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TENDER NO. ST/OT/IAD/07/23

**TENDER DOCUMENT FOR
PROVISION OF ANONYMOUS WHISTLE BLOWER HOTLINE
SERVICE**

Tender start Date: *Friday 14th July 2023*

Tender Opening/Closing Time: *Friday 28th July 2023 at 12:00 Noon.*

ALL TENDERERS ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS ENTIRETY BEFORE MAKING ANY BID

STIMA DT SACCO SOCIETY LTD

STIMA SACCO PLAZA, MUSHEMBI ROAD, PARKLANDS

P.O. BOX 75629-00200, NAIROBI,

E-Mail: *tenders@stima-sacco.com*

Website: *www.Stima-sacco.com*

INVITATION TO TENDER

PROCURING ENTITY	STIMA DT SACCO SOCIETY LTD
CONTRACT NAME AND DESCRIPTION:	ST/OT/IAD/07/23: TENDER FOR PROVISION OF ANONYMOUS WHISTLE BLOWER HOTLINE SERVICE

1. Stima DT Sacco society invites sealed tenders from eligible candidates for the provision of Anonymous whistle blower Hotline service.
2. Tendering will be conducted under open tender method using a standardized tender document. Tendering is open to all eligible, qualified, and interested Tenderers.
3. Qualified and interested bidders may obtain further information and inspect the bidding documents from the Supply chain Office, Stima Investment Plaza I, 2nd Floor Mushembi road, during normal working hours from Monday to Friday (excluding any public or gazetted holiday) between 9.00 a.m. & 12.30 p.m. and 2.00 p.m. & 4.00 p.m.
4. A complete set of tender documents may be downloaded from Stima DT Sacco society website (www.stima-sacco.com) free of charge. All bidders will be required to email their name, email address, physical address and telephone contacts to tenders@stima-sacco.com. to facilitate any further clarification or addendum.
5. Tenderers shall submit one original and one copy of tender document properly bound and sequentially serialized/paginated in the form of i.e., 1,2,3,4.... on each page including all the attachments.
6. Completed tenders must be delivered to the address given below on or before **Friday 28th July 2023 at 12:00 Noon**. Electronic tenders will NOT be permitted
7. Tenders will be opened immediately after the deadline date and time specified above. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
8. Late tenders will be rejected.
9. The addresses referred to above are:

A. Address for obtaining further information and for purchasing tender documents

Stima DT Sacco Society Ltd, Stima Investment Plaza I, 2nd Floor Mushembi road

P.O. Box 75629-00200, Nairobi.

Email: tenders@stima-sacco.com

B. Address for Submission of Tenders

Stima DT Sacco Society Ltd,

P.O. BOX 75629-00200 Nairobi. Tender Box located at

Ground Floor, Stima Sacco Plaza, Mushembi Road, Nairobi

C. Address for Opening of Tenders.

Stima DT Sacco Board Room, Located at 2nd Floor

Stima DT Sacco Society Ltd, Stima Sacco Plaza, Mushembi Road, Nairobi



PART 1 - TENDERING PROCEDURES



SECTION I -INSTRUCTIONS TO TENDERERS

A. General

1. Scope of Tender

1.0. This tendering document is for the delivery of Non-Consulting Services, as specified in Section V, Stima Sacco's Requirements. The name, identification and number of this tender are specified in the TDS.

2. Throughout this tendering document

2.1 The terms:

- a) The term “in writing” means communicated in written form (e.g., by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by Stima Sacco) with proof of receipt.
- b) If the contexts or esquires, “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 Stima Sacco. It excludes Stima Sacco's official public holidays.

2.2 The successful Tenderer will be expected to complete the performance of the Services by the Intended Completion Date provided in the TDS.

3. Fraud and Corruption

3.1 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, Stima Sacco shall indicate in the TDS and make available to all the firms together with this tender document all Information that would in that respect give such firm any unfair competitive advantage over competing firms.

3.2 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. Stima Sacco shall indicate in the TDS firms (if any) that provided consulting services for the contract being tendered for. Stima Sacco shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. Stima Sacco shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

4. Eligible Tenderers

4.1 A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to ITT 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 Form 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 Tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontract or in a separate tender or be part of another joint

venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the TDS.

- 4.2 Officers, of Stima Sacco, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse in which they have a substantial or controlling interest shall not be eligible to tender or be awarded contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer: a Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or Receives or has received any direct or indirect subsidy from another Tenderer; or has the same legal representative as another Tenderer; or has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of Stima Sacco regarding this Tendering process; or any of its affiliates participated as a consultant in the preparation of Stima Sacco's Requirements (including Activities Schedules, Performance Specifications and Drawings) for the Non Consulting Services that are the subject of the Tender; or f or any of its affiliates has been hired (or is proposed to be hired) by Stima Sacco for the Contract implementation; or 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 TDS ITT 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 has a close business or family relationship with a professional staff of Stima Sacco or of the project implementing agency, who:
 - i. are directly or in directly involved in the preparation of the tendering document or specifications of the contract, and/or the Tender evaluation process of such contract; or
 - ii. Would be involved in the implementation or supervision of such contract unless the conflicts teeming from such relationship has been resolved in a manner acceptable to Stima Sacco throughout the procurement process and execution of the Contract.
- 4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member may participate as a subcontractor in more than one Tender.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4 .6.
- 4.6 A Tenderer shall be deemed to have the nationality of a country if the Tenderer 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 sub consultants for any part of the Contract including related Services.
- 4.7 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information

required to enable Stima Sacco determine if this condition is met shall be provided in for this purpose is be provided in “SECTION III-EVALUATION AND QUALIFICATION CRITERIA, Item 9”.

- 4.8 Pursuant to the eligibility requirements of ITT 4.7, a tender is considered a foreign tenderer if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 4.9 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke.
- 4.10 A Tenderer may be considered ineligible if he/she offers goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.
- 4.11 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate is sued by the Kenya Revenue Authority.

5. Qualification of the Tenderer

- 5.1 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 5.2 In the event that pre-qualification of Tenderers has been undertaken as stated in ITT 18.3, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

B. Contents of Tendering Document

6. Sections of Tendering Document

- 6.1 The tendering document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITT 10.

PART 1: Tendering Procedures

- i. Section I - Instructions to Tenderers (ITT)
- ii. Section II - Tender Data Sheet (TDS)
- iii. Section III - Evaluation and Qualification Criteria
- iv. Section IV - Tendering Forms

PART 2: Stima Sacco's Requirements

- v. Section V-Stima Sacco's Requirements

PART 3: Contract

- vi. Section VI – General Conditions of Contract (GCC)
 - vii. Section VII - Special Conditions of Contract (SCC)
 - viii. Section VIII - Contract Forms
- 6.2 The Invitation to Tender (ITT) notice or the notice to pre-qualify Tenderers, as the case may be, issued by Stima Sacco is not part of this tendering document.
- 6.3 Unless obtained directly from Stima Sacco, Stima Sacco is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from Stima Sacco shall prevail.
- 6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

7. Site Visit

- 7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be the Tenderer's own expense.

8. Pre-Tender Meeting

- 8.1 Stima Sacco shall specify in the TDS if a pre-tender conference will be held, when and where. Stima Sacco shall also specify in the TDS if a pre-arranged pretender site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 8.2 The Tenderer is requested to submit any questions in writing, to reach Stima Sacco not later than the period specified in the TDS before the meeting.
- 8.3 Minutes of the pre-Tender meeting and the pre-arranged pre tender visit of the site of the service, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT6.3. Minutes shall not identify the source of the questions asked.
- 8.4 Stima Sacco shall also promptly publish anonymized (no names) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the service at the web page identified in the TDS. Any modification to the Tender Documents that may become necessary as a result of the pre tender meeting shall be made by Stima Sacco exclusively through the issue of an Addendum pursuant to ITT10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

9. Clarification of Tender Documents

- 9.1 A Tenderer requiring any clarification of the Tender Document shall contact Stima Sacco in writing at Stima Sacco's address specified in the TDS or raise its enquiries during the pretender meeting and the pre- arranged pretender visit of the site of the Service if provided for in accordance with ITT 8.4. Stima Sacco will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the TDS prior to the deadline for submission of tenders. Stima Sacco shall forward copies of its

response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so, specified in the TDS, Stima Sacco shall also promptly publish its response at the webpage identified in the TDS. Should the clarification result in changes to the essential elements of the Tender Documents, Stima Sacco shall amend the Tender Documents appropriately following the procedure under ITT 8.4.

