



NATIONAL HOUSING CORPORATION, KENYA

REQUEST FOR QUALIFICATION (RFQ)

FOR

**THE DEVELOPMENT OF AN AFFORDABLE HOUSING PROJECT AT MOMBASA
ROAD, STONI ATHI ESTATES, MACHAKOS COUNTY, KENYA ON PUBLIC PRIVATE
PARTNERSHIP (PPP) BASIS**

TENDER NO.: NHC/TECH-PPP/006/2024-25

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Disclaimer

The information contained in this RFQ, 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 RFQ, and such other terms and conditions subject to which such information is provided.

This RFQ is neither an agreement nor an offer by the Contracting Authority to the Applicants or any other Person. The purpose of this RFQ 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 RFQ 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 RFQ 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 RFQ. The assumptions, assessments, statements, and information contained in this RFQ 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 RFQ. The information provided in this RFQ 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 RFQ.

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 RFQ, the Data Room or otherwise, including the accuracy, adequacy, correctness, completeness, or reliability of this RFQ, or the information provided in the Data Room, and any assessment, assumption, statement, or information contained in this RFQ, or the Data Room, or deemed to form part of this RFQ, 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 RFQ, 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 RFQ, and/or the Data Room.

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 RFQ, and/or the Data Room.

The issue of this RFQ 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 RFQ, 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 RFQ.
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.
Affordable Housing Program	means the Kenya Affordable Housing Program launched by the Government, as amended from time to time.
AHD/AH Development	means the design, financing, engineering, fabrication, development, construction, completion, marketing, allotment, and sale and/or transfer of the AHD Assets, in accordance with the Project Requirements and the Project Agreement.
AHU/AH Units	means the affordable housing units comprising 1 (one), 2 (two) or 3 (three) bedroom typologies to be designed, financed, engineered, fabricated, developed, constructed, completed, marketed, allotted, sold and transferred/handed over in accordance with the terms of the Project Agreement, and include the Contracting Authority AH Units.
AHD Area	means, with respect to the Site, the area for construction of the AHD Assets, which is indicated in the Site Details and will be described in greater detail in the Site Layout Plan.
AHD Assets	means, collectively, the AHU and the Infrastructure Facilities.
AHD Completion Certificate	means the certificate issued by the Contracting Authority to the ProjectCo to certify completion of construction of each phase of the AHD Assets on the Site, in accordance with the Project Agreement.
AHD Completion Date	means the date on which the AHD Completion Certificate is issued to the ProjectCo by the Contracting Authority in accordance with the Project Agreement.
AHU Price	has the meaning ascribed to it in Clause 1.8(e).
Annexure	means an annexure to this RFQ.
Annual Turnover	means the gross revenue recognised in the profit and loss account of a Person during a Financial Year, as per such Person's audited financial statements.
Appendix	means an appendix to this RFQ.
Applicable Law(s)	means the Constitution of the Republic of Kenya and any and all laws, enacted or brought into force and effect, by the Government or any other Government authority having jurisdiction over the Contracting Authority, the ProjectCo, 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 RFQ, and the exercise, performance, and discharge of the respective rights and obligations of the Contracting Authority, the Applicants, the Bidders, and/or the ProjectCo, hereunder.
Applicant	means an interested Person or a Consortium which submits an Application to the Contracting Authority in accordance with this RFQ 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 RFQ, 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 2.9.
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 Selected Bidder on the terms and conditions set out in this RFQ and the RFP. The Bid Process has commenced with the issuance of this RFQ and will end on the date that the Project Agreement and the Subscription and Shareholders' Agreement (along with all other ancillary project agreements) are executed by the ProjectCo in accordance with the terms of the RFP.
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 and the Subscription and Shareholders' Agreement (along with all other ancillary project agreements) are executed by the ProjectCo.
Bidder	means an Applicant that is pre-qualified in accordance with this RFQ and that is issued the RFP as contemplated by this RFQ.
Business Day	means a day other than a Saturday, Sunday, or a public holiday in the Republic of Kenya.
Clause	means a clause of this RFQ.
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	mean a combination of Persons that have formed a consortium or association by fulfilling the requirements set out in this RFQ, including executing a Joint Bidding Agreement, for the purpose of participating in the Bid Process and for implementing the Project, if such consortium or association is declared as the Selected Bidder.
Contracting Authority	means the National Housing Corporation, Government of Republic of Kenya.
Contracting Authority AH Units	has the meaning ascribed to it in Clause 1.8(c).
Control	means, with respect to a Person: <ul style="list-style-type: none"> (a) the ownership, directly or indirectly, of more than 50% (fifty 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.
Data Room	means the virtual data room set up by the Contracting Authority
Defects Liability Period	means: <ul style="list-style-type: none"> (a) with respect to each AHU and MRU, a period of 12 (twelve) months from the date of issue of the certificate of occupation (as issued under Applicable Laws) with respect to such AHU or MRU; and (b) 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 ProjectCo or the Contracting Authority, as the case may be, 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 KES representing the paid up share capital of the ProjectCo, 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 ProjectCo; 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.
e-Procurement Portal	means the e-Procurement Portal of the Contracting Authority available at the following URL: https://tenders.go.ke/tenders
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.
Housing Act	means the Housing Act, Cap 117of the Laws of Kenya, as amended from time to time, including any regulations issued thereunder.
Housing Policy	has the meaning ascribed to it in Clause 1.3.
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 AH Units and the MRU to

	ensure that each AH Unit and MRU is capable of being connected to the Main Utilities Network, and such other systems and works to be financed, constructed, and installed by the ProjectCo 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 that participate in the Bid Process in accordance with this RFQ, in the format set out in Annexure 9 .
KES	means Kenyan Shilling, 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 26% (twenty six percent) of the total Equity Contribution and voting rights of the ProjectCo until the timelines specified in Clause 3.2(b)(ii)(A) below; and (b) is authorised 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 Joint Bidding Agreement.
Legal Capacity	has the meaning ascribed to it in Clause 4.1.
Lessee	has the meaning ascribed to it in Appendix A .
Lessor	has the meaning ascribed to it in Appendix A .
LOA	means the letter of award that will be issued by the Contracting Authority to the Selected 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 ProjectCo at the Site in accordance with the Project Agreement, for the ProjectCo to connect the Infrastructure Facilities with the Main Utilities Network.
ManagementCo	has the meaning ascribed to it in Clause 1.8(i).
Market Rate Unit(s)/ MRU	means the market rate units comprising either 3 (three) or 4 (four) bedrooms maisonettes or middle-high end apartments, to be designed, financed, engineered, fabricated, developed, constructed, marketed, allotted, sold and transferred in accordance with the terms of the Project Agreement.
Member	means a member of a Consortium.
Minimum Prescribed AH Units	has the meaning ascribed to it in Clause 1.8(d).
Minimum Prescribed MRU	has the meaning ascribed to it in Clause 1.8(d).

MRU Area	means, with respect to the Site, the portion/area of such Site provided to the ProjectCo to construct the MRU, which is indicated in the Site Details and will be described in greater detail in the Site Layout Plan.
MRU Development	means the design, financing, engineering, fabrication, development, construction, completion, marketing, allotment, and sale and/or transfer of the MRU (along with the related Infrastructure Facilities) in accordance with the Project Requirements and the Project Agreement.
Net Worth	means: (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; and (b) in the context of a fund, the committed capital available for immediate deployment based on their latest unqualified audited financial statements.
OwnCo	has the meaning ascribed to it in Clause 1.8(h).
Person	mean any individual, Company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organisation, or any other legal entity.
PPP	means public-private partnership.
PPP Act	means the Public Private Partnership Act, 2021, as amended from time to time, including any regulation issued thereunder.
Project	means, collectively, the AH Development and the MRU Development.
Project Agreement	means the project development agreement to be executed between the Contracting Authority and the Selected 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 ProjectCo by executing the deed of accession in the format set out in the Project Agreement.
Project Information Memorandum	means the information memorandum prepared by the Contracting Authority in relation to the Project and provided in the Data Room as part of this RFQ.
Project Requirements	means the broad technical requirements, parameters and specifications for the AH Development and MRU Development, as will be prescribed by the Contract Authority in the Project Agreement, which the ProjectCo must comply with during the construction and completion of the Project.
ProjectCo	means an SPV incorporated by the Selected Bidder under the Companies Act to implement the Project.

