



**Procurement of  
Super of Cereal plus Corn Soya Blend**

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**ICB No: KEMSA/KHSSP-ONT-01/2017-2018**

**Project: HEALTH SECTOR SUPPORT PROJECT (HSSP)**

**CREDIT No. 4771-KE**

**Project ID No. P074091**

**Purchaser: KENYA MEDICAL SUPPLIES AUTHORITY**

**Country: KENYA**

**Issued on: 28<sup>th</sup> November 2017**

**Tender Closing date: 9<sup>th</sup> January 2018**

**Time: -10.00 a.m. Local time**

# Invitation for Bids (IFB)

GOVERNMENT OF KENYA

MINISTRY OF HEALTH

KENYA HEALTH SECTOR SUPPORT PROJECT

CREDIT No. 4771-KE

PROJECT ID No. P074091

1. This invitation follows the general procurement notice that appeared in UNDB Online reference no. KE-KEMSA-38224-GO-RFB
2. The Government of Kenya has received a Credit from the International Development association toward the cost of Health Sector Support Project and intends to apply part of the proceeds of this credit to payments under the contract for the procurement of Super Cereal plus Corn Soya Blend.
3. The Kenya Medical Supplies Authority (KEMSA) on behalf of the Ministry of Health now invites sealed bids from eligible bidders to Supply of Super Cereal plus Corn Soya Blend.

Tender Description	No. of Items	Eligibility
KEMSA/KHSSP-ONT-01/2017-2018 - Supply of Super Cereal plus Corn Soya Blend	1	Open to all

4. Bidding will be conducted through the National Competitive Bidding procedures specified in the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits, and is open to all bidders from eligible source countries as defined in the Guidelines.
5. 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](mailto:procure@kemsa.co.ke)

on normal working days on Monday to Friday between 0900hrs and 1600hrs except on Public Holidays or download at the IFMIS Suppliers portal

[www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) or the KEMSA website <http://www.kemsa.co.ke/tenders/> 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](mailto:procure@kemsa.co.ke). (refer to registration form in the tender document)

6. A complete set of Bidding Document(s) in English (hardcopy) may be purchased by eligible Bidders upon payment of a non-refundable fee of Kenya Shillings 1,000 (One thousand Kenya Shillings.) The method of payment is i) cash or by banker's cheque payable to "Kenya Medical Supplies Authority" 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. 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 accompanied by a **Bid security of Kshs.1,500,000.00** or equivalent in a freely convertible currency from Commercial Banks 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 Local time on 9th January 2018**. Bulky tenders can be handed over to KEMSA Procurement Director's office for registration and safe keeping till the tender opening date.

8. 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 bids' opening conference Hall at **10:00am Local time on 9th January 2018**.
9. Late bids, portion of bids, bids not received, bids not opened and not readout in public at the bid open ceremony shall not be accepted for evaluation irrespective of circumstances

**REGISTRATION FORM FOR ONLINE TENDERERS**

Tender No. **KEMSA/KHSSP/ONT-01/2017-2018 FOR PROCUREMENT OF  
SUPER CEREAL PLUS CORN SOYA BLEND**

**NOTE:** Please provide your details below for purposes of communication in case you download this tender document from IFMIS or KEMSA website.

Name of the firm:.....

Postal Address:.....

Telephone Contacts:.....

Company email address:.....

Contact

Person:.....

Once completed please submit this form to the email below;

[procure@kemsaco.ke](mailto:procure@kemsaco.ke)

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## **PART 1 – Bidding Procedures**





# Section I - Instructions to Bidders

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## Section I - Instructions to Bidders

### A General

- 1. Scope of Bid**
  - 1.1 In connection with the Specific Procurement Notice - Request for Bids (RFB), specified **in the Bid Data Sheet (BDS)**, the Purchaser, **as specified in the BDS**, issues this bidding document for the supply of Goods (pharmaceuticals, vaccines, contraceptives, or nutritional supplements) and Related Services incidental thereto as specified in Section VII, Schedule of Requirements. The name, identification and number of lots (contracts) of this RFB are specified **in the BDS**.
  - 1.2 Throughout this bidding document:
    - (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, including if specified **in the BDS**, distributed or received through the electronic-procurement system used by the Purchaser) with proof of receipt;
    - (b) if the context so requires, “singular” means “plural” and vice versa; and
    - (c) “Day” means calendar day, unless otherwise specified as “Business Day.” A Business Day is any day that is an official working day of the Borrower. It excludes the Borrower’s official public holidays.
- 2. Source of Funds**
  - 2.1 The Borrower or Recipient (hereinafter called “Borrower”) specified **in the BDS** has applied for or received financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) in an amount specified **in BDS**, toward the project named **in BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract for which this bidding document is issued.
  - 2.2 Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the Loan (or other financing) Agreement. The Loan (or other financing) Agreement prohibits a withdrawal from the Loan (or other financing) account for the purpose of any payment to persons or entities, or for any import of goods, , plant or materials if such payment or import, to the knowledge of the Bank, is

prohibited by decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing).

### 3. Fraud and Corruption

- 3.1 The Bank requires compliance with the Bank's Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the WBG's Sanctions Framework, as set forth in Section VI.
- 3.2 In further pursuance of this policy, bidders shall permit and shall cause its agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and their personnel, to permit the Bank to inspect all accounts, records and other documents relating to any prequalification process (if applicable), bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank.

### 4. Eligible Bidders

- 4.1 A Bidder may be a firm that is a private entity, a state-owned enterprise or institution subject to ITB 4.6 or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless specified **in the BDS**, there is no limit on the number of members in a JV.
- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this Bidding process, if the Bidder:
  - (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
  - (b) receives or has received any direct or indirect subsidy from another Bidder; or
  - (c) has the same legal representative as another Bidder; or
  - (d) has a relationship with another Bidder, directly or

through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Purchaser regarding this Bidding process; or

- (e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Bid; or
- (f) or any of its affiliates has been hired (or is proposed to be hired) by the Purchaser or Borrower for the Contract implementation; or
- (g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
- (h) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding document or specifications of the Contract, and/or the Bid evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the Bidding process and execution of the Contract.

4.3 A firm that is a Bidder (either individually or as a JV member) shall not participate in more than one Bid, except for permitted alternative Bids. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Bids in which the firm is involved. A firm that is not a Bidder or a JV member, may participate as a subcontractor in more than one Bid.

4.4 A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 4.8. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its

articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or subconsultants for any part of the Contract including related Services.

- 4.5 A Bidder that has been sanctioned by the Bank, pursuant to the Bank's Anti-Corruption Guidelines, and in accordance with its prevailing sanctions policies and procedures as set forth in the WBG's Sanctions Framework as described in Section VI paragraph 2.2 d., shall be ineligible to be initially selected for, prequalified for, bid for, submit proposal for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available at the electronic address specified in the BDS.
- 4.6 Bidders that are state-owned enterprises or institutions in the Purchaser's Country may be eligible to compete and be awarded a Contract(s) only if they can establish, in a manner acceptable to the Bank, that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not under supervision of the Purchaser.
- 4.7 A Bidder shall not be under suspension from Bidding by the Purchaser as the result of the operation of a Bid-Securing Declaration.
- 4.8 Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.
- 4.9 A Bidder shall provide such documentary evidence of eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.
- 4.10 A firm that is under a sanction of debarment by the Borrower from being awarded a contract is eligible to participate in this

procurement, unless the Bank, at the Borrower's request, is satisfied that the debarment; (a) relates to fraud or corruption, and (b) followed a judicial or administrative proceeding that afforded the firm adequate due process.

**5. Eligible Goods and Related Services**

- 5.1 All the Goods and Related Services to be supplied under the Contract and financed by the Bank may have their origin in any country in accordance with Section V, Eligible Countries.
- 5.2 For purposes of this ITB, the term “goods” includes any goods that are the subject of this Request for Bids, and “Related Services” includes services such as transportation, insurance, commissioning and training.
- 5.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

**B. Contents of Bidding Document**

**6. Sections of Bidding Document**

- 6.1 The bidding document consists of Parts 1, 2, and 3, which includes all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

**PART 1 Bidding Procedures**

- Section I - Instructions to Bidders (ITB)
- Section II - Bidding Data Sheet (BDS)
- Section III - Evaluation and Qualification Criteria
- Section IV -Bidding Forms
- Section V - Eligible Countries
- Section VI -Fraud and Corruption

**PART 2 Supply Requirements**

- Section VII - Schedule of Requirements

**PART 3 Contract**

- Section VIII - General Conditions of Contract
- Section IX - Special Conditions of Contract
- Section X - Contract Forms

- 6.2 The Specific Procurement Notice - Request for Bids (RFB) issued by the Purchaser is not part of this bidding document.
  - 6.3 Unless obtained directly from the Purchaser, the Purchaser is not responsible for the completeness of the document, responses to requests for clarification, or Addenda to the bidding document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Purchaser shall prevail.
  - 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding document and to furnish with its Bid all information or documentation as is required by the bidding document.
- 7. Clarification of Bidding Document**
- 7.1 A Bidder requiring any clarification of the bidding document shall contact the Purchaser in writing at the Purchaser's address specified **in the BDS**. The Purchaser will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Bids within a period specified **in the BDS**. The Purchaser shall forward copies of its response to all Bidders who have acquired the bidding document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so specified **in the BDS**, the Purchaser shall also promptly publish its response at the web page identified **in the BDS**. Should the clarification result in changes to the essential elements of the bidding document, the Purchaser shall amend the bidding document following the procedure under ITB 8 and ITB 22.2.
- 8. Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of Bids, the Purchaser may amend the bidding document by issuing addenda.
  - 8.2 Any addendum issued shall be part of the bidding document and shall be communicated in writing to all who have obtained the bidding document from the Purchaser in accordance with ITB 6.3. The Purchaser shall also promptly publish the addendum on the Purchaser's web page in accordance with ITB 7.1.
  - 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB 22.2.



## C. Preparation of Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.
- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in the language specified **in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language specified **in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid** 11.1 The Bid shall comprise the following:
- (a) **Letter of Bid** prepared in accordance with ITB 12;
  - (b) **Price Schedules**: completed in accordance with ITB 12 and ITB 14;
  - (c) **Bid Security** or **Bid-Securing Declaration**, in accordance with ITB 19.1;
  - (d) **Alternative Bid**, if permissible, in accordance with ITB 13;
  - (e) **Authorization**: written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.3;
  - (f) **Bidder's Qualifications**: documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the Contract if its Bid is accepted;
  - (g) **Bidder's Eligibility**: documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility to Bid;
  - (h) **Eligibility of Goods and Related Services**: documentary evidence in accordance with ITB 16, establishing the eligibility of the Goods and Related Services to be supplied by the Bidder;
  - (i) **Conformity**: documentary evidence in accordance with ITB 16, that the Goods and Related Services

conform to the bidding document; and

(j) any other document required **in the BDS**.

11.2 In addition to the requirements under ITB 11.1, Bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement.

11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

## **12. Letter of Bid and Price Schedules**

12.1 The Letter of Bid and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.3. All blank spaces shall be filled in with the information requested.

## **13. Alternative Bids**

13.1 Unless otherwise specified **in the BDS**, alternative Bids shall not be considered.

## **14. Bid Prices and Discounts**

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Price Schedules shall conform to the requirements specified below.

14.2 All lots (contracts) and items must be listed and priced separately in the Price Schedules.

14.3 The price to be quoted in the Letter of Bid in accordance with ITB 12.1 shall be the total price of the Bid, excluding any discounts offered.

14.4 The Bidder shall quote any discounts and indicate the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.

14.5 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified **in the BDS**. A Bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 29. However, if in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a Bid submitted with a fixed price quotation shall not be rejected,

but the price adjustment shall be treated as zero.

