III. General Conditions of Contract

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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 Purchaser and the Supplier, 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 Supplier under the Contract for the full and proper performance of its contractual obligations.
 - (c) "Day" means calendar day.
 - (d) "Effective Date" means the date on which this Contract becomes effective pursuant to GCC Clause 6.2.
 - (e) "End User" means the organization(s) where the goods will be used, as named in the SCC.
 - (f) "GCC" means the General Conditions of Contract contained in this section.
 - (g) "The Goods" means all of the goods the Supplier is required to supply to the Purchaser under the Contract.
 - (h) "The Purchaser" or the procuring entity means the organization that is purchasing the Goods, as named in the SCC.
 - (i) "The Purchaser's country" is the country named in the SCC.
 - (j) "Registration Certificate" means the certificate of registration or other documents in lieu thereof establishing that the Goods supplied under the Contract are registered for use in the Purchaser's country in accordance with the applicable law.
 - (k) "SCC" means the Special Conditions of Contract.
 - (l) "The Services" means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
 - (m) "The Site," where applicable, means the place or places named in the SCC.

- (n) "The Supplier / tenderer mean the individual or firm supplying the Goods and Services under this Contract, as named in the SCC.

- 2. Application** 2.1 These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.
- 3. Country of Origin** 3.1 All Goods and Services supplied under the Contract shall have their origin in the countries and territories eligible under the rules of the Government of Kenya, or as further elaborated in the SCC.
- 3.2 For purposes of this Clause, "origin" means the place where the Goods were mined, grown, or produced, or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 3.3 The origin of Goods and Services is distinct from the nationality of the Supplier.
- 4. Standards** 4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the concerned institution.
- 5. Use of Contract Documents and Information;** 5.1 The Supplier shall not, without the Purchaser'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 Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated in GCC Sub-Clause 5.1 except for purposes of performing the Contract.
- 5.3 Any document, other than the Contract itself, enumerated in GCC Sub-Clause 5.1 shall remain the property of the Purchaser and shall be returned (all copies) to the Purchaser

on completion of the Supplier's performance under the Contract if so required by the Purchaser.

6. Certification of Goods in Accordance with Laws of the Purchaser's Country

6.1 If required under the applicable law, Goods supplied under the Contract shall be registered for use in the Purchaser's country. The Purchaser undertakes to cooperate with the Supplier to facilitate registration of the Goods for use in the Purchaser's country.

6.2 Unless otherwise specified in the SCC, the Contract shall become effective on the date ("the Effective Date") that the Supplier receives written notification from the relevant authority in the Purchaser's country that the Goods have been registered for use in the Purchaser's country.

6.3 If thirty (30) days, or such longer period specified in the SCC, elapse from the date of Contract signing and the Contract has not become effective pursuant to Sub-Clause 6.2 above, then either party may, by not less than seven (7) days' written notice to the other party, declare this Contract null and void. In such event, the Supplier's performance security shall be promptly returned.

7. Patent Rights

7.1 The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Purchaser's country.

8. Performance Security

8.1 Within twenty one (21) days of receipt of the notification of Contract award, the successful Tenderer shall furnish to the Purchaser the performance security in the amount specified in the SCC.

8.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

8.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the following forms:

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the Purchaser's country or abroad, acceptable to the Purchaser, in the format provided in the Tender Documents or another format acceptable to the Purchaser;

Or

(b) a guarantee from Insurance company approved by Public Procurement Oversight Authority (PPOA) in the form provided in the tender documents

- 8.4 The performance security will be discharged by the Purchaser and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.
- 9. Inspections and Tests**
- 9.1 a) The Supplier shall demonstrate conformity to Kenya Standards or approved equivalents by evidence of Test report or Certificate from ISO/IEC 17025 accredited laboratory, recognized by the International Laboratory Accreditation Co-operation (ILAC) or preferable from any conformity body recognized by the International Federation of Inspection Agencies (IFIA) prior to shipment. Cost shall be born by the supplier.
- b) Upon receipt of the pre-delivery samples or the consignment at the place of final destination, the Purchaser's representative shall inspect the samples or part of the Goods to ensure that they conform to the condition of the Contract and advise the Purchaser that the Goods were received in apparent good order. The Purchaser will issue an Acceptance Certificate to the Supplier in respect of such Goods (or part of Goods). The Acceptance Certificate shall be issued within ten (10) days of receipt of the Goods or part of Goods at place of final destination.
- 9.2 Where the Supplier contests the validity of the rejection by the Purchaser or his representative, of any inspection as required by 9.1 above conducted before shipment or at ultimate destination, whether based on product or packing grounds, a sample drawn jointly by the Supplier and Purchaser or his or her representative and authenticated by both, will be forwarded for umpire analysis within four weeks of the time the Supplier contests to an independent agency mutually agreed by the Purchaser and Supplier. The umpire's finding, which will be promptly obtained, will be final and binding on both parties. The cost of umpire analysis will be borne by the losing party.
- 10. Packing**
- 10.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt, and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of appropriate handling facilities at all points in transit.

- 10.2 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, including additional requirements, if any, specified in the SCC or Technical Specifications, and in any subsequent instructions ordered by the Purchaser.
- 11. Delivery and Documents**
- 11.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier are specified in the SCC.
- 11.2 For purposes of the Contract, "EXW", "CIP" and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of *Incoterms* published by the International Chamber of Commerce, Paris.
- 11.3 Documents to be submitted by the Supplier are specified in the SCC. *Incoterms* provides a set of international rules for the interpretation of the more commonly used trade terms.
- 12. Insurance**
- 12.1 The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the SCC.
- 13. Transportation**
- 13.1 Where the Supplier is required under Contract to deliver the Goods FOB, transport of the Goods, up to and including the point of putting the Goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price. Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Purchaser or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 13.2 Where the Supplier is required under Contract to deliver the Goods CIF or CIP, customs clearance and transport of the Goods to the port of destination or such other named place of destination in the Purchaser's country, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 13.3 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within the Purchaser's country, defined as the Site, transport to such place of destination in the Purchaser's country, including customs clearance, insurance and storage, as shall

be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price.

- 13.4 Where the Supplier is required under Contract to deliver the Goods CIF or CIP, no restriction shall be placed on the choice of carrier. Where the Supplier is required under Contract (a) to deliver the Goods FOB or FCA, and (b) to arrange on behalf and at the expense of the Purchaser for international transportation on specified carriers or on national flag carriers of the Purchaser's country, the Supplier may arrange for such transportation on alternative carriers if the specified or national flag carriers are not available to transport the Goods within the period(s) specified in the Contract.

14. Incidental Services

- 14.1 The Supplier shall provide such incidental services, if any, as are specified in the SCC.
- 14.2 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

15. Warranty

- 15.1 All goods must be of fresh manufacture and must bear the dates of manufacture and expiry.

