



**REPUBLIC OF KENYA**

**MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT**

**STATE DEPARTMENT FOR TRADE AND ENTERPRISE DEVELOPMENT**

**SELECTION OF CONSULTANTS**

**REQUEST FOR PROPOSALS (RFP)**

**TENDER TITLE: CONSULTANCY SERVICES FOR TECHNICAL ASSISTANCE TO KENYA TOWARDS TRADE NEGOTIATIONS AND IMPLEMENTATION OF TRADE AGREEMENTS**

**TENDER NUMBER: PRQ20210142**

**ISSUE DATE: 27 AUGUST 2021**

**DUE DATE: 20 SEPTEMBER 2021 (4.00 P.M. KENYA TIME)**

**FINANCED BY:**



*Growing Prosperity Through Trade*

**TRADEMARK EAST AFRICA (TMEA)**

## INVITATION TO TENDER INSTRUCTIONS

### CONTENTS

#### Introduction

1. [General](#)
2. [Acceptance of Tenders](#)

#### Instructions for Submitting a Tender

3. [Format of Your Tender](#)
4. [Part A Preliminary Requirements](#)
5. [Part B Executive Summary](#)
6. [Part C General & Technical Proposal](#)
7. [Part D Financial Proposal](#)
8. [Confirmation of Availability](#)
9. [Only One Proposal per Bidder](#)
10. [Government Tax Obligations](#)
11. [Evaluation Criteria & Process](#)
12. [Technical Evaluation](#)
13. [Financial Evaluation](#)
14. [Competitive Negotiation](#)
15. [Packaging and Delivery of Tenders](#)

#### Other Information

16. [Special Conditions](#)
17. [Terms of Reference](#)

#### Annexes

18. [Annex 1: Code of Ethics](#)
19. [Annex 2: Conflict of Interest Declaration Form](#)
20. [Annex 3: Confidentiality Agreement](#)
21. [Annex 4: Intellectual Property Agreement](#)
22. [Annex 5: Anti-Terrorism Financing Policy and Declaration](#)
23. [Annex 6: Organised Crime Policy and Declaration](#)
24. [Annex 7: Supplier Environmental and Social Standards Policy](#)
25. [Annex 8: Technical Bid Submission Form](#)
26. [Annex 9: Curriculum Vitae Template](#)
27. [Annex 10: Fair Price Declaration Form](#)
28. [Annex 11: Financial Bid Submission Form](#)
29. [Annex 12: Financial Proposal Pro-Forma Templates](#)
30. [Annex 13: Draft Contract Template](#)

## General

1. This Request for Proposal (RFP) and in particular the Instructions for Compiling and Submitting Your Tender are designed to help you produce a tender that is acceptable to TMEA as well as ensuring that tenders are given equal consideration. TMEA will select the most economically advantageous tender. It is essential, therefore, that you provide the information requested in the specific format and no other.
2. TMEA is not bound to accept the lowest price, or any, tender. We also reserve the right to request any, or all, bidders to clarify the bids submitted.

## Instructions for Compiling and Submitting your Tender

### 3. Format of Your Tender

Your tender should be submitted in English and be set out in four (4) main parts:

- Part A – Preliminary Requirements;
- Part B – Executive Summary;
- Part C – General and Technical; and
- Part D – Financial.

### 4. Part A Preliminary Requirements

Bidders are required to submit scanned copies of the below documents:

- Signed and stamped Code of Ethics (**Annex 1**) with all pages initialized;
- Signed and stamped Conflict of Interest (**Annex 2**) with all pages initialized;
- Signed and stamped Confidentiality Agreement (**Annex 3**) with all pages initialized;
- Signed and stamped Intellectual Property Form (**Annex 4**) with all pages initialized;
- Signed and stamped Anti-Terrorism Financing Policy and Declaration (**Annex 5**) with all pages initialized;
- Signed and stamped Organised Crime Policy and Declaration (**Annex 6**) with all pages initialized;
- Signed and stamped Supplier Environmental and Social Standards Policy (**Annex 7**) with all pages initialized; and
- Signed consortia/joint venture agreements or letters of intent (applicable to consortia/joint ventures) between your selected partners must be submitted.

Failure to submit the above requirements may lead to disqualification.

Parts A, B & C may be contained in one PDF document. However, the Financial Proposal (Part D) must be submitted as a **separate PDF document** to enable the Technical and Financial bids to be evaluated independently.

Please do not include any financial/ price information in Part A, B or C. Inclusion of any price information in Parts A, B or C shall lead to bid rejection.

## 5. Part B Executive Summary

This should be a brief overview of your tender covering how you intend to achieve the outputs and your assessment of the resources required.

## 6. Part C General and Technical Proposal

Your Technical submission should contain the following:

- a) Signed and stamped Technical Bid Submission Form (**Annex 8**);
- b) Where required, the firm's previous relevant experience should include the client's contact details, description of the assignment undertaken, start and end dates of each assignment;
- c) Technical Response (including method of implementation and your proposed quality assurance mechanisms);
- d) Where required, a list of the names and designation of all proposed experts/key personnel who will work on this project. Please clearly indicate the roles to be played by the personnel to match those requested for in the Terms of Reference; and
- e) Where required, the Curriculum Vitae (CVs) of proposed experts with information relevant to this project to support the proposed expert for this assignment. (**See Annex 9 for format**).

Bidders are advised to respond in line with or in reference to the scoring criteria as captured in Clause 12 of this RFP document.

## 7. Part D Financial Proposal

All prices must be submitted in **United States Dollars** and shall be inclusive of all applicable taxes.

Your financial bid should contain the following information:

- Signed and stamped Fair Price Declaration Form (**Annex 10**);
- Signed and stamped Financial Bid Submission Form (**Annex 11**); and
- Pricing details using the enclosed pro-formas. Besides completing proforma 1, bidders must complete proformas 2, 3 and 4 on a fees and expenses basis to demonstrate the cost breakdown of the milestone payments. Innovation is encouraged in the development and pricing of technical and commercial proposals (**See Annex 12 for Templates**). The financial proposal should not be combined with the technical proposal but should be submitted as a separate document. The financial proposal **MUST be in PDF and password protected.**

**Inclusion of any price information in Parts A, B or C shall lead to bid rejection.**

## 8. Confirmation of Availability

You must confirm that your proposed key personnel will be available to provide the required services for the duration of the contract.

## 9. Eligibility

- Applications are open only to reputable **Kenyan consultancy firms/consortiums**. Proposals submitted by individual consultants shall not be considered.
- The consultancy firms/consortiums MUST provide qualified personnel for all the experts required for the implementation of the project and matching all the professional skills and experience mentioned in the ToRs.
- In the case of a consortium or joint venture, firms must identify the lead partner and should attach supporting documentation detailing the agreement between all parties and working relationship. Agreement must be signed by all the parties.

## 10. Only One Proposal per Bidder

The bidder (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a bidder, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude the bidder's staff from participating as Key Experts and Non-Key Experts in more than one Proposal.

## 11. Government Tax Obligations

TMEA funds shall not be used to meet the cost of any customs duties, Value Added Tax (VAT) or any other taxes or fiscal charges imposed whatsoever by the Government whether directly or indirectly. The contract shall be domiciled in **Kenya** and Government of **Kenya** tax laws shall apply.

For evaluation purposes, the financial proposals **SHALL** be **net of taxes**. However, it's the responsibility of the bidders to include (a) all identifiable indirect local taxes in their financial proposals, such as sales taxes, excise taxes, VAT, or other similar charges applicable to contractual invoicing and (b) any additional indirect taxes on remuneration for services offered by non-resident staff in the beneficiary's country.

Bidders should clearly breakdown/separate the tax component in their financial proposals to facilitate evaluation of the financial proposals.

## 12. Evaluation Criteria and Process

In assessing the proposals submitted, the evaluation panel will use the Quality and Cost Based Selection (QCBS) selection as per sections 13 of this tender document.

## 13. Technical evaluation

The technical evaluation will be based on a scoring system marked out of a maximum score of **100 marks**. Only proposals that score a minimum of **70 marks** in this technical evaluation will be deemed to be "substantially responsive". Marks will be awarded according to the following matrix.

The detailed evaluation criteria are provided below:

	Evaluation Criteria	Maximum Score
<b>A</b>	<b>Proposed Firm's Experience (20 marks)</b>	
1.	Demonstrate at least 5 years' experience in supporting International Trade Negotiations, and preferably Free Trade Area or Bilateral Trade Agreements in the EAC, COMESA or Africa	5
2.	Demonstrate at least 5 years' experience working in regional integration work in the EAC, COMESA or Africa)	4
3.	Demonstrate experience and capacity to conduct multisectoral studies in the field of regional and international trade	2
4.	Demonstrate experience in impact assessment of trade agreements and ability to analyse huge trade data sets to inform trade negotiation	4
5.	Demonstrable competence in mobilization and management of the proposed key personnel and short-term technical assistance	3
6.	Demonstrable ability in management of trade programs	2
<b>B</b>	<b>Technical Proposal (10 marks)</b>	
1.	The firm has detailed their understanding of the Terms of Reference (TORs) using their own words for each major scope of work mentioned in the TORs	10
<b>C</b>	<b>Proposed Key Personnel Experience and Qualifications (70 marks)</b>	
<b>1.</b>	<b>Technical Expert</b>	
a)	Minimum of master's degree in the field of Economics, International Trade, Development Economics or export related qualifications ( <i>Submit a copy of master's degree certificate</i> );	5
b)	Minimum of 10 years' experience in trade negotiations including concluded Free Trade Area Agreements	4
c)	Demonstrable experience in dealing with integration issues in RECs such as EAC/COMESA/SADC	2
d)	Demonstrable technical abilities in designing and undertaking trade policy analytical studies to inform trade negotiations and position building. Provide previous studies undertaken and various tools used.	3
e)	Demonstrate the ability to keep track record and developing public policy documents including policy briefs	2
f)	Demonstrate understanding of the Kenyan economy structure particularly structure of Kenya's export sector at products and firm/industry level	2

	<b>Evaluation Criteria</b>	<b>Maximum Score</b>
g)	Demonstrable experience in the management of stakeholder consultative process to common course in general and in particular to formulate negotiations positions	2
<b>2. Trade Negotiations Expert</b>		
a)	Minimum of a master's degree in Economics, Business, International Trade, Development Economics or Export Business related qualifications <b>(Submit a copy of master's degree certificate)</b>	2
b)	At least 10 years of relevant professional experience in the Multilateral Trading System and Regional Integration	3
c)	Demonstrable experience in trade negotiations including Free Trade Area Agreements	3
d)	Demonstrable knowledge of the challenges and opportunities encountered by developing countries in the areas of Free Trade Agreement	2
e)	Demonstrable ability to work with various arms of government to common course	2
<b>3. Legal Expert</b>		
a)	Minimum Bachelor's Degree in Law <b>(Submit a copy of bachelor's degree certificate);</b>	2
b)	Proof of recognition as an Advocate of the High Court of Kenya	1
c)	At least 10 years relevant professional experience in the Multilateral Trading System and Regional Integration including drafting of trade agreements	1
d)	At least 5 years' work experience in public sector	2
e)	Demonstrate understanding of legislative procedures, particularly in Kenya	2
<b>4. Trade Economist</b>		
a)	Minimum Master's degree in Economics <b>(Submit a copy of master's degree certificate);</b>	1.5
b)	At least 10 years' experience in trade working on EAC, COMESA or SADC	2
c)	Demonstrable understanding of the Kenyan economy	1.5
<b>5. Statistician</b>		
a)	Minimum Master's degree in applied sciences/statistics/ mathematics <b>(Submit a copy of master's degree certificate)</b>	1.5
b)	At least 5 years demonstrable experience working on research projects involving statistical analysis. Provide previous research undertaken and various tools used.	2
c)	Demonstrable skills in trade related statistical analysis. For previous research project undertaken under (b), provide various statistical analysis tools used	1.5