- 14.6 If so specified in ITB 1.1, Bids are being invited for individual lots (contracts) or for any combination of lots (packages). Unless otherwise specified **in the BDS**, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer discounts for the award of more than one Contract shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4 provided the Bids for all lots (contracts) are opened at the same time.
- 14.7 The terms EXW, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, as specified **in the BDS**.
- 14.8 Prices shall be quoted as specified in each Price Schedule included in Section IV, Bidding Forms. The dis-aggregation of price components is required solely for the purpose of facilitating the comparison of Bids by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered. In quoting prices, the Bidder shall be free to use transportation through carriers registered in any eligible country, in accordance with Section V, Eligible Countries. Similarly, the Bidder may obtain insurance services from any eligible country in accordance with Section V, Eligible Countries. Prices shall be entered in the following manner:
- (a) for Goods manufactured in the Purchaser's Country:
- (i) the price of the Goods quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
  - (ii) any Purchaser's Country sales tax and other taxes which will be payable on the Goods if the Contract is awarded to the Bidder; and
  - (iii) the price for inland transportation,

- insurance, and other local services required to convey the Goods to their final destination (Project Site) **specified in the BDS;**
- (b) for Goods manufactured outside the Purchaser's Country, to be imported:
- (i) the price of the Goods, quoted CIP named place of destination, in the Purchaser's Country, as **specified in the BDS;** and
  - (ii) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) **specified in the BDS;**
- (c) for Goods manufactured outside the Purchaser's Country, already imported:
- (i) the price of the Goods, including the original import value of the Goods; plus any mark-up (or rebate); plus any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported;
  - (ii) the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported;
  - (iii) the price of the Goods, obtained as the difference between (i) and (ii) above;
  - (iv) any Purchaser's Country sales and other taxes which will be payable on the Goods if the Contract is awarded to the Bidder; and
  - (v) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) **specified in the BDS.**
- (d) for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services

are specified in the Schedule of Requirements:

- (i) the price of each item comprising the Related Services (inclusive of any applicable taxes).

**15. Currencies of Bid and Payment**

15.1 The currency(ies) of the Bid and the currency(ies) of payments shall be the same. The Bidder shall quote in the currency of the Purchaser's Country the portion of the Bid price that corresponds to expenditures incurred in the currency of the Purchaser's Country, unless otherwise specified **in the BDS**.

15.2 The Bidder may express the Bid price in any currency. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three foreign currencies in addition to the currency of the Purchaser's Country.

**16. Documents  
Establishing the  
Eligibility and  
Conformity of the  
Goods and  
Related Services**

16.1 To establish the eligibility of the Goods and Related Services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.

16.2 To establish the conformity of the Health Sector Goods and Related Services to the bidding document, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.

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

- (a) an item-by-item commentary on the provisions of Section VII, Schedule of Requirements demonstrating substantial responsiveness of the Goods and Services to the specifications, or a statement of deviations and exceptions to the provisions of the specifications; and
- (b) any other procurement-specific documentation requirement as stated **in the BDS**.

16.4 Unless the **BDS** stipulates otherwise, the Goods to be supplied under the Contract shall be registered with the relevant authority in the Purchaser's Country. A Bidder who has already registered its Goods by the time of Bidding should submit a copy of the Registration Certificate with its Bid. Otherwise, the successful Bidder, by the time of Contract signing, shall submit to the Purchaser either:

- (a) a copy of the Registration Certificate of the Goods for use in the Purchaser's Country; or
- (b) if such Registration Certificate has not yet been obtained, evidence establishing to the Purchaser's satisfaction that the Bidder has complied with all the documentary requirements for registration as specified **in the BDS**.

16.5 The Purchaser shall at all times cooperate with the successful Bidder to facilitate the registration process within the Purchaser's Country. The agency and contact person able to provide additional information about registration are identified **in the BDS**.

16.6 If the Goods of the successful Bidder have not been registered in the Purchaser's Country at the time of Contract signing, then the Contract shall become effective upon such date as the Certificate of Registration is obtained.

16.7 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

**17. Documents  
Establishing the  
Eligibility and  
Qualifications of  
the Bidder**

17.1 To establish Bidder's eligibility in accordance with ITB 4, Bidders shall complete the Letter of Bid, included in Section IV, Bidding Forms.

17.2 The documentary evidence of the Bidder's qualifications to perform the Contract if its Bid is accepted shall establish to the Purchaser's satisfaction:

- (a) that a Bidder that does not manufacture or produce the Health Sector Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's Country;
- (b) that in case of a Bidder not doing business within the Purchaser's Country (or for other reasons will not itself carry out service obligations), the Bidder is or will be

(if awarded the Contract) represented by a local service provider in the Purchaser's Country equipped and able to carry out the Bidder's warranty obligations prescribed in the Conditions of Contract and/or Technical Specifications; and

- (c) that the Bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria (see additional ITB for pharmaceuticals and vaccines).

### **18. Period of Validity of Bids**

18.1 Bids shall remain valid for the Bid Validity period specified **in the BDS**. The Bid Validity period starts from the date fixed for the Bid submission deadline (as prescribed by the Purchaser in accordance with ITB 22.1). A Bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.

18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Purchaser may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 19, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB 18.3.

18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Bid validity period, the Contract price shall be determined as follows:

- (a) in the case of **fixed price** contracts, the Contract price shall be the Bid price adjusted by the factor specified **in the BDS**;
- (b) in the case of **adjustable price** contracts, no adjustment shall be made; or
- (c) in any case, Bid evaluation shall be based on the Bid price without taking into consideration the applicable correction from those indicated above.

### **19. Bid Security**

19.1 The Bidder shall furnish as part of its Bid, either a Bid-Securing Declaration or a Bid Security, as specified **in the BDS**, in original form and, in the case of a Bid Security, in the amount and currency specified **in the BDS**.

19.2 A Bid-Securing Declaration shall use the form included in

## Section IV, Bidding Forms.

19.3 If a Bid Security is specified pursuant to ITB 19.1, the Bid Security shall be a demand guarantee in any of the following forms at the Bidder's option:

- (a) an unconditional guarantee issued by a bank or non-bank financial institution (such as an insurance, bonding or surety company);
- (b) an irrevocable letter of credit;
- (c) a cashier's or certified check; or
- (d) another security **specified in the BDS**,

from a reputable source, and an eligible country. If the unconditional guarantee is issued by a non-bank financial institution located outside the Purchaser's Country, the issuing non-bank financial institution shall have a correspondent financial institution located in the Purchaser's Country to make it enforceable unless the Purchaser has agreed in writing, prior to Bid submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Purchaser prior to Bid submission. The Bid Security shall be valid for twenty-eight (28) days beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 18.2.

19.4 If a Bid Security is specified pursuant to ITB 19.1, any Bid not accompanied by a substantially responsive Bid Security shall be rejected by the Purchaser as non-responsive.

19.5 If a Bid Security is specified pursuant to ITB 19.1, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the Performance Security pursuant to ITB 46.

19.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.

19.7 The Bid Security may be forfeited or the Bid-Securing



Declaration executed:

- (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or
- (b) if the successful Bidder fails to:
  - (i) sign the Contract in accordance with ITB45; or
  - (ii) furnish a Performance Security in accordance with ITB 46.

19.8 The Bid Security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of Bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.

19.9 If a Bid Security is not required **in the BDS**, pursuant to ITB 19.1, and:

- (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid; or
- (b) if the successful Bidder fails to:
  - (i) sign the Contract in accordance with ITB 45; or
  - (ii) furnish a Performance Security in accordance with ITB 46;

the Borrower may, if provided for **in the BDS**, declare the Bidder ineligible to be awarded a contract by the Purchaser for a period of time as stated **in the BDS**.

## 20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB 11 and clearly mark it “ORIGINAL.” Alternative Bids, if permitted in accordance with ITB 13, shall be clearly marked “ALTERNATIVE.” In addition, the Bidder shall submit copies of the Bid, in the number specified **in the BDS** and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 Bidders shall mark as “CONFIDENTIAL” information in their Bids which is confidential to their business. This may

include proprietary information, trade secrets or commercial or financially sensitive information.

- 20.3 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified **in the BDS** and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.
- 20.4 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

#### **D. Submission and Opening of Bids**

##### **21. Sealing and Marking of Bids**

- 21.1 The Bidder shall deliver the Bid in a single, sealed envelope (one-envelope Bidding process). Within the single envelope the Bidder shall place the following separate, sealed envelopes:
- (a) in an envelope marked “ORIGINAL”, all documents comprising the Bid, as described in ITB 11; and
  - (b) in an envelope marked “COPIES”, all required copies of the Bid; and,
  - (c) if alternative Bids are permitted in accordance with ITB 13, and if relevant:
    - (i) in an envelope marked “ORIGINAL – ALTERNATIVE BID”, the alternative Bid; and
    - (ii) in the envelope marked “COPIES – ALTERNATIVE BID” all required copies of the alternative Bid.
- 21.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
  - (b) be addressed to the Purchaser in accordance with ITB

22.1;

- (c) bear the specific identification of this Bidding process indicated in ITB 1.1; and
- (d) bear a warning not to open before the time and date for Bid opening.

21.3 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the Bid.

**22. Deadline for Submission of Bids**

22.1 Bids must be received by the Purchaser at the address and no later than the date and time specified **in the BDS**. When so specified **in the BDS**, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the electronic Bid submission procedures specified **in the BDS**.

22.2 The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the bidding document in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**23. Late Bids**

23.1 The Purchaser shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 22. Any Bid received by the Purchaser after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

**24. Withdrawal, Substitution, and Modification of Bids**

24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITB 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and

- (b) received by the Purchaser prior to the deadline prescribed for submission of Bids, in accordance with

## ITB 22.1.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

24.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

**25. Bid Opening**

25.1 Except as in the cases specified in ITB 23 and ITB 24.2, the Purchaser shall publicly open and read out in accordance with this ITB all Bids received by the deadline at the date, time and place specified **in the BDS** in the presence of Bidders' designated representatives and anyone who choose to attend. All Bidders, or their representatives and any interested party may attend a public opening. Any specific electronic Bid opening procedures required if electronic Bidding is permitted in accordance with ITB 22.1, shall be as specified **in the BDS**.

25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Bidder, the corresponding Bid will be opened. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening.

25.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening.

25.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening.

25.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a

modification; the total Bid Prices, per item or lot (contract) if applicable, including any discounts and alternative Bids; the presence or absence of a Bid Security, if required; and any other details as the Purchaser may consider appropriate.

- 25.6 Only Bids, alternative Bids and discounts that are opened and read out at Bid opening shall be considered further for evaluation. The Letter of Bid and the Price Schedules are to be initialed by representatives of the Purchaser attending Bid opening in the manner specified **in the BDS**.
- 25.7 The Purchaser shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with ITB 23.1).
- 25.8 The Purchaser shall prepare a record of the Bid opening that shall include, as a minimum:
- (a) the name of the Bidder and whether there is a withdrawal, substitution, or modification;
  - (b) the Bid Price, per lot (contract) if applicable, including any discounts;
  - (c) any alternative Bids; and
  - (e) the presence or absence of a Bid Security or Bid Securing Declaration, if one was required.
- 25.9 The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

## **E. Evaluation and Comparison of Bids**

### **26. Confidentiality**

- 26.1 Information relating to the evaluation of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the Bidding process until the Notification of Intention to Award the Contract is transmitted to all Bidders in accordance with ITB 43.
- 26.2 Any effort by a Bidder to influence the Purchaser in the evaluation or contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB 26.2, from the time of Bid opening to the time of Contract Award, if any Bidder wishes to contact

the Purchaser on any matter related to the Bidding process, it should do so in writing.

**27. Clarification of Bids**

27.1 To assist in the examination, evaluation, comparison of the Bids, and qualification of the Bidders, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the Evaluation of the Bids, in accordance with ITB 31.

27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Purchaser's request for clarification, its Bid may be rejected.

**28. Deviations, Reservations, and Omissions**

28.1 During the evaluation of Bids, the following definitions apply:

- (a) "Deviation" is a departure from the requirements specified in the bidding document;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding document; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the bidding document.

**29. Determination of Responsiveness**

29.1 The Purchaser's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB 11.

29.2 A substantially responsive Bid is one that meets the requirements of the bidding document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- (a) if accepted, would:
  - (i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
  - (ii) limit in any substantial way, inconsistent with

the bidding document, the Purchaser's rights or the Bidder's obligations under the Contract; or

- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

29.3 The Purchaser shall examine the technical aspects of the Bid submitted in accordance with ITB 16 and ITB 17, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.

