



**ESTABLISHMENT OF A FRAMEWORK AGREEMENT – INVITATION TO TENDER**



**FRAMEWORK TITLE: PROVISION OF CONSULTANCY SERVICES FOR TRADEMARK AFRICA CUSTOMS SUB-UNIT**

**FRAMEWORK NUMBER: TMA/FWA/T&P/01/2024**

**TENDER SUBMISSION DEADLINE DATE: 30 SEPTEMBER 2024 (10.00 A.M. KENYA TIME)**



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## INTRODUCTION TO TRADEMARK AFRICA

### 1. About TradeMark Africa

TradeMark Africa (TMA) is a leading African Aid-for-Trade organisation, founded in 2010 with the mission to grow intra-African trade and increase Africa's share in global trade, while helping make trade more pro-poor and environmentally sustainable. TMA operates on a not-for-profit basis and is funded by: the Bill and Melinda Gates Foundation, Canada, Denmark, the European Union, Finland, France, Ireland, the Mastercard Foundation, the Netherlands, Norway, the United Kingdom, and the United States of America. TMA works closely with regional and continental organisations, national Governments, the private sector, and civil society.

Since its inception, TMA has delivered substantial gains for trade and regional economic integration in East Africa and the Horn of Africa, including a reduction of 16.5% in cargo transit times on the Northern Corridor from Mombasa to Bujumbura, and a reduction of an average of 70% in the time taken to cross selected one stop border posts. TMA works in 14 countries across East and West Africa, Southern Africa, and the Horn.

In 2022, TMA set up a catalytic finance company – Trade Catalyst Africa – that will pilot commercially viable projects for creating trade infrastructure (both physical and digital) as well as increasing access to Trade Finance for Small and Medium Enterprises (SMEs).

Both TCA's and TMA's headquarters are in Nairobi, Kenya. Offices are in: EAC (East Africa Community) Secretariat - Arusha, Burundi, the Democratic Republic of Congo, Djibouti, Ethiopia, Ghana, Malawi, Rwanda, Somaliland, Tanzania, and Uganda, with operations in Mozambique, South Sudan, and Zambia. For more information, please visit [www.trademarkafrica.com](http://www.trademarkafrica.com).

#### 1.1 This Opportunity

1.1.1 TMA is inviting Framework Submissions from interested consultancy firms/consortiums to be considered for appointment to this Framework Agreement for the **Provision of Consultancy services for TradeMark Africa Customs Sub-Unit** funded by TradeMark Africa.

#### 1.2 Eligibility

1.2.1 Only **consultancy firms/consortiums and joint ventures** are eligible to apply for this framework.  
1.2.2 Submissions from individual consultants will be disqualified.

#### 1.3 Only One Proposal per Bidder

1.3.1 The bidder (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a bidder, including any Joint Venture member, submits or participates in more than one proposal, all such



proposals shall be disqualified and rejected. This does not, however, preclude the bidder's staff from participating as Key Experts and Non-Key Experts in more than one Proposal.

- 1.3.2 This framework agreement shall accommodate a maximum number of ten (10) service providers once the selection process is complete.
- 1.3.3 The detail and full scope of the Framework Agreement is contained in the Framework Scope of Services in Section 2.0.

#### **1.4 TradeMark Africa's Partners and Stakeholders**

- 1.4.1 TMA works closely with regional inter-governmental organisations, including the African Union (AU), East Africa Community (EAC), Common Market for East and Southern Africa (COMESA), Southern African Development Community, Economic Community of West Africa States (ECOWAS), national governments, the private sector, and civil society organisations. Other Partners may be added from time to time.

#### **1.5 Instructions to Tenderers**

- 1.5.1 This document is designed to help you submit a framework bid that is acceptable to TMA as well as ensuring that all potential service providers are given equal consideration. It is essential that you provide a complete tender that contains all the information requested in the specific format and in no other format. See the Annexes for the specific format templates.
- 1.5.2 Please read the following general and specific information carefully, before submitting your application, including the Instructions to Tenderers in section 4.0 of this document.

#### **1.6 Submission Deadline for Establishment of Framework**

- 1.6.1 You are invited to submit a tender for appointment to a Framework for the Provision of Consultancy services for TradeMark Africa Customs Sub-Unit. TMA will **ONLY** accept electronic format submissions.
- 1.6.2 Submissions must be emailed to [frameworks@trademarkafrica.com](mailto:frameworks@trademarkafrica.com) on or before **30 September 2024 by 10.00 am. (Kenya time)**. **TMA cannot answer any query relating to this framework process seven (7) days or less prior to the submission deadline.**
- 1.6.3 All queries quoting this framework process title and number should be emailed to [frameworks@trademarkafrica.com](mailto:frameworks@trademarkafrica.com).
- 1.6.4 TMA reserves the right to cancel the entire procurement process without incurring any liability whatsoever.
- 1.6.5 **Late submissions, or submissions in any other format, will not be accepted.**



## 2.0 Framework Terms of Reference

### Terms of Reference for Provision of Consultancy services for TradeMark Africa Customs Sub-Unit

#### INTRODUCTION

##### ***About TradeMark Africa***

TradeMark Africa (TMA) is a leading African Aid-for-Trade organisation, founded in 2010 with the mission to grow intra-African trade and increase Africa's share in global trade, while helping make trade more pro-poor and environmentally sustainable. TMA operates on a not-for-profit basis and is funded by: the Bill and Melinda Gates Foundation, Canada, Denmark, the European Union, Finland, France, Ireland, the Mastercard Foundation, the Netherlands, Norway, the United Kingdom, and the United States of America. TMA works closely with regional and continental organisations, national Governments, the private sector, and civil society.

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##### ***Trade and Investment programme***

Strategy 3 (2023-2030) of TMA seeks to build on successes of its previous strategies – Strategy 1 (2010-2017) and Strategy 2 (2017 – 2023). Strategy 3 results are anchored on six key results portfolios that include Trade and Investment Environment, Quality/Value of Traded Goods, Digital Systems, Physical Connectivity, Greening Trade and Resilience and Inclusive Trade.

The wider outlook of the Trade and Investment programme is to enhance the trade regulatory environment to reduce barriers to trade which ultimately increases business competitiveness and market



access. This is achieved through working closely with regional intergovernmental organisations, including the African Union (AU), the African Continental Free Trade Area (AfCFTA) Secretariat, the East Africa Community (EAC), the Intergovernmental Authority on Development (IGAD), the Common Market for East and Southern Africa (COMESA), The Southern African Development Community (SADC), and the Southern Africa Customs Union (SACU), COMESA-EAC-SADC Free Trade Area, The Northern Corridor Transit and Transport Coordination Authority (NCTTCA), Central Corridor Transit Transport Facilitation Agency (CCTTFA), national Governments, the private sector and civil society organisations. TMAs interventions are guided by a trade and transport corridor approach which ensures holistic results.

The Trade & Investment programme also extends technical support to the country programmes in TMAs new areas of operation in the Horn of Africa, Southern and Western Africa. This support is demand- driven and draws on TMAs successful experience in implementing innovative trade and trade facilitation initiatives in East Africa.

Activities under Trade and Customs unit focus on enhancing the capacities of the relevant regional bodies, national government actors and the private sector through a suite of solutions that address legal and regulatory challenges; technical capacities to implement and comply with trade environment requirements and facilitation; and operational capacities related to management and administration of trade processes and procedures used in trade documentary and border compliance. Implementation of the activities is expected to lead, but are not limited to the following results:

- a. Improved adoption and utilization of trade agreements and trade facilitation instruments in Regional Economic Communities (RECs) by cross border traders, women and youth run and owned enterprises.
- b. Increased and sustainable efficiency and effectiveness in resolving trade disputes and barriers affecting trade within the region and between the region and other parts of the world.
- c. Improved efficiency and effectiveness of trade policy instruments for enhanced trade facilitation.
- d. Improved coordination and collaboration between border agencies within national borders and across borders. In addition, enhanced cooperation between the private sector actors and border agencies.
- e. Improved trade information data, policy research and strategies.

#### ***Customs sub-unit***

Drawing from the Trade and Customs unit, the Customs sub-unit focuses on trade facilitation by enhancing the capacities of the relevant regional bodies, national government actors and the private sector on the following specific areas:

- a. Improved efficiency and effectiveness of trade policy instruments for enhanced trade facilitation.
- b. Improved coordination and collaboration between border agencies within national borders and across borders. In addition, enhanced cooperation between the private sector actors and border agencies.



## SCOPE

While the EAC and Sub-Saharan Africa witnessed steady economic growth and deepening of regional integration evidenced by embracing the Africa Continental Free Trade Area (AfCFTA) and entry of Democratic Republic of Congo's (DRC) and Somalia into the EAC, many challenges remain including increased protectionism, insecurity, climate change and inflation, which have undermined the many gains over last decade, including the reduction in time and costs to trade across borders. To help address these challenges in the Customs space, TMA is focusing on the following two (2) thematic areas to work with Regional Economic Communities (RECs) as well as with the AfCFTA Secretariat. To support implementation of various interventions under the programme, TMA shall draw technical expertise from qualified firms to be engaged through this framework agreement.

### ***Strengthen capacity for implementing trade policy instruments to facilitate movement and clearance of goods at borders and ports.***

Trade policy instruments are critical rules and guidelines which government how trade takes place within and across countries. In EAC, the Single Customs Territory(SCT) is the cornerstone for free movement of goods within the EAC. Under this workstream TMA supports countries and RECs to develop, review and implement various trade policy instruments. Some of the interventions include:

- a. Supporting the development of regional transit guarantee bonds.
- b. Development, review and implementation of the Customs Union/Single Customs Territory Instruments such as the Customs Management Regulations, Common Tariff Nomenclature and Common External Tariff (CET)
- c. Developing and implementing Online Buyer-Seller Platform to facilitate intra-regional trade.
- d. Supporting implementation of simplified trade regimes (STR).

### ***Strengthening capacity for Integrated Corridor and Border Management (ICBM) systems to facilitate cross border trade.***

Within the regional integration One-Stop Border Posts (OSBPS) have played a key role in facilitating trade. By only having one physical stop at a border, OSBPs significantly reduce border-crossing time and associated costs. With the support of TMA, 16 OSBPs have been set up across the EAC region and clearance times at borders have been reduced by 80%. However, this framework for trade facilitation, including integrated border co-ordination, has not been applied to the existing two-stop border posts, lake ports or airports, where significant agricultural trade takes place. TMA continues to support trade facilitation measures at border crossings as well as ensuring all agencies along the corridors and borders are well coordinated. Some of the interventions include:

- a. Supporting design of OSBP/IBM mechanisms and frameworks to cover OSBPS, two-stop borders, airports, lakes, sea and dry ports, and Customs-controlled zones.
- b. Supporting Trade Facilitation Sub-committees
- c. Supporting implementation of WTO and AfCFTA Trade facilitation Agreements implementation
- d. Support implementation of the OSBP Performance Measurement Tools



- e. Development of OSBPs manuals and guidelines
- f. Capacity building on trade facilitation measures

#### **RECEPIENT**

TradeMark Africa and its implementing partners that include; Regional Economic Communities, regional bodies, national governments, private sector associations and civil society organisations.

#### **DURATION**

The framework shall run for a period of three (3) years and successful bidders will be called upon to undertake specific assignments during the duration of the framework.

#### **REPORTING**

Bidders engaged on specific assignments will be required to report to TMA's Director, Trade and Customs, and the designated Programme Managers and Programme Officers within the Trade and Customs programme.

#### **QUALIFICATIONS FOR FIRMS**

The Customs sub-unit will be looking for agile, innovative and results-oriented firms, in the areas guided by the programme's components.

