



DISPOSAL OF KAREN LAND L.R. NUMBER 2259/311

TENDER NO. KPPF/PROC/2-A/05/19

NOVEMBER 2019

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

KENYA POWER PENSION FUND TENDER DOCUMENT FOR DISPOSAL 2019

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1.1.1. **Balance of the Purchase Price** means ninety per cent (90%) of the Purchase Price being the sum of Kenya Shillings [*] (KES [*]); 32

1.1.2. **Business Day** means a day other than a Saturday, Sunday or national day or public holiday in the Republic of Kenya; 32

1.1.3. **Competent Authority** means the Government of Kenya, the relevant county authority, county agencies, state corporations and other bodies having statutory or regulatory competence to promulgate rules and regulations having the force of law touching and concerning, the Property and the transaction contemplated in this Agreement and other matters contemplated in this Agreement; 33

1.1.4. **Completion** means the steps and matters to be undertaken by the parties relating to the transfer of the title from the Vendor to the Purchaser as more particularly set out in clause 4 (Completion); 33

1.1.5. **Completion Date** means [should not exceed 90 days from date of sale agreement]; 33

1.1.6. **Performance Guarantee** means ten percent (10%) of the Purchase Price being the sum of Kenya Shillings [*] (KES [*]); 33

1.1.7. **Extended Completion Date** shall have the meaning given in clause 9.1.2; 33

1.1.8. **Interest** means eighteen percent (18%) per annum calculated on daily balances and compounded monthly at the end of each calendar month being 31st January, 28th February, 31st March and so on; 33

1.1.9. **Outgoings** means land rent, land rates, water and electricity charges relating to the occupation or use of the Property; 33

1.1.10. **Parties** mean the parties to this Agreement; 33

1.1.11. **Property** has the meaning given to it in Recital A and as more particularly described in Schedule 1; 33

1.1.12. **Purchase Price** means the sum of Kenya Shillings [*] (KES [*]); 33

1.1.13. **Purchaser’s Advocates** means [*] of [*] Advocates, P.O. Box [*]; 33

1.1.14. **RTGS** means the real time gross settlement funds transfer system; and 33

1.1.15. **Vendor’s Advocates** means [*] of [*] Advocates, P.O. Box [*] 33

1.2.1. the expressions the **Vendor** includes the Vendor’s successors in title to the Property and the **Purchaser** includes the successors in title and permitted assigns of the Purchaser; 33

1.2.2. the word **tax** shall be construed so as to include any tax, levy, impost, assessment, duty or other charge of a similar nature (including, without limitation, value added tax, stamp duty, capital gains tax and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and **taxation or taxes** shall be construed accordingly and the expression **competent taxing authority** means, in respect of any state or administrative division thereof, any governmental or county authority, monetary agency or central bank having power to collect or levy taxes; 34

1.2.3. In this Agreement any reference to any document means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof 34

1.2.4. In addition to the definitions in clause 1.1, unless the context requires otherwise 34

1.2.5. All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it. 34

2.1.1. **Agreement to sell** 34

2.1.2. **Interest sold** 34

2.1.3. **Capacity** 34

3.1.1. On or before the date of this Agreement, purchaser shall provide a performance guarantee equivalent to 10% of tender sum from a commercial bank licensed by Central Bank of Kenya 34

3.1.2. The Purchaser may pay a Deposit to the bank account nominated by the Vendor’s Advocates by RTGS. The Deposit shall be immediately and unconditionally released by the Vendor’s Advocates to the Vendor (or as the Vendor may direct), without any reference to the Purchaser 35

3.1.3. The Balance of the Purchase Price shall be paid to a bank account nominated by the Vendor’s Advocates by RTGS on or before the Completion Date and shall held by the Vendor’s Advocates as stakeholder in accordance with the provisions of clause 4.3 below. All interest earned on the balance of the Purchase Price shall be for the account of the Vendor 35

3.1.4.	<i>The Purchase Price shall be paid by the Purchaser in Kenya Shillings (KES).</i>	35
4.2.1.	<i>original grant in respect of the Property;</i>	35
4.2.2.	<i>the formal instrument of transfer in respect of the Property duly executed by the Vendor in favour of the Purchaser (in triplicate);</i>	35
4.2.3.	<i>valid land rent clearance certificate for the Property for current year and certified copies of the land rent payment receipts for the Property for the years 2018 and 2019;</i>	35
4.2.4.	<i>valid consent to transfer the Property from the National Lands Commission;</i>	35
4.2.5.	<i>valid land rates clearance certificate for the current year and certified copies of the land rates payment receipts for the Property for the years 2018 and 2019;</i>	35
4.2.6.	<i>certified copy of the Vendor's tax PIN certificate;</i>	35
4.2.7.	<i>three (3) coloured passport sized photographs, and certified copies of the passport or national identity card and the tax PIN certificates of the Vendor's duly authorised officials who will effect the execution of the formal instrument of transfer referred to in clause 4.2.2.</i>	35
7.1.1.	<i>all subsisting easements and rights of way (if any); and</i>	36
7.1.2.	<i>the exceptions and reservations, stipulations, conditions and other matters contained in or implied by the title document to the Property or imposed by law or any Competent Authority.</i>	36
8.1.1.	<i>its duly appointed officials/agents and advocates have inspected the Property and its title and the Purchaser purchases the Property with knowledge of its actual state and condition and shall take the Property as it stands. The Vendor shall not be called upon to renew or improve the area making up the Property;</i>	37
8.1.2.	<i>it enters into this Agreement solely as a result of its duly appointed officials/agents own inspection of the Property and on the basis of the terms of this Agreement and not in reliance upon any representation or warranty either written or oral or implied made by or on behalf of the Vendor of anything whatsoever, save as expressly set out in this Agreement; and</i>	37
8.1.3.	<i>it shall not be entitled to make any warranty claim or seek any remedy whatsoever for anything that is within its knowledge or that may be deemed by law to be within its knowledge</i>	37
8.1.4.	<i>it shall procure that all reasonable steps are taken and all reasonable assistance in its power is given, to avoid or mitigate any losses.</i>	37
9.1.1.	<i>rescind this Agreement by notice in writing to the Purchaser; or</i>	37
9.1.2.	<i>extend from time to time the Completion Date by notice in writing to the Purchaser, to any date not later than twenty one (21) days from the date of the written notice (the Extended Completion Date, and any reference in this Agreement to Completion Date shall thereafter apply mutatis mutandi to the Extended Completion Date, save in respect of interpretation of any provisions of this Agreement for purposes of any rights and remedies that the Vendor may have against the Purchaser for failing to complete the transaction on the initial Completion Date), provided always that the Vendor may in its sole and absolute discretion rescind this Agreement at any time on or after the Extended Completion Date, by notice in writing to the Purchaser, if the Purchaser shall not be ready, able or willing to pay the Balance of the Purchase Price;</i>	
	37	
	AND UPON RESCISSION PURSUANT TO CLAUSE 9.1.1 OR 9.1.2, THE PURCHASER SHALL FORTHWITH RETURN ALL DOCUMENTS DELIVERED TO THE PURCHASER BY OR ON BEHALF OF THE VENDOR AND, WITHOUT PREJUDICE TO ANY OTHER RIGHTS OR REMEDIES AVAILABLE TO THE VENDOR, THE PERFORMANCE GUARANTEE SHALL STAND FORFEITED AND THE VENDOR SHALL RETAIN THE PERFORMANCE GUARANTEE FOR THE VENDOR'S ACCOUNT AND BENEFIT. THE PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT THE FORFEITURE OF THE PERFORMANCE GUARANTEE AND THE RETENTION OF THE PERFORMANCE GUARANTEE FOR THE VENDOR'S ACCOUNT AND BENEFIT IS A REASONABLE AND GENUINE PRE-ESTIMATE OF THE LOSS WHICH THE VENDOR SHALL SUFFER AS A RESULT OF THE PURCHASER'S BREACH IN FAILING TO COMPLETE THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT	38
9.3.1.	<i>extend the time for Completion; or</i>	38
9.3.2.	<i>rescind this Agreement by notice in writing to the Vendor</i>	38
10.2.1.	<i>"interest" means the interest at the Interest Rate prescribed in this Agreement;</i>	39
10.2.2.	<i>the provisions of condition 10 (objections and requisitions) shall not apply;</i>	39
10.2.3.	<i>the provisions of condition 18 (mis-description and compensation) shall not apply; and</i>	39
10.2.4.	<i>the provisions of condition 14 (Identity and conditions of the Property) shall not apply and the Vendor shall be under no obligation to point out to the Purchaser any survey beacons or to replace any missing or misplaced beacon; and</i>	39