29.4 If a Bid is not substantially responsive to the requirements of bidding document, it shall be rejected by the Purchaser and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

**30. Nonconformities,  
Errors and  
Omissions**

30.1 Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformities in the Bid.

30.2 Provided that a Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

30.3 Provided that a Bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in the BDS.**

**31. Correction of  
Arithmetical  
Errors**

31.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;

- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1, shall result in the rejection of the Bid.

**32. Conversion to Single Currency**

32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted in a single currency as specified **in the BDS**.

**33. Margin of Preference**

33.1 Unless otherwise specified **in the BDS**, a margin of preference shall not apply.

**34. Evaluation of Bids**

34.1 The Purchaser shall use the criteria and methodologies listed in this ITB and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Purchaser shall determine the Most Advantageous Bid. This is the Bid of the Bidder that meets the qualification criteria and whose Bid has been determined to be:

- (a) substantially responsive to the bidding document; and
- (b) the lowest evaluated cost.

34.2 To evaluate a Bid, the Purchaser shall consider the following:

- (a) evaluation will be done for Items or Lots (contracts), as specified **in the BDS**; and the Bid Price as quoted in accordance with ITB 14;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
- (c) price adjustment due to discounts offered in accordance with ITB 14.4;
- (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;



- (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3; and
- (f) the additional evaluation factors specified in Section III, Evaluation and Qualification Criteria.

34.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.

34.4 If this bidding document allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated cost of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria

34.5 The Purchaser's evaluation of a Bid will exclude and not take into account:

- (a) in the case of Goods manufactured in the Purchaser's Country, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Bidder;
- (b) in the case of Goods manufactured outside the Purchaser's Country, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Bidder;
- (c) any allowance for price adjustment during the period of execution of the contract, if provided in the Bid.

34.6 The Purchaser's evaluation of a Bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Bids, unless otherwise specified **in the BDS** from amongst those set out in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in ITB 34.2 (f).

### 35. Comparison of

35.1 The Purchaser shall compare the evaluated costs of all substantially responsive Bids established in accordance with

**Bids**

ITB 34.2 to determine the Bid that has the lowest evaluated cost. The comparison shall be on the basis of CIP (place of final destination) prices for imported goods and EXW prices, plus cost of inland transportation and insurance to place of destination, for goods manufactured within the Borrower's country, together with prices for any required installation, training, commissioning and other services. The evaluation of prices shall not take into account custom duties and other taxes levied on imported goods quoted CIP and sales and similar taxes levied in connection with the sale or delivery of goods.

**36. Abnormally Low Bids**

36.1 An Abnormally Low Bid is one where the Bid price, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the Bid price raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid price.

36.2 In the event of identification of a potentially Abnormally Low Bid, the Purchaser shall seek written clarification from the Bidder, including a detailed price analyses of its Bid price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the bidding document.

36.3 After evaluation of the price analyses, in the event that the Purchaser determines that the Bidder has failed to demonstrate its capability to perform the contract for the offered Bid price, the Purchaser shall reject the Bid.

**37. Qualification of the Bidder**

37.1 The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated cost and substantially responsive Bid is eligible and meets the qualifying criteria specified in BDS ITB 11.1 as applicable, and Section III, Evaluation and Qualification Criteria.

37.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17. The determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Bidder.

- 37.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which event the Purchaser shall proceed to the Bidder who offers a substantially responsive Bid with the next lowest evaluated cost to make a similar determination of that Bidder's qualifications to perform satisfactorily.
- 38. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids** 38.1 The Purchaser reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time prior to Contract Award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.
- 39. Standstill Period** 39.1 The Contract shall be awarded not earlier than the expiry of the Standstill Period. The duration of the Standstill Period is specified **in the BDS**. Where only one Bid is submitted, the Standstill Period shall not apply.
- 40. Notice of Intention to Award** 40.1 When a Standstill Period applies, it shall commence when the Purchaser has transmitted to each Bidder (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Bidder. The Notification of Intention to Award shall contain, at a minimum, the following information:
- (a) the name and address of the Bidder submitting the successful Bid;
  - (b) the Contract price of the successful Bid;
  - (c) the names of all Bidders who submitted Bids, and their Bid prices as readout, and as evaluated;
  - (d) a statement of the reason(s) the Bid (of the unsuccessful Bidder to whom the letter is addressed) was unsuccessful, unless the price information in c) above already reveals the reason;
  - (e) the expiry date of the Standstill Period; and
  - (f) instructions on how to request a debriefing and/or submit a complaint during the standstill period.

## **F. Award of Contract**

- 41. Award Criteria** 41.1 Subject to ITB 38, the Purchaser shall award the Contract to the successful Bidder. This is the Bidder whose Bid has been

determined to be the Most Advantageous Bid. This is the Bid of the Bidder that meets the qualification criteria and whose Bid has been determined to be:

- (a) substantially responsive to the bidding document, and
- (b) the lowest evaluated cost.

**42. Purchaser’s Right to Vary Quantities at Time of Award**

42.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VII, Schedule of Requirements, provided this does not exceed the percentages specified **in the BDS**, and without any change in the unit prices or other terms and conditions of the Bid and the bidding document.

**43. Notification of Award**

43.1 Prior to the expiration of the Bid Validity Period and upon expiry of the Standstill Period, specified in BDS ITB 39.1 or any extension thereof, or upon satisfactorily addressing a complaint that has been filed within the Standstill Period, the Purchaser shall transmit the Letter of Acceptance to the successful Bidder. The Letter of Acceptance shall specify the sum that the Purchaser will pay the Supplier in consideration of the execution of the Contract (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”).

43.2 At the same time, the Purchaser shall publish the Contract Award Notice which shall contain, at a minimum, the following information:

- (a) name and address of the Purchaser;
- (b) name and reference number of the contract being awarded, and the selection method used;
- (c) names of all Bidders that submitted Bids, and their Bid prices as read out at Bid opening, and as evaluated;
- (d) names of all Bidders whose Bids were rejected either as nonresponsive or as not meeting qualification criteria, or were not evaluated, with the reasons therefor; and
- (e) the name of the successful Bidder, the final total contract price, the contract duration and a summary of its scope.

43.3 The Contract Award Notice shall be published on the Purchaser’s website with free access if available, or in at least

one newspaper of national circulation in the Purchaser's Country, or in the official gazette. The Purchaser shall also publish the contract award notice in UNDB online.

43.4 Until a formal Contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract.

#### **44. Debriefing by the Purchaser**

44.1 On receipt of the Purchaser's Notification of Intention to Award referred to in ITB 40.1, an unsuccessful Bidder has three (3) Business Days to make a written request to the Purchaser for a debriefing. The Purchaser shall provide a debriefing to all unsuccessful Bidders whose request is received within this deadline.

44.2 Where a request for debriefing is received within the deadline, the Purchaser shall provide a debriefing within five (5) Business Days, unless the Purchaser decides, for justifiable reasons, to provide the debriefing outside this timeframe. In that case, the standstill period shall automatically be extended until five (5) Business Days after such debriefing is provided. If more than one debriefing is so delayed, the standstill period shall not end earlier than five (5) Business Days after the last debriefing takes place. The Purchaser shall promptly inform, by the quickest means available, all Bidders of the extended standstill period

44.3 Where a request for debriefing is received by the Purchaser later than the three (3)-Business Day deadline, the Purchaser should provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of Public Notice of Award of contract. Requests for debriefing received outside the three (3)-day deadline shall not lead to extension of the standstill period.

44.4 Debriefings of unsuccessful Bidders may be done in writing or verbally. The Bidder shall bear their own costs of attending such a debriefing meeting.

#### **45. Signing of Contract**

45.1 Promptly upon Notification of Award, the Purchaser shall send the successful Bidder the Contract Agreement.

45.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

45.3 Notwithstanding ITB 45.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be

supplied, where such export restrictions arise from trade regulations from a country supplying those products/goods, systems or services, the Bidder shall not be bound by its Bid, always provided however, that the Bidder can demonstrate to the satisfaction of the Purchaser and of the Bank that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract.

#### **46. Performance Security**

- 46.1 Within twenty-eight (28) days of the receipt of Letter of Acceptance from the Purchaser, the successful Bidder, if required, shall furnish the Performance Security in accordance with the GCC 18, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to the Purchaser. If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Purchaser. A foreign institution providing a bond shall have a correspondent financial institution located in the Purchaser's Country, unless the Purchaser has agreed in writing that a correspondent financial institution is not required.
- 46.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Purchaser may award the Contract to the Bidder with the next Most Advantageous Bid.







## Section II. Bid Data Sheet (BDS)

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

*[Instructions for completing the Bid Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITB Clauses.]*

ITB Clause Reference	A. General
ITB 1.1	The reference number of the Invitation for Bids is : <b>KEMSA/KHSSP ONT-01/2017-2018</b>
ITB 1.1	The Purchaser is: <b>Kenya Medical Supplies Authority (KEMSA)</b>
ITB 1.1	The name of the ICB is: <b>Procurement of Super Cereal plus Corn Soya Blend</b> The identification number of the ICB is: <b>KEMSA/KHSSP ONT-01/2017-2018</b>
ITB 2.1	The Borrower is: <b>Republic of Kenya</b>
ITB 2.1	Loan or Financing Agreement amount: <i>US\$ 100Million</i>
ITB 2.1	The name of the Project is: <b>Health Sector Support Project.</b>
ITB 4.1	Maximum number of members in the Joint Venture (JV) shall be: <i>Three (3)</i>
IITB 4.4	A list of debarred firms and individuals is available on the Bank's external website: <a href="http://www.worldbank.org/debarr">http://www.worldbank.org/debarr</a> .
	<b>B. Contents of Bidding Documents</b>
ITB 7.1	For <b>Clarification of bid purposes</b> only, the Purchaser's address is:  Kenya Medical Supplies Authority, 13 Commercial Street, Industrial Area, P.O Box 47715-00100, Nairobi Tel No: 254 20 3922000/ 0719033000/ 0733606600 Fax No: 254 20 3922400 Email: <a href="mailto:procure@kemsa.co.ke">procure@kemsa.co.ke</a>  Requests for clarification should be received by the Employer no later than Ten (10) days to the bid closing date.

<b>ITB 7.1</b>	<p>Web page: <a href="http://www.kemsa.co.ke">www.kemsa.co.ke</a></p> <p><a href="http://www.kemsa.co.ke/tenders/">http://www.kemsa.co.ke/tenders/</a> or  <a href="http://supplier.treasury.go.ke/site/tenders.go/index.php/public/entities">http://supplier.treasury.go.ke/site/tenders.go/index.php/public/entities</a></p>
	<p><b>C. Preparation of Bids</b></p>
<b>ITB 10.1</b>	<p>The language of the bid is: <i>English</i></p> <p>All correspondence exchange shall be in <i>English</i> language.</p> <p>Language for translation of supporting documents and printed literature is <i>English</i></p>
<b>ITB 11.1 (f)</b>	<p>The following documents must be included with the bid:</p> <p>Documentary evidence of the Bidder's qualifications to perform the Contract if its bid is accepted:</p> <ul style="list-style-type: none"> <li>(i) that, in the case of a Bidder offering to supply Goods under the Contract that the Bidder manufactures or otherwise produces (using ingredients supplied by primary manufacturers) that the Bidder: <ul style="list-style-type: none"> <li>(a) is incorporated in the country of manufacture of the Goods;</li> <li>(b) has been licensed by the regulatory authority in the country of manufacture to supply the Goods;</li> <li>(c) has manufactured and marketed the specific goods covered by this Bidding Document, for at least two (2) years, and for similar Goods for at least five (5) years;</li> <li>(d) has received a satisfactory Current Certificate of Quality for products offered issued by a recognized independent body</li> </ul> </li> <li>(ii) that, in the case of a Bidder offering to supply Goods under the Contract that the Bidder does not manufacture or otherwise produce, <ul style="list-style-type: none"> <li>(a) that the Bidder has been duly authorized by a manufacturer of the Goods that meets the criteria under (i) above to supply the Goods in the Purchaser's country; and</li> </ul> </li> </ul> <p>The Bidder shall also submit the following additional information:</p> <ul style="list-style-type: none"> <li>(a) a statement of installed manufacturing capacity;</li> <li>(b) copies of its audited financial statements for the past three fiscal years;</li> <li>(c) details of on-site quality control laboratory facilities and</li> </ul>