The Supplier further warrants that all Goods supplied under the Contract will have remaining a minimum of five-sixths (5/6) of the specified shelf life upon delivery at port/airport of entry for goods with a shelf life of more than two years and three-fourths (3/4) for goods with a shelf life of two years or less, unless otherwise specified in the SCC; have "overages" within the ranges set forth in the Technical Specifications, where applicable; are not subject to recall by the applicable regulatory authority due to unacceptable quality or an adverse drug reaction; and in every other respect will fully comply in all respects with the Technical Specifications and with the conditions laid down in the Contract.

- 15.2 The Purchaser shall have the right to make claims under the above warranty for three months after the Goods have been delivered to the final destination indicated in the Contract. Upon receipt of a written notice from the Purchaser, the Supplier shall, with all reasonable speed, replace the defective Goods without cost to the Purchaser. The Supplier shall remove, at his own risk and cost, the defective Goods WITHIN fourteen (14) Days of the advise by the purchaser,

failure to which storage charges will accrue at the prevailing market rates to be determined by the purchaser. The replacement of the Goods must be done within the time stipulated in the SCC.

- 15.3 In the event of a dispute by the Supplier, a counter-analysis will be carried out on the manufacturer's retained samples by an independent neutral laboratory agreed by both the Purchaser and the Supplier. If the counter-analysis confirms the defect, the cost of such analysis will be borne by the Supplier as well as the replacement and disposal of the defective goods. In the event of the independent analysis confirming the quality of the product, the Purchaser will meet all costs for such analysis.
- 15.4 If, after being notified that the defect has been confirmed pursuant to GCC Sub-Clause 15.2 above, the Supplier fails to replace the defective Goods within the period specified in the SCC, the Purchaser may proceed to take such remedial action as may be necessary, including removal and disposal, at the Supplier's risk and expense and without prejudice to any other rights that the Purchaser may have against the Supplier under the Contract. The Purchaser will also be entitled to claim for storage in respect of the defective Goods for the period following notification and deduct the sum from payments due to the Supplier under this contract.
- 15.5 Recalls. In the event any of the Goods are recalled, the Supplier shall notify the Purchaser within fourteen (14) days, providing full details of the reason for the recall and promptly replace, at its own cost, the items covered by the recall with Goods that fully meet the requirements of the Technical Specification and arrange for collection or destruction of any defective Goods. If the Supplier fails to fulfill its recall obligation promptly, the Purchaser will, at the Supplier's expense, carry out the recall.

16. Payment

- 16.1 The method and conditions of payment to be made to the Supplier under this Contract shall be specified in the SCC.
- 16.2 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to GCC Clause 11, and upon fulfillment of other obligations stipulated in the Contract.
- 16.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or claim by the Supplier.
- 16.4 The currency or currencies in which payment is made to the Supplier under this Contract shall be specified in the SCC

subject to the following general principle: Payment will be made in the currency or currencies in which the payment has been requested in the Supplier's tender.

- 16.5 All payments shall be made in the currency or currencies specified in the SCC pursuant to GCC 16.4.
- 17. Prices**
- 17.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its tender, with the exception of any price adjustments authorized in the SCC or in the Purchaser's request for tender validity extension, as the case may be.
- 18. Change Orders**
- 18.1 The Purchaser may at any time, by a written order given to the Supplier pursuant to GCC Clause 31, make changes within the general scope of the Contract in any one or more of the following:
- (a) specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - (b) the method of shipment or packing;
 - (c) the place of delivery; and/or
 - (d) the Services to be provided by the Supplier.
- 18.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.
- 19. Contract Amendments**
- 19.1 Subject to GCC Clause 18, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.
- 20. Assignment**
- 20.1 The Supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Purchaser's prior written consent.
- 21. Delays in the Supplier's Performance**
- 21.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser in the Schedule of Requirements.
- 21.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in

writing of the fact of the delay, its likely duration, and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.

21.3 Except as provided under GCC Clause 24, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of liquidated damages.

22. Liquidated Damages

22.1 Subject to GCC Clause 24, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 23.

23. Termination for Default

23.1 The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:

- (a) if the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 21; or
- (b) if the Goods do not meet the Technical Specifications stated in the Contract; or
- (c) if the Supplier fails to provide any registration or other certificates in respect of the Goods within the time specified in the SCC.
- (d) if the Supplier, in the judgment of the Purchaser, 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

procurement process or in Contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Purchaser, and includes collusive practice among Tenderers (prior to or after tender submission) designed to establish tender prices at artificial noncompetitive levels and to deprive the Purchaser of the benefits of free and open competition.

- (e) if the Supplier fails to perform any other obligation(s) under the Contract.

23.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 23.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

24. Force Majeure

24.1 Notwithstanding the provisions of GCC Clauses 21, 22, and 23, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

24.2 For purposes of this clause, “Force Majeure” means an event beyond the control of the Supplier and not involving the Supplier’s fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

24.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

25. Termination for Insolvency

25.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

26. Termination for Convenience

- 26.1 The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- 26.2 The Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- 27.2.1 Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.
- 27.2.2 Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.3 Notwithstanding any reference to arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the Purchaser shall pay the Supplier any monies due the Supplier.

- 28. Limitation of Liability**
- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 7,
- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and
 - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing Language**
- 29.1 The Contract shall be written in the language specified in the SCC. Subject to GCC Clause 30, the version of the Contract written in the specified language shall govern its interpretation. All correspondence and other documents pertaining to the Contract that are exchanged by the parties shall be written in the same language.
- 30. Applicable Law**
- 30.1 The Contract shall be interpreted in accordance with the laws of the Purchaser's country, unless otherwise specified in the SCC.
- 31. Notices**
- 31.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by cable, telex, or facsimile and confirmed in writing to the other party's address specified in the SCC.
- 31.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.
- 32. Taxes and Duties**
- 32.1 A Supplier supplying Goods from abroad shall be entirely responsible for all taxes, stamp, duties, license fees, and other such levies imposed outside the Purchaser's country.
- 32.2 A Supplier supplying Goods offered locally shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.
- 33. Inspections and Tests**
- 33.1 The Procuring entity or its representative shall have the right to inspect and/or to test the commodities 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.

- 32.2 Should any inspected or tested commodities fail to conform to the Specifications, the Procuring entity may reject the commodities, and the tenderer shall either replace the rejected commodities or make alterations necessary to meet specification requirements free of cost to the Procuring entity.
- 33.4 The Procuring entity's right to inspect, test and, where necessary, reject the commodities after the commodities' arrival shall in no way be limited or waived by reason of the commodities having previously been inspected, tested, and passed by the Procuring entity or its representative prior to the Medical commodities' delivery.
- 33.5 Nothing in paragraph 8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

Section IV.