10.2.5.	<i>the provisions of condition 8 (Interest on purchase money) shall not apply.</i>	39
	THE PURCHASER CONFIRMS THAT THE FUNDS EMPLOYED TO PAY FOR THE PURCHASE PRICE OR ANY SUMS PURSUANT TO THIS AGREEMENT ARE NOT AND SHALL NOT BE FROM THE PROCEEDS OF CRIME. THE PURCHASER HEREBY INDEMNIFIES THE VENDOR AGAINST ANY LOSS THAT THE PURCHASER MAY SUFFER AS A RESULT OF THE FUNDS EMPLOYED FOR THE PURCHASE PRICE OR ANY SUMS PURSUANT TO THIS AGREEMENT BEING DEEMED BY ANY COMPETENT AUTHORITY TO BE FROM PROCEEDS OF CRIME	40
15.1.1.	Dispute means any disagreement, difference or conflict that arises between the Parties as a result of the formation, existence, performance, interpretation, nullification (or consequences thereof), termination or invalidation of this Agreement, or arising from, out of or related to this Agreement in any manner whatsoever; and	41
15.1.2.	Dispute Notice means a notice given in writing by one Party to the other and that describes in reasonable and sufficient detail, the Dispute resulting from this Agreement.	41
15.6.1.	The tribunal shall consist of one (1) arbitrator to be agreed upon between the parties within fourteen (14) days of the lapse of the Mediation Period, failing which such arbitrator as shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators of the United Kingdom, (Kenya Branch) upon the application of either Party;	42
15.6.2.	The place of arbitration shall be Nairobi;	42
15.6.3.	The language to be used in the arbitral proceedings shall be English;	42
15.6.4.	The governing law shall be as set out in clause 14; and	42
15.6.5.	To the extent permitted by law, the award of the arbitration tribunal shall be final and binding upon the Parties and either Party may apply to a court of competent jurisdiction for enforcement of such award.	42
16.1.1.	the Vendor's Address means the address of the Vendor shown on the first page of this Agreement or such other address as the Vendor may from time to time, notify to the Purchaser as being its address for service for the purposes of this Agreement	43
16.1.2.	the Purchaser's Address means the address of the Purchaser shown on the first page of this Agreement or such other address as the Purchaser may from time to time notify to the Vendor as being its address for service for the purposes of this Agreement.	43
16.2.1.	may (in addition to any other effective mode of service) be sent by registered or recorded delivery post;	43
16.2.2.	shall in the case of a notice or other communication to the Vendor be served on the Vendor at the Vendor's Address; and	43
16.2.3.	shall (in the case of a notice or other communication to the Purchaser be served on the Purchaser at the Purchaser's Address	43
16.3.1.	by or to the Vendor may be given or made by or to the Vendor's Advocates on behalf of the Vendor;	43
16.3.2.	by or to the Purchaser may be given or made by or to the Purchaser's Advocates on behalf of the Purchaser	43
16.3.3.	Save as otherwise expressly provided herein, any notice, demand or document to be given or made by one party to this Agreement to the other shall be deemed made	43
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SECTION I - INVITATION TO TENDER

DATE: JULY 2019

- 1.1 The Kenya Power Pension Fund (KPPF) invites bids from eligible tenderers for **DISPOSAL OF KAREN LAND L.R. NUMBER 2259/311 TENDER NO. KPPF/PROC/2-A/05/19**
- 1.2 Tendering will be conducted through the Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015, the Public Procurement and Disposal Regulations, 2006 and Amendment Regulations (2013) Nos. 106 and 114.
- 1.3 Interested firms may obtain further information on the tender document from;
Head of Procurement,
Kenya Power Pension Fund,
Stima Plaza Annex, Kolobot Road
P.O Box 1548 – 00600
Nairobi, Kenya.
TEL NO: 254-20-3201020
EMAIL: tenders@kppf.co.ke
- 1.4 Completed Tenders are to be enclosed in plain sealed envelopes clearly marked **with the tender reference number and name** and be deposited in the Tender Box next to the lift lobby located at Stima Plaza Annex Kenya Power Pension Fund Offices, Ground Floor, Kolobot Road, Nairobi, Kenya so as to be received on or before on **16th January 2020 AT 11:30 AM.**
- 1.5 **Tenderers who need copy of title will be required to fill in on the register at KPPF Offices, replication of copy of title is not permitted unless with due authorization from KPPF.**
- 1.6 Tenders will be opened promptly thereafter in the presence of the tender's or their representatives who choose to attend at 3rd Floor Ndovu Meeting Room, Stima Plaza Annex Kenya Power Pension Fund Offices Kolobot Road, Parklands Nairobi Kenya.

OUR MISSION

To deliver value and quality of life in retirement for our members

OUR VISION

To be the best-in-class occupational pension scheme in the whole of Africa

CORE VALUES

Integrity

Accountability

Courteous

Stewardship

SECTION II - TENDER SUBMISSION CHECKLIST

Bidders are advised to clearly label their documents according to the tender submission checklist.

No.	Item	Tick Where Provided
1.	Tender Security	
2.	Duly completed Tender Form	
3.	Copy of National Identification Number for those bidding as individuals or Firm's Registration/Incorporation Certificate for companies/businesses	
4.	Copy of PIN Certificate or its equivalent for foreign companies	
5.	Copy of Valid Tax Compliance Certificate or its equivalent for foreign companies	
6.	The Certificate of directors and shareholding (CR12 or B12) from the registrars of companies (applicable to firms)	
7	Initialed Sale Agreement (signifying acceptance of its terms)	
8.	Any other document or item required by the Tender Document. (The Tenderer shall specify such other documents or items it has submitted)	

*NOTES TO TENDERERS

1. Valid Tax Compliance Certificate shall be one issued by KRA (Kenya Revenue Authority) and valid for at least up to the tender closing date. All Tenderers must provide a valid Tax Compliance Certificate, no acknowledgement receipt will be accepted
2. All Tenderers must provide the Personal Identification Number Certificate (PIN Certificate).

ABBREVIATIONS AND ACRONYMS

1. JV Joint Venture
2. KSH./KES Kenya Shillings
3. NLC National Land Commission
4. PPAD 2015 Public Procurement and Asset Disposal Act, 2015
5. PPDR 2006 Public Procurement and Disposal Regulations, 2006
6. PPRA Public Procurement Regulatory Authority
7. VAT Value Added Tax
8. KRA Kenya Revenue Authority
9. TCC Tax Compliance Certificate

SECTION III - INSTRUCTIONS TO TENDERERS (ITT)

3.1 Definitions

In this tender, unless the context or express provision otherwise requires: -

- a) *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.*
- b) *"Date of Tender Document" shall be the **start date** specified on the KPPF tender document.*
- c) *"Day" means calendar day and "month" means calendar month.*
- d) *"PPRA" wherever appearing means The Public Procurement Regulatory Authority or its successor(s) and assign(s) where the context so admits.*
- e) *Reference to "the tender" or the "Tender Document" includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*
- f) *"The Disposing Entity" means The Kenya Power & Lighting Company Limited Staff Retirement Benefits Scheme or its successor(s) and assign(s) where the context so admits (hereinafter referred to as Kenya Power Pension Fund abbreviated as KPPF).*
- g) *"The Tenderer" means the person(s) submitting its Tender for the purchase of Land Reference Number 2259/311 in response to the Invitation to Tender.*
- h) *Where there are two or more persons included in the expression the "Tenderer", any act or default or omission by the Tenderer shall be deemed to be an act, default or omission by anyone or more of such persons.*
- i) *Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.*
- j) *Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the "Tenderer" the covenants, agreements and obligations expressed to be made or performed by the Tenderer shall be deemed to be made or performed by such persons jointly and severally.*
- k) *KPPF's "authorized person" shall mean its Ag. CEO & Trust Secretary who is designated by the PPAD Act 2015 to exercise such power, authority or discretion as is required under the tender and any contract arising therefrom, or such other KPPF staff delegated with such authority.*

- l) *Citizen tenderer -means a person/firm wholly owned and controlled by person(s) who are citizens of Kenya.*

3.2 Eligible Tenderers

3.2.1 This invitation to bid is open **to ALL individuals/entities**

3.2.2 Bidders shall not have a conflict of interest. Bidders shall be considered to have conflict of interest, if they participated in the preparation of this bidding document

3.2.3 The classification of eligibility shall be in accordance with that maintained by PPRA or its successor.

3.2.4 Government or government owned institutions in Kenya may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government.

3.2.5 Local Tenderers i.e. Kenyan registered companies whose operations are based in Kenya shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya.

3.2.6 Tenderers shall provide such evidence of their continued eligibility satisfactory to KPPF as KPPF may reasonably request.

3.2.7 Tenderers (including all members of a joint venture and sub Purchasers) shall provide a statement that they are not associated, or have not been associated in the past, directly or indirectly, with the officer or any other entity that has prepared the tender documents for this Tender.

3.2.8 In addition, a tenderer is eligible to bid for this Tender only if the tenderer satisfies the following criteria—

- a) the tenderer has the legal capacity to enter into a contract for procurement or asset disposal;
- b) the tenderer is not insolvent, in receivership, bankrupt or in the process of being wound up;
- c) the tenderer, if a member of a regulated profession, has satisfied all the professional requirements;
- d) the tenderer and his or her sub- Purchaser, if any, is not debarred;
- e) the tenderer has fulfilled tax obligations;
- f) the tenderer has not been convicted of corrupt or fraudulent practices; and
- g) is not guilty of any serious violation of fair employment laws and practices.

3.3 Ineligible Tenderers

3.3.1 Notwithstanding any other provisions of this tender, the following are not eligible to participate in the tender: -

- a) KPPF's employees, its Board or any of its committee members and their relatives.
- b) Any Public/State Officer of the Disposing entity.

- c) Any member of a Board or Committee of the Disposing entity.
 - d) Any tenderer submitting false, inaccurate or incomplete information about their qualifications.
- 3.3.2 In addition, the tenderer shall be considered ineligible to bid, where in case of a corporation, private company, partnership or other body, the tenderer, their spouse, child or a business associate or agent or other body which the officer has substantial or controlling interest and is found to be in contravention of the provisions of section 3.2.7 above.
- 3.3.3 Despite the provisions of section 3.3.1 and 3.3.2, a tenderer having a substantial or controlling interest shall be eligible to bid where—
- a) such tenderer has declared any conflict of interest; and
 - b) performance and price competition for the purchase of Land Reference Number 2259/311 can only be completed by that tenderer.
- 3.3.4 For the purposes of this paragraph, any relative i.e. spouse(s) and child(ren) of any person mentioned in sub-paragraph 3.3.1 is also ineligible to participate in the tender.

3.4 Declarations of Eligibility

- 3.4.1 Tenderers shall not be under declarations of ineligibility for corrupt, fraudulent practices and are not amongst persons mentioned in sub-paragraphs 3.3.1 and 3.3.2 above.
- 3.4.2 Tenderers who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XI.
- 3.4.3 Those that are under the Declaration for corrupt and fraudulent practices whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.

3.5 Joint Venture

- 3.5.1 Tenders submitted by a joint venture (JV) of two or more firms (consortium), as partners shall comply with the following requirements: -
- 3.5.2 The Tender Form and in case of a successful tender, the Sale agreement Form, shall be signed so as to be legally binding on all partners of the joint venture.
- a) One of the partners shall be nominated and authorized as being lead Purchaser. The authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners/directors.
 - b) The Power of Attorney which shall accompany the tender, shall be granted by the authorized signatories of all the partners as follows: -
 - i) for local and citizen Purchasers, before a Commissioner of Oaths or a Notary Public or Magistrate of the Kenyan Judiciary.