Qualification	has the meaning ascribed to it in Clause 2.1.
Qualification Criteria	means the qualification criteria set out in this RFQ 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 2.9, 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 RFQ to Applicants, and that will end on the date that the pre-qualified Applicants are notified that they have been pre-qualified for issuance of the RFP.
RFP	means the request for proposals which will be issued to the Bidders during the Bid Stage.
RFQ	means this request for qualification dated 26th November 2024 along with its schedules, annexures, any Addenda, or clarifications issued by the Contracting Authority in accordance with the terms of this RFQ and any other documents (including the Project Information Memorandum) provided by the Contracting Authority pursuant to this RFQ, as may be modified, amended, and clarified from time to time, by the Contracting Authority.
Section	means a section of this RFQ.
Selected 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 ProjectCo.
Shareholder Loans	means any and all unsecured and subordinated loans provided to the ProjectCo by any Shareholder and/or its Affiliates.
Site	means the site identified for the Project, as described in the Site Details, Project Agreement, and the Project Information Memorandum.
Site Details	means the details, specifications, indicative/reference Site plan and other information regarding the Site, as set out in Appendix A .
Site Layout Plan	means, for the Site, the detailed plan to be prepared by the ProjectCo and approved by the Contracting Authority in accordance with the terms of the Project Agreement.
SPV	means a special purpose vehicle incorporated under the provisions of the Companies Act.
Subscription and Shareholders' Agreement	means the subscription and shareholders' agreement to be executed by the Selected Bidder, the ProjectCo, and the Contracting Authority in accordance with the terms of the RFP and the Project Agreement.
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.
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SECTION I

INTRODUCTION

1. BACKGROUND

- 1.1 Kenya's affordable housing sector suffers from a deficit of approximately 200,000 (two hundred thousand) housing units. Rapid urbanization, migration from rural to urban areas, rising land prices, high construction and development costs coupled with liquidity constraints are some of the key factors which have contributed to the shortage of affordable housing units for the lower income segment in Kenya, which accounts for the highest demand for housing units.
- 1.2 According to the National Housing Corporation's strategic plan (2023-2027), Kenya's population is projected to increase to 55.8 (fifty-five point eight) million by 2028 from 50.8 (fifty point eight) million in 2022. The labour force (15 – 64 years) is expected to increase to 35.1 (thirty-five point one) million by 2028 from 30.4 (thirty point four) million in 2022, which will only increase the demand for affordable housing.
- 1.3 To bridge the housing gap, the Government issued the National Housing Policy 2016 (**Housing Policy**) with a view to attract private investment in the affordable housing sector to provide low-cost housing (including housing for rental purpose) to affordable housing beneficiaries. Further, the Government launched the Affordable Housing Program in 2017, which aims at delivering 50,000 (fifty thousand) affordable housing units annually in major urban areas across Kenya. Affordable housing is a priority sector for the Government and the provision of sustainable housing to Kenyans is included as a key objective in the Kenya Vision 2030.
- 1.4 Given the constraints faced by the Government in mobilising funds for the housing sector and other challenges involved in delivering quality affordable housing to Kenyans, the Government wishes to partner with and leverage the private sector to finance, develop, and deliver sustainable housing to Kenyans.
- 1.5 The Contracting Authority (i.e., the National Housing Corporation) is a Government corporation established under Section 3 of the Housing Act, Cap 117 of the Laws of Kenya (**Housing Act**).
- 1.6 With a view to further the objectives set out in the Affordable Housing Program and the Housing Policy, the Contracting Authority seeks to develop and deliver at least 2,820 (two thousand eight hundred twenty) AH Units under a public private partnership (**PPP**) arrangement on 23 (twenty-three) acres of land leased to the Contracting Authority by the Government, situated at Mombasa Road, Stoni Athi Estate, Machakos (**Site**).

The details of the Site, including its location, land type, basic infrastructure facilities and other features are provided in a Data Room.

- 1.7 Some of the objectives that the Contracting Authority wishes to achieve through the Project include the following:
 - (a) to partner with the private sector to address the shortage of affordable housing in urban areas in Kenya;

- (b) to leverage private sector expertise and capital to deliver quality and sustainable housing for Kenya's low to middle income market segments;
- (c) to promote the PPP model for investment in housing; and
- (d) to support sustainable mixed-income housing development to meet the needs of all socio-economic groups and vulnerable groups.

1.8 The main features of the Project are set out below:

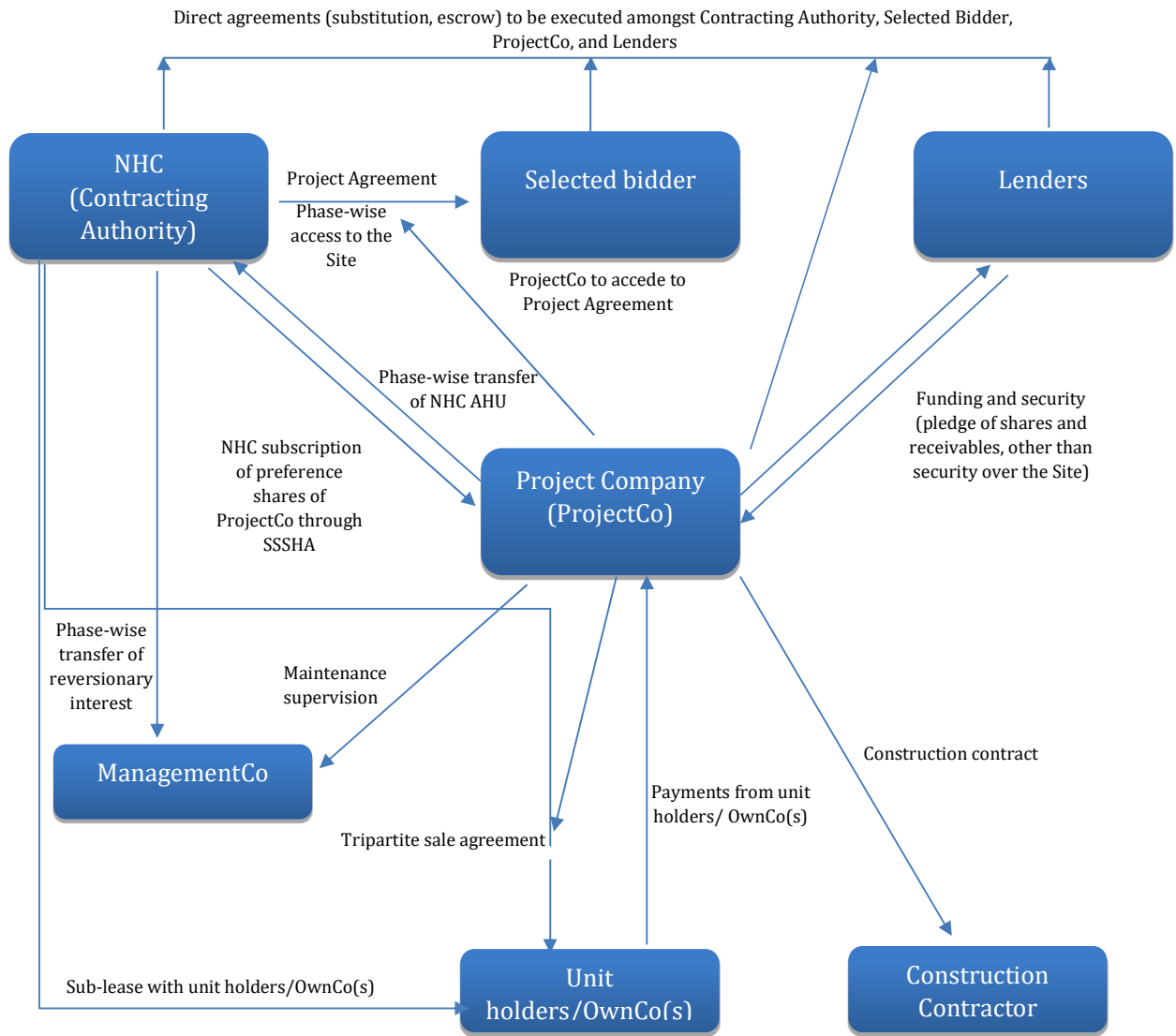
- (a) The Project comprises: (i) the development (design, financing, engineering, fabrication, construction, completion, marketing, allotment, sale and transfer/handover) of a minimum number of affordable housing residential units (**AH Units**) along with corresponding Infrastructure Facilities (*as defined above*) (collectively, the **AHD Assets**) over a portion of the Site (*as defined above*) (**AHD Area**) (such development being the **AH Development**); and (ii) the development (design, financing, engineering, fabrication, construction, completion, marketing, allotment and sale and transfer) of a minimum number of market rate residential units (**Market Rate Unit/MRU**) along with corresponding Infrastructure Facilities (collectively, the **MRU Development**) over the balance portion of the Site (**MRU Area**), in 2 (two) phases. Detailed specifications for the AH Development and the MRU Development will be provided as part of the technical specifications under the Project Agreement, which will be issued along with the RFP.
- (b) The Contracting Authority will grant the ProjectCo (*as defined below*) access rights to the Site to implement the Project in a phased manner. The ProjectCo will: (i) design, finance, develop, and construct the AHU; (ii) market the AHU (other than the Contracting Authority AH Units (*as defined below*)); and (iii) handover the Contracting Authority AH Units to the Contracting Authority, under the terms of the Project Agreement (*as defined below*). The AHU will be sold and transferred by the Contracting Authority and the ProjectCo along with a proportionate interest in the Infrastructure Facilities to either unit holders or the OwnCo(s) (*as defined below*), and the ProjectCo will appropriate the revenues/proceeds from sale of the AHD Assets (other than the Contracting Authority AH Units). The ProjectCo will also design, finance, develop, construct, and market the MRU. The MRU will be sold and transferred by the Contracting Authority and the ProjectCo along with a proportionate interest in the Infrastructure Facilities to either unit holders or the OwnCo(s), and the ProjectCo will appropriate the revenues/proceeds from sale of the MRU Development.
- (c) As part of the Project, the ProjectCo will be required to handover a pre-determined number of pre-identified AH Units to the Contracting Authority (**Contracting Authority AH Units**), free of cost, proportionate to the market value of the Site, as deferred consideration in kind, for grant of phase-wise access to the Site in accordance with the Project Agreement. The ProjectCo will have no right to deal with, and will have no third-party interest, in the Contracting Authority AH Units.
- (d) The Contracting Authority has indicated a minimum number of the AH Units - i.e., 2,820 (two thousand eight hundred twenty) AH Units (including the Contracting Authority AH Units) (**Minimum Prescribed AH Units**) and a minimum number of the MRU - i.e., 200 (two hundred) MRU (**Minimum Prescribed MRU**), which the ProjectCo will be required to construct based on the Contracting Authority's

