



COUNCIL OF LEGAL EDUCATION

PRE-QUALIFICATION OF LAWYERS FOR PROVISION OF LEGAL SERVICES

FOR THE PERIOD OF 2018-2020

TENDER NO: CLE/PREQ/ 01/2018-2019

**THE COUNCIL OF LEGAL EDUCATION
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KAREN, NAIROBI,
KENYA.**

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APRIL 2019

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ABBREVIATION AND ACRONYMS

CLE	Council of Legal Education
Council	Council of Legal Education
GCA	General Conditions of Application
ICPAK	Institute of Certified Public Accountants of Kenya
LSK	Law society of Kenya
KSL	Kenya School of Law
PPAD 2015	Public Procurement & Asset Disposal Act 2015
SLA	Service Level Agreement

SECTION I

COUNCIL OF LEGAL EDUCATION

TENDER NOTICE

**INVITATION FOR PRE-QUALIFICATION OF LAWYERS FOR PROVISION OF LEGAL SERVICES
FOR FY 2018-2019 AND FY 2019-2020**

The Council of Legal Education invites applications for Pre - qualification of s for Provision of Legal Services for the period of 2018-2020. Interested eligible individuals may obtained pre-qualification tender document by downloading tenders online from CLE website, www.cle.info.or.ke.

All bidders will be required to e-mail their name, e-mail address, physical address and telephone contacts to www.cle.info.or.ke immediately after downloading the tender document so that they can benefit from any tender clarifications that may be made OR register at the Council of Legal Education Procurement Office, Karen office Park Acacia Block , Wing 2 during office working hours.

Completed Pre-qualification documents should be enclosed in plain sealed envelopes marked **“PREQUALIFICATION OF LAWYERS TENDER NO. CLE /PREQ/ 01/2018-2019 FOR PROVISION OF LEGAL SERVICES”** addressed to:

The Secretary/CEO
Council of Legal Education
P. O. Box 829-00502 Karen
Nairobi, Kenya.

OR deposited in the tender box located at Karen Office Park Acacia Block, Wing 1 on or before **23RD APRIL, 2019 at 12.00 P.M.**

The applications will be opened immediately thereafter in the presence of Tenderers' or their representatives who choose to attend at Council Boardroom

CLE reserves the right to accept or reject the applications.

Any canvassing or giving of false information will lead to automatic disqualification. Late proposals will not be accepted.

**SECRETARY/CHIEF EXECUTIVE OFFICER
COUNCIL OF LEGAL EDUCATION**

SECTION II - INFORMATION TO TENDERERS (ITC)

2.0 INTRODUCTION

- 2.1 CLE will pre-qualify and enlist prospective Tenderers for the provision of Legal Services from among those who will have submitted their Pre-qualification documents in accordance with the pre-qualification requirements to undertake the assignments described herein for two (2) years.
- 2.2 The payment of fees will be based on the s Remuneration Order, capped or as may be agreed between the Lawyer and CLE.
- 2.3 The Pre-qualification Tender document and the Tenderers response thereof shall be the basis for prequalification. Tenderers must familiarize themselves with the requirements described in this document including all attachments and take them into account when preparing their response.
- 2.4 Tenderers will be informed in writing of the results of their application.
- 2.5 Tenderers will meet all costs associated with preparation and submission of their applications.
- 2.6 It is CLE's policy to require that Tenderers observe the highest standards of ethics and professionalism in the procurement process and execution of contracts.

In pursuance of this policy, CLE:

- a) Defines, for the purpose of this provision, the terms set forth below as follow:
 - i) "**Corrupt practice**" means the offering, giving, receiving or soliciting of anything of value to influence the action of an officer of the Procurement Entity/Purchaser/Employer in the prequalification process; and
 - ii) "**Fraudulent practice**" means a misrepresentation of facts in order to influence the prequalification process to the detriment of the Purchaser/Employer, and includes collusive practices among Tenderers (prior to or after submission of Tenders) designed to establish prices at artificial, non-competitive levels and to deprive the Procurement Entity the benefits of free and open competition.
- b) Will reject a Tender for pre-qualification if it determines that a Tenderer has engaged in corrupt or fraudulent activities in competing for the contract in question;
- c) Will declare a Tender ineligible, for pre-qualification if at any time it determines that

Tenderer has engaged in corrupt or fraudulent practices in competing for, or in executing, a similar contract; and

- d) Will have the right to examine financial or other records relating to the performance of such services to determine capability;
- e) Will have the right to inspect the business premises of the Tenderer.