- ii) for a foreign bidder, before a Notary Public, or the equivalent of a Notary Public, and in this regard the bidder shall provide satisfactory proof of such equivalence.
 - c) The lead Purchaser shall be authorized to incur liability and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be done exclusively with the lead Purchaser.
- 3.5.3 All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a relevant statement to this effect shall be included in the authorization mentioned in paragraph 3.5.1 (b) above as well as in the Form of Tender and the Sale agreement Form (in case of the accepted tender).
- 3.5.4 The JV must be in either of the following forms –
- a) A registered JV agreement. The registration may either be: -
 - i) At the Ministry of Transport, Infrastructure, Housing and Urban Development or,
 - ii) At the Office of the Attorney General, or
 - b) A Letter of Intent to enter into a joint venture including a draft JV Agreement.
 - c) The JV agreement should be signed by at least two directors from each company or firm that is a party to the JV
 - d) The JV agreement must be under the company or firm seal
 - e) The Letter of Intent should be signed by at least one director from each company or firm that is a party to the intended joint venture
- 3.5.5 A copy of the agreement entered into, or Letter of Intent by the joint venture partners shall be submitted with the tender.

3.6 Cost of Tendering

- 3.6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and KPPF will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.6.2 The price to be free of charge and can be downloaded from KPPF's website www.kppf.co.ke.

3.7 Time for Purchase

The successful Tenderer will be expected to complete the transfer of monies by the required purchase period as specified in the appendix to instructions.

3.8 Conflict of Interest

- 3.8.1 A Tenderer (*including all members of a joint venture and sub Purchasers*) shall not have a conflict of interest. A Tenderer found to have a conflict of interest shall be

disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this tendering process if they: -

- a) are associated or have been associated in the past directly or indirectly with employees or agents of KPPF or a member of the Board or committee of KPPF
- b) are associated or have been associated in the past directly or indirectly with a firm or company or any of their affiliates which have been engaged by KPPF to provide consulting services for the preparation of this Tender
- c) have controlling shareholders in common with (b) above
- d) receive or have received any direct or indirect subsidy from any of them
- e) have a relationship with each other, either directly or through common third parties, that puts them in a position to have access to information about, or influence on the tender of another Tenderer, or influence the decisions of KPPF regarding this tendering process
- f) submit more than one Tender in this tendering process.

3.9 One Tender per Tenderer

- 3.9.1 A firm or company or an individual shall submit only one Tender in the same tendering process, either individually or as a partner in a joint venture.
- 3.9.2 No firm or company can be a sub- Purchaser while submitting a Tender individually or as a partner in a joint venture in the same tendering process.
- 3.9.3 A company or firm, if acting in the capacity of sub- Purchaser in any Tender may participate in more than one Tender but only in that capacity.
- 3.9.4 A Tenderer who submits or participates in more than one tender will cause all tenders in which the Tenderer has participated to be disqualified.

3.10 Site Visit and Pre-Bid Meeting

- 3.10.1 The Tenderer, at the Tenderer's own responsibility and risk is advised to visit and examine the land and its surrounding and obtain all information that may be necessary for preparing the tender and entering into a Sale Agreement. The cost of visiting the site shall be at the Tenderer's own expense.

3.11 Contents of the Tender Document

- 3.11.1 The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.7 of these Instructions to Tenderers: -
 - a. Invitation to Tender
 - b. Instructions to Tenderers
 - c. Appendix to Instructions to Tenderers
 - d. Description and location of the Land
 - e. Price Schedule

- f. Evaluation Criteria
 - g. Sale Agreement
 - h. Tender Form
 - i. Tender Security Form
 - j. Declaration Form
- 3.11.2 The Tenderer is expected to examine all instructions, forms, provisions, terms and specifications in the Tender Document. Failure to furnish all information required by the Tender Document or to submit a tender not substantially responsive to the Tender Document in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.
- 3.11.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (*whether they submit a tender or not*) shall treat the details of the documents as "Private and Confidential".

3.12 Clarification of Documents

A prospective Tenderer requiring any clarification of the Tender Document may notify the Procurement Officer in writing and ensure receipt is acknowledged at KPPF's Physical address indicated on the Tender Document. KPPF will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KPPF. Written copies of KPPF's response (*including an explanation of the query but without identifying the source of inquiry*) will be published and accessible to all prospective Tenderers on the KPPF's website.

3.13 Amendment of Documents

- 3.13.1 At any time prior to the deadline for submission of Tenders, KPPF, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the tender documents by amendment.
- 3.13.2 All prospective Tenderers that have received the Tender Documents will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) in writing and will be binding on them.
- 3.13.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, KPPF, at its discretion, may extend the deadline for the submission of Tenders.

3.14 Language of Tender

The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender, exchanged between the Tenderer and KPPF, shall be written in English language. Any printed literature furnished by the Tenderer written in any other language shall be accompanied by an accurate English translation of the relevant passages, in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the Tenderer's

letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the Tenderer's stamp.

3.15 Documents Comprising the Tender

The Tender prepared and submitted by the Tenderers shall include but not be limited to all the following components: -

- a) Tender Form and a Price Schedule completed
- b) Documentary evidence that the tenderer is eligible to tender and qualified to perform the Sale Agreement if its tender is accepted.
- c) Tender Security furnished in accordance with tender requirements
- d) In case of a tender submitted by a joint venture, either of the following –
 - (i.) the registered joint venture agreement, or,
 - (ii.) a Letter of Intent to enter into a joint venture including a draft JV agreement
- e) *Any information or other materials required to be completed and submitted by Tenderers as specified in the Tender Document.*

3.16 Tender Form

The Tenderer shall complete and sign the Tender Form and all other documents furnished in the Tender Document, indicating the proposed quantity and price amongst other information required.

3.17 Tender Rates and Prices

- 3.17.1 The Tenderer shall indicate on the appropriate price schedule and prices and total tender price of the Land it proposes to purchase under the Sale Agreement.
- 3.17.2 Prices indicated shall be the purchase price for the Land, exclusive of any Value Added Tax (if applicable) which shall be paid by the Tenderer. No other basis shall be accepted for evaluation, award or otherwise.
- 3.17.3 Prices to be submitted (quoted) by the Tenderer shall remain fixed for the Sale Agreement duration.

3.18 Tender Currencies

- 3.18.1 The price shall be quoted in Kenya Shillings, or in another freely convertible currency in Kenya. The currency quoted must be indicated clearly on the Tender Form.
- 3.18.2 The exchange rate to be used for currency conversion shall be the Central Bank of Kenya selling rate prevailing on the Tender closing date. (Please visit the Central Bank of Kenya website).

3.19 Tenderer's Eligibility and Qualifications

- 3.19.1 that the Tenderer has the financial capability necessary to perform the Sale Agreement. The Tenderer shall be required to provide -

- a) A valid and current Tax Compliance Certificate (TCC) issued by KRA. The Tenderer is strongly advised to confirm the authenticity of the TCC with KRA's Compliance Department to avoid rejection of its Tender.

3.20 Conformity to Tender Documents

- 3.20.1 The Tenderer shall furnish, as part of its tender, documents establishing the conformity to the Tender Document that the Tenderer proposes to perform under the Sale Agreement.

3.21 Tender Security

- 3.21.1 The Tenderer shall furnish, as part of its Tender, a tender security for the amount specified in the appendix to instructions.
- 3.21.2 The tender security shall be either one of the following: -
 - a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Tender Security Form (Bank Guarantee) in the Tender Document.
- 3.21.3 The tender security is required to protect KPPF against the risk of the Tenderer's conduct which would warrant the security's forfeiture pursuant to paragraph 3.23.10.
- 3.21.4 The Tender Security shall be denominated in Kenya Shillings or in another freely convertible currency in Kenya. A Tender Security in form of a Bank Guarantee should be from a commercial bank of licensed by the Central Bank Kenya.
- 3.21.5 The Tender Security shall be valid for thirty (30) days beyond the validity of the tender.
- 3.21.6 KPPF shall seek authentication of the Tender Security from the issuing bank. It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed five (5) days from the date of KPPF's query. Should there be no conclusive response by the bank within this period, such Tenderer's Tender Security may be deemed as invalid and the bid rejected.
- 3.21.7 Any Tender not secured in accordance with this paragraph will be rejected by KPPF as non-responsive
- 3.21.8 The unsuccessful Tenderer's Tender Security will be released as promptly as possible, in any of the following circumstances: -
 - a) *the disposal proceedings are terminated*
 - b) *KPPF determines that none of the submitted Tenders is responsive*
 - c) *a Sale Agreement for the procurement is entered into and a deposit thereunder paid to KPPF's Advocates.*

- 3.21.9 The successful Tenderer's Tender Security will be released upon the successful Tenderer's signing the Sale Agreement and furnishing an authentic Performance Security
- 3.21.10 The Tender Security shall be forfeited –
- a) *if the Tenderer withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which the Tenders must remain valid*
 - b) *if the Tenderer fails to enter into a written Sale Agreement*
 - c) *if the successful Tenderer fails to pay the balance of the bid price*
 - d) *if the Tenderer fails to extend the validity of the tender security where KPPF has extended the tender validity period.*

3.22 Validity of Tenders

- 3.22.1 Tenders shall remain valid for One hundred and fifty (150) days after the date of tender opening as specified in the Invitation to Tender or as otherwise may be prescribed by KPPF. A Tender that is valid for a shorter period shall be rejected by KPPF as non-responsive.
- 3.22.2 In exceptional circumstances, KPPF may extend the Tender validity period. The extension shall be made in writing. The tender security provided shall also be extended. A Tenderer shall not be required nor permitted to modify its tender during the extended period

3.23 Alternative Offers

Only main offers shall be considered, as alternative offers are not acceptable.