Special Conditions of Contract For Goods

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Special Conditions of Contract (SCC)

<p>The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The corresponding clause number of the GCC is indicated in parentheses</p>	
<p>1. Definitions (GCC Clause 1)</p>	
GCC 1.1 (f)	The end user is: -----
GCC 1.1 (i)	The Purchaser is: Kenya Medical Supplies Authority (KEMSA)
GCC 1.1 (j)	The Purchaser's country is: Kenya
GCC 1.1 (n)	The Site is: KEMSA, Industrial Area, Nairobi
GCC 1.1 (o)	The Supplier is: -----
<p>4. Standards (GCC Clause 4)</p>	
GCC 4	The Tenderer warrants that all Medical commodities supplied under the Contract will fully comply in all respects with the technical specifications and with the conditions laid down in the Contract.
<p>Tenderers Eligibility (ITT Clause 4.1)</p>	
ITT 4.1	The documentary evidence of the Bidders eligibility to tender shall include proof of tax compliance from the relevant tax authorities
<p>6. Certification of Goods in Accordance with Laws of the Purchaser's Country (GCC Clause 6)</p>	
<p>8. Performance Security (GCC Clause 8)</p>	
GCC 8.1	The amount of the Performance security as a percentage of the Contract price shall be 1%. The performance security shall be in the form of a banker's Cheque, bank guarantee, irrevocable letter of credit issued by a reputable bank.

9. Inspections and Tests (GCC Clause 9)	
GCC 9.1	<p>a) Imports of Goods to Kenya are subject to the (PVoC) Pre-shipment verification of conformity</p> <p>b) The supplier is requested to provide for batch by batch Certificates of Compliance by ISO/IEC 17025/ EN 45002 accredited test laboratories to prove the conformity to the technical specifications and applicable quality standards. The cost of such inspection shall be to the supplier's account.</p> <p>c) The Goods shall not be shipped unless a copy of satisfactory documentary proof of conformity has been submitted to the Purchaser.</p> <p>(d) The Purchaser shall analyze all new brands of products, and products that have previously failed quality analysis tests, before confirming an order. The cost of analysis shall be borne by the Tenderer and shall be paid in full prior to analysis.</p>
10. Packing (GCC Clause 10)	
GCC 10.2	<p>Additional requirements for packing and transport are indicated in</p> <p>(a) Section VI, Technical Specifications</p> <p>and</p> <p>(b) General Packing Instructions</p>
11. Delivery and Documents (GCC Clause 11)	
GCC 11.1 & 11.3	<p>For goods supplied from abroad under Incoterms CIP, named place of destination:</p> <p>Upon shipment, the Supplier shall notify the Purchaser and the insurance company in writing the full details of the shipment including Contract number, description of the Goods, quantity, date and place of shipment, mode of transportation, and estimated date of arrival at place of destination. In the event of Goods sent by airfreight, the Supplier shall notify the Purchaser a minimum of forty-eight (48) hours ahead of dispatch, the name of the carrier, the flight number, the expected time of arrival, and the waybill number. Under all transport modes, the Supplier shall fax and then send by courier the following documents to the Purchaser, with a copy to the insurance company:</p> <p>(i) three originals and two copies of the Supplier's invoice, showing Purchaser as Consignee; the Contract number, grant no., goods description, quantity, unit price, and total</p>

amount. Invoices must be signed in original and stamped or sealed with the company stamp/seal;

- (ii) one original and two copies of the negotiable, clean, on-board through MT Document marked "freight prepaid" and showing Purchaser as Consignee and Notify Party as stated in the Contract, with delivery through to final destination as per the Schedule of Requirements and two copies of non-negotiable bill of lading, or three copies of railway consignment note, road consignment note, truck or air waybill, or multi-modal transport document, marked "freight prepaid" and showing delivery through to final destination as per the Schedule of Requirements;
- (iii) four copies of the packing list identifying contents of each package;
- (iv) copy of the Insurance Certificate, showing the Purchaser as the Beneficiary;
- (v) one original of the manufacturer's or supplier's Warranty Certificate covering all items supplied;
- (vi) one original of the Supplier's Certificate of Origin covering all items supplied;
- (vii) original and six copies of the Certificate of Compliance/Test Report furnished to the supplier by ISO/IEC 17025 accredited test laboratories;
- (viii) any other procurement-specific documents required for delivery/payment purposes;
- (ix) one original and one copy of a protocol (certificate of analysis) of a product test per batch conducted by the laboratory of the manufacturer.
- (x) one original of the certificate of weight issued by the port authority/licensed authority and six copies.

At arrival of the goods at port of clearance, the Supplier or its Shipping agent shall provide the Purchaser with:

1) Arrival notice

and

2) Delivery note.

The above documents 1) and 2) shall be received by the Purchaser immediately after arrival of the Goods at port of clearance and, if not

	<p>received, the Supplier will be responsible for any consequent expenses.</p> <p>Note: In the event that the documents presented by the Supplier are not in accordance with the Contract, payment will be made against issue of the Acceptance Certificate, to be issued in accordance with SCC 9 (GCC 9) above.</p>
	<p>For goods supplied from within the Purchaser's country under Incoterms EXW, delivered to named place of destination:</p> <p>The Supplier shall notify the Purchaser at least forty-eight (48) hours ahead of delivery of the goods in writing and deliver the following documents to the Purchaser:</p> <ul style="list-style-type: none"> (i) two originals and two copies of the Supplier's invoice, showing Purchaser, the Contract number, grant number, goods description, quantity, unit price, and total amount. Invoices must be signed in original and stamped or sealed with the company stamp/seal; (ii) two copies of delivery note, railway consignment note, road consignment note, truck or air waybill, or multimodal transport document showing Purchaser as consignee and delivery through to final destination as stated in the Contract; (iii) copy of the Insurance Certificate, showing the Purchaser as the Beneficiary; (iv) four copies of the packing list identifying contents of each package; (v) one original of the manufacturer's or Supplier's Warranty certificate covering all items supplied; (vi) one original of the Supplier's Certificate of Origin covering all items supplied; (viii) other procurement-specific documents required for delivery/payment purposes (ix) One original of the certificate of quality control test results. <ul style="list-style-type: none"> (a) are accredited in accordance with ISO/IEC 17025 or EN 45002.
<p>11. Clarification of bidding documents (ITT Clause 11.1)</p>	
<p>ITT 11.1</p>	<p>Tenderers requesting for clarifications shall do it in writing to the purchaser ten (10) days before tender submission. The Purchaser will respond in writing to any request for clarification of the tender documents within two (2) days of receipt of such clarification requests.</p>