2.7 Tenderers shall furnish information as described in the pre-qualification tender document.

2.8 Tenderers shall be aware of the provisions on fraud and corruption stated in herein after.

3.0 PROFESSIONAL QUALIFICATIONS

The Advocate (s) must be active member (s) of the Law Society of Kenya with current practicing certificates. They should not have any pending disciplinary cases. Due diligence will be carried out to ensure that they have not been disbarred.

3.1 Professional Insurance Indemnity

They must have taken out a Professional Insurance Indemnity from a reputable insurance company of not less than Kshs.50, 000,000.00.

3.2 Expertise

The Principal Partner must be an of at least 10 years standing with a current practicing certificate from the Law Society of Kenya.

3.3 Scope of Legal Services

From time to time, Council may require/need to elicit external legal services by pre-qualifying and engaging from time to time suitable external Law Firms to assist it in the protection of the organization's interests in one or more of the following areas:

- a) Litigation arising from matters ancillary to, in connection with or arising from Council's mandate under the Legal Education Act, 2012
- b) Labour Law related matters;
- c) Property Law and Conveyancing work;
- d) Procurement Law matters
- e) Information Communication and Technology (ICT Law);
- f) Intellectual Property matters;

- g) Advising on matters related to compliance with various statutory requirements including but not limited to the State Corporations Act (Cap 446) and other applicable laws.

3.3.1 The ideal law firm should therefore demonstrate passion of the following attributes (this list is not exhaustive):

- Submit an expression of interest demonstrating inter alia competency and prior experience in the provision of legal services to comparable public section organizations (particularly state corporations) in the above listed areas.
- Demonstrate sound understanding of the Council's legal mandate, operational environment and organizational requirements and respond to these effectively and efficiently. In the course of handling briefs from Council in a manner that adds value to Council's role in discharging its statutory mandate.
- Ensure advise/opinions provided are concise, sound, thorough, well-researched and thought through and accurate legal jurisprudence.
- Adhere to reporting requirements and strict turn-around times on matters briefed by Council to ensure that legal briefs/matters are adequately managed as follows:

Requirement	Time frame
Acknowledgement of instructions	Within three (3) days of receipt of written instructions from Council.
Legal Opinions	Within seven (7) days from the date of receipt of written request for an opinion from Council
Progress Reports on Specific Briefs	Provide status reports on specific briefs not later than seven (7) days from the date of receipt of written request from Council for an update on a specific matter/brief handled by the firm.
General Quarterly Status Reports	Furnish Council with a quarterly status reports not later than the 5 th day of each month in respect to all Council briefs/matters handled by the firm
Fee Notes/Invoices	Submitted together with the final report of conclusion of brief) or as applicable)

- Uphold and maintain strict -client confidentiality in all circumstances and without exception.
- Not engage in any matters that would place or cause the s/law firm to be in a position of direct or indirect conflict of interest with Council`s interests. For this purpose, the Firm will be required to declare any actual or potential conflict of interest exists or is likely to arise prior to accepting any instruction/brief from Council, or where such conflict arises in the course of performing Council`s instructions, to disclose such conflict to Council as soon as it arises.
- Manage briefs in a cost effective, time and resource efficient manner. Costs must of course be managed with austerity and prudence.
- The firm should provide an indication of the billing rates in particular for matters where rates are not specifically prescribed by the Advocates Remuneration Amendment Order, 2014 (as may from time to time be amended). The firm will be expected to indicate in advance the hourly rates and/or fixed tariffs where applicable.
- All parties must generally be in good standing with the Law Society of Kenya (evidenced by a Certificate of Good Standing from LSK). None of its Advocates should have any pending disciplinary matter or complaint before the Advocates Complaints Commission or the Disciplinary Tribunal.
- The Firm must have reasonable professional Indemnity cover of not less than Kes. 50 Million.
- The Firm should be a mid-tier level firm and, ideally with at least five (5) advocates. The Firm **MUST** designate one of its partners as the liaison point with respect to all council briefs/matters

3.4 Individual History

- 3.4.1 The advocates should attach their profiles stating the type of cases/matters handled and the success rate in litigation and commercial transactions. The profile should indicate experience in handling matters before different courts and Tribunals.