	Evaluation Criteria	Maximum Score
<b>6.</b>	<b>Industry Expert</b>	
a)	Minimum Master’s degree in business administration or relevant social science field <b>(Submit a copy of master’s degree certificate)</b>	1.5
b)	At least 5 years demonstrable experience of work in Kenya’s industrial/manufacturing sector	2
c)	Demonstrable experience in research, industrial development programs or advisory at policy level	1.5
<b>7.</b>	<b>Agriculture/SPS expert</b>	
a)	At least a master’s degree in a field relevant to SPS, such as Food Safety, Plant Health, Animal Health or related fields. A PhD in crop protection will be an added <b>(Submit a copy of master’s and PhD degree certificate)</b>	3
b)	A minimum of 10 years consistent working experience in the field of SPS as it relates to international trade	2
c)	Demonstrable experience in negotiations of SPS issues are regional or multilateral level	2
d)	Experience with Kenya and/or USA SPS framework	2
e)	Demonstrate experience in management of stakeholder consultative process	1
<b>8.</b>	<b>Multilateral trade system expert</b>	
a)	Minimum Bachelor’s degree in Law, Economics or Business <b>(Submit a copy of bachelor’s degree certificate)</b>	1
b)	At least 10 years demonstrable experience in Kenya’s trade sector	2
c)	Demonstrate understanding of Multilateral Trade System	1
d)	Demonstrable ability to carry out trade research and development programs or advisory at policy level	1
	<b>GRAND TOTAL</b>	<b>100</b>

***Bidders who achieve the minimum technical score of 70 marks out of 100 marks will qualify for the financial evaluation.***

***Note: In the evaluation criteria where a firm or proposed key personnel are expected to demonstrate any aspect e.g. experience or understanding et.c, this must be submitted using the templates provided below.***



### Template 1: Previous Assignment Conducted

No. Assignment (e.g. Assignment 1, Assignment 2, Assignment 3)		
A.	Project Aspect	Details
1.	Project/assignment title	
2.	Brief description of the assignment	
3.	Organization/Client:	
4.	Supervisor and Contact person	
5.	Contact person's telephone and email details	
6.	Location of the assignment	
7.	Description of the Beneficiaries:	
8.	Project/assignment value in USD:	
9.	Project start date:	
10.	Project start end date:	

### Template 2: Team Qualification and Experience

Role (e.g. Project Manager)	
Name:	
Bate of Birth:	
University First Degree:	<i>[Awarded Degree, Awarding Institution]</i>
Month & Year of Graduation:	
Post Graduate Qualification(s):	
Month & Year of Graduation:	
Issuing Body:	
Certificate Reference/Number:	
Date of Certification:	<i>Submit a copy of the certificate.</i>
Technical Skills competent in:	
Work Experience (List all previous roles held with the detail as provided below for each role):	<ul style="list-style-type: none"> <li>• <i>Start Date - End Date</i></li> <li>• <i>Institution</i></li> <li>• <i>Role/Position</i></li> <li>• <i>Brief Role Description</i></li> <li>• <i>List of projects involved and role played in those projects</i></li> </ul>

The weight given to the technical proposal shall be **70%** and the weight given to the financial proposal shall be **30%**.

#### 14. Financial Evaluation

All substantially responsive proposals that score **70 marks or more** from the **Technical submission evaluation** shall have their Financial proposals evaluated.

The formula for determining the financial score (SF) shall be as follows:

**Sf = 30% x fm/f where:**

**Sf =** is the financial score

**Fm** is the lowest fees quoted and

**F** is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of **30%**.

The bidder's proposals will be ranked according to their combined technical score (st) and financial score (sf) and weighted accordingly. The formula for the combined scores shall be as follows:

$$S = ST \times T\% + SF \times P\%$$

Where:

S, is the total combined scores of technical and financial scores

St is the technical score

Sf is the financial score

T is the weight given to the technical proposal (in this case **70%**) and

P is the weight given to the financial proposal (in this case **30%**)

Note P + T will be equal to **100%**.

The bidder who has achieved the highest combined technical and financial score shall be declared successful and subsequently invited for clarifications.

#### 15. Competitive Negotiation

TMEA, may at its discretion, choose to negotiate either with all tenderers that have passed technical and financial evaluation, or a shortlist of such, on any aspects of the Terms of Reference, proposed methodology, inputs, price and/or conditions of the contract.

## 16. Packaging, Submission and Delivery of Tenders

All submissions must be submitted via TMEA’s procurement mailbox using the email address, [procurement@trademarkea.com](mailto:procurement@trademarkea.com) on or before **20 September 2021 (4.00 P.M. (Kenya Time))**. Please note that the maximum size of each email with attachments must not exceed **5MB**. The Technical and Financial proposal shall be submitted **as two separate documents in PDF format**, in the same email.

The financial proposal **MUST be password protected**.

**16.2** All queries quoting the tender title and number should be emailed to [procurement@trademarkea.com](mailto:procurement@trademarkea.com) TMEA cannot answer any query relating to this tender seven (7) days or less prior to the submission deadline.

**16.2** Late tenders will not be accepted. No special pleadings will be accepted. Faxed or hard copy proposals/samples shall be rejected.

**16.3** TMEA reserves the right to cancel the entire procurement process without incurring any liability whatsoever.

## 17. Special Conditions

For this tender, the following conditions shall apply:

<p><b>1. Deviations, Reservations, and Omissions</b></p>	<p>During the evaluation of bids, the following definitions apply:</p> <ul style="list-style-type: none"> <li>i. “Deviation” is a departure from the requirements specified in the Bidding Document;</li> <li>ii. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and</li> <li>iii. “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document.</li> </ul>
<p><b>2. Determination of Responsiveness</b></p>	<p>The <i>Employer’s</i> determination of a bid’s responsiveness is to be based on the contents of the bid itself.</p> <p>A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,</p> <ul style="list-style-type: none"> <li>i. if accepted, would: -</li> <li>a) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or</li> <li>b) Limit in any substantial way, inconsistent with the Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or</li> </ul>

	<ul style="list-style-type: none"> <li>ii. If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.</li> <li>a) The Employer shall examine the technical aspects of the bid submitted in accordance with Invitation to Bid (ITB) 12, Technical Proposal in particular, to confirm that all requirements have been met without any material deviation, reservation or omission.</li> <li>b) If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.</li> </ul>
<p><b>2. Nonconformities, Errors, and Omissions</b></p>	<ul style="list-style-type: none"> <li>a) Provided that a bid is substantially responsive, the <i>Employer</i> may waive any non-conformity in the bid.</li> <li>b) Provided that a bid is substantially responsive, the <i>Employer</i> may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.</li> <li>c) Provided that a bid is substantially responsive, the <i>Employer</i> shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.</li> </ul>

## 18. TERMS OF REFERENCE

### CONSULTANCY SERVICES FOR TECHNICAL ASSISTANCE TO KENYA TOWARDS TRADE NEGOTIATIONS AND IMPLEMENTATION OF TRADE AGREEMENTS

#### 1.0 Background

Kenya has since 1981 embraced regional integration as a key pillar in her trade policy. She was a founder member of the Preferential Trade Area (PTA) in Eastern and Southern Africa region which was transformed to Common Market for Eastern and Southern Africa (COMESA) in 1994. Kenya's zeal to regional integration is further evidenced in her being among the ten COMESA countries who started implementing the COMESA Free Trade Agreements (FTA) in 2000 and has continued to trade with rest of the COMESA countries under this framework.

Kenya was also among the three East African Community (EAC) Partner States that concluded the Treaty on re-establishment of the East African Community in 1999 leading to the launch of the EAC Customs Union in 2005 and EAC Common Market in 2010. Further milestones that the country has attained in pursuit of regional integration is the Tripartite Free Trade Area and the African Continental Free Trade Area (AfCFTA).

The effects of the regional integration are opening up the horizon of regional and continental market to Kenya's goods and services. While the regional and continental trade arrangements have been concluded, there remains elements that require to be negotiated to ensure that the goal is attained, especially in ensuring Kenya's goods and services access to these markets.

On international trade realm, Kenya has enjoyed non-reciprocal duty free and quota free market access in the European Union, since 1975 and in the U.S under African Growth and Opportunity Act (AGOA) since 2000. This status quo has been under scrutiny and shake up.

The Kenya duty free quota free market access to the U.S under AGOA is set to end by September 2025 when AGOA expires. This puts over Kenya Shillings (KES) 52 billion of Kenya's exports into the USA under jeopardy. This risk will be avoided by securing the preferential market access under an FTA that Kenya and the U.S have agreed to negotiate.

Emerging issues from the new US Administration pertaining to the FTA negotiating priorities include the following considerations: -

- What flexibilities (e.g., longer phase in periods, less extensive commitments, greater technical assistance, or flexible rules of origin such as an AGOA style third-country fabric rule) are appropriate for the Kenya –USFTA ;
- Effects of the Kenya US-FTA on broader AGOA utilization; and
- Effects of the Kenya- USFTA on regional initiatives, such as the African Continental Free Trade Area (AfCFTA). (See *Congressional Research Service Report on AGOA of 3<sup>rd</sup> May 2021*).

The above developments have presented an opportunity to Kenya to pursue Free Trade Agreements along with many other countries that are globally embracing FTAs as instruments for attraction of investments targeting secured markets. Further, the FTAs provide an opportunity for transformation of the economies through tapping potential in the goods and services sectors in the regional, continental and international markets. Kenya seeks to pursue these opportunities while respecting her

commitments and regional and continental level, which constitutes the country's backyard market, just as Kenya is a backyard market to partners at the regional and continental level.

Negotiating FTAs is a complex process which requires a lot of experience and knowledge on the part of the negotiators. The areas of negotiations are also many. Taking cognizance of this, the ministry has deemed necessary to seek technical assistance from TradeMark East Africa (TMEA) to support the negotiations. The technical assistance required is to support trade negotiations at regional, continental and international level addressing the challenges that the country is facing and aiming at securing Kenya's market access preferences through FTAs. It is against this background that the Ministry intends to procure the services of a consultancy firm(s) through the TMEA's support. The consultancy firm/consortium is expected to have consultants with varying and diverse skills, knowledge and experience to support the negotiations.

## **2.0 Objective of the assignment**

The objective of this assignment is to provide technical assistance at both technical and strategic levels to the Government of Kenya, specifically through the Ministry of Industrialization, Trade and Enterprise Development to negotiate Free Trade Agreements that safeguard market access preferences in the U.S. The support will be extended to negotiations within the EAC, AfCFTA and any other regional arrangement aimed at ensuring that the bilateral FTAs that Kenya concludes are aligned to her commitments at continental and regional level.

## **3.0 Recipient**

The principal recipient is the State Department for Trade and Enterprise Development within the Ministry of Industrialization, Trade and Enterprise Development.

## **4.0 Scope of work**

The assignment will focus on technical studies and advisory services both at technical and strategic levels. In this regard, the consultancy firm(s) will undertake the following tasks:

- a) Undertake a review of the new US Administration Trade Policy, focusing on the Build Back Better policy, US priorities vis a vis Kenya's priorities and envisaged strategy for Africa and identify opportunities that Kenya should pursue in the FTA negotiations
- b) Identify areas of the FTA Scope that are affected by the new US Trade Policy and propose areas of amendment of the scope,
- c) Profile of potential sectors in goods to benefit from the FTA with the U.S aimed at informing negotiations and policy reforms towards Kenya's response to opportunities that emanate from the FTAs;
- d) Undertake sectoral analysis (agriculture and industry) to inform market access negotiations (tariffs and rules of origin) building on commitments at the East African Community (EAC), Africa Continental Free Trade Area (AfCFTA), Economic Partnership Agreements (EPAs);
- e) Undertake analysis of the World Trade Organisation (WTO) Agreements that are relevant to the proposed FTAs and identify Multilateral level flexibilities and policy space that could guide in the negotiations, with the aim of translating the FTA to a development tool;
- f) Participate in the preparation of Kenya's negotiation positions on the various issues that will be negotiated;
- g) Undertake short term studies as and when needed to fill knowledge and information gaps necessary to assist in making informed negotiation positions/decisions;

- h) Advise Senior Kenya Government officials responsible for Trade on policy matters relating to the FTA negotiations as well as negotiations within the EAC and AfCFTA in regard to Kenya's pursuit of FTAs bilaterally;
- i) Analyze how the FTAs will impact on Kenya's bilateral and regional commitments in existing Regional Economic Communities in which Kenya is a member;
- j) Develop, using outcome of analytical work, redlines/boundaries and fall-back positions in all areas of negotiations taking into consideration Kenya's strategic interests and existing bilateral, regional and multilateral commitments;
- k) Development strategies to be pursued during the negotiations;
- l) Facilitate national consensus building through dialogue meetings (aimed at allowing stakeholders to give views on the strategic direction to be taken by Kenya in the negotiations);
- m) Provide technical support in stakeholder consultations, media briefing and communication during the negotiations; and
- n) Provide technical support during stakeholder consultations.