12. Insurance (GCC Clause 12)

13. Delivery and Documents (GCC Clause 11)

GCC 11.1 & 11.3	<p><i>For Goods supplied from abroad:</i></p> <p>(iii) Original copy of the certificate of weight issued by the port authority / licensed authority and six copies.</p>
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14. Incidental Services (GCC Clause 14)
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GCC 14.1	<p>Incidental services to be provided:</p> <p>The Supplier shall provide all necessary licenses and permissions for use of the Goods in the Purchaser's country that may be required for the Goods. The cost shall be deemed included in the Contract Price.</p>
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15. Warranty (GCC Clause 15)

GCC 15.4	<p>(i) The period for the replacement of defective goods is twelve (12) weeks</p>
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16. Payment (GCC Clause 16)

GCC 16.1 & 16.4	<p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>(i) Payment shall be made after transfer of ownership of the medical commodities.</p> <p>(ii) Ownership will be transferred after acceptance of quality of medical commodities.</p> <p>(iii) The Procuring entity accepts medical commodities subject to checks on quality. Invoices and delivery notes shall be stamped, "received but not checked" at the time of delivery. The Procuring entity will check deliveries as quickly as possible and notify the Tenderer of any defective Medical commodities or of short/excess</p>
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	<p>deliveries.</p> <p>(iv) Payment shall be made promptly by Procuring Entity, but in no case later than sixty (60) days after submission of an invoice or claim by the Tenderer.</p> <p>(v) The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the bid prices were expressed in the Supplier's tender, subject to compliance with all aspects of the contract agreement, especially the delivery schedule</p>
	17.1 Prices (GCC Clause 17.1)
GCC 17.1	<p>(i) Prices quoted should include all costs of shipment and handling until the medical commodities are actually received at Kenya Medical Supplies Authority, Industrial Area, and Nairobi.</p> <p>(ii) To facilitate evaluation and comparison, the Procuring entity will convert all bid prices expressed in the amounts in the various currencies in which bid price is payable, to the Kenya shillings using the GOK Rate on the day the bids are opened.</p> <p>(iii) The Procuring entity reserves the right to award the contract in whole or in part without any change in the Unit price or other terms and conditions.</p>
	Validity of tenders (ITT 18.1)
ITT 18.1	Tenders shall remain valid for 90 days from the date of submission
	21.1 Delays in supplier performance (GCC Clause 21.1)
GCC 21.1	Further to the penalties described under GC 21.1 the Purchaser will initiate debarment proceedings against suppliers who fail to comply with the contract conditions as specified under the General Conditions of Contract, Special Conditions and Technical Specifications
	22. Liquidated Damages (GCC Clause 22)
GCC 22.1	The applicable rate is one-half (0.5) percent per week, the maximum rate is ten (10) percent of the Contract Price and this shall be deducted

	from the payment due to the supplier.
27. Settlement of Disputes (GCC Clause 27)	
GCC 27.2.2	<p>Clause 27.2.2 (a) shall be retained in the case of a Contract with a foreign Supplier and Clause 27.2.2 (b) shall be retained in the case of a Contract with a national of the Purchaser's country. The dispute resolution mechanism to be applied pursuant to GCC Sub-Clause 27.2.2 shall be as follows:</p> <p>(i) <i>Contracts with foreign Supplier:</i></p> <p>GCC 27.2.2 (a)–All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said rules.</p> <p>(ii) <i>Contracts with Supplier national of the Purchaser's country:</i></p> <p>In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser's country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of the Purchaser's country.</p>
29. Governing Language (GCC Clause 29)	
GCC 29.1	English language
30. Applicable Law (GCC Clause 30)	
GCC 30.1	The Contract shall be interpreted in accordance with the laws of the Republic of Kenya
31. Notices (GCC Clause 31)	

GCC 31.1	<p>Procurement entity address</p> <p>Kenya Medical Supplies Authority (KEMSA) Office address: Chief Executive Officer Kenya Medical Supplies Authority (KEMSA) Commercial Street, Industrial Area Nairobi/Kenya</p> <p>Postal address: P. O. Box: 47715 00100 Nairobi/Kenya</p> <p>Tel: (+254-0)20-3922000 Fax: (+254-0)20-392200 E-Mail: procure@kemsa.co.ke</p> <p><i>Supplier's address:</i></p>
	<p>33. Inspections and Tests (GCC Clause 33.1)</p>
GCC 33.1	<p>(i) Overseas Bidders shall ensure that all commodities are inspected prior to shipment. Any charges incurred as a result of failure to comply with this requirement shall be borne by the tenderer.</p> <p>(ii) The Purchaser shall analyze all new brands of products, and products that have previously failed quality analysis tests, before confirming an order. The cost of analysis shall be borne by the Tenderer and shall be paid in full prior to analysis.</p>
	<p>33. Replacement of faulty commodities (GCC Clause 33.3)</p>
GCC 33.3	<p>If any item fails to comply with the technical specifications, the Procuring entity shall notify the supplier in writing. The supplier shall within fourteen (14) days, take steps to replace the product in question at its own cost with a fresh batch of acceptable product, or withdraw and give a full refund if the product has been taken off the market due to safety problems</p>
	<p>33. Product Recall (GCC Clause 33.3)</p>

GCC 33.3	In the event any of the commodities are recalled, because of problems with product quality or adverse reactions to the product, the supplier will be obligated to notify the Procuring entity within fourteen (14) days, providing full details about the reason leading to the recall, and shall take steps to replace the product in question at its own cost with a fresh batch of acceptable product, or withdraw and give a full refund if the product has been taken off the market due to safety problems
	33 Handling of rejected commodities (CC Clause 33.4)
GCC 33.4	<p>(i) Rejected medical commodities shall be collected promptly upon notification and not later than 7 days from date of notification, failure to which demurrage charges shall accrue at a rate of 2% of the total value. The commodities shall be disposed after 21 days at Tenderer's cost.</p> <p>(ii) The Tenderer shall advise The Procuring entity on whether to return rejected medical commodities at Tenderer's cost, to arrange for collection from The Procuring entity, or to destroy in the presence of the Tenderer's agent as witness, at Tenderer's cost</p>
	33. Right to inspect commodities after Receipt (GCC Clause 33.5)
GCC 33.5	The Procuring entity may undertake further quality control testing and may reject the whole consignment if the samples tested fail to meet the required standards
	37.1 Variations in Order Quantities (ITT Clause 37.1)
ITT 37.1	The purchaser reserves the right at the time of Contract award to increase or decrease, the quantity of medical commodities beyond that originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions

Section V

Tender Registration No. KEMSA/ONT 1/2017-2018

- 1. Schedule of Requirements**
 - Refer to No. 2 table below for details
- 2. Price Schedule for Goods Offered**
- 3. Technical Requirements and Specifications**