10. Amendment of Tender Documents

- 10.1 At any time prior to the deadline for submission of Tenders, Stima Sacco may amend the Tendering document by issuing addenda.
- 10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from Stima Sacco in accordance with ITT 6.3. Stima Sacco shall also promptly publish the addendum on Stima Sacco's web page in accordance with ITT 8.4.
- 10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, Stima Sacco shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.

C. Preparation of Tenders

11. Cost of Tendering

- 11.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and Stima Sacco shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

12. Language of Tender

- 12.1 The Tender as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and Stima Sacco shall be written in the English language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

13. Documents Comprising the Tender

- 13.1 The Tender shall comprise the following:
 - a) **Form of Tender** prepared in accordance with ITT 14;
 - b) **Schedules:** priced Activity Schedule completed in accordance with ITT 14 and ITT 16;
 - c) **Tender Security or Tender-Securing Declaration** in accordance with ITT 21.1;
 - d) **Alternative Tender:** if permissible in accordance with ITT 15;
 - e) **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;
 - f) **Qualifications:** documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
 - g) **Tenderer's Eligibility:** documentary evidence in accordance with ITT 19 establishing the Tenderer's eligibility to Tender;

- h) **Conformity:** documentary evidence in accordance with ITT 18, that the Services conform to the tendering document; and
 - i) Any other document required in the **TDS**.
 - j) The Tenderer shall chronologically serialize pages of all tender documents submitted.
- 13.2 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.
- 13.3 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

14. Form of Tender and Activity Schedule

- 14.1 The Form of Tender and priced Activity Schedule shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 22.3. All blank spaces shall be filled in with the information requested.
- 14.2 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

15. Alternative Tenders

- 15.1 Unless otherwise indicated in the TDS, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the Best Evaluated Tender shall be considered by Stima Sacco.
- 15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the TDS and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.
- 15.3 When specified in the TDS, Tenderers are reemitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified in the TDS, as will the method for their evaluating, and described in Section VII, Stima Sacco's Requirements.

16. Tender Prices and Discounts

- 16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Activity Schedule (s) shall conform to the requirements specified below.
- 16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).
- 16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, submitted by the Tenderer.
- 16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 16.1.
- 16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, Stima Sacco Requirements. Items for which no rate or price is entered by the Tenderer will

- not be paid for by Stima Sacco when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.
- 16.6 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.
- 16.7 If provided for in the TDS, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and / or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
- 16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.

17. Currencies of Tender and Payment

- 17.1 The currency of the Tender and the currency of payments shall be Kenya Shillings.

18. Documents Establishing Conformity of Services

- 18.1 To establish the conformity of the Non-Consulting Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, Stima Sacco's Requirements.
- 18.2 Standards for provision of the Non-Consulting Services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to Stima Sacco's satisfaction that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Stima Sacco's Requirements.
- 18.3 Tender to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by Stima Sacco, a Service provider or group of service providers. Qualifies for a margin of preference. Further the information will enable Stima Sacco identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement processor contract management.
- 18.4 The purpose of the information described in ITT 18.3 above, overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by Stima Sacco as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 18.5 The Tenderer shall provide further documentary proof, information or authorizations that Stima Sacco may request in relation to ownership and control which information on any

changes to the information which was provided by the tenderer under ITT18.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

- 18.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to Stima Sacco.
- 18.7 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if Stima Sacco is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 18.8 If information submitted by a tenderer pursuant to these requirements, or obtained by Stima Sacco (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i. If the procurement process is still on going, the tenderer will be disqualified from the procurement process,
 - ii. if the contract has been awarded to that tenderer, the contract award will be set aside, pending the outcome of (iii),
 - iii. The tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 18.9 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out of-date, or attempts to obstruct the verification process, then the consequences ITT 18.9 will ensue unless the tenderer can show to the reasonable satisfaction of Stima Sacco that any such act was not material or was due to genuine error or which was not attributable to the intentional act, negligence or recklessness of the tenderer.

19. Documents Establishing the Eligibility and Qualifications of the Tenderer

- 19.1 To establish Tenderer's their eligibility in accordance with ITT4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 19.2 The documentary evidence of the Tenderer's qualification submitted with the Contract if its Tender is accepted shall establish to Stima Sacco's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 19.3 All Tenderers shall provide in Section IV, Tendering Forms, and a preliminary description of the proposed methodology, work plan and schedule.
- 19.4 In the event that pre-qualification of Tenderers has been undertaken, only Tenders from prequalified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission.
- 19.5 If pre-qualification has not taken place before Tendering, the qualification criteria for the Tenderers are specified- in Section III, Evaluation and Qualification Criteria.

20. Period of Validity of Tenders

20.1 Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by Stima Sacco in accordance with ITT 24.1). A Tender valid for a shorter period shall be rejected by Stima Sacco as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, Stima Sacco may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 20, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

21. Tender Security

21.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified in the TDS, in original form and, in the case of a Tender Security, in the amount and currency specified in the TDS.

21.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.

21.3 If a Tender Security is specified pursuant to ITT 21.1, from a reputable source, and an eligible country and shall be in bank guarantee.

21.4 If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by Stima Sacco as non-responsive.

21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 46. Stima Sacco shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive, or a bidder decline to extend tender validity period.

21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.

21.7 The Tender Security may be forfeited, or the Tender-Securing Declaration executed:

- a) If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension there to provide by the Tenderer; or
- b) if the successful Tenderer fails to:
- c) sign the Contract in accordance with ITT 46; or
- d) Furnish a performance security in accordance with ITT 47.

21.8 Where tender securing declaration is executed, Stima Sacco shall recommend to the PPRA that PPRA debar the Tenderer from participating in public procurement as provided in the law.

21.9 The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender security or Tender-Securing Declaration

shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 13.2.

21.10 A tenderer shall not issue a tender security to guarantee itself.

22. Format and Signing of Tender

22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13, bound with the volume containing the Form of Tender, and clearly marked "Original." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the TDS, and clearly marked as "Copies." In the event of discrepancy between them, the original shall prevail.

22.2 Tenderers shall mark as "CONFIDENTIAL" information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person

22.4 In case the Tenderer is a JV, the Tender 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.

22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. Submission and Opening of Tenders

23. Sealing and Marking of Tenders

23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to Stima Sacco and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

- i. in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT13; and
- ii. in an envelope or package or container marked "COPIES", all required copies of the Tender; and
- iii. if alternative Tenders are permitted in accordance with ITT15, and if relevant:
 - a) in an envelope or package or container marked "ORIGINAL-ALTERNATIVE TENDER", the alternative Tender; and
 - b) in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) Bear the name and address of Stima Sacco.
- b) Bear the name and address of the Tenderer; and

c) Bear the name and Reference number of the Tender.

23.2 If an envelope or package or container is not sealed and marked as required, Stima Sacco will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

24. Deadline for Submission of Tenders

24.1 Tenders must be received by Stima Sacco at the address and no later than the date and time specified in the TDS. When so specified in the TDS, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

24.2 Stima Sacco may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT9, in which case all rights and obligations of Stima Sacco and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

25. Late Tenders

25.1 Stima Sacco shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 24. Any Tender received by Stima Sacco after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

26. Withdrawal, Substitution and Modification of Tenders

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by a n authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a) Prepared and submitted in accordance with ITT 21 and ITT 22 (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 Stima Sacco prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.

26.2 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.

26.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

Tender Opening

27.1 Except as in the cases specified in ITT 23 and ITT 25.2, Stima Sacco shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified in the TDS in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1 shall be as specified in the TDS.

27.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. 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 Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

27.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

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

27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender Securing Declaration, if required; and any other details as Stima Sacco may consider appropriate.

27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Activity Schedule are to be initialled by representatives of Stima Sacco attending Tender opening in the manner specified in the TDS.

27.7 Stima Sacco shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT25.1).

27.8 Stima Sacco shall prepare a record of the Tender opening that shall include, as a minimum:

- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
- b) The Tender Price, per lot (contract) if applicable, including any discounts; and
- c) any alternative Tenders;
- d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
- e) Number of pages of each tender document submitted

27.9 The Tenderers' representatives who a rep resent shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be distributed to Tenderer upon request.

E. Evaluation and Comparison of Tenders

28 Confidentiality

28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 42.

28.2 Any effort by a Tenderer to influence Stima Sacco in the evaluation or contract award decisions may result in the rejection of its Tender.