assessment of the development potential of the Site. The Bidders/ProjectCo may, in its Technical Proposal to be submitted under the RFP and/or in the Site Layout Plan to be submitted under the Project Agreement, propose a higher number of the AH Units and/or MRU that may be constructed on the Site based on the Bidders'/ProjectCo's optimisation of the land use and subject to its market assessment of the demand for additional AH Units and/or MRU. The AH Units (including the Contracting Authority AH Units) to be constructed by the ProjectCo under the Project Agreement must be in the ratio of 25%:50%:25% for the 1-bedroom:2-bedroom:3-bedroom typologies, respectively.

- (e) For each AH Unit (along with a proportionate interest in the Infrastructure Facilities) completed and sold, the ProjectCo will be entitled to receive directly from the unit holders/OwnCo(s) a per-square meter price as determined in accordance with the Bid Process pursuant to the RFP (**AHU Price**). For each MRU (along with a proportionate interest in the Infrastructure Facilities) completed and sold, the ProjectCo will receive directly from the unit holders/OwnCo(s) a per unit sale price as determined by them. The Contracting Authority will not prescribe or regulate the price at which the MRU are sold.
- (f) The ProjectCo will be solely responsible for the identification of beneficiaries/allottees for both the AH Units (except for the Contracting Authority AH Units) and the MRU, and for recovery of the AHU Price or, as the case maybe, the MRU sale price from the allottees.
- (g) The ownership and title over the Site will vest with the Contracting Authority, as head lessee from the Government, at all times during the term of the Project Agreement. The ProjectCo will have a contractual lien over the AH Units (except the Contracting Authority AH Units) and the MRU until transferred to unit holders/OwnCo(s), as the case may be, and over the Infrastructure Facilities until transferred to the ManagementCo (*as defined below*).
- (h) Sale of the AH Units (other than the Contracting Authority AH Units) and the MRU along with proportionate interest in the Infrastructure Facilities will be undertaken directly by the Contracting Authority and the ProjectCo (having a contractual lien over such assets) to either unit holders, or to a single or multiple bulk offtaker(s) (**OwnCo(s)**) in accordance with the Project Agreement and Applicable Laws. Both, the Contracting Authority as well as the ProjectCo (on account of the ProjectCo's contractual lien) will be a party to such sale agreements, under which, the Contracting Authority will consent to the sale of the AHU and/or the MRU, and undertake to: (i) transfer (by way of a separate sublease) the underlying land relating to the AH Units and the MRU to the unit holders/OwnCo(s); and (ii) transfer its proportionate reversionary interest in the primary lease (executed between the Contracting Authority and the Government) to the ManagementCo.
- (i) The ProjectCo will supervise maintenance of the AHD Assets and MRU Development, during the Defects Liability Period (*as defined above*), to be undertaken by third-party property managers appointed by a management company set up by unit holders or the OwnCo(s) to manage and maintain the common facilities (**ManagementCo**).

- (j) The ProjectCo will rectify all defects in workmanship, quality of materials, design, services etc., identified in the AHD Assets and the MRU Development during the Defects Liability Period, in accordance with the Project Agreement.
- (k) For the sake of brevity and understanding, the following schematic setting out the brief of the Project may be referred:

Project Contractual Relationship



1.9 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.

- 1.10 Upon award of the Project, the Contracting Authority and the selected bidder (**Selected Bidder**) will enter into a project development agreement (**Project Agreement**), which will, *inter alia*, provide for formation of a project company as an SPV (**ProjectCo**) to implement the Project. Pursuant thereto, the ProjectCo will accede to the Project Agreement by executing a deed of accession 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 ProjectCo 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.
- 1.11 The Contracting Authority will subscribe to preference shares issued by the ProjectCo against the market value of the Site. As a preference Shareholder, the Contracting Authority will have veto/affirmative voting rights over a list of relevant reserved matters. The preference shares will be proportionately redeemed by the ProjectCo against transfer of the Contracting Authority AH Units to the Contracting Authority. To give effect to this understanding, the Contracting Authority, the Selected Bidder, and the ProjectCo will enter into a subscription and shareholders' agreement (**Subscription and Shareholders' Agreement**). A draft of the Subscription and Shareholders' Agreement will be provided with the RFP.
- 1.12 The statements and explanations contained in this RFQ 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 Selected Bidder/ProjectCo as are set out in the Project Agreement/the Subscription and Shareholders' Agreement or the Contracting Authority's rights to amend, alter, change, supplement, or clarify the scope of work, this RFQ or its terms, or the terms of the Project Agreement/the Subscription and Shareholders' Agreement. Consequently, any omissions, conflicts, or contradictions in this RFQ, 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 declaration of the Selected Bidder for award of the Project. The first stage of the Bid Process (**Qualification Stage**) involves qualification (**Qualification**) of the Applicants in accordance with the provisions of this RFQ. 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 (**Request for Proposals** or **RFP**).
- 2.2 The Applicants will download this RFQ from NHC's Website <https://www.nhckeny.go.ke/currentend.html> and the e-Procurement Portal.(PPIP) Basic instructions on how to use the e-Procurement Portal are set out in **Annexure 10**. This RFQ will appear on the e-Procurement Portal under "All Current Tenders" or can be found using the "Search" function by selecting "Public Private Partnerships" and will be available only until the time specified for submission of Applications on the Application Due Date. The Contracting Authority is not responsible for the completeness of this RFQ, if it is not downloaded directly from NHC's Website <https://www.nhckeny.go.ke/currentend.html> and the e-Procurement Portal (PPIP).
- 2.3 The Contracting Authority will set up the Data Room, which will be open to the Applicants (until the Application Due Date) and the Bidders (until the Bid Due Date). The Contracting

Authority may, from time to time, add to the Data Room such information in connection with the Project as it deems necessary, without having any obligation to notify the Applicants/Bidders of any such addition. The Applicants are invited to familiarise themselves with all such information made available in the Data Room and to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Applications, and, thereafter, for submitting their Bids, if they are pre-qualified. The information provided in the Data Room will be provided only as a preliminary reference point by way of assistance to the Applicants. Nothing provided in the Data Room will be binding on the Contracting Authority and its agents, employees, advisors, or confer any right on the Applicants. The Contracting Authority and its advisors will have no liability whatsoever in relation to, or arising out of, any or all contents of the information provided in the Data Room.

- 2.4 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 for inspecting the Site on any other date prior to the Application Due Date. The Contracting Authority will use reasonable endeavours 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.
- 2.5 In the Qualification Stage, the Applicants are required to furnish all the information specified in this RFQ, and demonstrate their Technical Capacity and Financial Capacity, to implement the Project. The Contracting Authority will receive Applications pursuant to this RFQ 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 2.9 below for submission of Applications (**Application Due Date**) and will be in compliance with 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.
- 2.6 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.

2.7 **Evaluation stages**

Once an Applicant is pre-qualified under the RFQ, 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. Bidders will be required to quote, in their Financial Proposals, the AHU Price (not exceeding a ceiling price set out under the RFP) applicable to the AH Units, which will be the maximum price per square meter at which the AHU will be sold to the unit holders/OwnCo.

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

"Development of Affordable Housing PPP Project: Questions or Request for Additional Information".

The Managing Director/CEO
National Housing Corporation, NHC House,
Aga-Khan Walk P. O. Box 30257-00100 Nairobi Kenya,
Tel: +254 730 749000
Email: info@nhckkenya.go.ke

2.9 **Schedule of Qualification Stage**

The Contracting Authority will endeavour 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:

Sl. No.	Event	Date
1.	Issue of RFQ	26 th November, 2024
2.	Site visit and Pre-Application Meeting	Within 3 (three) weeks of #1 above
3.	Last date for receiving queries from Applicants	2 (two) weeks after #2 above
4.	Last date for issuing response to queries from Applicants issuance of Addendum/revised RFQ	2 (two) weeks after #3 above
5.	Application Due Date and time & Opening of Applications	21st January 2025, 11:00 am EAT
6.	Evaluation of the Applications, Clarifications on the Applications (if any) and the Contracting Authority Approval	Within 15 (fifteen) days of #5 above
7.	Notification of pre-qualified Applicants	3 (three) days after #6 above

SECTION II

ELIGIBILITY AND QUALIFICATION CRITERIA

3. ELIGIBILITY OF APPLICANTS

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 RFQ 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 5 (five);
 - (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 Selected Bidder, during the implementation of the Project;
 - (iv) the Consortium is required to submit a binding and enforceable Joint Bidding Agreement in the format set out in **Annexure 9**, and the Members will not be permitted to amend or terminate the Joint Bidding Agreement, 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 of the Selected Bidder's obligations in relation to the Project until incorporation of the ProjectCo;
 - (vi) the Consortium Members will undertake to, if declared as the Selected Bidder, subscribe and hold the subscribed and paid-up equity share capital of the ProjectCo in the proportion committed by them in **Annexure 9**; and
 - (vii) 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 Selected Bidder, it is required to incorporate an SPV (i.e., the ProjectCo) to implement the Project.