#### ***The firm***

Firms will be required to have the following:

- i. Seven (7) years demonstrable experience in undertaking consultancy assignments in Customs and trade facilitation e.g. as trade policy instruments and/or Integrated Corridor and Border Management (ICBM) processes, procedures and systems to facilitate trade etc.
- ii. Previously undertaken two (2) in Customs & Trade facilitation in the last 5 years in terms of nature and scope. The assignments identified must have been undertaken in Africa in East/West/Southern/Horn of Africa. ***For each assignment provide a signed recommendation/reference letter. Where reference letters are not available the name, telephone, and email contact details for the main client representative for each assignment should be provided.***
- iii. Demonstrate previous experience in managing and delivering complex assignments within the project management variables (cost, time, quality, scope, risk, results/benefits).

#### ***The team***

- i. Possess a good understanding of cross cutting themes around environmental sustainability, gender and inclusion, safeguarding and risk management.
- ii. Demonstrable stakeholder management skills and ability to work flexibly with Governments officials, development partners and private sector entities, with a demonstrated ability to manage relationships and interests in a tactful and productive manner.





- iii. Fluency in English language (reading, written, spoken) and any other East/West/Southern/Horn of Africa languages. Fluency in French is an added advantage. **Provide a 1-5 fluency scale (5 being fluent)**
- iv. Good communication skills, including the preparation and presentation of high-quality reports. **Provide a recent sample report no older than 5 years at the time of bidding**
- v. Demonstrate excellent skills with computers, especially in the use of various MS Office applications (e.g., Excel, Word, PowerPoint, etc.).

#### **Lead consultant**

- i. A master's degree in economics, International Trade, International Trade Law, Trade policy, Development Studies, Business Administration Regional Integration, Customs / Trade Facilitation or a trade related discipline.
- ii. Ten (10) years demonstrable experience in undertaking various Customs/ Trade facilitation consultancy assignments in (at least 5 years in Africa).
- iii. Participated in the two (2) assignments identified in the consultancy on Customs & Trade facilitation identified under the firm criteria.
- iv. Demonstrate in-depth knowledge of trade policy and trade facilitation issues particularly in EAC, and application of trade facilitation frameworks and guidelines, including the WTO Trade Facilitation Agreement, Regional Trade Agreements, Protocols, Treaties including the AfCFTA.
- v. Demonstrate a good understanding of the WCO conventions, frameworks and recommendations including but not limited to the Revised Kyoto Convention, Safe Framework of Standards and Integrated/Coordinated Border Management (I/CBM).

#### **Additional key technical experts**

- i. Provide at least an additional 2 key relevant and dynamic technical experts in consultancies on Customs and Trade facilitation possessing at least 8 years of demonstrable relevant experience and competencies in following key thematic areas under (iv).
- ii. The additional minimum 2 technical experts with relevant education that contributes to the overall portfolio as listed under the thematic areas listed under item (iv)
- iii. The additional minimum 2 technical experts should have participated in at least one (1) of the two (2) assignments identified in the consultancy on Customs & Trade facilitation identified under the firm criteria.
- iv. The identified 2 technical experts provided under (i) should demonstrate previous experience
  - a) **Trade facilitation:** Development, review, implementation and capacity building on simplification, modernization, and harmonization of international trade procedures.
  - b) **Customs:** Development, review, implementation and capacity building on Customs and trade facilitation measures including Customs management regulations, common tariff nomenclature and common external tariffs, Customs processes and procedures development and implementation, and Harmonised System transposition.



- c) **Regional Integration:** Development, review, implementation and capacity building in Regional, continental, and international trade agreements, Protocols and Treaties.
- d) **Rules of Origin:** Rules of origin development, negotiation, interpretation, review, and implementation as well as certificate of origin related aspects.
- e) **Tariffs:** Tariff schedules development, review, domestication, and implementation
- f) **Valuation:** Development, review, implementation and capacity building in Customs valuation on imported goods.
- g) **Trade policy instruments:** Development, review, implementation and capacity building e.g. Authorized Economic Operators, Customs Bonds Development, Simplified Trade Regime.
- h) **Integrated Corridor and Border Management (ICBM):** Development, review, implementation and capacity building on ICBM principles and approaches.
- i) **Small scale cross border trade:** Simplified trade regimes development and implementation, data collection, trade information focal points and capacity building
- j) **Institutional training and capacity building:** Developing and delivering training programs.
- k) **Research:** Conducting research in Trade facilitation and Customs areas.

## METHODOLOGY

The firm is expected to share their proposed methodology of how to implement this framework including proposed general and specific approaches and staffing prior to commencement. This should also include addressing issues such as how to achieve outputs, institutions/individuals to be consulted to assist achievement of the outputs etc.



### **3.0 EVALUATION PROCESS AND CRITERIA**

- 3.0.1 This section sets out how TMA will evaluate your tender and explains the evaluation **selection** criteria that will apply at this **establishment of the Framework** and also **example of** evaluation **award** criteria that will apply to the call-off / mini - competition stage that will follow during the three-year life of the Framework.
- 3.0.2 For individual consultancy frameworks or input based assignments, potential service providers shall be required to provide their daily rates in line with the fee rates schedule provided as Annex 3 of this document. Failure to comply with the rate card provided may lead to your submission being declared non-responsive.
- 3.0.3 Once the Framework process has been completed and service providers shortlisted, TMA will periodically require pieces of assignments to be undertaken throughout Strategy 3. The following selection approaches shall be applicable:
- (i) For individual consultants and input-based assignments, where fee rates have been provided as stipulated in clause 3.0.2 above, service providers shall be allocated assignments under a fair principle of rotation.
  - (ii) Where service providers have not provided fee rates, a mini competition shall be applicable. Competition shall be carried out in a batch of a minimum of three service providers until all service providers under the framework have been invited to tender.
- 3.0.4 Please note, that the final specific award criteria that will apply at the mini-competition/call-off stage, including the specific TORs will be **communicated at the time**. Consequently, the specific technical proposals (where requested) for the relevant piece of work and the corresponding financial offer will also be sought **at that time**.
- 3.0.5 At the conclusion of this evaluation process the successful applicants will be (where possible) appointed to the Framework.

### **3.1 ESTABLISHING THE FRAMEWORK STAGE**



3.2.1 The Evaluation process is made up of the stages below:

Tender Evaluation	Shortlisting	Supplier Presentation	Demonstration	Site visit to reference	Competitive Negotiation
Yes	Yes	No	No	No	Yes

3.2.2 The evaluation process will be on compliant and non-compliant basis. Price is not evaluated at this stage. All framework submissions will be evaluated by an evaluation panel using the evaluation criteria in the table below.

3.2.3 All Framework submissions received will first be subject to a compliance check of Part A preliminary requirements, which is based on a **Pass/Fail method**. Tenderers are required to be compliant in Part A (Table 1 below) to progress to the evaluation of Part B (Table 2 below).

3.2.4 Part B is an evaluation of technical capability and will be undertaken in accordance with table B below. For Part B, prospective firms/ consortiums and individual consultant must be fully compliant with the specified criteria to be shortlisted.

3.2.5 At the end of the evaluation process, only a defined number of suppliers, where it is possible, who comply with the specified selection criteria and achieve a score above the minimum pass mark shall be appointed to the framework agreement, or where relevant, the Lots, until the defined number of places on the Framework or Lots are filled at which point no more suppliers will be appointed irrespective of whether they have passed the minimum pass-mark.

3.2.6 TMA reserves the right to hold a supplier presentation stage, if deemed necessary.

3.2.7 Potential service providers who are not compliant with Part A and B will be deemed to have failed and will not be appointed onto the Framework Agreement.

3.2.8 The proposal should be submitted as two secure PDF documents, one containing the Part A response and one containing the Part B response.



**Table 1: Part A - Preliminary Requirements (Applicable to All LOTs)**

<b>A. Preliminary Requirements</b>		<b>Compliant/Non-compliant</b>
a.	Audited books of account – for 2021, 2022 and 2023 ( <i>applicable to bidding firms and all consortium parties</i> )	Compliant/Non-compliant
b.	Copy of Certificate of Registration/Incorporation demonstrating the bidding firm/lead partner’s registration in either Burundi, the Democratic Republic of Congo, Djibouti, Ethiopia, Ghana, Kenya, Malawi, Rwanda, Somaliland, Tanzania, Uganda, Mozambique, South Sudan and/or Zambia.	Compliant/Non-compliant
c.	Tax Registration Certificate from the relevant Revenue Authority or equivalent as at time of submission ( <i>applicable to bidding firms and all consortium parties</i> )	Compliant/Non-compliant
d.	Signed letter of intent or joint venture agreement ( <i>applicable to consortiums/joint ventures</i> )	Compliant/Non-compliant
e.	Signed TMA Supplier Code of Conduct	Compliant/Non-compliant



**TABLE 2: PART B – SELECTION CRITERIA**

<b>Section A: The firm criteria</b>		<b>Max Score (16)</b>
1	Seven (7) years demonstrable experience in undertaking consultancy assignments in Customs and trade facilitation e.g. as trade policy instruments and/or Integrated Corridor and Border Management (ICBM) processes, procedures and systems to facilitate trade etc. <b>7 years demonstrable relevant experience - 7 marks</b>	7
2	Previously undertaken two (2) assignments in Customs & Trade facilitation in the last 5 years in terms of nature and scope. The assignments identified must have been undertaken in Africa either in East/West/Southern/Horn of Africa. <i>For each assignment provide a signed recommendation/reference letter. Where reference letters are not available the name, telephone, and email contact details for the main client representative for each assignment should be provided.</i> <b>2 similar in Customs and Trade Facilitation - 6 marks</b> <b>Work in East/West/Southern/Horn of Africa - 1 marks</b> <b>Evidence with relevant letters or alternative - 2 marks</b>	9
<b>Section B: Team criteria</b>		<b>Max Score (47)</b>
<b>Sub-section 1B: Team criteria</b>		<b>12 marks</b>
1	Possess a good understanding of cross cutting themes around environmental sustainability, gender and inclusion, safeguarding and risk management.	3
2	Demonstrable stakeholder management skills and ability to work flexibly with Governments officials, development partners and private sector entities, with a demonstrated ability to manage relationships and interests in a tactful and productive manner.	3
3	Fluency in English language (reading, written, spoken) and any other EAC/West Africa languages. Fluency in French is an added advantage. <i>Provide a 1-5 fluency scale (5 being fluent)</i> <b>English - 1 mark</b> <b>East/West/Southern/Horn of Africa language - 1 mark</b> <b>French - 1 mark</b>	3
4	Possess good communication skills, including the preparation and presentation of high-quality reports. <i>Provide a recent sample project report no older than 5 years at the time of bidding</i>	3
<b>Section 2B: Lead consultant criteria</b>		<b>12 marks</b>
1	A master's degree in economics, International Trade, International Trade Law, Trade policy, Development Studies, Business Administration Regional Integration, or a trade related discipline.	2