	<p>services and range of tests conducted;</p> <p>(d) list of major supply contracts conducted within the last five years.</p>
<b>ITB 11.1 (j)</b>	<p>The Bidder shall submit the following additional documents in its bid:</p> <p><b><u>Bidders who are Manufacturers</u></b></p> <p>a) Copy of Current certificate of quality (ISO 22000 – Food Safety Management System Standards)</p> <p>b) KEBS approval that the product is safe for human consumption</p> <p>c) Evidence of listing with Pharmacy and Poisons Board of Kenya (PPB)</p> <p>d) Certificate of Analysis</p> <p><b><u>Bidders who are distributors</u></b></p> <p>a. Manufacturers Authorization that is both tender and item specific must be provided.</p> <p>b. Copy of Current certificate of quality (ISO 22000 – Food Safety Management System Standards)</p> <p>c. KEBS approval that the product is safe for human consumption</p> <p>d. Evidence of listing with Pharmacy and Poisons Board of Kenya (PPB)</p> <p>e. Certificate of Analysis</p> <p>Bidders who are not primary manufacturers should provide evidence that their product conforms to the quality standards of the primary manufacturer and they have the capacity to supply the specified quantities. A “primary manufacturer” is defined as a company that performs all the manufacturing and formulating operations needed to produce equipment, pharmaceuticals or nutritional supplements in their appropriate dosage forms, including processing, blending, formulating, filling, packing, labeling, and quality testing. The Bidder shall furnish a certificate from the competent Regulatory Authority (RA) that the manufacturer is licensed to manufacture the Goods offered.</p>
<b>ITB 13.1</b>	Alternative Bids <i>shall not be</i> considered.
<b>ITB 14.5</b>	The prices quoted by the Bidder <b>shall not</b> be subject to adjustment during the performance of the Contract.

<b>ITB 14.6</b>	Prices quoted for each item shall correspond to <b>100%</b> percent of the quantities specified for this item.
<b>ITB 14.7</b>	The Incoterms edition is: <b>2015</b>
<b>ITB 14.8 (b) (i) and (c) (v)</b>	Place of Destination: <b>DDP KEMSA Embakasi Nairobi Kenya</b>
<b>ITB 14.8 (a) (iii);(b)(ii) and (c)(v)</b>	“Final destination (Project Site)”: <b>“KEMSA Embakasi Warehouse, Embakasi Road,Nairobi Kenya</b>
<b>ITB 15.1</b>	The prices shall be quoted by the Bidder <b>in Kshs or any freely convertible currency</b>
<b>ITB 16.3 (b)</b>	Not applicable.  Documentation requirements for eligibility of Goods. In addition to the documents stated in Clause 16.1, 16.2, and 16.3 (a), the following documents should be included with the Bid:
<b>ITB 16.4</b>	The Purchaser’s country requires listing of Goods with PPB
<b>ITB 18.1</b>	The bid validity period shall be <b><i>Ninety days (90)</i></b> days.
<b>ITB 18.3 (a)</b>	Not applicable
<b>ITB 19.1</b>	A <b><i>Bid Security shall be</i></b> required. The amount of the bid security shall be KES. 1,500,000.00 or in any freely convertible currency
<b>ITB 19.3 (d)</b>	Other types of acceptable securities:  a) Bank Guarantee
<b>ITB 20.1</b>	In addition to the original of the bid, the number of copies is: <b>1 original and 1 copy of the tender shall be submitted.</b>
<b>ITB 20.2</b>	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <b>Power of attorney.</b>
	<b>D. Submission and Opening of Bids</b>
<b>ITB 22.1</b>	For <b><u>bid submission purposes</u></b> only, the Purchaser’s address is: Attention: <b><i>Chief Executive Officer</i></b>

	<p><b>Kenya Medical Supplies Authority,</b>  Address: <i>P.O Box 47715 - 00100</i>  <b>Commercial street Industrial Area</b>  <b>Building No. 13, First Floor</b>  City: <i>Nairobi</i>  Country: <i>Kenya</i></p> <p><b>The deadline for bid submission is:</b>  Date: <b>9<sup>th</sup> January 2019</b>  Time: <b>10:00am</b>  Location: <b>Tender Box No. 1 marked GOK/World Bank at the Reception on the Ground Floor of KEMSA's Commercial Street Office in Nairobi</b></p>
<b>ITB 25.1</b>	<p>The bid opening shall take place at the address below;  Street Address: <b>Commercial street Industrial Area</b>  <b>Building No. 13, First Floor</b>  Floor/ Room : <b>KEMSA bids' opening conference Hall</b>  City: <b>Nairobi</b>  Country: <b>Kenya</b>  Date: <b>9<sup>th</sup> January 2019</b>  Time: <b>10:00am</b></p>
<b>ITB 25.3</b>	<p>The Letter of Bid and Price Schedules shall be initialed by three (3) representatives of the Purchaser conducting Bid opening.</p> <p>Bids shall be opened at the tender opening hall and shall be numbered in a sequence. Bidder names and assigned numbers of tender documents (original and copies) received shall be announced to all. Requisite information such as bid security details, pagination of documents and prices shall also announced.</p> <p>Any modifications including unit or total price shall be initialed by the Representative of the Employer.</p>
<b>E. Evaluation and Comparison of Bids</b>	
<b>ITB 30.3</b>	<p>The adjustment shall be based on the <i>highest</i> price of the item or component as quoted in other substantially responsive Bids. If the price of the item or component cannot be derived from the price of other substantially responsive Bids, the Purchaser shall use its best estimate.</p>

<b>ITB 32.1</b>	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: Kenya Shillings or any other freely convertible currency</p> <p>The source of exchange rate shall be: <b>Central Bank of Kenya</b></p> <p>The date for the exchange rate shall be the date of closing bid</p>
<b>ITB 33.1</b>	N/A
<b>ITB 34.2(a)</b>	<p>Evaluation will be done for <i>Items</i></p> <p>Note:</p> <p><b><i>Bids will be evaluated for each item and the Contract will comprise the item(s) awarded to the successful Bidder.</i></b></p>
<b>ITB 34.6</b>	<p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:</p> <p>(a) Deviation in Delivery schedule: <b><i>Yes</i></b>.</p> <p>The adjustment per week for delivery delays beyond the time specified in the Schedule of Requirements is 0.5%.</p> <p><b>The bidders price shall be adjusted upwards by 0.5 percent per week above the required delivery date</b></p>
<b>ITB 39 Standstill Period</b>	<p>The Standstill Period is <b>ten (10)</b> Business Days from the date the Employer has transmitted to all Bidders that submitted a Bid, the Notification of its Intention to Award the Contract to the successful Bidder.</p>
<b>F. Award of Contract</b>	
<b>ITB 42</b>	<p>The maximum percentage by which quantities may be increased is: <b>20%</b></p> <p>The maximum percentage by which quantities may be decreased is: <b>20%</b></p>

## Bid Data Sheet

### NUTRITIONAL SUPPLEMENT (ADDITIONAL CLAUSES)

<b>ITB 11.1 (f)</b>	Documentary evidence of the Bidder's qualifications to perform the Contract if its bid is accepted: <ul style="list-style-type: none"><li>a. Copy of Current certificate of quality (ISO 22000 – Food Safety Management System Standards)</li><li>b. KEBS approval that the product is safe for human consumption</li><li>c. Evidence of listing with Pharmacy and Poisons Board of Kenya (PPB)</li><li>d. Certificate of Analysis</li></ul>
<b>ITB 16.3 (b)</b>	The product offered should meet the specified Technical Specification.





## **Section III. Evaluation and Qualification Criteria**

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### 1. Margin of Preference (ITB 33)

If the Bidding Data Sheet so specifies, the Purchaser will grant a margin of preference to goods manufactured in the Purchaser's country for the purpose of bid comparison, in accordance with the procedures outlined in subsequent paragraphs.

Bids will be classified in one of three groups, as follows:

- (a) **Group A:** Bids offering goods manufactured in the Purchaser's Country, for which (i) labor, raw materials, and components from within the Purchaser's Country account for more than thirty (30) percent of the EXW price; and (ii) the production facility in which they will be manufactured or assembled has been engaged in manufacturing or assembling such goods at least since the date of bid submission.
- (b) **Group B:** All other bids offering Goods manufactured in the Purchaser's Country.
- (c) **Group C:** Bids offering Goods manufactured outside the Purchaser's Country that have been already imported or that will be imported.

To facilitate this classification by the Purchaser, the Bidder shall complete whichever version of the Price Schedule furnished in the Bidding Documents is appropriate provided, however, that the completion of an incorrect version of the Price Schedule by the Bidder shall not result in rejection of its bid, but merely in the Purchaser's reclassification of the bid into its appropriate bid group.

The Purchaser will first review the bids to confirm the appropriateness of, and to modify as necessary, the bid group classification to which bidders assigned their bids in preparing their Bid Forms and Price Schedules.

All evaluated bids in each group will then be compared to determine the lowest evaluated bid of each group. Such lowest evaluated bids shall be compared with each other and if as a result of this comparison a bid from Group A or Group B is the lowest, it shall be selected for the award.

If as a result of the preceding comparison, the lowest evaluated bid is a bid from Group C, all bids from Group C shall be further compared with the lowest evaluated bid from Group A after adding to the evaluated price of goods offered in each bid from Group C, for the purpose of this further comparison only, an amount equal to 15% (fifteen percent) of the respective CIP bid price for goods to be imported and already imported goods. Both prices shall include unconditional discounts and be corrected for arithmetical errors. If the bid from Group A is the lowest, it shall be selected for award. If not, the lowest evaluated bid from Group C shall be selected as paragraph above."

## **2. Evaluation (ITB 34)**

### **2.1. Evaluation Criteria (ITB 34.6)**

The Purchaser's evaluation of a bid may take into account, in addition to the Bid Price quoted in accordance with ITB Clause 14.8, one or more of the following factors as specified in ITB 34.2(f) and in BDS referring to ITB 34.6, using the following criteria and methodologies.

- (a) Delivery schedule. (as per Incoterms specified in the BDS)

*The Goods specified in the List of Goods are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section VII, Schedule of Requirements. No credit will be given to deliveries before the earliest date, and bids offering delivery after the final date shall be treated as nonresponsive. Within this acceptable period, an adjustment, as specified in BDS 34.6, will be added, for evaluation purposes only, to the bid price of bids offering deliveries later than the "Earliest Delivery Date" specified in Section VII, Schedule of Requirements.*

- (b) Deviation in payment schedule.

*The SCC stipulates the payment schedule specified by the Purchaser. If a bid deviates from the schedule and if such deviation is considered acceptable to the Purchaser, the bid will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the bid as compared with those stipulated in the SCC, at the rate per annum specified in BDS 34.6.*

- (c) Specific additional criteria

*Other specific additional criteria to be considered in the evaluation, and the evaluation method shall be detailed in BDS 34.6]*

### **2.2. Multiple Contracts (ITB 34.4)**

The Purchaser shall award multiple contracts to the Bidder that offers the lowest evaluated combination of bids (one contract per bid) and meets the post-qualification criteria (this Section III, Sub-Section ITB 36.1 Post-Qualification Requirements)

### **2.3. Alternative Bids (ITB 13.1)**

*Not applicable*

## **3. Qualification (ITB 36)**

### **3.1 Postqualification Requirements (ITB 36.1)**

After determining the lowest-evaluated bid in accordance with ITB 35.1, the Purchaser shall carry out the postqualification of the Bidder in accordance with ITB 36, using only the

requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Bidder's qualifications.