- 3.4.2** The firm should also provide a list of clients handled which should include government departments and Parastatals, international companies and private organizations; and the types of matters handled.

3.5 Payment of Fees/Costs

- 3.5.1** CLE will consider the firm that offers the right balance of value for money as measured by the quality of legal service provided. The firm will be required to identify ways in which legal costs for any significant or complex matter can be mitigated.

- 3.5.2** Payment of fees will be based on the Advocates Remuneration Order, capped or as may be agreed between the Advocate and CLE.

3.6 Litigation against CLE

The firm should disclose if it is engaged in past or pending litigation against CLE and the nature of litigation in order to avoid conflict of interest.

The firm should declare any conflict of interest.

3.7 Ability to Work Closely with CLE

The selected firm will be required to work closely with CLE.

3.8 Monitoring and Evaluation

The selected firm must agree to be monitored through regular client satisfaction surveys in order to ensure that it maintains high standards of service. The firm must give regular reports to CLE.

3.9 Documents Comprising the Request for Pre-Qualification

Tenderers may request a clarification on the Tender Pre-qualification document up to seven (7) days before the Tender submission date. Any request for clarification must be sent in writing by postal mail or electronic mail to the CLE's address www.info.cle.co.ke. CLE will respond in writing by normal postal mail or electronic mail to such requests and will send copies of the response to all Tenderers who intend to submit tenders.

3.10 Preparation of Tender Documents

- 3.10.1** Tenderers are requested to submit documents written in the English language.
- 3.10.2** Tenderers are expected to examine the documents comprising this Request for pre-qualification in detail. Material deficiencies in providing the information requested may result in rejection of a Tender.
- 3.10.3** Tenderers are required to meet the Pre-Qualification criteria stipulated herein-after. Those who do not meet the requirements need not submit tenders. Only tenders, which fulfill these requirements, will be considered for detailed evaluation.
- 3.11 Period of Validity - N/A**
The request for pre-qualification must remain valid for not less than 120 days from the date of submission. CLE will undertake to complete the evaluation and communicate within this period.
- 3.12 Submission, Receipt, and Opening of Pre-Qualifications**
- 3.12.1** The original Pre-qualification Document shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the applicant. Any such corrections must be initialed by the person or persons who sign(s) the Pre-qualification Document.
- 3.12.2** The Applicants should initial all pages of the tender document.
- 3.12.3** The Pre-qualification document should be prepared and submitted in two (2) copies in a plain sealed envelope marked:

"PRE-QUALIFICATION OF LAWYERS FOR PROVISION OF LEGAL SERVICES" and delivered to:

Secretary/CEO
Council of Legal Education
P. O. BOX 829-00502 Karen
Nairobi-Kenya

3.13 Tender Submission

3.13.1 Submission Time

The closing time for submission of the Pre-Qualification Document shall be 23RD April 2019 at 12.00 P.M. and shall be sent to the above address. Pre-Qualification Document shall be marked on top "DO NOT OPEN BEFORE 23RD April 2019 at 12.00 P.M.

3.13.2 Late Submission

Any Pre-Qualification Document received after the deadline shall be rejected as a late tender and shall not be considered.

3.13.3 Tender Opening

An Opening Committee shall open the applications immediately after the closing time for submission of the Pre-Qualification Document.

CLE will prepare a record of the Pre-Qualification Document opening.

3.13.4 Pre-Qualification Evaluation

Mandatory Requirements for Pre-Qualification:

- i) Pre-qualification Submission Form.
- ii) Current Practicing Certificate (s)
- iii) A copy of Valid Tax Compliance Certificate.
- iv) Certificate of good standing from the Law Society of Kenya for the Partners
- v) Current Professional Insurance Indemnity cover of at least Kshs.50, 000,000.00.
- vi) Original and Copy of tender documents must be duly paginated consistent with the table of contents, signed/initialed and stamped on every page. No loose document will be accepted.
- vii) Duly filled, signed and stamped Ethics and Integrity pact form provided.

General Requirements

3.13.5 CLE will examine the tenders to determine completeness, general orderliness and sufficiency in responsiveness.

3.13.6 Applicants shall not contact CLE on the matter relating to their Pre-Qualification Document from the time of opening until the evaluation is finalized unless

official communication is sent to them.