2	Ten (10) years demonstrable experience in undertaking various Customs/ Trade facilitation consultancy assignments in (at least 5 years in Africa), <b>5 marks - for the two criteria i.e 10 years and 5 years in Africa</b> <b>2.5 marks - if not achieved the two criteria i.e 10 years and 5 years in Africa</b>	5
3	Participated in the two (2) assignments identified in the consultancy on Customs & Trade facilitation identified under the firm criteria. <b>1 mark for each identified assignment</b>	2
4	Possess in-depth knowledge of trade policy and trade facilitation issues particularly in EAC, and application of trade facilitation frameworks and guidelines, including the WTO Trade Facilitation Agreement, Regional Trade Agreements, Protocols, Treaties including the AfCFTA. <b>Additionally</b> , must possess a good understanding of the WCO conventions, frameworks and recommendations including but not limited to the Revised Kyoto Convention, Safe Framework of Standards and Integrated / Coordinated Border Management (I/CBM).	3
<b>Sub section 3B: Key technical experts</b>		<b>23 marks</b>
1	Provide at least an additional 2 key relevant and dynamic technical experts in consultancies on Customs and Trade facilitation with at least each possessing at least 5 years of demonstrable relevant experience in the listed thematic areas. <b>2 relevant and dynamic technical experts - 2 marks</b> <b>Experts in Customs and Trade facilitation - 4 marks</b> <b>5 years' experience each - 4 marks (2 marks each)</b>	10
2	The additional minimum 2 technical experts must have relevant education that contributes to the overall portfolio as listed under the key thematic areas listed under item (iv) <b>11 marks for the 11 listed thematic items</b>	11
3	The additional minimum 2 technical experts must have participated in at least one (1) of the two (2) assignments identified in the consultancy on Customs & Trade facilitation identified under the firm criteria.	2
<b>Section C: Technical Proposal - Adequacy of the Proposed Methodology</b>		<b>Max Score (37)</b>
1	Demonstrates a clear understanding and interpretation of the TORs and the assignment and objectives to be achieved.	13
2	Provides a clear logical approach (methodology) to the assignment – the approach should provide high level information on details to be considered, analytical approaches to be used to analyse potential data, policy analysis, anticipated issues, challenges and mitigation stakeholders to be contacted and generally, how the work will be carried out.	15
3	Provides a <b>3 months sample workplan</b> that is clear, logical, well-sequenced and demonstrates how a consultancy assignment would be approached.	9
<b>Grand Total</b>		<b>100</b>



### **3.2 Calling Off from the Framework Agreement and mini competitions**

**PLEASE NOTE: The information below is NOT REQUIRED at this time.**

3.2.1 Each time a piece of work is required, clause 3.0.3 above shall be applicable.

3.2.2 In compliance with clause 3.0.4 (above), once submissions are received, each will be evaluated in accordance with the prescribed evaluation criteria published at the time. All tenders may be evaluated using the *example* evaluation criteria below. Each criterion will be weighted and published at the time.

- Methodology of the specified scope;
- Implementation/work plan (timelines and milestones);
- Financial proposal; and
- Any other criteria (TMA reserves the right to change the criteria when required).

3.2.3 The contract will be formed at the call-off stage. A draft contract is shown in Annex 8.

3.2.4 In compliance with clause 3.0.4 (1), where the proposed assignment value is less than **\$30,000**, TMA reserves the right to make a direct award to a selected supplier from the Framework, without a mini competition.





#### 4.0 Instructions to Tenderers and Bidding Data Sheet

A – General Instructions	
1. Introduction	<p>TMA issues these Instructions to Tenderers for the requirements explained in these Procurement Documents.</p> <p>The name, identification, important contractual information and indicative budget is contained in the Procurement Documents and the <b>Bidding Data Sheet</b>.</p> <p>The name and address of the Financier, tender method, selection process and applicable guidelines are shown in the <b>Bidding Data Sheet</b>.</p> <p>The Framework will be established by inviting submissions for prospective bidders to demonstrate general technical capability. Once established and in due course, specific Technical and Financial proposals shall be invited for pieces of work via a call-off/mini-competition process, in accordance with the procurement documents. Further Procurement Documents will be issued at that time.</p>
2. Definitions	<p>(a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Bidder.</p> <p>(b) “Allocated Funds” means Funds set aside in TMA’s budget specifically towards payment directly to the service provider/s against service/s or goods or works to the beneficiary or client.</p> <p>(c) “Applicable Guidelines” means the policies of TradeMark Africa’s contained in <b>TMA’s Regulations and Procurement Policy Manual</b> that <b>shall</b> govern the selection and Contract award process.</p> <p>(d) “Applicable Law” means the laws and any other instruments having the force of law in the beneficiary country, or in such other country as may be specified in the <b>Bidding Data Sheet</b>, as they may be issued and in force from time to time.</p> <p>(e) “Authorised Representatives” are individuals nominated by the Bidder to represent them during the procurement process.</p> <p>(f) “Beneficiary” means the implementing agency or agencies that will receive the benefit of the object of the contract. Beneficiary may also mean TMA itself.</p> <p>(g) “Bidding Data Sheet” means an integral part of the instructions to tenderers and is used to reflect specific conditions to supplement or amend the provisions of the ITT.</p> <p>(h) “Bidder” means a legally established professional company or an entity that may provide or provides the Services to the beneficiary under the Contract and who is participating in the procurement process.</p>



	<ul style="list-style-type: none"><li>(i) “Bid” means the Technical and Financial Proposal of the Bidder</li><li>(j) “Contract” means a legally binding written agreement signed between the financier or the beneficiary and the Bidder, including all relevant appendices.</li><li>(k) “Competitive Negotiation” means the act of negotiating with all shortlisted suppliers, prior to award of contract, in accordance with <b>TMA’s Regulations and Procurement Policy Manual</b>.</li><li>(l) “Conflict of Interest” means the conflict between professional obligations and private gain.</li><li>(m) “Controlling Partner” means a separate organisation independent from the Bidder that exerts control over the activity of the Bidder in the form of management direction, capital or voting rights.</li><li>(n) “Call-off” thereof means to contract, following the mini-competition, for works, services and/or goods throughout the Framework Agreement duration.</li><li>(o) “Day” means a calendar day.</li><li>(p) “Establishment of a Framework Agreement” means to undertake an open procurement process to appoint the defined number of suppliers onto the Framework.</li><li>(q) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Bidder, Sub-Bidder or Joint Venture member(s).</li><li>(r) “Framework Agreement” means a list of a defined number of pre-qualified suppliers in a relevant market, that may be established at regional and/or country level, for a specified period and may incorporate ‘Lots’ as appropriate.</li><li>(s) “Financier” means TradeMark Africa.</li><li>(t) “In writing” means communicated in written form (e.g., by ordinary mail or e-mail) with proof of receipt;</li><li>(u) “Funding Agreement” means the terms and conditions of the agreement between the Beneficiary and the TMA.</li><li>(v) “Government” means the government of the Beneficiary’s country.</li><li>(w) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Bidder where one member has the authority to conduct all business for and on behalf of all the members of the JV, and where the members of the JV are jointly and severally liable to the beneficiary for the performance of the Contract.</li><li>(x) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge, and experience are critical to the performance of the Services</li></ul>
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	<p>under the Contract and whose CV is considered in the technical evaluation of the Bidder's proposal.</p> <p>(y) "LOI" means the Letter of Invitation being sent by TMA to prospective Bidders.</p> <p>(z) "Mini-competition" means the action of holding a competitive process amongst the suppliers appointed to the Framework Agreement throughout the life of the Framework Agreement, for the award of specific assignments.</p> <p>(aa) "Nominated sub-contractor, or s service provider" is one which either has been: included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the bidder's pre-qualification application or the bid;</p> <p>(bb) "Non-Key Expert(s)" means an individual professional provided by the Bidder or its Sub-Bidder and who is assigned to perform the Services or any part thereof under the Contract and are not part of the core team.</p> <p>(cc) "Pre-tender market engagement" means the action of pro-actively and fairly contacting a broad range of potential suppliers in the relevant market, during the programme and/or project design stage, with the intention of learning the best way to obtain value for money from the Terms of Reference, procurement process and contract management.</p> <p>(dd) "Procurement Documents" is a general term to mean all documents in this pack.</p> <p>(ee) "Recipient" means the institution gaining from the procured goods, works or services. They may include Government, Government agency or other entity that signs the Funding Agreement with the TMA. Recipient may also mean TMA itself.</p> <p>(ff) "Request for Market Information" means the document(s) used in Pre-tender market engagement that contains the outline of the draft requirements, project information, budget and other relevant information, that is published on the TMA website, inviting participation and written responses in the pretender market engagement process.</p> <p>(gg) "RFP" means the Request for Proposals to be prepared by TMA for the selection of Bidders.</p> <p>(hh) "Services" means the work to be performed by the Bidder pursuant to the Contract.</p> <p>(ii) "TMA" means TradeMark Africa.</p> <p>(jj) "TORs" means the Terms of Reference that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the</p>
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	<p>Client and the Bidder, and expected results and deliverables of the contract and will be specific to the particular works, services or goods that are required and may take the form of any or all of scope of works, bill of quantities, bill of materials, statement of requirements, and/or specification.</p>
3. Intention and Responsibility	<p>TMA intends to appoint a supplier(s) from those Bidders who will submit bids that are found to be qualified and capable in accordance with the method of framework evaluation explained in table A and B in the procurement document.</p> <p>The Bidders should familiarize themselves with the local conditions and take them into account in preparing their Proposals. TMA shall not be liable as a result of a Bidder not establishing local geographical context.</p>
4. Right to Accept or Reject tenders	<p>TMA reserves the right to reject any bid, and/or to annul the bidding process entirely or in part, and reject any or all bids at any time, prior to framework contract award, without thereby incurring any liability whatsoever to Bidders.</p> <p>In case of annulment or cancellation TMA shall notify all Bidders.</p>
5. Source of Funds	<p>The Beneficiary indicated in the <b>Bidding Data Sheet</b> has been identified and received a grant / allocated financing (hereinafter called “funds”) from TMA, a proportion of which is intended to be put towards the cost of the project/assignment named in the <b>Bidding Data Sheet</b>.</p> <p>Payments by TMA shall be made directly to the successful bidder only at the request of the Beneficiary (if applicable) and upon approval by TMA in accordance with the terms and conditions of the agreement between the Beneficiary and the TMA (hereinafter called the Funding Agreement). No party other than the Beneficiary shall derive any rights from the Funding Agreement or have any claim to the funds.</p>
6. Fraud and Corruption	<p>TMA’s policy to require that Beneficiaries of TMA Funds, as well as bidders, suppliers, and contractors and their agents (whether declared or not), personnel, subcontractors, and service providers under TMA-financed contracts, observe the highest standard of ethics during the procurement and execution of contracts. Bidders are required to sign the Code of Ethics Policy, as contained in the tender documents at Annex 1.</p>
7. Conflict of Interest	<p>A Bidder shall not have a conflict of interest with TMA or the Beneficiary. The contractor/supplier is required to offer professional, objective and impartial works, services and goods at all times holding TMA's and the beneficiary’s interest’s paramount and strictly avoiding conflicts of interests with its own or a thirds party’s interests. Bidders are required to adhere and sign the Conflict-of-Interest Form, as contained in the tender documents at Annex 2.</p>