28.3 Notwithstanding ITT 28.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact Stima Sacco on any matter related to the Tendering process, it should do so in writing.

29 Clarification of Tenders

29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, Stima Sacco may, at Stima Sacco's discretion, ask any tenderer for clarification of its Tender including break downs of the prices in the Activity Schedule, and other information that Stima Sacco may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by Stima Sacco shall not be considered. Stima Sacco'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 Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by Stima Sacco in the evaluation of the Tenders, in accordance with ITT32.

29.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in Stima Sacco's request for clarification, its Tender may be rejected.

30 Deviations, Reservations, and Omissions

30.1 During the evaluation of Tenders, the following definitions apply:

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

31 Determination of Responsiveness

31.1 Stima Sacco's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.

31.2 A substantially responsive Tender is one that meets the requirements of the tendering 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 Non-Consulting Services specified in the Contract; or
 - ii. limit in any substantial way, inconsistent with the tendering document, Stima Sacco's rights or the Tenderer's obligations under the Contract; or
- b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

31.3 Stima Sacco shall examine the technical aspects of the Tender submitted in accordance with ITT 18 and ITT 19, in particular, to confirm that all requirements of Section VII, Stima Sacco's Requirements have been met without any material deviation or reservation, or omission.

31.4 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by Stima Sacco and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

31.5 Provided that a Tender is substantially responsive, Stima Sacco may waive any nonconformity in the Tender.

31.6 Provided that a Tender is substantially responsive, Stima Sacco may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities or omissions in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

31.7 Provided that a Tender is substantially responsive, Stima Sacco shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender 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 TDS.

32 Arithmetical Errors

32.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

32.2 Provided that the Tender is substantially responsive, Stima Sacco shall handle errors on the following basis:

a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.

b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive .and

c)If there is a discrepancy between words and figures, the amount in words shall prevail

32.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.

33 Conversion to Single Currency

33.1 For evaluation and comparison purposes, the currency (ies) of the Tender shall be converted into a single currency as specified in the TDS.

34 Margin of Preference and Reservations

34.1 Margin of preference on local service providers may be allowed if it is deemed that the services require participation of foreign tenderers. If so allowed, it will be indicated in the TDS.

34.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and /or persons living with disability, who are appropriately registered as such by the authority to be specified in the TDS, a Stima Sacco shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to the specified group are eligible to tender as specified in the TDS. Otherwise, if not so stated, the invitation will be open to all tenderers.

35 Evaluation of Tenders

35.1 Stima Sacco shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, Stima Sacco shall determine the Best Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- a) Substantially responsive to the tendering document; and
- b) The lowest evaluated cost.

35.2 In evaluating the Tenders, Stima Sacco will determine for each Tender the evaluated Tender cost by adjusting the Tender price as follows:

- a) Price adjustment due to discounts offered in accordance with ITT 16.4;
- b) price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3;
- c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 33; and
- d) any additional evaluation factors specified in the TDS and Section III, Evaluation and Qualification Criteria.

35.3 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 considered in Tender evaluation.

35.4 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria. For one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT

35.5. The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

36 Comparison of Tenders

36.1 Stima Sacco shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

37 Abnormally Low Tenders and Abnormally High

Tenders Abnormally Low Tenders

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regard to the Tenderer's ability to perform the Contract for the offered Tender Price.

37.2 In the event of identification of a potentially Abnormally Low Tender, Stima Sacco shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

37.3 After evaluation of the price analyses, in the event that Stima Sacco determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, Stima Sacco shall reject the Tender.

Abnormally High Tenders

37.4 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that Stima Sacco is concerned that it (Stima Sacco) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

37.5 In case of an abnormally high price, Stima Sacco shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. Stima Sacco may also seek written clarification from the tenderer on the reason for the high tender price. Stima Sacco shall proceed as follows:

- i) If the tender price is abnormally high based on wrong estimated cost of the contract, Stima Sacco may accept or not accept the tender depending on Stima Sacco's budget considerations.
- ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, Stima Sacco shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case maybe.

37.6 If Stima Sacco determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (often due to collusion, corruption or other manipulations), Stima Sacco shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

38 Unbalanced and/or Front-Loaded Tenders

38.1 If in Stima Sacco's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, Stima Sacco may require the Tenderer to provide Written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Stima Sacco may as appropriate:

- a) Accept the Tender; or
- b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding 10% of the Contract Price; or

- c) agree on a payment mode that eliminates the inherent risk of Stima Sacco paying too much for undelivered works; or
- d) Reject the Tender.

39 Qualification of the Tenderer

39.1 Stima Sacco shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event Stima Sacco shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

40 Stima Sacco's Right to Accept Any Tender, and to Reject Any or All Tenders

40.1 Stima Sacco reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to Contract Award, without there by incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

F. Award of Contract

41 Award Criteria

41.1 Stima Sacco shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

42 Notice of Intention to enter in to a Contract

42.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period Stima Sacco shall issue a Notification of Intention to Enter into a Contract/Notification of a ward to all tenderers which shall contain, at a minimum, the following information:

- a) The name and address of the Tenderer submitting the successful tender;
- b) The Contract price of the successful tender;
- c) A statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in(c) above already reveals the reason;
- d) The expiry date of the Stand still Period; and
- e) Instructions on how to request a debriefing and/or submit a complaint during the stand still period;

43 Stand still Period

43.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

43.2 Where a Standstill Period applies, it shall commence when Stima Sacco has transmitted to each Tenderer the Notification of Intention to enter into a Contract with the successful Tenderer.

44 Debriefing by Stima Sacco

44.1 On receipt of Stima Sacco's Notification of Intention to Enter into a Contract referred to in ITT 42, an unsuccessful tenderer may make a written request to Stima Sacco for a debriefing on specific issues or concerns regarding their tender. Stima Sacco shall provide the debriefing within five days of receipt of the request.

44.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

45 Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 43.1, upon addressing a complaint that has been filed within the Standstill Period, Stima Sacco shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

46 Signing of Contract

46.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, Stima Sacco shall send the successful Tenderer the Contract Agreement.

46.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to Stima Sacco.

46.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period

47 Performance Security

47.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from Stima Sacco, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 3.9, using for that purpose the Performance Security Form included in Section VIII, Contract Forms, or another Form acceptable to Stima Sacco. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to Stima Sacco. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless Stima Sacco has agreed in writing that a correspondent financial institution is not required.

47.2 Failure of the successful Tenderer 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 Tender Security. In that event Stima Sacco may award the Contract to the Tenderer offering the next Best Evaluated Tender.

48 Publication of Procurement Contract

48.1 Within fourteen days after signing the contract, Stima Sacco shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

- a) Name and address of Stima Sacco;
- b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) The name of the successful Tenderer, the final total contract price, the contract duration.
- d) Dates of signature, commencement and completion of contract;
- e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

49 Adjudicator

49.1 Stima Sacco proposes the person named in the TDS to be appointed as adjudicator or under the Contract, at an hourly fee specified in the TDS, plus reimbursable expenses. If the Tenderer disagrees with this Tender, the Tenderer should so state in the Tender. If, in the Form of Acceptance, Stima Sacco has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

50 Procurement Related Complaints and Administrative Review

50.1 The procedures for making a Procurement-related Complaint are as specified in the TDS.

50.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION II - TENDER DATA SHEET (TDS)

The following specific data for the Non-Consulting Services to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions here in shall prevail over those in ITT.

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	A. General
ITT 1.1	The reference number of the Request for Tenders (ITT) is : <i>ST/OT/IAD/07/23</i> The Procuring Entity is: <i>Stima DT Sacco Society Limited</i> The name of the ITT is: <i>Provision of Anonymous whistle blower Hotline service.</i> The number and identification of lots (contracts) comprising this ITT is: <i>N/A</i>
ITT 2.1(a)	N/A
ITT 2.2	The Intended Completion Date is; 30 days upon signing of the contract.
ITT 3.3	Information that any unfair competitive advantage over competing firms is as follows: <i>N/A</i>
ITT 3.4	The firms that provided consulting services <i>N/A</i>
ITT 4.1	Maximum number of members in the Joint Venture (JV) shall be: shall be 0 (Not Allowed)
	B. Contents of Tendering Document
ITT 8.1	(a) A pre-tender conference will not be held
ITT 8.2	The questions in writing, to reach Stima Sacco not later than; Five (5) days to tender closing date
ITT 8.4	Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works shall be published on the website <i>N/A</i>
ITT 9.1	i) The Tenderer will submit any request for clarifications in writing at the Address tenders@stima-sacco.com to reach Stima Sacco not later than Five (5) days to tender closing date. ii) Stima Sacco shall send its response to the bidders who will have submitted their particulars to the mail address tenders@stima-sacco.com
	iii) Stima Sacco shall also promptly publish response at the website www.stima-sacco.com .