- (b) If the Selected Bidder is a Consortium, then the Members are required to comply with the following conditions with respect to the ProjectCo:
- (i) the Consortium will cumulatively hold at least 51% (fifty one percent) of the total Equity Contribution and voting rights of the ProjectCo until the later of: (A) the expiry of 12 (twelve) months from the date of the completion certificate issued for both phases of the Project in accordance with the terms of the Project Agreement; and (B) where, with respect to any AH Units and/or MRU, any offer letter(s) have been issued but the sale agreement(s) have not been executed, and/or sale agreement(s) have been executed, but the sub-lease(s) for the underlying land have not been executed, the date on which the sub-lease(s) for transfer of the underlying land relating to all such AH Units and MRU to the unit holders/OwnCo(s), in respect of each such offer letter and/or sale agreement, are duly executed, and the mother title is available for registration purposes;
 - (ii) without prejudice to Clause 3.2(b)(i) above,
 - (A) the Lead Member will hold at least 26% (twenty six percent) of the total Equity Contribution and voting rights of the ProjectCo until the later of: (I) the expiry of 12 (twelve) months from the date of the completion certificate issued for both phases of the Project in accordance with the terms of the Project Agreement; and (II) where, with respect to any AH Units and/or MRU, any offer letter(s) have been issued but the sale agreement(s) have not been executed, and/or sale agreement(s) have been executed, but the sub-lease(s) for the underlying land have not been executed, the date on which the sub-lease(s) for transfer of the underlying land relating to all such AH Units and MRU to the unit holders/OwnCo(s), in respect of each such offer letter and/or sale agreement, are duly executed, and the mother title is available for registration purposes; and
 - (B) any Member, other than the Lead Member, whose Technical Capacity and/or Financial Capacity was assessed for the purpose of qualification, will hold at least 15% (fifteen percent) of the total Equity Contribution and voting rights of the ProjectCo until the later of: (I) the expiry of 12 (twelve) months from the date of the completion certificate issued for both phases of the Project in accordance with the terms of the Project Agreement; and (II) where, with respect to any AH Units and/or MRU, any offer letter(s) have been issued but the sale agreement(s) have not been executed, and/or sale agreement(s) have been executed, but the sub-lease(s) for the underlying land have not been executed, the date on which the sub-lease(s) for transfer of the underlying land relating to all such AH Units and MRU to the unit holders/OwnCo(s), in respect of each such offer letter and/or sale agreement, are duly executed, and the mother title is available for registration purposes.
- (c) If the Selected Bidder is a single entity, the Selected Bidder will hold at least 51% (fifty one percent) of total Equity Contribution and voting rights of the ProjectCo until

the later of: (i) the expiry of 12 (twelve) months from the date of the completion certificate issued for both phases of the Project in accordance with the terms of the Project Agreement; and (ii) where, with respect to any AH Units and/or MRU, any offer letter(s) have been issued but the sale agreement(s) have not been executed, and/or sale agreement(s) have been executed, but the sub-lease(s) for the underlying land have not been executed, the date on which the sub-lease(s) for transfer of the underlying land relating to all such AH Units and MRU to the unit holders/OwnCo(s), in respect of each such offer letter and/or sale agreement, are duly executed, and the mother title is available for registration purposes.

- (d) If, after submission of the Application, and until the AHD Completion Date of the last phase of AH Development, any Affiliates of the Applicant/Bidder or any Member, whose credentials have been taken into consideration for determining the Technical Capacity or Financial Capacity, ceases or will cease to be an Affiliate of the Applicant/Bidder or such Member, then, such Applicant/Bidder or Member will seek the approval of the Contracting Authority for such occurrence. If the Contracting Authority is of the view that such occurrence is likely to adversely affect the Technical Capacity or the Financial Capacity of the Applicant/Bidder, then the Contracting Authority may disqualify the Applicant/Bidder from participating in the Bid Process, or, if the Bidder has been declared as the Selected Bidder, withdraw the LOA, and where the Project Agreement has been executed, treat such occurrence as a ProjectCo event of default in accordance with the Project Agreement. While the Contracting Authority will not unreasonably withhold or delay such approval, the decision of Contracting Authority will be final in this regard.
- (e) The Applicants agree that any dilution of shareholding by the Selected Bidder or any Member in the ProjectCo which is not in line with the provisions of this RFQ or as stated in the Project Agreement will require express prior approval in writing from: (i) the Contracting Authority; and (ii) the Cabinet Secretary for the National Treasury and Economic Planning. 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 of them 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 RFQ; or
 - (B) such advisor, or any of its Affiliates, provides any finance or financial assistance to the Applicant/Selected Bidder/ProjectCo 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 RFQ;
 - (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 RFQ; 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 RFQ, 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 request for qualification 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 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 that is a

party to the Agreement on Mutual Enforcement of Debarment Decisions of 9 April 2010 (www.crossdebarment.org), then such Applicant will not be eligible to submit an Application.

- (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 recognised 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 the 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 RFQ (**Legal Capacity**). For this purpose, each Applicant will: (a) provide the unconditional undertakings, certifications, declarations, representations and warranties as prescribed under **Annexure 1, Annexure 11, and Annexure 12** of this RFQ; (b) submit a self-attested 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 from the relevant Government revenue authority in accordance with Applicable Laws, or, for Applicants which are entities not incorporated in Kenya, submit: (A) a similar certificate from the country of origin in accordance with applicable laws; or (B) a certificate from a statutory auditor, certifying that the Applicant is tax compliant as of 20 (twenty) days prior to the Application Due Date.

4.2 **Technical Capacity**

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

- (a) The Applicant must have, in the 10 (ten) years immediately preceding the Application Due Date, experience in developing a minimum of 3 (three) Real Estate Projects, with an average Construction Cost of KES 2,500,000,000 (Kenyan Shilling two billion five hundred million) per project; or
- (b) The Applicant must have, in the 10 (ten) years immediately preceding the Application Due Date, experience in developing a minimum of 1 (one) Real Estate Project with a Construction Cost of at least KES 7,500,000,000 (Kenyan Shilling seven billion five hundred million).

Further, with respect to Clauses 4.2(a) and 4.2(b) above:

- (i) at least one of the Real Estate Projects demonstrated must be undertaken through the PPP mode or in the capacity of a developer which has

- funded/raised funding for the Construction Cost of the relevant Real Estate Project;
- (ii) at least one of the Real Estate Projects demonstrated must be located in a Developing Market;
 - (iii) at least one of the Real Estate Projects demonstrated must have been sold or rented directly to end-users (which can include an institutional offtaker);
 - (iv) 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
 - (v) 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.
- (c) The Applicant must have, within any 5 (five) consecutive years during the 10 (ten) years immediately preceding the Application Due Date, experience in marketing and selling (which can include rent-to-own models) at least 3,500 (three thousand five hundred) units forming part of Real Estates Projects to the end-users (which can include an institutional offtaker).

For the purpose of this RFQ: (a) "**Real Estate Project**" includes all forms of accommodation, including student housing; (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>; 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; or (ii) the development/construction contract executed with the Applicant (or its Affiliate) for the Real Estate Project accounting for construction costs plus a profit of 20% (twenty percent) over the construction costs (i.e., the contract price under such contract will be reduced by 20% (twenty percent) for the purposes of calculating the Construction Cost under the terms of this RFQ), if the Real Estate Project was developed as a contractor.

- (d) It is clarified 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) completion certificate issued by the project owner/client certifying completion of the Real Estate Project(s) under Clause 4.2(a) or 4.2(b) (as the case may be) and completion of marketing and sales of the units under Clause 4.2(c); and
 - (ii) information as required under **Annexure 6A**.
- (e) 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(a) 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.
 - (f) The Applicant/Member may rely on the experience of its Affiliate(s) to demonstrate the Technical Capacity set out in Clauses 4.2(a) or 4.2(b) and Clause 4.2(c) above.
 - (g) For certificates demonstrating technical experience that are issued overseas, the document will also have to be notarised in the jurisdiction where the certificate is being issued.
 - (h) 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.