## 5.0 Deliverables

The main deliverables from the consultancy will be technical studies and policy briefs both technical and strategic to aid in the negotiations. The consultancy firm/consortium will be expected to develop a work plan after one week with very clear priorities and outputs. The deliverables for this assignment will be as follows:

- a) Inception Report including detailed analysis of the Biden Administration Trade Policy (Build Back Better) and its implication on the scope of the Kenya US FTA and areas of flexibility including phaseout options and indicating how the project will be implemented. The inception report to be submitted within 14 working days after the signing of the contract;
- b) Detailed Work-plan on the activities identified under the Scope of Work leading to the envisaged outputs towards successful conclusion of the FTAs and other negotiations at regional level;
- c) Sectoral assessment study reports and proposed position on the following areas of the negotiation: Market access, Rules of Origin, Customs procedures and Trade Facilitation, Trade Remedies, Subsidies, Agriculture, Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) issues, Kenya's trade in goods commitments at Multilateral, regional and continental levels;
- d) Study on FTA related flexibilities provided in the multilateral trade agreements and regional/continental trade agreements;
- e) Negotiating policy briefs/position papers and draft negotiating legal texts in all areas of negotiations; and Quarterly Progress Reports on the Negotiations against the milestones in the work plan.

## 6.0 Reporting

The Advisors will report directly to the Principal Secretary for the State Department for Trade and Enterprise Development, Ministry of Industrialization, Trade and Enterprise Development.

## 7.0 Coordination

The Ministry of Industrialization, Trade and Enterprise Development and TMEA will oversee and monitor the work of the consultancy firm(s). The Principal Secretary will establish a team that will act as the operational interface between the consultant (s) and TMEA.

## 8.0 Timeframe

This assignment will be conducted within a period not exceeding eight (8) months.

## 9.0 Proposed budget for this assignment

The proposed budget for this assignment is limited to **USD 200,000** at the highest, which is inclusive of all applicable taxes and expenses.

For this particular process, bidders are expected to provide their financial proposal as per the milestone/deliverables indicated at **Annex 12**

## 10.0 Qualifications for the firm and proposed key personnel

This assignment will require the following mix of experience, professional and academic qualifications. The assignment requires a firm or consortium of firms with requisite capacity and past demonstrable experience in supporting trade negotiations and ability to mobilize required personnel to deliver the assignment.

### a) For the firm

The consultancy firm/consortium will be required to:

- a) Have at least 5 years' experience in supporting International Trade Negotiations, and preferably Free Trade Area or Bilateral Trade Agreements in the EAC, COMESA or in Africa;
- b) Demonstrate its experience and capacity to conduct multisectoral studies in the field of regional and international trade, including impact assessment of trade agreements and ability to analyze huge trade data sets to inform trade negotiation (**submit three assignments undertaken to demonstrate this. Please indicate the client's contact details i.e., client organisation's physical address, contact person's full name, telephone and email details**);
- c) Demonstrate its competence in the mobilisation and management of the proposed key personnel and short-term technical assistance and management of trade programs.

### b) Proposed key personnel

The required personnel fall into the following two categories: key personnel and short-term technical support personnel:

**Note: Please submit only one (1) CV for each of the positions mentioned for the proposed key personnel and short-term technical support personnel. If more than one CV is submitted for the same position, only the first CV will be evaluated. Please also clearly indicate the positions that each of the submitted CVs will have in this assignment**

## Proposed key personnel

### 1. Technical Expert

- a) Minimum of a M.A. in Economics, International Trade, Development Economics or export related qualifications (**Submit a copy of master's degree certificate**);
- b) Not less than 10 years' experience in trade negotiations including concluded Free Trade Area Agreements;
- c) Technical abilities in complex simulations using different economic models/methods;
- d) Experience in designing and undertaking trade policy analytical studies, including coordination of multifaceted studies to inform trade negotiations and position building;
- e) Demonstrate experience in the management of a stakeholder consultative process in trade negotiations and trade policy formulation and implementation;
- f) Past experience in management of multi sectoral trade programs;



PRQ20210142 Technical assistance to Kenya towards trade negotiations and implementation of trade agreements

- g) A track record of developing public policy documents including policy briefs (;
- h) Demonstrate experience working on the structure of Kenya's export sector at products and firm/industry level;
- i) Demonstrate experience in dealing with integration issues in Regional Economic Communities (RECs) such as EAC/COMESA/SADC and EU countries will be an added advantage:
- j) Must have served in the position of a Technical Expert or Team Leader in the fields of;
- k) Must be fluent in both written and spoken English; and
- l) Must be proficient in computer end user skills.

Level of effort is **eighty (80) days**.

## 2. Trade Negotiations Expert

- a) Minimum of a M.A. in Economics, Business, International Trade, Development Economics or Export Business related qualifications (**Submit a copy of master's degree certificate**);
- b) At least 10 years relevant professional experience in the Multilateral Trading System and Regional Integration;
- c) Experience in leading trade negotiations including Free Trade Area Agreements.
- d) At least 5 years of diplomatic experience in Trade negotiations at the Multilateral level;
- e) At least 5 years' experience in the public sector with the ability to interact with ease and confidence with top leadership of the Ministry;
- f) Experience in using complex research materials or findings to successfully inform public policy choices;
- g) Experience working on regional and international issues in goods and services trade and global political economy ;
- h) Demonstrate experience in dealing with complex trade and economic negotiations and leading teams of negotiators;
- i) Experience in determining the challenges and opportunities encountered by developing countries in the areas of Free Trade Agreement;
- j) Must have served in the position of a Trade Negotiations Expert in the fields of Multilateral Trading System and/or Regional Integration including drafting of trade agreements; A track record of working on international aid projects or international consulting experience will be an added advantage.
- k) Must be fluent in both written and spoken English; and
- l) Must be proficient in computer end user skills.

Level of effort is **eighty (80) days**.

## 3. Legal Expert

- a) Minimum Bachelor's Degree in Law (**Submit a copy of bachelor's degree certificate**);
- b) At least 10 years relevant professional experience in the Multilateral Trading System and Regional Integration including drafting of trade agreements;
- c) Experience in dealing with integration issues in RECs such as EAC/COMESA/SADC and EU countries will be an added advantage;
- d) Experience in using complex research materials or findings to successfully inform trade negotiations;
- e) Demonstrate experience in dealing with complex trade and economic negotiations and leading teams of negotiators;

- f) At least 5 years' experience in the public sector with the ability to interact with ease and confidence with top leadership of the Ministry;
- g) Must have served in the position of a Legal Expert in the fields of Multilateral Trading System and/or Regional Integration including drafting of trade agreements
- h) Must be fluent in both written and spoken English; and
- i) Must be proficient in computer end user skills

Level of effort is **forty (40) days**.

➤ **Short-term technical support personnel**

Short Term Technical Assistance (STTA) is envisaged in support of impact assessment, sectoral studies, analytical work in response to negotiation dynamics, developing value matrix/bench marks in each of the negotiating areas to assist in quantification of the benefits to Kenya that will need to be safeguarded during the negotiation, effective communication and stakeholder engagement to ensure compliance with the constitutional requirements, among other areas of engagement as shall be required in the course of the negotiation. The specification of the required STTA experts is as follows:

**4. Trade Economist**

- a) Minimum of a master's degree in economics (***Submit a copy of master's degree certificate***);
- b) At least 10 years' experience in trade working with the EAC and/or COMESA especially on assignments involving the Kenyan economy; and
- c) Demonstrate experience leading multi-disciplinary teams in undertaking trade related research to inform policy making process.

Level of effort is **thirty (30) days**

**5. Statistician**

- a) The expert must be a holder of a master's degree in science, statistics, mathematics, (***Submit a copy of master's degree certificate***); and
- b) At least 5 years' experience working on research projects involving statistical analysis, and preferably on trade related statistical analysis.

Level of effort is **thirty (30) days**

**6. Industry Expert**

- a) The expert must be a holder of a master's degree in business administration or relevant social science field, (***Submit a copy of master's degree certificate***)
- b) At least 5 years' experience in Kenya's industrial/manufacturing sector engaged in research, industrial development programs or advisory at policy level

Level of effort is **thirty (30) days**

**7. Agriculture/SPS Expert**

- a) At least a master's degree in a field relevant to SPS, such as Food Safety, Plant Health, Animal Health or related fields. A PhD in crop protection will be an added advantage (***Submit a copy of master's and PhD degree certificate***);
- b) A minimum of 10 years consistent working experience in the field of SPS as it relates to international trade;

**PRQ20210142 Technical assistance to Kenya towards trade negotiations and implementation of trade agreements**

- c) Experience working on the role of SPS Measures in safeguarding human health and safety;
- d) Experience of leading negotiations on SPS issues at a regional or multilateral level. Experience with Kenya and USA SPS framework will be an added advantage
- e) Experience in the management of stakeholder consultative process in SPS measures negotiations, capacity building for SPS measures compliance;
- f) Must be fluent in both written and spoken English; and
- g) Must be proficient in computer end user skills

Level of effort is **thirty (30) days**

**8. Multilateral Trade System Expert**

- a) A bachelor's degree in law, economics, business, or relevant social science field, (***Submit a copy of bachelor's degree certificate***); and
- b) At least 10 years' experience in Kenya's trade sector, Multilateral Trade System, engaged in trade research and development programs or advisory at policy level

Level of effort is **thirty (30) days**.

**ANNEXES**

**ANNEX 1: CODE OF ETHICS**



**TMEA CODE OF ETHICS**

## 1. Preamble

- 1.1 TradeMark East Africa's (TMEA) success depends on its reputation, integrity, openness and respect for others. The trust and confidence of those with whom we deal is therefore, essential. The protection of our reputation and relationships is of fundamental importance to our long-term sustainability. We recognise our obligations to all those with whom we have a direct relationship such as, donors, staff, service providers, contractors and suppliers, the private sector in general, government, civil society and the wider community.
- 1.2 This document covers fraud and corruption in the use of funds, as well as fraud and corruption engaged in for the purpose of influencing any decision as to the use of funds. All such fraud and corruption are deemed to occur "in connection with the use of TMEA funds". The recourse for funds mismanagement, where TMEA has sufficient evidence, shall lead to refund of monies by the beneficiary involved and prosecution by the authorities.
- 1.3 This document also covers gifts and hospitality. TMEA does not promote receiving or issuing of gifts and hospitality which might reasonably be perceived or seen to compromise any staff or service providers' judgement and integrity.
- 1.4 TMEA will make every attempt to ensure that its reputation is held to the highest standards and treats everyone with fairness and transparency. To that effect TMEA highlights in this documents that whistle blowing of any illegal or unethical activities by staff or service providers should be reported and it will be acted upon accordingly.
- 1.5 No staff member, service provider, contractors or suppliers shall be involved in any activity for personal gain. Any personal interests or interests of a member of one's immediate family in relation to the organisation's business must be disclosed.
- 1.6 Sustainable and Inclusive Trade, including gender mainstreaming also forms part of this document and it is obligatory for all partners to put gender equity issues into practice rather than adopting a superficial approach. This will be through continuous assessment of the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels of the project.
- 1.7 Finally, all partners, consultants, contractors and stakeholders shall sign the last page signifying they have read and understood and will put into practice this document, which is an integral part of the engagement/contract document with TMEA.