	<p>The Bidder has an obligation to disclose to TMA and the beneficiary any situation of actual or potential conflict that impacts its capacity to serve the best interest of TMA and the beneficiary. Any bidder(s) found to have conflict of interest may be disqualified.</p> <p>Bidders may be considered to have a conflict of interest with one or more parties in this bidding process, if they:</p> <ul style="list-style-type: none"><li>(a) They have a controlling partner in common; or they receive or have received any direct or indirect subsidy from any controlling partner that may result in undue influence in the tender process; or</li><li>(b) They have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of TMA regarding this bidding process; or</li><li>(c) Have a conflict between a current TMA or Beneficiary engagement and prospective related future TMA or Beneficiary engagement such that a firm hired to provide consulting services for the preparation or implementation of a project, or any of its Affiliates, may be disqualified from subsequently providing services resulting from or directly related to the consulting services for such preparation or implementation, unless the conflict stemming from the engagements has been declared and resolved in a manner acceptable to TMA throughout the selection process and the execution of the Contract, and measures taken to rectify the potential unfair competitive advantage.</li><li>(d) A Bidder has a conflict in relationship with the Beneficiary/Client's staff: a Bidder (including its Experts and Sub-Bidders) that has a close business or family relationship with a staff member of TMA or the Beneficiary (or of the Client, or of the implementing agency, or of a recipient of a part of the Client's financing) who are directly or indirectly involved in any part of:<ul style="list-style-type: none"><li>(i) the preparation of the Terms of Reference for the assignment,</li><li>(ii) the selection process for the Contract, or</li><li>(iii) the supervision of the Contract.</li></ul>may not be awarded a Contract, unless the conflict stemming from this relationship has been declared and resolved in a manner acceptable to TMA throughout the selection process and the execution of the Contract,</li><li>(e) A bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid shall result in the disqualification of all Bids in which the</li></ul>
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	<p>Bidder is involved. However, for subcontractors only, this does not limit the inclusion of the same subcontractor in more than one bid, each time as a subcontractor. The inclusion of the Bidder as a Bidding party and subcontractor in the same bidding process is not permitted and will result in disqualification.</p>
<p>8. Unfair Competitive Advantage</p>	<p>Fairness and transparency in the selection process require that the Bidders or their Affiliates competing for a specific assignment do not derive a competitive advantage from having previously provided consulting services related to the assignment in question.</p> <p>To that end, TMA shall indicate in the <b>Bidding Data Sheet</b> and make available to all prospective Bidders all information that would in that respect give such a Bidder any unfair competitive advantage over other competing Bidders.</p>
<p>9. Eligibility</p>	<p>TMA permits Bidders (individuals and firms, including Joint Ventures) from all countries to offer works, services and/or goods for TMA-financed projects, unless the Bidder or the country is prohibited by TMA debarment policy, the Beneficiary, donor, development partner, trade body, or as a matter of law or official regulation, or as a decision by the UN Security Council or any other relevant party's sanctions or prohibition.</p> <p>A Bidder may be a private entity, government owned entity or any combination of them in the form of a Joint Venture, under an existing agreement or with the intent to constitute a legally enforceable joint venture.</p> <p>The materials, equipment and services to be supplied under the contract shall have their origin in eligible source countries as defined on the same basis.</p> <p>Bidders shall provide such evidence of their eligibility satisfactory to TMA, as TMA shall reasonably request.</p> <p><b>Restrictions for Government-owned Enterprises</b></p> <p>Government-owned enterprises or institutions in the beneficiary's country shall be eligible only if they can establish that they:</p> <ul style="list-style-type: none"> <li>(i) are legally and financially autonomous;</li> <li>(ii) operate under commercial law, and</li> <li>(iii) that they are not dependent agencies of the beneficiary.</li> </ul> <p>To establish eligibility, the government-owned enterprise or institution should provide all relevant documents (including its charter) sufficient to demonstrate that it is a legal entity separate from the government; it does not currently receive any substantial subsidies or budget support; it is not obligated to pass on its surplus to the government;</p>



	<p>it can acquire rights and liabilities, borrow funds, and can be liable for repayment of debts and be declared bankrupt; and it is not competing for a contract to be awarded by the government department or agency which, under the applicable laws or regulations, is its reporting or supervisory authority or has the ability to exercise influence or control over it.</p> <p><b>Restrictions for public employees</b>  Government officials and civil servants of the Beneficiary’s country are not eligible to be included as Experts in the Bidder’s Proposal unless such engagement does not conflict with any employment or other laws, regulations, or policies of the Beneficiary’s country, and they:</p> <ul style="list-style-type: none"> <li>(i) are on leave of absence without pay, or have resigned or retired; or</li> <li>(ii) are not being hired by the same agency they were working for before resigning or retiring (in case of resignation or retirement), for a period of at least 6 (six) months, or the period established by statutory provisions applying to civil servants or government employees in the Beneficiary’s country, whichever is longer. Experts who are employed by the government-owned universities, educational or research institutions are not eligible unless they have been full time employees of their institutions for a year or more prior to being included in Bidder’s Proposal.; and</li> <li>iii) their hiring would not create a conflict of interest.</li> </ul>
<p>10.Nationality</p>	<p>A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related works, goods and/or services.</p>
<p>11.Joint Venture and Sub-contracting</p>	<p>A Bidder may be a private entity, or government-owned entity or any combination of them in the form of a joint venture, under an existing agreement, or with the intent to constitute a legally enforceable joint venture.</p> <p>If a prospective Bidder considers that it may enhance its expertise for the assignment by associating with other Bidders in the form of a Joint Venture or as sub-contractor, it may do so, and shall describe the arrangements in the Proposal.</p> <p>The Bidder shall not subcontract any part of the contract unless the arrangements are described in the Proposal.</p> <p>A Bid submitted by a Joint Venture shall be signed by the Lead Member, accompanied by the signed Joint Venture form and signed Power of Attorney, from the Lead Member</p>



	to legally bind all other Members of the Joint Venture, as stated in the <b>Bidding Data Sheet</b> .
12. Joint and Several Liability	All suppliers in a Joint Venture shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
13. Confidentiality	Information relating to the examination, evaluation, comparison, negotiation, and post-qualification of the bids and recommendation for contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until the information on Contract award is communicated to all Bidders. This does not prevent Bidders from raising questions or clarifications with TMA in the manner described in the <b>Bidding Data Sheet</b> .
14. Duty of Care to your staff	<p>TMA operates in Countries that from time to time receive travel advisory notes advising degrees of caution when travelling to those Countries. The advisory notes can advise caution through to a full travel ban.</p> <p>Bidders are required to have a ‘Staff Duty of Care Policy’ or equivalent, that explains how the decision to travel to a country is made, what advice, if any, is followed, and what are the arrangements for extraction and repatriation of staff in an emergency.</p> <p>For the avoidance of doubt, TMA shall not insist or require travel by a Bidder/suppliers staff. The safety of Bidders/suppliers staff is of paramount importance and the final decision on their travel rests solely with the Bidder/supplier.</p>
15. Sustainability, environmental and social safeguards	The Bidders shall be required to adhere to sustainable and environmentally acceptable standards, technologies and management practices in the delivery of required goods and services to TMA.
<b>B - Preparation of Proposals</b>	
16. Clarification and amendment of the Bidding Documents	<p>In preparing the Proposal, the Bidder is expected to examine the procurement documents and understand the requirements in detail before responding.</p> <p>A Bidder requiring any clarification of the Procurement Documents shall contact TMA in writing via the method explained in the <b>Bidding Data Sheet</b> or raise enquiries during the pre-bid meeting (if applicable).</p>





	<p>All clarifications raised, shall, subject to TMA's decision on their relevance and importance, be shared with all prospective Bidders participating in the procurement process.</p> <p>TMA, may, at its own discretion, amend the Procurement Documents at any time, for any reason, prior to the tender deadline. Any changes shall be communicated via the website and TMA may extend the deadline for submission of bids.</p>
17. Cost of Preparation and Bid	The Bidder shall bear all costs associated with the preparation and submission of its Bid, and TMA shall not be responsible or liable for those costs, regardless of the conduct or outcome or annulment of the procurement process.
18. Language	The Bid, as well as all correspondence and documents relating to the Bid exchanged between the Bidder and TMA shall be written in the language(s) specified in the <b>Bidding Data Sheet</b> . Where bids are invited in a language other than English, a translation into English is required. The translated copy must be endorsed by a professionally accredited translator in which case, the translated English version shall take precedence.
19. Documents Comprising the Bid	<p>The Bid shall comprise the documents and forms listed in the <b>Bidding Data Sheet</b> and Procurement Documents, in the specific required format.</p> <p>An authorized representative of the Bidder shall sign the original Bid submission form in the required format.</p> <p>A Bid submitted by a Joint Venture shall be signed by the Lead Member, accompanied by the signed Joint Venture form and signed Power of Attorney, from the Lead Member to legally bind all other Members of the Joint Venture.</p> <p>In the event of any discrepancy between the original and the copies, the original shall prevail. Any interlineation, erasures, or overwriting in any Bid document shall be valid only if they are signed by the person signing the Bid.</p>
20. Confirmation of Experience Letter	TMA may seek from Bidders a 'Confirmation of Experience' letter(s) for each piece of previous experience. The Bidder may include in its response, a letter(s) from TMA itself (where applicable) that will confirm basic details of the previous experience. Such letter(s), where requested, shall be submitted as part of the Bid.
21. Bid Validity	Bids shall remain valid for the period specified in the <b>Bidding Data Sheet</b> .



	<p>During this period, the Bidder shall maintain its original Bid without any change, including the availability of the Key Experts, the proposed rates and the total price.</p>
22. Extension of Validity Period	<p>TMA will make its best effort to complete the evaluation/ negotiations within the Bid's validity period. However, in exceptional circumstances, prior to the expiry of the bid validity period, TMA may request Bidders who submitted Bids to extend the Bids' validity. The request and the responses shall be made in writing. If a Bid Security had been requested, it shall also be extended for the same corresponding period.</p>
23. Material deviation, reservation and omission.	<p>TMA's determination of a Bid's completeness is based on the contents of the bid itself.</p> <p>A complete Bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents <b>without material</b> deviation, reservation, or omission.</p> <p>During the opening, evaluation and award of bids, including during the bid validity period, the following definitions apply:</p> <ul style="list-style-type: none"> <li>(i) "Deviation" is a departure from the requirements specified in the Bidding Documents</li> <li>(ii) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and</li> <li>(iii) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document</li> </ul> <p>A material deviation, reservation, or omission is one that:</p> <ul style="list-style-type: none"> <li>(i) Affects in any substantial way the scope, quality, or performance of the requirements specified in the Contract; or</li> <li>(ii) Limits in any substantial way TMA's rights or the Bidder's obligations under the Contract; or</li> <li>(iii) If rectified would substantially unfairly affect the competitive position of other bidders presenting bids.</li> </ul> <p>Where <b>material</b> deviation, reservation, or omission is demonstrated in the Bid or at any time prior to contract signature, it shall be rejected and may not subsequently be made complete by correction of the material deviation, reservation, or omission.</p>
24. Nonmaterial non-conformities, errors, omissions.	<p>During the opening, evaluation and award of bids, including during the bid validity period, TMA may waive any non-material non-conformity in any Bid.</p> <p>Provided that a Bid is substantially complete TMA may request that the Bidder submit the necessary supporting information or documentation, omitted</p>



	<p>supporting annexes, omitted paper or electronic copies, USB sticks or CD-ROMs within a reasonable period, to rectify non-material non-conformities in the bid related to documentation requirements.</p> <p>Failure of the Bidder to comply with the request to rectify non-material non-conformities within the stated reasonable period, shall result in the rejection of the bid.</p>
<b>C - Sealing, Marking and Submitting of Bids</b>	
25. Submitting Bids in electronic and paper format.	TMA accepts Bids in paper or electronic format, and the relevant format and method is described in the <b>Bidding Data Sheet</b> . The Bidder shall submit their Bid in accordance with the instructions in the <b>Bidding Data Sheet</b> .
26. Deadline for Submission of Bids	<p>In all cases, Bids must be received <b><u>on or before the tender deadline</u></b>, as specified in the <b>Bidding Data Sheet</b>.</p> <p><u>Electronic Format Submission</u></p> <p>Where the method of submission is electronic format, bids shall be received via TMA's <a href="mailto:frameworks@trademarkafrica.com">frameworks@trademarkafrica.com</a>.</p> <p>TMA may, at its own discretion, extend the deadline for the submission of bids and will communicate the extended deadline appropriately, to all Bidders.</p>
27. Withdrawal, Substitution or Modification of Bids	<p>A Bidder may withdraw, substitute or modify its Bid after it has been submitted, but prior to the deadline for submission, by sending written notice of its intention to do so, accompanied by the replacement Bid via the submission method stated in the <b>Bidding Data Sheet</b>.</p> <p>The withdraw, substitution or modification of any Bid after the deadline for submission has passed, is prohibited.</p>
28. Late Bids	<p>TMA shall not consider any bid that is received after the deadline for submission of bids. Any bid received by TMA after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.</p> <p>For bids submitted electronically via email, the time of bid electronic receipt by TMA shall be deemed the bid delivery time. Bidders are requested to provide themselves sufficient time for submitting to accommodate unforeseen electronic eventualities and internet downtime.</p>