Any effort by an Applicant to influence CLE in the Pre-Qualification document evaluation shall result in the rejection of its application.

3.13.7 Pre-qualification will be based on meeting the following minimum criteria regarding the Applicant's legal status, compliance with statutory requirements, general and particular experience as demonstrated by the responses in the attached forms.

3.13.8 The Applicants should have registered offices and CLE reserves the right to visit the physical premises from which the applicant conducts business if necessary to confirm existence and capability to deliver services.

3.13.9 Applicants who qualify according to the selection criteria will be required to offer various legal services as and when required within the two (2) years.

3.13.10 CLE reserves the right to accept or reject any or all Pre-Qualification Documents without any obligation to assign reason(s) for its decision thereof.

3.13.11 Evaluation Criteria

The points given to evaluation criteria are provided in the evaluation matrix below.

EVALUATION CRITERIA

PART I - MANDATORY CRITERIA

Bidders must attach evidence to fulfill the following requirements:

PART I - MANDATORY CRITERIA			
NO.	REQUIREMENTS	MAX SCORE	YES/ NO
A.	Duly completed and signed Submission Form.	Mandatory	
B.	Original and Copy of tender documents, duly paginated	Mandatory	
C.	Duly completed and signed Confidential Business Questionnaire.	Mandatory	
D.	A copy of the Certificate of Registration of the Law firm.	Mandatory	
E.	Evidence of Physical Address.	Mandatory	

F.	Certified Copies of practicing Certificates of All Advocates in the Law firm.	Mandatory	
G.	Certificate/Letter of good standing from the Law Society of Kenya	Mandatory	
H.	Letters of Commendation from at least 3 corporate Clients. (Client`s name and Contact Person (Email and telephone No.)	Mandatory	
I.	Audited Accounts for immediate past two (2) Years.	Mandatory	
J.	Duly completed, signed and stamped Ethics and Integrity pact form provided.	Mandatory	
K.	Tax Compliance Certificate.	Mandatory	
L.	Evidence of the firm's Professional Insurance Indemnity of not less than shs.50,000,000.00	Mandatory	
An application shall be rejected at this stage if it does not respond to the mandatory requirements. Applications that respond to the mandatory requirements will be proceed to Technical evaluation.			

PART II - TECHNICAL CRITERIA

PART II - TECHNICAL CRITERIA				
NO.	REQUIREMENTS	PARAMETER	MAX SCORE (Points)	FIRM'S SCORE
A.	Experience in the handling related matters as per the scope of services . Attach evidence.	-	10	

B.	Value of Professional Indemnity	Kshs. 50 Million and Over Less than Kes. 50 Million	15 No Score	
----	---------------------------------	--	--------------------	--

C.	Capacity & Period of Operation of Firm		30	
	C1. Firm Profile & Experience			
	Qualifications and competence/areas of practice of Key professional staff (attach respective CVs for each with above details)	Senior Partners 15 years and over of experience	10	
		Less than 15years.	5	
	C2. Size			
	Number of Partners	Partners 2 and above	5	
		1-2 Associates	3	
	Number of Associates	4 and above	5	
		3 -5	2	
		1-2	1	
	Number of Support staff	4 and above	2	
		2- 3	1	
		No support staff	No score	
			-	

D	Major Litigation briefs successfully handled in the following courts/ subject matter.	Briefs Supreme Court Court of Appeal High Court Regional Courts/ International Courts	30 15 7 5 3	
E	Audited financial statements for the last two (2) years or where the firm has been in operation for less than 2 years. Certified Management Accounts.	-	12	
F	Completeness of bid documents	-	6	
	TOTAL		100	

Each responsive proposal will be given a technical score (St).

A proposal shall be rejected at this stage if it does not respond to important aspects of the Criteria or if it fails to achieve the minimum technical score indicated.

The pass mark shall be a minimum technical score of **70 points**.

3.13.12 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Tenderers who submitted the proposals or to other persons not officially involved in the process, until the winning firm of lawyers has been notified and prequalified for the services.

3.14 Litigation

Applicants must also disclose if they are handling any matters against the CLE and briefly describes the nature and scope of the matters.

3.15 Corrupt or fraudulent practices

3.15.1 CLE requires the Tenderers to observe the highest standards of ethics during the selection and prequalification of the Lawyers and during the performance of any assignment(s). The tenderer shall sign a declaration that he/she has not and will not be involved in corrupt or fraudulent practices.