## 2. Definitions

- A "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- A "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

- A “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- A “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party, and;
- An “obstructive practice” is;
  - Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a TMEA investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - Acts intended to materially impede the exercise of the TMEA’s contractual rights of audit or access to information.
- “Gender mainstreaming” is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making humankind concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that both gender benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.
- A “recipient” is any individual, firm, organisation, NGO, PSO or CSO or any partner that works with TMEA and/ or receives TMEA funding either through a contract or a grant.
- “Gift” is a tangible item presented to a party to impress, appreciate, solicit or manage a relationship
- “Hospitality” is an intangible item presented to a party to impress, appreciate, solicit or manage a relationship
- “Whistleblowing” is an act of reporting an activity deemed to be illegal, unethical or a misconduct with or without confidentiality while not being victimized.

### **3. Managing TMEA relationships**

#### **3.1 Relationship with stakeholders**

- 3.1.1 TMEA’s reputation depends on the way in which we work. It is vital that our stakeholders have confidence in our competence and professional excellence. We will treat our stakeholders with respect, honesty and fairness.
- 3.1.2 Confidential information relating to our relationship with all stakeholders will be respected. We respect copyright and other intellectual property rights.
- 3.1.3 Where consultants and other third parties are contracted by TMEA to perform duties, they will be expected to act in accordance with this code. The obligation to comply with this document forms an integral part of the engagement we have with partners or consultants who are expected to append their signature, as a confirmation of commitment to adherence.

- 3.1.4 Decisions to hire a consultant or source materials from a particular vendor or supplier are made on the basis of objective criteria such as quality, reliability, technical excellence, price and service. Purchasing decisions must never be made on the basis of personal relationships or the opportunity for personal financial gain.
- 3.1.5 The recipient shall not avoid tax. The recipient will record and report all transactions, including those where payment is made in cash. All taxable perquisites to which staffs are entitled will be listed and declared for tax purposes.
- 3.1.6 TMEA funds, including receipt through award of contracts shall not be used for terrorism and/or any form of organized crime or to support any form of related activities. TMEA shall rely on laws and rules, among others, from donors or country of operation that prohibits acts of terrorism and organized crimes or providing material support or resources to terrorist and/or designated terrorist and organized crime organizations. If TMEA carries out its due diligence and confirms involvement of any stakeholder including suppliers, it will terminate the contract or agreement and notify the relevant authorities immediately.
- 3.1.7 TMEA is committed to openness and transparency in communicating with stakeholders and seeks a constructive relationship the wider private sector/ civil society, the media, the government, non-governmental organisations and the general public.

### **3.2 Relationship with employees**

- 3.2.1 TMEA aims to provide a positive, responsible, open and exemplary working environment. Relationship with staff should be based on respect, dignity and fair treatment for all. We strive to maintain an environment that is based on merit and inclusiveness. The organisation will recruit and promote staff on the basis of their suitability for the job and organisation's needs without discrimination. Diversity of staff is central to our operations and we value it immensely.
- 3.2.2 TMEA expect staffs to conduct their business activities with colleagues and stakeholders with respect for all and with honesty and courtesy. We will not tolerate harassment or bullying of staff.
- 3.2.3 The recipient will explain the purpose of its activities and individual jobs, foster effective communication and involve employees in improving their work. As far as possible, it will provide staff with opportunities to enhance their skills and capabilities, enabling them to develop fulfilling careers and to maximise their contribution to the organisation.
- 3.2.4 The recipient, in recognition of the efforts of an individual, it will maintain an atmosphere of fair terms and conditions of employment and remuneration policies and structures.
- 3.2.5 The recipient's time, physical and intellectual property should be used for business purposes only. Electronic communication equipment and related services (including email, internet, bulletin boards, fax machines, file storage) must be protected from unauthorised external access or use. Under no circumstances should they be used for receiving illegal, offensive, obscene or otherwise inappropriate materials.

3.2.6 The recipient shall respect staff privacy. We will only collect and retain personal information that is required for effective operation of the organisation or as required by law. The information will be kept confidential and released only to those who have a legitimate need to know. Information received by staff in the course of business dealings may not be used for personal gain.

#### **4. Fraud and corruption**

4.1 The recipient shall:

Take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices in connection with the use of TMEA funds, including (but not limited to):

- adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the funds are used only for the purposes for which they were intended, and;
- ensuring that all of its representatives involved in/with the project, and all recipients of funds with which it enters into an agreement related to the Project, receive a copy of this document and are made aware of its contents;

4.2 Immediately report to TMEA any allegations of fraud and corruption; cooperate fully with representatives of TMEA or its appointed agent in any investigation into allegations of fraud and corruption;

4.3 If TMEA determines that any person or entity receiving its funds has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, it may suspend further funding/disbursement/payment;

4.4 TMEA reserves the right to demand a refund and may terminate the agreement in place; may also hand over the reports from any investigations to proceed with prosecution;

4.5 Take all necessary and appropriate action against any representative declared ineligible, as described below, from duties and responsibilities;

- If TMEA determines that a recipient is also a potential provider of goods, works or services, it shall declare the recipient ineligible;
- TMEA shall declare a firm, consultant or individual ineligible under this code of ethics if such firm, consultant or individual has been declared ineligible under TMEA procurement guidelines or those of the respective government/partner or any other international organisation; and
- Assist or enable TMEA to obtain a refund of any resources (assets, monies, materials among other benefits) that have been used inappropriately funds including returning any unutilised funds especially where TMEA is not content with progress.

4.6 TMEA will reject a proposal for award and / or will cancel the contract at any time if it determines at any time that representatives of the Recipient or of a beneficiary engaged in corrupt,



fraudulent, collusive, misleading/false, coercive or obstructive practices during the procurement or the execution of that contract;

- 4.7 In the event that TMEA establishes to a reasonable degree that a Bidder(s) has misrepresented information in their bid or receives confirmation from a referee that an assignment was not undertaken satisfactory or litigation not captured in the bid submitted is discovered, TMEA shall reject the bid and/ or terminate the contract immediately at any point without incurring any liability whatsoever; and
- 4.8 TMEA at its own discretion, may decide to debar a supplier where there is demonstrable evidence of: (i) The supplier undertaking unethical, illegal, corrupt, or fraudulent activities in connection with a TMEA contract or a TMEA-funded contract; (ii) Persistent poor performance by the supplier under a TMEA contract or a TMEA-funded contract in terms of quality of work or goods delivered, including consistently late delivery; and (iii) Debarment of a supplier by a TMEA donor, the World Bank, or a Government with whom TMEA has a Memorandum of Understanding.

## **5. Gifts and Hospitality**

- 5.1 Gifts and hospitality must not be solicited by any recipient, representative or staff of TMEA.
- 5.2 The receipt or acceptance of gifts and hospitality is related to the issue of conflicts of interest and can leave an organisation vulnerable to accusations of unfairness, partiality, improper inducement or deceit. Its stakeholders' relationships may be perceived to be biased and its ethical reputation will be at risk.
- 5.3 Representatives, agents and any potential bidder intending to work for/with TMEA should not be seen as using their official position to receive, agree to accept or attempt to obtain any payment or other consideration for doing, or not doing, anything or showing favour, or disfavour, to any person as this might reasonably be seen to compromise personal judgement and integrity.
- 5.4 Service providers should not put TMEA in a position to accept gifts and/or hospitality which might be perceived as a compromise to personal judgement and integrity. TMEA reserves the right to reject any gift/hospitality and declare as such.

## **6. Gender mainstreaming**

The core guidelines for gender mainstreaming in TMEA funded projects shall be based on but not limited to the following:

- 6.1 Issues across all areas of activity shall be defined in such a manner that gender differences are diagnosed;

- 6.2 Responsibility for translating gender mainstreaming into practice is system- wide and rests at the highest level of the recipient organisation. Accountability for outcomes needs to be monitored continuously;
- 6.3 Gender mainstreaming also requires that every effort be made to broaden equal participation at all levels of decision-making;
- 6.4 Gender mainstreaming must be institutionalised through concrete steps, mechanisms and processes in all areas of TMEA funded projects;
- 6.5 Gender mainstreaming does not replace the need for targeted, policies and programmes or positive legislation, nor does it substitute for gender units or focal points; and
- 6.6 There shall be clear organisational will and the allocation of adequate human and financial resources for gender mainstreaming from all available funding for the successful translation of the concept into practice.

## **7. Discrimination of marginalized groups**

- 7.1 TMEA believes in respect and equal treatment for everyone regardless of gender, religion, and disability to help lift people out of poverty and injustice and allow them to assert their dignity and guarantee sustainable development through its campaigns for fairer trade rules within the East Africa region, and for better policies at the national level, and also improve on the capacity for local markets.
- 7.2 TMEA, its partners and suppliers will therefore not discriminate against any group deemed to be marginalized be it women, men, disabled, religious groups, or ethnic minority and will strive to ensure that they work with partners and/or suppliers who ensure that these groups have and enjoy equal access to jobs, essential services and influence.

## **8. Whistle Blowing**

- 8.1 TMEA has a zero tolerance to corruption policy. To this effect, KPMG has been engaged to provide an independent whistle-blowing hotline for reporting any malpractice involving TMEA resources or staff. This allows both employees and outsiders to report anonymously any unethical practices, including fraud, corruption, and theft. The call-centre is secure and TMEA will not be informed of the identity of any callers.
- 8.2 If you have concerns about unethical behaviour at TMEA, if you have been asked for a bribe in connection with TMEA business, or if you have suspicions about the theft of TMEA resources, we urge you to call the confidential whistle-blower hotline from any of the countries in which TMEA operates:
- Kenya: 0800 722 770 (toll-free)
  - Uganda: 0800 113 220 (toll-free)
  - Tanzania, Rwanda, South Sudan, and DRC: +254 740 023 702

Alternatively, you can send an email to: [tmeaspeak-up@kpmg.com](mailto:tmeaspeak-up@kpmg.com) or use the web-portal [www.thornhill.co.za/kpmgeaethicsportal](http://www.thornhill.co.za/kpmgeaethicsportal).

## 9. Implementing and monitoring this document

- 9.1 The recipient's commitment to this document is essential to TMEA's success and will be demonstrated through training, enforcement and accountability. Adherence to the provisions of this document is a condition of partnership.
- 9.2 Project Managers should ensure that all recipients receive guidance on this document and understand the values that underpin its usage. They should strive to create an environment that encourages open discussion about any concerns.
- 9.3 This document is a guide rather than an exhaustive description of the recipient's ethics policies and standards. TMEA aims to create a culture in which it is normal for partners to 'do the right thing' and to voice genuinely held concerns about behaviour or decisions that they perceive to be unethical.
- 9.4 All recipients are required to sign stating that they have read this document and have taken all reasonable steps to ensure that they have conducted business responsibly and in compliance with applicable laws and regulations.

## 10. Miscellaneous

- 10.1 The provisions in this code do not limit any other rights, remedies or obligations of TMEA or the recipient under the Memorandum of Understanding/Agreement or any other document to which TMEA and the Partner are both parties.

## 11. Commitment to the Code of Ethics

I have read the code and hereby sign as an indication of commitment to ensure the code is incorporated and adhered to.

### On behalf of Vendor:

Organisation's name: \_\_\_\_\_

Title of Signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ANNEX 2: CONFLICT OF INTEREST DECLARATION**

**BIDDERS CONFLICT OF INTEREST FORM**

Tender Number: .....

Tender Title: .....

TMEA operates procurement processes which are fair, transparent and able to withstand probity. In view of this, TMEA requires that any potential bidder who participates in its procurement processes declares any actual or potential conflicts of interest. Bidders who do not declare relevant conflicts of interest and do not sign this form will not be permitted to participate in TMEA’s procurement processes.

