



THE MOI TEACHING AND REFERRAL HOSPITAL, ELDORET

Request for Expression of Interest (REOI)

THE DEVELOPMENT OF AN ULTRA-MODERN MEDICAL TRAINING COMPLEX PROJECT FOR THE MOI TEACHING AND REFERRAL HOSPITAL ON PUBLIC PRIVATE PARTNERSHIP (PPP) BASIS

TENDER (REOI) NO.: MTRH/EOI/63/2024-25

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Disclaimer

The information contained in this REOI, or any other information provided to the Applicants, whether verbally or in writing, or in any other form, by or on behalf of the Contracting Authority, its employees or its advisors is provided to the Applicants on the terms and conditions set out in this REOI, and such other terms and conditions subject to which such information is provided.

This REOI is neither an agreement nor an offer by the Contracting Authority to the Applicants or any other Person. The purpose of this REOI is to provide the Applicants with information that may be useful to them in the preparation and submission of their applications, and if pre-qualified, in the submission of their Bids.

This REOI includes statements which reflect various assumptions and assessments arrived at by the Contracting Authority and its advisors for the Project. Such assumptions, assessments, and statements do not purport to contain all the information that the Applicants may require. The information contained in this REOI may not be appropriate for all Persons, and it is not possible for the Contracting Authority, its employees, or advisors to consider the investment objectives, financial situation, and particular needs of each Person who reads this REOI. The assumptions, assessments, statements, and information contained in this REOI may not be complete, accurate, adequate, or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability, and completeness of the assumptions, assessments, statements, and information contained in this REOI. The information provided in this REOI to the Applicants is on a wide range of matters, some of which may depend upon interpretation of the law. The information given is not intended to be an exhaustive account of the statutory requirements and should not be regarded as a complete or an authoritative statement of the law. The Contracting Authority and their employees, agents, and advisors accept no responsibility for the accuracy or otherwise for any interpretation or opinion on laws expressed in this REOI.

The Contracting Authority and its employees and advisors make no representation or warranty and will have no liability to any Person, including any Applicant, under any law, statute, rules, regulations or tort, or otherwise, for any loss, damage, cost, or expense which may arise from, or that may be incurred or suffered on account of, anything contained in this REOI, including the accuracy, adequacy, correctness, completeness, or reliability of this REOI, or other information provided, and any assessment, assumption, statement, or information contained in this REOI, or deemed to form part of this REOI, or arising in any way.

The Applicants agree and release the Contracting Authority and its employees, agents, and advisors, irrevocably, unconditionally, fully, and finally from any and all



liability for any claims, losses, damages, costs, expenses, or liabilities in any way related to, or arising from, the exercise of any rights and/or performance of any obligations under this REOI, and/or in connection with the Bid Process, to the fullest extent permitted by Applicable Law, and waive any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in the future.

The Contracting Authority and its employees and advisors also accept no liability of any nature, whether resulting from negligence or otherwise, however caused arising from reliance of any Applicant upon the contents of this REOI.

The Contracting Authority may, in its absolute discretion, but without being under any obligation to do so, update, amend, or supplement the information, assessment, statements, or assumptions contained in this REOI.

The issue of this REOI does not imply that the Contracting Authority is bound to select and shortlist Applicants for the Bid Stage or to award the Project to any Bidder. The Contracting Authority reserves the right to reject all or any of the Applications or Bids received.



Glossary

In this REOI, unless the context otherwise requires capitalized terms will have the meaning given to them in the table below.

Addendum or Addenda	Means an addendum or addenda to this REOI.
Affiliate	Means in relation to an Applicant or a Member, a Person who Controls, or is Controlled by, or is under common Control with such Applicant or Member.
Annexure	Means an annexure to this REOI.
Annual Turnover	Means the gross revenue recognized in the profit and loss account of the applicant during a Financial Year, as per applicant's audited financial statements.
Applicable Law(s)	Means the Constitution of Kenya and Laws of Kenya enacted or brought into force and effect, by the Government of Kenya (GOK) or any other Government authority having jurisdiction over the Contracting Authority, the SPV, or the Project, including rules, regulations, duly promulgated orders, policies, guidelines, and other duly authorized actions (whether having the force of law or not), and notifications made thereunder, and judgments, decrees, injunctions, writs, and orders of any court of record, including environmental laws, applicable to the Project, the Bid Process, this REOI, and the exercise, performance, and discharge of the respective rights and obligations of the Contracting Authority, the Applicants, the Bidders, and/or the SPV, hereunder.
Applicant	Means an interested Person or a Consortium which applies to the Contracting Authority in accordance with this REOI and includes each Member when the Applicant is a Consortium, and Applicants will be construed accordingly.
Application	Means an application to be submitted by an Applicant pursuant to this REOI, to demonstrate that it meets the Qualification Criteria to submit a Bid.
Application Due Date	Means the last date for submission of Applications, being the date specified in Clause 2.8

Bid	Means a bid for qualification and award of the Project, consisting of the Technical Proposal and the Financial Proposal, to be submitted by a Bidder pursuant to the RFP, and Bids mean collectively, all the bids for the Project.
Bid Due Date	Means the last date for submission of the Bids which will be specified in the RFP.
Bid Process	Means the 2 (two) stage bidding process undertaken by the Contracting Authority to award the Project to the Preferred Bidder on the terms and conditions set out in this REOI and the RFP. The Bid Process has commenced with the issuance of this EOI and will end on the date that the Project/ Concession Agreement is signed.
Bid Stage	Means the second stage of the Bid Process that will commence with the issuance of the RFP to Bidders and that will end on the date on which the Project Agreement/ Concession Agreement is signed.
Bidder	Means an Applicant that is pre-qualified in accordance with this REOI and that is issued the RFP as contemplated by this REOI.
Business Day	Means a day other than a Saturday, Sunday, or a public holiday in the Republic of Kenya.
Clause	It means a clause of this REOI.
Companies Act	Means the Companies Act, 2015, Cap 486 of the Laws of Kenya, as amended from time to time.
Company	Means a company incorporated under the Companies Act or a foreign company incorporated under the relevant equivalent statute of its jurisdiction.
Conflict of Interest	Has the meaning ascribed to it in Clause 3.3.
Consortium	Means a combination of Persons that have formed a consortium or association by fulfilling the requirements set out in this REOI, including executing a Declaration of Association at the time of EOI and Joint Bidding Agreement at the time of RFP if shortlisted at the EOI stage. This is, for the purpose of participating in the Bid Process and for implementing the Project, if such consortium or association is declared as the Preferred Bidder.

Contracting Authority	Moi Teaching and Referral Hospital Board
Control	Means with respect to a Person: (a) the ownership, directly or indirectly, of at least 51% (fifty one percent) of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract, or otherwise, and the term Controlled will be construed accordingly.
Declaration of Association	Means a Declaration of association to be entered into by the Members of Consortium that participate in the Bid Process in accordance with this REOI, in the format set out in Annexure 9 .
Defects Liability Period	Means with respect to the Infrastructure Facilities for each phase, a period of 12 (twelve) months from the date of completion of the Infrastructure Facilities corresponding to such phase, as certified under the Project Agreement.
EAT	Means East Africa Time.
Effective Date	Means the date on which all the conditions precedent specified in the Project Agreement for effectiveness of the Project Agreement have been satisfied by the SPV or the Contracting Authority evidenced by notices for satisfaction of conditions precedent being acknowledged in writing by the relevant party.
Eligibility Criteria	Means the eligibility criteria set out in Clause 3 that an Applicant (and in the case of a Consortium, the relevant Member) is required to satisfy.
Equity Contribution	Means the sum expressed in KSHs representing the paid-up share capital of the SPV, infused by the Shareholder(s) for meeting the equity component of its/their obligations under the Project Agreement and the financing documents, which will include: (a) instruments that will compulsory convert into equity share capital. (b) instruments or certificates representing a beneficial ownership interest in the equity shares of the SPV; and (c) Shareholder Loans, which will be capped at the

	amount specified as the equity contribution in the financing package indicating the means of financing the Project, submitted to the Contracting Authority in accordance with the Project Agreement. Major shareholder of the SPV (lead member) shall have minimum 51% equity shareholding.
Financial Capacity	Has the meaning ascribed to it in Clause 4.3.
Financial Proposal	Means the financial proposal submitted by a Bidder during the Bid Stage.
Financial Year	Means each 12 (twelve) month periods commencing on 1 July of 1 (one) calendar year and ending on 30 June of the next calendar year (both days inclusive); and if different for an Applicant or a Member, then the 12 (twelve) month period for which such Applicant or Member files its statutory audited financial statements in the normal course of its business.
GAAP	Means the Generally Accepted Accounting Principles issued by the Financial Accounting Standards Board.
Government	Means the Government of the Republic of Kenya, and for the avoidance of doubt, includes county governments, ministries, government departments, agencies, and any other statutory authorities exercising authority of the Government.
IBRD	Has the meaning ascribed to it in Clause 3.5(b).
IDA	Has the meaning ascribed to it in Clause 3.5(b).
IFRS	Means the International Financial Reporting Standards issued by the International Accounting Standards Board.
Infrastructure Facilities	Means, for each phase, the internal development works and infrastructure facilities, including but not limited to electrical wiring, internal roads, foot paths, water supply facilities (including storage tanks and pipelines), common area lighting, fire protection and fire safety equipment, drainage systems, sewage pipelines, and collection/ disposal facilities/ sewerage infrastructure (including all necessary tee connections), and all associated infrastructure related to the CHS project, and such other systems and works to be financed, constructed, and installed by the SPV on the Site, as described in greater detail in the Project

	Agreement.
Joint Bidding Agreement	Means a binding Joint bidding agreement to be entered into by the Members of a Consortium at the RFP stage once shortlisted at the EOI stage, in the format that will be set out in RFP.
KSHs	Means Kenyan Shillings, the lawful currency of the Republic of Kenya.
Lead Member	Means, with respect to a Consortium, the Member who: <ul style="list-style-type: none"> (a) will hold at least 51% (fifty one percent) of the total Equity Contribution and voting rights of the SPV until the timelines specified in Clause 3.2(b)(ii)(A) below; and (b) is authorized by all other Members of the Consortium to be responsible for the Bid Process and to represent and act on behalf of the Consortium for submission of the Application and upon being pre-qualified, for submission of the Bid, in terms of the Declaration of Association.
Legal Capacity	Has the meaning ascribed to it in Clause 4.1.
LOA	Means the letter of award that will be issued by the Contracting Authority to the Preferred Bidder in accordance with the RFP.
Main Utilities Network	Means all facilities as more particularly set out under the Project Information Memorandum and as will be described under the Project Agreement, including but not limited to roads, bulk water, solid waste, water and internet connectivity infrastructure, to be provided by the Contracting Authority to the SPV at the Site in accordance with the Project Agreement, for the SPV to connect the Infrastructure Facilities with the Main Utilities Network.
Member	means a member of a Consortium.
Net Worth	means: <ul style="list-style-type: none"> (a) In the context of a Person (other than a fund), the amount by which the total cumulative assets of the Applicant exceed the total cumulative liabilities of the Applicant based on their latest unqualified audited financial statements; Net Worth = Total assets - Total liabilities OR

	Net Worth= Equity share capital + Reserves & surplus - Accumulated losses - Miscellaneous Expenditure (yet not written off)
Person	It means any individual, Company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization, or any other legal entity.
PPP	It means public-private partnerships.
PPP Act	Means the Public Private Partnerships Act CAP 430 of the Laws of Kenya, as amended from time to time, including any regulation issued thereunder.
Project	Means, construction and equipping of medical training complex and accommodation facility for students.
Project Agreement	Means the agreement to be executed between the Contracting Authority and the Preferred Bidder to develop the Project, substantially in the format to be provided to the Bidders during the Bid Stage, and includes any ancillary agreements to be entered into in relation to the Project, which will be acceded to by the SPV by executing the deed of novation in the format set out in the Project Agreement (also referred to as the concession agreement).
Project Information Memorandum	Means the information memorandum prepared by the Contracting Authority in relation to the Project.
Project Requirements	Means the broad technical requirements, parameters and specifications for the project development, as will be prescribed by the Contracting Authority in the Project Agreement, which the SPV must comply with during the construction, operation and maintenance of the Project.
Qualification	Has the meaning ascribed to it in Clause 2.1.
Qualification Criteria	It means the qualification criteria set out in this EOI that an Applicant is required to satisfy to be pre-qualified as a Bidder.
Qualification Schedule	Means the schedule of the Qualification process set out in Clause 2.8, as may be amended from time to time.

Qualification Stage	Means the first stage of the Bid Process, that commenced with the issuance of this REOI to Applicants, and that will end on the date that the pre-qualified Applicants are notified that they have been pre-qualified for the issuance of the RFP.
RFP	Means the request for proposal which will be issued to the Bidders during the Bid Stage.
REOI	Means this Request for Expression of Interest dated 1st July 2025 along with its schedules, annexures, any Addenda, or clarifications issued by the Contracting Authority in accordance with the terms of this REOI and any other documents provided by the Contracting Authority pursuant to this REOI, as may be modified, amended, and clarified from time to time, by the Contracting Authority.
Section	Means a section of this REOI.
Preferred Bidder	Means the Bidder selected by the Contracting Authority for award of the Project in accordance with the terms of the RFP.
Shareholder	Means any Person whose name appears in the register of members of the SPV.
Shareholder Loans	Means all unsecured and subordinated loans provided to the SPV by any Shareholder and/or its Affiliates.
Site Layout Plan	Means, for the Site, the detailed plan to be prepared by the SPV and approved by the Contracting Authority in accordance with the terms of the Project Agreement.
SPV	Means a Special Purpose Vehicle incorporated by the Preferred Bidder under the Companies Act, CAP 486 to implement the Project.
Technical Capacity	Has the meaning ascribed to it in Clause 4.2.
Technical Proposal	Means the technical proposal submitted by a Bidder during the Bid Stage.

PART A

INTRODUCTION

1. BACKGROUND

- 1.1 The Government of Kenya (GoK) launched its national long-term development plan, 'Vision 2030', with the aim of transforming Kenya into a newly industrialized, middle-income country to provide high quality living to all citizens by 2030. The vision is developed around three key pillars – economic, social and political including strong healthcare reforms. The policy thrust in Kenya is to improve the quality of life of the population by investing to improve health service provision and achieving Universal Health Coverage (UHC). Towards achieving UHC, qualified, skilled and equitably distributed health workers are vital.

In Kenya, as in many developing countries, challenges faced by health workers have hindered health sector planning, service delivery, and the attainment of national health goals. This issue has been exacerbated since the devolution of healthcare, which has given counties the responsibility of recruiting and managing their own healthcare workforce based on local needs. Consequently, the devolution of the health sector in Kenya has encountered several challenges related to healthcare workers, including uneven distribution of the available workforce at both county and facility levels, shortages of essential staff, limited opportunities for continuous professional development, and other issues.

- 1.2 In this direction, through legal notice number 78 of June 12, 1998 under the State Corporation act CAP 446, the Moi Teaching and Referral Hospital (MTRH) was established with the mandate to focus on: a) Receive patients on referrals from other hospitals; b) Provide facilities for medical education and research; c) Provide facilities for education and training in healthcare; d) Participate as a National Referral Hospital in Health Planning.
- 1.3 The MTRH established the College of Health Sciences (CHS) as one of its Directorates to deliver its teaching mandate. The CHS was established in 2004 as an upgrading center for the enrolled community nurses.

The CHS occupies an area of about 1.5 acres (5,713 m²) within the precinct of the MTRH. At present, there are only 10 classrooms for over 750+ students at the existing CHS campus, with only one library, a skills lab and a computer lab, which are minimally equipped with inadequate capacity. The CHS faces significant challenges in terms of its infrastructure and resources. The training

equipment available is insufficient to meet the needs of students. The physical infrastructure is inadequate, with limited amenities that are overstretched. Furthermore, the college lacks on-campus accommodation facility, forcing most students to reside in off-campus facilities provided by private landlords. The CHS is currently housed in old buildings, many of which were originally designed as residential houses prior to independence and are ill-suited for the demands of a medical training institution. Some structures are even temporary, erected as a stopgap measure to alleviate the severe shortage of facilities. Overall, the current state of the CHS facilities is far from ideal for a medical training and teaching institute, hindering its ability to provide a conducive learning environment for students.