4.3 **Financial Capacity**

- (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) In the Financial Year immediately preceding the Application Due Date, the Applicant's Net Worth (as per the latest annual audited financial statements) must have been at least KES 2,000,000,000 (Kenyan Shilling two billion) as certified by the statutory auditor of the Applicant (and in case of a Consortium, the statutory auditor of the relevant Member(s)) or of the Affiliate whose Financial Capacity is being relied upon. If the Applicant is a Consortium, then the Net Worth may be demonstrated by only the Lead Member alone or by some (including the Lead Member) or all of the Members together. Provided that the Lead Member must demonstrate Net Worth of at least 26% (twenty-six percent) of the requirements set out in this Clause 4.3(a)(i).
 - (ii) In any select 3 (three) out of 8 (eight) Financial Years immediately preceding the Application Due Date, the Applicant's aggregate Annual Turnover (as per the annual audited financial statements) must have been at least KES 10,000,000,000 (Kenyan Shilling ten billion), as certified by the statutory auditor of the Applicant (and in case of a Consortium, the statutory auditor of the relevant Member(s)) or of the Affiliate whose Financial Capacity is being relied upon. If the Applicant is a Consortium, then the aggregate Annual Turnover may be demonstrated by only the Lead Member alone or by some

(including the Lead Member) or all of the Members together. Provided that the Lead Member must demonstrate an aggregate Annual Turnover of at least 26% (twenty-six percent) of the requirements set out in this Clause 4.3(a)(ii).

- (iii) In any select 3 (three) out of 8 (eight) Financial Years immediately preceding the Application Due Date, 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, the statutory auditor of the relevant Member(s)) or of the Affiliate whose Financial Capacity is being relied upon. If the Applicant is a Consortium, then the net profitability must be demonstrated by each Member demonstrating the Net Worth, as specified in Clause 4.3(a)(i) above and/or the aggregate Annual Turnover, as specified in Clause 4.3(a)(ii) above.

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.

- (b) Any Member whose Net Worth and aggregate Annual Turnover and net profitability is being relied on to demonstrate the Financial Capacity must hold at least 15% (fifteen percent) of the total Equity Contribution and voting rights in the ProjectCo until timeline specified in Clause 3.2(b)(ii)(B) above.
- (c) 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)(i) above, and/or the aggregate Annual Turnover under Clause 4.3(a)(ii) 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.
- (d) An Applicant is permitted to rely on the Net Worth, the aggregate Annual Turnover and the net profit of its Affiliate(s), either wholly or in part (where applicable), for demonstrating its Financial Capacity.
- (e) The calculation of the Net Worth, the aggregate 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 aggregate Annual Turnover, in accordance with Clause 4.3(d) above, where such Applicant Controls such Affiliate, then the Net Worth and/or the aggregate Annual Turnover will be calculated based on the consolidated annual audited financial statements of the Applicant.
- (f) 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 aggregate 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 a select 3 (three) out of 8 (eight) 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 Selected 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 aggregate 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)(i), 4.3(a)(ii), and 4.3(a)(iii) above.
- (g) If the Selected 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 Selected Bidder does not meet the minimum Net Worth criteria as required in Clause 4.3(a)(i) above, and/or, if applicable, the aggregate Annual Turnover criteria as required in Clause 4.3(a)(ii) above, and/or, if applicable, the net profit criteria as required in Clause 4.3(a)(iii) above, then the Contracting Authority will have the right to treat such event as a ProjectCo event of default and terminate the Project Agreement.
- (h) For the purposes of demonstrating the Financial Capacity, if the Applicants provide financial data in a currency other than KES, they will provide the amount equivalent in KES, 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.
- (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 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 categorised as a wilful 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 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, 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.

- (j) 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.
- (k) 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.

SECTION III

INSTRUCTION TO APPLICANTS

PART A. GENERAL

5. RFQ

5.1 The Contracting Authority wishes to receive Applications for qualification in order 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 RFQ will be read as a whole. If any Applicant finds any ambiguity or lack of clarity in this RFQ, the Applicant will inform the Contracting Authority at the earliest. The Contracting Authority will then direct the Applicants regarding the interpretation of this RFQ. All Addenda and clarifications by the Contracting Authority will be uploaded on the e-Procurement Portal.

6. ACKNOWLEDGEMENT BY APPLICANT

6.1 It will be deemed that by submitting an Application, the Applicant has:

- (a) made a complete and careful examination of this RFQ (including all instructions, forms, terms, and specifications) and any other information provided by the Contracting Authority under this RFQ, and the Applicant acknowledges that its submission of an Application that is not substantially responsive to this RFQ 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 RFQ;
- (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 of its obligations under, and in accordance with, this RFQ;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in this RFQ, 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, as the case may be, under, and in terms of, this RFQ.

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 in order 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 any and 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 RFQ;
 - (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 in order 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.

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 and/or the Subscription and Shareholders' 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 Selected 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 Selected 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 at least 30 (thirty) days prior to the bid due date under the RFP;
 - (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(ies) required to be submitted under this RFQ;
 - (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 RFQ 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 Selected Bidder/the ProjectCo. 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 RFQ, the RFP, the Project Agreement, or Applicable Laws.

8. CLARIFICATIONS ON RFQ AND INVESTOR CONSULTATIONS

8.1 Clarification and Queries

- (a) If, an Applicant requires any clarification on, or has any query in relation to, this RFQ, it should submit such query or request for clarification to the Contracting Authority in writing by e-mail to info@nhckenya.go.ke and in hard copy by speed post or courier to the address specified in Clause 18.2 below. The subject of the e-mail must clearly bear the following subject: "**Development of Affordable Housing PPP Project: Clarifications 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 will make reasonable efforts to respond to the queries or requests for clarifications on or before the date mentioned in the Qualification Schedule. However, the Contracting Authority reserves the right to not respond to any query or provide any clarification, in its sole discretion. The Contracting Authority's responses (including an explanation of the query but not identification of its source) will be made available to all the Applicants and will be uploaded on the e-Procurement Portal.
- (c) 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 RFQ. Should the Contracting Authority deem it necessary to amend this RFQ as a result of a request for clarification, it will do so following the procedure under Clause 9 below.
- (d) It will be the responsibility of the Applicants to check the e-Procurement Portal for the responses to the queries or requests for clarifications. 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.
- (e) 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 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 48 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 RFQ, the Bid Process, and the Project.
- (b) All interested Applicants may nominate up to 3 (three) authorised representatives to participate in the pre-Application meeting, by confirming the participation of its authorised representatives at the pre-Application meeting at least 1 (one) day prior to

the date of the pre-Application meeting. Such confirmation will be sent by e-mail to info@nhckkenya.go.ke.

- (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) Minutes of the meetings, including the text of the questions raised (without identifying the source) and the responses given, together with any responses prepared after the meetings, will be uploaded on the NHC website www.nhckkenya.go.ke and e-Procurement Portal.(PPIP)
- (f) The Contracting Authority will organise 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 info@nhckkenya.go.ke. A maximum of 2 (two) representatives for each Applicant will be allowed to attend the Site visits.
- (g) In addition to the Site visits organised 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 RFQ

- 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 RFQ by issuing an Addendum or an amended RFQ.
- 9.2 All Addenda/amendments will be issued on the NHC website and e-Procurement Portal (PPIP).
- 9.3 The Applicants are required to read this RFQ 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 RFQ, or on any other matter, will not be considered as amending this RFQ.
- 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 RFQ, including all notices issued by the Contracting Authority to all the Applicants in accordance with this RFQ, queries, and responses or clarifications, and any Addenda, will be uploaded on the NHC website and e-Procurement Portal-(PPIP)
- 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 e-Procurement Portal, the Applicant may seek assistance from the Contracting Authority by sending a written e-mail request to info@nhckenya.go.ke at any time prior to the Application Due Date.
- 10.4 The Contracting Authority will use its best endeavours 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 RFQ, 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 RFQ and the Data Room 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 RFQ; 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

- (d) 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
- (e) 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 RFQ 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 RFQ.

14. **VALIDITY OF THE APPLICATIONS**

14.1 The Applications will remain valid for a period of 182 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 authorised 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 Submission

- (a) Each Applicant will submit its Application in physical form, comprising 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 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 authorising 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 aggregate Annual Turnover of the Applicant or Member or Affiliate, as the case may be;
- (viii) in case of Consortium, the aggregate 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 the format 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(d) above;
- (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 utilised 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 utilised 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) self-attested copies of the certificate of incorporation, memorandum of association, and articles of association. If the Bidder is a Consortium, then each Member will submit self-attested 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 authorising the Lead Member of the Consortium to act on behalf of, and commit, the Consortium; and
 - (ii) Joint Bidding Agreement in the format set out at **Annexure 9**.

18.2 **Other submission requirements**

- (a) The documents will be duly sealed in an envelope, which will be super-scribed as follows:

**"NATIONAL HOUSING CORPORATION – AFFORDABLE HOUSING PPP
PROJECT APPLICATION**

**DO NOT OPEN BEFORE SPECIFIED TIME ON APPLICATION DUE
DATE"**

- (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:

National Housing Corporation,
P. O. Box 30257-00100 Nairobi
NHC House, Aga-Khan Walk
NHC House, Aga -Khan Walk,
Deposit in the Tender Located on Ground Floor

- (d) Any interlineations, erasures, or overwriting will be valid only if they are signed by the authorised 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, or e-mail 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 KES.