**I. Conflict of interest declaration**

Potential conflicts of interest can include the following (but the list is **not** exhaustive): -

**Relationship with TMEA: -**

1. Relationship/ Association with TMEA staff members and/or representatives.
2. Relationship/Association with TMEA’s Board Members and/or office bearers
3. Where applicable; if the bidder was involved in earlier phases of the project for which bids/proposals are now being sought.
4. Knowledge of TMEA’s terms of reference or any bidding documents before they were officially published.

If you are in any doubt about whether something is a potential conflict of interest, you are advised to declare it below

**Either:**

A) I wish to declare the following conflict(s) of interest: -

1. ....
2. ....
3. ....

**Or**

B) I have no conflicts of interest to declare.

Please note that TMEA reserves the right to disqualify a bidder if an actual or potential conflict of interest that was not declared, is later discovered.

**On behalf of Vendor:**

Organisation's name: \_\_\_\_\_

Title of Signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### **ANNEX 3: CONFIDENTIALITY AGREEMENT**

#### **Background**

TradeMark East Africa (TMEA) is a not-for-profit organisation funded by a range of development agencies to promote regional trade and prosperity in East Africa. Our vision is 'a united East Africa with flourishing trade, strong investment and less poverty', and our mission is 'to promote rapid advances in East Africa's integration, trade and global competitiveness for all East Africans.'

TMEA was founded in 2010 but became fully operational in 2011. TMEA has scaled up significantly in terms of expenditure and personnel during this time. TMEA works closely with business and civil society organisations, the East African Community (EAC), The Democratic Republic of Congo (DRC) national governments. TMEA has its headquarters in Kigali with branches in Arusha, Bujumbura, Dar es Salaam, Juba, Kampala and Kigali. TMEA seeks to support growth in East African trade through three strategic objectives: -

- 1) Increased market access;
- 2) Enhanced trade environment; and
- 3) Improved business competitiveness.

Further information is available on the TMEA website [www.trademarkea.com](http://www.trademarkea.com).

#### **Confidentiality Agreement**

It is understood and agreed to that the below identified discloser of confidential information may provide certain information that is and must be kept confidential. To ensure the protection of such information, and to preserve any confidentiality necessary under patent and/or trade secret laws, it is agreed that

1. The Confidential Information to be disclosed can be described as and includes:  
  
Invention description(s), technical and business information relating to proprietary ideas and inventions, ideas, patentable ideas, trade secrets, drawings and/or illustrations, patent searches, existing and/or contemplated products and services, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure.
2. The Recipient agrees not to disclose the confidential information obtained from the discloser to anyone unless required to do so by law.
3. This Agreement states the entire agreement between the parties concerning the disclosure of Confidential Information. Any addition or modification to this Agreement must be made in writing and signed by the parties.
4. If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

PRQ20210142 Technical assistance to Kenya towards trade negotiations and implementation of trade agreements

**WHEREFORE**, the parties acknowledge that they have read and understand this Agreement and voluntarily accept the duties and obligations set forth herein.

**On Behalf of the Service provider:**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **ANNEX 4: INTELLECTUAL PROPERTY AGREEMENT**

### **INTELLECTUAL PROPERTY (IP) AGREEMENT**

#### **Purpose**

This Agreement on Intellectual property comprises Patents, Copyrights and Confidential Information. The Agreement provides guidance to TMEA, its partners, service providers and/or third parties regarding disclosing and managing inventions made at or under the auspices of TMEA in a manner consistent with TMEA's commitment to strengthening East Africa regional economic integration.

#### **Principle**

The patent, copyright and intellectual property agreement shall ensure a fair and equitable balance between creators, owners and users, and the needs of the public.

#### **Copyright**

The copyright in all drawings, documents and other materials containing data and information furnished to TMEA by the Provider/Partner shall remain vested in the Provider/Partner or, if they are furnished to the TMEA directly or through the Provider by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

#### **Ownership of Material**

Any studies, reports or other material, graphic, software or otherwise, prepared by the Provider for TMEA under any Contract shall belong to and remain the property of TMEA.

Where intellectual property rights in all material produced by the provider or the provider's personnel pursuant to the performance of the Services ("the Material") are the property of the Provider, the Provider shall grant to TMEA a worldwide, nonexclusive, irrevocable, royalty free license to use all the Material. "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

#### **Confidential Information**

TMEA and the Provider/Partner shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party, whether such information has been furnished prior to, during or following termination of any binding engagement. Notwithstanding the above, the Provider/Partner may furnish to its Subcontractor(s) such documents, data and other information it receives from TMEA to the extent required for the Subcontractor(s) to perform its work under any contract, in which event the Provider/Partner shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Provider/Partner under this paragraph.



PRQ20210142 Technical assistance to Kenya towards trade negotiations and implementation of trade agreements

TMEA shall not use such documents, data and other information received from the Provider for any purpose other than the operation and maintenance of the Supplies. Similarly, the Provider/Partner shall not use such documents, data and other information received from the TMEA for any purpose other than the design, procurement of Goods, construction or such other work and services as are required for the performance of the Contract.

The obligation of a party under the above paragraphs, however, shall not apply to that information which

- a) Now or hereafter enters the public domain through no fault of that party;
- b) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; and
- c) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

In witness of the parties hereto append their signatures and seals on the date indicated below:

**On behalf of Vendor:**

Organisation's name: \_\_\_\_\_

Designation of Signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## ANNEX 5: ANTI-TERRORISM FINANCING POLICY AND DECLARATION

### Overview

1. The United Nations Security Council defines terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.”
2. TMEA will take all appropriate measures taken to reduce the risk that TMEA resources are used for unintended purposes including exploitation by terrorist organisations and/or their support networks.
3. Non-adherence to this policy, in itself, constitutes substantial breach of rules of engagement with TMEA and may lead to immediate termination of engagement with TMEA without the need for further notice.
4. TMEA shall rely on an array of laws and rules that fight any potential threat of terrorist financing. TMEA relies on, among others, any laws from donors or country of operation laws that prohibit the financing of terrorism or providing material support or resources to terrorists and/or designated terrorist organisations.
5. In this policy, the term “partner” shall include any supplier of goods or services, any recipient of TMEA grant funding or financial aid, and any investor making contributions to TMEA.

### TMEA Anti-Terrorism Due Diligence Checks

6. As part of the usual procurement or grant-awarding process (and before a preferred bidder is recommended to the Tender Committee), the Procurement Director shall undertake, to the maximum extent reasonably possible, the following verification to ensure that any new partner shall substantially protect TMEA’s resources from diversion to unintended purposes including exploitation by terrorist organisations and/or their support networks:
  - i. TMEA shall conduct a reasonable search of publicly available information to determine whether the partner is suspected of any activity relating to terrorism, including terrorist financing or other support.
  - ii. TMEA shall seek confirmation that the partner does not exist on any country of operation lists of designated terrorist-related individuals, entities, or organisations, pursuant to national obligations arising from United Nations Security Council Resolution 1373;
  - iii. As a pre-condition to entering into a contract or other agreement, TMEA shall require partners to certify in writing that they are in compliance with all laws and regulations restricting persons from dealing with any individuals, entities, or groups subject to country of operation sanctions or TMEA donors sanctions, or any other persons known to the partner to support terrorism or to have violated any known anti-terrorism sanctions (see Annex 1).
  - iv. TMEA shall require partners to certify in writing that they have taken all reasonable steps to ensure that TMEA resources provided are neither distributed to terrorists or their support networks nor used for activities that support terrorism or terrorist organizations. Periodically, the partner shall apprise TMEA of the measures it has taken to meet this goal;

- v. TMEA may perform routine, on-site audits of partners to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources) to ensure that the partner has taken adequate measures to protect its/ TMEA resources from diversion to, or abuse or influence by, terrorists or their support networks.
- 7. The certifications submitted by partners shall be valid for three years after which the certifications shall need to be renewed.
- 8. In relation to key employees and members of the Board of Directors, before any person is awarded a contract of employment or contract of service as a Director, the People Director shall consult publicly available information to ensure that the person is not reasonably suspected of activity relating to terrorist organisations and/or their support networks.
- 9. Where an employee has suspicion that a partner is breaching any aspect of this policy, they should report the matter to the Director of Audit & Assurance.

**Declaration Statement**

I confirm that I \_\_\_\_\_ *(insert Signatory's name)* on behalf of \_\_\_\_\_ *(insert name of Party)* hereby confirm that I have read and wholly understood the anti-terrorism policy provided and do hereby confirm that to the best of my knowledge and that available with the organisation that \_\_\_\_\_ *(insert name of Party)* does not support any terrorism activities or has links with any terrorism support organisation.

I also therefore give full endorsement that should TMEA establish that this information is inaccurate, action \_\_\_\_\_ may \_\_\_\_\_ be \_\_\_\_\_ taken \_\_\_\_\_ against

\_\_\_\_\_ *(insert names of the Signatory and Party)* which could include availing said information to the known anti-terrorism handling unit in my country of operation or any such international unit as approved under the United Nations Security Council Resolution 1373.

**On behalf of Party: -**

Organisation's/ consultant/ firm/ company/ JV name: \_\_\_\_\_

Title of Signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Stamp/ seal: \_\_\_\_\_

## **ANNEX 6: ORGANISED CRIME POLICY AND DECLARATION**

### **Overview**

1. Organised crime can be defined as serious crime planned, coordinated and conducted by people working together on a continuing basis. Their motivation is often, but not always, financial gain. Organised criminals working together for a particular criminal activity or activities are called an organised crime group.
2. Organised criminal activities that include, but not limited to, money laundering, human trafficking and smuggling, animal trafficking, drug dealing, purchase of illegal arms, cyber-crimes, child labour, kidnap and extortion, and organised crime groups will have a negative impact on the region's social and economic development, as well as damaging the reputation to TMEA's donors and stakeholders. See Annex 2 for a list of types of organised crime.
3. TMEA will take all appropriate measures to reduce the risk that TMEA resources are used for unintended purposes including those that are intended for organised criminal activities and/or their support networks.
4. Non-adherence to this policy, in itself, constitutes substantial breach of rules of engagement with TMEA and may lead to immediate termination of engagement with TMEA without need for further notice.
5. TMEA shall rely on an array of laws and rules that fight any potential threat of organised crimes. TMEA shall rely on, among others, any laws from donors or country of operation laws that prohibit financing of organised criminal activities or providing material support or resources to organised criminal groups. TMEA also has a separate Safeguards Policy which also includes measures to address some of these issues.
6. In this policy, the term "partner" shall include any supplier of goods or services, any recipient of TMEA grant funding or financial aid, and any investor making contributions to TMEA.

### **TMEA Organised Crime Due Diligence Checks**

7. As part of the usual procurement or grant-awarding process (and before a preferred bidder is recommended to the Tender Committee), the Procurement Director shall undertake to the maximum extent reasonably possible the following verification to ensure that any new partner shall substantially protect TMEA's resources from diversion to unintended purposes including financing and participating in organised criminal activities as an organisation and/or through their support networks:
  - i. TMEA shall conduct a reasonable search of publicly available information to determine whether the partner is suspected of any activity relating to organised crime, including financing or other support;
  - ii. TMEA shall seek written confirmation from the partner that they are not involved and/or linked, including their employees, in any way and are not listed in their country of operation or any other as financiers of or participants in organised criminal activities whether as individuals, entities, or organisations, pursuant to national obligations arising from General Assembly resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organised Crime;

- iii. As a pre-condition to entering into a contract or other agreement, TMEA shall require partners to certify in writing that they are in compliance with all laws and regulations restricting persons from dealing with any individuals, entities, or groups subject to country of operation sanctions or TMEA donors sanctions, or any other persons known to the partner to support organised crime or to have violated any known organised crime sanctions (see Annex 1);
  - iv. TMEA shall require partners to certify in writing that they have taken all reasonable steps to ensure that TMEA resources are not funding organised crime activities or their support networks, nor used for activities that support organised crime. Periodically, the partner shall apprise TMEA of the measures it has taken to meet this goal; and
  - v. TMEA may perform routine, on-site audits of partners to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources) to ensure that the partner has taken adequate measures to protect its/ TMEA resources from diversion to, or abuse or influence by, organised crime individuals, entities or organisations.
8. The certifications submitted by partners shall be valid for three years after which the certifications shall need to be renewed.
  9. In relation to key employees and members of the Board of Directors, before any person is awarded a contract of employment or contract of service as a Director, the People Director shall consult publicly available information to ensure that the person is not reasonably suspected of activity relating to organised criminal activities.
  10. Where an employee has suspicion that a partner is breaching any aspect of this policy, they should report the matter to the Director of Audit & Assurance.