The following documents must be included with the bid:

Documentary evidence of the Bidder's qualifications to perform the Contract if its bid is accepted:

- (i) that, in the case of a Bidder offering to supply Goods under the Contract that the Bidder manufactures or otherwise produces (using ingredients supplied by primary manufacturers) that the Bidder:
  - (a) is incorporated in the country of manufacture of the Goods;
  - (b) has been licensed by the regulatory authority in the country of manufacture to supply the Goods;
  - (c) has manufactured and marketed the specific goods covered by this Bidding Document, for at least two (2) years, and for similar Goods for at least five (5) years;
  - (d) has goods from a manufacturer with a Current Certificate of Quality for products offered issued by a recognized independent body
- (ii) that, in the case of a Bidder offering to supply Goods under the Contract that the Bidder does not manufacture or otherwise produce,
  - (a) that the Bidder has been duly authorized by a manufacturer of the Goods that meets the criteria under (i) above to supply the Goods in the Purchaser's country; and

The Bidder shall also submit the following additional information:

- (a) a statement of installed manufacturing capacity;
- (b) copies of its audited financial statements for the past three fiscal years;
- (c) details of on-site quality control laboratory facilities and services and range of tests conducted;
- (d) list of major supply contracts conducted within the last five years.

**Note: In addition, guidance on what qualification requirements are reasonable is given in the Bank's TN on the Procurement of Health Sector Goods. If bids for individual lots are permitted, the qualification criteria for each lot should be given separately. In the case where a prequalification process has been undertaken, the qualification criteria stated here should mirror the criteria established in the prequalification.**

## Section IV. Bidding Forms

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## Letter of Bid

*The Bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the Bidder's complete name and address.*

*Note: All italicized text is for use in preparing these form and shall be deleted from the final products.*

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

ICB No.: **KEMSA/KHSSP ONT-01/2017-2018**

**To: Kenya Medical Supplies Authority**

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8)\_\_\_;
- (b) We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- (c) We have not been suspended nor declared ineligible by the Purchaser based on execution of a Bid Securing Declaration in the Purchaser's country in accordance with ITB 4.6

(d) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods: **[insert a brief description of the Goods and Related Services]**;

(e) The total price of our Bid, excluding any discounts offered in item (f) below is:

In case of only one item/lot, total price of the Bid **[insert the total price of the bid in words and figures, indicating the various amounts and the respective currencies]**;

**In case of multiple items/lots, total price of each item/lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]**;

**In case of multiple lots, total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]**;

(f) The discounts offered and the methodology for their application are:

(i) The discounts offered are: **[Specify in detail each discount offered.]**

- (ii) The exact method of calculations to determine the net price after application of discounts is shown below: ***[Specify in detail the method that shall be used to apply the discounts]***;
- (g) Our bid shall be valid for a period of ***[specify the number of calendar days]*** days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents;
- (i) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;
- (j) We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by a member of the World Bank Group or a debarment imposed by the World Bank Group in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank and other development banks. Further, we are not ineligible under the Employer's country laws or official regulations or pursuant to a decision of the United Nations Security Council;
- (k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB 4.5;<sup>1</sup>
- (l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract: ***[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]***

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

- (m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and

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<sup>1</sup> Bidder to use as appropriate

- (n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (o) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption

Name of the Bidder\* *[insert complete name of person signing the Bid]*

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\* *[insert complete name of person duly authorized to sign the Bid]*

Title of the person signing the Bid *[insert complete title of the person signing the Bid]*

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

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

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid Schedules.



## Bidder Information Form

*[The Bidder shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: *[insert date (as day, month and year) of Bid Submission]*  
 ICB No.: **KEMSA/KHSSP ONT-01/2017-2018**

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Name <i>[insert Bidder's legal name]</i>
2. In case of JV, legal name of each member : <i>[insert legal name of each member in JV]</i>
3. Bidder's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Bidder's year of registration: <i>[insert Bidder's year of registration]</i>
5. Bidder's Address in country of registration: <i>[insert Bidder's legal address in country of registration]</i>
6. Bidder's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.4. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITB 4.6 documents establishing: <ul style="list-style-type: none"> <li>• Legal and financial autonomy</li> <li>• Operation under commercial law</li> <li>• Establishing that the Bidder is not under the supervision of the Purchaser</li> </ul>
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## Form ELI -1.1 (continued)

### Bidder Information Form

Date: *[insert day, month, year]*  
 RFB No. and title: *[insert RFB number and title]*  
 Page *[insert page number]* of *[insert total number]* pages

1. Bidder's name			
2. 2. Street Address:	Postal Code:	City:	Country:
3. P.O. Box and Mailing Address:			
4. Telephone Number:			
5. Fax Number:			
6. E-mail Address:			
7. Web Site:			
8. Contact Name:			
9. Contact Title:			
10. Type of Business:			
11. If Other, specify:			
12. Nature of Business:			
13. Year Established:			
14. Dates, Numbers, and Expiration Dates of Current Licenses and Permits:			
15. Current health authority registration information:			
16. Proof of product and facility registrations with purchaser's country regulatory authority and international agencies (e.g., WHO Certification Scheme, GMP)			
17. Name of government agency(ies) responsible for inspecting and licensing of facilities in the country of origin of the raw material and or processing of the goods:			
Date of last inspection:			

18. Quality Assurance Certification (Please include a copy of your latest certificate):	
19. Production capacity: <i>[insert peak and average production capacity over the last three years in units/day or units/month, etc.]</i>	
20. List of names and addresses of sources of raw material and what products they will be used in:	
21. Proof of raw material product and facility registrations with purchaser's country regulatory authority and international agencies (e.g., WHO Certification Scheme, GMP):	
22. Raw materials tested prior to use:	
23. Presence and characteristics of in-house quality control laboratory	
24. Names and addresses of external quality control laboratories used:	
25. Are all finished products tested and released by quality control prior to release for sale? Yes ___ No ___, If not, why?	
26. List control tests done during production? If so list.	
27. Procedures for dealing with rejected batches:	
28. List tests conducted after production and prior to release of product on market:	
29. List product recalls linked to defects during the last 36 months. Include reason and date of recall.	
30. Are technical documents available in: <i>[Purchaser should insert language]</i> Yes No	

## Bidder's JV Members Information Form

*[The Bidder shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the Bidder and for each member of a Joint Venture]].*

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

ICB No.: **KEMSA/KHSSP ONT-01/2017-2018**

Alternative No.: *[insert identification No if this is a Bid for an alternative]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Name: <i>[insert Bidder's legal name]</i>
2. Bidder's JV Member's name: <i>[insert JV's Member legal name]</i>
3. Bidder's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4. Bidder's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5. Bidder's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6. Bidder's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.3. <input type="checkbox"/> In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status, in accordance with ITB 4.5.
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## Price Schedule Forms

*[The Bidder shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Purchaser in the Schedule of Requirements.]*



## Price Schedule: Goods Manufactured Outside the Purchaser's Country, to be Imported

				(Group C bids, goods to be imported)			Date: _____		
				Currencies in accordance with ITB 15			ICB No: _____		
							Alternative No: _____		
							Page N° _____ of _____		
1	2	3	4	5		6	7	8	9
Line Item N°	Description of Goods	Country of Origin	Delivery Date as defined by Incoterms	Physical unit	Quantity	Unit price DDP <i>[insert place of destination]</i> in accordance with ITB 14.8(b)(i)	DDP Price per line item (Col. 5x6)	Price per line item for inland transportation and other services required in the Purchaser's country to convey the Goods to their final destination specified in BDS	Total Price per Line item (Col. 7+8)
<i>[insert number of the item]</i>	<i>[insert name of good]</i>	<i>[insert country of origin of the Good]</i>	<i>[insert quoted Delivery Date]</i>		<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price CIP per unit]</i>	<i>[insert total CIP price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[insert total price of the line item]</i>
Name of Bidder <i>[insert complete name of Bidder]</i> Signature of Bidder <i>[signature of person signing the Bid]</i> Date <i>[Insert Date]</i>  Currency <i>[insert currency]</i>									

## Price Schedule: Goods Manufactured Outside the Purchaser's Country, already imported\*

(Group C bids, Goods already imported)											Date: _____	
Currencies in accordance with ITB 15											ICB No: _____	
Currencies in accordance with ITB 15											Alternative No: _____	
Currencies in accordance with ITB 15											Page N° _____ of _____	
1	2	3	4	5		6	7	8	9	10	11	12
Line Item N°	Description of Goods	Country of Origin	Delivery Date as defined by Incoterms	Physical unit	Quantity	Unit price including Custom Duties and Import Taxes paid, in accordance with ITB 14.8(c)(i)	Custom Duties and Import Taxes paid per unit in accordance with ITB 14.8(c)(ii) , [to be supported by documents]	Unit Price net of custom duties and import taxes, in accordance with ITB 148 (c) (iii) (Col. 6 minus Col.7)	Price per line item net of Custom Duties and Import Taxes paid, in accordance with ITB 14.8(c)(i) (Col. 5×8)	Price per line item for inland transportation and other services required in the Purchaser's country to convey the goods to their final destination, as specified in BDS in accordance with ITB 14.8 (c)(v)	Sales and other taxes paid or payable per item if Contract is awarded (in accordance with ITB 14.8(c)(iv)	Total Price per line item (Col. 9+10)
[insert number of the item]	[insert name of Goods]	[insert country of origin of the Good]	[insert quoted Delivery Date]		[insert number of units to be supplied and name of the physical unit]	[insert unit price per unit]	[insert custom duties and taxes paid per unit]	[insert unit price net of custom duties and import taxes]	[insert price per line item net of custom duties and import taxes]	[insert price per line item for inland transportation and other services required in the Purchaser's country]	[insert sales and other taxes payable per item if Contract is awarded]	[insert total price per line item]

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[insert date]*

Currency *[insert currency]*

*[For previously imported Goods, the quoted price shall be distinguishable from the original import value of these Goods declared to customs and shall include any rebate or mark-up of the local agent or representative and all local costs except import duties and taxes, which have been and/or have to be paid by the Purchaser. For clarity the bidders are asked to quote the price including import duties, and additionally to provide the import duties and the price net of import duties which is the difference of those values.]*



## Price Schedule: Goods Manufactured in the Purchaser's Country

Purchaser's Country _____				(Group A and B bids)  Currencies in accordance with ITB 15				Date: _____ ICB No: _____ Alternative No: _____ Page N° _____ of _____		
1	2	3	4		5	6	7	8	9	10
Line Item N°	Description of Goods	Delivery Date as defined by Incoterms	Physical unit	Quantity and physical unit	Unit price EXW	Total EXW price per line item (Col. 4x5)	Price per line item for inland transportation and other services required in the Purchaser's Country to convey the Goods to their final destination	Cost of local labor, raw materials and components from with origin in the Purchaser's Country % of Col. 5	Sales and other taxes payable per line item if Contract is awarded (in accordance with ITB 14.8(a)(ii))	Total Price per line item (Col. 6+7)
[insert number of the item]	[insert name of Good]	[insert quoted Delivery Date]		[insert number of units to be supplied and name of the physical unit]	[insert EXW unit price]	[insert total EXW price per line item]	[insert the corresponding price per line item]	[Insert cost of local labor, raw material and components from within the Purchase's country as a % of the EXW price per line item]	[insert sales and other taxes payable per line item if Contract is awarded]	[insert total price per item]

Name of Bidder: *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[insert date]*

Currency *[insert currency]*

## Form of Bid Security

### (Bank Guarantee)

*[The bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary: KENYA MEDICAL SUPPLIES AUTHORITY**

**IFB No.: KEMSA/KHSSP ONT1/2017-2018**

**Date:** *[Insert date of issue]*

**BID GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ *[insert name of the Bidder, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof]* (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_ under Invitation for Bids No. \_\_\_\_\_ ("the IFB").