3.24 Preparation and Sealing of the Tender

- 3.24.1 The Tenders shall be typed or written in indelible ink. It shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the Sale Agreement.
- 3.24.2 The authorization shall be indicated by a written Power of Attorney granted by the Tenderer to the authorized person before any of the following persons: -
- a) *For local Tenderers, a Commissioner of Oaths or a Notary Public or a Magistrate of the Kenyan Judiciary.*
 - b) *For foreign Tenderers, a Notary Public in the country of the Tenderer.*
- In either case above, the Power of Attorney shall accompany the Tender.
- 3.24.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the person or persons signing the Tender and serially numbered.
- 3.24.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled by the person or persons signing the Tender.

- 3.24.5 The Tenderer shall seal the Original and each Copy of the Tender in envelopes or packages, duly marking the envelopes or packages as "ORIGINAL", and "COPY 1 OF TENDER". The envelopes or packages.
- 3.24.6 The envelopes or packages shall -
- a) be addressed to KPPF at the address given in the Invitation to Tender,
 - b) bear the tender number and tender name as per the Invitation to Tender and

KPPF will assume no responsibility whatsoever for the Tenderer's failure to comply with or observe the entire contents of this paragraph

- 3.24.7 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPPF as non-responsive.

3.25 Deadline for Submission of Tenders

- 3.25.1 Tenders must be received by KPPF by the date and time specified in Invitation to tender.
- 3.25.2 KPPF may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents, in which case all rights and obligations of KPPF and the Tenderer previously subject to the initial deadline, will therefore be subject to the deadline as extended.

3.26 Modification and Withdrawal of Tenders

- 3.26.1 The Tenderer may modify or withdraw its Tender after it has submitted, provided that the modification, including substitution or withdrawal of the Tender is received by KPPF prior to the deadline prescribed for submission of tenders.
- 3.26.2 No Tender may be modified after the deadline for submission of Tenders.
- 3.26.3 No Tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period during which the Tender must remain valid except where KPPF extends the initial validity period. Any withdrawal of a Tender during this interval shall result in forfeiture of the Tenderer's Tender Security except where KPPF extends the initial validity period.

3.27 Opening of Tenders

- 3.27.1 KPPF shall open all Tenders promptly at the date and time at the location specified in the Invitation to Tender or as may otherwise be indicated.
- 3.27.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security and such other details as KPPF, at its discretion, may consider appropriate, will be announced at the opening.
- 3.27.3 At the Tender opening, tender prices, discounts, and such other details as KPPF, at its discretion, may consider appropriate will be read out.
- 3.27.4 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

3.28 Process to be Confidential

- 3.28.1 After the opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising there-from shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until conclusion of that process.
- 3.28.2 Conclusion of that process shall be deemed to have occurred, at the latest, by the date and time KPPF notifies the successful bidder(s). In any event, official disclosure by KPPF of any information upon conclusion of that process may only be to the unsuccessful bidders and may contain only the information permissible by law in summary form.
- 3.28.3 Any effort by a Tenderer to influence KPPF or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning the Tender may result in the disqualification of the Tenderer.

3.29 Clarification of Tenders and Contacting KPPF

- 3.29.1 To assist in the examination, evaluation and comparison of Tenders KPPF may, at its discretion, ask the Tenderer for a clarification of its Tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the Tender shall be sought, offered, or permitted.
- 3.29.2 The Tenderer is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the Tenderer to provide in writing the clarification or substantiation which should reach KPPF within five (5) days from the date of KPPF's query. Such writing may include by electronic mail, facsimile or postal mail. Should there be no conclusive response within this period, it shall result in the Tenderer's disqualification.
- 3.29.3 Save as is provided in this paragraph and paragraph 3.26 above, no Tenderer shall contact KPPF on any matter related to its Tender, from the time of the tender opening to the time the successful Tenderer is announced.
- 3.29.4 Any effort by a Tenderer to influence KPPF in its decisions on tender evaluation, tender comparison, tender recommendation(s) or signing of Agreement may result in the disqualification of the Tenderer.

3.30 Preliminary Evaluation and Responsiveness

- 3.30.1 Prior to the detailed Technical and Financial evaluation, KPPF will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KPPF's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.
- 3.30.2 KPPF will examine the Tenders to determine whether they conform to the set Evaluation Criteria .

3.30.3 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KPPF and cannot subsequently be made responsive by the Tenderer by correction of any non-conformity.

3.31 Minor Deviations, Errors or Oversights

3.31.1 KPPF may waive any minor deviation in a Tender that does not materially depart from the requirements of tender set out in the Tender Document.

3.31.2 Such minor deviation -

3.31.2.1 shall be quantified to the extent possible,

3.31.2.2 shall be taken into account in the evaluation process, and,

3.31.2.3 shall be applied uniformly and consistently to all qualified Tenders duly received by KPPF.

3.31.3 KPPF may waive errors and oversights that can be corrected without affecting the substance of the Tender.

3.32 Technical Evaluation and Comparison of Tenders

3.32.1

- a) The Tenders submitted will be evaluated in two stages; Preliminary and Financial. Tenderers will proceed to the Technical Stage only if they qualify in compliance with Preliminary Evaluation. Only technical bids that attain a minimum score of 80% will be eligible for financial evaluation as detailed in (c) below.
- b) The criteria to be followed at the Technical Evaluation stage is contained in Evaluation Process, and Bidders are urged to follow the format outlined therein which is critical in determining the responsiveness of the bids.
- c) To be eligible for the Financial Evaluation, bidders must score at least Eighty (80) out of one hundred (100) at the Technical Evaluation stage. Each responsive tender will be given a technical score (St) based on the eligibility of the Tenderer to participation in the Tender, and the production of the requisite documents required. A tender shall be rejected at this stage if it fails to achieve the minimum technical score.
- d) The Evaluation Committee will determine whether the financial proposals are complete (i.e. whether the tenderer has costed all the items of the corresponding Technical Proposal and correct any computational errors). The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.

3.32.2 Upon completion of the preliminary and technical evaluation, Kenya Power Pension Fund shall conduct a Financial Evaluation and comparison as set out in Section VI Evaluation Criteria.

- 3.32.3 Where other currencies are used, KPPF will convert those currencies to the same currency using the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya.
- 3.32.4 If a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.
- 3.32.5 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

3.33 Financial Evaluation

- 3.33.1 The financial evaluation and comparison shall be as set out in the Summary of Evaluation Process.
- 3.33.2 Where other currencies are used, KPPF will convert those currencies to the same currency using the selling exchange rate prevailing on the date of tender closing provided by the Central Bank of Kenya.

3.34 Debarment of a Tenderer

A Tenderer who gives false information in the Tender about its qualification or who refuses to enter into a Sale Agreement after notification of award shall be considered for debarment from participating in future public procurement.

3.35 Confirmation of Qualification for Award

- 3.35.1 KPPF may confirm to its satisfaction whether the Tenderer that is selected as having submitted the highest evaluated responsive tender is qualified to perform the Sale Agreement satisfactorily.
- 3.35.2 The confirmation will take into account the Tenderer's financial capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, as well as confirmation of such other information as KPPF deems necessary and appropriate. This may include due diligence.
- 3.35.3 Qualification criteria are as provided in the Appendix to instruction to tenderers.
- 3.35.4 An affirmative confirmation will be a prerequisite for award to the Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender, in which event KPPF will proceed to the next highest evaluated responsive tender to make a similar confirmation of that Tenderer's capabilities to perform satisfactorily.

3.36 Award of Sale Agreement

- 3.36.1 KPPF will award the Sale Agreement to the successful Tenderer whose Tender has been determined to be substantially responsive, compliant with the evaluation criteria and has been determined to be the highest evaluated tender, and further,

where deemed necessary, that the Tenderer is confirmed to be qualified to perform the Sale Agreement satisfactorily.

3.37 Termination of Procurement Proceedings

- 3.37.1 KPPF may at any time terminate procurement proceedings before Sale Agreement award and shall not be liable to any person for the termination.
- 3.37.2 KPPF shall give prompt notice of the termination to the Tenderers, and, on request from any Tenderer, give its reasons for termination within fourteen (14) days of such request.

3.38 Notification of Award

- 3.38.1 Prior to the expiration of the period of tender validity, KPPF shall notify the successful Tenderer in writing that its Tender has been accepted.
- 3.38.2 The notification of award shall not constitute the formation of the Sale Agreement until one is finally signed by both parties.
- 3.38.3 Simultaneously, and without prejudice to the contents of paragraph 3.41, on issuance of Notification of Award to the successful Tenderer, KPPF shall notify each unsuccessful Tenderer.
- 3.38.4 A notification of the tender outcome does not reduce the validity period for any tender security whether the Tenderer is successful or not, except where such tender security is officially released to the Bank and/or the Tenderer and such Bank discharged of all its obligations by KPPF prior to the expiry of its stated validity period.

3.39 Signing of Sale Agreement

- 3.39.1 At the same time as KPPF notifies the successful Tenderer that its Tender has been accepted, KPPF will send the Tenderer the Sale agreement provided in the Tender Document together with any other necessary documents incorporating all agreements between the Parties.
- 3.39.2 KPPF shall sign and date the Sale Agreement not earlier than fourteen (14) days from the date of notification of Sale Agreement award. Further, KPPF shall not sign the Sale Agreement until and unless the 10% performance security bank guarantee is received.
- 3.39.3 Failure of the successful Tenderer to sign the Sale Agreement, the award shall be annulled and its tender deposit forfeited in which event KPPF shall notify the highest evaluated Tenderer that its Tender has been accepted.