### Declaration Statement

I confirm that I \_\_\_\_\_ (*insert Signatory's name*) on behalf of \_\_\_\_\_ (*insert name of Party*) hereby confirm that I have read and wholly understood the anti-organised crime policy provided and do hereby confirm that to the best of my knowledge and that available with the organisation that \_\_\_\_\_ (*insert name of Party*) does not support any organised criminal activities or has links with any organisation or individuals that support the same.

I also therefore give full endorsement that should TMEA establish that this information is inaccurate, action may be taken against \_\_\_\_\_ (*insert the names of Signatory and Firm*) which could include availing said information to the known anti-organised crime handling unit in my country of operation or any such international unit as approved under resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organised Crime.

**On behalf of Party: -**

Organisation's/ consultant/ firm/ company/ JV name: \_\_\_\_\_

Title of Signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Stamp/ seal: \_\_\_\_\_

**Examples of organised crime**

The threats East Africa faces from organised crime include:

- Child sexual exploitation and abuse;
- Counterfeit currency;
- Cyber-crime - crimes committed through the use of information communication technology;
- Drugs - the Class A drugs trade and the illegal drugs market;
- Firearms - the use of guns by organised criminals;
- Fraud;
- Human trafficking - the movement of people for exploitation;
- Identity crime - how criminals use false identities and documents;
- Intellectual property crime - the counterfeiting and piracy of goods;
- Kidnap and extortion;
- Money laundering - how criminals 'clean' their dirty money;
- Organised theft - commodity related criminality, armed robbery and vehicle crime;
- Organised crime groups - what they are and how they are formed; and
- People smuggling

## ANNEX 7: SUPPLIER ENVIRONMENTAL AND SOCIAL STANDARDS POLICY

### Overview

1. These TMEA Supplier Environmental and Social Standards (SESS's) are the minimum standards expected from TMEA suppliers. These standards are part of TMEA's Environment and Social Policy, which focuses on the identification and management of environmental and social risks.
2. TMEA requires that all suppliers comply with these standards. TMEA also requires that all subcontractors engaged under the primary contract acknowledge and operate in a manner consistent with these SESS's.
3. Failure by suppliers and/or subcontractors to comply with the provisions of these standards shall disqualify the supplier and/or subcontractor from being eligible for a TMEA contract and shall result in a contract being terminated.
4. Suppliers adherence to this policy is demonstrated by the signing of the self-declaration at the end of this document.

### TMEA Requirements

Below are the specific requirements that TMEA suppliers and subcontractors are expected to adhere.

#### 1. Forced or Compulsory Labour

TMEA's suppliers shall not:

- a) Employ forced or compulsory labour in all its forms which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty.

#### 2. Child Labour

TMEA's suppliers shall not:

- a) Employ children below 14 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part of a contract takes place; and
- b) Employ persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons.

#### 3. Wages and Working Hours

TMEA's suppliers shall not:

- a) Permit or require any person or employee whose work relates to this Contract to work more than the maximum hours in any one work week permitted by applicable law or regulation unless such employees are paid at least the overtime rate specified by applicable law or regulation. In the event that the applicable national laws of regulations do not prescribe the maximum hours of work and/or overtime remuneration the prevailing International Labour Organisation standards shall apply.

#### 4. Health and Safety

TMEA's suppliers shall provide a healthy and safe working environment that:

- a) Ensures the workplaces, machinery, equipment and processes under their control are safe and without risk to health.
- b) Ensures the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
- c) Ensures where necessary, adequate protective clothing and protective equipment are provided to prevent so far as is reasonably practicable, risk of accidents or adverse effects to health.
- d) For employees, ensures that adequate occupational safety training is provided and identifies, accesses and controls potential exposure to safety hazards.

#### 5. Harassment and Bullying

TMEA suppliers shall create and maintain an environment that:

- a) Treats all employees and other persons with dignity and respect.
- b) Is free from threats of physical violence, bullying, psychological or verbal harassment and/or sexual exploitation and abuse, perpetrated by employees and/or other contractors or person engaged by them.

#### 6. Sexual Exploitation, Violation and Abuse

TMEA's suppliers shall:

- a) Take all appropriate measures to prohibit their employees and/or other contractors or person engaged by them, from engaging in sexual exploitation and abuse, including but not limited to the prohibition of:
  - i) Engaging in any sexual activity with any person under the age of 18, regardless of any laws of majority or consent; and
  - ii) Engaging in any sexual activity that is exploitive or degrading to any person.

#### 7. Environmental

TMEA's suppliers shall:

- a) Wherever possible, support a precautionary approach to environmental matters, which is at least to have an effective environment policy and/or to comply with existing legislation and regulations regarding the protection of the environment.



- b) Where significant environmental and social risks are identified in the implementation of a specific assignment or project, a detailed environment and social assessment and management plan will be required and, where necessary, this will be described in the Terms of Reference.

#### 8. Pollution Prevention, Energy and Resource Efficiency

TMEA suppliers shall:

- a) Utilise strategies to deliver products or services that as far as possible, minimise emissions and discharge of pollutants and generation of waste.
- b) Aim for the most efficient use of energy and resources in order to provide for significant opportunities in terms of competitiveness, cost reduction and improved productivity.
- c) Obtain, maintain and keep current all relevant environmental permits, approvals and registrations.

#### **TMEA Supplier Environmental and Social Standards due diligence checks**

1. As part of the usual procurement process (and before a preferred bidder is recommended to the Tender Committee), the Procurement Director shall undertake to the maximum extent reasonably possible the following verification to ensure that any new supplier shall substantially protect employees, the environment and community in which the works and/or services shall be carried out:
  - i. As a pre-condition to entering into a contract, TMEA shall require suppliers to certify in writing via this self-certification form, that they are in compliance with the requirements of these standards.
  - ii. Suppliers acknowledge that TMEA may perform routine, on-site audits of suppliers to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources) to review documents and working practices to ensure all reasonable measures are taken to achieve compliance with these standards.
2. The self-certification submitted shall be valid for three years after which the certification shall be renewed.
3. Where an employee or other stakeholder has suspicion that a supplier is breaching any aspect of these standards, they should report the matter to the Director of Audit & Assurance.

**Declaration statement**

I confirm that I \_\_\_\_\_ *(insert Signatory's name)* on behalf of \_\_\_\_\_ *(insert name of Party)* hereby confirm that I have read and wholly understood the Supplier Environmental and Social Standards Framework provided and do hereby confirm that to the best of my knowledge and that available with the organisation that \_\_\_\_\_ *(insert name of Party)* has all relevant policies and procedures to eliminate the prohibited practices and does not undertake any of the prohibited practices nor have links with any organisation or individuals that undertake such prohibited practices.

I also therefore give full endorsement that should TMEA establish that this information is inaccurate, action \_\_\_\_\_ may \_\_\_\_\_ be \_\_\_\_\_ taken \_\_\_\_\_ against \_\_\_\_\_

\_\_\_\_\_ *(insert names of the Signatory and Party)* which shall include disqualification of the supplier and/or subcontractor from being eligible for a TMEA contract and shall result in a contract being suspension and/or terminated.

On behalf of Party: -

Organisation's/ consultant/ firm/ company/ JV name: \_\_\_\_\_

Title of Signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Stamp/ seal: \_\_\_\_\_

**ANNEX 8: TECHNICAL BID SUBMISSION FORM**

**TECHNICAL BID SUBMISSION FORM**

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

Date: \_\_\_\_\_ (insert date (as day, month and year) of Bid Submission)

To: **TradeMark East Africa**  
**Fidelity Insurance Centre,**  
**P O Box 313 00606,**  
**Nairobi, Kenya**

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents;
- (b) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods and Related Services [insert a brief description of the Goods and Related Services];
- (c) Our bid shall be valid for a period of **120 days**, from the date fixed for the bid submission deadline in accordance with the ITT, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (d) If our bid is accepted, we commit on request to obtain a performance security (if applicable) for the due performance of the Contract;
- (e) We have no conflict of interest;
- (f) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall not constitute a binding contract between us, until a formal contract is prepared and executed.
- (g) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

**Signed by:** \_\_\_\_\_ (signature of person authorized by the Bidder to sign the bid submission form, and whose name and title are shown below)

**Name:** \_\_\_\_\_ (insert full name)

**Title:** \_\_\_\_\_ (insert official title)

**Duly authorized to sign the bid for and on behalf of:** \_\_\_\_\_  
(insert full name of Bidder)

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

**ANNEX 9: CURRICULUM VITAE TEMPLATE**

**CURRICULUM VITAE (CV)**

<b>Position Title and No.</b>	{e.g., K-1, TEAM LEADER}
<b>Name of Expert:</b>	{Insert full name}
<b>Date of Birth:</b>	{day/month/year}
<b>Country of Citizenship/Residence</b>	

**Education:** {List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained **attach valid copies of the certificates and testimonials**}

---



---

**Employment record relevant to the assignment:** {Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous clients and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}

<b>Period</b>	<b>Employing organization and your title/position. Contact info for references</b>	<b>Country</b>	<b>Summary of activities performed relevant to the Assignment</b>
[e.g., May 2005-present]	[e.g., Ministry of ....., advisor/consultant to...  For references: Tel...../e-mail.....; Mr. Hbbb, deputy minister]		

**Membership in Professional Associations and Publications:**

---

**Language Skills (indicate only languages in which you can work ranking from 1 to 5 for speaking, writing and reading where 1 is poor and 5 is excellent):**

<b>Language</b>	<b>Reading</b>	<b>Writing</b>	<b>Speaking</b>

**Adequacy for the Assignment:**

Detailed Tasks Assigned on Consultant's Team of Experts ( <i>insert the time period</i> )	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
{List all deliverables/tasks in which the Expert will be involved}	

**Expert's contact information :** (e-mail....., phone.....)

**Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Client, and/or sanctions by the Client.

{Day/month/year}

---

Name of Expert	Signature
Date	{Day/month/year}

---

Name of authorized	Signature
Date	

Representative of the Consultant (*the same one who signs the Proposal*)

**Note:**

1. Failure by the consultant to sign the CV (physically or electronically), may lead to the CV not being considered altogether.
2. Failure to submit copies of certificates and/or accreditation may lead to the CV being invalidated.

**ANNEX 10: FAIR PRICE DECLARATION**

**FAIR PRICE DECLARATION FORM**

I/We \_\_\_\_\_ (*insert name of the consultant or consultancy firm*) hereby declare that the price quoted in our financial proposal/quotation/ pro-forma invoice (~~delete that which is not applicable~~) are in line with the market rates and/or the approved professional charges and are economical. I/We also confirm that the prices quoted have been arrived at independently and without consultation with any other supplier. I/We hereby give TradeMark East Africa authority to terminate the contract without further communication should they discover that I/we \_\_\_\_\_ (*insert name of the consultant or consultancy firm*) am/are in contravention of this declaration.

Name: .....

Designation: .....

Signature: .....

Date: .....

**ANNEX 11: FINANCIAL BID SUBMISSION FORM**

**FINANCIAL BID SUBMISSION FORM**

Dear Sir/Madam:

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of \_\_\_\_\_  
**(indicate the corresponding amount(s) in words and figures and the currency (ies))**, including all applicable taxes in line provided clauses in this tender document.

