



KenGen

KENYA ELECTRICITY GENERATING COMPANY LIMITED

KGn-GDD-016-2018

**TENDER FOR PROVISION OF INTERNET SERVICES FOR KENGEN
RIGS**

(OPEN NATIONAL)

**Kenya Electricity Generating Company Limited
Stima Plaza Phase III, Kolobot Road, Parklands
P.O. BOX 47936-00100
NAIROBI.**

Website: www.kengen.co.ke

February, 2018

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SECTION I - INVITATION TO TENDER

The Company invites sealed tenders from eligible candidates for the Provision of Internet Service for KenGen Rigs whose specifications are detailed in the Tender Document.

Interested eligible candidates may obtain further information from and inspect the Tender Documents during official working hours starting at the date of advert at the office of:

Supply Chain Director

Tel: (254) (020) 3666000

Email: tenders@kengen.co.ke; cc jgesaka@kengen.co.ke

where the tender document may be collected upon payment of a non-refundable fee of **KShs.1, 000.00** paid in cash or through a bankers cheque at any KenGen finance office. The document can also be viewed and downloaded from the website www.kengen.co.ke. Bidders who download the tender document from the website **are advised to forward their particulars to facilitate any subsequent tender clarifications and addenda.**

Bidders are advised from time to time to be checking the website for any uploaded further information on this tender.

Unless otherwise stated, tenders MUST be accompanied by a security in the format and amount specified in the tender documents and must be submitted in a plain sealed envelope and marked “**KGn-GDD-016-2018 - TENDER FOR PROVISION OF INTERNET SERVICES FOR KENGEN RIGS**” and addressed to:

Company Secretary & Legal Affairs Director

Kenya Electricity Generating Company Limited

10th Floor, KenGen Pension Plaza Phase II

Kolobot Road, Parklands

P O Box 47936 - 00100

NAIROBI, KENYA

On or before: **5th April 2018 at 10.00am**

There shall be a **MANDATORY SITE VISIT on.20th March 2018 at 10.00AM**. Briefing shall be at Olkaria II Conference Room from 10.15AM. Thereafter, all in attendance shall proceed to all the target sites. Contractors who arrive later than this time shall miss opportunity to visit the sites and KenGen engineer(s) shall not be available for late visits. Contractors shall meet their cost for the site visit including KWS park entry fees.

Tenders will be opened on **5th April 2018 at 10.30am** in the presence of the candidates’ representatives who choose to attend at KenGen Pension Plaza II Ground Floor, Tender Opening Room.

KenGen adheres to high standards of integrity in its business operations.

Report any unethical behavior immediately to the provided anonymous hotline service.

Call Toll Free: 0800722626 Free Fax: 00800 007788

Email: kengen@tip-offs.com Website: www.tip-offs.com

SUPPLY CHAIN MANAGER

SECTION II

INSTRUCTIONS TO TENDERERS

2.1 Eligible tenderers

- 2.1.1. This Invitation to tender is open to all tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the **date** of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2. The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.3. Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of tendering

- 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.2.2 The price to be charged for the tender document shall not exceed Kshs.1,000/= . Where the tenderers download documents from KenGen website, there shall be no cost.
- 2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

2.4 The Tender documents

2.4.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders

- i) Instructions to tenderers
- ii) General Conditions of Contract
- iii) Special Conditions of Contract
- iv) Schedule of Requirements
- v) Details of service
- vi) Form of tender
- vii) Price schedules
- viii) Contract form
- ix) Confidential business questionnaire form
- x) Tender security form
- xi) Performance security form

2.4.2. The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

2.4 Clarification of Documents

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

2.4.2. The procuring entity shall reply to any clarifications sought by the tenderer within **3 days** of receiving the request to enable the tenderer to make timely submission of its tender

2.5 Amendment of documents

2.5.1. At any time prior to the deadline for submission of tenders, the Procuring

entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.