ITT 15.1	Alternative Tenders shall not be permitted.
ITT 15.2	Alternative times for completion shall not be permitted. If permitted, the range of acceptable completion time is: N/A
ITT 15.3	Alternative technical solutions shall be permitted for the following parts of the Services: N/A
ITT 16.7	The prices quoted by the Tenderer shall not be subject to adjustment during the performance of the Contract.
ITT 20.1	The Tender validity period shall be 120 days after tender submission date .
ITT 21.1	A Tender Security <i>shall be required of kshs 50,000.00 in form of unconditional bank guarantee from a reputable bank registered in Kenya and regulated by the Central Bank valid up to and including 30 days after the period of the tender validity.</i> A Tender-Securing Declaration shall be required.
ITT 22.1	In addition to the original of the Tender, the number of copies is: One Copy
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: power of attorney
	D. Submission and Opening of Tenders
ITT 24.1	For <u>Tender submission purposes</u> only, Stima Sacco's address is Chief Executive Officer Stima DT Sacco Society Ltd P.O. BOX 75629-00200 Nairobi. Tender documents be deposited in Tender Box, Located at Ground Floor, Stima Sacco Plaza, Mushembi Road, Nairobi- Kenya
ITT 24.1	The deadline for Tender submission is: Friday 28th July 2023 at 12:00 Noon Tenderers <i>shall not</i> have the option of submitting their Tenders electronically.

ITT 27.1	The Tender opening shall take place at: Physical Address: Stima Sacco Board Room 2nd Floor Stima Sacco Plaza, Mushembi Road, Nairobi
ITT 27.1	The electronic Tender opening procedures shall be: N/A
ITT 27.6	The Form of Tender and priced Activity Schedule shall be initialed by all tender opening committee members of Stima DT Sacco conducting Tender opening.
E. Evaluation and Comparison of Tenders	
ITT 31.7	The tender price shall be fixed
ITT 33.1	The currency that shall be used in Tender submission, evaluation and comparison purposes only; Kenya shillings
ITT 34.1	Margin of preference will not be applicable
ITT 34.2	The invitation to tender is extended to the following group that qualify for Reservations: Not applicable
ITT35.2 (d)	Additional evaluation factors shall be; As indicated in the evaluation criteria
ITT 35.4	N/A
ITT 47.1	10% of tender sum in form of unconditional bank guarantee from a reputable bank registered in Kenya and regulated by the Central Bank
	F. Award of Contract
ITT 49.1	There will be no Adjudicator under this contract

SECTION III – EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

1.1 Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

For construction turnover or financial data required for each year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year are to be converted) was originally established.

Value of single contract-Exchange rate prevailing on the date of the contract signature.

Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Fund.

1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. Stima DT Sacco shall use the Standard Tender Evaluation Report for Goods and Works for evaluating Tenders.

1.3 Evaluation and contract award Criteria

Stima DT Sacco shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria,(ii)has been determined to be substantially responsive to the Tender Documents, and(iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

2 Preliminary examination for Determination of Responsiveness

Stima DT Sacco will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

3 Tender Evaluation (ITT 35)

Price evaluation: in addition to the criteria listed in ITT 35.2 (a)–(d) the following apply: criteria shall

Alternative Completion Times, if permitted under ITT 15.2, will be evaluated as follows:

..... NOT APPLICABLE

Alternative Technical Solutions for specified parts of the Works, if permitted under ITT 15.3, will be evaluated as follows: NOT APPLICABLE

Other Criteria; if permitted under ITT 35.2 (e):NOT APPLICABLE

4 Multiple Contracts-Not applicable

Multiple contracts will be permitted in accordance with ITT 35.4. Tenderers are evaluated on basis of Lots and the lowest evaluated tenderer identified for each Lot. Stima DT Sacco will select one Option of the two Options listed below for award of Contracts.

OPTION 1

If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.

If a tenderer wins more than one Lot, the tenderer will be awarded contracts for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the Lots. The tenderer will be awarded the combination of Lots for which the tenderer qualifies, and the others will be considered for award to second lowest the tenderers.

OPTION 2

Stima DT Sacco will consider all possible combinations of won Lots [contract(s)] and determine the combinations with the lowest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combinations provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

5 Alternative Tenders (ITT 15.1)- Not Applicable

An alternative if permitted under ITT 13.1, will be evaluated as follows:

Stima DT Sacco shall consider Tenders offered for alternatives as specified in Part 2- Stima DT Sacco requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

6 MARGIN OF P R E F E R E N C E - Not Applicable

Apply Margin of Preference, if so allowed to all evaluated and accepted tender as follows.

6.1 If the TDS so specifies, Stima DT Sacco will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of foreign tenderers, where the percentage of shareholding of Kenyan citizens is less than fifty-one percent (51%).

6.2 Contractors applying for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractor's qualifies for a margin of preference.

6.3 After Tenders have been received and reviewed by the Procuring Entity, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into the following groups:

Group A: tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of over fifty one percent (51%).

Group B: tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty one percent (51%).

6.4 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award. If a tender from Group B is the lowest, an amount equal to the percentage indicated

in Item 3.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group B and the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group B based on the first evaluation price shall be selected.

7 Post qualification and Contract award (ITT 39), more specifically,

In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.

In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.

The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shillings .

Minimum average annual construction turnover of Kenya Shillings [insert amount], equivalent calculated as total certified payments received for contracts in progress and/or completed within the last _____ [insert of year] years.

At least _____ (insert number) of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or subcontractor each of minimum value Kenya shillings _____ equivalent.

Contractor's Representative and Key Personnel, which are specified as

Contractors key equipment listed on the table “Contractor's Equipment” below and more specifically

listed as [specify requirements for each lot as applicable] _____

Other conditions depending on their seriousness.

a) History of non-performing contracts:

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last _____ (specify years). The required information shall be furnished in the appropriate form.

b) Pending Litigation

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) Litigation History

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last _____ (Specify years). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the year's specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

EVALUATION CRITERIA

The received tenders will be evaluated in four stages as detailed below:

Stage 1: Compliance with Mandatory Requirements.

Stage 2: Technical Evaluation on Capacity to Deliver the Service

Stage 3: The Financial Evaluation

Stage 4: Recommendation of award

Stage 1: Compliance with Mandatory Requirements.

The following mandatory requirements must be met notwithstanding other requirements in the tender document:

This stage shall be evaluated on a PASS/FAIL basis.

DOCUMENTS TO BE SUBMITTED		PASS/FAIL
1.	Submission of 1 Original and 1 copy of Tender document MUST be paginated/ serialized /Numbered sequentially on all pages including attachments from the beginning of the document to the end. This includes ALL the attachments submitted by the bidder and ALL the pages already paginated by Stima DT Sacco.	
2.	Power of attorney/ Authorization Letter, Giving the name of person who has been authorized to submit/execute this agreement as a binding document and this person should sign all the documents related to this tender	
3.	Confirmation of Directors- CR12 for limited companies (This should be the one issued within three months to the tender closing date), CR.13 for partnerships or National Identity card/Passport for sole proprietor.	
4.	Copy of Certificate of Incorporation/Business Registration	
5.	Submission of Valid Tax compliance certificate (Expired tax compliance certificates will not be accepted) or a tax exemption certificate from KRA	
6.	Submission of Original tender security of kshs 50,000.00 in form of unconditional bank guarantee from a reputable bank registered in Kenya and regulated by the Central Bank valid for 120 days from the date of tender opening. Validity period is from the date of tender opening	
7.	Duly filled and signed Form of Tender in the format provided in the tender document	
8.	Dully filled and signed Confidential Business Questionnaire in the form or format provided in the tender document	
9.	Previous experience of the bidder in similar assignments to organizations with more than 100 staff	
10.	Attach certified Audited Accounts for two financial years (2020 and 2021)	

Bidders will be required to meet all the mandatory requirements to qualify to proceed to the next stage on Technical Evaluation on Capacity to deliver the Service.