This financial bid submission/ proposal is in line with Pro-forma 1, 2, 3 and 4 of Annex 1 of this RFP tender document.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from any contract negotiations, up to expiration of the validity period of the Proposal, up to a period of **120 days** after bid submission deadline date.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours Sincerely,

Authorized Signature **(In full and initials)**: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

In the capacity of: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

**(For a joint venture, either all members shall sign or only the lead member/ consultant, in which case the power of attorney to sign on behalf of all members shall be attached)**

**ANNEX 12: FINANCIAL PROPOSAL PRO - FORMA TEMPLATES**

**Pro- forma 1**

**TENDER FOR:** \_\_\_\_\_ *(Insert tender title)*

**TENDER NUMBER:** \_\_\_\_\_ *(Insert tender reference number)*

**MILESTONE PAYMENTS PROPOSAL**

**The amount to be paid for the completion of the services is fixed at USD**

For this particular process, bidders are expected to provide their financial proposal as per the milestone/deliverables below

<b>Milestone/Deliverables</b>	<b>Percentage to be Paid</b>	<b>Total contract Amount in USD</b>
Inception Report with Detailed Work Plan	10	
Detailed analysis of the Biden Administration Trade Policy (Build Back Better) and its implication on the scope of the Kenya US FTA	10	
Sectoral assessment study reports and proposed position on the listed areas of the negotiation	20	
Study on FTA related flexibilities provided in the multilateral trade agreements and regional/continental trade agreements	20	
Kenya Negotiating Position Paper and Joint Text with	30	



PRQ20210142 Technical assistance to Kenya towards trade negotiations and implementation of trade agreements

Summary Input from Country Position Paper		
Legal FTA Text (as of end of contract) and Project Closeout Report	10	
<b>TOTAL</b>	<b>100</b>	

- a) Inception Report including detailed analysis of the Biden Administration Trade Policy (Build Back Better) and its implication on the scope of the Kenya US FTA and areas of flexibility including phaseout options and indicating how the project will be implemented. The inception report to be submitted within 14 working days after the signing of the contract;
- b) Detailed Work-plan on the activities identified under the Scope of Work leading to the envisaged outputs towards successful conclusion of the FTAs and other negotiations at regional level;
- c) Sectoral assessment study reports and proposed position on the following areas of the negotiation: Market access, Rules of Origin, Customs procedures and Trade Facilitation, Trade Remedies, Subsidies, Agriculture, Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) issues, Kenya's trade in goods commitments at Multilateral, regional and continental levels;
- d) Study on FTA related flexibilities provided in the multilateral trade agreements and regional/continental trade agreements;
- e) Negotiating policy briefs/position papers and draft negotiating legal texts in all areas of negotiations; and Quarterly Progress Reports on the Negotiations against the milestones in the work plan.

**Pro forma 2**

TENDER FOR: \_\_\_\_\_ *(Insert tender title)*

TENDER NUMBER: \_\_\_\_\_ *(Insert tender reference number)*

**PROPOSAL BREAKDOWN - PERSONNEL INPUTS AND FEE RATES**

NAME	COUNTRY <i>(PLEASE SPECIFY)</i>	NO DAYS	DAILY FEE RATE (\$)	COST (\$)
Long Term*				
Short Term				
<b>TOTAL FEES</b>				\$

\* Long Term is in excess of 4 months

Guidance on Fees and Expenses can be found in Section 2 of the contract - the General Conditions.

**Pro- forma 3**

**TENDER FOR:** \_\_\_\_\_ *(Insert tender title)*

**TENDER NUMBER:** \_\_\_\_\_ *(Insert tender reference number)*

**PROPOSAL BREAKDOWN – PROJECT EXPENSES**

Costs should be shown separately in the format set out below using separate sheets to provide full details under each heading. Fees proposed by tenderers should be inclusive of all taxes.

<b>TRAVEL (PLEASE STATE COUNTRY OF TRAVEL)</b>		<b>NO.</b>	<b>RATE</b>	<b>COST (\$)</b>
<b>FARES</b>	International			
	Domestic			
	Other Travel Costs			
	<b>Sub Total</b>			\$
<b>DAILY LIVING COSTS (state country) *Long Term</b>				
	*Short Term			
	<b>Sub Total</b>			\$
<b>EQUIPMENT* Items Purchased/Rented (Including vehicles)</b>				
	<b>Sub Total</b>			\$
<b>Any other expenses (please list)</b>				
	<b>Sub Total</b>			\$
<b>TOTAL PROJECT EXPENSES: (B)</b>				\$

\*TMEA will not reimburse costs for normal tools of trade (e.g. portable personal computers)

\* Long Term consultants are expected to utilise rented accommodation. No per diem is payable.

\*Short Term expectation is either rented accommodation or a hotel.

**Pro- forma 4**

TENDER FOR: \_\_\_\_\_ *(Insert tender title)*

TENDER NUMBER: \_\_\_\_\_ *(Insert tender reference number)*

**PROPOSAL BREAKDOWN - SUMMARY OF PAYMENT**

PROPOSED PAYMENT BREAKDOWN	AMOUNT (USD \$)
<b>Sub-total (exclusive of taxes)</b>	\$
Taxation amount <i>(include all applicable taxes (e.g., Value Added Tax, Withholding Tax etc) in separate rows)</i>	\$
<b>TOTAL (inclusive of taxes)</b>	\$

**ANNEX 13: DRAFT CONTRACT TEMPLATE**

**CONTRACT FOR CONSULTANCY SERVICES**

**Section 1 – Form of Contract**

CONTRACT FOR: [Insert Title here]

CONTRACT REFERENCE: [Insert Number here]

**THIS CONTRACT** dated [Insert date here] is made

**BETWEEN:**

**TradeMark East Africa** (“TMEA”) having its principal place of business at (insert office details);

**AND**

[Insert Consultant Name] (“The Consultant”) having its principal office located in [Insert Contact Details].

**WHEREAS:**

TMEA has requested the Consultant to provide certain consulting services as defined in the detailed terms of reference and scope of services attached to this Contract (hereinafter called the “Services”); the Consultant, having represented to TMEA 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.

**IT IS HEREBY AGREED** as follows:

**1. Documents**

This Contract from page [Insert page no] to page [Insert page no.] shall comprise the following documents:

Section 1 Form of Contract

Section 2 General Conditions

Section 3 The Services

Section 4 Special Conditions and Key Personnel

Section 5 Fees

This Contract constitutes the entire agreement between the Parties in respect of the Consultant's obligations and supersedes all previous communications between the Parties, other than as expressly provided for in Section 3 and/or Section 4.

## 2. Contract Signature

If the original Contract is not returned to - TMEA duly completed, signed and dated on behalf of the Consultant within 15 days of the date of signature on behalf of TMEA, TMEA will be entitled, at its sole discretion, to declare this Contract void. No payment will be made to the Consultant under this Contract until a copy of the Contract, signed on behalf of the Consultant is returned to TMEA.

## 3. Commencement and Duration of the Services

- a. The contract shall be effective on the date both parties sign, and the services shall be completed by **[Insert end date]** (End Date") or any other period as may be subsequently agreed by the parties in writing unless this Contract is terminated earlier in accordance with its terms and conditions.
- b. If the services have not commenced in accordance with clause 3a above, TMEA will within not less than 30 days notify the consultant in writing, declaring the contract to be null and void, and in the event of such declaration, the consultant shall have no claim against TMEA with respect thereto.

## 4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed **[XXX]** for fees and **[XXX]** for expenses within a total limit of **[XXX]** inclusive of all taxes applicable ("the Financial Limit").

## 5. Time of the Essence

Time shall be of the essence as regards the performance by the Consultant of its obligations under this Contract.

For and on behalf of TMEA

Name: **KEN JONES**  
Position: **CHIEF OPERATING OFFICER**  
Signature:  
Date:

For and on behalf of the consultant

Name:  
Signature:  
Date:

## CONTRACT FOR CONSULTANCY SERVICES

### Section 2 – General Conditions

#### 1. Definitions

"The Contract" means the agreement entered into between TMEA and the consultant, as recorded in this Contract Document signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

"TMEA Project Manager" means the person nominated by TMEA who is responsible for the management of the Project.

"the Equipment" means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services which are financed or provided by TMEA for use by the Consultant.

"the Financial Limit" means the amount specified in Section 1 and which represents the maximum amount payable by TMEA under this Contract.

"Fees" means the fees payable for the Services as set out in Section 5.

"the Services" means the services to be provided by the Consultant as set out in Section 3.

"the Consultant" means the natural person(s), partnership(s), or company (ies) whose bid to perform this contract has been accepted by TMEA and is named as such in this contract and includes the legal successors or permitted assigns of the Consultant.

"the Consultant's Personnel" means any person instructed by the Consultant pursuant to this Contract to undertake any of the Consultant's obligations under this Contract, including the Consultant's employees, agents and sub-contractors.

"Subcontractor" means any natural person(s), partnership(s), or company (ies), including its legal successors or permitted assigns, to whom any part of the services to be provided is subcontracted by the Consultant.

#### 2. Interpretation

In the event of any inconsistency between the Form of Contract (Section 1), these General Conditions (Section 2) and the Special Conditions (Section 4), the Special Conditions shall prevail.

#### 3. Project management

TMEA designates the TMEA Project Manager as being responsible for the coordination of activities under this Contract, for the acceptance and approval on behalf of TMEA of the reports and of other deliverables produced by the Consultant, and for receiving and approving invoices for payment.

#### 4. Obligations

- a. TMEA and the Consultant each warrant that it has all the requisite corporate power and authority to enter into this Contract and is fully capable of performing its obligations under this Contract on the terms provided for in this Contract.

- b. The Consultant shall perform the Services and all other obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.
- c. The Services shall be provided at the location set out in Section 3. Notwithstanding this, the Consultant may be required to travel to other locations from time to time in carrying out the Services.

## 5. Indemnification

At its own expense, the Consultant shall indemnify, protect and defend, TMEA, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Consultant in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights. Should the act or omission originate from TMEA, then TMEA will indemnify the consultant.

The Consultant hereby indemnifies TMEA, its agents and employees against any legal cost, including attorney/own client costs incurred by TMEA in defending any complaints, disputes or claims lodged by any party as a result of the actions or omissions of the Consultant.

## 6. Consultant's Personnel

- a. The Consultant acknowledges that it and the Consultant's Personnel have no authority to create or incur any liability or obligation on behalf of TMEA, including but not limited to any liability or obligation to expend or incur capital expenditure and not to recruit, employ or dismiss any member of staff employed by TMEA.
- b. The Consultant shall not at any time, either personally or by an agent, directly or indirectly represent itself as being in any way connected with or interested in TMEA save as being engaged to perform the Services.
- c. Save for the Services agreed and set out at Section 3, TMEA is under no obligation to offer work to the Consultant and the Consultant is under no obligation to accept any work, which may be offered by TMEA.
- d. No changes or substitutions may be made to members of the Consultant's Personnel identified in Section 4, if any, of this Contract without TMEA's prior written consent.
- e. If TMEA considers any member of the Consultant's Personnel unsuitable, the Consultant shall substitute such member as quickly as reasonably possible without direct or indirect charge to TMEA with a replacement acceptable to TMEA.
- f. The Consultant is responsible for all acts and omissions of the Consultant's Personnel and for the health, safety and security of such persons and their property.
- g. TMEA is dedicated to gender equality and ensuring equitable and sustainable human development.