2.5.2. All prospective tenderers who have obtained the tender documents will be notified of the amendment by email and such amendment will be binding on them.

2.5.3. In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.6 Language of tender

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

2.7 Documents Comprising the Tender

The tender prepared by the tenderer shall comprise the following Components:

(a) A Tender Form and a Price Schedule completed in accordance with paragraph 9, 10 and 11 below.

(b) Documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;

(c) Tender security furnished is in accordance with Clause 2.12

(d) Confidential business questionnaire

2.8 Form of Tender

2.8.1 The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

2.9 Tender Prices

2.9.1 The tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the services it proposes to provide under the contract.

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

2.9.3 Prices quoted **by** the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22.

2.9.4 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

2.9.5 Where contract price variation is allowed, the variation shall not exceed 25% of the original contract price.

2.9.6 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

2.10 Tender Currencies

2.10.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to in Instructions to Tenderers

2.11 Tenderers Eligibility and Qualifications.

2.11.1 Pursuant to Clause 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.11.2 The documentary evidence of the tenderers qualifications to perform the

contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

2.12 **Tender Security**

2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Invitation to tender.

2.12.2 The tender security shall be in the amount not exceeding **0.5 – 2 per cent of the tender price. (Indicate Specific Amount)**

2.12.2 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7

2.12.3 The tender security shall be denominated in a Kenya Shillings or in another freely convertible currency and shall be in the form of:

- a) A bank guarantee.
- b) Such insurance guarantee approved by the Public Procurement Oversight Authority.

2.12.4 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non responsive, pursuant to paragraph 2.20

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

2.12.6 The successful tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.29, and furnishing the performance security, pursuant to paragraph 2.30.

2.12.7 The tender security may be forfeited:

(a) If a tenderer **withdraws** its tender **during** the period of tender validity specified by the procuring entity on the Tender Form;

or

(b) In the case of a successful tenderer, if the tenderer fails:

(i) To sign the contract in accordance with paragraph 30

Or

(ii) To furnish performance security in accordance with paragraph 31.

(c) If the tenderer rejects, correction of an error in the tender.

2.13 Validity of Tenders

2.13.1 Tenders shall remain valid for **Ninety (90) days** or as specified in the invitation to tender after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as nonresponsive.

2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

2.14 Format and Signing of Tender

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

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

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

2.15 Sealing and Marking of Tenders

2.15.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The Envelopes shall then be sealed in an outer envelope.

The inner and outer envelopes shall:

(a) be addressed to the Procuring entity at the address given in the invitation to tender

(b) bear, tender number and name in the invitation to tender and the words: “DO NOT OPEN BEFORE **5th April 2018 at 10.00am**”

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

2.15.4 If the outer envelope is not sealed and marked as required by paragraph 2.15.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

2.16 Deadline for Submission of Tenders

2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 no later than **5th April 2018 at 10.00am**

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

2.17 Modification and withdrawal of tenders

2.17.1 The tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification, including

substitution or withdrawal of the tender's is received by the procuring entity prior to the deadline prescribed for the submission of tenders.

2.17.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by email, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

2.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.7.

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

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

2.18 Opening of Tenders

2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **5th April 2018 at 10.30am** and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

2.18.4 The procuring entity will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

2.19 Clarification of tenders

2.19.1 To assist in the examination, evaluation and comparison of tenders the procuring entity may at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance shall be sought, offered, or permitted.

2.19.2 Any effort by the tenderer to influence the procuring entity in the procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers tender.

2.20 Preliminary Examination and Responsiveness

2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.

2.20.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.

2.20.3 The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.20.4 Prior to the detailed evaluation, pursuant to paragraph 23, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.20.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

2.21 Conversion to a single currency

2.21.1 Where other currencies are used, the procuring entity will convert those currencies to Kenya shillings using the selling exchange rate on the date of

tender closing provided by the central bank of Kenya.

2.22 Evaluation and comparison of tenders.

2.22.1 The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.22.2 The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services.