Note: Failure to submit any one of the above requirements will lead to disqualification or fail. Only those firms who pass in the mandatory stage will proceed to the technical capacity evaluation stage.

Stage 2: Technical Evaluation on Capacity to Deliver

No.	Description	Max Score
1.	Demonstrated experience and competency in conducting similar assignments and an understanding of the terms of reference.	10
2.	Organizations experience:	10
3.	At least 3 years' experience in similar assignments to organizations with more than 100 staff.	
4.	Staff Experience:	10
5.	Submission of valid CVs, academic qualifications, and relevant professional certifications of the proposed team leader and 2 other staff	
6.	Methodology and Work Plan:	20
7.	The quality and relevance of the proposed approach and methodology to be applied by the consultant.	
8.	This should include:	
9.	A comprehensive work-plan with proposed deliverables and timelines where applicable. (15mks)	
10.	Submission of literature of the system and tools to be provided (5mks)	
11.	Any other relevant Information (value addition) to the assignment. (5mks)	
12.	Compliance to technical requirements as per the technical requirements in Section 3	50
	Total	100

Stage 3: Financial Evaluation

Financial evaluation shall involve:

- i. checking completeness of financial bids
- ii. Bidders who pass the technical stage will be ranked according to the prices submitted in the tender
- iii. Award shall be based on the lowest compliant bidder.
- iv. Consideration of the prevailing market price and value for money

Due Diligence:

Stima DT Sacco shall prior to the award of the tender determine to its satisfaction whether the selected bids will qualify to perform the contract satisfactorily by carrying out due diligence as required.

Stage 4: Recommendation of Award

The Lowest Evaluated bidder will be recommended for consideration of award of the Tender.

1. SECTION IV - TENDERING FORMS

1. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

- i) *The Tenderer must prepare this Form of Tender on stationery with its letter head clearly showing the Tenderer's complete name and business address.*
- ii) *All italicized text is to help Tenderer in preparing this form.*
- iii) *Tenderer must complete and sign TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE, CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER, all attached to this Form of Tender*
- iv) *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*
 - *Tenderer's Eligibility-Confidential Business Questionnaire*
 - *Certificate of Independent Tender Determination*
 - *Self-Declaration of the Tenderer*

Date of this Tender submission..... [insert date (as day, month and year) of Tender submission] **ITT No.:** [insert number of ITT process]

To: [Insert complete name of procuring entity]

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with Instructions to Tenderers (ITT 10);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;
- c) **Tender-Securing Declaration:** We have not been debarred by the Authority based on execution of a Tender- Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 28.8;
- d) **Conformity:** We offer to provide design, supply and installation services in conformity with the tendering document of the following: [insert a brief description of the IS Design, Supply and Installation Services];
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is: [Insert one of the options below as appropriate]
[Option 1, in case of one lot:] Total price is: [insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];
Or
[Option 2, in case of multiple lots:] (a) Total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and (b) 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) **Discounts:** 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:

Tender Validity Period: Our Tender shall be valid for the period specified in TDS ITT 21 (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS ITT 24 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- g) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- h) **One Tender per Tenderer:** We are not submitting any other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member, and meet the requirements of ITT 4.1.3, other than alternative Tenders submitted in accordance with ITT 15;
- i) **Suspension and Debarment:** 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 the PPRA. Further, we are not in eligible under Laws of Kenya or official regulations or pursuant to a decision of the United Nations Security Council;
- j) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT 4.1.6];*
- k) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering 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.”)

- l) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- m) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- n) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

Name of the Tenderer: **[insert complete name of person signing the Tender]*

- o) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the

“Certificate of Independent Tender Determination” attached below.

- p) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from www.pppra.go.ke during the procurement process and the execution of any resulting contract.
- q) We, the Tenderer, have fully completed and signed the following Forms as part of our Tender:
- i) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
 - ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
 - iii) Self-Declaration of the Tenderer–to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
 - iv) Declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as in formed in “**Appendix1-Fraud and Corruption**” attached to the Form of Tender.

Name of the Tenderer: *.....[insert complete name of person signing the Tender]

Name of the person duly authorized to sign the Tender on behalf of the Tenderer:
.....**[insert complete name of person duly authorized to sign the Tender]

Title of the person signing the Tender: [insert complete title of the person signing the

Tender] **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]

2. **TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE**

1. ***Instruction to Tenderer***

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV*. Tenderer is further reminded that it is an offence to give false information on this Form.

a) ***Tenderer's details***

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (<i>postal and physical addresses, email, and telephone number</i>) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address (<i>postal and physical addresses, email, and telephone number</i>) of state which stock exchange	

General and Specific Details

b) **Sole Proprietor**, provide the following details.

Name in full _____ Age _____

Nationality _____ Country of Origin _____

Citizenship _____

c) **Partnership**, provide the following details

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				

3				
---	--	--	--	--

d) **Registered Company**, provide the following details.

i) Private or public Company

ii) State the nominal and issued capital of the Company: -
Nominal Kenya Shillings (Equivalent)

Issued Kenya Shillings (Equivalent)

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

(e) **DISCLOSURE OF INTEREST-Interest of the Firm in the Procuring Entity.**

i) Are there any person/persons in.....(Name of Procuring Entity) who has/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

ii) **Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

f) Certification

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission. Full Name_____ Title or Designation_

(Signature)

(Date)

OTHER FORMS

FORM OF TENDER SECURITY- [Option 1–Demand Bank Guarantee]

Beneficiary: Request for Tenders No: _____

Date:

TENDER GUARANTEE No.:

Guarantor: _____

We have been informed that (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of under Request for Tenders No. ("the ITT").

Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender 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 Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
- b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.

This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender 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.

[signature(s)]

FORM PER - 1

Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

Contractor' Representative and Key Personnel

1.	Title of position: Contractor's Representative	
	Name of candidate:	
	Duration of appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
2.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
3.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
4.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
5.	Title of position: [insert title]	

Name of candidate	
Duration of appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]

FORM PER-2:

Resume and Declaration - Contractor's Representative and Key Personnel.

Name of Tenderer		
Position [#1]: <i>[title of position from Form PER-1]</i>		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Details	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present Procuring Entity:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

DECLARATION

I, the undersigned.....[insert either “Contractor's Representative” or “Key Personnel” as applicable], certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:-

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available to work on this contract]</i>
Time commitment:	<i>[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Tender evaluation;
- b) result in my disqualification from participating in the Tender;
- c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel: _____ [insert name]

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Tenderer:

Signature: _____

Date: (day month year): _____

FORM FIN-3.4:**Current Contract Commitments / Works in Progress**

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

No .	Name of Contract	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month]
1					
2					
3					
4					
5					

FORM EXP-4.1

General Construction Experience

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

_____ Page __ of _____ pages

Contract Identification			
Starting	Ending		Role of
Year	Year		Tenderer
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ _____	

FORM EXP -4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor	Member in JV	Management Contractor	Subcontractor
			<input type="checkbox"/>	<input type="checkbox"/>
Total Contract Amount				Kenya Shilling _____
If member in a JV or subcontractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:				
1. Amount				
2. Physical size of required works items				
3. Complexity				
4. Methods/Technology				
5. Construction rate for key activities				
6. Other Characteristics				

FORMEXP-4.2(b)

Construction Experience in Key Activities

Tenderer's Name: _____

Date: __

Tenderer's JV Member Name: _____

Sub-contractor's Name¹ (as per ITT35): _____

ITT No. and title: _____

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: _____

Information				
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Subcontractor
Total Contract Amount	Kenya Shilling <input type="checkbox"/>			
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				

¹ *If applicable*

Year 2			
Year 3			
Year 4			
Procuring Entity's Name:			
Address: Telephone/fax number E-mail:			

	Information
Description of the key activities in accordance with SubFactor 4.2(b) of Section III:	
1	
2	
3	
4	
5	

PRICED ACTIVITY SCHEDULE

Item	Description	Quantity	Unit price	Total Price
1	Anonymous Whistle blower Hotline service	Activity		
2	16% VAT			
3	TOTAL TENDER PRICE			

LETTER OF AWARD

[Form head paper of the Procuring Entity]

.....*[date]*
e]

To:.....*[name and address of the Service Provider]*

This is to notify you that your Tender dated*[date]*forexecutionofthe*[nameoftheContractandidentificationnumber, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us (Procuring Entity).

You are requested to furnish the Performance Security within 28days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the tender document.

Please return the attached Contract dully signed

AuthorizedSignature:.....

....
.....
....

Name and Title of

Signatory:..... Name of

Agency:.....