3.15.2 CLE will reject an application if it determines that the firm (s) recommended for prequalification has engaged in corrupt or fraudulent practices in competing for the services in question.

3.15.3 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

SECTION III: PRE-QUALIFICATION SUBMISSION FORM

To:

Date: _

Tender No.: _____

The Secretary/CEO
Council of Legal Education
P.O. BOX 829-00502 Karen
NAIROBI, KENYA.

Dear Sir,

I, the undersigned, offer to provide the required services in accordance with your Instructions and I hereby submit my Pre-qualification Document.

My Application is binding to me and if found acceptable I shall be pleased to be included in the list of pre-qualified Lawyers.

I understand you are not bound to accept any application you receive.

Yours Sincerely,

Signature:

Name of Tenderer

Address:

SECTION IV: CONFIDENTIAL PRE-QUALIFICATION BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1; either Part 2(a), 2(b) or 2 (c) whichever applies to your type of business; and Part 3. You are advised that it is a serious offence to give false information on this form.

Part 1 - General Information

1.1 Business Name

.....
.....

1.2 Location of Business Premises.

.....
.....

1.3 Plot No..... Street/Road.....

Postal Address Tel No:
Fax..... E mail

1.4 Nature of Business

1.5 Registration Certificate No.....

1.6 Maximum Value of Business which you can handle at any one time Kshs.

.....

1.7 Name of your Bankers

1.Branch
2.Branch
3.Branch

Part 2 (a) - Sole Proprietorship																				
<p>2a. 1 Name in Full</p> <p>2a.2 Nationality Country of Origin</p>																				
Part 2 (b) Partnership																				
<p>2b.1 Given details of Partners as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 30%;">Name</th> <th style="text-align: left; width: 20%;">Nationality</th> <th style="text-align: left; width: 30%;">Citizenship Details</th> <th style="text-align: left; width: 20%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>4.....</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Name	Nationality	Citizenship Details	Shares	1.....				2.....				3.....				4.....			
Name	Nationality	Citizenship Details	Shares																	
1.....																				
2.....																				
3.....																				
4.....																				
Part 2 (c) - Debarment																				
<p>I / We declare that I/ we have not been debarred from any procurement process and shall not engage in any fraudulent or corrupt acts with regard to this or any other tender by the Council of Legal Education and any other public or private institution.</p> <p>Name of duly authorized person.....</p> <p>Signature of duly authorized person..... Date</p>																				
Part 2 (d) - Criminal Offence																				

I / We, individually or jointly have not been convicted of any criminal offence relating to professional (mis)conduct or the making of false statements or misrepresentations as to my/our qualifications to enter into a procurement contract within a period of five (5) years preceding the commencement of this prequalification procurement.

Name of duly authorized person.....

Signature of duly authorized person..... Date

Part 3 - Conflict of Interest

3.1 I / We, the undersigned state that I/ we have no conflict of interest in relation to this prequalification.

1 Date

2 Date

3 Date

Name of duly authorized person.....

Signature of duly authorized person..... Date

3.2 Does any person/person in CLE have interest in the firm?

Yes_____No_____

3.3 If your answer in “3.2” above is Yes, give details

.....
.....
.....
.....

3.4 Are you under a declaration of ineligibility for corrupt and/or fraudulent practices? Yes ____ No__

3.5 If your answer in “3.4” above is Yes, give details

.....
.....
.....
.....

I/ We, declare that the information given on this form is correct to the best of my/our knowledge and belief that I/we give CLE authority to seek any other references concerning my/our firm from whatever source (s) deemed relevant.

Signature of applicant:Date

SECTION V – STATUTORY DECLARATION

**REPUBLIC OF KENYA IN THE MATTER OF OATHS AND STATUTORY DECLARATION
ACT CHAPTER 15 OF THE LAWS OF KENYA**

AND

IN THE MATTER OF THE PUBLIC PROCUREMENT AND DISPOSAL ACT, 2015.