2.22.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.4 and in the technical specifications:

(a) Operational plan proposed in the tender;

(b) Deviations in payment schedule from that specified in the Special Conditions of Contract;

2.22.4 Pursuant to paragraph 2.23 the following evaluation methods will be applied:

(a) *Operational Plan.*

The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenders offering to perform longer than the procuring entity's required delivery time will be treated as non-responsive and rejected.

(b) *Deviation in payment schedule.*

Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

2.22.5 The tender evaluation committee shall evaluate the tender within fifteen (15) days from the date of opening the tender.

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

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing
- (d) Shall not be debarred from participating in public procurement.

2.23. Contacting the procuring entity

2.23.1 Subject to paragraph 2.19, no tenderer shall contact the procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

2.23.2 Any effort by a tenderer to influence the procuring entity in its decisions on tender evaluation tender comparison or contract award may result in the rejection of the tenderers tender.

2.24 Award of Contract

a) Post qualification

2.24.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.24.2 The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.

2.24.3 An affirmative determination will be a prerequisite for award of the contract

to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

b) Award Criteria

2.24.3 Subject to paragraph 2.29 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

2.24.4 The procuring entity reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.

2.24.5 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

2.25 Notification of award

2.25.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.

2.25.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.29. Simultaneously the other tenderers shall be notified that their tenders have not been successful.

2.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, the Procuring entity will promptly notify

each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

2.26 **Signing of Contract**

2.26.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.

2.26.2 Within **fifteen (15) days** of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

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

2.27 **Performance Security**

2.27.1 Within **fifteen (15) days** of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

2.27.2 Failure of the successful tenderer to comply with the requirement of paragraph 2.29 or paragraph 2.30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated or call for new tenders.

2.28 **Corrupt or Fraudulent Practices**

2.28.1 The Procuring entity requires that tenderers observe the highest standard of ethics during procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.28.2 The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

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

Appendix to instructions to tenderers

The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.1 Eligible tenderers	This is an Open National tender.
2.10 Tender Currencies	All prices shall be quoted in Kenya Shillings.
2.11 Tenderers Eligibility and Qualifications	Particulars of eligibility and qualifications documents of evidence required.
2.12 Tender Security	Tender security shall be Kenya Shillings One Hundred Thousand (100,000.00).

<p>2.22 Evaluation and comparison of tenders</p>	<p>A) Mandatory Evaluation Criteria</p> <ul style="list-style-type: none"> • Duly completed tender form • Duly completed price schedule • Valid Tax Compliance Certificate • Evidence of incorporation in the country of domicile i.e. Certificate of Incorporation/ Registration. • Mandatory site visit • Duly Filled Mandatory Business Questionnaire • Valid Communications Authority of Kenya license for Internet Service Provision • Manufacturer’s Authorization for use of equipment to be deployed. • Tender Security in the amount of KES 100,000.00 • The Tender validity period of 90 days from the date of tender closing. • Technical data sheets or catalogues showing conformity to the technical specifications. • Tender Security has to be valid for thirty (30) days beyond the validity of the tender i.e. 120 days from the date of tender closing. • Audited financial statements for the last two (2) years (2015 & 2016). • Pagination/serialization of all pages of the bid document. • All items must be quoted in each schedule to be considered responsive. <p>B) Technical Evaluation Criteria</p> <ul style="list-style-type: none"> • Compliance to the technical specifications. Documentary evidence to prove that the equipment offered comply with the Technical Specifications must be provided. • Manufacturer’s guarantee attesting to the quality of the products offered. <p>C) Financial Evaluation Criteria</p> <ul style="list-style-type: none"> • Award shall be based on the lowest evaluated bidder
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2.24 Award of Contract	Award shall be based on the total lowest evaluated bidder.
2.27 Performance Security	Performance security shall be 10% of the contract value.