<b>D - Opening, Evaluation of Bids</b>	
29. General	<p>All tenders received on or before the tender deadline shall be assessed.</p> <p>TMA will conduct the Bid evaluation based on the submitted Technical Bids.</p> <p>TMA may undertake site visits, supplier presentations, product/service demonstration, and/or competitive negotiation during the evaluation process as specified in the Procurement Documents.</p>
30. Opening of Technical Proposals	<p><u>Electronic Format Submission (where applicable)</u></p> <p>Where the method of submission is electronic format, Technical Bids shall be downloaded from TMA's designated email address, and saved to a secure drive, for opening and evaluation.</p>
31. Evaluation of Technical Proposals	<p>TMA's evaluation panel shall evaluate the Technical Bids by applying the evaluation criteria and using the evaluation methodology, as stated in the procurement documents, objectively and transparently to each submission. Each Bid will be given a technical score.</p> <p>In the event of a tie of the total score, TMA will first use two decimal places to determine the successful tenderer. For Frameworks, thereafter and if necessary, TMA will use the individual scores achieved by each tenderer in the technical section that carries the greatest weighting and shall use that score to determine appointment to the Framework. In the event of a further tie, the next highest weighted technical section shall be used, and so on, until the defined number of places on the Framework are filled.</p> <p>Subject to section 23, a Bid may be rejected at this stage if it does not respond to important aspects of the TOR or if it fails to achieve the minimum technical score indicated in the Procurement Documents. Only those bids that achieve the minimum technical score shall be considered for the appointment to a Framework. For Frameworks, once the defined number of places on the Framework are filled, no further suppliers will be appointed irrespective of whether the minimum technical score was achieved.</p>
32. Clarification of Technical Bids	<p>To assist in the evaluation and comparison of the Bids, TMA may, at its discretion, ask any Bidder for a clarification of its Technical Bid.</p> <p>Clarifications shall not result in material changes to the Technical Bid or substantially unfairly affect the competitive position of other bidders presenting bids.</p>



	<p>Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by TMA shall not be considered.</p> <p>TMA's request for clarification and the response shall be in writing.</p> <p>Clarification may be sought on any aspect of the Technical Bid, to allow TMA to accurately evaluate the Technical Bids received.</p> <p>If a Bidder does not provide clarifications of its bid by the date and time set in TMA's request for clarification, its bid may be rejected.</p>
33. Technical evaluations outcome notification and feedback	<p>After the technical evaluation is complete, TMA shall notify those Bidders whose Bids meet the minimum technical score and therefore progress to appointment to the Framework and shall inform all the bidders of their score and shall provide panellists observations of their bid.</p> <p>Until a formal Contract is prepared and executed or otherwise stated, the notification of award <b>shall not</b> constitute a binding Contract.</p> <p>In addition, TMA shall simultaneously notify those Bidders whose Proposals did not meet the minimum technical score and whom therefore are deemed unsuccessful and shall therefore not progress to appointment to the Framework. For unsuccessful Bidders TMA shall inform them of their score and provide feedback on the strengths and weaknesses of the Technical Bid.</p>
34. No-action period	<p>For Framework Agreements with an expected value greater than \$250,000, the unsuccessful Bidders shall be given an opportunity of 3 calendar days from the point of notification, to raise any queries regarding the evaluation outcome.</p> <p>At the expiry of the 3 days a framework agreement shall be awarded to the successful tenderer.</p>
35. Contracting	<p>For Framework Agreements with an expected value greater than \$250,000, the unsuccessful Bidders shall be given an opportunity of 3 calendar days from the point of notification, to raise any queries regarding the evaluation outcome.</p> <p>At the expiry of the 3 days a framework agreement shall be awarded to the successful tenderer.</p>
36. Assignment start date	<p>The Assignment start date shall be after both parties sign the contract and is anticipated to be the date stated in the <b>Bidding Data Sheet</b>.</p>
37. Due Diligence	<p>TMA may commission a Due Diligence review, on any procurement process irrespective of value, for any purpose, at any time to establish the veracity of statements made in the</p>



	<p>submitted bid with regard to previous experience, capability, key personnel, organisational structures, key policies, or any other aspect of the tenderer's bid.</p> <p>If the Due Diligence confirms the veracity of statements made in the submitted bid, a contract shall be awarded.</p> <p>If the Due Diligence disputes the veracity of statements made in the submitted bid this shall result in disqualification of the bid and bidder <i>without any liability whatsoever</i>.</p> <p>In such circumstances TMA reserves the right to determine the most appropriate course of action including but not limited to proceeding to the next best evaluated bid or annulling the procurement process and starting again.</p>
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**E - Bidding Data Sheet**

<b>A. General</b>
<b>ITC Clause/ Reference</b>



<p><b>1. Introduction</b></p>	<p><b>Name of Framework:</b> Provision of consultancy services for TradeMark Africa Customs Sub-Unit</p> <p><b>Reference number:</b> TMA/FWA/T&amp;P/01/2024</p> <p><b>Framework length:</b> 3 years</p> <p><b>Name of the Financier:</b> TradeMark Africa</p> <p style="text-align: right;"><b>2<sup>nd</sup> Floor, Fidelity Insurance Centre,</b></p> <p><b>Address:</b> <b>P. O. Box 313, 00606,</b></p> <p style="text-align: right;"><b>Nairobi, Kenya</b></p> <p>Telephone: <b>+254 204235200</b></p> <p>Email: <a href="mailto:frameworks@trademarkafrica.com">frameworks@trademarkafrica.com</a></p> <p><b>Tender method:</b> Open Competition for Framework Agreement</p> <p><b>Method of selection:</b> Qualitative Evaluation.</p> <p><b>Applicable procurement Guidelines:</b> TMA's Regulations and Procurement Procedures Manual.</p>
<p><b>Definitions</b></p>	
<p><b>2. Applicable law</b></p>	<p><b>Call-off contract:</b> The laws of the relevant country in which the assignment will be carried out and issued at the time.</p>
<p><b>3. Source of Funds</b></p>	<p>The Beneficiaries are national governments in the respective countries, ministries, and government departments. Other Partners may be added from time to time.</p>
<p><b>4. TMA Supplier code of conduct</b></p>	<p>All Bidders are required to sign the TMA Supplier Code of Conduct at <b>Annex 2</b></p>



<b>5. Joint Venture and Sub-contracting</b>	Bid signed by the Lead Member: REQUIRED  Joint Venture Agreement signed by the Lead Member: REQUIRED
<b>6. Contract framework</b>	Information made available all tenderers: NOT APPLICABLE
<b>7. Draft contract Consultancy</b>	Information made available all tenderers: NOT APPLICABLE
<b>B. Preparation of Proposals</b>	
<b>8. Clarification and Amendment of the Bidding documents</b>	Clarifications may be requested from TMA no later than <b>7 days</b> prior to the submission deadline.  The contact information for requesting clarification is:  Attention: <b>Head of Procurement</b>  <b>TradeMark Africa</b>  Email: <a href="mailto:frameworks@trademarkafrica.com">frameworks@trademarkafrica.com</a>
<b>9. Language</b>	English
<b>10. Documents Comprising the Bid Submission</b>	The Bid submission shall comprise the following: a) Administrative documents required for eligibility are indicate under <b>Part A – Preliminary Requirements of the Evaluation Criteria in Section 3.0; and</b> b) <b>Technical Proposal (Where required).</b>
<b>11. Bid Validity</b>	Proposals must remain valid for <b>120 days</b> calendar days after the proposal submission deadline.
<b>C/. Sealing, Marking and Submitting of Bids</b>	





<p><b>12. Submitting Bids in electronic and paper format</b></p>	<p>Format of Bid Submission: <b>EMAIL</b></p> <p><u>Electronic Format Submission</u></p> <p>For email submission, tender documents must be sent via <a href="mailto:frameworks@trademarkafrica.com">frameworks@trademarkafrica.com</a>. The email should be addressed to the Head of Procurement. Documents must be well labelled and include tender number and description. The technical proposal will be submitted <b>as two separate documents</b> (Part A and Part B) in PDF format and the maximum size must not exceed <b>10 MB</b>.</p>
<p><b>13. Deadline for Submission of Bids</b></p>	<p>The Deadline for submission of bids is:</p> <p><b>Date: 30 September 2024</b></p> <p><b>Time: 10.00 A.M. Kenya time</b></p>
<p><b>14. Withdrawal Substitution or Modification of Bids</b></p>	<p>Written Notice to withdraw, substitute or modify Bids must be sent to the email address indicated in Section 25 above, depending on the method of tender submission, prior to the Deadline for Submission of Bids.</p> <p>With substitution or modification, the written notice must be accompanied by a replacement Bid.</p>
<p><b>D. Opening and Evaluation of Bids</b></p>	
<p><b>15. Framework start date</b></p>	<p>Anticipated Framework start date <b>October 2024</b>.</p>



**ANNEXES**

**ANNEX 1: CURRICULUM VITAE (CV)**

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

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

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

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

**Membership in Professional Associations and Publications:**

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

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**ANNEX 2: TMA SUPPLIER CODE OF CONDUCT**



**TRADEMARK AFRICA**

**SUPPLIER CODE OF CONDUCT**

Control Version	2.0
Date Published	08.02.2023
Sections changed	
Signed	



## DEFINITIONS

The following definitions have been adopted throughout this TMA Supplier Code of Conduct:

- a. A “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.
- b. A “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- c. A “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.
- d. A “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- e. An “obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence which is material to a TMA investigation or making false statements to investigators in order to materially impede a TMA investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to an investigation or from pursuing an investigation, or acts intended to materially impede the exercise of TMA’s contractual rights of audit or access to information.
- f. “ESS” – Environmental and Social Safeguards.
- g. “ESIA” – Environmental and Social Impact Assessment.
- h. “ESSMP” – Environmental and Social Safeguards Management Plan.
- i. “Gender mainstreaming” is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making humankind concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that both genders benefit equally, and inequality is not perpetuated. The ultimate goal is to achieve gender equality.
- j. “Gift” is a tangible item presented to a party to impress, appreciate, solicit or manage a relationship.
- k. “GRM” – Grievance Redress Mechanism, is a system of policy and processes designed to receive and manage, on a confidential basis, any and all grievances received in connection with a contract for the provision of services or works.
- l. “Hospitality” is an intangible item presented to a party to impress, appreciate, solicit or manage a relationship.



- m. “PAP” – Project Affected Persons are individuals and/or communities living and/or working at or close to a project site who may be affected either directly or indirectly by the activities at the project site.
- n. “Recipient” is any individual, firm, organisation, Non-Governmental Organisation, Private Sector Organisation or Civil Society Organisation or any partner that works with TMA and/or receives TMA funding either through a contract or a grant.
- o. “Supplier” shall include contractors and subcontractors.
- p. “Terrorism” is any criminal act, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act.
- q. “Value for Money” is defined by TMA as achieving economy, efficiency, effectiveness, and equity in the use of its resources.
- r. “Whistleblowing” is an act of reporting an activity deemed to be illegal or unethical.



## Preamble

TradeMark Africa (TMA), formerly TradeMark East Africa), is an Aid-for-Trade organisation that was established in 2010, with the aim of growing prosperity through increased trade. TMA operates on a not-for-profit basis and is funded by: Belgium, the Bill and Melinda Gates Foundation, Canada, Denmark, the European Union, Finland, France, Ireland, the Netherlands, Norway, the United Kingdom and the United States of America. TMA works closely with regional intergovernmental organisations, including the African Union (AU), the African Continental Free Trade Area (AfCFTA) Secretariat, the East Africa Community (EAC), the Intergovernmental Authority on Development (IGAD), the Common Market for East and Southern Africa (COMESA), the Southern Africa Customs Union (SACU), national Governments, the private sector and civil society organisations.