- 1.4 As part of its overall PPP Program, the GoK has identified the health sector (health education) as one of the priority infrastructure sectors for PPP investment for which several prospective projects have been identified and considered. Against this backdrop, the idea to develop an ultra-modern training complex and associated facilities was conceived. The proposed project is expected to be delivered and operated as a PPP project under contract formats and terms consistent with the provisions of the PPP Act.
- 1.5 The primary objective of this project is to improve the capacity of MTRH and CHS to meet the growing demand for education/ training in the health sector, providing modern state-of-the-art facilities and infrastructure to ensure quality education/ training and students' wellbeing
- 1.6 The Contracting Authority wishes to achieve some of the objectives through the Project which include the following:
 - (a) To promote and maintain excellence of MTRH in teaching and research through diversification and strengthening of teaching and learning evaluations for all faculty and students;
 - (b) Contribute towards meeting the demand for specialized health care workers in Kenya and Globally through specialized healthcare training and research;
 - (c) Expand and promote innovation in the use of information and communication and
 - (d) Maintain, improve and expand infrastructure and equipment through a multi-agency collaborative approach.
- 1.7 The main features of the Project are set out below:
 - (a) The project will be implemented through a PPP model, which will enable the college to leverage the expertise of a private partner to develop and manage

the infrastructure. This approach will allow for a collaborative effort between the public and private sectors to deliver a world-class facility.

- (b) The project will be implemented under the Design-Build-Finance-Maintain-Transfer (DBFMT) PPP model. Under this model, the private partner will be responsible for designing, building, financing, and maintaining the infrastructure, and will transfer the assets back to the college at the end of the concession period. The private partner will be allowed to optimize the layout of the site and design of the buildings, provided they comply with the minimum set of specifications as set out in project agreement.
- (c) The total duration of the proposed project agreement would be for 30 years, commencing on the effective date and subject to meeting the conditions precedent as mentioned under the project agreement. The 30-year period would include a construction period of 2 years as well as operation and maintenance period for the remaining 28 years.
- (d) MTRH intends to develop teaching facilities for CHS and has allocated 15 acres for development of the proposed CHS campus. The proposed site, delineated in yellow in the below figure and situated approximately 6 Km north of Eldoret town Centre, boasting excellent road access through the approach road to the proposed site.

Figure 1: proposed site



- (e) The facilities proposed to be developed for the CHS campus are¹:

¹ The construction cost includes the cost for physical infrastructure development and the cost towards furniture and specialized equipment that will be part of the project.

Academic facilities	Admin & support	Hostel facilities	Other facilities/ amenities
<ul style="list-style-type: none"> • Four separate school buildings with Classrooms • One separate building with Computer labs, Skills labs and other labs 	<ul style="list-style-type: none"> • One library building • One admin block 	<ul style="list-style-type: none"> • Separate male and female hostels with: <ul style="list-style-type: none"> ✓ Quad bedrooms ✓ Double bedrooms ✓ Single bedrooms with attached washrooms ✓ Single en-suite rooms with attached washroom and kitchen 	<ul style="list-style-type: none"> • Auditorium • Gymnasium with pool table and table tennis • Playgrounds: Athletic track, Football, basketball, volleyball, badminton, tennis • Swimming pool • Stationery and Convenience store • Counselling room for students • Multi-purpose hall • Worship place • Bank and ATM • Canteen • Security office and Parking • Crutch room and Feeding room

- (f) The private party will be responsible for the design, construction, financing, operating and maintenance of the facilities as per the minimum output specifications and other terms and conditions of the PPP agreement. This will include responsibility for the performance of the facilities and for the discharge of all obligations to MTRH throughout the agreement period. The other responsibilities of private party shall be:
- (i) Overall obligations: The private party will be responsible for the design, construction, financing, and maintenance/facility management of the facilities as per the minimum output specifications

and other terms and conditions of the project agreement. This will include responsibility for the performance of the facilities and for the discharge of all obligations to the Contract Governing Body (CGB) and MTRH throughout the agreement period.

- (ii) Obtaining desired clearances, permits, and approvals: The private party will be responsible for identifying, applying and obtaining all the desired clearances, permits and approvals for the construction, operation and maintenance of the proposed project.
- (iii) Sub-contracting to other firms: The private party would be given the right to sub-contract certain aspects of the construction and maintenance to reputable parties, if required. However, all responsibility relating to, and arising out of the project agreement, will rest entirely with the private party.
- (iv) Operation of hostels and commercial establishments: While CGB handles the core functions of CHS (teaching and administration), the private party would be given the right for running the hostel facilities and commercial establishments, and collection of revenues.
- (v) Overall facility management of campus: The private party would be responsible for the performance of the campus facilities (all the facilities including classrooms, labs, library, offices, hostels, playgrounds, auditorium etc.) and for the discharge of all obligations to the CGB/ MTRH broad throughout the agreement period. This will have to be as per the performance standards defined in the project agreement.
- (vi) Collect student fee and commercial lease rentals: The private party will be responsible for the collection of the tuition and other fees from the students and their escalation over the years, if any, through CGB/ admin staff for CHS recruited by CGB (via an Escrow account through a waterfall mechanism). Further, it will be responsible for the collection of all lease rentals from retail shops, cafeterias, auditorium lease, advertisement, etc. during the concession period. Payments/ salary to the admin and teaching staff of CHS will be transferred with CGB's approval and guidelines. Notably, while all the fees collected from students (including academic and hostels) are governed by CGB, the SPV/ private party may be given the right to determine the rentals for commercial establishments.
- (vii) Transfer of project assets at the end of the project agreement period: At the end of the project agreement period, the private party shall transfer all the project assets and associated fixtures/ equipment in good working condition and free from any encumbrances, to the MTRH board at zero cost as per the terms of the project agreement.

- (g) The MTRH will form a “CGB” with members from the MTRH administration as well as from the CHS senior officials. The CGB will be in place for the entire concession period, with the final authority of MTRH Board on the establishment of the CGB and/or any changes in its membership.
- (i) Determining fees structure: The CGB will determine the academics fees, including application fees, admission fees, course fees, library fees, hostel fees, mess fees, etc. Essentially all the fees collected from the students will be determined by the CGB in consultation with the private party. On the other hand, the rentals from shops, canteens, Bank, ATM, advertising etc., may be determined by the private party.
 - (ii) Oversee admissions to various courses: The CGB will be the decision-making authority related to admission process, admission cycle, selection of students, approve intake, etc.
 - (iii) Recruitment of teaching, admin, and other staff: The CGB will be the decision-making authority related to recruitment of teaching staff, admin staff, support staff (e.g., lab staff), required to run the day-to-day teaching function and administration of campus. Recruitment of various posts will happen through CGB and their duties/ obligations, salary structure and payment of salary will be determined by CGB.
 - (iv) Operation of teaching and administration function: The CGB will determine the course structure, intake, teaching modalities/ methods, examination, training, etc. and oversee the academic function and administration of campus through the recruited staff who will directly report to the CGB. Largely, the teaching and administration function will be controlled by the CGB.
- (h) The contracting authority will transfer the development, operation and maintenance rights to the private party during the concession agreement period. However, ownership and title over the Site will vest with the Contracting Authority. The private party will hand over the project assets to the contracting authority at the end of the concession period in a well-maintained condition, free from any encumbrances and at zero cost to the contracting authority (the specific terms and conditions governing the handover and transfer of the project will be outlined in the project agreement).
- (i) The contracting authority will facilitate the project through the PPP process, obtaining necessary approvals and clearances, and support the private party in securing required permits and environmental approvals, on a best effort basis.
- (j) Upon receipt of the proposed project concept and designs from the selected



private party, the contracting authority will review the same and provide its inputs/ suggestions/ approvals promptly. The contracting authority shall also set up a CGB to review the performance of the private party and specify processes for Contract Management.

- 1.8 The Contracting Authority intends to pre-qualify suitable Applicants who will be eligible for participation in the Bid Stage, to award the Project through an open competitive bidding process, in accordance with the procedure briefly described in Clause 2 below.
- 1.9 Upon award of the Project, the Contracting Authority and the Preferred Bidder (**Preferred Bidder**) will enter into a project agreement, which will, *inter alia*, provide for formation of a project company as an SPV to implement the Project. Pursuant thereto, the SPV will accede to the Project Agreement by executing a deed of novation in the format set out in the Project Agreement. A detailed description of the scope of the work and services to be provided by the SPV and its rights and obligations will be set out in the Project Agreement and the Project Requirements. A draft of the Project Agreement will be provided with the RFP.
- 1.10 The statements and explanations contained in this REOI are intended to provide an understanding to the Applicants about the Project and the Bid Process and should not be construed or interpreted as limiting, in any way or manner, the scope of work and obligations of the Preferred Bidder/ SPV as are set out in the Project Agreement or the Contracting Authority's rights to amend, alter, change, supplement, or clarify the scope of work, this REOI or its terms, or the terms of the Project Agreement. Consequently, any omissions, conflicts, or contradictions in this REOI are to be noted, interpreted, and applied appropriately to give effect to this intent and no claims on that account will be entertained by the Contracting Authority.

2. BRIEF DESCRIPTION OF BID PROCESS

- 2.1 The Contracting Authority has adopted a 2 (two) stage bid process, i.e., the Qualification Stage and the Bid Stage (collectively referred as **Bid Process**), for the declaration of the Preferred Bidder for award of the Project. The first stage of the Bid Process (**Qualification Stage/ REOI**) involves qualification (**Qualification**) of the Applicants in accordance with the provisions of this REOI. At the end of the Qualification Stage, the Contracting Authority will announce a list of suitable pre-qualified Applicants (**Bidders**) who will be eligible for participation in the second stage of the Bid Process (**Bid Stage**) under the request for proposals (**RFP**).



- 2.2 The Applicants will download this REOI from the websites of MTRH (<https://www.mtrh.go.ke>) and PPPD (<https://pppkenya.go.ke>)
- 2.3 The Applicants may inspect the Site and carry out, at their own cost and expense, such inspections and requisite test including geo-technical study, topographical survey, area drainage study, etc., as may be required to submit their respective Applications, on the date for the Site visit set out in the Qualification Schedule. The Applicants may also submit a written request to the Contracting Authority to inspect the Site on any other date prior to the Application Due Date. The Contracting Authority will use reasonable endeavor to facilitate such Site visits provided that the Applicant gives the Contracting Authority at least 3 (three) Business Days' prior written notice of its intention to visit the Site. The Contracting Authority will have no liability to the Applicants in connection with any Site visit by the Applicant or its employees, advisors, agents, or representatives, including any loss or liability (including personal injury or loss to property) caused to the Applicant or any of its employees, advisors, agents, or representatives while on a Site visit. The Applicants will hold the Contracting Authority harmless and indemnify the Contracting Authority from and against any injury, loss, claims, damage, cost, or expense which may arise from or may be incurred or suffered on account of the Applicant's Site visits.
- 2.4 In the Qualification Stage, the Applicants are required to furnish all the information specified in this REOI, and demonstrate their Technical Capacity and Financial Capacity, to implement the Project. The Contracting Authority will receive Applications pursuant to this REOI in accordance with the terms set forth herein, as these may be modified, altered, amended, and clarified from time to time by the Contracting Authority. All Applications will be prepared and submitted in accordance with such terms on or before the date specified in Clause 2.8 below for submission of Applications (**Application Due Date**) and will follow Applicable Laws. Only those Applicants that are pre-qualified by the Contracting Authority will be invited to submit their Bids, as part of the Bid Stage.
- 2.5 In the Bid Stage, the pre-qualified Applicants (i.e., the Bidders) will be called upon to submit their Bids in accordance with the RFP and other bidding documents.
- 2.6 **Evaluation stage**
Once an Applicant is pre-qualified at the EOI stage, and submits a Bid under the RFP, the evaluation of the Bids will be carried out in 2 (two) sub-stages:
- (a) The first sub-stage will involve evaluation of Technical Proposals to

determine compliance with the technical criteria in accordance with the RFP. The Technical Proposals will be evaluated and given a score on the basis of the criteria set out in the RFP. Only those Bidders who satisfy the criteria set out in the RFP and obtain minimum specified technical score as set out in the RFP will qualify for evaluation of their Financial Proposals; and

- (b) The second and final sub-stage will involve evaluation of the Financial Proposals of the Bidders.

2.7 Any queries or requests for clarification or additional information relating to this REOI should be submitted in e-mail to the officers designated below. The communications must clearly bear the following subject line or title:

"Development of an ultra-modern medical training complex project for the Moi Teaching and Referral Hospital on PPP basis: Questions or Request for Additional Information" and be addressed to both:

- chsppppproject@mtrh.go.ke
- procurement@pppkenya.go.ke

2.8 **Schedule of Qualification Stage**

The Contracting Authority will endeavor to adhere to the following schedule. However, the Contracting Authority may, at its sole discretion, revise, or extend any of the timelines set out below:

S. No.	Event	Date
1.	Issue of REOI	1 July 2025
2.	Pre-Application Meeting	Within 1 weeks of #1 above
3.	Site visit	2 (two) weeks after #1 above
4.	Last date for receiving queries from Applicants	2.5 (two & half) weeks after #1 above
5.	Last date for issuing response to queries from Applicants issuance of Addendum/revised REOI	3 (three) weeks after #1 above
6.	Submission Due Date and time of REOI	31 July 2025, 03:00 pm EAT
7	Opening of application/ REOI	31 July 2025, 03:00 pm EAT



3. ELIGIBILITY OF THE APPLICANT

3.1 Nature of Applicant

- (a) An Applicant may be a Person, acting in its individual capacity or as a Consortium. The term Applicant used in this REOI will apply to both a single entity as well as a Consortium.
- (b) If the Applicant is a Consortium, then the Consortium and its Members will comply with the following conditions:
 - (i) The number of Members in such Consortium will not exceed 3 (three);
 - (ii) The Application submitted by the Consortium should contain the required information for each Member and a brief description of the roles and responsibilities of each Member;
 - (iii) The Consortium will appoint one of the Members as the Lead Member. Such appointment will be supported by a power of attorney from each Member of the Consortium, which will be in the format set out in **Annexure 4B**. The Lead Member will have the authority to represent and bind all the Members during the Bid Process; and, if the Consortium is declared as the Preferred Bidder, during the implementation of the Project;
 - (iv) The Consortium is required to submit a Declaration of Association in the format set out in **Annexure 9**, and the Members will not be permitted to amend or terminate the Declaration of Association, at any time during the validity of the Bid, without prior consent of the Contracting Authority;
 - (v) The Consortium Members will undertake that they will be jointly and severally responsible and liable for meeting all the Preferred Bidder's obligations in relation to the Project until incorporation of the SPV
 - (vi) The Consortium Members will undertake to, if shortlisted at the EOI stage, enter into a joint bidding agreement following the same shareholding structure (with the same consortium members) as committed in **Annexure 9** of the submitted REOI. The Joint bidding agreement shall be submitted with the technical proposal at the RFP stage; and

The Consortium Members will undertake to, if declared as the



Preferred Bidder at the RFP stage, subscribe and hold the subscribed and paid-up equity share capital of the SPV in the proportion committed by them in **Annexure 9**; and

Any change in the composition of a Consortium will not be permitted by the Contracting Authority until the completion of the Bid Process unless the change in composition is in accordance with Clauses 3.3(c) and 7.5 below.

3.2 **Lock-in Restrictions and Change in Ownership**

- (a) If an Applicant (whether a single entity or a Consortium) is identified as the Preferred Bidder, it is required to incorporate an SPV to implement the project.
- (b) If the Preferred Bidder is a Consortium, then the Members are required to comply with the following conditions with respect to the SPV:
 - (i) The Lead Member will hold at least 51% (fifty one percent) of the total Equity Contribution and voting rights of the SPV until the third anniversary of the commercial operation date of the Project;
- (c) All members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Project Agreement; and
- (d) The Applicants agree that any dilution of shareholding by the Preferred Bidder or any Member in the SPV which is not in line with the provisions of this REOI or as stated in the Project Agreement will require express prior approval in writing from the Contracting Authority. It is clarified that any such approval will in no instance: (A) alter the overall split between debt and equity approved under the Project Agreement; and (B) and will not dilute the majority position of the Shareholder designated as the Lead Member during the Bid Process.