SECTION III GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

In this contract the following terms shall be interpreted as indicated:

- a) “The contract” means the agreement entered into between the Procuring entity and the tenderer as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- c) “The services” means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the Procuring entity under the Contract.
- d) “The Procuring entity” means the organization sourcing for the services under this Contract.
- e) “The contractor means the individual or firm providing the services under this Contract.
- f) “GCC” means general conditions of contract contained in this section
- g) “SCC” means the special conditions of contract
- h) “Day” means calendar day

3.2 Application

These General Conditions shall apply to the extent that they are not superceded by provisions of other part of contract.

3.3 Standards

- 3.3.1 The services provided under this Contract shall conform to the 7 standards mentioned in the Schedule of requirements

3.5 **Patent Right's**

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

3.6 **Performance Security**

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

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

3.6.3 The performance security shall be denominated in the currency of the Contract or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of:

- a) A bank guarantee.
- b) Such insurance guarantee approved by the Public Procurement Oversight Authority.

3.6.4 The performance security will be discharged by the procuring entity and returned to the candidate not later than thirty (30) days following the date of completion of the tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

3.7 **Inspections and Tests**

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

3.7.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to

drawings and production data shall be furnished to the inspectors at no charge to the Procuring entity.

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

3.7.4 Nothing in paragraph 3.7 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.8 Payment

3.8.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in SCC

3.9 Prices

Prices charged by the contractor for services performed under the Contract shall not, with the exception of any Price adjustments authorized in SCC, vary from the prices by the tenderer in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

3.10 Assignment

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

3.10 Termination for Default

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

- a) if the tenderer fails to provide any or all of the services within the period(s) specified in the Contract or within any extension thereof granted by the Procuring entity.
- b) if the tenderer fails to perform any other obligation(s) under the Contract.

- c) if the tenderer, in the judgment of the Procuring entity, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar services.

3.12 Termination of insolvency

The procuring entity may at the any time terminate the contract by giving written notice to the contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

3.13 Termination for convenience

3.13.1 The procuring entity by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entity's convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

3.13.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor an agreed amount for partially completed services.

3.14 Resolution of disputes

The procuring entity's and the contractor shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract.

If after thirty (30) days from the commencement of such informal

negotiations both parties have been unable to resolve amicably a contract dispute either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

3.15 Governing Language

The contract shall be written in the English language. All correspondence and other documents pertaining to the contract, which are exchanged by the parties, shall be written in the same language.

3.16 Force Majeure

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

3.17 Applicable Law.

The contract shall be interpreted in accordance with the laws of Kenya unless otherwise specified in the SCC

3.18 Notices

Any notices given by one party to the other pursuant to this contract shall be sent to the other party by E-mail and confirmed in writing to the other party's address specified in the SCC

A notice shall be effective when delivered or on the notices effective date, whichever is later.

3.19 Taxes

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

3.19.2 Local Taxation

Nothing in the Contract shall relieve the Contractor and/or his Sub-Contractors from their responsibility to pay any taxes, statutory contributions and levies that may be levied on them in Kenya in respect of the Contract. The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes.

3.19.3 The Contractor shall be deemed to be familiar with the tax laws in the Employer's Country and satisfied themselves with the requirements for all taxes, statutory contributions and duties to which they may be subjected during the term of the Contract.

3.19.4 In instances where discussions are held between the Employer and the Contractor regarding tax matters, this shall not be deemed to constitute competent advice and hence does not absolve the Contractor of their responsibility in relation to due diligence on the tax issue as per 3.19.2 above.

Tax Deduction

3.19.5 If the Employer is required to make a tax deduction by Law, then the deduction shall be made from payments due to the Contractor and paid directly to the Kenya Revenue Authority. The Employer shall upon remitting the tax to Kenya Revenue Authority furnish the Contractor with the relevant tax deduction certificates.

3.19.6 Where the Contractor is paid directly by the Financiers and the Employer is not able to deduct tax, then the Contractor will be required to pay the tax deduction to Kenya Revenue Authority in the name of the Employer and furnish the Employer with an original receipt thereof as evidence of such payment. In absence of the said evidence, the Employer will not process any subsequent payments to the Contractor.