20. SIGNING OF APPLICATION

The electronic and physical copies of the Application will be signed by the authorised signatory of the Applicant and in the case of an Application submitted by a Consortium, it will be signed by the Lead Member's authorised 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 Managing Director, National Housing Corporation citing reasons for substitution or withdrawal, as the case may be. This letter will be e-mailed to info@nhckenya.go.ke.
- 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:

National Housing Corporation, NHC House, Aga-Khan Walk 11th floor Conference room

The Applications will be opened in the presence of the Applicants whose designated representatives choose to be present.

22.3 If 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.

22.4 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.

22.5 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.

22.6 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.

22.7 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 RFQ or if any Application 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 Applications will be evaluated to determine responsiveness to this RFQ. 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 RFQ; 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 Applications 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 RFQ, 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 in writing. 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 Applicants to submit their Bids for award of the Project.

SECTION IV

FORMATS

ANNEXURE 1

FORMAT OF APPLICATION LETTER

[On the letterhead of the Applicant/Lead Member]

Place:

Date:

To,

The National Housing Corporation,

Government of the Republic of Kenya,

[insert the address]

Sub: **Application for development of an affordable housing project**

Dear Sir/Ma'am,

Please find enclosed our Application in respect of the abovementioned project and complying with the Request for Qualification (**RFQ**) issued by the National Housing Corporation, Government of the Republic of Kenya (**Contracting Authority**) dated [●]. This Application is valid for [●] ([●]) 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 RFQ.

We hereby confirm the following:

1. The Application is being submitted by _____¹ (*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*)]², in accordance with the terms and conditions stipulated in the RFQ.
2. This statement is made for the express purpose of pre-qualifying as a Bidder for among other things, the development of an affordable housing project in accordance with the RFQ, the RFP and the Project Agreement. We hereby enclose our Application with formats duly signed and/or executed as requested by you in accordance with the RFQ for your consideration.
3. We have examined in detail and have understood the terms and conditions stipulated for qualification of an Applicant in the RFQ issued by the 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 RFQ issued

¹ All blank spaces will be suitability filled up by the Applicant to reflect particulars relating to such Applicant.

² To be deleted for a single entity Applicant.

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 RFQ 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 RFQ. 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 and/or the Subscription and Shareholders' 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 Selected 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 confirm that we have studied the provisions of the laws of the Republic of Kenya that may be applicable or have an impact on our ability to submit the Application (if declared as pre-qualified Applicant, then to submit the Bid), and for us to enter into the Project Agreement and the ProjectCo to accede to the Project Agreement and to enter into and cause the ProjectCo to enter into the Subscription and Shareholders' Agreement in accordance with the provisions of the bidding documents (including the RFP), and perform the Project, if we are declared as the Selected Bidder.

9. 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.
10. 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.
11. We represent, warrant, and certify that in the [3 (three)] Financial Years 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 categorised as a wilful 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:
 - (i) 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; or
 - (ii) resulted in the permanent or temporary suspension of our rights to provide any service or carry on any type of business or operations.
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) 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.

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 as a debarred person on the public sanctions list of any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decisions of 9 April 2010 (www.crossdebarment.org).
14. 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 recognised 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.
15. We declare that:
 - (a) we have examined and have no reservations to the RFQ and do not seek any deviations to the RFQ, 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 RFQ; and
 - (c) we hereby represent, warrant, and certify that we have taken steps to ensure that, in conformity with the provisions of the RFQ and submission of the Application, no person acting for us or on our behalf has engaged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice, or restrictive practice.
16. 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 RFQ.
17. 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 RFQ.
18. We declare that we, [our Members]³, and our Affiliates are not submitting separate Applications for the Project.
19. We declare that we are not submitting more than one Application for the Project.
20. 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 ProjectCo).

³ To be deleted for a single entity Applicant.

21. We undertake 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 RFQ, we will inform the Contracting Authority of the same immediately.
22. In the event of us being declared as the Selected 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 ProjectCo which will execute a deed of accession in the format set out in the Project Agreement for undertaking the Project;
 - (c) enter into and cause the ProjectCo to enter into the Subscription and Shareholders' Agreement in accordance with the provisions of the bidding documents (including the RFP);
 - and (d) comply with Clause 3.2 of the RFQ in relation to the following Lock-in Restrictions and Change in Ownership:
 - (i) if the Selected Bidder is a Consortium, then:
 - (A) the Consortium will cumulatively hold at least 51% (fifty one percent) of the total Equity Contribution and voting rights of the ProjectCo until the later of: (I) the expiry of 12 (twelve) months from the date of the completion certificate issued for both phases of the Project in accordance with the terms of the Project Agreement; and (II) where, with respect to any AH Units and/or MRU, any offer letter(s) have been issued but the sale agreement(s) have not been executed, and/or sale agreement(s) have been executed, but the sub-lease(s) for the underlying land have not been executed, the date on which the sub-lease(s) for transfer of the underlying land relating to all such AH Units and MRU to the unit holders/OwnCo(s), in respect of each such offer letter and/or sale agreement, are duly executed, and the mother title is available for registration purposes; (B) the Lead Member will hold at least 26% (twenty six percent) of the total Equity Contribution and voting rights of the ProjectCo until the later of: (I) the expiry of 12 (twelve) months from the date of the completion certificate issued for both phases of the Project in accordance with the terms of the Project Agreement; and (II) where, with respect to any AH Units and/or MRU, any offer letter(s) have been issued but the sale agreement(s) have not been executed, and/or sale agreement(s) have been executed, but the sub-lease(s) for the underlying land have not been executed, the date on which the sub-lease(s) for transfer of the underlying land relating to all such AH Units and MRU to the unit holders/OwnCo(s), in respect of each such offer letter and/or sale agreement, are duly executed, and the mother title is available for registration purposes; and (C) any Member, other than the Lead Member, whose Technical Capacity and/or Financial Capacity is assessed for the purpose of qualification, will hold at least 15% (fifteen percent) of the total Equity Contribution and voting rights of the ProjectCo until the later of: (I) the expiry of 12 (twelve) months from the date of the completion certificate issued for both phases of the Project in accordance with the terms of the Project Agreement; and (II) where, with respect to any AH Units and/or MRU, any offer letter(s) have been issued but the sale agreement(s) have not been executed, and/or sale agreement(s) have been executed, but the sub-lease(s) for the underlying land have not been executed, the date on which the sub-lease(s) for transfer of the underlying land relating to all such AH Units and MRU to the unit holders/OwnCo(s), in respect of each such offer letter and/or sale agreement, are duly executed, and the mother title is available for registration purposes; and
 - (ii) if the Selected Bidder is a single entity, the Selected Bidder will hold at least 51% (fifty one percent) of the total Equity Contribution and voting rights of the ProjectCo until the later of: (A) the expiry of 12 (twelve) months from the date of the completion certificate issued for both phases of the Project in accordance with the terms of the

Project Agreement; and (B) where, with respect to any AH Units and/or MRU, any offer letter(s) have been issued but the sale agreement(s) have not been executed, and/or sale agreement(s) have been executed, but the sub-lease(s) for the underlying land have not been executed, the date on which the sub-lease(s) for transfer of the underlying land relating to all such AH Units and MRU to the unit holders/OwnCo(s), in respect of each such offer letter and/or sale agreement, are duly executed, and the mother title is available for registration purposes.

23. We agree and undertake to abide by all the terms and conditions of the RFQ.
24. We have studied the RFQ, and all other information provided in the Data Room carefully. We understand that except to the extent expressly set forth in the RFQ, 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.
25. [A Power of Attorney, issued by *[insert details of the other Consortium Members here]* (in their capacity as Consortium Members), appointing and authorising the Lead Member to sign the Application related documents and commit the Consortium in respect of the Project is included as a part of the Application.]⁴
26. A Power of Attorney from the [Applicant/Lead Member] authorising *[insert here details of persons authorised to sign under the Power of Attorney on behalf of the Applicant/Lead Member]* as the authorised representative, signatory, and contact person who is authorised 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.
27. We certify that, in terms of the RFQ:
 - (a) [our]/[the Consortium's]/[and our Affiliate's] Net Worth as of the last Financial Year prior to the Application Due Date is KES [●] (Kenyan Shilling in words);
 - (b) [our]/[the Consortium's]/[and our Affiliate's] aggregate Annual Turnover in a select 3 (three) out of 8 (eight) Financial Years immediately preceding the Application Due Date is KES [●] (Kenyan Shilling in words) for the Financial Year [●], KES [●] (Kenyan Shilling in words) for the Financial Year [●], and KES [●] (Kenyan Shilling in words) for the Financial Year [●];
 - (c) in a select 3 (three) out of 8 (eight) Financial Years immediately preceding the Application Due Date, [we]/[the Consortium]/[and our Affiliate] have/has recorded a net profit of KES [●] (Kenyan Shilling in words) for the Financial Year [●], KES [●] (Kenyan Shilling in words) for the Financial Year [●], and KES [●] (Kenyan Shilling in words) for the Financial Year [●]; and
 - (d) [any Member, other than the Lead Member, whose Technical Capacity and/or Financial Capacity is assessed for the purpose of qualification will hold at least 15% (fifteen percent) of the total Equity Contribution and voting rights in the ProjectCo until the later of: (i) the expiry of 12 (twelve) months from the date of the completion certificate

⁴ To be deleted for a single entity Applicant.

issued for both phases of the Project in accordance with the terms of the Project Agreement; and (ii) where, with respect to any AH Units and/or MRU, any offer letter(s) have been issued but the sale agreement(s) have not been executed, and/or sale agreement(s) have been executed, but the sub-lease(s) for the underlying land have not been executed, the date on which the sub-lease(s) for transfer of the underlying land relating to all such AH Units and MRU to the unit holders/OwnCo(s), in respect of each such offer letter and/or sale agreement, are duly executed, and the mother title is available for registration purposes].⁵

28. We certify that we have the Legal Capacity, Technical Capacity, and Financial Capacity to undertake the Project.
29. We agree and understand that the Application is subject to the provisions of the RFQ. 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.
30. We have submitted all the relevant information as per the formats specified in the RFQ, including physical submissions as required under Clause 18 of the RFQ.
31. Our Application will remain valid for a period of not less than [●] ([●]) 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 RFQ.
32. Capitalised terms used herein will have the meanings ascribed to them in the RFQ.