3.40 Corrupt or Fraudulent Practices

- 3.40.1 KPPF requires that Tenderers observe the highest standard of ethics during the procurement process and execution of Sale Agreement. When used in the present Regulations, the following terms are defined as follows: -

- a) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of public official in the procurement process or in Sale Agreement execution;
 - b) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a Sale Agreement to the detriment of KPPF, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive KPPF of the benefits of free and open competition.
- 3.40.2 KPPF will nullify its notification of award if it determines that the Tenderer recommended has engaged in corrupt or fraudulent practices in competing for the Sale Agreement in question.
- 3.40.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

3.41 Performance Security

- 3.41.1 Within fourteen (14) days of the date of notification of award from KPPF, the successful Tenderer shall furnish KPPF with a Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
- 3.41.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 3.41.3 The Performance Security shall be the sum of ten percent (10%) of the purchase price in the Sale Agreement. It shall be in the currency of the purchase price.
- 3.41.4 KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.
- Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPPF may notify the next highest evaluated Tenderer that its Tender has been accepted

3.42 Payment of the land

The successful bidder shall be required to make full payment within 90 days from the date the Sale Agreement is signed. Reserve Price is Kenyan Shillings 3,761,950,773.00. All Agency Costs if any, All costs of transfer, stamp duties and any other costs will be borne by the Purchaser.

SECTION IV DESCRIPTION AND LOCATION OF THE LAND

DISPOSAL OF LAND L.R. NUMBER 2259/311 TENDER NO. KPPF/PROC/2-A/05/19

The Kenya Power and Lighting Company Limited Staff Retirement Benefits Scheme (Kenya Power Pension Fund-KPPF) is a body established by a Trust Deed to receive, manage and provide benefits to employees of the Kenya Power and Lighting Company Limited upon their retirement or to their dependents in the event of death in service. To achieve its elaborate role, the pension fund wishes to manage down its real estate allocation by disposing of its parcel of land situated at Karen area, Nairobi.

The parcel. A fairly level, irregular shaped black cotton soils parcel fronting Ngong and Langata roads. The boundary is marked by palisade mounted on a perimeter masonry wall.

The parcel is within ease of accessibility to recreational and shopping facilities at the local center such as Karen Shopping Centre and Crossroads Shopping Mall. The area is also well served by several international educational institutions.

Location. The parcel of land situated at the junction of Ngong and Langata Roads, opposite Karen shopping center, within Karen area, Nairobi.

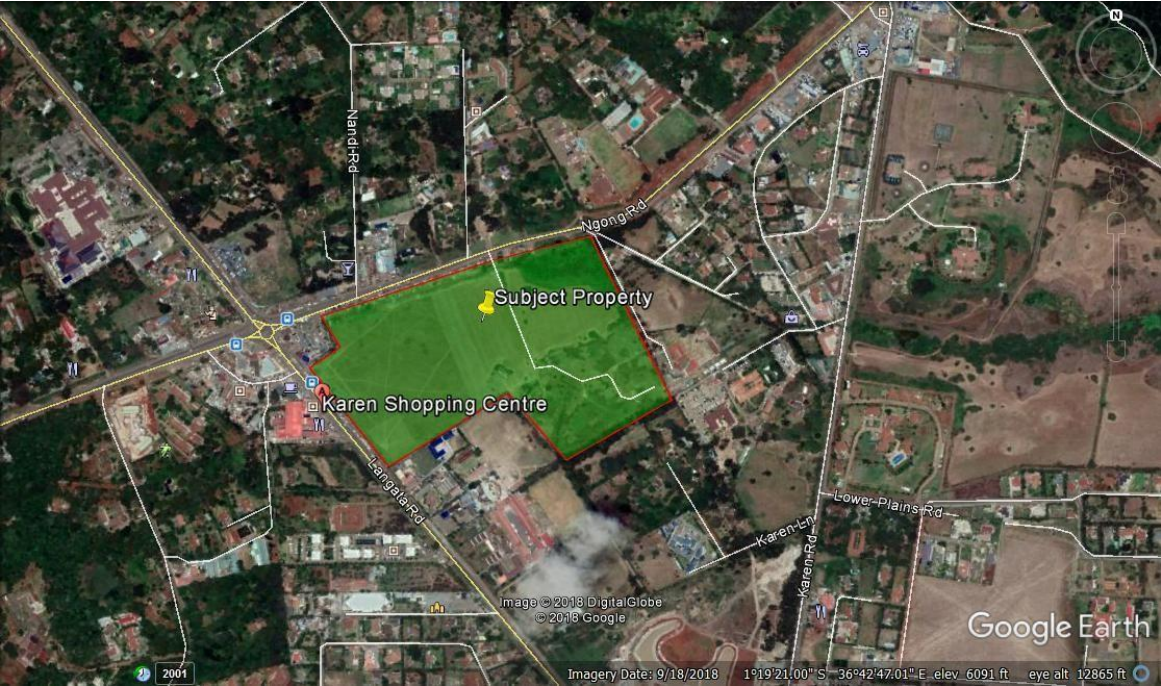
Tenure. Leasehold interest of 999 years with effect from 1st July 1910 at an annual ground rent of Kshs. 17/-. (Repealed by The Land Act, 2012) of the Laws of Kenya.

Lessee. The title is registered in the name of Kenya Power and Lighting Company Limited, Staff Retirement Benefits Scheme Registered Trustees.

Area. The parcel measures approximately twenty-three decimal nought one (23.01) hectares or fifty-six decimals eight five (56.85) acres

Reserve Price. Kenyan Shillings **3,761,950,773.00**

MAP



SECTION V APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement and or amend the provisions of the Instructions to Tenderers *hereinafter abbreviated as ITT*. Wherever there is a conflict between the provisions of the ITT and the appendix to instructions, the provisions of the Appendix to ITT shall prevail over those of the ITT

No.	ITT Reference Clause	Particulars of Appendix
1.	3.2 Eligible Tenderers	Open to ALL individuals/entities
2.	3.2 Eligible item	Land L.R. Number 2259/311
3.	3.7 Time for Completion of Payment	Within 90 days after Sale Agreement signing
4.	3.5 Joint Venture	Allowed
5.	3.39 Signing of Sale Agreement	Refer to the Sale Agreement terms and conditions in Section VII
6.	3.24 Preparation and Sealing of tender documents	The Tenderer shall prepare two complete sets of its Tender, identifying and clearly marking the "ORIGINAL TENDER" and "COPY 1 OF TENDER" as appropriate. Each set shall be properly bound. The copy shall be a replica of the Original. The copy will be deemed to contain the same information as the Original.
7.	3.21 Tender Security/ Tender Deposit	Original Tender Security shall be Kshs. 2,000,000.00 paid to KPPF in form of bank guarantee by a bank licensed by Central Bank of Kenya.
8.	3.32 Technical Evaluation	This shall not be applicable
9.	3.29 Opening of Tenders	The tender shall be opened 3 rd Floor Ndovu Meeting Room, Stima Plaza Annex Kenya Power Pension Fund Offices Kolobot Road, Parklands Nairobi Kenya on 16th January 2020 at 11:30 a.m. and bidders are encouraged to attend.
10.	3.36 Award of Sale Agreement	Award shall be to the highest offered evaluated bidder whose price is equivalent or above the set reserve price of Kshs. 3,761,950,773.00

		<p>NO bidder will be awarded if the price offered is below the set reserve price for the land.</p> <p>All Agency Costs if any, all costs of transfer, stamp duties and any other costs will be borne by the Purchaser.</p>
11.	3.43 Performance Security	Within 14 days of the date of notification of award Performance Security shall be 10% of the purchase price in the form of an Original bank guarantee.
12.	3.24 Tender validity	Shall be 150 days

SECTION VI - EVALUATION CRITERIA

Evaluation of duly submitted tenders will be conducted along the following stages: -

6.1 Part 1 - Preliminary Evaluation Under Paragraph 3.32 of the ITT. These are mandatory requirements. This shall include confirmation of the following:

6.1.1 *Submission of Tender Security - Checking its validity, whether it is **Original**; whether it is issued by a local bank/institution licensed by the Central Bank Kenya; whether it is **strictly in the format required** in accordance with the sample Tender Security Form(s) and **amount** required.*

6.1.2 *Submission and considering Tender Form duly completed and signed.*

6.1.3 *Submission and considering the following :*

6.1.3.1 *For Local Tenderers*

- a) *Company or Firm's Registration Certificate or Individual National Identification Cards*
- c) *Valid Tax Compliance Certificate from KRA.*

6.1.3.2 *For Foreign Tenderers*

- a) *Company or Firm's Registration Certificate or Individual National Identification Cards or its equivalent in the country of bidder*
- b) *PIN Certificate or its equivalent in the country of bidder or a statement from the tax authorities in the Tenderer's country of origin indicating that such certificate or its equivalent is not issued.*
- c) *Valid Tax Compliance Certificate or its equivalent in the country of bidder or a statement from the tax authorities in the Tenderer's country of origin indicating that such certificate or its equivalent is not issued.*

6.1.4 *That the Tender is valid for the period required.*

Tenders will proceed to the Financial Evaluation Stage only if they qualify in compliance with Part 1 above, Preliminary Evaluation.

6.2 Financial Evaluation

The Successful Tenderer shall be the technically qualified tenderer who has offered the highest price (which must be above the set reserve price).

No bidder will be awarded if the price offered is below the reserve price.

***NOTES:** - Total tender value means the Tenderer's total tender price inclusive of VAT. All **Agency** Costs, All costs of transfer, stamp duties and any other costs will be borne by the Purchaser.

SECTION VII – FORM OF SALE AGREEMENT

**AGREEMENT FOR SALE OF
LAND REFERENCE NUMBER 2259/311**

between

**KENYA POWER AND LIGHTING COMPANY LIMITED STAFF RETIREMENT BENEFITS
SCHEME 2006 REGISTERED TRUSTEES**

and

[NAME OF PURCHASER]

PARTIES:

This Agreement is made this _____ day of _____ 20 between:

- 1) **THE KENYA POWER AND LIGHTING COMPANY LIMITED STAFF RETIREMENT BENEFITS SCHEME 2006 REGISTERED TRUSTEES** a pension fund incorporated in the Republic of Kenya under the Trustees (Perpetual Succession) Act Chapter 164 of the Laws of Kenya and of Post Office Box Number 1548-00600 Nairobi in the said Republic (hereinafter called the "**Vendor**" which expression shall where the context so admits include the Vendor's successors in title and assigns); and
- 2) **[*]** a company registered in accordance with the laws of Kenya with company number and of P. O. Box **[*]** (the **Purchaser** which expression shall include the Purchaser's successors in title and permitted assigns).