I, of P. O. Boxbeing a resident of
in the Republic of Kenya do hereby make oath and state as follows: -

1. THAT I am an advocate of the High Court of Kenya, having been admitted to the bar on and duly authorized and competent to make this Affidavit.
2. THAT I have submitted my candidature in respect of Tender Number
To render legal services to Office of the Director of Public Prosecutions.
3. THAT I have not been requested to pay any inducement to any member of Management, Staff and/or agents of CLE, which is the procuring entity.
4. THAT I have not been debarred from any procurement process.
5. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

SWORN at by the said }
..... }
on this day of 20..... } DEPONENT
Before me..... } Commissioner for Oaths

SECTION VI - METHOD OF CHARGING FOR SERVICES

PART A

6.1 Advocates Remuneration Order under the Advocates Act, 2014

- 6.1.1 CLE's appointment will consider law firm's that offer the right balance of value for money as measured by the quality of legal service rendered. Law firm's will be expected to identify ways in which legal costs for any significant or complex cases may be mitigated.
- 6.1.2 CLE expects that legal fees and charges payable shall generally be in accordance with the Order as applicable to the case or matter being handled.
- 6.1.3 The mode of billing shall be considered on a case by case basis and subject to agreement between CLE and the firm. Should there be a difference on this, then CLE and the law firm may by agreement refer the issue to Taxation with each party bearing their own costs for the Taxation.

PART B

6.2 Advocates Remuneration Order (Schedule V) under the Advocates Act, 2014

- 6.2.1 Without prejudice to the contents of paragraph 5.1, CLE recognizes that the present 5th Schedule of the Order provides for an hourly billing system or an amount fixed by agreement between CLE and the firm.
- 6.2.2 Law firms' are required to fill in the table below (*Hourly Billing Table*). If and when the issue of hourly billing arises from the performance of services instructed within the two - year period, where CLE consents, the parties will refer to the Table 5.2.2 below as a basis for discussion and determination of fees payable.

Table 5.2.2

SN	Name of Professional Staff	Position (<i>Partner or Associate</i>)	Hourly Remuneration Rate (KSh.)
1.			
2.			
3.			
4.			
5.			

SECTION VI: TEAM COMPOSITION SUMMARY AND TASK ASSIGNMENTS

1. Partner(s)

No	Name	Position	Area of Practice
1.			
2.			
3.			
4.			
5.			

2. Associates, Support Staff and Consultants

NO	Name	Position	Area of Practice
1.			
2.			
3.			
4.			
5.			
6.			
7.			

SECTION VII: FORMAT OF CURRICULUM VITAE (CV) FOR **PROPOSED PROFESSIONAL STAFF**

Position: _____

Name of: _____

Date of Birth: _____

Years of Practice: _____

Nationality: _____

Membership into Professional Societies:

Key Qualifications:

[Outline Lawyer qualifications].

Education:

[Summarize college/university and other specialized education, giving names of Schools, dates attended and degree(s) obtained.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]

Certification:

I, the undersigned, certify that the data correctly describe me, my qualifications, and experience.

[Signature]

Date:

Full name: _____

SECTION VIII. ETHICS AND INTEGRITY PACT

TO BE FILLED, DATED, SIGNED AND SUBMITTED BY ALL PERSONS BIDDING FOR THE SUPPLY OF OR PROVISION OF ANY GOODS OR SERVICES TO COUNCIL OF LEGAL EDUCATION

Bidder's undertaking on Ethics and Integrity

Accepting that transparent business management and fair public administration are key to social development and national competitiveness, and in an effort to eliminate corruption and apply sanctions to corrupt businesses, and in full support of the worthy goals of this Integrity Pact, concerning the present proposal for:....., I.....

1. I understand that CLE is a law-abiding institution and I undertake to abide by all the Laws of Kenya particularly the laws, rules and regulations governing ethics and integrity and the procurement of goods and services by public agencies in Kenya. I shall not engage in any unethical business practices, including but not limited to making false declarations and representations in bidding documents; bid-rigging, collusive bidding, canvassing and other related corrupt practices.
2. I shall not offer any bribe, gift, entertainment or any other undue benefit directly or indirectly to any officials of the CLE or indeed any other person nor commit any other act with a view to unlawfully influencing the process or outcome of procuring for the services herein or the performance of any contract arising from the procurement process.
3. I undertake to report to the CLE, Ombudsman and the Kenya Ethics & Anti-Corruption Commission any acts of corruption and unethical practice by any official of CLE, any other person that come to my knowledge in the course of procuring the provision of the services herein or the performance of any contract arising therefrom.
4. In bidding for the services herein and in the course of any contract that may arise therefrom, I shall not make any statement which is untrue based on my knowledge, information and belief. I shall fully and truthfully declare my ability to provide the services and will not bid for the provisions of services which I do not have the capacity to provide whether at all or under the terms required by CLE.
5. I declare that I have the legal and operational capacity to make a bid for the services herein, including but not limited to the fact that I am not an undischarged bankrupt, under receivership or in liquidation or otherwise insolvent nor suffering from any such or other incapacity that would make my bid or ability to provide the services herein legally

or operationally untenable.