For and on behalf of :

Signature :

(Authorised Signatory)

Name of the Person :

Designation :

⁵ To be deleted for a single entity Applicant.

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 5 (five) 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 ProjectCo
1.		
2.		
3.		

For and on behalf of :

Signature :

(Authorised Signatory)

Name of the Person :

Designation :

ANNEXURE 3

CHECKLIST FOR PHYSICAL SUBMISSION

[On the letterhead of the Applicant/Lead Member]

Name of Applicant[/Lead Member]⁶:

[Names of the other Members:]⁷

Status of the Applicant: [Single entity/Consortium]

S. No.	Document	Format	Issued by	Mode of submission (Physical)	To be submitted for	Provided
1.	Application letter	1	Applicant/Lead Member	Original – physical submission along with a copy	NA	[Provided /Not provided]
2.	Description of Applicant/Members	2	Applicant/Lead Member		NA	[Provided /Not provided]
3.	Power of Attorney for the Authorised Signatory	4A	Applicant/Lead Member		NA	[Provided /Not provided]
4.	Certified true copy of board or shareholders' resolution/power of attorney in favour 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 or 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 aggregate Annual Turnover	5B	Statutory auditor of Applicant/Member/Affiliate		Applicant or Member or Affiliate	[Provided /Not provided]

⁶ Delete if Applicant is not a Consortium.

⁷ Delete if Applicant is not a Consortium.

S. No.	Document	Format	Issued by	Mode of submission (Physical)	To be submitted for	Provided
8.	Format setting out aggregate Annual Turnover (in case of a Consortium, and if applicable)	5.1B	Lead Member		Members	[Provided /Not provided]
9.	Certificate of net profitability	5C	Statutory auditor of Applicant/Member/Affiliate		Applicant or Member or Affiliate	[Provided /Not 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.	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]
14.	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	7	Statutory auditor of Applicant/relevant Member		Applicant or relevant Member	[Provided /Not provided]

S. No.	Document	Format	Issued by	Mode of submission (Physical)	To be submitted for	Provided
15.	Authorisation and Undertaking from Affiliate	8A	Applicant's/Member's Affiliate		Applicant or relevant Member	[Provided /Not provided]
16.	Authorisation and Undertaking from Affiliate	8B	Applicant's/Member's Affiliate		Applicant or relevant Member	[Provided /Not provided]
17.	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 of the last Financial Year along with an undertaking	NA	Statutory auditor of Applicant/Member		Applicant and Affiliate(s) whose Financial Capacity is being relied on (if applicable)	[Provided /Not provided]
18.	Self-attested copy of certificate of incorporation	NA	Applicant/Member		Applicant or each Member	[Provided /Not provided]
19.	Self-attested copy of memorandum of association	NA	Applicant/Member		Applicant or each Member	[Provided /Not provided]
20.	Self-attested copy of articles of association	NA	Applicant/Member		Applicant or each Member	[Provided /Not provided]
21.	Tax compliance certificate	NA	Relevant statutory authorities/ statutory auditor of Applicant/Member		Applicant or each Member	[Provided /Not provided]
22.	Power of Attorney for the Lead Member	4B	ONLY FOR CONSORTIUM Each Member other than Lead Member		In favour of the Lead Member	[Provided /Not provided]

S. No.	Document	Format	Issued by	Mode of submission (Physical)	To be submitted for	Provided
23.	Certified true copy of the board or shareholders' resolution/power of attorney in favour of the person executing the power of attorney	NA	ONLY FOR CONSORTIUM Each Member other than Lead Member		NA	[Provided /Not provided]
24.	Certified true copy of board resolution for appointment of the Lead Member	NA	ONLY FOR CONSORTIUM Each Member other than Lead Member		In favour of the Lead Member	[Provided /Not provided]
25.	Joint Bidding Agreement	9	ONLY FOR CONSORTIUM All Members		NA	[Provided /Not provided]
26.	Certified true copy of board resolution for execution of the Joint Bidding Agreement	NA	ONLY FOR CONSORTIUM Each Member		In favour of the signatories to the Joint Bidding Agreement	[Provided /Not provided]
27.	Self-declaration regarding non-engagement in fraud and corrupt practices	11	Applicant/Lead Member		Applicant or each Member	[Provided /Not provided]
28.	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 :

(Authorised 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 affordable housing project proposed or being developed by the National Housing Corporation, Government of Republic of Kenya (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, Subscription and Shareholders' 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 favour 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 legalised by the Embassy of the Republic of Kenya and notarised 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 Joint Bidding Agreement dated [*insert date*] for pre-qualification and, if declared as pre-qualified, submission of our bid (**Bid**) for the development of an affordable housing project proposed or being developed by the National Housing Corporation, Government of Republic of Kenya (**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, Subscription and Shareholders' 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 favour 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 legalised by the Embassy of the Republic of Kenya and notarised 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 KES [●] (Kenyan Shilling [●]).

The Net Worth of the [Applicant/Member/Affiliate] has been calculated in accordance with the terms set out in the Request for Qualification (RFQ) issued by the National Housing Corporation, Government of Republic of Kenya 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 KES (if applicable)	Conversion date (if applicable)	Amount in KES
Lead Member	[●]	[●]	[●]
Member 2	[●]	[●]	[●]
Member 3	[●]	[●]	[●]
Member 4	[●]	[●]	[●]
Member 5	[●]	[●]	[●]
Net Worth (aggregate amount)			[●]

For and on behalf of :

Signature :

(Authorised Signatory)

Name of the Person :

Designation :

ANNEXURE 5B

FORMAT FOR AGGREGATE 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 KES [●] (Kenyan Shilling [●]);
- (b) Financial Year [●] is KES [●] (Kenyan Shilling [●]); and
- (c) Financial Year [●] is KES [●] (Kenyan Shilling [●]);

Thus, the [Applicant's/Member/Affiliate's] aggregate Annual Turnover for the Financial Years [●], [●] and [●] is KES [●] (Kenyan Shilling [●]).

The aggregate Annual Turnover of the [Applicant/Member/Affiliate] has been calculated in accordance with the terms set out in the Request for Qualification (RFQ) issued by the National Housing Corporation, Government of Republic of Kenya on [●].

Name of the auditor:

Seal of the auditor:

Signature:

Name:

Membership Number:

Designation:

Date:

ANNEXURE 5.1B

FORMAT FOR AGGREGATE ANNUAL TURNOVER IN CASE OF CONSORTIUM

[On the letterhead of the Lead Member]

Based on the aggregate 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 aggregate Annual Turnovers of each such Member for their selected 3 (three) Financial Years:

Entity (Applicant/ Member, as applicable)	Relevant Financial Years	Amount (aggregated for the 3 (three) relevant Financial Years) in a currency other than KES (if applicable)	Conversion date (if applicable)	Amount in KES (aggregated for the 3 (three) relevant Financial Years)
Lead Member	(a) [•] (b) [•] (c) [•]	[•]	[•]	[•]
Member 2	(a) [•] (b) [•] (c) [•]	[•]	[•]	[•]
Member 3	(a) [•] (b) [•] (c) [•]	[•]	[•]	[•]
Member 4	(a) [•] (b) [•] (c) [•]	[•]	[•]	[•]
Member 5	(a) [•] (b) [•] (c) [•]	[•]	[•]	[•]
Annual Turnover (aggregate amount)				[•]

For and on behalf of :

Signature :

(Authorised 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 KES [●] (Kenyan Shilling [●]);
- (b) Financial Year [●] is KES [●] (Kenyan Shilling [●]); and
- (c) Financial Year [●] is KES [●] (Kenyan Shilling [●]).

The net profitability of the [Applicant/Member/Affiliate] has been calculated in accordance with the terms set out in the Request for Qualification (RFQ) issued by the National Housing Corporation, Government of Republic of Kenya on [●].