3.3 **Conflict of Interest**

- (a) An Applicant will not have a conflict of interest (**Conflict of Interest**) that affects the Bid Process. An Applicant or Member found to have a Conflict of Interest may be disqualified at the Contracting Authority's sole discretion.
- (b) An Applicant will be considered to have a Conflict of Interest if the Applicant (and in case of a Consortium, any Member) or its Affiliate:



- (i) Controls, is Controlled by or is under common Control with, any of the other Applicants or Members of any other Consortium; or
- (ii) Has direct or indirect shareholding or other ownership interest in any other Applicant, its Member, or its Affiliate; provided that this disqualification will not apply in cases where the direct or indirect shareholding of an Applicant, its Member, or Affiliate in the other Applicant, its Member or Affiliate is less than 5% (five percent) of the subscribed and paid up share capital thereof; provided further that this disqualification will not apply to any ownership by a bank, insurance company, pension fund, sovereign fund, multilateral institution, or a public financial institution; or
- (iii) Is also a Member of another Applicant's Consortium; or
- (iv) Receives or has received any direct or indirect subsidy, grant, loan, subordinated debt, or other funded or non-funded financial assistance from any of the other Applicants or their Affiliate; or
- (v) Has hired or appointed the same legal, financial, or technical advisor as those hired by any of the other Applicants; or
- (vi) Has a relationship with any of the other Applicants, directly or through common third parties, that puts either one or both in a position to have access to each other's information that may influence the Application of one or more of such Applicants, or influence the decisions of the Contracting Authority regarding the Bid Process; or
- (vii) Submits more than 1 (one) Application for the Project (including through its Affiliates). This will result in the disqualification of all such Applications submitted by the Applicant and its Affiliates; or
- (viii) Has participated, directly or through an Affiliate, as a consultant or advisor in the preparation of the design of or technical specifications for the Project; or
- (ix) Has engaged any legal, financial, or technical advisor of the Contracting Authority in relation to the Project for any matters related to or incidental to the Project. Provided that this disqualification will not apply where:
 - (A) Such advisor's engagement expired or was terminated at least 18 (eighteen) months prior to the issue of this REOI; or



- (B) Such advisor, or any of its Affiliates, provides any finance or financial assistance to the Applicant/Preferred Bidder/SPV for, or in relation to, the Project.
- (c) If, an Applicant is a Consortium and the Consortium would be pre-qualified but for a Conflict of Interest affecting a Member, the Contracting Authority may notify the Applicant of the Conflict of Interest, at the time that it notifies the Applicants which are pre-qualified in accordance with Clause 25 below. Upon receiving the notification in relation to the Conflict of Interest, the Applicant may, within 10 (ten) days of receipt of the notification, substitute the Member which suffers from a Conflict of Interest, and the substitution will be deemed to cure the Conflict of Interest. The substitution will be subject to compliance with the following conditions:
 - (i) The application for the substitution is made at least 30 (thirty) days prior to the last date for submission of Bids, as specified in the RFP;
 - (ii) If the Lead Member suffers from a Conflict of Interest and is sought to be substituted, then a new Lead Member should be nominated to represent the Consortium, in accordance with the provisions of this REOI;
 - (iii) The substitute will be at least equal, in terms of Legal Capacity, Technical Capacity and/or Financial Capacity, to the Member who is sought to be substituted, and this is proven to the satisfaction of the Contracting Authority;
 - (iv) The new Member will not be liable for disqualification in terms of this Clause 3;
 - (v) The modified Consortium will continue to meet the Qualification Criteria for Applicants and this is proven to the satisfaction of the Contracting Authority;
 - (vi) The new Member expressly adopts the Application already made on behalf of the Consortium as if it were a party to it originally, including submitting power of attorney(ies) required to be submitted under this REOI; and
 - (vii) The new Member does not constitute another Applicant, member, or Affiliate of any other Consortium bidding for this Project.
- (d) Approval for substituting a Member of a Consortium, in accordance with



the Clause 3.3(c) above, will be at the sole discretion of the Contracting Authority and must be in writing.

3.4 **Fraud and Corrupt Practices**

- (a) Applicants and their respective officers, employees, agents, and advisors are required to observe the highest standards of ethics during the Bid Process and in undertaking the Project. The Applicant will submit, as a part of its Application, a self-declaration to this effect, in the format set out in **Annexure 11**. Notwithstanding anything to the contrary contained in this REOI, the Contracting Authority may reject an Application without being liable in any manner whatsoever to the Applicant, if it determines that an Applicant has, directly or indirectly or through an agent, engaged in a corrupt, fraudulent, coercive, undesirable, or restrictive practice in, or affecting, the Bid Process or the Project (including the entry into, or performance of the obligations under, the Project Agreement and the implementation, operation, and administration of the Project).
- (b) Without prejudice to the rights of Contracting Authority under Clause 3.4(a) above, in the event that an Applicant is found by the Contracting Authority to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any corrupt, fraudulent, coercive, undesirable or restrictive practice during the Bid Process or in relation to the Project, such Applicant will not be eligible to participate in any tender or Expression of Interest issued by the Contracting Authority for 5 (five) years from the date such Applicant is found by Contracting Authority to have directly or indirectly or through an officer, employee, agent, or advisor engaged or indulged in any of the activities mentioned above.
- (c) For the purposes of this Clause 3.4, the following terms will have the meanings given to them below:
 - (i) **Corrupt practice** means offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence the actions of any Person connected with the Bid Process (for the avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Contracting Authority who is or has been associated in any manner, directly or indirectly, with the Bid Process or has dealt with matters relating to the Project or arising from it, before or after its execution, at any time prior to the expiry of 1 (one) year from the date that such official resigns or retires from or otherwise ceases to be in the service of the Contracting Authority, will be deemed to



constitute influencing the actions of a Person connected with the Bid Process;

- (ii) **Fraudulent practice** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a Person to obtain a financial or any other benefit or to avoid an obligation;
- (iii) **Coercive practice** means impairing or harming or threatening to impair or harm, directly or indirectly, any Person or the property of the Person to influence improperly the actions of a Person;
- (iv) **Undesirable practice** means: (A) establishing contact with any Person connected or employed or engaged by the Contracting Authority with the objective of canvassing, lobbying, or in any manner influencing or attempting to influence the Bid Process; or (B) having a Conflict of Interest (as defined in Clause 3.3 above); and
- (v) **Restrictive practice** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating full and fair competition in the Bid Process.

3.5 Other Eligibility Criteria

- (a) If, an Applicant, including any Member or its Affiliate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project, has been barred by any instrumentality of the Government/ Public Procurement Regulatory Authority (PPRA) from participating in any project or being awarded any contract and the bar subsists on the Application Due Date, then such Applicant will not be eligible to submit an Application. The Applicant will submit, as a part of its Application, a self-declaration to this effect, in the format set out in **Annexure 12**.
- (b) If an Applicant or any Member or its Affiliate whose Technical Capacity or Financial Capacity is being relied upon to qualify for the Project has been determined to be ineligible by the World Bank under the Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by International Bank for Reconstruction and Development (**IBRD**) loans and International Development Association (**IDA**) credits and grants, then such Applicant will not be eligible to submit an Application.
- (c) If an Applicant or any Member or its Affiliate whose Technical Capacity or



Financial Capacity is being relied upon to qualify for the Project is included as a debarred person pursuant to the public sanctions list of any multilateral development bank.

- (d) If, an Applicant or any Member or its Affiliate whose Technical Capacity or Financial Capacity is being relied upon to qualify for the Project is included in any sanctions lists promulgated by the United Nations Security Council or its committees, or any other recognized international sanctions list or has operations (directly or through any subsidiary) or carries out transactions that are not in compliance with the sanctions promulgated by the United Nations Security Council or its committees, then such Applicant will not be eligible to submit an Application.
 - (e) In the 3 (three) Financial Years immediately preceding the Application Due Date, the Applicant, including any Member or its Affiliate whose Technical Capacity or Financial Capacity is being relied upon to qualify for the Project has not:
 - (i) Failed to perform any contract, as evidenced by the imposition of a penalty by an arbitral or judicial authority or arbitration award or a judicial pronouncement against such Applicant or the members or an Affiliate, as the case may be; or
 - (ii) Been expelled from any project or contract by the Government or any of its instrumentalities; or
 - (iii) Had any contract terminated by the Government or any of its instrumentalities for breach by such Applicant or the Member, as the case may be; or
 - (iv) To the best of its knowledge, been the subject of any investigation or proceedings initiated by any government authority in connection with allegations of corrupt, fraudulent, coercive, undesirable, or restrictive practices adopted by the Applicant or any Member or its Affiliate and where such investigation: (A) has led to the imposition of a penalty (or other penal action) by an arbitral or judicial authority or arbitration award or a judicial pronouncement against such Applicant or the Member or an Affiliate, as the case may be; or (B) is still ongoing as on the Application Due Date.
- 3.6 The Applicants will provide such evidence of their continued eligibility as the Contracting Authority may request at any time during or after the Bid Process.
- 3.7 If an Applicant is a Consortium, then the term "**Applicant**" or "**Bidder**" as used



in Clause 3.3 and Clause 3.4 above will include each Member of such Consortium, and the term "**Affiliate**" as used in Clause 3.3 above and Clause 3.5 above will include Affiliates of each Member of the Consortium.

- 3.8 If an Applicant is ineligible in accordance with Clause 3.1 to 3.6 above (together the **Eligibility Criteria**), at the Application Due Date or thereafter, such Applicant will be disqualified. Each of the Eligibility Criteria set out in this Clause 3 are mandatory in nature and are required to be met by all Applicants.

4. **QUALIFICATION CRITERIA**

To be eligible for pre-qualification, an Applicant must fulfil each of the following Qualification Criteria:

- (a) The Applicant must have met all the Eligibility Criteria in terms of Clause 3 above.
- (b) The Applicant must have Legal Capacity in accordance with Clause 4.1 below.
- (c) The Applicant should demonstrate its Technical Capacity in accordance with Clause 4.2 below.
- (d) The Applicant should demonstrate its Financial Capacity in accordance with Clause 4.3 below.

4.1 **Legal Capacity**

The Applicants which satisfy the Eligibility Criteria (including the Other Eligibility Criteria) in accordance with Clause 3 above, whose constitutional documents allow the Applicant to undertake the Project, and who is tax compliant will be deemed to have the legal capacity for the purpose of this REOI (**Legal Capacity**). For this purpose, each Applicant will:

- (a) Provide unconditional undertakings, certifications, declarations, representations and warranties as prescribed under **Annexure 1**, **Annexure 11**, and **Annexure 12** of this REOI;
- (b) Submit a notarized copy of its memorandum of association and articles of association in accordance with Clause 18 below; and
- (c) For Applicants which are entities incorporated in Kenya, submit a tax compliance certificate for each member of consortium from the relevant Kenya Revenue Authority in accordance with Applicable Laws, or, for Applicants which are entities not incorporated in Kenya, submit for each member of consortium:
 - (A) a similar certificate from the their relevant tax authority in accordance with applicable laws duly certified by statutory auditor or tax authority; or
 - (B) a certificate from a statutory auditor, certifying that the Applicant is tax compliant as of 1 month prior to the Application Due Date.

4.2 **Technical Capacity**

For demonstrating its technical capacity and experience (**Technical Capacity**):

- (a) Bidder must have successfully completed at least 2 similar building projects/ real estate project (preferably mixed use) in last 10 years immediately preceding the application due date
- (b) Bidder must have completed at least 2 projects of minimum 10,000 square meter each built up each in last 10 years immediately preceding the application due date
- (c) Bidder must have experience of undertaking facility management for operations & maintenance of a mixed-use/ real estate project in the last 10 years immediately preceding the application due date
- (d) Bidder must showcase the experience of leasing the commercial units in the mixed use/real estate development project in the last 10 years immediately preceding the application due date
- (e) Bidder must demonstrate experience in executing projects under PPP mode in the last 10 years immediately preceding the application due date
- (f) Bidders must demonstrate experience in raising finance for projects under PPP mode or non-recourse or limited recourse project finance² in the last 10 years immediately preceding the application due date
- (g) Bidder to showcase experience of in-house architectural and engineering team
- (h) Bidder should showcase their accessibility to construction equipment and qualified manpower to undertake a project of such magnitude
- (i) Bidder to provide a concept note (maximum 3 pages) showcasing their understanding of the project and how they plan to implement the project
- (j) To claim experience as a contractor (where applicable), the entity claiming experience should have been appointed as the principal contractor/developer (i.e. the contractor/developer hired directly by the owner of the project/entity developing the project) and any other subcontractor experience is not permitted; and
- (k) If any Real Estate Project used to demonstrate Technical Capacity was undertaken by the Applicant or any Member through an unincorporated joint venture or consortium or partnership, that project will be considered as experience of the Applicant or Member for the purposes of this Bid Process only if the capital expended by the Applicant or Member, or payments received by the Applicant or Member, is more than 26% (twenty six percent) of the total project/contract value, as evidenced by a statutory auditor's certificate.

² Project securing funding using the future cash flow and assets

For the purpose of this EOI submission: (a) **"Real Estate Project"** includes all forms of mixed use development, including student housing and educational institutions; (b) **"Developing Market"** means the emerging and developing economies as identified by the International Monetary Fund which can be found at <https://www.imf.org/en/Publications/WEO/weo-database/2023/April/groups-and-aggregates#oem> and (c) **"Construction Cost"** means the actual and documented construction costs for development of a Real Estate Project (net of cost of land). For demonstrating the Construction Cost, the Applicant will be required to submit a copy of: (i) the financing documents for a Real Estate Project, if such project was developed as an investor.

- (l) That to satisfy the technical experience criteria set out in Clause 4.2(a), Clause 4.2(b) and clause 4.2(c) above, the Applicant will submit, as a part of its Application, the following documents:
 - (i) For clause 4.2(a) and 4.2(b) the bidder to provide completion certificate issued by the project owner/ client certifying the Real Estate Project(s) under Clause 4.2(a) or 4.2(b) (as the case may be)
 - (ii) For clause 4.2(c), the bidder to provide work order/ concession agreement issued by the project owner/client
 - (iii) Information as required under **Annexure 6A**.
 - (iv) Each project showcased by the bidder will need to be supported with information pertaining to the client with whom they worked on the project (name of the nodal person of the client organization with contact details and email id)³
 - (v) For all the project showcased in 4.2 (a), 4.2(b), 4.2(c), the bidder to provide a statutory auditor certificate verifying the details of the work order/ completion certificate/concession agreement provided by the bidder.
- (m) In case of a Consortium, the Technical Capacity may either be satisfied by the Lead Member alone, or by the Lead Member along with another Member. However, it is clarified that, the Technical Capacity criterion under Clause 4.2(b) above, if elected to be satisfied, must be demonstrated by any 1 (one) Member, where such Member may be the Lead Member or any other Member.
- (n) The Applicant/Member may rely on the experience of its Affiliate(s) to demonstrate the Technical Capacity set out in Clauses 4.2(a), 4.2(b), Clause 4.2(c), Clause 4.2(d), Clause 4.2(e), Clause 4.2(f), 4.2(g) and

³ The contracting authority will contact the nodal person to verify the details



Clause 4.2(h) above.

- (o) For certificates demonstrating technical experience that are issued overseas, the document will also have to be certified by their statutory auditor.
- (p) If an Applicant submits the Application demonstrating its Technical Capacity, relying on experience gained by its Affiliate, it will, as a part of the Application, provide an undertaking from the Affiliate, in the form set out in **Annexure 8A**, stating that: (a) it has permitted the Applicant to rely on the experience gained by the Affiliate; and (b) it has not permitted any other entity to rely on its or any of its group companies' experience for the purposes of participating in the Bid Process.
- (q) The bidders will be evaluated on a Pass/ Fail basis, as per the submission of relevant supporting documents against each listed indicator.

4.3 **Financial Capacity⁴**

- (a) For demonstrating its financial capacity to undertake the Project (**Financial Capacity**), the Applicant will be required to meet each of the financial qualification criteria specified in this Clause 4.3:
 - (i) **Average Annual Turnover (AAT):** The minimum AAT of the bidder should be KSHs 5,000 million, for the last 3 financial years immediately preceding the application due date
 - (ii) **Net worth:** The minimum net worth of the bidder should be KSHs 800 million for the financial year immediately preceding the application due date. If the Bidder is a Consortium, then the Net Worth may be demonstrated by only the Lead Member alone or by all of the Members together provided that the Lead Member must demonstrate Net Worth of at least 51% of the minimum net worth requirement of KSHs 800 million.
 - (iii) Bidder must have experience of undertaking and completing at least 2 projects with a construction cost of KSHs 2,000 million each or at least 1 project with a construction cost of KSHs 4,000 million in last 10 years immediately preceding the application due date.