(or if the Purchaser is an individual)

[*] an individual with National ID/ Passport Number **[*]** and of P.O. Box **[*]**, (the **Purchaser** which expression shall include the Purchaser's personal representatives and permitted assigns).

WHEREAS

- A. The Vendor is the registered proprietor as lessee from the Government of Kenya of all that piece of land comprised in Land Reference Number Number 2259/311 (the **Property**).
- B. The Vendor has agreed to sell and the Purchaser has agreed to purchase the Property on the terms and conditions set out in this Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

For the purposes of this Agreement and the preamble above, unless the context requires otherwise:

- 1.1.1. **Balance of the Purchase Price** means ninety per cent (90%) of the Purchase Price being the sum of Kenya Shillings **[*]** (KES **[*]**);
- 1.1.2. **Business Day** means a day other than a Saturday, Sunday or national day or public holiday in the Republic of Kenya;

- 1.1.3. **Competent Authority** means the Government of Kenya, the relevant county authority, county agencies, state corporations and other bodies having statutory or regulatory competence to promulgate rules and regulations having the force of law touching and concerning, the Property and the transaction contemplated in this Agreement and other matters contemplated in this Agreement;
- 1.1.4. **Completion** means the steps and matters to be undertaken by the parties relating to the transfer of the title from the Vendor to the Purchaser as more particularly set out in clause 4 (*Completion*);
- 1.1.5. **Completion Date** means [*should not exceed 90 days from date of sale agreement*];
- 1.1.6. **Performance Guarantee** means ten per cent (10%) of the Purchase Price being the sum of Kenya Shillings [*] (KES [*]);
- 1.1.7. **Extended Completion Date** shall have the meaning given in clause 9.1.2;
- 1.1.8. **Interest** means eighteen percent (18%) per annum calculated on daily balances and compounded monthly at the end of each calendar month being 31st January, 28th February, 31st March and so on;
- 1.1.9. **Outgoings** means land rent, land rates, water and electricity charges relating to the occupation or use of the Property;
- 1.1.10. **Parties** mean the parties to this Agreement;
- 1.1.11. **Property** has the meaning given to it in Recital A and as more particularly described in Schedule 1;
- 1.1.12. **Purchase Price** means the sum of Kenya Shillings [*] (KES [*]);
- 1.1.13. **Purchaser's Advocates** means [*] of [*] Advocates, P.O. Box [*];
- 1.1.14. **RTGS** means the real time gross settlement funds transfer system; and
- 1.1.15. **Vendor's Advocates** means [*] of [*] Advocates, P.O. Box [*].

1.2. Interpretation

- 1.2.1. the expressions the **Vendor** includes the Vendor's successors in title to the Property and the **Purchaser** includes the successors in title and permitted assigns of the Purchaser;

- 1.2.2. the word **tax** shall be construed so as to include any tax, levy, impost, assessment, duty or other charge of a similar nature (including, without limitation, value added tax, stamp duty, capital gains tax and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and **taxation or taxes** shall be construed accordingly and the expression **competent taxing authority** means, in respect of any state or administrative division thereof, any governmental or county authority, monetary agency or central bank having power to collect or levy taxes;
- 1.2.3. In this Agreement any reference to any document means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.
- 1.2.4. In addition to the definitions in clause 1.1, unless the context requires otherwise:
- 1.2.4.1. the singular shall include the plural and *vice versa*;
- 1.2.4.2. a reference to any one gender, whether masculine, feminine or neuter, includes the other two.
- 1.2.5. All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

2. AGREEMENT FOR SALE AND PURCHASE

2.1.1. Agreement to sell

The Vendor hereby agrees to sell and the Purchaser agrees to purchase the Property at the Purchase Price.

2.1.2. Interest sold

The interest sold in the Property is the Vendor's leasehold interest.

2.1.3. Capacity

The Vendor sells the Property as the legal and beneficial owner.

3. PAYMENT OF PURCHASE PRICE

- 3.1.1. On or before the date of this Agreement, purchaser shall provide a performance guarantee equivalent to 10% of tender sum from a commercial bank licensed by Central Bank of Kenya.

- 3.1.2. The Purchaser may pay a Deposit to the bank account nominated by the Vendor's Advocates by RTGS. The Deposit shall be immediately and unconditionally released by the Vendor's Advocates to the Vendor (or as the Vendor may direct), without any reference to the Purchaser.
- 3.1.3. The Balance of the Purchase Price shall be paid to a bank account nominated by the Vendor's Advocates by RTGS on or before the Completion Date and shall held by the Vendor's Advocates as stakeholder in accordance with the provisions of clause 4.3 below. All interest earned on the balance of the Purchase Price shall be for the account of the Vendor.
- 3.1.4. The Purchase Price shall be paid by the Purchaser in Kenya Shillings (KES).

4. COMPLETION

- 4.1. Completion shall take place at the office of the Vendor's Advocates on the Completion Date.
- 4.2. On or before the Completion Date and **subject to** receipt by the Vendor's Advocates of the Balance of the Purchase Price and apportioned Outgoings in cleared funds, the Vendor's Advocates will deliver the following documents to the Purchaser's Advocates:
- 4.2.1. original grant in respect of the Property;
- 4.2.2. the formal instrument of transfer in respect of the Property duly executed by the Vendor in favour of the Purchaser (in triplicate);
- 4.2.3. valid land rent clearance certificate for the Property for current year and certified copies of the land rent payment receipts for the Property for the years 2018 and 2019;
- 4.2.4. valid consent to transfer the Property from the National Lands Commission;
- 4.2.5. valid land rates clearance certificate for the current year and certified copies of the land rates payment receipts for the Property for the years 2018 and 2019;
- 4.2.6. certified copy of the Vendor's tax PIN certificate;
- 4.2.7. three (3) coloured passport sized photographs, and certified copies of the passport or national identity card and the tax PIN certificates of the Vendor's duly authorised officials who will effect the execution of the formal instrument of transfer referred to in clause 4.2.2.

- 4.3. Following Completion, the Balance of the Purchase Price will be retained by the Vendor's Advocates and will not be released to the Vendor until the earlier of registration of the formal instrument of transfer referred to in clause 4.2.2 in favour of the Purchaser and thirty (30) days from the Completion Date. If registration has not been finalised by the Purchaser's Advocates within thirty (30) days from the Completion Date, the Balance of the Purchase Price shall be unconditionally paid and released to the Vendor and thereafter the Purchaser shall be granted physical possession of the Property in terms of clause 5.2 and thereupon the transaction of the sale and purchase of the Property shall be deemed to be completed and this Agreement shall be deemed to have come to an end.

5. POSSESSION

- 5.1. The Property is sold with vacant possession as at the Completion Date.
- 5.2. Notwithstanding the foregoing, the Purchaser shall not be entitled to possession of the Property unless and until the entire Purchase Price has been unconditionally paid and released to the Vendor, and thereafter the sale and purchase of the Property shall be deemed to be completed and this Agreement shall be deemed to have come to an end, save in respect of any claims that the Vendor may have against the Purchaser for any antecedent breach of the terms of this Agreement.

6. OUTGOINGS OF THE PROPERTY

All Outgoings of the Property (if any) shall be apportioned at the Completion Date.

7. MATTERS AFFECTING THE PROPERTY

- 7.1. The Property is sold (so far as the same relate to and affect the property and are still subsisting and capable of being enforced and taking effect) subject to and with the benefit of:
- 7.1.1. all subsisting easements and rights of way (if any); and
- 7.1.2. the exceptions and reservations, stipulations, conditions and other matters contained in or implied by the title document to the Property or imposed by law or any Competent Authority.
- 7.2. Save as set out in clause 7.1, the Property is sold free from any mortgage, lien or any other encumbrance securing the repayment of monies or other obligation or liability of the Vendor or any other person.

8. DISCLAIMER

- 8.1. The Purchaser agrees and admits that:
- 8.1.1. its duly appointed officials/agents and advocates have inspected the Property and its title and the Purchaser purchases the Property with knowledge of its actual state and condition and shall take the Property as it stands. The Vendor shall not be called upon to renew or improve the area making up the Property;
 - 8.1.2. it enters into this Agreement solely as a result of its duly appointed officials/agents own inspection of the Property and on the basis of the terms of this Agreement and not in reliance upon any representation or warranty either written or oral or implied made by or on behalf of the Vendor of anything whatsoever, save as expressly set out in this Agreement; and
 - 8.1.3. it shall not be entitled to make any warranty claim or seek any remedy whatsoever for anything that is within its knowledge or that may be deemed by law to be within its knowledge.
 - 8.1.4. it shall procure that all reasonable steps are taken and all reasonable assistance in its power is given, to avoid or mitigate any losses.

9. SPECIAL CONDITIONS

- 9.1. If on the Completion Date the Purchaser is not ready, able or willing to pay the Balance of the Purchase Price as required under the provisions of clause 3.1.3 then, without prejudice to any other rights or remedies available to the Vendor at law or equity, the Vendor shall in its sole and absolute discretion have the right to either:
- 9.1.1. rescind this Agreement by notice in writing to the Purchaser; or
 - 9.1.2. extend from time to time the Completion Date by notice in writing to the Purchaser, to any date not later than twenty one (21) days from the date of the written notice (the **Extended Completion Date**, and any reference in this Agreement to Completion Date shall thereafter apply *mutatis mutandi* to the Extended Completion Date, save in respect of interpretation of any provisions of this Agreement for purposes of any rights and remedies that the Vendor may have against the Purchaser for failing to complete the transaction on the initial Completion Date), provided always that the Vendor may in its sole and absolute discretion rescind this Agreement at any time on or after the Extended Completion Date, by notice in writing to the Purchaser, if the Purchaser shall not be ready, able or willing to pay the Balance of the Purchase Price;

and upon rescission pursuant to clause 9.1.1 or 9.1.2, the Purchaser shall forthwith return all documents delivered to the Purchaser by or on behalf of the Vendor and, without prejudice to any other rights or remedies available to the Vendor, the Performance Guarantee shall stand forfeited and the Vendor shall retain the Performance Guarantee for the Vendor's account and benefit. The Purchaser hereby acknowledges and agrees that the forfeiture of the Performance Guarantee and the retention of the Performance Guarantee for the Vendor's account and benefit is a reasonable and genuine pre-estimate of the loss which the Vendor shall suffer as a result of the Purchaser's breach in failing to complete the transaction contemplated under this Agreement.