Item No.	Item Name	Unit Pack	Initial Quantity	Unit Price KEMSA Delivered	Net Total Price	Brand	Manufacturer	Country of Origin	Delivery period	Remarks
1	Desktop Computer	Each	62							
2	Laptop 1	Each	50							
3	Laptop II	Each	1							

		Supply of Desktop and Laptop Computers									
		TENDER REGISTRATION NO KEMSA/ONT 1 /2017-2018					P. O. BOX 47715, 00100, NAIROBI TEL: 254-20-3922000 FAX: 254 20 3922400 E-MAIL: procure @kemsa.co.ke				
		Date of Tender Notice:		10th October 2017							
		Closing date:		14th November, 2017							
		Time:		10.00 am							
NAME OF FIRM QUOTING:											
Address:											
Phone, fax, e-mail:											

NOTE:

1. Successful bidders will be offered one (1) year frame work contract.
2. The quantities indicated above are initial requirements. Subsequent additional quantities will be called down 'as and when' need arises.
3. Prices will remain fixed over the one (1) year period.

DELIVERY SCHEDULE

The delivery schedule for all items shall be **within 12 weeks from effective date of contract for the initial quantities while delivery period for call down quantities shall be negotiated.**

Delivery Terms: DDP KEMSA Commercial Street- Nairobi - Kenya

TECHNICAL REQUIREMENTS

1. ORIGINAL MANUFACTURER'S BROCHURE

- a) Tenderers are required to submit with their offer an original manufacturer's brochure for each product/item offered. Failure to submit an original manufacturer brochure will lead to disqualification of the product/item offered.
- b) For the purpose of this tender an original manufacturer brochure shall contain the following information;
 - i) Name and physical address of the product manufacturer, including the phone number, e-mail address, website (URL), other manufacturing sites if any, and country.
 - ii) The product model name/number assigned by the manufacturer
 - iii) Colour picture of the product which must be clear and reasonably sized.
 - iv) Description of the product and its features
 - v) Performance specification of the product including any other technical data
 - vi) Dimensions of the product
- c) A brochure shall not be considered an original manufacturer brochure if it;
 - i) does not contain any of the requirements in section 1 (b) from (i) to (vi)
 - ii) Contains superimposed images of the product
- d) The assembled colour picture in the brochure should be a representative of the product that the bidder intends to supply.
- e) For ease of the comparison of bids, the tenderer is supposed to;
 - i) **Highlight the product to be offered where two or more of these products appear in the brochure provided.**
 - ii) Ensure that the brochure submitted contains detailed information on the product parameters as required in the tender document.

Non-compliance to the above requirements will amount to non-responsiveness of the bid and disqualification from further evaluation.

2 MANUFACTURER'S AUTHORIZATION

- a) The tenderer shall provide a Manufacturer Authorization as stipulated in the tender documents for all products tendered for. The Manufacturer Authorization shall specify the product offered in terms of name and model number.
- b) Any alteration whatsoever on the Manufacturer Authorization will lead to automatic disqualification of the product.
- c) The procurement entity, in the event of non - clarity, has a right to clarify directly with the supplier's manufacturer, details related and not limited to manufacturer authorization, Product brochures and the quality certificates.
- d) Any falsehood established during this verification on authenticity of the above documents will lead to disqualification of a supplier's bid and the subsequent disciplinary measures against this supplier

3 QUALITY CERTIFICATION

- a) The tenderer shall be required quality certificate for the purpose of this tender
- b) For the certificate of conformity to be valid it shall comply with the following;
 - i) Issued by recognized independent certification body to the manufacturer
 - ii) It should be current (not have expired)
 - iii) Clearly specify the product(s) being produced
 - iv) State the location of the manufacturing plant
 - v) Must not contain any alterations whatsoever

4 TECHNICAL SPECIFICATIONS

ITEM 1		DESKTOP SPECIFICATIONS	
No	Item	Key Description	Specifications
1	Processor Type	Processor	Intel Core i5-7500 QC 3.4 Ghz
2	Memory	Installed RAM	8 GB
		RAM Technology	DDR 4
3	Hard Drive	Capacity	500 GB 7200RPM
4	Optical Drives	DVD	DVD + -RW Dual Layer Blu-ray
5	Input Devices	Keyboard	USB Standard English
		Mouse	USB Optical Mouse
		Card Reader	Media card reader
			Inbuilt Stereo Speakers
6	Output Devices	Speaker	External speakers
		USB	4x USB 3.0
7	Display	Monitor Screen	17" Inch
		Graphics	Intel Integrated Graphics
8	Operating System	OS Type	Windows 10 Professional 64 With down gradable rights to Windows 7 Pro 64)
	Dimensions		
9	(HxWxD)		13.8 x 6.1 x 10.8 / 35 x 15.4 x 27.4

		Recovery Media	Recovery Media Kit
10	Software's	MS Office	Microsoft Office 2016 Standard Licensed
11	Technical Feature	Expandability	Card
		Ports	4 x USB 3.0,1 x HDMI,1 x VGA, 1 RJ45
		Form Factor	Tower
		Language	English (UK)
12	Communication	Network	1 x NIC RJ45, 10/100/1000
		Data Link Protocol	IEEE 802.11
13	Power	Ratings	240 V
		Power Cable	UK Standard (Three pin plug)
14	Warranty		3 year standard commercial warranty; 1 Year limited warranty on primary battery. Detailed product Brochure Evidence of Warranty of manufacturer's defects
15	Authorization	Manufacturer's authorization	Provide duly completed, signed and stamped manufacturer authorization form

ITEM 2 - LAPTOP I			
No	Item	Key Description	Specifications
1	Processor Type	Processor	Intel® Core™ i7-6500U with Intel HD Graphics 520 (2.5 GHz, up to 3.1 GHz with Intel Turbo Boost Technology, 4 MB cache, 2 cores)
2	Memory	Installed RAM	8 GB DDR4
		Memory slots	2
3	Hard Drive	Capacity	500 GB up to 1 TB SATA
4	Optical Drives	DVD	USB Super drive
5	Input Devices	Keyboard	Full-sized, spill resistant backlit keyboard
		Pointing device	Touchpad with on/off button, taps enabled as default, support multi gestures, two-finger scroll, pinch/zoom, edge swipe
		Mouse	Wireless
		USB and HDMI	Supports HDMI,VGA and at least 3 USB slots
		Web Camera	720 HD camera
6	Output Devices	Speaker	Inbuilt Stereo speakers
		USB	3 USB ports
		Audio In/Out	Head Phone port-Head phone/optical audio output(minijack)
		Mic	Support for headset with microphone.
7	Display	Display Size	33.8 cm (13.3") diagonal HD anti-glare LED-backlit (1366 x 768)
		Graphics	Intel® HD Graphics 520 or Higher
8	Operating System		Windows 10 Professional 64 With down gradable rights to Windows 7 Pro 64)
9	Software's	Ms Office	Microsoft Office 2016 Standard Licensed
10	Technical Feature	Expansion Slot	1 multi-format digital media reader