Attachment:
Contract

FORM OF CONTRACT

[Form head paper of the Procuring Entity] **LUMP SUM REMUNERATION**

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

ote: *In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: “... (herein after called the “Procuring Entity”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to Stima DT Sacco for all the Service Provider’s obligations under this Contract, namely, *[name of Service Provider]* and *[name of Service Provider]* (herein after called the “Service Provider”).]*

WHEREAS

- a) Stima DT Sacco has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the “Services”);
- b) the Service Provider, having represented to Stima DT Sacco that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
 - a) The Form of Acceptance;
 - b) The Service Provider's Tender
 - c) The Special Conditions of Contract;
 - d) The General Conditions of Contract;
 - e) The Specifications;
 - f) The Priced Activity Schedule; and
 - g) The following Appendices: [**Note:** *If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.*]

Appendix A: Description of the Services

Appendix B: Schedule of Payments

Appendix C: Subcontractors

Appendix D: Breakdown of Contract Price

Appendix E: Services and Facilities Provided by the Procuring Entity

2. The mutual rights and obligations of Stima DT Sacco and the Service Provider shall be as set forth in the Contract, in particular:

- a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and

b) Stima DT Sacco shall make payments to the Service Provider in accordance with the provisions of the Contract.

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

For and on behalf of _____ *[name of Procuring Entity]*

_____ *[Authorized Representative]*

For and on behalf of *[name of Service Provider]*

_____ *[Authorized Representative]*

[Note :If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]

For and on behalf of each of the Members of the Service Provider

..... *[name of member]*

..... *[Authorized Representative]*

..... *[name of member]*

..... *[Authorized Representative]*

PART II – PROCURING ENTITY'S REQUIREMENTS

SECTION V – ACTIVITY SCHEDULE

A. SCHEDULE OF REQUIREMENTS

1.1. Background

Stima DT Sacco is a Savings and Credit Cooperative (Sacco) that was established in 1974 to facilitate savings and provide affordable credit to its members derived from all sectors of the economy.

The Sacco is a deposit-taking financial institution licensed by SASRA. The Sacco membership has grown significantly with its members drawn from all sectors of the economy. The current membership is around 150,000 members with an asset base of around Kshs. 46.5 billion as of April 2022. The Sacco has 9 branches and one subsidiary spread across the country.

Considering the growth and size of the Sacco in terms of the Human capital, asset base, revenue and transaction volume, and technological investment, the Sacco continues to be exposed to various risks.

It is therefore important that through the practice of good corporate governance and coupled with the need to comply with the Anti Bribery Act of 2016, the Sacco establishes a good system of internal controls that will seek to detect, and deter (prevent), any risks and threats to which the Sacco may be exposed to, from workplace malpractices and financial irregularities perpetrated by internal and external stakeholders to active frauds committed by employees at all levels of management.

In view of the above and also as part of improving the current Fraud Risk Management Program, **Stima DT Sacco Society Ltd is seeking to establish and operationalize an outsourced whistleblower hotline.** The need for a whistleblower hotline has been fronted by the fact that fraud and misconduct are more likely to be detected by a tip off than by any other method¹.

It is expected that the whistleblower hotline will complement the current fraud risk management program by providing an anonymous mechanism for reporting that allows any person within or without the Sacco report such misconducts without fear of reprisal.

1.2. Purpose of Whistleblower Hotline

The purpose of the hotline is to provide a confidential avenue to report inappropriate and unethical behavior such as fraud, waste, abuse, misconduct, or violations of Stima Sacco's policies or any laws or regulations.

1.3. Scope of Services

The services to be provided by the approved vendor will include establishing a Whistleblower Hotline channels for Stima Sacco which will include:

1. Providing a whistleblowing platform that provides various reporting channels which include and are not limited to confidential¹, partially anonymous², and anonymous reporting³.
2. Designing and establishing an online forum through which different types of complaints can be received i.e., web portal.
3. Provision of a toll-free complaint hotline mobile number. The mobile number should be able to receive local and international calls and SMSs at all times.
4. Provision of Post office address for receiving feedback from whistleblowers structured in a way to accommodate the subject of the complaint, the perpetrator details, incidence date, the amount involved, and if possible, the transactions references.
5. Designing a staffing plan to receive calls via the Hotline, 24 hours per day, and 7 days per week (24x7x365). The exact volume of complaints that will be called into the Hotline is unknown.
6. Ensuring and providing the capacity to answer multiple calls simultaneously, with the capacity to record messages and complaints.
7. Deployment of employees who are professional, knowledgeable, and courteous in the receipt of all calls. Staff receiving calls should have investigative interviewing experience.
8. Accurately capturing information, in writing, about the caller, the date and time of the call, the subject of the complaint, the nature of the complaint, and the substance of the complaint.
9. Provide whistleblowers with a reference, case, or identification number should they wish to seek feedback from the service provider regarding possible information supplied to the service provider by the client in response to their original reporting.
10. Staff should be knowledgeable in the field of financial services and be able to discern calls of an urgent nature and be able to refer the caller accordingly.
11. Creating a secure, confidential database into which information detailing the substance of the complaints is recorded.
12. Providing reports about the complaints that are received online and through the Hotline, such as statistical reports and summary reports, and export of data, charts, and tables to other applications.
13. Providing a confidential, secure method of transmitting complaint information to Stima Sacco, in electronic format, immediately upon receipt of each complaint.

1.4. Approach and Methodology

It is expected that the service provider will give a detailed methodology in line with the prescribed scope and objectives. Among the key elements to be highlighted here include:

- a) The overarching methodological framework of the assignment
- b) Expected data collection and analysis methods, with descriptions of any instruments to be used to collect the required information.
- c) The process for verifying or validating the information received.
- d) The meetings or consultations or other interactions expected with particular stakeholder groups
- e) How the various users/stakeholders in the evaluation are likely to be involved.

1.5. Expertise Required, Prequalification & Other Expectation:

In evaluating the relative merits of consultant firms bidding for the project, the evaluation panel will among other qualifications take into account:

- a) Demonstrated experience and competency in conducting similar assignments and an understanding of the terms of reference.
- b) Number of years of experience in conducting similar assignments.
- c) The quality and relevance of the proposed approach and methodology to be applied by the consultant.
- d) The quality and relevant experience of individual staff members proposed by the Consultant firm, including the leadership team.

1.6 The bidding firms should demonstrate the following:

- a) A Commitment to Integrity: the bidding firm adheres to the conduct, remain honest and transparent in all business transactions, and continually strives to improve the whistle-blowing hotline service. The service provider must:
 - i. Ensure that whistle-blowing hotline contact center staff are of a high ethical and professional standing.
 - ii. Ensure complete, accurate, and truthful reporting.
- b) A commitment to Efficiency: the bidding firm delivers high-quality information promptly and assists clients to maximize the professional and effective use of the whistle-blowing hotline.
The service provider must:
 - i. Perform services promptly;
 - ii. Ensure that whistle-blowing hotline contact center staff are professionally trained to produce high-quality reports;
 - iii. Provide the Sacco with customized service options;
 - iv. Record and securely store information received through all communication channels;
 - v. Advise clients on awareness and communications initiatives; and
 - vi. Continually improve service.
- c) A commitment to Protection: the provider should respect whistleblowers' anonymity and confidentiality, as applicable and appropriate, to prevent victimization and encourage the use of the whistle-blowing hotline.
The firm must:
 - i. Ensure the secrecy of whistle-blowing hotline contact center facilities.

- ii. Guarantee whistle-blowers' anonymity and confidentiality; and
- iii. Assure the confidentiality of communications received and reports delivered.

d) A commitment to Availability: The service provider should demonstrate the provision of easy and reliable access to the whistleblowing hotline through a variety of channels, twenty-four hours per day.

The firm must:

- i. Guarantee the sustainability of the service.
- ii. Provide a choice of user-friendly communication channels; and
- iii. Provide whistle-blowing hotline contact center staff capable of professional delivery on all aspects of agreements Sacco.