Furthermore, we understand that, according to the Beneficiary's conditions, bids must be supported by a bid guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- (a) has withdrawn its Bid during the period of bid validity set forth in the Applicant's Letter of Bid ("the Bid Validity Period"), or any extension thereto provided by the Applicant; or
- (b) having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee will expire: (a) if the Applicant is the successful bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance security issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the bidding process; or (ii) twenty-eight days after the end of the Bid Validity Period.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

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*[Signature(s)]*

***Note: All italicized text is for use in preparing this form and shall be deleted from the final product.***

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## Manufacturer's Authorization

*[The Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Bidder shall include it in its bid, if so indicated in the BDS.]*

Date: *[insert date (as day, month and year) of Bid Submission]*  
ICB No.: **KEMSA/KHSSP ONT1/2017-2018**

To: *[insert complete name of Purchaser]*

### WHEREAS

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of Bidder]* to submit a bid the purpose of which is to provide the following Goods, manufactured by us *[insert name and or brief description of the Goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

Signed: *[insert signature(s) of authorized representative(s) of the Manufacturer]*

Name: *[insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title: *[insert title]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

## **Section V. Eligible Countries**

### **Eligibility for the Provision of Goods, Works and Non Consulting Services in Bank-Financed Procurement**

In reference to ITB 4.7 and 5.1, for the information of the Bidders, at the present time firms, goods and services from the following countries are excluded from this bidding process:

Under ITB 4.7(a) and 5.1: *none*

Under ITB 4.7(b) and 5.1: *none*



## Section VI. Bank Policy - Corrupt and Fraudulent Practices

Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011.

### “Fraud and Corruption:

1.16 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.<sup>2</sup> In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;<sup>3</sup>
  - (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;<sup>4</sup>
  - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;<sup>5</sup>
  - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;<sup>6</sup>
  - (v) "obstructive practice" is:

<sup>2</sup> In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

<sup>3</sup> For the purpose of this sub-paragraph, “*another party*” refers to a public official acting in relation to the procurement process or contract execution. In this context, “*public official*” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>4</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>5</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

<sup>6</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution.

- (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 1.16(e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures,<sup>7</sup> including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated<sup>8</sup>;
- (e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to

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<sup>7</sup> A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines.

<sup>8</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.



the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.”



## **PART 2 – Supply Requirements**



# Section VII. Schedule of Requirements

## Contents

1. List of Goods and Delivery Schedule .....	<b>Error! Bookmark not defined.</b>
2. Technical Specifications .....	74
3. Inspections and Tests .....	83

## 1. List of Goods and Delivery Schedule

*[The Purchaser shall fill in this table, with the exception of the column “Bidder’s offered Delivery date” to be filled by the Bidder]*

Line Item N°	Description of Goods	Quantity	Physical unit	Final (Project Site) Destination as specified in BDS	Delivery (as per Incoterms) Date		
					Earliest Delivery Date	Latest Delivery Date	Bidder’s offered Delivery date <i>[to be provided by the bidder]</i>
				<i>[insert place of Delivery]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>
1	Super Cereal plus Corn Soya Blend	Super cereal plus (CSB++)/ Metric tonne	2,635	DDP KEMSA Embakasi	10 weeks	12 weeks	

## **2. List of Related Services and Completion Schedule**

*Not Applicable*

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## **2. Technical Specifications**

**TECHNICAL SPECIFICATIONS:      SUPER CEREAL PLUS CORN SOYA  
BLEND**



## **Technical Specifications**

### **SUPER CEREAL PLUS CORN SOYA BLEND**

#### **1 MANUFACTURER 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.
- b) The procurement agency, 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.

#### **2 QUALITY CERTIFICATION AND OTHER DOCUMENTATION**

- a) The tenderer shall be required to submit Current certificate of quality (ISO 22000 - Food Safety Management System Standards) for products offered issued by a recognized independent body 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 offered
  - iv) State the location of the manufacturing plant
  - v) Must not contain any alterations whatsoever
- c) The tenderer shall be required to submit KEBS approval that the product is safe for human consumption
- d) The tenderer shall also be required to submit evidence of product listing with Pharmacy and Poisons Board of Kenya

#### **5. DELIVERY PERIOD**

The tenderer shall be required to indicate the shortest possible delivery period for each product

## 7. TECHNICAL SPECIFICATIONS

# SUPER CEREAL *plus*

## CORN SOYA BLEND

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### 1. INTRODUCTION

#### 1.1 Product purpose

**SUPER CEREAL *plus*- Corn Soya Blend** is a product that can be used by adults and young children aged 6 to 59 months. The product is to be used as a complement to breastfeeding for children 6-23 months as continued breastfeeding is recommended up to the age of two years. The product is NOT a breastmilk replacer.

#### 1.2 Usage

**Corn Soya Blend** is consumed as a porridge or gruel, it should be prepared by mixing an appropriate proportion of flour and clean water (i.e. 50g of **SUPER CEREAL *plus*- Corn Soya Blend** with 250 g of water) followed by a boiling time at simmering point from five to ten minutes.

#### 1.3 Standards and recommendations

**SUPER CEREAL *plus*- Corn Soya Blend** shall comply with Kenya Bureau of standards and the company should be ISO Certified.

### 2. RAW MATERIALS

#### 2.1 Main ingredients

*Maize, Soya beans, Sugar, Dried Skim Milk , Refined Soya Bean Oil*

#### (i) 2.2 Vitamins and minerals

Micronutrient premixes are used at the following rate per metric ton of finished product:

- 2.0 kg of vitamin premix .
- 12.3 kg of Dicalcium Phosphate Anhydrous. ▪ And 2.7 kg of Potassium chloride.

Requirements Potassium chloride and Dicalcium Phosphate Anhydrous are:

- Must meet at least food chemical codex.
- Particle size for Potassium chloride min 60% < 250 µm (microns).
- Dicalcium Phosphate Anhydrous, compliant with food chemical codex, min 95% < 250 micron, total aerobic viable count < 1000 CFU/g, yeast < 10 CFU/g, mould < 100 CFU/g, and enterobacteria negative in 1 g.

The composition of micronutrient premixes is presented in product specification. Complete micronutrient premixes must be purchased from a Ministry of Health Premix Supplier approved supplier:

Micronutrient premixes must be delivered to the processor of **SUPER CEREAL plus- Corn Soya Blend** with a complete Certificate of Analysis as well as with a Proof of purchase of premixes. The two documents must be presented with other documents for evaluation.

Micronutrient premixes must be stored in a dry, cool and clean place.

### 3. PRODUCT SPECIFICATIONS

3.1 Moisture content 7.0 % maximum

**3.2 Nutritional value:** it shall contain the following nutritional value per 100 g dry matter:

- Energy 410 kcal minimum
- Protein 16.0 % (N x 6.25) minimum
- Fat 9.0 % minimum
- Crude fibre 2.9 % maximum ▪ Ash  
4.6 % maximum

3.3 Micronutrient

**SUPER CEREAL plus- Corn Soya Blend** must be fortified to provide the following net micro nutrient **supplement** per 100g of finished product:

*Table 2: Micronutrient rate and chemical form*

	Target/100g finished product	Form
<b>Vitamin/Mineral premix FBF-V-13</b>		
Vitamin A	3460 IU	Dry Vitamin A Palmitate 250 Cold Water Dispersible Stabilized
Vitamin D3	441.6 IU	Dry Vitamin D3 100 Water Dispersible Stabilized
Vitamin E TE	8.3 mg	Dry Vitamin E Acetate 50% Water Dispersible
Vitamin K1	30 µg	Dry Vitamin K1 5% Water Dispersible
Vitamin B1	0.2 mg	Thiamine mononitrate
Vitamin B2	1.4 mg	Vitamin B2 fine powder
Vitamin B6	1 mg	Pyridoxine hydrochloride
Vitamin C	90 mg	Ascorbic acid
Pantothenic acid	1.6 mg	Calcium D Panthotenate
Folate, (DFE)	110 µg	Folic acid*
Niacin	8 mg	Niacinamide
Vitamin B12	2 µg	Vitamin B12 0.1% or 1% Spray Dried
Biotin	8.2 µg	Biotin 1%
Iodine	40 µg	Potassium Iodide*
Iron (a)	4 mg	Ferrous fumarate fine powder
Iron (b)	2.5 mg	Iron-sodium EDTA
Zinc	5 mg	Zinc Sulphate Monohydrate
<i>Carrier</i>		Corn maltodextrin
		* Adequate dilution must be used in order to guarantee premix homogeneity
<b>Other minerals</b>		

Potassium	140 mg	Potassium Chloride with 0.5% silicon dioxide as anticaking agent, compliant with food chemical codex, min 90%<425 micron and min 60%<250 micron
Calcium	362 mg	Dicalcium Phosphate Anhydrous, compliant with food chemical codex, min 95%<250 micron, total aerobic viable count <1000 CFU/g, yeast<10 CFU/g, mould <100 CFU/g, and enterobacteria negative in 1 g.
Phosphorous	280 mg	

### 3.4 Flour characteristics

#### *Particle size*

It shall have a uniform fine texture with the following particle distribution:

- 95% must pass through a 600 microns sieve.
- 100% must pass through a 1,000 microns sieve.

**Organoleptic:** it shall have a pleasant smell and palatable taste.

### (ii) 3.5 Microbiology

Microbiological contamination of **SUPER CEREAL plus- Corn Soya Blend** shall not to exceed the following levels:

*Table 3: Limit of microorganisms in SUPER CEREAL plus- Corn Soya Blend*

Microorganisms	Maximum levels
Mesophilic aerobic bacteria	10,000 cfu per g
Coliforms	10 cfu per g
Salmonella	0 cfu per 25g
Escherichia Coli	0 cfu per g
Staphylococcus aureus	0 cfu per g
Bacillus cereus	50 cfu per g
Yeasts and moulds	100 cfu per g

### (iii) 3.6 Contaminants

**SUPER CEREAL plus- Corn Soya Blend** shall be free from objectionable matter; not contain any substances originating from micro-organisms or any other poisonous or deleterious substances such as anti-nutritional factors, heavy metals or pesticide residues, in amounts which may represent a hazard to health.

- Permitted level of total aflatoxin: 5 ppb (B1, B2, G1, G2).
- Maximum level of Deoxynivalenol (DON) is 0.2 mg/kg (on dry matter basis).
- Heavy metals: below levels specified in Codex Stan 193-1995, in particular Pb max 20 ppb and Cd max 100 ppb.

### (iv) 3.7 Shelf life

It shall retain above qualities for at least 18 months from date of manufacture when stored dry at ambient temperatures prevalent in the country of destination.

## (v) 3.8 Fit for human consumption guarantee

Suppliers shall have to check the quality of their products and guarantee that they are '**fit for human consumption**'.

## (vi) 3.9 Additional Requirements

**Peroxide value:** max 10 meq/kg fat.

**Consistency of 17% dry matter porridge** (Bostwick test): min 100 mm per 30 sec at 45°C and at the proposed preparation dosage (i.e. 50g of product plus 250g water after a boiling at simmering point for five minutes).

**Anti-nutrients:** The urease index of **SUPER CEREAL plus- Corn Soya Blend** should be maximum 0.2 pH units.

**Dispersiveness:** It shall be free from lumping or balling when mixed with water of ambient temperature.

**Cooking time:** It shall be suitable for young children and adults after a boiling at simmering point for a minimum of five minutes and a maximum of ten minutes.

## 4. PACKAGING

**SUPER CEREAL plus- Corn Soya Blend** shall be packed in new uniform multilayer bags of a net content of 1.5 kg, fit for export and multiple handling and must be heat-sealed.

### 4.1 Primary packaging

#### Plastic foil

- PE60/Met polyester 12
- Characteristics of the metalized layer:

	<b>12 Metallised</b>	<b>Method</b>
Specific weight	1.4 g/cm <sup>3</sup>	
Thickness base film	12.0 microns	
	59.5 m <sup>2</sup> /kg	
Yield	21.0 kg/mm <sup>2</sup>	
Tensile strength at break	100%	
Elongation at break	2.0%	
Shrinkage	0.2%	
Shrinkage (150°C 30')	2.2	ASTM D882
	1.5 cc/m <sup>2</sup> /24h	ASTM D882
Optical density	1.5 cc/m <sup>2</sup> /24h	ASTM D1204
Permeability O <sub>2</sub> (38°C – 45% RH)	260□C	ASTM D1204
Permeability Vapour (38°C – 90% RH)		ASTM D1484
Melting point		ASTM E 96

### Marking

Here are the basics that must be on the label to ensure that it is compliant with KEBS Standards:

- **Name of the product: SUPER CEREAL *plus*- Corn Soya Blend**
- **Manufacturers contacts and logo**
- Product type: Corn Soya Blend
- Ingredients: Corn, Soya, Sugar, Milk Powder, Vegetable Oil, Minerals and Vitamins
- Net Contents: 1.5 kg
- Name of supplier
- Batch number
- Manufacturing date
- Best used before: eighteen months after production date -
- Preparation instructions:
- Storage instructions: Store the closed bag in a cool, dry and hygienic place. -
- Additional marking as per contractual agreement.