6. I declare that there is no conflict of interest situation existing between myself on the one hand and the CLE on the other with regard to the provision of the services herein that would make the my bid or contract ethically or legally untenable. If any such conflict arises in the course of the procurement process and before the conclusion of any contract arising therefrom, I shall fully and truthfully declare such conflict to the CLE.
7. I understand that the violation of this pact may lead to the disqualification my bid, to the termination of any contract or obligation between myself and CLE and my prosecution.

Name:Signature: -----Stamp.....

SECTION IX - GENERAL CONDITIONS OF APPOINTMENT

The General Conditions of Appointment shall form part of the Conditions of Appointment in accordance with the law and CLE's guidelines, practices, procedures and working circumstances. The provisions in the General Conditions of Application will apply unless an alternative solution or amendment is made under other parts of the Conditions including the Service Level Agreement.

9.1 Definitions

In these Conditions the following terms shall be interpreted as follows: -

- a) *"Day" means calendar day and "month" means calendar month.*
- b) *"The Conditions" means the agreements entered into between CLE and the law firm, as recorded in the Main Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.*
- c) *"The Charges" means the rates and fees of which the appointed law firm is entitled to for the proper performance of its obligations as and when it is called upon by CLE to do so.*
- d) *"The Services" means services or part thereof that may from time to time be duly provided by the law firm and includes all of the materials and incidentals, which the law firm is required to perform and provide to CLE as part of its assignment.*
- e) *"The Procuring Entity" means The Council of Legal Education or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as CLE*
- f) *"The law firm" or the lawyer" or the Consulting firm" means the individual or firm providing the Services consequent to the appointment. For the avoidance of doubt this shall mean the Successful Law firm(s) or lawyer(s) pursuant to the tender.*

9.2 Application

These General Conditions of Appointment shall apply to the extent that the provisions of other parts of the Conditions do not supersede them.

9.3 Standards

The Services supplied under this contract shall conform to the professional ethics and standards applicable to lawyers under the s Act, 1989 together with the Service Level Agreement entered into between CLE and the law firm.

9.4 Use of documents and Information

- 9.4.1 The law firm and each and every individual lawyer therein shall not, without CLE's prior written consent, disclose these Conditions, or any provision thereof or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of CLE in connection therewith, to any person other than a person employed by the law firm in the performance of any assignment arising out of this appointment.
- 9.4.2 The law firm shall not, without CLE's prior written consent, make use of any document or information enumerated in sub-clause 9.4.1 above.
- 9.4.3 Any document, other than the contract itself, enumerated in sub-clause 9.4.1 shall remain the property of CLE and shall be returned (including all copies) to CLE on completion of the law firm's performance of any assignment which may be given to and accepted by it, where so required by CLE.

9.5 Professional Indemnity Cover

- 9.5.1 Within fourteen (14) days of the date of notification of appointment from CLE, the successful law firm shall furnish CLE with a valid PI Cover.
- 9.5.2 The Professional Indemnity Cover shall be issued by an insurance company registered by the Insurance Regulatory Authority and approved by PPOA. The insurer must be located in Kenya.
- 9.5.3 The successful law firm shall furnish the PI Cover in not less than Kenya Shillings Fifty Million (Kshs. 50 Million) or that which it submitted for purposes of evaluation; whichever is higher, giving rise to these Conditions.
- 9.5.4 The law firm shall ensure that the PI Cover remains valid throughout the period of Appointment and where CLE engages it in any assignment upto the conclusion of that assignment.
- 9.5.5 The PI Cover is required to protect CLE against the risk of the law firm's conduct during the performance of Services which would warrant the PI Cover's forfeiture or part thereof.
- 9.5.6 CLE shall seek authentication of the PI Cover from the issuing Insurer. It is the responsibility

of the successful law firm to sensitize its issuing Insurer on the need to respond directly and expeditiously to queries from CLE. The period for response shall not exceed five (5) days from the date of CLE's query. Should there be no conclusive response by the Insurer within this period, such successful law firm's PI Cover may be deemed as invalid.