The first two strategic periods of TMA (2010-2023) have contributed to substantial gains for trade and regional integration in East Africa and the Horn of Africa in terms of decreased cargo transit times (reduction of 16.5% on the Northern Corridor from Mombasa to Bujumbura), improved border efficiency (the time to cross targeted one stop border posts has been reduced by an average of 70%), and reduced barriers to trade. The continental-wide shift and rebrand to TMA was officially launched in West Africa in January 2023, with Ghana being the first country of operations in the region. While continuing to leverage our core expertise in trade facilitation, we will evolve our focus to harness the potential of digitalisation, support African exporters to pioneer low carbon trade, address the core trade factors behind food security and promote inclusive trade. By increasing trade volumes, and enhancing the sustainability and inclusiveness of trade, we aim to deliver large-scale job creation, poverty reduction and enhanced economic growth.

In 2022, TMA set up a catalytic finance fund, Trade Catalyst Africa (TCA), that will pilot commercially viable projects for creating trade infrastructure (both physical and digital) as well as increasing access to Trade Finance for Small and Medium Enterprises (SMEs). TMA's headquarters are in Nairobi, Kenya. Operations and offices are in: EAC Secretariat - Arusha, Burundi, the Democratic Republic of Congo, Djibouti, Ethiopia, Ghana, Malawi, Mozambique, Rwanda, Somaliland, South Sudan, Tanzania, Uganda, and Zambia. For more information, please visit [www.trademarkafrika.com](http://www.trademarkafrika.com)

## Overview

- i. TMA's success depends on its reputation, integrity, openness, and respect for others. The trust and confidence of those with whom we deal is therefore essential. We treat our stakeholders with respect, honesty and fairness. We recognise our obligations to all those with whom we have a direct relationship such as donors, staff, service providers, contractors and suppliers, the private sector in general, governments, civil society and the wider community.



- ii. This TMA Supplier Code of Conduct (“the Code”) sets out the minimum requirements and standards expected from all suppliers, tenderers, and sub-contractors, when delivering projects and programmes. The Code covers areas that are central to a procurement and supply process such as value for money and governance, ethical behaviour and transparency, delivery chain management, observance of human rights, environmental and social safeguarding, organised crime, and security. It also covers employment of forced and/or child labour, fraud and corruption, gifts and hospitality. The Code replaces the previous Code of Ethics, Fair Price declaration, the Anti-Terrorism and Anti-Organised Crime declarations that all TMA suppliers were required to sign.
- iii. Furthermore, the Code sets out the overarching principles for tenderers, suppliers and sub-contractors when doing business with TMA requiring them to:
  - Act responsibly and with integrity;
  - Be transparent and accountable;
  - Seek to improve value for money; and
  - Demonstrate commitment to poverty reduction and TMA priorities.
- iv. TMA requires that all tenderers, suppliers and sub-contractors, along with their respective staff, comply with the requirements and standards contained in the Code as applicable.
- v. Failure by a tenderer, supplier and/or their sub-contractors to comply with the provisions of the Code may disqualify and/or debar the supplier and/or sub-contractor from being eligible for TMA contracts and may result in a contract being terminated.
- vi. For each separate procurement process, each tenderer must initial each page and sign the final page of the Code to signify that they have read, understood, will comply with, and will put into practice the content of the Code.
- vii. In signing the Code, tenderers and suppliers accept that TMA or its appointed agents may undertake any checks it deems fit to ensure all reasonable measures have been taken to achieve compliance with the Code.
- viii. TMA aims to create a culture in which it is normal for suppliers to ‘do the right thing’ and to voice genuinely held concerns about behaviour or decisions that they perceive to be unethical. Any



concerns should be directed to TMA’s independent whistleblowing channels as described in this document, and/or to the whistleblowing mechanisms of any of TMA’s donors, the contact details of which can be found on their respective official websites.

## **Code of Conduct**

### 3.1 Value for Money and Compliance

TMA suppliers shall,

- a) Propose a price for the goods, works, or services which is fair, economical, and in line with market rates.
- b) Work with TMA in a transparent manner to enable scrutiny of value for money throughout the life of the contract.
- c) Undertake the contract in strict adherence to and compliance with all relevant national and international anti-fraud, anti-bribery and corruption legislation.
- d) Undertake the contract in strict adherence to and compliance with all relevant national and international tax legislation. TMA suppliers/contractors and subcontractors shall not engage in tax evasion schemes.
- e) Permit TMA the right to inspect company financial and other records pertaining to the delivery of the TMA-financed contract to ensure adherence to the Code.

### 3.2 Ethical Behaviour and Transparency

TMA suppliers shall,

- a) Maintain the confidentiality of all TMA tender and contract related information coming into their possession.
- b) Take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices in connection with the use of TMA funds, including, but not limited to:
  - i. Adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the funds are used only for the purposes for which they were intended, and
  - ii. Ensuring that all its representatives involved in the project, and all recipients of funds with which it enters into an agreement related to the project, receive a copy of this document and are made aware of its contents.





- c) Immediately, and in any case within 24 hours, report to TMA any suspicions or allegations of fraud, corruption, bribery, or harassment, and cooperate fully with representatives of TMA or its appointed agent in any investigation into those suspicions or allegations.
- d) Acknowledge and accept that if TMA determines that any person or entity receiving its funds has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, it may suspend further funding/disbursement/payment and pursue appropriate legal action against the person or entity engaging in such activity.
- e) Acknowledge and accept that TMA reserves the right to demand a refund and may immediately terminate any contract in place and may also hand over any reports from any investigations to the Police and/or criminal investigation body to proceed with prosecution.
- f) Acknowledge and accept that TMA shall reject a proposal or shall terminate a contract and/or not make any payments under the contract if it determines that representatives of the supplier, sub-contractor and/or beneficiary engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during either the procurement or the execution of that contract.
- g) Acknowledge and accept that if TMA is satisfied that a supplier has misrepresented information in their bid, receives confirmation from a referee that an assignment was not undertaken satisfactorily, or becomes aware of litigation that was not disclosed in the submitted bid, TMA shall reject the bid or terminate the contract immediately at any point without incurring any liability whatsoever.
- h) Acknowledge and accept that TMA, at its own discretion, may decide to debar a supplier from current and future tendering opportunities in line with the TMA debarment policy, where there is demonstrable evidence of: (i) The supplier undertaking unethical, illegal, corrupt, or fraudulent activities in connection with a TMA contract or a TMA-funded contract; (ii) Persistent poor performance by the supplier under a TMA contract or a TMA-funded contract in terms of quality of work or goods delivered, including consistently late delivery; (iii) Poor quality adherence and/or delivery of Environmental and Social Safeguards measures; or (iv) Debarment of a supplier by a TMA donor, the World Bank, or a Government with whom TMA has a Memorandum of Understanding.

### 3.3 Gifts and Hospitality



TMA suppliers shall,

- a) Not offer any member of staff of TMA, Board of Directors, or Council member any gifts, gratuities, or hospitality worth more than \$50.
  
- b) Acknowledge and accept that if an offer of gifts, gratuities or hospitality worth more than \$50 is made by a supplier, TMA may reject the bid or terminate the contract immediately at any point without incurring any liability whatsoever.

### 3.4 Whistleblowing

TMA suppliers shall,

- a) Acknowledge and accept that TMA has zero tolerance of fraud, corruption, misconduct (including harassment) and has implemented a fraud prevention policy.
  
- b) Acknowledge and accept that if they have concerns about unethical behaviour at TMA, have been asked for a bribe in connection with TMA business, or have suspicions about the theft of TMA resources or any form of misconduct including harassment, they shall submit a report to the confidential TMA whistle-blower line by calling or emailing one of the following:

1. Telephone:

- Kenya: 0800 722 770 (toll-free), +27 12 567 8381
- Uganda: +27 12 567 8383
- Tanzania: +27 12 567 8440
- Rwanda, Burundi, DRC - +27 12 567 8432
- Ethiopia, Somaliland - +27 12 567 8433
- Djibouti; Zambia, Malawi, Mozambique, and South Sudan: +27 12 567 8455

2. Email: [hotline@kpmg.co.za](mailto:hotline@kpmg.co.za)

3. Web-portal: <http://www.thornhill.co.za/kpmgfaircallreport>

If a whistle-blower is concerned about the adequacy of TMA's response to their report, they may also submit their concern through the whistle-blowing mechanisms of any of TMA's donors, the contact details of which can be found on their respective official websites.



For TMA's USAID funded projects, reports may be made directly to the USAID office of Inspector General:

P.O Box 657 Washington DC 20044-0657

Phone: 1-800-230-6539 or 202-712-1023

Email: [ig.hotline@usaid.gov](mailto:ig.hotline@usaid.gov)

Web Portal: <https://oig.usaid.gov/contractor-reporting-form>

- c) Acknowledge and confirm that all tenderers, suppliers, sub-contractors along with their respective staff are aware of TMA's zero tolerance of fraud, corruption, misconduct, and harassment, and that each staff member engaged on the contract has been provided with the above whistleblowing procedures, telephone number, website and email address and understand how to report suspicions of malpractice involving TMA resources and/or staff.

### 3.5 Confidentiality

TMA suppliers shall,

- a) Acknowledge that TMA may provide certain information that is and must be kept confidential by suppliers. To ensure the protection of such information, and to preserve any confidentiality necessary under patent and/or trade secret laws, TMA suppliers shall not disclose the confidential information obtained from TMA to anyone unless required to do so by law, in which TMA would be informed of such disclosure.
- b) Acknowledge that the confidential information not to be disclosed can be described as and includes the following regardless of whether such information is designated as "confidential information" at the time of its disclosure:
  - i. Invention description(s), technical and business information relating to proprietary ideas and inventions;
  - ii. Ideas, patentable ideas, trade secrets, drawings and/or illustrations, patent searches, existing and/or contemplated products and services; and
  - iii. Research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models.
- c) Not, without the written consent of TMA, divulge to any third party any documents, data or other information furnished directly or indirectly by TMA, whether such information has been furnished



prior to, during or following termination of any binding engagement. Notwithstanding the above, the supplier may furnish to its subcontractor(s) such documents, data and other information it receives from TMA to the extent required for the subcontractor(s) to perform its work under any contract, in which event the supplier shall obtain from such subcontractor(s) an undertaking of confidentiality similar to that imposed on the supplier under this paragraph.

- d) Not use documents, data and other information received from the TMA for any purpose other than such work and services as are required for the performance of the contract.
- e) Acknowledge that the obligation of the supplier under the above paragraphs, however, shall not apply to information which:
  - i. had entered the public domain through no fault of the supplier;
  - ii. can be proven to have been possessed by the supplier at the time of disclosure; or
  - iii. otherwise lawfully became available to the supplier from a third party that has no obligation of confidentiality.

### 3.6 Intellectual Property (IP)

TMA suppliers shall,

- a) Acknowledge that the copyright in all drawings, documents and other materials containing data and information furnished to TMA by the supplier shall remain vested in the supplier or, if they are furnished to TMA directly or through the supplier by any third party, including sub-contractors of materials, the copyright in such materials shall remain vested in such third party.
- b) Acknowledge that any studies, reports or other material, graphic, software or otherwise, prepared by the supplier for TMA under any contract shall belong to and remain the property of TMA.
- c) Agree that, where intellectual property rights in all material produced by the supplier or the supplier's personnel pursuant to the performance of the services ("the material") are the property of the supplier, the supplier shall grant to TMA a worldwide, non-exclusive, irrevocable, royalty free license to use all the material. "Use" shall mean, without limitation, the reproduction, publication, and sub-licence of all the material and the intellectual property rights therein, including the reproduction and sale of the material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.