11	Ports	Ports	2 USB 3.0; 1 USB 2.0 (power port); 1 HDMI; 1 headphone/microphone combo; 1 AC power; 1 RJ-45; 1 VGA
12	Communication	Network	10/100/1000BASE-T Gigabit Ethernet (RJ-45 connector)
		Wireless	Broadcom 802.11a/b/g/n (2x2)
		Bluetooth	Bluetooth® 4.0 Combo
13	Power	Battery	45 W Smart AC adapter 4-cell, 44 WHr Li-ion
14	Carrying Case		Backpack Designed to fit a range of laptops with screens up to 15.4" in size; including models with an extended battery. Padded laptop compartment fits laptops with screen sizes up to 15.4"
15	Warranty		3 year standard commercial warranty; 1 Year limited warranty on primary battery. Detailed product Brochure Evidence of Warranty of manufacturer's defects
16	Authorization	Manufacturer's authorization	Provide duly completed, signed and stamped manufacturer authorization form

ITEM 3 - LAPTOP II			
No	Item	Key Description	Specifications
1	Processor Type	Processor	Intel® Core™ i7-7700HQ with Intel® HD Graphics 630 (2.8 GHz, up to 3.8 GHz with Intel® Turbo Boost Technology 2.0, 6 MB L3 cache, 4 cores) or higher
2	Memory	Installed RAM	20GB DDR4
		Memory slots	4
3	Hard Drive	Capacity	512 GB SSD storage
4	Optical Drives	DVD	USB Super drive
5	Input Devices	Keyboard	Full-sized, spill resistant backlit keyboard
		Mouse	Wireless
		Pointing device	Image sensor touchpad with on/off button, two-way scroll, gestures, three pick buttons. Pointstick with three additional pointstick buttons.
		USB and HDMI	Supports VGA and at least 3 USB slots
		Web Camera	720 HD camera
6	Output Devices	Speaker	Inbuilt Stereo speakers
		USB	1 power connector; 2 USB, DisplayPort 1.2, USB 3.1); 2 USB 3.0
		Audio In/Out	Integrated stereo speakers and microphone
		Mic	Combo microphone-in/stereo headphone-out jack.
7	Display	Display Size	15.6" diagonal FHD IPS anti-glare (1920 x 1080); 15.6" diagonal UHD, non-touch.
		Graphics	Intel® HD Graphics 630; NVIDIA® Quadro® M2200 (2 GB or Higher)
9	Operating System		Windows 10 Pro 64
			Licensed

10	Software's	Ms Office	Microsoft Office 2016 Standard Licensed
11	Technical Feature	Expansion Slot	1 SD UHS-II flash media; 1 smart card reader
12	Ports	Ports	2 USB 3.0; 1 USB 2.0 (power port); 1 headphone/microphone combo; 1 AC power; 1 RJ-45; 1 VGA
12	Communication	Network	LAN: Integrated Intel® I219-LM Gigabit Network Connection
		Wireless/Bluetooth	WLAN: Intel® Dual Band Wireless-AC 8265 802.11a/b/g/n/ac (2x2) Wi-Fi and Bluetooth® 4.2 Combo; Intel® Dual Band Wireless-AC 8265 802.11a/b/g/n/ac (2x2)
13	Power	Battery	150 W Slim Smart AC adapter 9-cell, 90 Wh Li-ion
14	Carrying Case		Backpack Designed to fit a range of laptops with screens up to 15.4" in size; including models with an extended battery. Padded laptop compartment fits laptops with screen sizes up to 15.4"
15	Warranty		3 year standard commercial warranty; 1Year limited warranty on primary battery. Detailed product Brochure Evidence of Warranty of manufacturer's defects
16	Authorization	Manufacturer's authorization	Provide duly completed, signed and stamped manufacturer authorization form

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1. Section H. Tender Form and Price Schedules

(i) Form of Tender

Date: _____
Tender N^o: KEMSA-ONT1-2017/2018 For
Supply of Desktop and Laptop Computers

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 supply and deliver.....
[Description of goods]
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 deliver the goods in accordance with the 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 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..... [Number] days from the date fixed for tender opening of the Instructions to Bidders, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.
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 and on behalf of ____

2. Tender-Securing Declaration Form

[The bidder shall complete this form in accordance with the instructions indicated.]

Date: [insert date (as day month and year) of bid submission]

Tender No: KEMSA-ONT1-2017/2018 For Supply of Desktop and Laptop Computers

To: [Insert complete name of purchaser]

We, the undersigned, declare that:

1. We understand that, according to your conditions, bids must be supported by a Bid-securing declaration.
2. We accept that we automatically be suspended from being eligible for bidding in any contract with the purchaser for the period of time of three years starting on [insert date], if we are in breach of our obligation(s) under the bid conditions because we-
 - a) Have withdrawn our Bid during the period of bid validity specified by us using the Bid Data Sheet; or
 - b) Having been notified of the acceptance of our Bid by the purchaser during the period of Bid validity
 - i. Fail or refuse to execute the contract, if required, or
 - ii. Fail or refuse to furnish the Performance Security, in accordance with the ITT.
3. We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of
 - i. Our receipt of a copy of your notification of the name of the successful bidder; or
 - ii. Twenty eight days after the expiration of the tender.
4. We understand that if we are Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the Bid, and the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all the future partners as named in the letter of intent.

Signed: [Insert signature of the person whose name and capacity are shown] in the capacity of [insert legal capacity of person signing the Bid Securing Declaration]

Name: [Insert complete name of person signing the Bid Securing Declaration]

Duly authorised to sign the bid for on behalf of: [insert complete name of bidder]

Date on _____ day of _____, _____ [Insert date of signing]

3. Form of Contract Agreement

THIS CONTRACT AGREEMENT is made

the [*insert: number*] day of [*insert: month*], [*insert: year*].