To demonstrate this experience, bidder must submit Completion certificate and statutory auditor certificate for the projects being showcased to qualify under the above criteria. Details to be provided in a table showcasing the project name, project details,

⁴ The conversion rate from any foreign currency to Kenyan Shillings (KSHs) shall be determined based on the exchange rates published on the Central Bank of Kenya's website, specifically at <https://www.centralbank.go.ke/forex/>

construction cost, ownership in the project, project completion year, client contact details. (The above details and supporting documents to be provided as a separate Annexure between Annexure 6A and 6B)

- (iv) Bidder should not have incurred any cash loss during 3 financial years immediately preceding the application due date (To be submitted for each member of the consortium)
- (v) Bidder should not have a record of bankruptcy/ insolvency (To be submitted for each member of the consortium)
- (vi) Bidder should submit a valid tax compliance certificate from the Kenya Revenue Authority (KRA) - To be submitted for each member of the consortium. In case of bidders based outside Kenya, a similar certificate from their relevant tax authority in accordance with applicable laws duly certified by statutory auditor or tax authority; or a certificate from a statutory auditor, certifying that the Applicant is tax compliant as of 1 month prior to the Application Due Date should be submitted.
- (vii) Bidder should submit annual report of last 3 financial years immediately preceding the application date, audited by statutory auditor. The Applicant (as per the annual audited financial statements) must have recorded a net profit, as certified by the statutory auditor of the Applicant (and in case of a Consortium, then the net profitability must be demonstrated by each Member demonstrating the Net Worth).

In each of the above instances, the statutory auditor must be a leading firm of repute (registered with the relevant jurisdictional regulatory authority), and the annual audited financial statements must be prepared in accordance with IFRS/ GAAP. For points (iii), (iv), (v) please refer Annexure-3 for the evidences to be provided by the bidder to comply with the required criteria.

- (b) If the Applicant is a Consortium, and more than 1 (one) Member (whether by themselves or through their Affiliates) is demonstrating the Net Worth under Clause 4.3(a) above, and/or the Average Annual Turnover under Clause 4.3(a) above, then the Applicant will be required to, in the formats set out in **Annexures 5.1A** and **5.1B**, respectively, calculate and set out the aggregate Net Worth and/or the Annual Turnover, basis the certificates issued by the statutory auditor(s), for all such members.



- (c) An Applicant is permitted to rely on the Net Worth, the Average Annual Turnover and the net profit of its Affiliate(s), either wholly or in part (where applicable), for demonstrating its Financial Capacity.
- (d) The calculation of the Net Worth, the Average Annual Turnover and the net profit will be based on the unconsolidated annual audited financial statements in case of an Applicant and, if relevant, an Affiliate. Provided that if an Applicant is relying on its Affiliate's Net Worth and/or Average Annual Turnover, in accordance with Clause 4.3(c) above, where such Applicant Controls such Affiliate, then the Net Worth and/or the Average Annual Turnover will be calculated based on the consolidated annual audited financial statements of the Applicant.
- (e) The calculation of Net Worth will be based on the annual audited financial statements of the Applicant or Member or, if relevant, an Affiliate for the Financial Year immediately preceding the Application Due Date. The calculation of the Average Annual Turnover and/or the net profit will be based on the annual audited financial statements of the Applicant or Member or, if relevant, an Affiliate for the last 3 (three) Financial Years immediately preceding the Application Due Date. If the annual financial statements for the Financial Year immediately preceding the Application Due Date are not audited, the Applicant will submit annual unaudited financial statements for such Financial Year (and only for such Financial Year, and not any previous Financial Years) along with an undertaking to the effect that:
 - (i) The audited financial statements for the last Financial Year are not available;
 - (ii) If it is chosen as the Preferred Bidder, the Applicant will submit the annual audited financial statements for the Financial Year immediately preceding the Application Due Date prior to the Effective Date; and
 - (iii) The Net Worth and/or Average Annual Turnover (if applicable) and/or net profit (if applicable) as per such annual audited financial statements will meet the minimum criteria required in Clauses 4.3(a) above.
- (f) If the Preferred Bidder has submitted annual unaudited financial statements for the last Financial Year with its Application and proceeds to submit the audited financial statements for the last Financial Year prior to the Effective Date, and as per such annual audited financial statements,



the Preferred Bidder does not meet the minimum Net Worth criteria as required in Clause 4.3(a) above, and/or, if applicable, the Average Annual Turnover criteria as required in Clause 4.3(a) above, and/or, if applicable, the net profit criteria as required in Clause 4.3(a) above, then the Contracting Authority will have the right to treat such event as a SPV event of default and terminate the Project Agreement.

- (g) For the purposes of demonstrating the Financial Capacity, if the Applicants provide financial data in a currency other than KSHs, they will provide the amount equivalent in KSHs, calculated using the closing exchange rate as published at the website of the Central Bank of Kenya as on the reporting date of the annual audited financial statements for such Financial Year.
- (h) The Applicant (and in case of a Consortium, any Member) or any Affiliate of the Applicant whose Financial or Technical Capacity is being relied upon is not affected by, and has not been affected by, any of the following events, conditions or circumstances in the 3 (three) Financial Years immediately preceding the Application Due Date, as certified by the statutory auditor of the Applicant (and in case of a Consortium, the statutory auditor of a Member) or Affiliate:
 - (i) Has not been categorized as a willful defaulter in accordance with the laws of the country of its incorporation; or
 - (ii) Has not been admitted into corporate insolvency resolution process under the laws of the country of its incorporation; or
 - (iii) Has not entered any compromise with its creditors, or been subject to proceedings for being wound up, or having its affairs administered or conducted by any court, administrator, receiver; or
 - (iv) Has not been declared by a court or other competent authority as being unable to pay its debts or having had the repayment of its debts suspended.
- (i) The Applicant (and in case of a Consortium, any Member) or any Affiliate of the Applicant whose Financial or Technical Capacity is being relied upon has not been convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers, or managers convicted or being found responsible) by any court, tribunal, regulatory, public, or other competent authority for a breach of any laws or regulations which:



- (i) Related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation, or other payment was levied against the relevant entity or any of its directors, partners, trustees, officers, or managers; or
 - (ii) Resulted in the permanent or temporary suspension of the rights of the Applicant to provide any service or carry on any type of business or operations.
- (j) If an Applicant submits the Application demonstrating its Financial Capacity, relying on experience gained by its Affiliate, it will, as a part of the Application, provide an undertaking from such Affiliate, in the form set out in **Annexure 8B**, stating that: (A) it has permitted the Applicant to rely on the experience gained by the Affiliate; (B) it has not permitted any other entity to rely on its or any of its group companies' experience for the purposes of participating in the Bid Process.

5. INSTRUCTION TO APPLICANTS

- 5.1 The Contracting Authority wishes to receive Applications for qualification to shortlist experienced and capable Applicants for the Bid Stage.
- 5.2 Pre-qualified Applicants may be subsequently invited to submit Bids for award of the Project.
- 5.3 This REOI will be read as a whole. If any Applicant finds any ambiguity or lack of clarity in this REOI, the Applicant will inform the Contracting Authority at the earliest. The Contracting Authority will then direct the Applicants regarding the interpretation of this REOI.
- 5.4 All Addenda and clarifications by the Contracting Authority will be uploaded on the websites of MTRH (<https://www.mtrh.go.ke>) and PPP (<https://pppkenya.go.ke>).

6. ACKNOWLEDGEMENT BY APPLICANT

- 6.1 It will be deemed that by applying, the Applicant has:
 - (a) Made a complete and careful examination of this REOI (including all instructions, forms, terms, and specifications) and any other information provided by the Contracting Authority under this REOI, and the Applicant acknowledges that its submission of an Application that is not substantially responsive to this REOI in every respect will be at the Applicant's risk and may result in rejection of the Application;
 - (b) Received all relevant information requested from the Contracting Authority;
 - (c) Acknowledged and accepted the risk of inadequacy, error, or mistake in the information provided in this REOI;
 - (d) Satisfied itself about all the matters, things and information, necessary and



required for submitting an informed Application, execution of the Project and performance of all its obligations under, and in accordance with, this REOI;

- (e) Acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in this REOI, or ignorance of any matter in relation to the Project will not be a basis for any claim for compensation, damages, extension of time for performance of its obligations or loss of profits or revenue from the Contracting Authority, or a ground for termination of the Project Agreement and/or Subscription and Shareholders' Agreement; and
- (f) Satisfied itself regarding suitability of the Site conditions to undertake the Project; and
- (g) Agreed to be bound by the undertakings provided by it and by the Affiliate under, and in terms of, this REOI.

7. RIGHTS OF THE CONTRACTING AUTHORITY

7.1 The Contracting Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) Suspend or amend the Bid Process, and/or supplement the Bid Process, or modify the dates or other terms and conditions relating thereto;
- (b) Consult with any Applicant to receive clarification or further information at any stage of the Bid Process;
- (c) Retain any information, documents, and/or evidence submitted to the Contracting Authority by and/or on behalf of any Applicant;
- (d) Independently verify, disqualify, reject, and/or accept all documents, information and/or evidence submitted by, or on behalf of, any Applicant;
- (e) Disqualify a Consortium upon removal or withdrawal of the Lead Member or any Member, subject to Clause 7.5 below;
- (f) Waive minor infractions or discrepancies in the Applications;
- (g) Reject any Application, if:
 - (i) At any stage, the Applicant does not meet the requirements under this REOI;
 - (ii) At any time, a material misrepresentation is made or discovered;
 - (iii) The Applicant colludes, connives, or is involved in any corrupt or dishonest practice intended to confer an unfair advantage over



- other Bidders in the award of the Project;
- (iv) The Applicant in question does not provide, within the time specified by the Contracting Authority, the supplemental information sought by the Contracting Authority for evaluation of the Application; or
 - (v) At any stage, the Contracting Authority finds that the Applicant has been or is in contravention of Applicable Laws, including to have an unfair advantage over other Applicants.
- (h) Accept or reject an Application, annul the Bid Process, and reject all Applications, at any time, without any liability whatsoever to any Person, including the Applicants.
 - (i) If the Contracting Authority annuls the Bid Process and rejects all Applications, it may, in its sole discretion, invite fresh Applications for the Project.
- 7.2 If, it is found during the Bid Process, at any time before signing the Project Agreement or after its execution and while it is in force, that one or more of the Qualification Criteria and/or the Eligibility Criteria have not been met by an Applicant or a Bidder, or an Applicant or a Bidder has made material misrepresentations or has given any materially incorrect or false information, then such Applicant or Bidder will be disqualified.
- If such Bidder has been declared as the Preferred Bidder or has already been issued the LOA or has entered into the Project Agreement, then the LOA or the Project Agreement, as the case may be, will be liable to be terminated, by a notice in writing from the Contracting Authority to the Preferred Bidder.
- 7.3 If, an Applicant is a Consortium and the Consortium will be pre-qualified but for an event relating to withdrawal or removal of a Lead Member, then, the Applicant may, subject to approval of the Contracting Authority, replace the Lead Member with a new Lead Member in a manner that ensures that the Consortium remains eligible to participate in the Bid Process, subject to the following conditions:
- (a) The application for substitution is made 10 days before the RFP submission stage.
 - (b) The substitute will be at least equal, in terms of Legal Capacity, Technical Capacity, and Financial Capacity, to the Lead Member who is sought to be substituted, and this is proven to the satisfaction of the Contracting Authority;



- (c) The new Lead Member will not be liable for disqualification in terms of Clause 3 above;
 - (d) The modified Consortium will continue to meet the Qualification Criteria for Applicants and this is proven to the satisfaction of the Contracting Authority;
 - (e) The new Lead Member will expressly adopt the Application already made on behalf of the Consortium as if it were a party to it originally, including submitting power of attorney(is) required to be submitted under this REOI;
 - (f) The new Lead Member does not constitute another Applicant, Member, or Affiliate of any other Consortium bidding for this Project; and
 - (g) The new Lead Member will represent the Consortium in accordance with the provisions of the REOI and RFP.
- 7.4 If, an Applicant is a Consortium and the Consortium will be pre-qualified but for an event relating to withdrawal or removal of a Member, then, the Applicant, may, subject to approval of the Contracting Authority, replace such Member with a new Member in a manner that ensures that the Consortium remains eligible to participate in the Bid Process. The provisions of Clause 7.3(a) to (f) above will also apply *mutatis mutandis* to substitution of the Member with a new Member, as applicable.
- 7.5 Any approval for substituting a Member or the Lead Member, in accordance with Clause 7.3 or Clause 7.4 above, as the case may be, will be at the sole discretion of the Contracting Authority and must be in writing.
- 7.6 Upon any disqualification, cancellation, or termination in accordance with this Clause 7, the Contracting Authority will not be liable in any manner whatsoever to the Applicant, the Preferred Bidder/the SPV. Additionally, the Contracting Authority will have the right to forfeit and appropriate the bid security (as provided under the RFP) or, as the case may be, appropriate an equivalent amount from the performance security(ies) if the Project Agreement has been executed, as a mutually agreed genuine pre-estimate of the loss suffered by the Contracting Authority as a result of such cancellation, disqualification, or termination. Such forfeiture will be without prejudice to any other right or remedy that the Contracting Authority may have under this REOI, the RFP, the Project Agreement, or Applicable Laws.

8. CLARIFICATIONS ON EOI AND INVESTOR CONSULTATIONS

8.1 Clarification and Queries

- (a) If, an Applicant requires any clarification on, or has any query in relation to, this REOI, it should submit such query or request for clarification to the Contracting Authority in writing by e-mail set out to both email ids: chspppproject@mtrh.go.ke, procurement@pppkenya.go.ke. The subject of the e-mail must clearly bear the following subject: "**Development of an ultra-modern medical training complex project for the Moi Teaching and Referral Hospital on PPP basis: Questions or Request for Additional Information**". All queries or clarification requests should be received on or before the date mentioned in the Qualification Schedule.
- (b) The Contracting Authority may, on its own initiative, if deemed necessary, issue clarifications to the Applicants. All clarifications and interpretations issued by the Contracting Authority will be deemed to be part of this REOI. Should the Contracting Authority deem it necessary to amend this REOI as a result of a request for clarification, it will do so following the procedure under Clause 9 below.
- (c) The Contracting Authority may, but will not be obliged to, communicate with the Applicants by e-mail, notice, or any other means it may deem fit about the issuance of the clarifications.
- (d) Verbal clarifications and information given by the Contracting Authority or any other Person for or on its behalf will not in any way or manner be binding on the Contracting Authority.

8.2 Pre-Application Meeting and Site Visit

- (a) All interested Applicants may nominate up to 3 (three) authorized representatives to participate in the pre-Application meeting, by confirming the participation of its authorized representatives at the pre-Application meeting at least 2 (two) business day prior to the date of the pre-Application meeting. Such confirmation will be sent by e-mail to both the email ids: chspppproject@mtrh.go.ke and procurement@pppkenya.go.ke.
- (b) All interested Applicants will be invited to attend the virtual pre-Application meeting on the date, and time mentioned in the Qualification Schedule, and the link for attending such virtual pre-Application meeting will be provided by the Contracting Authority at least 24 hours prior to the date of such meeting.

The purpose of the Pre-Application meeting will be to clarify issues and answer question(s) on any matter relating to this REOI, the Bid Process, and the Project.