2.0 PERFORMANCE TECHNICAL SPECIFICATIONS

The scope of works shall cover all Stima Sacco operational areas and interests. The details of the required anonymous whistle blower services shall address the following among others:

#	Particular Specification	Bidders Response	
		Yes	No
1.	Must be web-based – The solution should be based on the internet and available to anyone with an internet connection.		
2.	Must support multiple channels of reporting – The reporting must be supported by multiple channels of reporting i.e., Mobile, Email, Telephone, web forms etc. The solution should allow for mobile reporting either through text or USSD.		
3.	Must be private and secure in terms of hosting and Management. The solution should be managed locally. All communication should be highly secure and encrypted through an SSL certificate.		
4.	Must allow full anonymous whistleblowing and reporting. – The solution must enable anonymous whistle-blower’s report on any issues of corruption in a highly secure and anonymous manner. The solution should also give a whistle-blower the option of providing their contact information if required.		
5.	Must allow for dialogue and other feedback mechanisms with whistle-blowers – The solution should allow whistle-blowers communicate with the organization, attach necessary files and receive feedback and updates on their reports.		
6.	Must allow for the analysis of reports - The solution must allow for the analysis and distribution of the reports received through an elaborate workflow.		
7.	Must provide automated notifications and statistics. - The solution should provide automatic notifications, and generate relevant statistics downloadable in various formats such as HTML, Excel, and PDF etc.		
8.	Should come with 24/7 access, support, and maintenance. The solution should be accessible 24*7*365 days. Response time in case of any issues should not be more than 12hrs.		
9.	User and Technical training must be provided. Bidders must state schedule of services for provision of user and technical training on the solution for smooth operation and support		
10.	Documentation (Soft & Hard copy) - The solution should be well documented with both hard and soft copies available.		

11.	Provision of warranty period and services. - Warranty periods and service agreement should be indicated.		
12.	The system must support communication using at least two languages i.e., English and Kiswahili.		
13.	The system must have been used in at least TWO medium/Large institutions.		
14.	The system must be integrated with Microsoft outlook.		
15.	The system must support a case management tool that can be interfaced and is compatible with the system where reports and investigation reports can be handled centrally and shared with other intended personnel in a secure manner		
16.	The vendor should demonstrate/provide proof of independent assessments to provide assurance on security and Integrity of the system.		

A. DELIVERY SCHEDULE

Number	Description	Quantity	Delivery schedule (shipment)In Weeks/months from signing of the contract
1.0	Anonymous Whistle blower Hotline service	Activity	

**PART III – CONDITIONS OF
CONTRACT AND CONTRACT
FORMS**

SECTION VI - GENERAL CONDITIONS OF CONTRACT

A. General

1.1 Provisions

Definitions

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

- a) The Adjudicator is the person appointed jointly by Stima Sacco and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- c) “Completion Date” means the date of completion of the Services by the Service Provider as certified by Stima Sacco
- d) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- e) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- f) “Day works” means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- g) “Stima Sacco” means Stima Sacco or party who employs the Service Provider
- h) “Foreign Currency” means any currency other than the currency of Kenya;
- i) “GCC” means these General Conditions of Contract;
- j) “Government ” means the Government of Kenya;
- k) “Local Currency ” means Kenya shilling;
- l) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards Stima Sacco under this Contract;

- m) “Party” means Stima Sacco or the Service Provider, as the case maybe, and “Parties” means both of them;
- n) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part there of;
- o) “Service Provider” is a person or corporate body whose Tender to provide the Services has been accepted by Stima Sacco;
- p) “Service Provider's Tender” means the completed Tendering Document submitted by the Service Provider to Stima Sacco
- q) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- r) “Specifications” means the specifications of the service included in the Tendering Document submitted by the Service Provider to Stima Sacco
- s) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.
- t) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;
- u) “Public Procurement Regulatory Authority (PPRA)” shall mean the Government Agency responsible for oversight of public procurement.
- v) “Project Manager” shall the person appointed by Stima Sacco to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointed from time to time by Stima Sacco and notified to the Contractor.
- w) “Notice of Dissatisfaction” means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of Kenya.

1.3 Language

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

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

1.5 Location

The Services shall be performed at such locations as a respecified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as Stima Sacco may approve.

1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by Stima Sacco or the Service Provider may be taken or executed by the officials **specified in the SCC**.

1.7 Taxes and Duties

The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

2. Commencement, Completion, Modification, and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as maybe **stated in the SCC**.

2.2 Commencement of Services

2.2.1 Program

Before commencement of the Services, the Service Provider shall submit to Stima Sacco for approval a Program showing the general methods, arrangements order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.

2.2.2 Starting Date

The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.

2.3 Intended Completion Date

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

2.4 Modification

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

2.4.1 Value Engineering

The Service Provider may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

- a) The proposed change(s), and a description of the difference to the existing contract requirements;
- b) A full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs, if applicable) Stima Sacco may incur in implementing the value engineering proposal; and
- c) A description of any effect(s) of the change on performance/functionality.

Stima Sacco may accept the value engineering proposal if the proposal demonstrates benefits that:

- a) accelerates the delivery period; or
- b) reduces the Contract Price or the lifecycle costs to Stima Sacco; or
- c) improves the quality, efficiency, safety or sustainability of the services; or
- d) yields any other benefits to Stima Sacco, without compromising the necessary functions of the Facilities.

If the value engineering proposal is approved by Stima Sacco and results in:

- a) a reduction of the Contract Price; the amount to be paid to the Service Provider shall be the percentage specified in the **SCC** of the reduction in the Contract Price; or
- b) an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in (a) to (d) above, the

amount to be paid to the Service Provider shall be the full increase in the Contract Price.

2.5 Force Majeure

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

2.5.2 No Breach of Contract

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

2.5.3 Extension of Time

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

2.5.4 Payments

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

2.6 Termination

2.6.1 By Stima Sacco

Stima Sacco may terminate this Contract, by not less than thirty(30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs(a)through (d) of this Sub-Clause 2.6.1:

- a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;

- b) if the Service Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of Stima Sacco has engaged in Fraud and Corruption, as defined in paragraph 2.2a. of Attachment 1 to the GCC, in competing for or in executing the Contract

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to Stima Sacco, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- a) If Stima Sacco fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Payment up on Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, Stima Sacco shall make the following payments to the Service Provider:

- a) Remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- b) Except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

3 Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to Stima Sacco, and shall at all times support and

safeguard Stima Sacco's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contractor the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contractor to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project

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

3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees' inactive duty or on any type of leave, to perform any activity under this Contract;
- c) After the termination of this Contract, such other activities as may be **specified in the SCC.**

3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or Stima

Sacco's business or operations without the prior written consent of Stima Sacco.

- 3.4 **The Service Provider** (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Sub contractors', as the case may be) own cost but on terms and conditions approved by Stima Sacco, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at Stima Sacco's request, shall provide evidence to Stima Sacco showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Service Provider's Actions Requiring Stima Sacco's Prior Approval

The Service Provider shall obtain Stima Sacco's prior approval in writing before taking any of the following actions:

- a) Entering into a subcontract for the performance of any part of the Services,
- b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- c) changing the Program of activities; and
- d) Any other action that may be **specified in the SCC**.

- 3.6 **Reporting Obligations** The Service Provider shall submit to Stima Sacco the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

- 3.7 **Documents Prepared by the Service Provider to Be the Property of Stima Sacco** All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of Stima Sacco, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to Stima Sacco, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to Stima Sacco at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. Stima Sacco

may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, Stima Sacco shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

3.8.3 Lack of performance penalty If the Service Provider has not corrected a Defect within the time specified in Stima Sacco's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC.**

3.9 Performance Security

The Service Provider shall provide the Performance Security to Stima Sacco no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to Stima Sacco, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

3.10 Fraud and Corruption

Stima Sacco requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. Stima Sacco requires the Service Provider 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 tendering 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.

3.11 Sustainable Procurement

The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the **SCC.**

4 Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix Care hereby approved by Stima Sacco.

4.2 Removal and/or Replacement of Personnel

- a) Except as Stima Sacco may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If Stima Sacco finds that any of the Personnel have (i) committed serious misconduct
or
have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at Stima Sacco's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to Stima Sacco.
- c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5 Obligations of Stima Sacco

5.1 Assistance and Exemptions

Stima Sacco shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC**.

5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding

adjustments shall be made to the amounts referred to in SubClauses 6.2(a) or (b), as the case may be.

5.3 Services and Facilities

Stima Sacco shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6 Payments to the Service Provider

6.1 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lumpsum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in SubClause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.

6.2 Contract Price

- a) The price payable is **set forth in the SCC**.
- b) Price may be payable in foreign currency, if so allowed in this document.

6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lumpsum price is provided in Appendices D and E.

6.3.2 **If the SCC so specify**, the service provider shall be paid performance incentive compensation asset out in the Performance Incentive Compensation appendix.