Tax Indemnity

3.19.7 The Contractor shall indemnify and hold the Employer harmless from and against any and all liabilities, which the Employer may incur for any reason of failure by the Contractor to comply with any tax laws arising from the execution of the Contract whether during the term of the Contract or after its expiry.

3.19.8 The Contractor warrants to pay the Employer (within fourteen (14) days of demand by the Employer), an amount equal to the loss, liability or cost which the Employer determines has been (directly or indirectly) suffered by the Employer for or on account of the Contractor's Tax liability arising from the Contract.

3.19.9 Where the amount in 3.19.8 above remains unpaid after the end of the fourteen (14) days moratorium, the Employer shall be entitled to compensation for financing charges.

SECTION IV

SPECIAL CONDITIONS OF CONTRACT

- 4.1 Special conditions of contract (SCC) shall supplement the general conditions of contract, wherever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.
- 4.2 Special conditions of contract with reference to the general conditions of contract.

General conditions of contract reference	Special conditions of contract
3.6 Performance Security	Performance security <ul style="list-style-type: none">• The Performance Security shall be in the amount of 10% of the Contract Price
3.8 Payment	Payment Terms and Conditions KenGen's payment terms are 30 days upon receipt of certified invoices and delivery notes confirming that

<p>3.9 Prices</p>	<p>Prices charged by the contractor for services performed under the Contract shall not, with the exception of any Price adjustments authorized in SCC , vary from the prices by the tenderer in its tender or in the procuring entity’s request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.</p>
<p>3.14.1 Resolution of disputes</p>	<p><i>Arbitration where necessary shall be by the Chartered Institute of Arbitrators Kenya Chapter or other International body.</i></p>
<p>3.17 Applicable Law</p>	<p>The contract shall be interpreted in accordance with the laws of Kenya</p>

SECTION V
SCHEDULE OF REQUIREMENTS

No.	Description	Quantity
1.	Internet for KenGen Rigs	3 Sites
2.	Content Filtering Solution	3 Sites
3.	Technical Training with regard to the Internet Infrastructure Technology to be deployed to deliver the Internet Link	6 Staff
4.	Technical Training on the Web Content Filtering Device/Solution:	6 Staff
5.	Web Content Solution License (If Any)	Specify

SECTION VI

DESCRIPTION OF SERVICES

SPECIFICATIONS FOR INTERNET SERVICE AT KENGEN DRILLING RIGS

KenGen requires Internet connectivity at its three (3) Drilling Rigs situated at Olkaria Business Area, specifically located inside Hell's Gate National Park.

The required Internet speed will be minimum 7Mbps Downlink and minimum 1Mbps Uplink at all the **THREE (3) Drilling Rigs.**

The technical specifications of the internet links to be provided for each site will be as below:

1. INTERNET CONNECTION SPECIFICATIONS

No.	FEATURE / MINIMUM REQUIREMENT	BIDDER'S OFFER (must be filled)
(i)	Minimum 7Mbps Downlink Speed	
(ii)	Minimum 1Mbps Uplink Speed	
(iii)	The provider backbone network MUST be on full redundancy with at least 2 multiple networks e.g. TEAMS, SEACOM, EASSy, etc.	
(iv)	The Provider must provide Network monitoring tools to be used by KenGen staff to monitor the link & generate reports for internal use and SLA adherence.	
(v)	The Provider must provide for flexibility in bandwidth upgrade/downgrade	
(vi)	Provide a draft SLA that includes - deployment and commissioning, service delivery, incident management and guarantee 99.5 % quarterly network availability.	
(vii)	Provider must provide the project plan for the deployment and implementation of the proposed solution. This should include activities/tasks, timelines and deliverables	
(vii)	Evidence of THREE similar works done including current customer references.	