- (c) During the course of the Pre-Application meeting, all interested Applicants will be free to seek clarifications and make suggestions to the Contracting Authority.
- (d) Non-attendance at the Pre-Application meeting will not be a cause for disqualification of an interested Applicant from participating in the Bid Process.
- (e) Response to the question raised during and post the meeting (without identifying the source) will be uploaded on the websites of MTRH (<https://www.mtrh.go.ke>) and PPPD (<https://pppkenya.go.ke>).
- (f) The Contracting Authority will organize Site visits on the day set out in the Qualification Schedule. The Applicants interested in participating in these Site visits will confirm their attendance at least 3 (three) days prior to the date of the respective site visit by sending an email to both email ids: chspppproject@mtrh.go.ke and procurement@pppkenya.go.ke. A maximum of 2 (two) representatives for each applicant will be allowed to attend the site visit.
- (g) In addition to the Site visits organized by the Contracting Authority as set out in Clause 8.2(f) above, the Applicants may also carry out such Site inspections as may be required to submit their applications at any time prior to the Application Due Date. The Contracting Authority will facilitate such Site visits provided that the Applicant gives the Contracting Authority at least 3 (three) Business Days' prior written notice of its intention to visit the Site.

9. **AMENDMENT OF REOI**

- 9.1 Until the date that is mentioned in the Qualification Schedule, the Contracting Authority may, for any reason, whether at its own initiative or in response to a query raised or clarifications requested by an Applicant in writing, amend this REOI by issuing an Addendum or an amended REOI.
- 9.2 All Addenda/amendments will be issued on the websites of MTRH (<https://www.mtrh.go.ke>) and PPPD (<https://pppkenya.go.ke>).
- 9.3 The Applicants are required to read this REOI with any Addenda/amendments



that may be issued in accordance with this Clause 9.

- 9.4 Each Addendum/amendment will be binding on the Applicants.
- 9.5 Any oral statements made by the Contracting Authority or its advisors regarding the Bid Process, this REOI, or on any other matter, will not be considered as amending this REOI.
- 9.6 The Contracting Authority will assume that the information contained in the Addendum/ amendments will have been taken into account by the Applicant in its Application. The Contracting Authority assumes no responsibility for the failure of an Applicant to submit the Application in accordance with the terms of the Addendum/amendments or for any consequent losses suffered by the Applicant.

10. **AVAILABILITY OF INFORMATION**

- 10.1 The information relating to, or in connection with, the Project, the Bid Process, and this REOI, including all notices issued by the Contracting Authority to all the Applicants in accordance with this REOI, queries, and responses or clarifications, and any Addenda, will be uploaded on the websites of MTRH (<https://www.mtrh.go.ke>) and PPPD (<https://pppkenya.go.ke>).
- 10.2 All such information will be made available for review by the Applicants until the Application Due Date.
- 10.3 If an Applicant faces any technical issue or technical error in accessing the websites of MTRH and PPPD, the Applicant may seek assistance from the Contracting Authority by sending a written e-mail request to any of email addresses mentioned in Chapter 8, any time prior to the Application Due Date.
- 10.4 The Contracting Authority will use its best endeavors to respond to a written e-mail request and resolve the technical issue or error or provide an alternative solution to the Applicant at its earliest convenience.

11. **CORRESPONDENCE WITH APPLICANTS**

Save as expressly provided in this REOI, the Contracting Authority will not entertain any correspondence with the Applicants, whether in connection with the acceptance or rejection of their Applications or otherwise.

12. **CONFIDENTIAL INFORMATION AND PROPRIETARY DATA**

12.1 **Proprietary Data**

All documents and other information provided by the Contracting Authority or



submitted by an Applicant to the Contracting Authority will remain or become the property of the Contracting Authority, as the case may be. The Applicants are required to treat all information provided by the Contracting Authority in this REOI as strictly confidential and will not use them for any purpose other than for preparation and submission of their Applications and if pre-qualified, their Bids.

12.2 Confidentiality Obligations of the Contracting Authority

The Contracting Authority will treat all information, submitted as part of an Application as confidential and will require all those who have access to such material to treat it in confidence. The Contracting Authority may not divulge any such information or any information relating to evaluation and qualification of Applicants unless:

- (a) Such publication is contemplated under this REOI; or
- (b) Such publication is made to any person who is officially concerned with the Bid process or is a retained professional advisor advising the Contracting Authority, or the Applicant on matters arising out of, or in connection with, the Bid Process; or
- (c) It is directed to do so by any statutory authority that has the power under Applicable Laws to require its disclosure; or such publication is to enforce or assert any right or privilege of the statutory authority and/or the Contracting Authority or as may be required by Applicable Laws; or
- (d) Such publication is in connection with any legal process.

12.3 The Applicants acknowledge and agree that written consent of the Contracting Authority will be obtained prior to issuing any press release or other public statement with respect to declaration of such Applicants as the pre-qualified Applicant (i.e., Bidder).

13. GOVERNING LAW AND JURISDICTION

13.1 Governing Law

The Bid Process and this REOI will be, governed by, and construed in accordance with, the Laws of the Republic of Kenya.

13.2 Exclusive Jurisdiction

The competent courts in Kenya will have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bid Process and this REOI.



14. **VALIDITY OF THE APPLICATIONS**

- 14.1 The Applications will remain valid for a period of 180 days from the Application Due Date. An application valid for a shorter period will be rejected by the Contracting Authority as being non-responsive.
- 14.2 In exceptional circumstances, prior to the expiry of the Application validity period, the Contracting Authority may request the Applicants to extend the Application validity period.
- 14.3 The request and the responses will be made in writing.
- 14.4 An extension of the Application validity period will not entitle an Applicant to modify its application.



PART B. PREPARATION AND SUBMISSION OF APPLICATIONS

15. NUMBER OF APPLICATIONS

- 15.1 Each Applicant will be permitted to submit only 1 (one) Application for the Project, and a Member will be permitted to be part of only 1 (one) Consortium. An Applicant who submits or participates in more than 1 (one) Application for the Project will cause all the Applications with the Applicant's participation to be disqualified. A Member who participates in more than 1 (one) Consortium will cause the Applications submitted by Consortia of which it is a part to be disqualified.
- 15.2 It is hereby clarified that an Affiliate of an Applicant or a Member will not be entitled to submit another Application either individually or as a Member of a Consortium, as the case may be. Any Affiliate of an Applicant or Member who submits or participates in more than 1 (one) Application for the Project will cause all the Applications with the Applicant's, Member's, or Affiliate's participation to be disqualified.

16. LANGUAGE OF APPLICATION AND CORRESPONDENCE

- 16.1 The Application prepared by the Applicant and all correspondence and documents related to the Application exchanged by the Applicant and the Contracting Authority will be in English.
- 16.2 Any document furnished by the Applicant may be in another language, as long as such document is accompanied by an English translation, in which case, for purposes of interpretation of the Application, the English translation will take precedence. If any document submitted by an Applicant is in a language other than English, then the English translation must be certified by the authorized signatory of the Applicant. Supporting materials which are not translated into English or certified in accordance with this Clause 16.2 may not be considered by the Contracting Authority.

17. APPLICATION DUE DATE

- 17.1 The Application will be submitted on or before the date and time specified in the Qualification Schedule and the same may be amended by the Contracting Authority, at its sole discretion, from time to time.
- 17.2 The Contracting Authority may, at its discretion and for any reason, extend the Application Due Date for all the Applicants by issuing an Addendum in accordance with Clause 9 above, in which case, all rights and obligations of the Contracting Authority and the Applicants will, thereafter, be subject to the Application Due Date as extended.

- 17.3 The Applications received by the Contracting Authority after the specified time on the Application Due Date will not be eligible for consideration and will be summarily rejected.

18. SUBMISSION OF APPLICATION

18.1 Physical/ Online Submission

- (a) Each Applicant will submit its Application in physical form or through email. The password protected technical proposal shall be shared on both below email addresses:
chspppproject@mtrh.go.ke and procurement@pppkenya.go.ke

The applicants shall be required to share the password in response to the email from the above email ids requesting for the password prior to opening.

In case the bidder is making the hardcopy submission, it shall comprise 1 (one) original version and 1 (one) copy, at the address specified in Clause 18.2 below, by the Application Due Date. The Application will comprise the documents set out below, in a sequential manner, which shall be duly paginated:

- (i) Application letter in the format set out in **Annexure 1**;
- (ii) Description of the Applicant, and in the case of a Consortium, of each of the Members, in the format set out in **Annexure 2**;
- (iii) Checklist for physical/ online submission of documents comprising the Application in the format set out at **Annexure 3**;
- (iv) Power of attorney in the format set out in **Annexure 4A**, executed by the Applicant or the Lead Member authorizing the signatory of the Applicant or the Lead Member to commit the Applicant;
- (v) Certificate issued by the statutory auditor of the Applicant or Member or Affiliate, as the case may be, in the format set out in **Annexure 5A**, certifying the Net Worth of the Applicant or Member or Affiliate, as the case may be;
- (vi) In case of a Consortium, the aggregate Net Worth of the Members in the format set out in **Annexure 5.1A**;
- (vii) Certificate issued by the statutory auditor of the Applicant or

Member or Affiliate, as the case may be, in the format set out in **Annexure 5B**, certifying the Average Annual Turnover of the Applicant or Member or Affiliate, as the case may be;

- (viii) In case of Consortium, the Average Annual Turnover of the Members in the format set out in **Annexure 5.1B**;
- (ix) Certificate issued by the statutory auditor of the Applicant or Member or Affiliate, as the case may be, in the format set out in **Annexure 5C**, certifying the net profitability of the Applicant or Member or Affiliate, as the case may be;
- (x) Details of the Technical Capacity for which the Bidder is claiming experience in instructions and formats specified for each of the technical criteria specified in **Annexure 6A**;
- (xi) For each project for which the Applicant is claiming experience, documents evidencing that the project has been completed in accordance with Clause 4.2 above and also as mentioned in **Annexure 6A**;
- (xii) If applicable, certificate issued by a statutory auditor certifying the relationship of the Applicant (or in case of a Consortium, the relevant Member) with the Affiliate(s) whose: (A) experience is being relied upon to demonstrate Technical Capacity; and/or (B) Financial Capacity, in the format set out in **Annexure 6B**;
- (xiii) If applicable, a certificate from its statutory auditor certifying the percentage of equity share capital held by the Applicant or in case of a Consortium, the relevant Member in the incorporated company undertaking the project as on the commercial operations date of such project and/or the percentage of the capital expended towards the project and/or the percentage of the payments received from the project (as against the total project/contract value) by the Applicant or in case of a Consortium, the relevant Member, in the format set out in **Annexure 7**;
- (xiv) If applicable, an undertaking from an Affiliate whose credentials are utilized to demonstrate an Applicant's Technical Capacity, in the format set out in **Annexure 8A**;
- (xv) If applicable, an undertaking from an Affiliate whose credentials are utilized to demonstrate an Applicant's Financial Capacity, in



the format set out in **Annexure 8B**;

- (xvi) Self-declaration regarding non-engagement in any corrupt and fraudulent practices, in the format set out in **Annexure 11**;
 - (xvii) Self-declaration regarding non-debarment, in the format set out in **Annexure 12**;
 - (xviii) Unconsolidated/consolidated annual audited financial statements, as the case may be, of the Applicant (including profit and loss statements) and Affiliate(s) (if applicable) for the relevant Financial Years preceding the Application Due Date. If annual audited financial statements for the last Financial Year are not available, then the Applicant will submit the annual unaudited financial statements of the last Financial Year along with the undertaking in accordance with Clause 4.3(f) above;
 - (xix) Notarized copies of the certificate of incorporation, memorandum of association, and articles of association. If the Bidder is a Consortium, then each Member will submit notarized copies of its certificate of incorporation, memorandum of association, and articles of association; and
 - (xx) Tax compliance certificate in accordance with Clause 4.1 above.
- (b) If the Applicant is a Consortium, then in addition to the documents set out above, it will be required to submit the following documents:
- (i) Power of attorney in the format set out at **Annexure 4B**, executed by the Members of the Consortium authorizing the Lead Member of the Consortium to act on behalf of, and commit, the Consortium; and
 - (ii) Declaration of Association in the format set out at **Annexure 9**.

18.2 Other submission requirements

- (a) Each Applicant will submit its Application in physical form or through email. The password protected technical proposal shall be shared on both the email addresses below:
chspppproject@mtrh.go.ke and procurement@pppkenya.go.ke
“In case the bidder is submitting the hardcopy documents, the below conditions need to be followed”:
- (a) The documents will need to be duly sealed in an envelope, which will

be super-scribed as follows:

**" DEVELOPMENT OF AN ULTRA-MODERN MEDICAL TRAINING
COMPLEX PROJECT FOR THE MOI TEACHING AND REFERRAL
HOSPITAL ON PPP BASIS"**

- (b) Sealed envelope containing the Application will clearly indicate the name, address, and contact details of the Applicant or the Lead Member (in the case of a Consortium).
- (c) The sealed envelope for the Application will either be hand delivered or sent by registered post acknowledgement due or courier to the address below:

**Chief Executive Officer
Moi Teaching and Referral Hospital
P.O. Box 3-30100, Eldoret, Kenya
Tel: 0532033471/4 +254722209795**

- (d) Any interlineations, erasures or overwriting will be valid only if they are signed by the authorized signatory of the Applicant/Lead Member. In case of any discrepancy between the values mentioned in figures and in words, the value mentioned in words will prevail.
- (e) If the envelope is not sealed, marked, and submitted as instructed in this Clause 18, the Contracting Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.
- (f) Submission of the Application documents by an Applicant to any address other than the above-mentioned address will not be considered for evaluation.
- (g) Submission of the Application documents by fax, telex, telegram, will not be entertained and will be rejected.
- (h) The Contracting Authority will not be responsible for any delays, loss, or non-receipt of any Application.

19. COST AND CURRENCIES OF APPLICATION

- 19.1 The Applicants will bear their own costs associated with or relating to the preparation and submission of their Applications, including copying, postage, delivery charges, and expenses associated with any presentations which may be required by the Contracting Authority, or any other costs incurred in connection with, or relating to, their Applications, including any costs incurred in conducting any due diligence. All such costs and expenses will be borne by the Applicants and the Contracting Authority, and their employees and advisors will not be liable in any manner whatsoever for such costs and expenses, regardless of the conduct or outcome of the Bid Process.



19.2 All amounts in the Application should be stated in KSHs.

20. **SIGNING OF APPLICATION**

20.1 The electronic and physical copies of the Application will be signed by the authorized signatory of the Applicant and in the case of an Application submitted by a Consortium, it will be signed by the Lead Member's authorized signatory.

21. **SUBSTITUTION/ WITHDRAWAL OF APPLICATIONS**

21.1 An Applicant may substitute or withdraw its Application after submission at any time prior to the time specified for the submission of Applications on the Application Due Date. No Application will be substituted or withdrawn or altered by the Applicant on or after the time specified for the submission of Applications on the Application Due Date. Provided that if the Applicant is a Consortium, then only the Lead Member will be permitted to substitute or withdraw the Application.

21.2 The Applicant may substitute or withdraw the Application by e-mailing a scanned copy of a letter addressed to the same authority, to which it was submitted, citing reasons for substitution or withdrawal, as the case may be.

21.3 The Applicant will also deliver the original substitution or withdrawal letter/notice to the Contracting Authority to substitute or withdraw the physical copy of the Application submitted to the Contracting Authority.

21.4 The substitution or withdrawal notice will be prepared, sealed, marked, and delivered in accordance with Clause 18 above, with the envelopes being additionally marked "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

21.5 Any alteration/modification in the Application or additional information supplied after the specified time on the Application Due Date, unless the same has been expressly sought for by the Contracting Authority, will be disregarded.

21.6 If the Contracting Authority receives a substitution notice from an Applicant before the specified time on the Application Due Date, then the Applicant will be allowed to substitute its original Application, which will be returned unopened.

21.7 If the Contracting Authority receives a withdrawal notice before the specified time on the Application Due Date, then the Contracting Authority will return the Application to such Applicant unopened.