6.3.3 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$.

6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies)

shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to Stima Sacco specifying the amount due.

6.5 Interest on Delayed Payments

If Stima Sacco has delayed payments beyond thirty (30) days after the due date stated in the

SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in **the SCC**.

6.6 Price Adjustment

6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**.

If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment fact or to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency: **$P_c = A_c + B_c L_{mc} / L_{oc} + C_c I_{mc} / I_{oc}$** Where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.

A_c , B_c and C_c are coefficients specified in the **SCC**, representing: A_c the non-adjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and L_{mc} is the index prevailing at the first day of the month of the corresponding invoiced ate and L_{oc} is the index prevailing 28 days before Tender opening for labor; both in the specific currency “c”. I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} is the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of p_n for the formula of the relevant currency. Z_o is the number of units of Kenya Shillings of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account to fall changes in cost due to fluctuations in costs.

6.7 Day works

6.7.1 If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when Stima Sacco has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Day works shall be recorded by the Service Provider on forms approved by Stima Sacco. Each completed form shall be verified and signed by Stima Sacco representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Day works subject to obtaining signed Day works forms as indicated in Sub-Clause 6.7.2

7 Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by Stima Sacco shall be as **indicated in the SCC**. Stima Sacco shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. Stima Sacco may instruct the Service Provider to search for a Defect and to uncover and test any service that Stima Sacco considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

Correction of Defects, and Lack of Performance Penalty

- a) Stima Sacco shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by Stima Sacco's notice.
- c) If the Service Provider has not corrected a Defect within the time specified in Stima Sacco's notice, Stima Sacco will assess the cost of having the Defect corrected, the Service Provider will pay this amount and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8 Settlement of Disputes

8.1 Contractor's Claims

8.1.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

8.1.2 If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and Stima Sacco shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clauses shall apply.

8.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all s relevant to such event or circumstance.

8.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting Stima Sacco's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and /or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

8.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and /or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

8.1.5.1 This fully detailed claim shall be considered as interim;

- a) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and /or amount claimed, and such further particulars as the Project Manager may reasonably require; and The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

8.1.6 Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

8.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub Clause

3.5[Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

8.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

8.1.9 If the Project Manager does not respond within the time framed in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 8.2 [Matters that may be referred to arbitration].

8.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

8.2 Matters that may be referred to arbitration

8.2.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Services or abandonment of the Services or termination of the Contract by either party:

- a) The appointment of a replacement Project Manager upon the said person ceasing to act.
- b) Whether or not the issue of an instruction by the Project Manager is empowered by these

Conditions

- c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- e) Any dispute arising in respect of war risks or war damage.
- f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless Stima Sacco and the Contractor agree otherwise in writing.

8.3 Amicable Settlement

8.3.1 Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

8.4 Arbitration

8.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

8.4.2 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

8.4.3 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

8.4.4 Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.

8.4.5 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

8.5 Arbitration with proceedings

- 8.5.1** In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions; a) Law Society of Kenya or
- b) Chartered Institute of Arbitrators (Kenya Branch)
- 8.5.2** The institution written to first by the aggrieved party shall take precedence over all other institutions.
- 8.5.3** The arbitration maybe on the construction of this Contractor on any matter or thing of what so ever nature arising there under or in connection there with, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to been titled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.
- 8.5.4** Provided that no arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 8.5.5** Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 8.5.6** The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 8.5.7** The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 8.5.8** The award of such Arbitrator shall be final and binding upon the parties.

8.6 Failure to Comply with Arbitrator's Decision

8.6.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

9.1 The Adjudicator

9.1.1 Should the Adjudicator resign or die, or should Stima Sacco and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by Stima Sacco and the Service Provider.

In case of disagreement between Stima Sacco and the Service Provider, within 30days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

9.2 The Adjudicator shall be paid by the hour at the rate **specified in the TDS and SCC**, together with reimbursable expenses of the type's **specified in the SCC**, and the cost shall be divided equally between Stima Sacco and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

A. SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Adjudicator is: In case of a dispute between the service provider and the employer, the same shall be resolved amicably between the parties in the first instance failure to which the dispute shall be referred for arbitration as per provisions of the Arbitration Act of 1995 before a single arbitrator to be agreed on by the parties and in failure of such an agreement by the Chairperson for the time being of the chartered institute of Arbitrators Kenya branch and any award given shall be final.
1.1(v)	Project Manager is : Internal Audit Manager
1.1(d)	The contract name is: <i>Provision Anonymous whistle blower Services</i>
1.1(g)	Procuring Entity is : <i>Stima DT Sacco Society Ltd.</i>
1.1(o)	The Service Provider is.....
1.4	The addresses are: Chief Executive Officer Stima Sacco Society Ltd P.O. BOX 75629-00200, Nairobi. E-Mail: Tenders@stima-sacco.com
1.6	The Authorized Representatives are: <i>For Stima Sacco:</i> Chief Executive Officer Stima Sacco Society Ltd P.O. BOX 75629-00200, Nairobi. E-Mail: Tenders@stima-sacco.com <i>For the Service Provider:</i> CEO for service provider
2.1	The date on which this Contract shall come into effect is: Immediately after signing the contract or as advised in writing during contract signing

2.2.2	The Starting Date for the commencement of Services is Immediately after signing the contract or as advised in writing during contract signing.
2.3	The Intended Completion Date is <i>The contract will run for a period of 30 days.</i>
2.4.1	If the value engineering proposal is approved by Stima Sacco the amount to be paid to the Service Provider shall be N/A

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
3.4	The risks and coverage by insurance shall be: As indicated in evaluation criteria
3.5(d)	The other actions are: As will be advised by project manager in writing
3.7	Restrictions on the use of documents prepared by the Service Provider are: All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of Stima Sacco, and the service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to Stima Sacco, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software.
3.8.1	The liquidated damages rate is <i>N/A</i> per day The maximum amount of liquidated damages for the whole contract is <i>N/A</i> percent of the final Contract Price.
3.8.3	The percentage to be used for the calculation of Lack of performance Penalty(ies) is <i>N/A</i>
5.1	The assistance and exemptions provided to the Service Provider are: Relevant to this Contract.
6.3.2	The performance incentive paid to the Service Provider shall be: <i>N/A</i>
6.4	Payments shall be: <ul style="list-style-type: none"> • <i>paid Monthly at the Monthly rate agreed in the price schedule and after approval for satisfactory performance.</i>
6.5	Payment shall be made within 30 days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within 60 days in the case of the final payment. The interest rate is <i>N/A</i> .
6.6.1	Price adjustment is <i>N/A</i> in accordance with Sub-Clause 6.6.

7.1	The principle and modalities of inspection of the Services by Stima Sacco are as follows: <i>By Inspection and Acceptance Committee</i> The Defects Liability Period is <i>N/A</i> .
9.1	The designated Appointing Authority for a new Adjudicator is <i>Both parties</i> .
9.2	The Adjudicator is : In case of a dispute between the service provider and the employer, the same shall be resolved amicably between the parties in the first instance failure to which the dispute shall be referred for arbitration as per provisions of the Arbitration Act of 1995 before a single arbitrator to be agreed on by the parties and in failure of such an agreement by the Chairperson for the time being of the chartered institute of Arbitrators Kenya branch and any award given shall be final.

C. APPENDICES

Appendix A - Description of the Services

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Stima Sacco, etc.

Appendix B - Schedule of Payments and Reporting Requirements

List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here "Not applicable."

Appendix C - Breakdown of Contract Price

List here the elements of cost used to arrive at the breakdown of the lump- sum price:

1. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).

2. Reimbursable expenditures.

This appendix will exclusively be used for determining remuneration for additional Services.

Appendix D - Services and Facilities Provided by Stima Sacco

D. FORMS

SECTION VIII -CONTRACT FORMS

PERFORMANCE SECURITY – (Unconditional Demand Bank Guarantee)
[Guarantor letterhead or SWIFT identifier code]

Beneficiary: _____ *[insert name and Address of Stima Sacco]*

Date: _____ *[Insert date of issue]*

PERFORMANCE GUARANTEE No.: _____

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

1. We have been informed that_(hereinafter called "the Applicant") has entered into Contract No. *dated* with the Beneficiary, for the execution of_ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. 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_(),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
4. it must be received by us at this office indicated above on or before that date.
- 5.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.”
5. gdemand 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..., and any demand for payment under

[Name of Authorized Official, signature(s) and seals/stamps]