### 3.7 Conflict of Interest

TMA suppliers shall,

- a) Not try to gain improper advantage or improperly impact any TMA employee's ability to make sound, impartial, and objective decisions on behalf of TMA.
- b) Disclose any situation that appears to conflict, or could potentially conflict, in any way, with the interests of TMA. This includes situations where a TMA employee has an interest in or non-arm's length relationship to the suppliers' business. TMA recognises that it is not possible to define all the circumstances which may lead to a potential conflict of interest. It is therefore the responsibility of a supplier to declare any matters which they feel may present actual or potential conflicts, or the perception of such conflicts.
- c) Use the Bidders Conflict of Interest Form (Annex 1) of this document to declare a Conflict of Interest or Potential/Perceived Conflict of Interest.

### 3.8 Delivery Chain Management

TMA suppliers shall,

- a) Acknowledge and confirm they are aware of every sub-contractor(s) that contributes to the delivery of the TMA funded contract and warrant that this Code, including the whistleblowing procedures, has been communicated to every sub-contractor's member of staff, and is understood by them.
- b) Acknowledge and confirm that all of the sub-contractor(s) that contribute to the delivery of the TMA funded contract are risk-profiled on an annual basis and managed by the primary supplier themselves and any significant risks identified are acted upon and managed, including the risk of funding terrorism and /or organised crime and their support groups or the risk of fraud and misappropriation of TMA funding.

### 3.9 Environmental and Social Safeguards

TMA suppliers shall,

- a) Acknowledge that TMA has adopted the following Standards, based on the World Bank's Environmental and Social Framework (ESF).



## ESS1: Assessment and Management of Environmental and Social Risks and Impact

### Environmental Risks

TMA's suppliers shall,

- a) Have an effective environment policy in place.
- b) Comply with national legislation and regulations regarding the protection of the environment.
- c) Where significant environmental and social risks are identified by TMA in the implementation of a specific assignment or project, develop a detailed environment and social impact assessment and management plan, including an analysis of climate risk. The supplier will be required to show progress on the implementation of the plan during the execution of the project.

### Social Risks

TMA's suppliers shall:

- a) Take all reasonable measures to eliminate poor human rights practices, exploitive forms of forced labour, sexual exploitation, abuse, harassment, and harmful child labour and abuse.
- b) Take all reasonable measures to prohibit their employees and/or other sub-contractors or person engaged by them, from engaging in sexual exploitation and abuse, including but not limited to the prohibition of:
  - i) engaging in any sexual activity with any person under the age of 18, regardless of any laws of majority or consent; and
  - ii) engaging in any sexual activity that is exploitive or degrading to any person.
- c) Confirm the existence and application of an Environmental and Social Safeguarding policy in their organisation and ensure that it is communicated regularly to all staff and that all staff receive regular training on the same.
- d) Ensure that requisite clauses and measures are included in the contracts of any sub-contractors and are adequate to protect the community from adverse impacts of labour influx, including sexual



exploitation and abuse, sexually transmitted diseases, gender-based violence and other social challenges.

## ESS2: Labour and Working Conditions

### Healthy and safe working environment

TMA's suppliers shall:

- a) Ensure all reasonable risk mitigation measures relating to occupational health and safety (at the workplace) are put in place and applied.
- b) Ensure the workplaces, machinery, equipment and processes under their control are safe and without risk to health to any person.
- c) Ensure the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
- d) Ensure where necessary, adequate protective clothing and protective equipment are provided to and used by staff to prevent, so far as is reasonably practicable, risk of accidents or adverse effects to health.
- e) For employees, ensure that adequate occupational safety training is provided and identifies, assesses and controls potential exposure to safety hazards and that training records are maintained in personnel files.
- f) Ensure thorough documenting, investigating, and reporting of all occupational accidents, incidents and diseases.
- g) Ensure the existence of and periodic testing of emergency prevention, preparedness, and response arrangements to emergency situations and this testing is documented.
- h) Ensure there are clearly explained remedies (including compensation) for adverse impacts such as occupational injuries, deaths, disability, and disease.
- h) Ensure compliance with national and local laws, regulations, systems and processes on occupational health and safety.

### Non-discrimination and equal opportunity

TMA's suppliers shall:

- a) Ensure all employment relationships are based on the principles of respect, equal opportunity, and fair treatment, and do not discriminate with respect to any aspects such as race, gender,



age, religion, sexuality, culture, minority groups, disability, or any other protected characteristic.

#### Wages and Working Hours

TMA's suppliers shall:

- a) Not permit or require any person or employee whose work relates to a TMA-funded contract to work more than the maximum hours in any one work week permitted by applicable law or regulation unless such employees are paid overtime at rate specified by applicable law or regulation.
- b) Ensure that wages for persons or employees whose work relates to a TMA-funded contract comply with the statutory minimum wage requirements.
- c) Ensure, where the applicable national laws or regulations **do not** prescribe the minimum wage and/or maximum hours of work and/or overtime remuneration, that the prevailing International Labour Organisation standards are applied.

#### Harassment and Bullying

TMA suppliers shall:

- a) Create and maintain an environment that treats all employees and other persons with dignity and respect, and is free from threats of physical violence, bullying, psychological or verbal harassment and/or sexual exploitation and abuse, perpetrated by employees and/or other contractors or persons engaged by them.

#### Forced or Compulsory Labour

TMA's suppliers shall:

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

#### Child Labour

TMA's suppliers shall:





- a) Not employ children below 18 years of age or, if lower than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place; and
- b) Not employ persons under the age of 18 for work, that, by its nature or the circumstances in which it is carried out, is hazardous, is likely to harm the health, safety or morals of such persons.

#### Gender Mainstreaming

TMA suppliers shall:

- a) Ensure that there is a gender balance in terms of participation and decision making at all levels. Where it is not possible, the supplier should demonstrate that the delivery/impact of the service remains gender responsive.
- b) Demonstrate clear senior management commitment to gender mainstreaming, and allocation of human capital and finance, for the successful translation of the concept into practice and to institutionalise gender equality in the organisation.

#### Grievance Redress Mechanism.

TMA suppliers shall:

- a) Ensure an effective Grievance Redress Mechanism is established and operates for the raising of grievances from their staff and/or the community located near the project.

#### ESS3: Resource Efficiency and Pollution Prevention and Management

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

TMA suppliers shall:

- a) Ensure that deterioration in the quality of human health, environmental wellbeing, and/or loss of biodiversity is avoided.
- b) Utilise strategies to deliver products or services that as far as possible, minimise emissions and discharge of pollutants and the generation of waste.
- c) Ensure that there are demonstrable measures in place to prevent waste generation and, where this is impossible, to significantly reduce its hazardousness to human health and the



environment, by strictly applying the waste management hierarchy of: avoid waste, reuse, recycle, recovery and dispose.

- d) Ensure that there are demonstrable measures in place to tackle noise emissions and noise nuisances and ensure that the project is designed, constructed, and operated in a way that avoids, prevents or significantly reduces harmful noise effects of the project, on both the environment and humans.
- e) Aim for the most efficient use of energy and resources.
- f) Ensure that there is a demonstrable and tested plan in place to respond to any process upsets, accidental and emergency situations that includes implementing and testing control measures to prevent major accidental hazards.
- g) Ensure adequate mitigation measures are put in place to protect TMA projects from the impacts of climate variability and extreme weather events while at the same time minimising the projects contribution to increased Greenhouse Gas (GHG) emissions and environmental degradation.
- h) Obtain, maintain, and keep current all relevant environmental permits, approvals and registrations.

**ESS4: Community Health and Safety**

TMA's suppliers shall:

- a) Take all preventative measures to ensure communities are protected from exposure to adverse project related risks to and impacts on their daily lives.
- b) Ensure that the design, construction, operation, and decommissioning of structural elements of projects are in accordance with national legal requirements, the ESIA and ESMP for the project and take into consideration safety risks to third parties and affected communities.



- c) Ensure that the risks and likelihood of emergency events are identified, and measures implemented to address them, including training of community personnel on emergency response initiatives and emergency redress equipment handling.
- d) Ensure that deliberate measures are put in place to avoid or minimize the potential for community exposure to diseases that are water-borne, water-based, and water-related, as well as those diseases that are either communicable or non-communicable, that could result from project activities, taking into consideration differentiated exposure to, and higher sensitivity of vulnerable groups.

**ESS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement**

TMA's suppliers shall:

- a) Ensure that, to the maximum extent possible, project affected persons (PAPs) are fully protected from adverse impacts related to involuntary resettlement and that a mitigation hierarchy that puts in place measures to ensure that, where land acquisition results in economic displacement, the project affected persons are treated in a most humane manner, and that No Harm is visited upon them by project activities.
- b) Ensure that forced eviction is prohibited under any circumstances.
- c) Ensure that, to the maximum extent possible, contracts are delivered in a manner that respects the culture, dignity and human rights of indigenous peoples, and ensure that they access project benefits in a culturally appropriate manner.

**ESS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources**

TMA's suppliers shall:

- a) Endeavour to ensure the maintenance of the integrity of areas of important biodiversity and the ecosystem functions and services and their resilience through the application of the mitigation hierarchy of anticipate, avoid, minimise, mitigate, and compensate for Environmental and Social impacts.
- b) Identify and mitigate any risks of conversion or degradation of critical habitats such as critical forest areas, natural areas of cultural or religious value, areas that are legally protected (or officially proposed for protection), or areas of high conservation or biodiversity value.



### ESS7: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities

TMA's suppliers shall:

- a) Undertake an assessment of the nature and extent of the expected direct and indirect economic, social and cultural and environmental impacts on indigenous peoples and Sub-Saharan African Historically Underserved Traditional Local Communities.
- b) In consultation with the indigenous peoples, develop a strategy to ensure the indigenous people's rights and interests are protected and that they have an opportunity to participate and benefit from the project (as appropriate).
- c) Incorporate the implementation plan of the strategy as part of the overall project implementation plan and include a component of this in regular reporting to TMA.
- d) Where directed by TMA, the supplier shall be expected to have specialised personnel for instance, an Anthropologist or Sociologist to support engagement with the communities.

### ESS8: Cultural Heritage

TMA's suppliers shall:

- a) Ensure that the importance of cultural heritage is recognised and to the maximum extent possible seek to ensure it is protected from harm by the project/contract, and is preserved, regardless of whether it has been legally protected or previously disturbed.
- b) Ensure that, where there is a high chance of finding physical cultural resources, a recovery plan is prepared, in line with national procedures and rules and that the cultural heritage is protected from harm.

### ESS9: Stakeholder Engagement and Information Disclosure

TMA's suppliers shall:

- a) Through the ESIA (if applicable), and in reference to the TMA stakeholder engagement guidelines, systematically identify all project related stakeholders and their level of interest and/or impact they may have on the overall project at the earliest opportunity in the project design and or implementation.



- b) Develop a methodical and appropriate approach to engage all stakeholders where stakeholders are able to raise concerns and where the supplier is able to provide updates and respond to the concerns raised.
- c) Commit to respond to all issues raised by stakeholders in a timely and responsible way by establishing a project grievance redress mechanism and communicating the same to all stakeholders.
- d) Document all engagement processes, communication and engagement between the supplier and stakeholders. Evidence of this may be requested periodically by TMA.

### 3.7 Terrorism, Organised Crime and Security

TMA suppliers shall:

- a) Acknowledge that, for purposes of the Code, organised criminal activities include, but are not limited to, money laundering, human trafficking and smuggling, animal trafficking, drug dealing, purchase of illegal arms, cyber-crimes, child labour, kidnapping, and extortion.
- b) Acknowledge that the United Nations Security Council defines terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.”
- c) Adopt comprehensive and proportionate policies and procedures and take action to prevent, to the maximum extent reasonably possible, TMA’s resources from diversion to unintended purposes including exploitation by terrorist organisations and/or organised crime activities and/or their support networks and involvement with politically exposed persons.
- d) Acknowledge and accept that TMA shall conduct a reasonable search of publicly available information to determine whether the supplier is suspected of any activity relating to terrorism, including terrorist financing, or organised crime.
- e) Acknowledge and accept that TMA shall seek confirmation that the supplier does not appear on any country of operation lists of designated terrorist-related individuals, entities, or organisations, pursuant to national obligations arising from United Nations Security Council Resolution 1373.