PART C. OPENING AND EVALUATION OF APPLICATIONS

22. OPENING OF APPLICATIONS

- 22.1 The Contracting Authority will open only those Applications that are submitted on or before the time specified for the submission of Applications on the Application Due Date. If any Application is received after the time specified for submission of Applications on the Application Due Date, it will be rejected.
- 22.2 The Contracting Authority will open the Applications at the time and on the date specified in the Qualification Schedule at the following address:
**“Moi Teaching and Referral Hospital
P.O. Box 3-30100, Eldoret, Kenya”**
- 22.3 The Applications will be opened as per time and date mentioned in the qualification schedule. The bidder may choose to be present at above address physically at the time of EOI opening. However, the contracting authority will circulate the virtual meeting link for the bidders to be present online during the EOI opening.
- 22.4 If the specified date for opening the Applications is declared a holiday in the Contracting Authority's office, then the Applications will be opened at the same specified time and location on the next Business Day, or such other date as may be notified by the Contracting Authority.
- 22.5 The Contracting Authority will prepare a record of the opening of the Applications that will include, as a minimum, the names of the Applicants from whom Applications have been received. The Applicants' representatives who are present will be requested to sign the record. The omission of an Applicant's representative's signature on the record will not invalidate the contents and effect of the record. Non-attendance by an Applicant of the Application opening will not be a cause for delay or impact in any other way the opening of the Application.
- 22.6 Once all the Applications have been opened, they will be evaluated for responsiveness and to determine whether the Applicants are pre-qualified to participate in the Bid Stage. The procedure for evaluation of the Applications is set out under Clause 23 below.
- 22.7 The pre-qualification of Applicants will be entirely at the discretion of the Contracting Authority. The Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bid Process or selection will be given.
- 22.8 Any information contained in an application will not in any manner be construed as binding on the Contracting Authority, its agents, successors, or assigns, but will be binding on the Applicant.

23. DETERMINATION OF RESPONSIVENESS AND EVALUATION OF APPLICATIONS

- 23.1 The Contracting Authority will examine the Applications to determine whether they are complete, whether the documents have been properly signed, and whether the Applications are generally in order. If any Applicant is found to be disqualified in accordance with the terms of this REOI or if any Application/EOI is found to be non-responsive or not meeting the Technical Capacity or the Financial Capacity, the Application will be rejected by the Contracting Authority and not included for further consideration. No request for alteration, modification, substitution, or withdrawal will be entertained by the Contracting Authority in respect of such Application.
- 23.2 At the first instance, the Application/ EOI will be evaluated to determine responsiveness to this REOI. An Application will be considered responsive only if:
- (a) the Application and all documents specified in Clause 18 above are received in the prescribed format;
 - (b) the Application is received by the time specified for the submission of the Applications on the Application Due Date;
 - (c) it is signed, sealed, and marked as stipulated in Clause 18 above;
 - (d) it contains all the information and documents (complete in all respects) as requested in this REOI; and
 - (e) it does not contain any condition or qualification.
- 23.3 The Contracting Authority will evaluate and determine whether the Applicants who have submitted responsive Application/ EOI, satisfy the Eligibility Criteria and Qualification Criteria set out in Section II.
- 23.4 In order to determine whether the Applicant satisfies the Eligibility Criteria and Qualification Criteria, the Contracting Authority will review the documentary evidence of the Applicant's eligibility and qualifications submitted by the Applicant and any additional information which the Contracting Authority seeks from the Applicant.
- 23.5 Where any information provided by an Applicant is found to be patently false or amounting to a material misrepresentation, the Contracting Authority reserves the right to reject the Application submitted by such Applicant.
- 23.6 If any information furnished by the Applicant is found to be incomplete or contained in formats other than those specified in this REOI, the Contracting Authority may, in its sole discretion, exclude the relevant information for the



purposes of determining whether the Applicant will meet the Technical Capacity or Financial Capacity. Alternatively, the Contracting Authority may request the Applicant to submit necessary information or documentation in accordance with Clause 24.1 below, within the specified time, to rectify non-material omissions in the Application related to documentation requirements. If an Applicant does not provide clarifications sought under this Clause within the prescribed time, the provisions of Clause 24.2 below will be applicable. The Contracting Authority, in its sole discretion and without incurring any obligation or liability, also reserves the right, at any time, to waive any minor infractions or discrepancies in the Applications.

24. CLARIFICATION ON APPLICATIONS

- 24.1 To facilitate evaluation of the Applications, the Contracting Authority may, in its sole discretion, seek clarifications from any Applicant regarding its Application. Such clarification(s) will be provided within the time specified by the Contracting Authority for this purpose. Any request for clarification(s) and all response(s) to such clarification(s) will be sent via email at the email addresses specified. Any clarification submitted by an Applicant that is not in response to a request by the Contracting Authority may not be considered.
- 24.2 If an Applicant does not provide clarifications and/or any additional information sought under Clause 24.1 above within the prescribed time, its Application may be liable for rejection. If the Application is not rejected, the Contracting Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant will be barred from subsequently questioning such interpretation of the Contracting Authority.



PART D. QUALIFICATION AND BIDDING

25. QUALIFICATION AND NOTIFICATION

- 25.1 After the completion of evaluation of the Applications, the Contracting Authority will notify the pre-qualified Applicants, who will be eligible for participation in the Bid Stage. At the same time, the Contracting Authority would notify the other Applicants that they have not been pre-qualified. The Contracting Authority is not bound to entertain any query or clarification from the Applicants who fail to qualify.

26. SUBMISSION OF BIDS

- 26.1 The Contracting Authority will issue the RFP to, and invite only, the pre-qualified/ shortlisted Applicants to submit their Bids for award of the Project.



FORMATS: ANNEXURE 1

FORMAT OF APPLICATION LETTER

[On the letterhead of the Applicant/Lead Member]

Place:

Date:

To,
Chief Executive Office,
Moi Teaching and Referral Hospital
P.O. Box 3-30100, Eldoret,
Kenya

Sub: Application for the Development of an ultra-modern medical training complex project for the Moi Teaching and Referral Hospital on PPP basis

Dear Sir/Madam,

Please find enclosed our application in respect of the abovementioned project and complying with the Request for Expression of Interest (**REOI**) issued by the MTRH Board (**Contracting Authority**) dated 1st July 2025. This Application/ EOI is valid for 180 days from the Application Due Date or such extended period as may be requested by the Contracting Authority in accordance with the terms of the REOI.

We hereby confirm the following:

1. The Application is being submitted by _____⁵ (***name of the Applicant/Lead Member***), who is the [Applicant/Lead Member] [of the Consortium comprising _____, _____, and _____ (***mention the names of the entities who are Members***)]⁶, in accordance with the terms and conditions stipulated in the REOI.
2. This statement is made for the express purpose of pre-qualifying as a Bidder for among other things, the development of CHS project in accordance with the REOI. We hereby enclose our Application with formats duly signed and/or executed as requested by you in accordance with the REOI for your consideration.
3. We have examined in detail and have understood the terms and conditions stipulated for qualification of an Applicant in the REOI issued by the

⁵ All blank spaces will be suitably filled up by the Applicant to reflect particulars relating to such Applicant

⁶ To be deleted for a single entity Applicant.



Contracting Authority. We agree and undertake to abide by all these terms and conditions. Without prejudice to the generality of the foregoing, we acknowledge that we have received, reviewed, and understood the REOI issued by the Contracting Authority. We acknowledge and agree to submission of an unconditional Application. To the extent that there are any conditions mentioned in our Application, such conditions are, notwithstanding anything to the contrary, hereby deemed to be unconditionally and irrevocably revoked.

4. We hereby unconditionally and irrevocably agree and accept that decisions made by the Contracting Authority in relation to any matter regarding or arising out of the REOI will be binding on us. We hereby expressly waive any and all claims in respect of the Bid Process.
5. We acknowledge that the Contracting Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualifying the Applicant for participating in the Bid Stage for implementing the Project, and we certify that all information provided in the Application (including the annexures) is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals and all documents are strictly as per the requirements set out in the REOI. We acknowledge that we would be solely responsible for any errors or omissions in our Application.
6. We acknowledge that the Contracting Authority has the right to reject our Application if, among other things:
 - (a) At any time, a material misrepresentation is made or uncovered; or
 - (b) We do not provide, at the time specified by the Contracting Authority, any clarifications or supplemental information sought by the Contracting Authority for the evaluation of our Application.

If, it is found during the Bid Process, at any time before signing the Project Agreement or after its execution, and while it is in force, that one or more of the Qualification Criteria have not been met by us or that we have ceased to meet such criteria, or that we have made a material misrepresentation or have given materially incorrect or false information, we acknowledge that the Contracting Authority has the right to disqualify us from the Bid Process.

If any of the information provided in the Application is found to be incorrect after the Contracting Authority declares us as the Preferred Bidder, we agree that the same would be treated as an event of default under the Project Agreement and the Contracting Authority will have the right to terminate the LOA



and/or the Project Agreement, as the case may, and exercise any other rights available to it whether under the Project Agreement or otherwise.

7. We will make available to the Contracting Authority any additional information or documentation it may find necessary or require to supplement or authenticate the Application.
8. We acknowledge the right of the Contracting Authority to reject our Application and we hereby waive, to the extent permitted by Applicable Laws, our right to challenge the same on any account whatsoever.
9. We acknowledge the right of the Contracting Authority not to pre-qualify any Applicant and we hereby waive, to the extent permitted by Applicable Laws, our right to challenge the same on any account whatsoever.
10. We represent, warrant, and certify that in the [10 (Ten)] Financial Years for technical qualifying criteria and [3 (Three)] Financial Years for the financial qualifying criteria immediately preceding the Application Due Date, we (including any Affiliate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project) have not been affected by any of the following circumstances:
 - (a) Failed to perform any contract, as evidenced by the imposition of a penalty by an arbitral or judicial authority or arbitration award or a judicial pronouncement against such Applicant or Member or an Affiliate, as the case may be;
 - (b) Been expelled from any project or contract by the Government or any of its instrumentalities;
 - (c) Had any contract terminated by the Government or any of its instrumentalities for breach by such Applicants or Member, as the case may be;
 - (d) Been categorized as a willful defaulter in accordance with the laws of the country of its incorporation.
 - (e) Been admitted into corporate insolvency resolution process under the laws of the country of its incorporation.
 - (f) Entered into any compromise with its creditors, or been subject to proceedings for being wound up, or having its affairs administered or conducted by any court, administrator, or receiver.
 - (g) Been declared by a court or other competent authority as being unable to pay its debts or having had the repayment of its debts suspended.



- (h) Been convicted or otherwise being found responsible (including our directors, partners, trustees, officers, or managers convicted or being found responsible) by any court, tribunal, regulatory, public, or other competent authority for a breach of any laws or regulations which:
- Related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation, or other payment was levied against us, or our respective directors, partners, trustees, officers, or managers;
 - Resulted in the permanent or temporary suspension of our rights to provide any service or carry on any type of business or operations.
11. We represent, warrant, and certify that we (including any Affiliate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project) have not been determined to be ineligible by the World Bank under the Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD loans and IDA credits and grants.
12. We represent, warrant, and certify that we (including any Affiliate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project) are not included as a debarred person on the public sanctions list of any multilateral development
13. We represent, warrant, and certify that we (including any Affiliate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project) are not included in any sanctions lists promulgated by the United Nations Security Council or its Committees, or any other recognized international sanctions list or has operations (directly or through any subsidiary) or carries out transactions that are not in compliance with the sanctions promulgated by the United Nations Security Council or its Committees.
14. We declare that:
- (a) We have examined and have no reservations to the REOI and do not seek any deviations to the REOI, including any Addenda issued by the Contracting Authority.
 - (b) We do not have any Conflict of Interest in accordance with Clause 3.3 of the REOI; and
 - (c) We hereby represent, warrant, and certify that we have taken steps to ensure that, in conformity with the provisions of the REOI and submission of the Application/ EOI, no person acting for us or on our behalf has engaged in any corrupt practice, fraudulent practice, coercive



practice, undesirable practice, or restrictive practice.

15. We understand that the Contracting Authority may cancel the Bid Process at any time and that the Contracting Authority is neither bound to accept any Application that it may receive nor to invite the pre-qualified Applicants to submit a Bid for the Project, without incurring any liability to the Applicants, in accordance with the terms of the REOI.
16. The [Applicant/Consortium of which we are the Lead Member], satisfies the legal requirements and in our opinion by [itself/along with its Members] and through any Affiliate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project meets all the Qualification Criteria laid down in the REOI.
17. We declare that we, [our members]⁷, and our Affiliates are not submitting separate Applications for the Project.
18. We declare that we are not submitting more than one Application for the Project.
19. We further represent, warrant, and certify that no investigation by a regulatory authority is pending either against us or against our chief executive officer or any of our directors/managers/employees, which could have a material adverse effect on our ability to undertake the Project (including, through the SPV).

We believe that in case due to any change in facts or circumstances during the Bid Process, we attract the provisions of disqualification in terms of the provisions of the REOI, we will inform the Contracting Authority of the same immediately.

20. In the event of us being declared as the Preferred Bidder for the Project, we acknowledge and undertake to: (a) enter into the Project Agreement in accordance with the provisions of the bidding documents (including the RFP); (b) incorporate the SPV which will execute a Deed of Novation in the format set out in the Project Agreement for undertaking the Project (c) comply with Clause 3.2 of the REOI in relation to the following Lock-in Restrictions and Change in Ownership:
 - (a) The Lead Member will hold at least 51% (fifty one percent) of the total Equity Contribution and voting rights of the SPV until the third anniversary of the commercial operation date of the Project; and without prejudice to Clause 3.2(b).
 - (b) Include a statement to the effect that all members of the Consortium shall

⁷ To be deleted for a single entity Applicant.
EOI: MTRH/EOI/63/2024-25

be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement

21. We agree and undertake to abide by all the terms and conditions of the REOI.
22. We have studied the REOI, and all other information provided carefully. We understand that except to the extent expressly set forth in the REOI, we will have no claim, right, or title arising out of any documents or information provided to us by the Contracting Authority or in respect of any matter arising out of, or concerning or relating to, the Bid Process including the award of the Project.
23. [A Power of Attorney, issued by *[insert details of the other Consortium Members here]* (in their capacity as Consortium Members), appointing and authorizing the Lead Member to sign the Application related documents and committing the Consortium in respect of the Project is included as a part of the Application.⁸
24. A Power of Attorney from the [Applicant/Lead Member] authorizing *[insert here details of persons authorized to sign under the Power of Attorney on behalf of the Applicant/Lead Member]* as the authorized representative, signatory, and contact person who is authorized to perform all tasks including but not limited to providing information, responding to queries, entering into contractual commitments on behalf of the Applicant etc., in respect of the Project is included as a part of the Application.
25. We certify that, in terms of the application/ EOI:
 - (a) [Our]/ [the Consortium's]/ [and our Affiliate's] Net Worth as of the last Financial Year prior to the Application Due Date is KSHs [●] (Kenyan Shillings in words).
 - (b) [Our]/[the Consortium's]/[and our Affiliate's] Average Annual Turnover in the last 3 (three) Financial Years immediately preceding the Application Due Date is KSHs [●] (Kenyan Shillings in words) for the Financial Year [●], KSHs [●] (Kenyan Shillings in words) for the Financial Year [●], and KSHs [●] (Kenyan Shillings in words) for the Financial Year [●];
 - (c) In last 3 (three) Financial Years immediately preceding the Application Due Date, [we]/[the Consortium]/[and our Affiliate] have/has recorded a net profit of KSHs [●] (Kenyan Shillings in words) for the Financial Year [●], KSHs [●] (Kenyan Shillings in words) for the Financial Year [●], and KSHs [●] (Kenyan Shillings in words) for the Financial Year [●]; and

⁸ To be deleted for a single entity Applicant.
EOI: MTRH/EOI/63/2024-25



- (d) [Our]/ [the Consortium's]/ [and our Affiliate's] have not incurred any cash loss or/ and insolvency, bankruptcy in the last three financial years
26. We certify that we have the Legal Capacity, Technical Capacity, and Financial Capacity to undertake the Project.
27. We agree and understand that the Application is subject to the provisions of the REOI. In no case will we have any claim or right against the Government and the Contracting Authority if the Project is not awarded to us or our Application is not opened/rejected.
28. We have submitted all the relevant information as per the formats specified in the REOI, including submissions as required under Clause 18 of the REOI.
29. Our application will remain valid for a period of not less than 180 days from the Application Due Date or such other period as may be requested by the Contracting Authority in accordance with the terms of the REOI.
30. Capitalized terms used herein will have the meanings ascribed to them in the REOI.