- 9.2. In the event that any sum payable by the Purchaser hereunder is not paid on its due date for payment, the Purchaser shall (without prejudice to the exercise by the Vendor of any other rights or remedies in favour of the Vendor at law or equity) pay to the Vendor Interest on the unpaid sum from (and including) the due date for payment of such sum until the date of actual payment of the unpaid sum (together with all accrued Interest) in full.
- 9.3. If on the Completion Date the Vendor is not ready able or willing to complete this transaction the Purchaser shall serve a notice in writing upon the Vendor to complete the said transaction within forty five (45) days from the date upon which such notice is served on the Vendor. If the Vendor shall fail to complete the said transaction by the expiry of the forty five (45) days period set out in this clause, then the Purchaser shall be entitled, at the Purchaser's sole discretion, to either:
 - 9.3.1. extend the time for Completion; or
 - 9.3.2. rescind this Agreement by notice in writing to the Vendor.
- 9.4. If the Purchaser shall rescind this Agreement as aforesaid then all sums paid by the Purchaser to the Vendor on account of Purchase Price shall be refunded to the Purchaser without interest within ten (10) Business Days of written demand and this Agreement thereafter, notwithstanding any other provision to the contrary set out in this Agreement, the Purchaser shall have no claim whatsoever against the Vendor and this Agreement shall be of no further force or effect save in respect of any claim that the Vendor may have against the Purchaser.

10. LAW SOCIETY CONDITIONS OF SALE

10.1. Application of Conditions

The Law Society Conditions of Sale (1989 Edition) shall apply to this Agreement in so far as they are not expressly or impliedly varied by or inconsistent with the terms of this Agreement.

10.2. Variation of Conditions

The Law Society Conditions of Sale shall be varied as follows:

- 10.2.1. "interest" means the interest at the Interest Rate prescribed in this Agreement;
- 10.2.2. the provisions of condition 10 (*objections and requisitions*) shall not apply;
- 10.2.3. the provisions of condition 18 (*mis-description and compensation*) shall not apply; and
- 10.2.4. the provisions of condition 14 (*Identity and conditions of the Property*) shall not apply and the Vendor shall be under no obligation to point out to the Purchaser any survey beacons or to replace any missing or misplaced beacon; and
- 10.2.5. the provisions of condition 8 (*Interest on purchase money*) shall not apply.

11. MISCELLANEOUS

- 11.1. Payment of the Performance Guarantee, the Balance of the Purchase Price or any part thereof or any other sum payable by the Purchaser hereunder shall be made free and clear of and without any set-off counterclaim or deduction whatsoever.
- 11.2. No failure or delay to exercise any power, right or remedy by either Party shall operate as a waiver of that right, power or remedy and no single or partial exercise by either Party of any right, power or remedy shall preclude its further exercise or the exercise of any other right, power or remedy.
- 11.3. The provisions of this Agreement shall not merge on Completion of the sale and purchase of the Property so far as they remain to be observed or performed.
- 11.4. The rights and remedies of the Parties provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 11.5. Each of the provisions of this Agreement is severable and distinct from the others and, if at any time one or more of these provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 11.6. No amendment or variation to this Agreement shall be effectual or binding on the Parties unless it is in writing and duly executed by or on behalf of the Parties.

- 11.7. This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute one and the same Agreement.
- 11.8. Each of the Parties hereby agrees and confirms for the purpose of the Law of Sale Agreement Act (Chapter 23 of the laws of Kenya) that it has executed Agreement with the intention to bind itself to the contents of this Agreement.
- 11.9. This Agreement constitutes the entire agreement between the parties about its subject matter and any previous agreements, undertakings, representations, warranties and negotiations ("**prior representations**") on that subject hereby cease to have any effect. Each party confirms that it has not relied upon any prior representations and waives any rights which it may have in respect of such reliance if it in fact occurred. Further, all the parties to this Agreement shall keep confidential and shall not disclose to any other person, nor use for any purpose (except as contemplated in this Agreement), any information obtained from the other party as a result of negotiating, entering into or implementing this Agreement.

12. ANTI MONEY LAUNDERING

The Purchaser confirms that the funds employed to pay for the Purchase Price or any sums pursuant to this Agreement are not and shall not be from the proceeds of crime. The Purchaser hereby indemnifies the Vendor against any loss that the Purchaser may suffer as a result of the funds employed for the Purchase Price or any sums pursuant to this Agreement being deemed by any Competent Authority to be from proceeds of crime.

13. COSTS

- 13.1. If at any time, whether now or in the future, any applicable law, regulation or regulatory requirement or any competent taxing authority requires the Purchaser to make any deduction or withholding in respect of taxes from any payment due under this Agreement for the account of the Vendor the sum due from the Purchaser in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Vendor receives a net sum equal to the sum which the Vendor would have received had no such deduction or withholding been required to be made and the Purchaser shall indemnify the Vendor against any losses or costs incurred by the Vendor by reason of any failure of the Purchaser to make any such deduction or withholding.
- 13.2. All payments due to be made by the Purchaser hereunder and all costs, charges, expenses or remuneration shall be deemed to be exclusive of any tax charged or chargeable in respect thereof and for which the Purchaser shall be liable to account.

- 13.3. Each Party will be responsible for its own legal costs and expenses in relation to the drafting, negotiations and implementation of this Agreement provided that the Purchaser shall be responsible for the stamp duty, registration fees and incidental costs for registration of the transfer of the Property.

14. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with Kenyan law.

15. **DISPUTE RESOLUTION**

- 15.1. In this clause, the following capitalized terms shall have the following meaning:

15.1.1. **Dispute** means any disagreement, difference or conflict that arises between the Parties as a result of the formation, existence, performance, interpretation, nullification (or consequences thereof), termination or invalidation of this Agreement, or arising from, out of or related to this Agreement in any manner whatsoever; and

15.1.2. **Dispute Notice** means a notice given in writing by one Party to the other and that describes in reasonable and sufficient detail, the Dispute resulting from this Agreement.

15.2. If any Party deems that a Dispute has arisen, then such Party may issue a Dispute Notice to the other Party.

15.3. Upon service of the Dispute Notice in the manner set out in clause 15.2 above, the Parties shall immediately attempt to resolve the Dispute by negotiating in good faith, such negotiations to be completed within twenty one (21) days after the date on which the Dispute Notice is served on other Party (the **Negotiations Period**).

- 15.4. If a Dispute cannot be satisfactorily resolved within the Negotiations Period, the Parties agree that they will appoint a mediator within seven (7) days of the expiry of the Negotiations Period by mutual agreement to assist them in resolving the Dispute and the Parties agree to co-operate fully with such mediator, provide such assistance as is necessary to allow the mediator to discharge his duties. The mediator shall determine who shall bear the fees and expenses of the mediator, the guiding principle being that if such Dispute relates to a default hereunder by a Party to this Agreement, then, in the event such Party is determined to be in default hereunder, the mediator's fees shall be paid by the defaulting Party. If the Dispute is resolved by agreement, reached with or without the mediation, it shall be recorded in instrument in writing signed by all Parties. If after thirty (30) days of the commencement of mediation (the **Mediation Period**) the Parties have not reached an agreement, the Dispute will be dealt with in accordance with clause 15.6.
- 15.5. Any Dispute that is not resolved within the Mediation Period pursuant to the provisions of clause 15.4 shall be referred to arbitration, such arbitration to be conducted in accordance with the provisions of clause 15.6 below.
- 15.6. Any Dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, that is not resolved pursuant to the provisions of clauses 15.2 to 15.5 shall be referred to and finally resolved by arbitration with the provisions of the Kenyan Arbitration Act 1995 (as amended from time to time) (the **Arbitration Act**). In addition, it is agreed:
- 15.6.1. The tribunal shall consist of one (1) arbitrator to be agreed upon between the parties within fourteen (14) days of the lapse of the Mediation Period, failing which such arbitrator as shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators of the United Kingdom, (Kenya Branch) upon the application of either Party;
- 15.6.2. The place of arbitration shall be Nairobi;
- 15.6.3. The language to be used in the arbitral proceedings shall be English;
- 15.6.4. The governing law shall be as set out in clause 14; and
- 15.6.5. To the extent permitted by law, the award of the arbitration tribunal shall be final and binding upon the Parties and either Party may apply to a court of competent jurisdiction for enforcement of such award.
- 15.7. Notwithstanding the above provisions of this clause 15, a Party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of

competent jurisdiction pending the final decision or award of the arbitrator.

16. NOTICES

16.1. In this clause:

16.1.1. the **Vendor's Address** means the address of the Vendor shown on the first page of this Agreement or such other address as the Vendor may from time to time, notify to the Purchaser as being its address for service for the purposes of this Agreement.

16.1.2. the **Purchaser's Address** means the address of the Purchaser shown on the first page of this Agreement or such other address as the Purchaser may from time to time notify to the Vendor as being its address for service for the purposes of this Agreement.

16.2. Any notice or other communication given or made in accordance with this Agreement shall be in writing and:

16.2.1. may (in addition to any other effective mode of service) be sent by registered or recorded delivery post;

16.2.2. shall in the case of a notice or other communication to the Vendor be served on the Vendor at the Vendor's Address; and

16.2.3. shall (in the case of a notice or other communication to the Purchaser be served on the Purchaser at the Purchaser's Address.