- f) Confirm that they are not involved and/or linked, including their employees, in any way and are not listed in their country of operation or any other as financiers of or participants in organised criminal activities whether as individuals, entities, or organisations, pursuant to national obligations arising from General Assembly resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organised Crime.
- e) Acknowledge and accept that they will not deal with any individuals, entities, or groups known to the partner to support terrorism or to have violated any known anti-terrorism sanctions, nor organised crime and / or their support networks.
- f) Acknowledge and confirm that the supplier has taken all reasonable steps to ensure that TMA resources provided are neither distributed to terrorists or their support networks nor used for activities that support terrorism or terrorist organisations, nor organised crime and / or their support networks.
- g) Adopt comprehensive and proportionate policy and procedures, and take action to ensure, to the extent reasonably possible, all suppliers, TMA and customers' electronic data is secured and protected from intrusion, hacking, capture, theft and sale, for any and all illicit purposes, and adopt international standards of data security.
- h) Acknowledge and agree not to disclose the confidential information obtained from the discloser to anyone unless required to do so by law.
- i) Acknowledge that TMA or its appointed agents will perform routine, on-site audits of partners to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources). The purpose of the audit will be to confirm that the supplier has taken adequate measures to protect its/ TMA resources from diversion or abuse.

**Declaration Statement**

I, \_\_\_\_\_ (*insert name*), on behalf of \_\_\_\_\_ (*insert name of Party*), hereby confirm that I have read and wholly understood the TMA Supplier Code of Conduct, that \_\_\_\_\_ (*insert name of Party*) intends to comply with the Code, and that its contents have been communicated to our staff or will be communicated to staff if I win



the tender and the staff of our subcontractors who are or who will be involved in the delivery of our contract with TMA.

I acknowledge that should TMA establish that this declaration is in any way inaccurate, action may be taken against \_\_\_\_\_ (*insert name of Party and Self*) which could include terminating the contract and/or debarring \_\_\_\_\_ (*insert name of Party*) from future tendering opportunities with TMA.

On behalf of Party: -

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

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

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

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

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



**Annex 1A: Bidders Conflict of Interest Form**

Tender Number: .....

Tender Title: .....

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

**I. Conflict of interest declaration**

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

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

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

Either:

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

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

or

B) I have no conflicts of interest to declare.

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

On behalf of vendor:

Organisation’s name: \_\_\_\_\_

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

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

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







### ANNEX 3: PARTY TO JV INFORMATION SHEET

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

1. Bidder's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration:
4. JV's Party Year of Registration:
5. JV's Party Legal Address in Country of Registration:
6. JV's Party Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation or Certificate of Registration/Incorporation of firm named in 1, above. <input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.



## ANNEX 4: FRAMEWORK AGREEMENT TEMPLATE

### FRAMEWORK AGREEMENT

Framework Agreement with: **Insert Firm**

Framework Agreement for: **Insert Framework Title**

Contract For: **Insert Category**

I refer to the following:

1. The above-mentioned Agreement dated **Insert Date**;
2. Your proposal of **Insert Date in response to Insert Framework Title framework contract**, I confirm that TMA shall require you to provide Services on a call down basis as under the terms and conditions of the Agreement as expressly incorporated herein.
3. **Commencement and Duration of the Framework Agreement**
  - 3.1 The framework agreement shall commence on **Insert Date** and is expected to run for **three (03) years**.
4. **Framework Contract Termination**
  - 4.1 This Framework contract may be terminated by either party to the contract with a 30 day written notice.
5. **Call down mechanism**
  - 5.1 From time to time a Contract for Service under this framework shall be issued for specific pieces of work, following a mini-competition, as described in the procurement documents. A draft Contract for Service is shown in Annex 8.
6. **Call down Contract for Service Signature**
  - 6.1 At the time, if the original Contract for Service contract is not returned to the TMA duly completed, signed and dated on behalf of the Consultant within 15 working days of the date of



signature on behalf of TMA, TMA will be entitled, at its sole discretion, to declare the Contract for Service void.

**For and on behalf of TradeMark Africa**

Name:

Position:

Signature:

Date:

**For and on behalf of Insert Firm/ Consultant Name**

Name:

Position

Signature:

Date:



## **ANNEX 5: CONTRACT FOR SERVICES TEMPLATE**

### **CONTRACT FOR CONSULTANCY SERVICES**

#### **Section 1 – Form of Contract**

CONTRACT FOR: [Insert Title here]

CONTRACT REFERENCE: [Insert Number here]

**THIS CONTRACT** is made

#### **BETWEEN:**

**TradeMark Africa** (“TMA”) having its principal place of business at Fidelity Insurance Centre, P O Box 313 00606, Nairobi, Kenya;

#### **AND**

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

#### **WHEREAS:**

TMA has requested the Consultant to provide certain consulting services as defined in the detailed terms of reference and scope of services attached to this Contract (hereinafter called the “Services”); the Consultant, having represented to TMA that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract.

**IT IS HEREBY AGREED** as follows:

#### **1. Documents**

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

Section 1 Form of Contract

Section 2 General Conditions

Section 3 The Services

Section 4 Special Conditions and Key Personnel

Section 5 Fees



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

## 2. Contract Signature

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

## 3. Commencement and Duration of the Services

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

## 4. Financial Limit

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

## 5. Time of the Essence

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

For and on behalf of TMA

Name: **Josepha Ndamira**  
Position: **Senior Director, Corporate Resources**  
Signature:  
Date:

For and on behalf of the consultant

Name:  
Signature:  
Date:



## CONTRACT FOR CONSULTANCY SERVICES

### Section 2 – General Conditions

#### 1. Definitions

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

“TMA Project Manager” means the person nominated by TMA who is responsible for the management of the Project.

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

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

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

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

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

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

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

#### 2. Interpretation

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

#### 3. Project management

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



#### **4. Obligations**

- a. TMA and the Consultant each warrant that it has all the requisite corporate power and authority to enter into this Contract and is fully capable of performing its obligations under this Contract on the terms provided for in this Contract.
- b. The Consultant shall perform the Services and all other obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.
- c. The Services shall be provided at the location set out in Section 3. Notwithstanding this, the Consultant may be required to travel to other locations from time to time in carrying out the Services.

#### **5. Indemnification**

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

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

#### **6. Consultant's Personnel**

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





- g. TMA is dedicated to gender equality and ensuring equitable and sustainable human development

## **7. Fees**

- a. Subject as follows, payments shall be due to the Consultant in accordance with the Fee payment schedule set out in Section 5. In the case of Fees that are payable upon the completion of milestones as may be set out in Section 4, such fees shall not become due and payable until the completion, to TMA's satisfaction, of the relevant milestone event or the delivery of the deliverables to TMA's satisfaction required for the achievement of the relevant milestone satisfactorily
- b. Payment of the Fees shall be subject to TMA being satisfied that the Consultant is or has been carrying out its duties, obligations and responsibilities under this Contract.
- c. If for any reason TMA is dissatisfied with performance of this Contract, an appropriate sum may be withheld from payments that would otherwise be due under this Contract. In such event TMA shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.
- d. Fees charged and expenses incurred shall not, in aggregate, exceed the Financial Limit without the prior written consent of TMA.
- e. No payments shall be made in respect of days not worked due to sickness or holiday or otherwise.
- f. Only the fee rates listed in Section 5 of this Contract will apply to any Services performed by the Consultant under this Contract.

## **8. Expenses**

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

## **9. Invoicing Instructions**

- a. Invoices should particularise the contract to which they relate and should be sent to the address referenced in Section 5.
- b. All invoices should contain details of the Services provided, milestones achieved and deliverables provided to which the invoice relates. Where expenses are payable, invoices should be accompanied by proof of the expense. Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment.
- c. TMA may request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- d. TMA reserves the right to audit, or to nominate a reputable accounting firm to audit the Consultant's records relating to amounts claimed under this Contract during its term and any extension, and for a period of three months thereafter.
- e. TMA reserves the right not to pay any amount due in respect of an invoice received by TMA more than 60 days after the day of the Consultant becoming entitled to invoice for the payment to which it relates.



- f. TMA will deduct withholding tax from the consultant's invoiced amounts as per Government of Kenya regulations. Consultants from countries with double tax agreements will be provided with withholding tax certificates. It is the consultant's responsibility to establish their tax status in the country where the Services will be delivered.

#### **10. Payments**

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

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

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

Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent between TMA and the Consultant and the Consultant will be solely responsible for the tax status, tax and any statutory contributions payable of and for the CoConsultant's Personnel and for all or any of its or the Consultant's Personnel's taxes payable in respect of Fees and reimbursements received in connection with this Contract.

#### **12. Performance Standards**

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

#### **13. Termination**

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

#### **14. Confidentiality**

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



## **15. Ownership of Material**

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

## **16. Code of conduct**

The consultant shall at all times act loyally and impartially and as a faithful adviser to TMA in accordance with the rules and/or codes of conduct of its profession.

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

It shall not commit TMA in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation to third parties.

## **17. Conflict of interest**

The consultant shall refrain from any relationship which would compromise its independence or that of its personnel. If the consultant fails to maintain independence, TMA may terminate the contract in accordance with the provisions of this contract.

## **18. Insurance**

The Consultant and his/her/their personnel are responsible for ensuring adequate and appropriate medical, travel, Personal Accident or any other insurance cover before beginning work, under a TMA contract for services. The Consultant's fee is deemed to include an element to cover the cost of all insurance

## **19. Assignment**

The consultant shall not assign, in whole or in part, their obligation under this contract, except with prior written consent of TMA.



## **20. Subcontracting**

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

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

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

## **22. Dispute Resolution**

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

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

## **23. Liability**

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Consultant or the Consultant's Personnel, the Consultant's aggregate liability arising out of or in connection with this Contract shall be limited to the amount of the Financial Limit. The Consultant shall not be liable for any failure to perform or delay in performance of any of its obligations arising out of or in connection with this Contract where such failure or delay is caused by TMA or any of TMA's agents, employees or contractors.

## **24. Force Majeure**

- a. The failure of the Consultant to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an act, event, omission or accident beyond its reasonable control ("Force Majeure Event"), provided that the Consultant (i) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (ii) has informed TMA as soon as possible about the occurrence of such an event and in any event not later than 14 days after the occurrence of such event.



- b. Any period within which the Consultant shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which the Consultant was unable to perform such action as a result of the Force Majeure Event.
- c. During the period of their inability to perform the Services as a result of a Force Majeure Event, the Consultant shall be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

Force Majeure shall not include:

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

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

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

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

#### **26. Travel**

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



## **CONTRACT FOR CONSULTANCY SERVICES**

### **Section 3 – The Services**

#### **TERMS OF REFERENCE**

**[Insert]**



## CONTRACT FOR CONSULTANCY SERVICES

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

#### 1. Special conditions

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

#### 2. Key Personnel

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

[Insert]



## CONTRACT FOR CONSULTANCY SERVICES

### Section 5 – Fees

#### 1. Professional fees

Consultant	Fee rate per day (\$)	Maximum number of days	Total value (\$)
<b>TOTAL 1</b>			

#### 2. Reimbursable expenses

Item	Number	Cost (\$)	Total value (\$)
<b>GRAND TOTAL (1+2)</b>			

All expenses including accommodation must be supported by valid receipts which must be submitted with the relevant invoice. The only exception to this is the payment of subsistence allowances which are paid at TMA standard rates and which do not need to be supported by receipts.

#### 3. Invoicing instructions

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