BETWEEN

- 1 THIS AGREEMENT made the ____ day of _____ 20____ between.....[*name of Procurement entity*] of.....[*country of Procurement entity*] (hereinafter called “the Procuring entity”) of the one part and [*insert: name of Tenderer*], a corporation incorporated under the laws of [*insert: country of Tenderer*] and having its principal place of business at [*insert: address of Tenderer*] (hereinafter called “the Supplier”).
- 2 WHEREAS the Procuring entity invited tenders for certain goods and ancillary services, viz., [*insert: brief description of goods and services*] and has accepted a tender by the tenderer for the supply of those goods and services in the sum of [*insert: contract price in words and figures*] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

- 2.4.1 In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
- 2.4.2 The following documents shall constitute the Contract between the Purchaser and the Tenderer, and each shall be read and construed as an integral part of the Contract:
 - (a) This Contract Agreement
 - (b) Special Conditions of Contract
 - (c) General Conditions of Contract
 - (d) Technical Requirements (including Functional Requirements and Implementation Schedule)
 - (e) The Supplier’s tender and original Price Schedules
 - (f) The Purchaser’s Notification of Award
 - (g) The Supplier’s Acceptance letter
 - (h) [*Add here: any other documents*]
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 Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

The Procuring Entity hereby covenants to pay the Tenderer in consideration of the provision of the Goods and Services 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.

For and on behalf of the Procuring Entity

Signed: _____
in the capacity of [*insert: title or other appropriate designation*]

in the presence of _____

For and on behalf of the Tenderer

Signed: _____
in the capacity of [*insert: title or other appropriate designation*]

in the presence of _____

CONTRACT AGREEMENT

dated the [*insert: number*] day of [*insert: month*], [*insert: year*]

BETWEEN

[*insert: name of Procuring Entity*], "the Purchaser"

and

[*insert: name of Tenderer*], "the Supplier"

4. Performance Security Bank Guarantee (unconditional)

IFT No.: -----

Supply and delivery of -----

To: Kenya, Medical Supplies Authority (KEMSA).

Dear Sir or Madam:

We refer to the Contract Agreement (“the Contract”) signed on [*insert: date*] between you and [*insert: name of Tenderer*] (“the Supplier”) concerning the supply and delivery of [*insert: a brief description of the Goods*]. By this letter we, the undersigned, [*insert: name of bank*], a bank (or company) organized under the laws of [*insert: country of bank*] and having its registered/principal office at [*insert: address of bank*], (hereinafter, “the Bank”) do hereby jointly and severally with the Tenderer irrevocably guarantee payment owed to you by the Tenderer, pursuant to the Contract, up to the sum of [*insert: amount in numbers and words*]. This guarantee shall be reduced or expire as provided for by GCC Sub-Clause 8.4.

We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by your duly authorized officer declaring the Tenderer to be in default under the Contract and without cavil or argument any sum or sums within the above-named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Tenderer to dispute or question such demand. Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed under this Letter in respect of any demand duly made under this Letter prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid from the date of issue until the date of expiration of the guarantee, as governed by the Contract. Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation. Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made under this Letter after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed under this Letter, whichever is the earlier. All notices to be given under this Letter shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released, or discharged by mutual agreement between you and the Tenderer, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent, or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event, or condition that by any applicable law should operate to discharge us from liability hereunder shall have any effect, and we hereby waive any right

we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

For and on behalf of the Bank

Signed: _____

Date: _____

in the capacity of: [*insert: title or other appropriate designation*]

5. Manufacturer's Authorization Form

(Manufacturer's or Producer's letterhead)

To Kenya Medical Supplies Authority

WHEREAS [*insert: name of the manufacturer or producer*] (hereinafter, "we" or "us") who are established and reputable manufacturers or producers of [*insert: name and/or description of the Goods requiring this authorization*] (hereinafter, "Goods") having production facilities at [*insert: address of factory*] do hereby authorize [*insert: name and address of Tenderer*] (hereinafter, the "Tenderer") to submit a tender, and subsequently negotiate and sign the Contract with you against IFT KEMSA/ONT 1/2017-2018 Supply of **Laptop and Desktop Computers** including the above Goods produced by us.

We hereby extend our full guarantee and warranty for the above specified Goods against these tender documents.

For and on behalf of the Manufacturer or Producer

Signed: _____

Date: _____

In the capacity of [*insert: title, position, or other appropriate designation*] and duly authorize to sign this Authorization on behalf of [*insert: name of manufacturer or producer*]

NOTE: Manufacturer's Authorization must be ON LETTER HEAD and addressed to KEMSA and must be tender and item specific and signed by an authorized signatory. - MANDATORY

6. ANTI - CORRUPTION POLICY IN THE PROCUREMENT PROCESS

UNDERTAKING BY BIDDER ON ANTI - CORRUPTION POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME

The governments of Kenya is committed to fighting corruption in all its forms and in all its institutions to ensure that all the government earned revenues are utilized prudently and for the purpose intended with a view to promoting economic development as the country work towards actualizing Vision 2030.

Here at KEMSA and also being one of the government entities mandated under the government Legal Notice number 466 of 2004 to procure, warehouse and distribute Essential Medicines and Medical Supplies to all the public health facilities in Kenya, on behalf of the government, we are highly committed to fighting any form of corruption in our organization to ensure that all the monies that the government entrust with us, is optimally and prudently utilized for the benefits of all the people we serve.

The following is a requirement that every Bidder wishing to do business with KEMSA must comply with:

- (1) Each bidder must submit a statement, as part of the tender documents, in the format given and which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the bidding company and, where relevant, of its subsidiary in Kenya. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
- (2) Bidders will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the bidder may cover the subcontractors and consortium partners in its own statement, provided the bidder assumes full responsibility.
- (3) a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
 - b) Each bidder will make full disclosure in the tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the tender and, if successful, the implementation of the contract.
 - c) The successful bidder will also make full disclosure [quarterly or semi- annually] of all payments to agents and other third parties during the execution of the contract.
 - d) Within six months of the completion of the performance of the contract, the successful bidder will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made.

- e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
- (4) Tenders which do not conform to these requirements shall not be considered.
- (5) If the successful bidder fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
 - a) Cancellation of the contract;
 - b) Liability for damages to the public authority and/or the unsuccessful competitors in the bidding possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated).
- (6) Bidders shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.
- (7) The Government of Kenya through Kenya Anti-Corruption Commission has made special arrangements for adequate oversight of the procurement process and the execution of the contract. Those charged with the oversight responsibility will have full access if need be to all documentation submitted by Bidders for this contract, and to which in turn all Bidders and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a bidder may be disclosed to another bidder or to the public).