## 7. Fees

- a. Subject as follows, payments shall be due to the Consultant in accordance with the Fee payment schedule set out in Section 5. In the case of Fees that are payable upon the completion of milestones as may be set out in Section 4, such fees shall not become due and payable until the completion, to TMEA's satisfaction, of the relevant milestone event or the delivery of the deliverables to TMEA's satisfaction required for the achievement of the relevant milestone satisfactorily



- b. Payment of the Fees shall be subject to TMEA being satisfied that the Consultant is or has been carrying out its duties, obligations and responsibilities under this Contract.
- c. If for any reason TMEA is dissatisfied with performance of this Contract, an appropriate sum may be withheld from payments that would otherwise be due under this Contract. In such event TMEA shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.
- d. Fees charged and expenses incurred shall not, in aggregate, exceed the Financial Limit without the prior written consent of TMEA.
- e. No payments shall be made in respect of days not worked due to sickness or holiday or otherwise.
- f. Only the fee rates listed in Section 5 of this Contract will apply to any Services performed by the Consultant under this Contract.

## 8. Expenses

The Consultant shall be entitled to be reimbursed only for those expenses which have been approved and are set out in Section 5.

## 9. Invoicing Instructions

- a. Invoices should particularise the contract to which they relate and should be sent to the address referenced in Section 5.
- b. All invoices should contain details of the Services provided, milestones achieved, and deliverables provided to which the invoice relates. Where expenses are payable, invoices should be accompanied by proof of the expense. Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment.
- c. TMEA may request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- d. TMEA reserves the right to audit, or to nominate a reputable accounting firm to audit the Consultant's records relating to amounts claimed under this Contract during its term and any extension, and for a period of three months thereafter.
- e. TMEA reserves the right not to pay any amount due in respect of an invoice received by TMEA more than 60 days after the day of the Consultant becoming entitled to invoice for the payment to which it relates.
- f. TMEA will deduct all applicable taxes from the consultant's invoiced amounts as per Government of **XXXX** regulations. Consultants from countries with double tax agreements will be provided with withholding tax certificates. It is the consultant's responsibility to establish their tax status in the country where the Services will be delivered.

## 10. Payments

Subject to TMEA being satisfied that the Consultant is or has been carrying out their duties, obligations and responsibilities under this Contract, sums duly approved shall be paid within 30 days of receipt of a valid invoice.

### **11. Nature of relationship**

TMEA and the Consultant agree and intend that this relationship is one of undertaking independent services and specifically is not a relationship of employer or employee agency, joint venture or partnership.

Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent between TMEA and the Consultant and the Consultant will be solely responsible for the tax status, tax and any statutory contributions payable of and for the

Consultant's Personnel and for all or any of its or the Consultant's Personnel's taxes payable in respect of Fees and reimbursements received in connection with this Contract.

### **12. Performance Standards**

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity.

### **13. Termination and Suspension**

TMEA or the Consultant may terminate the Contract by giving not less than 30 days written notice. In such cases, TMEA shall be liable to make payments only for work completed and delivered, of acceptable standard.

Specifically, TMEA reserves the right to terminate this Contract if the Consultant fails to perform any of its obligations or to comply with the conditions and requirements set out in this Contract.

Without prejudice to the above paragraph, TMEA reserves the right to withdraw or suspend payments to the Consultant immediately under the following circumstances:

- i. The Consultant has engaged in illegal, corrupt, fraudulent, coercive, collusive or conflict of interest practices in connection with the Contract, without the Consultant having taken timely and satisfactory action to the satisfaction of TMEA to address such practices when they occur;
- ii. The Consultant fails to comply with its obligations in the fields of environmental, social or labour regulations, including sexual harassment and any form of abuse, including but not limited to failure by a supplier to take preventative measures, investigate allegations or to take corrective action against sexual exploitation or abuse incidences;
- iii. The Consultant fails to comply with its obligations under Anti-Terrorism and Organised Crime requirements of TMEA;
- iv. A representation or statement made by the Consultant in or pursuant to the Contract intended to be relied upon by TMEA in making the Contract, which was incorrect in any material aspect

A full accounting of all payments made under this contract will be required prior to the conclusion of the notice period, in addition to full reimbursement of any unspent advance payments to the Consultant.

For any of the above, any unspent or inconsistently spent payments must be returned to TMEA within 30 days of the termination notice.

#### **14. Confidentiality**

- a. The Consultant shall not, during the term of this Contract and within two years after its expiration or termination, disclose any proprietary or confidential information relating to the Services, this Contract or TMEA's business or operations without the prior written consent of TMEA.
- b. Notwithstanding the above, the consultant may furnish to its subcontractor such documents, data, and other information it receives from TMEA to the extent required for the subcontractor to perform its work under the contract, in which event the consultant shall obtain an undertaking of confidentiality similar to that imposed on the consultant under this contract.

#### **15. Ownership of Material**

- a. Any studies, reports or other material, graphic, software or otherwise, prepared by the Consultant for TMEA under the Contract shall belong to and remain the property of TMEA.
- b. Where intellectual property rights in all material produced by the Consultant or the Consultant's Personnel pursuant to the performance of the Services ("the Material") are the property of the Consultant, the Consultant hereby grants to TMEA a worldwide, nonexclusive, irrevocable, royalty free licence to use all the Material.
- c. "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

#### **16. Bribery, Conflict of Interest, Corruption and Fraud**

The Consultant shall not, and shall ensure that any person affiliated with the Consultant shall not:

- i. Participate in the selection, award or administration of a contract, grant or other benefit or transaction funded by the Contract, in which the person, members of the person's immediate family or his or her business partners, or organisations controlled by or substantially involving such person, has or have any financial interest;
- ii. Participate in transactions involving organisations or entities with which or whom that person is negotiating or has any arrangement concerning prospective employment;
- iii. Offer, give, solicit or receive, directly or indirectly, gratuities, favours, gifts or anything else of value to influence the action of any person involved in the procurement process or contract execution;
- iv. Misrepresent or omit facts in order to influence the procurement process or execution of the contract;
- v. Engage in a scheme or arrangement between two or more bidders, with or without the knowledge of the Consultant designed to establish bid prices at artificial, non-competitive levels;  
or
- vi. Participate in any other practice that is or could be construed as an illegal, corrupt or a conflict of interest in the country of operation.

Disclosure: If the Consultant has knowledge or becomes aware of any:

- i. Actual, apparent or potential conflict between financial interests of any person affiliated with the Contract and/or TMEA; or
- ii. Any of the practices listed under (i) to (vi) above,

the Consultant shall immediately disclose the same directly to Procurement Director, TMEA.

TMEA reserves the right to terminate this Contract if the Consultant or any person affiliated with the Consultant fails to perform any of its obligations or to comply with the conditions and requirements listed under (i) to (vi) above.

Further details can be found in the Code of Ethics under Clause 4 (Fraud and Corruption) and to report such activities, the Consultant will follow the steps provided in Clause 8 of the same document.

### **17. Anti-terrorism and Organised Crime**

The Contract funds shall not be used to finance terrorism and other criminal activities. The Consultant shall take all appropriate measures to ensure that the Contract payments are not used for unintended purposes including but not limited to money laundering and exploitation by terrorist organisations and/or their support networks.

The Consultant shall verify to the maximum extent reasonably possible that any parties associated with the Contract shall substantially protect TMEA's resources from diversion to unintended purposes including but not limited to exploitation by terrorist organisations and/or their support networks.

TMEA reserves the right to terminate this Contract if the Consultant or any person affiliated with the Consultant fails to perform any of its obligations or to comply with the conditions and requirements listed under this clause.

### **18. Safeguarding**

The Consultant shall ensure that the Contract is implemented with strict adherence to TMEA's Supplier Environmental and Social Standards document that includes adherence to policies against bullying, sexual exploitation, harassment and abuse. The Consultant shall ensure that all steps are taken to mitigate against any identified environmental, social, and safeguarding risks that may arise as a result of the Contract.

TMEA reserves the right to terminate this Contract if the Consultant or any person affiliated with the Consultant fails to perform any of its obligations or to comply with the conditions and requirements contained in the Supplier Environmental and Social Standards document

### **19. Code of Ethics**

The Consultant shall comply with TMEA's Code of Ethics which forms part of this Agreement as amended from time to time, which must be signed off and adopted prior to TMEA making payments on the Contract.

The Consultant shall at all times act loyally and impartially and as a faithful advisor to TMEA in accordance with the rules and/or codes of conducts governing its profession.

The Consultant shall in particular refrain from making any public statements concerning the services without prior written approval of TMEA, and from engaging in any activity which conflicts with its obligations towards TMEA under this contract.

The Consultant shall not commit TMEA in any way whatsoever without TMEA's prior written consent, and shall, where appropriate, extend this obligation to third parties.

TMEA reserves the right to terminate this Contract if the Consultant or any person affiliated with the Consultant fails to perform any of its obligations or to comply with the conditions and requirements contained in the Code of Ethics.

## **20. Subcontracting**

The consultant shall request approval in writing from TMEA for all subcontracts awarded under this contract that are not included in the contract. Subcontracting shall in no event relieve the consultant of any of its obligations, duties, responsibilities or liability under this contract.

## **21. Law Governing Contract and Language**

The Contract shall be governed by the laws of **XXXX** but in the event of a conflict between Rwandan laws and any other Law, then the laws of **XXXX** prevail. The language of the Contract shall be English.

## **22. Dispute Resolution**

TMEA and the Consultant agree to seek to resolve any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, by amicable settlement. Where it is not possible to reach an amicable settlement, any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Act of 1995 or any statutory modifications or re-enactment thereof for the time being in force.

Notwithstanding any adjudication or arbitration proceedings no party shall commit an anticipatory breach of contract.

## **23. Liability**

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Consultant or the Consultant's Personnel, the Consultant's aggregate liability arising out of or in connection with this Contract shall be limited to the amount of the Financial Limit.

The Consultant shall not be liable for any failure to perform or delay in performance of any of its obligations arising out of or in connection with this Contract where such failure or delay is caused by TMEA or any of TMEA's agents, employees or contractors.

## **24. Force Majeure**

a. The failure of the Consultant 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 act, event, omission or accident beyond its reasonable control ("Force Majeure Event"), provided that the

- Consultant (i) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (ii) has informed TMEA as soon as possible about the occurrence of such an event and in any event not later than 14 days after the occurrence of such event.
- b. Any period within which the Consultant shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which the Consultant was unable to perform such action as a result of the Force Majeure Event.
  - c. During the period of their inability to perform the Services as a result of a Force Majeure Event, the Consultant shall be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

Force Majeure shall not include:

Any event which is caused by the negligence or intentional action of the consultant, or such consultant's subcontractors or agents or employees; nor Any event which a diligent party could reasonably have been expected to both: Take into account from the effective date of the contract; and Avoid or overcome in the carrying out of its obligations.

#### **25. Joint venture, consortium or association**

Unless otherwise specified in this contract, if the Consultant is a joint venture, consortium or association, all of the parties shall be jointly and severally liable to TMEA for the fulfilment of the provisions of this contract.

The composition or constitution of the joint venture, consortium or association shall not be altered without the prior written consent of TMEA. Any alteration of the composition of the joint venture, consortium or association without prior written consent of TMEA shall be considered to be a breach of contract.

#### **26. Travel**

All authorized air travel must be economy class through the most direct and economical route.

## **CONTRACT FOR CONSULTANCY SERVICES**

### **Section 3 – The Services**

#### **TERMS OF REFERENCE**

**[Insert]**

## CONTRACT FOR CONSULTANCY SERVICES

### Section 4 – Special Conditions and Consultant’s Key Personnel

#### 1. Special conditions

The proposal-both technical and financial-submitted for this tender forms an integral part of this contract.

#### 2. Key Personnel

The following of the Consultant's Personnel cannot be substituted by the Consultant without TMEA's prior written consent:

[Insert]



## CONTRACT FOR CONSULTANCY SERVICES

### Section 5 – Fees

#### 1. Payment Schedule

Deliverable	%tage of Deliverable to be Paid (USD)	Total Contract Amount (USD)
<b>TOTAL</b>		

#### 2. Invoicing instructions

After approval by the recipient, invoices should be sent to [invoices@trademarkea.com](mailto:invoices@trademarkea.com). Invoices should clearly list the Contract Number (POxxxx) and the details of the Consultant’s bank account to which TMEA shall transfer payments.