#### 4.2 Outer packaging

##### **Carton boxes**

Dimensions: 400 x 280 s 210 (L x l x H)

Composition: 5 ply – 5 mm thickness

KB 2: 125 GMS  
S 6: 210 GMS  
F 2: 120 GMS  
S 6: 210 GMS

K

## 5. STORING

**SUPER CEREAL plus- Corn Soya Blend** must be stored under dry, ventilated and hygienic conditions.

## 6. ANALYTICAL REQUIREMENTS

Table 4: List of compulsory tests and reference methods

No	Analyses/tests	Recommended level	Reference methods (Or equivalent)
<b>Main composition</b>			
1	Moisture	7.0 % ( <i>maximum</i> )	ISO 712-2009
2	Protein	16.0% (N x 6.25) ( <i>minimum</i> )	AOAC 981.10 ISO 20483:2006
3	Fat	9.0 % ( <i>minimum</i> )	AOAC 954.02 ISO 11085:2008
4	Crude fibre	2.9 % ( <i>maximum</i> )	AOAC 962.09
5	Ash	4.6 % ( <i>maximum</i> )	ISO 2171:2007
<b>Chemico-physical characteristics of flour</b>			
6	Peroxide value	10 meq/kg fat ( <i>maximum</i> )	AOAC 965.33
7	Urease index	0.20 pH units ( <i>maximum</i> )	AOCS Ba 9-58 (1997)
8	Particle size	- 95% must pass through a 600 microns sieve - 100% must pass through a 1,000 microns sieve	
9	Organoleptic (smell, taste, color)	Pleasant smell and palatable taste, typical color	
10	Consistency (Bostwick flow rate)	min 100 mm/30s for 17% dry matter porridge	WFP's SOP <a href="http://foodqualityandsafety.wfp.org">http://foodqualityandsafety.wfp.org</a>
<b>Vitamins</b>			
11	Vitamin A	2770-4160 IU per 100g	AOAC 992.04 AACC 86-03
<b>Minerals</b>			
12	Iron	9.0-13.5 mg per 100g	AOAC 944.02 AACC 40-41B
13	Calcium	420-630 mg per 100g	AOAC 984.27
14	Potassium	650-970 mg per 100g	AOAC 984.27

<b>Mycotoxins</b>			
15	Aflatoxin (total)	5 ppb (B1, B2, G1, G2) <i>(maximum)</i>	AACC 45-16
16	Deoxynivalenol (DON)	Max. 0.2 mg/kg (on dry matter basis)	EN 15891:2010
<b>Melamine</b>			
17	Melamine	1 mg/kg <i>maximum</i>	
<b>Microorganisms</b>			
18	Mesophyllic aerobic bacteria	10,000 cfu per g <i>(maximum)</i>	ICC No 125 AACC 42-11
19	Coliforms	10 cfu per g <i>(maximum)</i>	AOAC 2005.03
20	Salmonella	0 cfu per 25g	AACC 42-25B
21	Escherichia Coli	0 cfu per g	AOAC 991.14
22	Staphylococcus aureus	0 cfu per g	AACC 42-30B
23	Bacillus cereus	50 cfu per g <i>(maximum)</i>	AOAC 980.31
24	Yeasts and moulds	100 cfu per g <i>(maximum)</i>	ICC No 146 AACC 42-50
25	GMO ( <i>Only if required</i> )	Negative (< 0.9% of GMO material)	



### **3. Inspections and Tests**

The following inspections and tests shall be performed: *[insert list of inspections and tests]*



## **PART 3 - Contract**



## Section VIII. General Conditions of Contract

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## Section VIII. General Conditions of Contract

### 1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “Bank” means the World Bank and refers to the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA).
- (b) “Contract” means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (c) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- (d) “Contract Price” means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (e) “Day” means calendar day.
- (f) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) “GCC” means the General Conditions of Contract.
- (h) “Goods” means all of the pharmaceuticals including equipment, nutritional supplement and oral and injectable forms of contraception, vaccines, and condoms Supplier is required to supply to the Purchaser under the Contract.
- (i) “Purchaser’s Country” is the country specified in the Special Conditions of Contract (SCC).
- (j) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (k) “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.
- (l) “Related Services” means the services incidental to the

supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.

- (m) “SCC” means the Special Conditions of Contract.
- (n) “Supplier” means the person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.
- (o) “The Project Site,” where applicable, means the place named in the **SCC**.

## **2. Contract Documents**

- 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

## **3. Corrupt and Fraudulent Practices**

- 3.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Appendix to the GCC.
- 3.2 The Purchaser requires the Supplier to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

## **4. Interpretation**

- 4.1 If the context so requires it, singular means plural and vice versa.
- 4.2 Incoterms
  - (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
  - (b) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.
- 4.3 Entire Agreement



The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

#### 4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

#### 4.5 Nonwaiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

#### 4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### 5. Language

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the **SCC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

- 6. Joint Venture, Consortium or Association**      6.1    If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.
- 7. Eligibility**      7.1    The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 7.2    All Goods and Related Services to be supplied under the Contract and financed by the Bank shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.
- 8. Notices**      8.1    Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term “in writing” means communicated in written form with proof of receipt.
- 8.2    A notice shall be effective when delivered or on the notice’s effective date, whichever is later.
- 9. Governing Law**      9.1    The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser’s Country, unless otherwise specified in the **SCC**.
- 9.2    Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in the Purchaser’s country when
- (a) as a matter of law or official regulations, the Borrower’s country prohibits commercial relations with that country; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.
- 10 Settlement of**      10.1    The Purchaser and the Supplier shall make every effort to

**Disputes**

resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

10.2 If, after twenty-eight (28) 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. 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. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC**.

10.3 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.

**11. Inspections and Audit by the Bank**

11.1 The Supplier shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Goods in such form and details as will clearly identify relevant time changes and costs.

11.2 The Supplier shall permit, and shall cause its Subcontractors to permit, the Bank and/or persons appointed by the Bank to inspect the Supplier's offices and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Supplier's and its Subcontractors and consultants' attention is drawn to Clause 3 [Fraud and Corruption], which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Sub-Clause 11.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).

**12. Scope of Supply**

12.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

- 13. Delivery and Documents** 13.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the **SCC**.
- 14. Supplier's Responsibilities** 14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.
- 15 Contract Price** 15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the **SCC**.
- 16. Terms of Payment** 16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the **SCC**.
- 16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 13 and upon fulfillment of all 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 request for payment by the Supplier, and after the Purchaser has accepted it.
- 16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the bid price is expressed.
- 16.5 In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period set forth in the **SCC**, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the **SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.
- 17. Taxes and Duties** 17.1 For goods manufactured outside the Purchaser's Country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's Country.
- 17.2 For goods Manufactured within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties,

license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

#### **18. Performance Security**

18.1 If required as specified in the SCC, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.

18.2 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.

18.3 As specified in the SCC, the Performance Security, if required, shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Purchaser; and shall be in one of the format stipulated by the Purchaser in the **SCC**, or in another format acceptable to the Purchaser.

18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) 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**.

#### **19. Certification of Goods in Accordance with Laws of the Purchaser's Country**

19.1 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.

19.2 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.

19.3 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 19.2 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.

## **20. Confidential Information**

- 20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.
- 20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the performance of the Contract.
- 20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- (a) the Purchaser or Supplier need to share with the Bank or other institutions participating in the financing of the Contract;
  - (b) now or hereafter enters the public domain through no fault of that party;
  - (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.
- 20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

## **21. Subcontracting**

- 21.1 The Supplier shall notify the Purchaser in writing of all

subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

## **22. Specifications and Standards**

22.1 The Goods supplied under this Contract shall conform to technical specifications and standards mentioned in Section VII, Schedule of Requirements 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.

## **23. Packing and Documents**

23.1 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. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, 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 heavy handling facilities at all points in transit.

23.2 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**, and in any other instructions ordered by the Purchaser.

## **24. Insurance**

24.1 Unless otherwise specified in the **SCC**, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.

## **25. Transportation and Incidental Services**

25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

25.2 The Supplier may be required to provide any or all of the following services, including additional services, if any, **specified in SCC:**

- (a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;

- (b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
- (d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
- (e) training of the Purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

25.3 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

## **26. Inspections and Tests**

26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.

26.2 The inspections and tests may be conducted on the premises of the Supplier or the manufacturer, at point of delivery, and/or at the Goods' final destination, or in another place in the Purchaser's Country as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or the manufacturer, all reasonable facilities and assistance, including access to production data, shall be furnished to the inspectors at no charge to the Purchaser.

26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

- (a) Said inspection and testing is for the Purchaser's account. In the event that inspection and testing is



required prior to dispatch, the Goods shall not be shipped unless a satisfactory inspection and quality control report has been issued in respect of those Goods.

- (b) The Supplier may have an independent quality test conducted on a batch ready for shipment. The cost of such tests will be borne by the Supplier.
  - (c) Upon receipt of the Goods at place of final destination, the Purchaser's representative shall inspect the Goods 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.
- 26.5 Where the Supplier contests the validity of the rejection by the Purchaser or his representative, of any inspection as required by 26.4 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;
- 26.6 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.7 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 26.8 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the

specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.

26.9 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.7, shall release the Supplier from any warranties or other obligations under the Contract.

## 27. Liquidated Damages

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all 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 those **SCC**. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.

## 28. Warranty

28.1 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.

28.2 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 will be entitled to remove, at his own risk and cost, the defective Goods once the replacement

Goods have been delivered.

- 28.3 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.
- 28.4 If, after being notified that the defect has been confirmed pursuant to GCC Sub-Clause 28.2 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.
- 28.5 *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.

## **29. Patent Indemnity**

- 29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
  - (b) the sale in any country of the products produced by the

### Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

### **30 Limitation of Liability**

- 30.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 29,
- (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, or to any obligation of the supplier to indemnify the purchaser with respect to patent infringement.

**31. Change in Laws and Regulations**

- 31.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

**32. Force Majeure**

- 32.1 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.
- 32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 32.3 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.

**33. Change Orders and Contract Amendments**

33.1 The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or 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
- (d) the Related Services to be provided by the Supplier.

33.2 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 in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract 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.

33.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

**34. Extensions of Time**

34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. 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, in which case the extension shall be ratified by the parties by amendment of the Contract.

34.2 Except in case of Force Majeure, as provided under GCC

Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 27, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

### **35. Termination**

#### 35.1 Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
  - (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34;
  - (ii) if the Supplier fails to perform any other obligation under the Contract; or
  - (iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

#### 35.2 Termination for Insolvency.

- (a) The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such 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

#### 35.3 Termination for Convenience.

- (a) The Purchaser, by 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.

- (b) The Goods that are complete and ready for shipment within twenty-eight (28) 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:
  - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

**36. Assignment**

36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

**37. Export  
Restriction**

37.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser and of the Bank that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to Sub-Clause 35.3.



## APPENDIX TO GENERAL CONDITIONS

### Bank's Policy- Corrupt and Fraudulent Practices

*(text in this Appendix shall not be modified)*

#### **Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011:**

##### **“Fraud and Corruption:**

1.16 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.<sup>9</sup> In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;<sup>10</sup>;
  - (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;<sup>11</sup>
  - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;<sup>12</sup>
  - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;<sup>13</sup>

<sup>9</sup> In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

<sup>10</sup> For the purpose of this sub-paragraph, “*another party*” refers to a public official acting in relation to the procurement process or contract execution. In this context, “*public official*” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>11</sup> For the purpose of this sub-paragraph, “*party*” refers to a public official; the terms “*benefit*” and “*obligation*” relate to the procurement process or contract execution; and the “*act or omission*” is intended to influence the procurement process or contract execution.