For and on behalf of:

Signature :

(Authorized Signatory)

Name of the Person: Designation :



ANNEXURE 2

DESCRIPTION OF THE APPLICANT

[On the letterhead of the Applicant/Lead Member]

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Principal address:
 - (d) Date of incorporation and/or commencement of business:
2. Brief description of the Applicant including details of its main lines of business:
[Note: Such description will not exceed 3 (three) type-written pages.]
3. Details of individual who will serve as the point of contact/communication for the Contracting Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Telephone Number:
 - (e) E-mail Address:
 - (f) Fax Number:
4. In the case of a Consortium:
 - (a) The information above (1-3) should also be provided for all the Members of the Consortium, in a tabular form.
 - (b) Additional information regarding each Member of the Consortium should be provided as per table below:

S. No.	Name of Member	Proposed percentage holding in the total Equity Contribution of the SPV
1.		
2.		
3.		



For and on behalf of:

Signature :

(Authorized Signatory)

Name of the Person:

Designation:



ANNEXURE 3

CHECKLIST FOR SUBMISSION

[On the letterhead of the Applicant/ Lead Member]

Name of Applicant [/Lead Member]⁹

[Names of the other Members:]¹⁰

Status of the Applicant: [Single entity/Consortium]

S. No.	Document	Format	Issued by	Mode of submission (physical/ online)	To be submitted for	Provided
1.	Application letter	1	Applicant/ lead member	Physical submission including one original version and one copy OR online submission	Na	[provided / not provided]
2.	Description of applicant/ members	2	Applicant/ lead member		Na	[provided / not provided]
3.	Power of attorney for the authorized signatory	4A	Applicant/ lead member		Na	[provided / not provided]

⁹ To be deleted if applicant is single

¹⁰ To be deleted if applicant is single



S. No.	Document	Format	Issued by	Mode of submission (physical/ online)	To be submitted for	Provided
4.	Certified true copy of board or shareholders' resolution/ power of attorney in favor of the person executing the power of attorney.	NA	Applicant/ lead member		Na	[provided / not provided]
5.	Certificate of Net Worth	5A	Statutory auditor of applicant/ member/ affiliate		Applicant member or affiliate	[provided / not provided]
6.	Format setting out aggregate net worth (in case of a consortium, and if applicable)	5.1A	Lead member		Members	[provided / not provided]
7.	Certificate of Average Annual Turnover	5B	Statutory auditor of applicant/ member/ affiliate		Applicant member or affiliate	[provided / not provided]
8.	Format setting out Average Annual turnover (in case of a consortium, and if applicable)	5.1B	Lead member		Members	[provided / not provided]
9.	Certificate of net profitability (to be submitted by each member separately)	5C	Statutory auditor of applicant/ member/ affiliate		Applicant Each member	[provided / not provided]



S. No.	Document	Format	Issued by	Mode of submission (physical/ online)	To be submitted for	Provided
10.	Details of Technical Capacity	6A	Applicant		Na	[provided / not provided]
11.	Completion certificate	NA	Relevant project owner /client		Each project for which the applicant is claiming experience	[provided / not provided]
12.	Financing documents or development/ construction contract for demonstrating construction cost	NA	Relevant lender/ Project owner/ client		Each project for which the applicant is claiming experience	[provided / not provided]
13	Statutory auditor certificate verifying the details of the work order/ completion certificate/ concession agreement provided by the bidder	NA	Statutory auditor		Each project for which the applicant is claiming experience	[provided / not provided]



S. No.	Document	Format	Issued by	Mode of submission (physical/ online)	To be submitted for	Provided
14.	Certificate of the relationship of the applicant (or in case of a consortium, the relevant member) with the affiliate	6B	Statutory auditor of applicant/relevant member		Each affiliate whose technical capacity or financial capacity is being relied upon (if applicable)	[provided / not provided]
15.	Certificate of percentage of the cost expended/ received by the applicant (or in case of a consortium, the relevant member), in implementing the development project This annexure to be developed separately for each of the consortium members. The annexure should include the details of all the projects that are being showcased against clause 4.3 (a) (iii)	7	Statutory auditor of applicant/ relevant member		Applicant or relevant member	[provided / not provided]
16.	Authorization and Undertaking from affiliate	8A	Applicant's/ member's affiliate		Applicant or relevant member	[provided / not provided]



S. No.	Document	Format	Issued by	Mode of submission (physical/ online)	To be submitted for	Provided
17.	Authorization and Undertaking from affiliate	8B	Applicant's/ member's affiliate		Applicant or relevant member	[provided / not provided]
18.	Unconsolidated annual audited financial statements for the relevant financial years preceding the application due date Or If the annual audited financial statement for the last financial year is not available, the annual unaudited financial statement for the last financial year along with an undertaking	NA	Statutory auditor of applicant/member		Applicant and affiliate(s) whose financial capacities being relied on (if Applicable)	[provided / not provided]
19.	Provide bank statement/ bank letter certifying no cash loss/ bankruptcy/ insolvency during the last three financial years	NA	Applicant/ member		Applicant and affiliate(s) whose financial capacities is being relied on (if Applicable)	[provided / not provided]
20.	Notarized copy of certificate of incorporation	NA	Applicant/ member		Applicant or each member	[provided / not provided]



S. No.	Document	Format	Issued by	Mode of submission (physical/ online)	To be submitted for	Provided
21.	Notarized copy of memorandum of association	NA	Applicant/ member		Applicant or each member	[provided / not provided]
22.	Notarized copy of articles of association	NA	Applicant/ member		Applicant or each member	[provided / not provided]
23.	Tax compliance certificate	NA	Relevant statutory authorities/ statutory auditor of applicant/ member		Applicant or each member	[provided / not provided]
24.	Power of Attorney for the lead member	4B	Only for Consortium Each member other than lead member		In favor of the lead member	[provided / not provided]
25	Certified true copy of the board or shareholders' resolution/power of attorney in favor of the person executing the power of attorney	NA	Only for Consortium Each member other than lead member		Na	[provided / not provided]
26.	Certified true copy of board resolution for appointment of the lead member	NA	Only for Consortium Each member other than lead member		In favor of the lead member	[provided / not provided]



S. No.	Document	Format	Issued by	Mode of submission (physical/ online)	To be submitted for	Provided
27.	Declaration of Association	9	Only for Consortium All members		NA	[provided / not provided]
28.	Certified true copy of board resolution for execution of the Declaration of Association	NA	Only for consortium Each member		In favor of the signatories to the Declaration of Association	[provided / not provided]
29.	Self-declaration regarding non-engagement in fraud and corrupt practices	11	Applicant/lead member		Applicant or each member	[provided / not provided]
30	Self-declaration regarding non- debarment	12	Applicant/lead member		Applicant or each member, each affiliate whose technical capacity or financial capacity is being relied upon (if applicable)	[provided / not provided]

For and on behalf of:
Signature :
(Authorized Signatory)
Name of the Person:
Designation:



ANNEXURE 4A

FORMAT OF THE POWER OF ATTORNEY TO BE EXECUTED BY THE APPLICANT OR THE LEAD MEMBER OF CONSORTIUM

POWER OF ATTORNEY

By this deed,

.....
HEREBY IRREVOCABLY NOMINATE, CONSTITUTE, APPOINT, AND AUTHORISE
.....

.....(Attorney)

as the true and lawful attorney for the purpose of (including all such acts, deeds, and things as are necessary or required in connection with or incidental to) the submission of our application (**Application**) for pre-qualification and, if declared as pre-qualified, submission of our bid (**Bid**) for the development of an ultra-modern medical training complex project for the Moi Teaching And Referral Hospital on PPP basis by the Moi Teaching and Referral Hospital Board (**Contracting Authority**) on a public private partnership basis (**Project**) and with the powers hereinafter expressed that is to say to sign and submit all the documents comprising the Application/Bid and other documents and writings, participate in investor consultations and other conferences and providing information/responses to the Contracting Authority, representing us in all matters before the Contracting Authority, signing and execution of all contracts including the Project Agreement and undertakings consequent to acceptance of the Application/Bid, and generally dealing with the Contracting Authority in all matters in connection with, or relating to, or arising out of, the Application/Bid for the Project and/or upon award of the Project to us.

AND WE HEREBY EXPRESSLY DECLARE that the foregoing powers are to be construed not strictly but in the widest sense.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds, and things done or caused to be done by the Attorney pursuant to, and in exercise of, the powers conferred by this Power of Attorney and that all acts, deeds, and things done by the Attorney in exercise of the powers hereby conferred will and will always be deemed to have been done by us.

IN WITNESS WHEREOF we have hereunto executed this deed this day of Two Thousand and Twenty [●].



Signatures or left thumb mark

Instructions:

- (1) *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents or articles of association (whichever is applicable) of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- (2) *Wherever required, the Applicant should submit for verification, the extract of the charter documents or articles of association (whichever is applicable) and documents such as the certified true copy of a board or shareholders' resolution/power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- (3) *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Embassy of the Republic of Kenya and notarized in the jurisdiction where the Power of Attorney is being issued.*



ANNEXURE 4B

FORMAT OF THE POWER OF ATTORNEY TO BE EXECUTED BY THE MEMBERS OF A CONSORTIUM

POWER OF ATTORNEY

By this deed,

.....
HEREBY IRREVOCABLY NOMINATE, CONSTITUTE, APPOINT, AND AUTHORISE
.....

...

..... (Attorney)

to be our true and lawful attorney for the purpose of (including all such acts, deeds, and things as are necessary or required in connection with or incidental to) submission of the Consortium's (comprising us and [*insert name of the Members other than the Member executing this Power of Attorney*]) application (**Application**) pursuant to our Declaration of Association dated [*insert date*] for pre- qualification and, if declared as pre-qualified, submission of our bid (**Bid**) with the joint bidding agreement (with the same consortium members and the same shareholding structure as submitted in the declaration of association) for the development of an ultra-modern medical training complex project for the Moi Teaching And Referral Hospital Board (**Contracting Authority**) on a public private partnership basis (**Project**) and with the powers hereinafter expressed that is to say to sign and submit all documents comprising the Application/ Bid and other documents and writings, participate in investor consultations and other conferences and providing information/responses to the Contracting Authority, representing us in all matters before the Contracting Authority, signing and execution of all contracts including the Project Agreement and undertakings consequent to acceptance of the Application/- Bid and generally dealing with the Contracting Authority in all matters in connection with, or relating to, or arising out of, the Application/Bid for the Project and/or upon award of the Project to us.

AND WE HEREBY EXPRESSLY DECLARE that the foregoing powers are to be construed not strictly but in the widest sense.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds, and things done or caused to be done by the Attorney pursuant to, and in exercise of, the powers conferred by this Power of Attorney and that all acts, deeds, and things done by the Attorney in exercise of the powers hereby conferred will and will always be deemed to have been done by us.

IN WITNESS WHEREOF we have hereunto executed this deed this day of Two



Thousand and Twenty [●].

Signatures or left thumb mark

Instructions:

- (1) *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents or articles of association (whichever is applicable) of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- (2) *Also, wherever required, the Members should submit for verification the extract of the charter documents or articles of association (whichever is applicable) and documents such as the certified true copy of a board or shareholders' resolution/power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Member of the Consortium.*
- (3) *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Embassy of the Republic of Kenya and notarized in the jurisdiction where the Power of Attorney is being issued.*



ANNEXURE 5A

FORMAT FOR NET WORTH CERTIFICATE

[On the letterhead of the statutory auditor]

Based on the financial statements of [*insert name of the Applicant/Member/Affiliate*] [(Affiliate of [•])] and other published information authenticated by it, this is to certify that:

As on [*insert date*], the [Applicant's/Member/Affiliate's] Net Worth for Financial Year [•] is KSHs [•] (Kenyan Shillings [•]).

The Net Worth of the [Applicant/Member/Affiliate] has been calculated in accordance with the terms set out in the Request for Expression of Interest (**REOI**) issued by the Moi Teaching and Referral hospital on [•].

Name of the auditor

Seal of the auditor

Signature:

Name:

Membership Number:

Designation:

Date:



ANNEXURE 5.1A

FORMAT FOR AGGREGATE NET WORTH IN CASE OF CONSORTIUM

[On the letterhead of the Lead Member]

Based on the Net Worth certificates issued by the statutory auditors of **[(insert name of each Member whose Financial Capacity is being relied upon)]**, we have set out below the aggregate Net Worth of each such Member for the Financial Year [●]:

Entity (Applicant/ Member, as applicable)	Amount in a currency other than KSHs (if applicable)	Conversion date (if applicable)	Amount in KSHs
Lead Member	[●]	[●]	[●]
Member 2	[●]	[●]	[●]
Member 3	[●]	[●]	[●]
Net Worth (aggregate amount)			[●]

For and on behalf of: Signature:

(Authorizes signatory)

Name of the Person:

Designation:



ANNEXURE 5B

FORMAT FOR AVERAGE ANNUAL TURNOVER CERTIFICATE

[On the letterhead of the statutory auditor]

Based on the financial statements of [*insert name of the Applicant/Member/Affiliate*] [(Affiliate of [●])] and other published information authenticated by it, this is to certify that:

As on [*insert date*], the [Applicant's/Member/Affiliate's] Annual Turnover for:

- (a) Financial Year [●] is KSHs [●] (Kenyan Shillings [●]);
- (b) Financial Year [●] is KSHs [●] (Kenyan Shillings [●]); and
- (c) Financial Year [●] is KSHs [●] (Kenyan Shillings [●]);

Thus, the [Applicant's/Member/Affiliate's] Average Annual Turnover for the Financial Years [●], [●] and [●] is KSHs [●] (Kenyan Shillings [●]).

The Average Annual Turnover of the [Applicant/Member/Affiliate] has been calculated in accordance with the terms set out in the Request for Expression of Interest (**REOI**) issued by the Moi Teaching and Referral hospital on 1st July 2025.

Name of the auditor

Seal of the auditor:

Signature:

Name:

Membership Number:

Designation:

Date:



ANNEXURE 5.1B

FORMAT FOR AVERAGE ANNUAL TURNOVER IN CASE OF CONSORTIUM

[On the letterhead of the Lead Member]

Based on the Average Annual Turnover certificates issued by the statutory auditors of **[(insert name of each Member whose Financial Capacity is being relied upon)]**, we have set out below the Average Annual Turnovers of each such Member for their selected 3 (three) Financial Years:

Entity (Applicant/ Member, as applicable)	Relevant Financial Years	Annual revenue as per relevant Financial Years in KSHs (if applicable)	Annual revenue as per relevant Financial Years in a currency other than KSHs (if applicable)	Conversion date (if applicable)	Average Amount in KSHs for 3 Financial Years
Lead Member	(a) [●] (b) [●] (c) [●]	[●] [●] [●]	[●] [●] [●]	[●]	[●]
Member 2	(a) [●] (b) [●] (c) [●]	[●] [●] [●]	[●] [●] [●]	[●]	[●]
Member 3	(a) [●] (b) [●] (c) [●]	[●] [●] [●]	[●] [●] [●]	[●]	[●]
	Aggregate Amount				[●]

For and on behalf of :

Signature :

(Authorized Signatory)

Name of the Person :

Designation :



ANNEXURE 5C

FORMAT FOR NET PROFIT CERTIFICATE

[On the letterhead of the statutory auditor]

Based on the financial statements of [*insert name of the Applicant/Member/Affiliate*] [(Affiliate of [●])] and other published information authenticated by it, this is to certify that: As on [*insert date*], the [Applicant's/Member/Affiliate's] net profit for:

- (a) Financial Year [●] is KSHs [●] (Kenyan Shillings [●]);
- (b) Financial Year [●] is KSHs [●] (Kenyan Shillings [●]); and
- (c) Financial Year [●] is KSHs [●] (Kenyan Shillings [●]).

The net profitability of the [Applicant/Member/Affiliate] has been calculated in accordance with the terms set out in the Request for Expression of Interest (**REOI**) issued by the Moi Teaching and Referral Hospital on 1st July 2025.