(viii)	Proof of technical competence.(Provide relevant professional certifications and experience of at least four Engineers/technical personnel)			
(ix)	Technical Training for 6 KenGen staff at Bidder's Training Center. This training will focus on:-			
	Training Specification	No. of Days	No. of Staff to be Trained	
(a)	<p>Technical Training with regard to the Internet Infrastructure Technology to be deployed to deliver the Internet Link. This shall be training at Bidder's Training Premises and the course content shall include, but will not be limited to;</p> <ul style="list-style-type: none"> (i) Link technology fundamentals (ii) Link installation, (iii) Link Configuration (iv) Link Commissioning (v) Link Troubleshooting (vi) Link Maintenance (vii) Training on Any other Activities that may be required to be done on the link from time to time so as to maintain uptime. 	4	6	
(b)	<p><u>Technical Training on the Web Content Filtering Device/Solution:-</u> This shall be training at Bidder's Training Premises and the course content shall include, but will not be limited to;</p>	4	6	

	<ul style="list-style-type: none"> (i) Installation (ii) Configuration (iii) Commissioning (iv) Troubleshooting (v) Routine Maintenance, Upgrade, Patching etc (vi) Training on Any other Activities that may be required to be done on the Device/Solution from time to time so as to avail & maintain uptime. 			
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3. WEB CONTENT FILTERING & THREAT PROTECTION SOLUTION

In addition to internet provision for the three sites, KenGen will also require a web content filtering & threat protection solution. This will enable ICT staff to configure different policies to ensure safe & responsible internet use in line with Company Policy. The solution to be provided for EACH of the sites MUST therefore have the below minimum features:

No.	FEATURE / MINIMUM REQUIREMENT	BIDDER'S OFFER (must be filled)
1	Malware Protection (Provides protection against malicious file downloads.)	
2	Application level (Layer 7) traffic analysis and shaping	
3	IDS / IPS (Provides alerts / prevention for suspicious network traffic)	
4	VPN(Secure, encrypted traffic between locations)	
5	Web Caching (Accelerating access to Web content by caching locally)	

6	Content filtering (top sites) Category based URL filtering using locally downloaded database	
7	Content filtering (full list)	
8	Web safe-search (Enforcing safe search option on common search engines)	
9	HTTPS scanning	
10	Block encrypted search	
11	Allow for Blacklist & Whitelist of URI patterns	
12	Anti-Virus Scanning	

SECTION VII

PRICE SCHEDULE OF SERVICES

No.	Description	Unit	Qty	Unit Price (KSH)	Total Price (KSH)
1.	Internet for KenGen Rigs	Site	3		
2.	Content Filtering Solution	Site	3		
3.	Technical Training (6 Staff) with regard to the Internet Infrastructure Technology to be deployed to deliver the Internet Link	Day	4		
4.	Technical Training (6 Staff) on the Web Content Filtering Device/Solution:	Day	4		
5.	Web Content Solution License (If Any)	Specify	10		
6.	Installation Charges (One off)	3 Sites	5		
7.	Any other Charges	Specify			
Total Cost					
Discount (%) if any					
Local Taxes e.g. Duty, VAT, GoK fees, etc					
GRAND TOTAL COST DDP (Delivery Duty Paid) to					

Olkaria site.	
Delivery period (Weeks)	

Tenderer's name (Company) _____

Signature & Rubber- stamp _____ Date _____

SECTION VIII

STANDARD FORMS

FORM OF TENDER

Date _____

Tender No. _____

To: _____

[name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. *[insert numbers]*.the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide the services (..... *(insert service description)*) in conformity with the said tender documents for the sum of *(total tender amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the services in accordance with the service delivery schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to _____ percent of the Contract Price for the due performance of the Contract in the form prescribed by*(Procuring entity)*.

4. We agree to abide by this Tender for a period of *[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us, subject to signing of the Contract by the parties.

6. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20 _____

[signature]

[in the capacity of]

Duly authorized to sign tender for an on behalf of _____

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

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

CONTRACT FORM

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

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

THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

Signed by _____ the _____ (for the Procuring entity)

Signed by _____ the _____ (for the tenderer)

in the presence of _____.

MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

Name of Applicant(s).....

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

Part 1 – General

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

(Applicable to Local suppliers only)

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

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

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

Part 2 (b) – Partnerships (if applicable)

Give details of partners as follows:

Full Names Nationality Citizenship Details Shares

1.
2.
Company Profile (Attach brochures)

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

Private or public
 Company Profile (Attach brochures or annual reports in case of public companies)
 State the nominal and issued capital of the Company
 Nominal KShs
 Issued KShs
 List of top ten (10) shareholders and distribution of shareholding in the company. Give details of all directors as follows:-

Full Names Nationality Citizenship Details Shares

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

Part 2 (d) – Debarment

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

Full Names
 Signature
 Dated this day of 2018.
 In the capacity of
 Duly authorized to sign Tender for and on behalf of

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

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

Full Names
 Signature
 Dated this day of 2018.
 In the capacity of
 Duly authorized to sign Tender for and on behalf of

Part 2 (f) – Criminal Offence

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

- a)
- b)

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

Signed
 For and on behalf of M/s
 In the capacity of

Dated this day of 2018.
 Suppliers' / Company's Official Rubber Stamp

Part 2 (g) – Conflict of Interest

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

- a)
- b)

For and on behalf of M/s
 In the capacity of

Dated thisday of2018
 Suppliers' / Company's Official Rubber Stamp

Part 2 (h) – Interest in the Firm:

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

(Title) (Signature) (Date)

Part 2(i) – Experience: NOTE: THIS SECTION IS MANDATORY ONLY IF IT FORMS PART OF TECHNICAL EVALUATION. IT'S ALSO NOT NECESSARY FOR ALREADY PRE-QUALIFIED OR DIRECT PROCUREMENT FIRMS. AGPO FIRMS ARE HOWEVER EXCLUDED ENTIRELY FROM FILLING IT.

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

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

Part 2 (i or j) – Bank account details:

AGPO firms must provide evidence from their bank that the account to which KenGen shall make payment has a youth or a woman or a PWD listed in the **CR12 form/partnership deed/sole proprietor certificate** as a MANDATORY signatory of that account,- **Sec.157 (11) of PPADA:**

Account No:.....Name of the person(s) in the CR12 form OR in the partnership deed
OR in the sole proprietor certificate...../.....

ID No(s):...../.....Signature and stamp of the authorized Banker Representative.....Date.....

Part 2(j or k) – Declaration

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

Full names

.....
 Signature.....

For and on behalf of M/s

In the capacity of

.....
 Dated thisday of2018.

Suppliers' / Company's Official Rubber Stamp

**TENDER SECURITY FORM
(To be on the Banks Letterhead)**

WHEREAS [name of the tenderer]

(hereinafter called “the tenderer”) has submitted its tender dated [date of submission of tender] for [name and/or description of the equipment] (hereinafter called “the Tender”)

KNOW ALL PEOPLE by these presents that **WE** of having our registered office at (hereinafter called “the Bank”), are bound unto the **Kenya Electricity Generating Company Limited** (hereinafter called “the Procuring entity”) in the sum of for which payment well and truly to be made to you, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this _day of _____20__

THE CONDITIONS of this obligation are:-

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

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

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

[Signature of the bank] _____

(Amend accordingly if provided by Insurance Company)

PERFORMANCE SECURITY FORM
(To be on the Banks Letterhead)

To:

[name of the Procuring entity]

WHEREAS.....[name of tenderer]

(hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. _____ [reference number of the contract] dated _____ 20 ____ to

supply.....

[Description services](Hereinafter called “the contract”)

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

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

NOW THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of *[amount of the guarantee in words and figures]*,

and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of *[amount of guarantee]* as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of 20

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

(Amend accordingly if provided by Insurance Company)