<sup>12</sup> For the purpose of this sub-paragraph, “*parties*” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.

<sup>13</sup> For the purpose of this sub-paragraph, “*party*” refers to a participant in the procurement process or contract execution.

- (v) "obstructive practice" is:
- (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 1.16(e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures,<sup>14</sup> including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated<sup>15</sup>;
- (e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to

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<sup>14</sup> A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines.

<sup>15</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.”

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## Section IX. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

*[The Purchaser shall select insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]*

<b>GCC 1.1(i)</b>	The Purchaser's country is: <b>Kenya</b>
<b>GCC 1.1(j)</b>	The Purchaser is: <b>Kenya Medical Supplies Authority</b>
<b>GCC 1.1 (o)</b>	The Project Site/Final Destination(s) is: <b><i>"KEMSA Embakasi Warehouse, Embakasi Road, Nairobi Kenya</i></b>
<b>GCC 4.2 (a)</b>	The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties thereunder shall not be as prescribed by Incoterms, they shall be as prescribed by: <b><i>Incoterms 2015</i></b>
<b>GCC 4.2 (b)</b>	The version edition of Incoterms shall be 2015
<b>GCC 5.1</b>	The language shall be: <b>English</b>
<b>GCC 8.1</b>	For <b><u>notices</u></b> , the Purchaser's address shall be: Attention: <b>Ag. Chief Executive Officer</b> <b>Kenya Medical Supplies Authority,</b> Address: <b>P.O. Box 47715 - 00100</b> <b>Commercial street Industrial Area</b> <b>Building No. 13, First Floor</b> City: <b>Nairobi</b> Country: <b>Kenya</b>
<b>GCC 9.1</b>	The governing law shall be the law of: <b>Republic of Kenya</b>
<b>GCC 10.2</b>	The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:  <i>"Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Supplier and clause 10.2 (b) shall be retained in the case of a Contract with a national of the Purchaser's country."</i>

**(a) Contract with foreign Supplier:**

*[For contracts entered into with foreign suppliers, International commercial arbitration may have practical advantages over other dispute settlement methods. The World Bank should not be named as arbitrator, nor should it be asked to name an arbitrator. Among the rules to govern the arbitration proceedings, the Purchaser may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Rules of the London Court of International Arbitration or the Rules of Arbitration Institute of the Stockholm Chamber of Commerce.]*

***If the Purchaser chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:***

GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

***If the Purchaser chooses the Rules of ICC, the following sample clause should be inserted:***

GCC 10.2 (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.

***If the Purchaser chooses the Rules of Arbitration Institute of Stockholm Chamber of Commerce, the following sample clause should be inserted:***

GCC 10.2 (a)—Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

***If the Purchaser chooses the Rules of the London Court of International Arbitration, the following clause should be inserted:***

GCC 10.2 (a)—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and

	<p>finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.</p> <p><b>(b) <i>Contracts with Supplier national of the Purchaser's country:</i></b></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>
GCC 13.1	<p><b><i>Sample provision</i></b></p> <p><b><i>For Goods supplied from abroad:</i></b></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. The Supplier shall fax and then send by courier the following documents to the Purchaser, with a copy to the insurance company:</p> <ul style="list-style-type: none"> <li>(i) three originals and two copies of the Supplier's invoice, showing Purchaser as <b><i>Kenya Medical Supplies Authority</i></b>; the Contract number, loan number, Goods description, quantity, unit price, and total amount. Invoices must be signed in original, stamped, or sealed with the company stamp/seal;</li> <li>(ii) one original and two copies of the negotiable, clean, on-board through bill of lading marked "freight prepaid" and showing Purchaser as <b><i>Kenya Medical Supplies Authority</i></b> 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 multimodal transport document, marked "freight prepaid" and showing delivery through to final destination as per the Schedule of Requirements;</li> <li>(iii) four copies of the packing list identifying contents of each package;</li> <li>(iv) copy of the Insurance Certificate, showing the Purchaser as the beneficiary;</li> </ul>

	<ul style="list-style-type: none"> <li>(v) one original of the manufacturer's or Supplier's Warranty Certificate covering all items supplied;</li> <li>(vi) one original of the Supplier's Certificate of Origin covering all items supplied;</li> <li>(vii) original copy of the Certificate of Inspection furnished to Supplier by the nominated inspection agency and six copies (where inspection is required);</li> <li>(viii) any other procurement-specific documents required for delivery/payment purposes.</li> </ul> <p><b><i>For Goods from within the Purchaser's country:</i></b></p> <p>Upon or before delivery of the Goods, the Supplier shall notify the Purchaser in writing and deliver the following documents to the Purchaser:</p> <ul style="list-style-type: none"> <li>(i) two originals and two copies of the Supplier's invoice, showing Purchaser, the Contract number, loan number; Goods' description, quantity, unit price, and total amount. Invoices must be signed in original and stamped or sealed with the company stamp/seal;</li> <li>(ii) two copies of delivery note, railway consignment note, road consignment note, truck or air waybill, or multimodal transport document showing Purchaser as [ <i>enter correct name of Purchaser for customs purposes</i> ] and delivery through to final destination as stated in the Contract;</li> <li>(iii) copy of the Insurance Certificate, showing the Purchaser as the beneficiary;</li> <li>(iv) four copies of the packing list identifying contents of each package;</li> <li>(v) one original of the manufacturer's or Supplier's Warranty certificate covering all items supplied;</li> <li>(vi) one original of the Supplier's Certificate of Origin covering all items supplied;</li> <li>(vii) original copy of the Certificate of Inspection furnished to Supplier by the nominated inspection agency and six copies (where inspection is required)</li> <li>(viii) other procurement-specific documents required for delivery/payment purposes.</li> </ul>
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	<p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
<b>GCC 15.1</b>	<p>Prices shall be fixed and firm for the duration of the Contract.</p>
<b>GCC 16.1</b>	<p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p><b>Payment for Goods supplied from abroad:</b></p> <p>Payment of foreign currency portion shall be made in currency of the Contract Price in the following manner:</p> <p>One Hundred (100) percent of the Contract Price for Goods shipped shall be paid through an irrevocable documentary Letter of Credit (L/C) opened in favor of the Supplier in a bank situated in its country upon submission of the documents specified in the General Conditions of Contract (GCC) Clause 11. In support of the L/C, the Purchaser will apply to the World Bank for its issuance of a Special Commitment (S/C)</p> <p>Payment of local currency portion shall be made in <i>Kenya Shillings</i> within thirty (30) days of presentation of an invoice (showing Purchaser's name; the Contract number, loan number; description of payment and total amount, signed in original, stamped or sealed with the company stamp/seal) supported by the Acceptance Certificate issued by the Purchaser</p> <p><b>Payment for Goods and Services supplied from within the Purchaser's country:</b></p> <p>Payment for Goods and Services supplied from within the Purchaser's country shall be made in Kenya Shillings as follows:</p> <p><b>On Acceptance:</b> One Hundred (100%) percent of the Contract Price of Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of an invoice (showing Purchaser's name; the Contract number, grant number; description of payment and total amount, signed in original, stamped or sealed with the company stamp/seal) supported by the Acceptance Certificate issued by the Purchase.</p>

<b>GCC 16.5</b>	The payment-delay period after which the Purchaser shall pay interest to the supplier shall be 120 days.  The interest rate that shall be applied is 10 % per annum
<b>GCC 18.1</b>	A Performance Security shall be required. The amount of the Performance Security shall be 10% of the contract value
<b>GCC 18.3</b>	If required, the Performance Security shall be in the form of a Performance Bond.  If required, the Performance security shall be denominated in a freely convertible currency acceptable to the Purchaser
<b>GCC 18.4</b>	Discharge of the Performance Security shall not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations
<b>GCC19.1</b>	The registration and other certification necessary to prove registration in Purchaser's country is Product registration and retention certificates
<b>GCC19.2</b>	The Effective Date of the Contract is <i>date of Contract signing if the Goods have already been registered at the time of Contracting signing</i>
<b>GCC19.3</b>	The time period shall be 30 days.
<b>GCC 23.2</b>	The packing, marking and documentation within and outside the packages shall be as described in the tender specifications.
<b>GCC 24.1</b>	The insurance coverage shall be as specified in the Incoterms.  DDP KEMSA Embakasi Warehouse
<b>GCC 25.1</b>	Responsibility for transportation of the Goods shall be as specified in the Incoterms.  DDP KEMSA Embakasi Warehouse
<b>GCC 25.2</b>	Not applicable
<b>GCC 26.1</b>	Not applicable
<b>GCC 26.2</b>	Not applicable
<b>GCC 27.1</b>	The liquidated damage shall be: 0.5% per week
<b>GCC 27.1</b>	The maximum amount of liquidated damages shall be: 10%
<b>GCC 28.1</b>	75% Shelf life

<b>GCC 28.4</b>	The period for replacement shall be 14 days.
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## Section X. Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

### Table of Forms

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# 1. Letter of Acceptance

*[letterhead paper of the Purchaser]*

*[date]*

To: *[name and address of the Supplier]*

Subject: **Notification of Award Contract No. KEMSA/KHSSP ONT1/2017-2018**

This is to notify you that your Bid dated . . . . *[insert date]* . . . . for execution of the . . . .  
. . . . .*[insert name of the contract and identification number, as given in the SCC]* .  
. . . . . for the Accepted Contract Amount of . . . . .*[insert amount in numbers and words and name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section X, Contract Forms, of the Bidding Document.

Authorized Signature: \_\_\_\_\_  
Name and Title of Signatory: \_\_\_\_\_  
Name of Agency: \_\_\_\_\_

**Attachment: Contract Agreement**

## 2. Contract Agreement

*[The successful Bidder shall fill in this form in accordance with the instructions indicated]*

THIS AGREEMENT made

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

BETWEEN

- (1) *[ insert complete name of Purchaser ]*, a *[ insert description of type of legal entity, for example, an agency of the Ministry of .... of the Government of { insert name of Country of Purchaser }, or corporation incorporated under the laws of { insert name of Country of Purchaser } ]* and having its principal place of business at *[ insert address of Purchaser ]* (hereinafter called “the Purchaser”), of the one part, and
- (2) *[ insert name of Supplier ]*, a corporation incorporated under the laws of *[ insert: country of Supplier ]* and having its principal place of business at *[ insert: address of Supplier ]* (hereinafter called “the Supplier”), of the other part :

WHEREAS the Purchaser invited bids for certain Goods and ancillary services, viz., *[insert brief description of Goods and Services]* and has accepted a Bid by the Supplier for the supply of those Goods and Services

The Purchaser and the Supplier agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
  - (a) the Letter of Acceptance
  - (b) the Letter of Bid
  - (c) the Addenda Nos. \_\_\_\_\_ (if any)
  - (d) Special Conditions of Contract
  - (e) General Conditions of Contract
  - (f) the Specification (including Schedule of Requirements and Technical Specifications)

- (g) the completed Schedules (including Price Schedules)
  - (h) any other document listed in GCC as forming part of the Contract
3. In consideration of the payments to be made by the Purchaser to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
  4. The Purchaser hereby covenants to pay the Supplier 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.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *[insert the name of the Contract governing law country]* on the day, month and year indicated above.

For and on behalf of the Purchaser

Signed: *[insert signature]*  
in the capacity of *[ insert title or other appropriate designation ]*  
in the presence of *[insert identification of official witness]*

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*  
in the capacity of *[ insert title or other appropriate designation ]*  
in the presence of *[ insert identification of official witness]*



### 3. Performance Security

#### Bank Guarantee

*[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of Purchaser ]*

**Date:** *\_ [Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *\_ [insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the supply of *\_ [insert name of contract and brief description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (\_\_\_\_\_) *[insert amount in words]*,<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the .... Day of ....., 2...<sup>2</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.

<sup>1</sup> *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

<sup>2</sup> *Insert the date twenty-eight days after the expected completion date as described in GC Clause 18.4. The Purchaser should note that in the event of an extension of this date for completion of the Contract, the Purchaser would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Purchaser might consider adding the following text to the form, at the end of the penultimate*

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

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*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

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*paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*