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]

NAME OF APPLICANT/CONSORTIUM MEMBER:		
RESIDENTIAL INVESTMENT		
	APPLICANT RESPONSE	DOCUMENTARY EVIDENCE
a) Name of Real Estate Project		
b) Country		
c) Site location		
d) Date of completion		
e) Project description (no. of housing units)		
f) Developer/list of consortium members (if applicable)		
g) Name of client/project owner		
h) Project Construction Cost value (KES)		
i) Capital extended by the Applicant (KES)/ payments received by the Applicant (KES)		
j) Certificate of project completion		
k) Confirmation of no outstanding charges		
l) Number of residential units marketed/sold		

For and on behalf of :

Signature :

(Authorised 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:

[more than 50% (fifty per cent) of the voting shares of [*insert name of the Applicant/relevant Member/Affiliate*]] is held, directly or indirectly, by [*insert name of Applicant/relevant Member/Affiliate*]].

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

OR

[*insert name of Applicant/relevant Member/Affiliate*] has the power, directly or indirectly, to direct or influence the management and policies of [*insert name of the Applicant/relevant member/Affiliate*] by operation of law, contract, or otherwise.

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

A brief description of the said voting shares held, directly or indirectly, is given below:

[*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]

National Housing Corporation

[●]

Dear Sir,

Sub: Implementation of the Affordable Housing PPP Project

We refer to the RFQ dated [●] issued by you for the Affordable Housing PPP Project.

We confirm that:

- (a) *[Insert name of the Applicant/Member of Consortium]* has been authorised by us to use our technical experience, set out in the Application submitted by *[Insert name of Applicant/Member of Consortium]*, in order to meet the Qualification Criteria set out in Clause 4.2 of the RFQ; and
- (b) we have not authorised 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 RFQ.

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

[Signature and stamp of the authorised signatory]

Name:

Date:

Place:

ANNEXURE 8B

AUTHORISATION AND UNDERTAKING FROM AFFILIATE

[On the letterhead of the Affiliate]

To,

Dated:

[Insert Designation]

National Housing Corporation

[●]

Dear Sir,

Sub: Implementation of the Affordable Housing PPP Project

We refer to the RFQ dated [●] issued by you for the Affordable Housing PPP Project.

We confirm that:

- (a) *[Insert name of the Applicant/Member of Consortium]* has been authorised by us to use our financial experience, set out in the Application submitted by *[Insert name of Applicant/Member of Consortium]*, in order to meet the Qualification Criteria set out in Clause 4.3 of the RFQ; and
- (b) we have not authorised 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 RFQ.

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

[Signature and stamp of the authorised signatory]

Name:

Date:

Place:

ANNEXURE 9

FORMAT OF JOINT BIDDING AGREEMENT

(To be executed on stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT 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);

AND

4. [●], with its registered office at [●] (referred to as **Member 4** which expression will, unless repugnant to the context include its successors and permitted assigns);

AND

5. [●], with its registered office at [●] (referred to as **Member 5** which expression will, unless repugnant to the context include its successors and permitted assigns).

The abovementioned parties namely Member 1, Member 2, Member 3, Member 4, and Member 5 are collectively referred to as the **Parties** and each is individually referred to as a **Party**.

WHEREAS

- (A) The National Housing Corporation, Government of Republic of Kenya (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 Qualification dated [●] (**RFQ**) for selection of bidder(s) for development of an affordable housing project on a 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 RFQ and other bidding documents in respect of the Project.
- (C) The RFQ stipulates that the Applicants qualifying on the strength of a Consortium will submit a legally enforceable Joint Bidding Agreement in a format specified in the RFQ, whereby the Members of the Consortium undertake to be liable for their respective equity investment

commitment in the ProjectCo and undertake to submit the performance bank guarantees as required as per the provisions of the RFQ, as specified herein.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and interpretations

In this Joint Bidding Agreement, the capitalised terms will, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ.

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 Joint Bidding Agreement do hereby unequivocally agree that [*insert name of the Lead Member (Member 1)*], will act as the Lead Member as defined in the RFQ for itself and agent for and on behalf of [*insert name of Member 2*], [*insert name of Member 3*], [*insert name of Member 4*], and [*insert name of Member 5*].

2.4 The Lead Member is hereby authorised by the Members of the Consortium and Parties to the Joint Bidding Agreement 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 undertakes 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 Joint Bidding Agreement.

2.6 Notwithstanding anything to the contrary contained in this Joint Bidding Agreement, by submitting an Application 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 RFQ, the RFP, and the other bidding documents.

3. Declaration as Selected Bidder

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, the Parties will perform all obligations applicable to the Selected Bidder contained in the RFQ 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. Equity Contribution

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

NAME	PERCENTAGE OF EQUITY CONTRIBUTION HOLDING
MEMBER 1 (LEAD MEMBER)	
MEMBER 2	
MEMBER 3	
MEMBER 4	
MEMBER 5	
TOTAL EQUITY	[●]%

4.2 The Parties hereby unconditionally and irrevocably undertake to be bound by the lock-in restrictions contained in the RFQ, the RFP, and the Project Agreement.

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 ProjectCo will become effective;
- (b) Member 2 will be [●];
- (c) Member 3 will be [●];
- (d) Member 4 will be [●]; and
- (e) Member 5 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 Joint Bidding Agreement that:

- (a) such Party is duly organised, validly existing, and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Joint Bidding Agreement;
- (b) the execution, delivery, and performance by such Party of this Joint Bidding Agreement has been authorised 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 favour of the person executing this Joint Bidding Agreement for the delegation of power and authority to execute this Joint Bidding Agreement on behalf of the Member of the Consortium is annexed to this Joint Bidding Agreement, 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 organisational documents;
 - (iv) violate any clearance, permit, concession, grant, license, or other governmental authorisation, 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 Joint Bidding Agreement.
- (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 Joint Bidding Agreement.

7. General

- 7.1 This Joint Bidding Agreement will be construed and interpreted in accordance with the laws of the Republic of Kenya and 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, on behalf of the Consortium.
- 7.3 It is further expressly agreed that this Joint Bidding Agreement will be irrevocable and remain in full force for the entire duration of the Project in accordance with the Subscription and Shareholders' Agreement and the Project Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is not selected for award of the Project, this Joint Bidding Agreement will stand terminated in case the Applicant is not pre-qualified, or upon return of the bid security, by the Contracting Authority, as the case may be.
- 7.4 The Members are authorised 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 RFQ 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 Joint Bidding Agreement except with the prior written consent of the Contracting Authority.
- 7.6 Each Party hereby represents and warrants that this Joint Bidding Agreement:
- (a) 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;

- (b) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof; and
- (c) 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 AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
For and on behalf of	For and on behalf of	For and on behalf of	For and on behalf of	For and on behalf of
MEMBER 1 by:	MEMBER 2 by:	MEMBER 3 by:	MEMBER 4 by:	MEMBER 5 by:
(Signature)	(Signature)	(Signature)	(Signature)	(Signature)
(Name)	(Name)	(Name)	(Name)	(Name)
(Designation)	(Designation)	(Designation)	(Designation)	(Designation)
(Address)	(Address)	(Address)	(Address)	(Address)
In presence of:				
1.				
(Signature)				
(Name)				
2.				
(Signature)				
(Name)				

Note:

1. *The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

ANNEXURE 10

INSTRUCTIONS TO USE THE e-PROCUREMENT PORTAL

Tenders can be downloaded free of charge by accessing link [-https://tenders.go.ke/tenders-](https://tenders.go.ke/tenders) active tenders. Bidders must note submissions are not online but by hardcopy documents as required

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 of in the Country do hereby make a statement as follows:

- 1. THAT I am the Authorised 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) [●]; (c) [●]; (d) [●]; and (e) [●]] in respect of RFQ No..... for (insert tender title/description) for (insert name of the Procuring entity) and am duly authorised 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 RFQ, 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 RFQ, 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 Authorised 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) [●]; (c) [●]; (d) [●]; and (e) [●]] in respect of RFQ No. for (*insert tender title/description*) for (*insert name of the Procuring entity*) and am duly authorised 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

APPENDIX A

SITE DETAILS

The Project is proposed to be developed on the land located at Title No. Mavoko Municipality Block 94/3 (Part) and Title No. Mavoko Municipality Block 94/2 (**Site**), which have been sub-divided from Land Reference Number 10426/81 (parent land or mother title).

Both these land parcels have been leased to the Contracting Authority (i.e., the **Lessee**) through a certificate of lease dated 2 May 2019 from the Government (i.e., the **Lessor**). As per the certificate of lease, the two parcels comprising the Site measure approximately 44.904 hectares (110.957 acres) and 8.6394 hectares (21.3479 acres) respectively.

An overview of the Site proposed to be utilised for the Project along with the details of the lease are set out below.⁸

Location	Annual Rent Payable to the Mavoko County Government	Commencement Date of Lease	Status of NHC Lease	Encumbrances
Mombasa Road, Stoni Athi Estate, Machakos County	Mavoko Municipality Block 94/3: KES 119,520 (revisable) Mavoko Municipality Block 94/2: KES 621,230 (revisable)	1 February 1997	Valid for 99 years from 1 February 1997 (i.e., 1 February 2096)	No encumbrances recorded in the encumbrances section of the register of the respective titles

⁸ Based on property searches dated 10 January 2023 obtained from Machakos District Land Registry and the lease certificate.