16.3. Any notice or other communication given or made in accordance with this Agreement:

16.3.1. by or to the Vendor may be given or made by or to the Vendor's Advocates on behalf of the Vendor;

16.3.2. by or to the Purchaser may be given or made by or to the Purchaser's Advocates on behalf of the Purchaser.

16.3.3. Save as otherwise expressly provided herein, any notice, demand or document to be given or made by one party to this Agreement to the other shall be deemed made:

16.3.3.1. when dispatched (if given by facsimile transmission during normal business hours on a Business Day) provided that the appropriate acknowledgement of proper transmission is obtained by the sender;

16.3.3.2. when left during normal working hours on a Business Day at the principal office of each party; or

16.3.3.3. seven (7) Business Days after posting by registered post provided that proof is given that the notice, demand or document was properly addressed adequately stamped and put into the post by registered post.

IN WITNESS this Agreement has been duly executed the day and year first hereinbefore written.

Sealed with the common seal of)

THE KENYA POWER AND LIGHTING COMPANY)

LIMITED STAFF RETIREMENT BENEFITS SCHEME)

2006 REGISTERED TRUSTEES)

in the presence of:)

)

)

Trustee)

)

)

Trustee)

)

)

Both before me:)

)

)

)

)

Advocate)

I CERTIFY THAT and
..... being the Trustees of the Vendor appeared before
me and freely and voluntarily signed this Agreement in my presence.

Signature of Witness: _____

Name: _____

Address: _____

Occupation: Advocate

Sealed with the common seal of)

[PURCHASER LIMITED])

in the presence of:)

)

)

Director)

)

)

Director/Secretary)

)

)

Both before me:)

)

)

)

Advocate)

[or insert appropriate execution block if Purchaser is not a company]

I **CERTIFY THAT** and being the Directors/Director and Secretary of the Purchaser appeared before me and freely and voluntarily signed this Agreement in my presence.

Signature of Witness: _____

Name: _____

Address: _____

Occupation: Advocate

Drawn by:

[*]

SCHEDULE 1 – Details of the Property

Property means ALL THAT parcel of land situate in the Nairobi Area of the Republic of Kenya containing by measurement twenty three decimal nought one (23.01) hectares or thereabouts being Land Reference Number 2259/311 being the premises registered in the Land Titles Registry at Nairobi as Number I.R [*] which said piece of land with the dimensions abuttals and boundaries thereof is delineated on the Plan annexed to the aforesaid Title and more particularly on Land Survey Plan deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red AND HELD by the Vendor for a term of 999 years from 1 July 1910 SUBJECT to payment of an annual rent of KES 17 , the Land Laws, special conditions, encumbrances and other matters as are notified.

SECTION VIII - STANDARD FORMS

- (i) Form of Tender
- (ii) Tender Security Form (Bank Guarantee)
- (iii) Declaration Form
- (iv) Letter of notification of award
- (v) Letter of notification of regret
- (vi) Sale agreement
- (vii) Performance Security Form (Bank Guarantee)
- (viii) Letter of notification of intent to award

SECTION X - TENDER FORM

Date:

Tender No.

To:

The Kenya Power Pension Fund,
Stima Plaza,
Kolobot Road, Parklands,
P.O Box 1548 – 00600,
Nairobi, Kenya.

Ladies and Gentlemen,

1. Having read, examined and understood the Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Tenderer, offer to purchase land (*insert description*) in accordance and conformity with the said tender document for the sum of (**total tender amount inclusive of taxes in words and figures**)
2. We undertake, if our Offer is accepted, to comply with the requirements as stipulated in this tender document.
3. If our Tender is accepted, we will obtain the performance security of a licensed commercial bank in Kenya in a sum equivalent to ten percent (10%) of the contract price for the due performance of the contract, in the form(s) prescribed by The Kenya Power & Lighting Company Limited.
- 4.* We agree to abide by this Tender for a **period of.....days (Tenderer please indicate validity of your tender)** from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall not constitute a contract, between us. The contract shall be formed between us when both parties duly sign the written contract.

6. We understand that you are not bound to accept any Tender you may receive.

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Designation of duly authorised person signing the Tender

Stamp or Seal of Tenderer

***NOTES:**

1. KPPF requires a validity period of at least One hundred and twenty (120) days.
2. This form must be duly signed or stamped and/or sealed.
3. **All Agency Costs if any, All costs of transfer, stamp duties and any other costs will be borne by the Purchaser.**

SECTION XI - TENDER SECURITY FORM – (BANK GUARANTEE)
(To Be Submitted on Bank’s Letterhead)

Date:

To:

The Kenya Power Pension Fund,
Stima Plaza,
Kolobot Road, Parklands,
P.O Box 1548 – 00600,
Nairobi, Kenya.

WHEREAS (*name of the Tenderer*) (*hereinafter called "the Tenderer"*) has submitted its Tender dated for the purchase of Land Reference Number 2259/311 Nairobi (*please insert KPPF tender no. and name*) (*hereinafter called "the Tender"*);

KNOW ALL PEOPLE by these presents that **WE**..... of having our registered office at..... (*hereinafter called "the Bank"*), are bound unto Kenya Power and Lighting Company Limited Staff Retirement Benefits Scheme 2006 Registered Trustees (Kenya Power Pension Fund) whose address for the purpose of this Agreement is P.O. Box 1548 - 00600 Nairobi (*hereinafter called "KPPF" which expression shall where the context so admits include its successors-in-title and assigns*) in the sum of for which payment, well and truly to be made to the said KPPF, the Bank binds itself, its successors, and assignees by these presents.

We undertake to pay you, upon your first written demand declaring the Tenderer to be in breach of the tender requirements and without cavil or argument, the entire sum of this guarantee being (*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

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

This guarantee is valid until theday of...20.....

EITHER

SEALED with the)
COMMON SEAL)

of the said **BANK**)
thisday)
of20....)

BANK SEAL

)
in the presence of :-)
)
_____)

)
and in the presence of:-)
)
_____)

OR

SIGNED by the **DULY AUTHORISED**
REPRESENTATIVE(S)/ ATTORNEY(S) of
the **BANK**

Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

Signature(s) of the duly authorised person(s)

NOTES TO TENDERERS AND BANKS

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made,*

the Tender Security shall not be accepted and shall be rejected by KPPF. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.

2. *It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.*

3. ***The issuing bank should address its response or communication regarding the bond to KPPF at the following e-mail address – "akimani@kplc.co.ke"***

4. *The Tender validity period is One hundred and twenty (120) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPPF. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

SECTION XII - DECLARATION FORM

Date _____

To:

The Kenya Power Pension Fund,
P.O Box 1548 – 00600,
Stima Plaza, Kolobot Road, Parklands,
Nairobi,
KENYA.

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address) _____

_____ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Tenderers.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Designation of duly authorised person signing the Tender

Stamp or Seal of Tenderer

SECTION XIII- DRAFT LETTER OF NOTIFICATION OF AWARD

To:

(Name and full address of the Successful Tenderer)

Dear Sirs/Madams,

RE: NOTIFICATION OF AWARD OF TENDER NO.

We refer to your tender datedand your acceptance letter datedfor purchase of land and are pleased to inform you that following evaluation, subject to the provision herein, has been accepted as follows:-

.....
.....

This notification does not constitute a Sale Agreement. The formal Sale agreement, which is enclosed herewith shall be entered into pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time, or replaced)*. Kindly sign and seal the Sale agreement. Further, initial and stamp on all pages of the documents forming the Sale Agreement that are forwarded to you with this letter. Thereafter return the signed and sealed Sale Agreement to us for our further action.

We take this opportunity to remind you to again note and strictly comply with the provisions as regards the Signing of Sale Agreement and Performance Security as stated in the tender document. Kenya Power Pension Fund is committed to best practices in supply chain management, attached please read carefully our Suppliers’ Charter. We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

FOR: THE KENYA POWER PENSION FUND

Enclosures

SECTION XIV – DRAFT LETTER OF NOTIFICATION OF REGRET

To: (Name and full address of the Unsuccessful Tenderer)

Date:

Dear Sirs/Madams,

RE: NOTIFICATION OF REGRET IN RESPECT OF TENDER NO.

Pursuant to the provision under section 87(3) of the public procurement and asset disposal Act 2015 to notify you that following evaluation, your Tender is unsuccessful. It is therefore not accepted. The brief reasons are as follows: -

- 1.
- 2.
- 3. etc

the successful bidder was _____.

However, this notification does not reduce the validity period of your Tender Security. In this regard, we request you to relook at the provisions regarding the Tender Security, Signing of Sale Agreement and Performance Security as stated in the Instructions to Tenderers.

You may collect the tender security from our offices only after expiry of twenty-five (25) days from the date hereof.

It is expected that by that time KPPF and the successful bidder will have entered into a Sale Agreement pursuant to the Public Procurement and Asset Disposal Act, 2015 (*or as may be amended from time to time or replaced*). When collecting the Security, you will be required to produce the original or certified copy of this letter.

We thank you for the interest shown in participating in this tender and wish you well in all your future endeavours.

Yours faithfully,

FOR: THE KENYA POWER PENSION FUND

Ag. CEO & TRUST SECRETARY

SECTION XV- DRAFT LETTER OF NOTIFICATION OF INTENT TO AWARD

To:

(Name and full address of the Successful Tenderer)

Dear Sirs/Madams,

RE: NOTIFICATION OF INTENT TO AWARD OF TENDER NO.

Pursuant to the provision under section 87 of the public procurement and asset disposal Act 2015 we refer to your tender datedand are pleased to inform you that following evaluation, we intend to award you a contract for the above mentioned subject to provision herein for the.....

This notification of intent does not constitute a contract. The formal Contract Agreement and notification of award, shall be entered into pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time, or replaced)*.

You are required to accept or reject this offer within a period of 14 days.

We take this opportunity to remind you to again note and strictly comply with the provisions as stated in the tender document.

Kenya Power Pension Fund is committed to best practices in quality management systems and supply chain management, attached please read carefully our Suppliers' Charter. We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

FOR: THE KENYA POWER PENSION FUND

Ag. CEO & TRUST SECRETARY