Name of the auditor

Seal of the auditor:

Signature:

Name:

Membership Number:

Designation:

Date:



ANNEXURE 6A

DETAILS OF TECHNICAL CAPACITY OF THE APPLICANT

[On the letterhead of the Applicant/Lead Member]

- *Bidder must have successfully completed at least 2 similar building projects/ real estate project (preferably mixed use) in last 10 years immediately preceding the application due date. Completion certificate and statutory auditor certificate to be provided for the projects being showcased to qualify under the above criteria. Details to be provided in a table showcasing the project name, project details, cost of construction, ownership in the project, project completion year, client contact details.*
- *Bidder must have completed at least 2 projects of minimum 10,000 square meter each built up area each in last 10 years immediately preceding the application due date. Completion certificate and statutory auditor certificate to be provided for the projects being showcased to qualify under the above criteria. Details to be provided in a table showcasing the project name, project details, cost of construction, ownership in the project, project completion year, client contact details.*
- *Bidder must have experience of undertaking facility management for operations & maintenance of a mixed-use/ real estate project in last 10 years immediately preceding the application due date: Work order/ Concession agreement and statutory auditor certificate to be provided for the projects being showcased to qualify under the above criteria. Details to be provided in a table showcasing the project name, project details, cost of operation and maintenance/ facility management (project undertaken for other company, government organization or private project undertaken by the bidder), ownership in the project, project initiation and completion year, client contact details.*
- *Bidder must showcase the experience of leasing the commercial units in the mixed use/real estate development project in the last 10 years immediately preceding the application due date : Copy of lease agreements/ documentary evidence (Email exchanges/ letters etc.)/ Legal letter pertaining to the involvement of the bidder in leasing of the commercial units in the projects (at least one for each of the project) to be provided for the projects being showcased under the criteria. Details to be provided in a table showcasing the project name, project details, project initiation and completion year.*
- *Bidder must demonstrate experience in executing projects under PPP mode in the last 10 years immediately preceding the application due date: Copy of the mandate letter and PPP agreement (pages highlighting project name, contracting authority and the private party, along with the PPP clause) for the projects being showcased under PPP mode. Details to be provided in a table showcasing the project name, project details, project cost, role of bidder in the project, project initiation year, completion year and client contact details*
- *Bidder must demonstrate experience in raising finances for project under PPP mode or non- recourse or limited recourse project finance in the last 10 years immediately preceding the application due date: The bidder should provide the*



copy of agreement with the lead lender along with letter of financial closure

- *Bidder to showcase experience of in-house architectural and engineering team: Short bios of the team members relevant for the design and development of the subject PPP project, self-undertaking on the letter head of the lead member/ consortium mentioning the details of the staff members that have been showcased to be working in the organization from last two years*
- *Bidder should showcase their accessibility to construction equipment and qualified manpower to undertake a project of such magnitude: Self-undertaking on the letter head of the lead member/ consortium mentioning the details of the equipment and the total technically qualified manpower available as on the last financial year immediately preceding the application due date.*
- *Bidder to provide a concept note (maximum 3 pages) showcasing their understanding of the project and how they plan to implement the project*

For and on behalf of:

Signature :

(Authorized Signatory)

Name of the Person :

Designation :



ANNEXURE 6B

AUDITOR'S CERTIFICATE REGARDING AFFILIATE

[On the letterhead of the statutory auditor]

Based on the authenticated record of the [*insert name of Applicant/relevant Member/Affiliate*], this is to certify that:

[At least 51% (fifty one per cent) of the voting shares of [consortium SPV] is held, directly or indirectly, by [*insert name of Lead Member*]

By virtue of the aforesaid, the latter exercises control over the former, who is an Affiliate.

OR

[(Describe the shareholding of the Applicant/relevant Member and the Affiliate. In the event the Affiliate is under common Control with the Applicant/relevant Member or the Control is exercised by operation of law or contract, the relationship may be suitably described and similarly certified herein.)]

Name of the auditor

Seal of the auditor:

Signature:

Name:

Membership Number:

Designation:

Date:



ANNEXURE 7

AUDITOR'S CERTIFICATE FOR PROJECT COST

[On the letterhead of the statutory auditor]

Based on [its financial statements and other] published information authenticated by it, this is to certify that [(insert name of the Applicant/Member/Affiliate)] had undertaken the development of [(insert title of the project)] and [expended as capital an amount of (insert amount of capital expended) (insert amount of capital expended in words)] **OR** [received payments of (insert amount of payment received) (insert amount of payment received in words)] which constitutes [●]% of the total project/contract value.

Name of the auditor

Seal of the auditor:

Signature:

Name:

Membership Number:

Designation:

Date:



ANNEXURE 8A

AUTHORISATION AND UNDERTAKING FROM AFFILIATE

[On the letterhead of the Affiliate]

To,

Dated:

[Insert Designation]

[•]

Dear Sir,

Sub: Development of an Ultra-modern medical training complex project for the Moi Teaching and Referral Hospital on PPP basis

We refer to the REOI dated *[•]* issued by you for the Project ultra-modern medical training complex project for the Moi Teaching and Referral Hospital on PPP basis.

We confirm that:

- (a) ***[Insert name of the Applicant/Member of Consortium]*** has been authorized by us to use our technical experience, set out in the Application submitted by ***[Insert name of Applicant/Member of Consortium]***, to meet the Qualification Criteria set out in Clause 4.2 of the REOI; and
- (b) we have not authorized any entity other than ***[Insert name of Applicant/Consortium Member]*** to use or rely on our technical experience for the purposes of meeting the Qualification Criteria set out in Clause 4 of the REOI.

For and on behalf of*[Insert Name of Affiliate]*

[Signature and stamp of the authorized signatory]

Name:

Date:

Place:



ANNEXURE 8B

AUTHORISATION AND UNDERTAKING FROM AFFILIATE

[On the letterhead of the Affiliate]

To,

Dated:

[Insert Designation]

Dear Sir,

Sub: Development of an ultra-modern medical training complex project for the Moi Teaching and Referral Hospital on PPP basis Project

We refer to the REOI dated [1st July 2025] issued by you for the Project ultra-modern medical training complex project for the Moi Teaching and Referral Hospital on PPP basis.

We confirm that:

- (a) ***[Insert name of the Applicant/ Member of Consortium]*** has been authorized by us to use our financial experience, set out in the Application submitted by ***[Insert name of Applicant/ Member of Consortium]***, to meet the Qualification Criteria set out in Clause 4.3 of the REOI; and
- (b) We have not authorized any entity other than ***[Insert name of Applicant/Consortium Member]*** to use or rely on our financial experience for the purposes of meeting the Qualification Criteria set out in Clause 4 of the REOI.

For and on behalf of**[Insert Name of Affiliate]**

[Signature and stamp of the authorized signatory]

Name:

Date:

Place:



ANNEXURE 9

FORMAT OF DECLARATION OF ASSOCIATION FOR CONSORTIUM

(To be Notarized by Legal Attorney)

THIS DECLARATION OF ASSOCIATION is entered into on this [●] day of [●] 202[●].

AMONGST

1. [●], with its registered office at [●] (referred to as **Member 1** which expression will, unless repugnant to the context include its successors and permitted assigns);

AND

2. [●], with its registered office at [●] (referred to as **Member 2** which expression will, unless repugnant to the context include its successors and permitted assigns);

AND

3. [●], with its registered office at [●] (referred to as **Member 3** which expression will, unless repugnant to the context include its successors and permitted assigns);

The above-mentioned parties namely Member 1, Member 2, Member 3 are collectively referred to as the **Parties** and each is individually referred to as a **Party**.

WHEREAS

- (A) The Moi Teaching and Referral Hospital (referred to as the **Contracting Authority** which expression will, unless repugnant to the context or meaning thereof, include its successors and assigns) has invited applications (**Applications**) by its Request for Expression of Interest dated [1st July 2025] (**REOI**) for selection of bidder(s) for captioned project on PPP basis (**Project**).
- (B) The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the REOI and other bidding documents in respect of the Project.
- (C) The REOI stipulates that the Applicants qualifying on the strength of a Consortium will submit a legally enforceable Declaration of Association in a format specified in the REOI, whereby the Members of the Consortium undertake to be liable for their respective equity investment commitment in



the SPV and undertake to submit the performance bank guarantees as required as per the provisions of the REOI, as specified herein.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and interpretations

In this Declaration of Association, the capitalized terms will, unless the context otherwise requires, have the meaning ascribed thereto under the REOI.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (**Consortium**) for the purposes of jointly participating in the Bid Process for the Project.

2.2 The Parties hereby undertake to participate in the Bid Process only through this Consortium and not individually and/or through any other consortium constituted for participating in the Bid Process. The Parties further undertake that none of their respective Affiliates will participate in the Bid Process either directly or indirectly through any other consortium.

2.3 We, the Members of the Consortium and Parties to the Declaration of Association do hereby unequivocally agree that [*insert name of the Lead Member (Member 1)*], will act as the Lead Member as defined in the EOI for itself and agent for and on behalf of [*insert name of Member 2*], [*insert name of Member 3*].

2.4 The Lead Member is hereby authorized by the Members of the Consortium and Parties to the Declaration of Association to bind the Consortium and receive instructions, for and on behalf of, all the Members of the Consortium.

2.5 The Lead Member will be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all their respective equity obligations. Each Member of the Consortium further undertake to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this Declaration of Association.

2.6 Notwithstanding anything to the contrary contained in this Declaration of Association, by applying and a Bid as a Consortium, each Member agrees to be jointly and severally responsible and liable for all matters relating to the Application/Bid and the Project as envisaged under the REOI, the RFP,



and the other bidding documents.

3. Declaration as Preferred Bidder

The Parties hereby undertake that in the event the Consortium is shortlisted for the REOI stage, they will submit a joint bidding agreement (following the same shareholding structure of the consortium members as submitted with the EoI) at the RFP stage. If they pass the RFP stage and are chosen as the Preferred Bidder and are awarded the Project, the Parties will perform all obligations applicable to the Preferred Bidder contained in the REOI and the RFP, in order to conclude the Bid Process at the earliest possibility, including, without limitation, complying with all requirements of the LOA in a timely manner.

4. Proposed Equity Contribution

4.1 Without prejudice to the lock-in restrictions contained in the REOI and the RFP, the percentage of equity holding of each Member of the Consortium in the SPV will be/is as follows:

NAME	%OF EQUITY HOLDING
MEMBER 1 (LEAD MEMBER)	
MEMBER 2	
MEMBER 3	
TOTAL EQUITY	[●]%

5. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Member 1 will be the Lead Member of the Consortium and will have the power of attorney from all the Parties for conducting all business, for and on behalf of, the Consortium during the Bid Process and until the Effective Date under the Project Agreement when all the obligations of the SPV will become effective;
- (b) Member 2 will be [●];
- (c) Member 3 will be [●];



6. Representations and Warranties of the Parties

Each Party represents, warrants, and undertakes to the other Party as of the date of this Declaration of Association that:

- (a) Such Party is duly organized, validly existing, and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Declaration of Association ;
- (b) The execution, delivery, and performance by such Party of this Declaration of Association has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favor of the person executing this Declaration of Association for the delegation of power and authority to execute this Declaration of Association on behalf of the Member of the Consortium is annexed to this Declaration of Association, and will not, to the best of its knowledge:
 - (i) Require any consent or approval not already obtained;
 - (ii) Violate any applicable law presently in effect and having applicability to it;
 - (iii) Violate the memorandum and articles of association, by-laws, or other applicable organizational documents;
 - (iv) Violate any clearance, permit, concession, grant, license, or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture, or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) Create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances, or obligations to create a lien, charge, pledge, security interest, encumbrances, or mortgage in, or on the property of, such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Declaration of Association.
- (c) There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently



affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Declaration of Association.

7. General

7.1 This Declaration of Association will be construed and interpreted in accordance with the laws of the Republic of Kenya and Kenyan courts at the [●] alone will have the exclusive jurisdiction in all matters relating thereto and arising hereunder.

7.2 It is hereby clarified that any Member may procure the bid security, as stipulated in the RFP once the bidder gets shortlisted, on behalf of the Consortium.

7.3 It is further expressly agreed that this Declaration of Association will be irrevocable and remain in full force for the entire duration of the Project in accordance with the Project Agreement. If the consortium is shortlisted at the EOI stage, the consortium members will submit the Joint Bidding Agreement (with the same consortium members and the same shareholding structure - as mentioned in the declaration of association submitted at the EOI stage) at the RFP stage. This Joint Bidding Agreement will be irrevocable and remain in full force for the entire duration of the Project in accordance with the Project Agreement in case the Project is awarded to the Consortium. However, in case the Consortium is not selected for the award of the Project, this Declaration of Association and Joint Bidding Agreement will stand terminated.

7.4 The Members are authorized and will be fully responsible for the accuracy and veracity of the representations and information submitted by the Members of the Consortium respectively from time to time in response to the REOI and the RFP for the purposes of the Bid Process.

7.5 No Party will assign or delegate its rights, duties, or obligations under this Declaration of Association except with the prior written consent of the Contracting Authority.

7.6 Each Party hereby represents and warrants that this Declaration of Association:

7.6.1 Has been duly executed and delivered on behalf of each Party hereto and constitutes the legal, valid, binding, and enforceable obligation of each



such Party;

7.6.2 Sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof; and

7.6.3 May not be amended or modified or terminated except in writing signed by each of the Parties and with the prior written consent of the Contracting Authority.

[Signature page follows]



IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS DECLARATION AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED For and on behalf of MEMBER 1 by:	SIGNED, SEALED AND DELIVERED For and on behalf of MEMBER 2 by:	SIGNED, SEALED AND DELIVERED For and on behalf of MEMBER 3 by:
(Signature) (Name) (Designation) (Address)	(Signature) (Name) (Designation) (Address)	(Signature) (Name) (Designation) (Address)
In presence of 1. (Signature) (Name) 2. (Signature) (Name)		

Note:

1. *The mode of the execution of the Declaration of Association should be in accordance with the procedure, if any, laid down by applicable law and the charter documents of the executant(s).*



ANNEXURE 10

INSTRUCTIONS TO ACCESS THE TENDERS ON WEBSITES OF MTRH AND PPPD

REOI can be downloaded free of charge by accessing link on - MTRH website (<https://www.mtrh.go.ke>), PPPD website (<https://pppkenya.go.ke>), National Treasury website (<https://treasury.go.ke>) and Government tenders portal (<https://www.tenders.go.ke>). Bidders must note submissions are to be done online or in hardcopy.



ANNEXURE 11

SELF DECLARATION THAT THE APPLICANT HAS/WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE

[On the letterhead of the Applicant/Lead Member]

I,, being a resident ofin the Country
...do hereby make a statement as follows:

1. THAT I am the Authorized Signatory of (insert name of the Applicant/Lead Member) who is [an Applicant/the Lead Member of a Consortium comprising the following Members: (a) [●]; (b) [●]; and (c) [●] in respect of **REOI No.....** for (*insert tender title/description*) for (*insert name of the Procuring entity*) and am duly authorized and competent to make this statement.
2. THAT the aforesaid [Applicant/Lead Member and each other Members forming part of the Consortium] and its Directors have not, directly or indirectly, or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice, or restrictive practice, as defined in Clause 3.4 of the REOI, in respect of any tender or request for proposal issued by or any agreement entered into with the Contracting Authority, and have not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of (*insert name of the Procuring entity*) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of (*name of the procuring entity*).
4. THAT the aforesaid [Applicant/Lead Member and each other Members forming part of the Consortium], and/or its Directors, and/or its servants and/or its agents and/or its subcontractors will not engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice, or restrictive practice, as defined in Clause 3.4 of the REOI, while undertaking the Project, if selected.
5. THAT the aforesaid [Applicant/Lead Member and each other Members forming part of the Consortium], and/or its Directors undertake to commit to abide by the highest standards of ethics as prescribed under applicable laws during the Bid Process and while undertaking the Project (if selected).



6. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

.....
(Title) (Signature) (Date)

Applicant's Official Stamp



ANNEXURE 12

SELF DECLARATION THAT THE APPLICANT IS NOT DEBARRED UNDER APPLICABLE LAWS

[On the letterhead of the Applicant/ Lead Member]

I,, being a resident of
..... in the Country do hereby make a statement as follows:

1. THAT I am the Authorized Signatory of (*insert name of the Applicant/ Lead Member*) who is [an Applicant/ the Lead Member of a Consortium comprising the following Members: (a) [●]; (b) [●]; and (c) [●] in respect of REOI No. for (*insert tender title/description*) for (*insert name of the Procuring entity*) and am duly authorized and competent to make this statement.
2. THAT the aforesaid [Applicant/ Lead Member and each other Members forming part of the Consortium], its Directors, or its Affiliates whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project have not been debarred from participating in any procurement proceeding or being awarded any contract under applicable laws, and no such bar subsists on the Application Due Date.
3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

.....
(Title)

.....
(Signature)

.....
(Date)

Applicant's Official Stamp