MEMORANDUM (FORMAT)

(Clause 41, 62 and 66 of Kenya Public Procurement and Asset Disposal Act (PPADA) 2015

This company _____ (*name of company*) has issued, for the purposes of this tender, a Compliance Program copy attached -which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers'")"

The company also confirms that it has not been debarred from participating in procurement proceedings

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Bidder: _____

Address: _____

7. Supplier (Tenderer/ Bidder) Data Information

SUPPLIER BUSINESS DETAILS (fill in Block letters)		
Company name		
Company Post Office Address:		
Telephone Nos: Office No. ----- ----- Mobile No. ----- ----- _____ ____	Fax No. (with entering your fax no. here you consent that this means of communication will be used for any communication during the tender process and that you will ensure that notice will be taken): _____ _____	e-Mail Address (with entering your e-Mail address here you consent that this means of communication will be used for any communication during the tender process and that you will ensure that notice will be taken): _____ _____

<p>Company Registration Number:</p> <p>1. Location of business premises -----</p> <p>2. Building name and number -----</p> <p>3. Floor Number -----</p> <p>4. Room number -----</p> <p>5. Plot Number -----</p> <p>6. VAT Certificate Number -----</p> <p>7. Local Authority License Number ----- Expiry Date ----- -----</p> <p>8. PIN certificate Number -----</p> <p>9. Website if any -----</p>
--

when submitting your bid, please ensure that you submit copies of the following documents;

- 1. Copy of Certificate of incorporation**
- 2. Copy of current Tax Compliance Certificate**

Contact Name		Job Title
Telephone No. _____	Fax No. (with entering your fax no. here you consent that this means of communication will be used for any communication during the tender process and that you will ensure that notice will be taken): _____	e-Mail Address (with entering your e-Mail address here you consent that this means of communication will be used for any communication during the tender process and that you will ensure that notice will be taken): _____
Main business activity		
<u>Please NOTE giving false information in this section will lead to outright Disqualification from tendering process.</u>		
Type of organization (please tick as necessary)		
<ol style="list-style-type: none"> 1. Partnership 2. Co-operative 3. Private Ltd. 4. Public Company 5. Other. 		
Type of premises (tick as necessary)	Freehold	
<ol style="list-style-type: none"> 1. factory, 2. warehouse 3. Other. 	Leasehold	
Names of executives		
Chairman ----- Nationality -----		

- Shares held ----- Managing Director ----- Nationality ----- -- Shares held ----- Company Secretary ----- Nationality ----- - Shares held ----- Name of Directors 1. ----- Nationality ----- Shares held ----- 2. ----- Nationality ----- Shares held ----- 3. ----- Nationality ----- Shares held ----- 4. ----- Nationality ----- Shares held ----- 5. ----- Nationality ----- Shares held -----	
Name and address of ultimate holding company and any subsidiary companies	
Total no. of employees in group	No. of locations/premises in group
Member of a Trade Association? Details of any Certification e.g. ISO 9000 (attach copies of valid certificates)	

Name product(s) for which you act as an Authorized Dealer / Distributor and attach copies of valid certificates of authority.

- | | |
|----|----|
| 1. | 5. |
| 2. | 6. |
| 3. | 7. |
| 4. | 8. |

Bidders should only provide documentation for products they are offering to supply in the tender

Bank References and other details

A) Primary Bank (The Main Bank)

- 1) Name: -----
- 2) Postal Address: -----
- 3) Telephone Land line number;-----
- 4) Fax Number: -----
- 5) Email Address: -----

Name of the account: -----

Account number: -----

Number of years operated: -----

SECONDARY BANKERS (if applicable)	
Bank name and address: -----	
Name of the account: -----	
Account number: ----- -----	Years of operation ----- -----

Commercial References	
<u>Provide names and contact details of four customers that have done business with you in the last three years.</u>	
A) Trade References - customer 1	
Activity: ----- -----	Period of relationship: (Year) ----- -----
Contact name: ----- ----- -----	Fax no. ----- ----- Email address: ----- -----
Value of contract orders in USD-----	

Telephone No. ----- -----
Physical address; ----- -----

--

B) Trade References - customer 2

Activity: ----- -----	Period of relationship: (Year) ----- -----
--------------------------	---

Contact name: ----- ----- -----	Fax no. ----- ----- Email address: ----- -----
---------------------------------------	---

Value of contract orders in USD----- -----

Telephone No. ----- -----
Physical address; ----- -----

--

Trade References - customer 3

Business Activity: ----- ----- -----	Period of relationship (year) ----- -----
--	--

Contact name: ----- ----- ----- -----	Fax no.----- Email address: ----- ---
Value of contract orders in Kenya Shillings KSHS ----- -----	
Telephone No. Mobile ----- ----- Telephone Number Land line ----- ----- Physical address: ----- -----	

Trade References - customer 4	
Business Activity: ----- ----- ----- -----	Period of relationship (year) ----- -----
Contact name: ----- ----- ----- -----	Fax no.----- Email address: ----- ---

Value of contract orders in Kenya Shillings KSHS ----- -----
Telephone No. Mobile ----- -----
Telephone Number Land line ----- -----
Physical address: ----- -----

SUPPORT SERVICES AVAILABLE
What after sales / warranty / spare parts / support services / local agent / repair are available? (Please feel free to attach any further supporting information with this form)

DECLARATION BY THE APPLICANT	
Full names: ----- -----	Job title of signatory:----- -----
Telephone Number mobile ----- -----	
Telephone No. Land Line ----- -----	
Signature of the applicant ----- ----- -----	Date of application: ----- -----

Please affix company rubber stamp or seal

Section VIII

Stages of Tender and Evaluation Criteria

Stage 1: Preliminary Examination

Stage 2: Technical Evaluation

Stage 3; Financial Evaluation

A) PRELIMINARY EXAMINATION

Required documents

1. Bidding documents must be paginated/serialized (**MANDATORY**)
2. Copy of Certificate of incorporation/Registration (**MANDATORY**)
3. Copy of current Tax Compliance Certificate (**MANDATORY**)
4. Copy of current AGPO certificate (**MANDATORY**)
5. Tender form duly **completed and signed** by the tenderer or his authorized agent (**MANDATORY**).
6. Anti-Corruption Declaration **must be signed** (**MANDATORY**).
7. Tender Securing Declaration form **must be signed** (**MANDATORY**).
8. Duly completed Business Questionnaire.

NOTE: Failure to comply with Mandatory requirements will lead to disqualification. Only bidders who are successful at this stage will proceed to the next stage of evaluation.

B) TECHNICAL EVALUATION

Required documents

- a) Manufacturer's Authorization that is tender and item specific (**MANDATORY**)
- b) Original Product Brochure (**MANDATORY**)

The technical evaluation will involve evaluation of the bidders' brochure against the technical specifications spelt out in the tender document.

The evaluation will be on a "Yes/No" basis;

NOTE: Only bidders who are successful at this stage will proceed to the next stage of evaluation.

C) FINANCIAL EVALUATION

Bidders who are successful at preceding stages of evaluation and offer acceptable delivery schedules will have their prices compared and award recommended to the lowest evaluated responsive bid.

RESERVATION

The tender is reserved for Youth, Women and Persons with disabilities

NOTE: Bidders should provide **Valid** Access to Government Procurement Opportunity (AGPO) Certificate issued by National Treasury as evidence of eligibility.