9.5.7 Failure of the successful law firm to furnish an authentic PI Cover, the appointment shall stand annulled.

9.5.8 The law firm shall provide such evidence of the continued existence and validity of the PI Cover as CLE may reasonably and from time to time request.

9.6 Demonstration(s), Inspection(s) and Test(s)

9.6.1 The law firm will be required to demonstrate dexterity, diligence, skill and professionalism in the performance of Services when called upon to do so right from receipt of instructions to conclusion of the assignment which is by closure of the file or matter by agreement between CLE and the law firm except in cases of earlier cessation of instructions.

9.6.2 CLE or its representative(s) shall have the right to inspect and confirm this demonstration of the law firm's performance, capacity, equipment, premises, and to confirm its conformity to the Conditions of Appointment. This shall include any Quality Management System.

9.6.3 CLE shall meet its own costs of the inspections/ visits. These may be done on the law firm's offices, courts or any other place at the discretion of CLE.

9.6.4 Where conducted on the premises of the law firm(s), all reasonable facilities and assistance, including access to literature and documentation save for other clients confidential information shall be furnished to CLE representative(s) at no charge to CLE.

9.6.5 A Demonstration/Visitation Report(s) may be completed by CLE upon conclusion of the inspection/ visitation. This Report where done shall be considered during periodical review with the law firm for purposes of improvement in the engagement between the parties, performance, analysis and continued empaneling or re-appointment at the end of the Period.

9.6.6 Nothing in this clause 9.6 shall in any way be construed as a Waiver of any kind whatsoever

or release the law firm from any of its obligations under the s Act as and when it is engaged in any matter by CLE.

9.7 Nature of the Conditions

9.7.1 The Pre-qualification and enlisting of the law firm on CLE's Panel shall not constitute a retainer or contract.

9.7.2 CLE does not bind itself to request the law firm for provision of any Service during any time in which the law firm is considered to be on its Panel.

9.8 Interest

9.8.1 Where the law firm is instructed by CLE on any assignment or matter, it is hereby agreed that interest payment by CLE is inapplicable on any charges or fees accruing to the law firm.

9.9 Fees and Rates

9.9.1 Where professional fees, charges or payments of any kind are due and owing to the law firm, the guide for payment shall be the relevant s Remuneration Order except for Schedule V thereon.

9.9.2 The mode of billing shall be considered on a case by case basis and subject to agreement between CLE and the law firm. Should there be a difference on this, then CLE and the law firm, may by agreement, refer the issue to Taxation with each party bearing their own costs for the Taxation.

9.9.3 The parties recognize that the present 5th Schedule of the s Remuneration Order under the s Act, 2014 provides for an hourly billing system or an amount fixed by agreement between CLE and the firm. Where fees or charges are due and owing to the law firm and it is agreed between the law firm and CLE that the same should be paid on the basis of Schedule V, then and in that event, the parties shall discuss the quantum thereof with regard to the figures indicated by the law firm in its tender as the Method of Charging for Services section.

9.10 Assignment

- 9.10.1 The law firm shall not assign or in whole or in part its appointment by virtue of its pre-qualification or assign or sub-contract its obligations to perform when instructed by CLE except as may be prescribed.
- 9.10.2 In the event that a sub-contract is permissible and the law firm sub-contracts its role, the responsibility and onus over the instructions given to the law firm shall rest with the law firm that is pre-qualified by CLE.

9.11 Resolution of Disputes

- 9.11.1 CLE and the law firm may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with its appointment to the Panel or during the performance of any services rendered by the firm.
- 9.11.2 Where the parties are of the opinion that direct informal negotiation cannot amicably resolve the dispute, or, that it is not appropriate, the dispute shall be referred to an arbitral tribunal constituted by a single arbitrator appointed by the Law Society of Kenya.

9.12 Language and Law

- 9.12.1 The language of the GCA and the law governing any ensuing contract shall be the English language and the Laws of Kenya respectively.

9.13 Waiver

- 9.13.1 Any omission or failure by CLE to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the law firm shall in no way, manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of CLE's powers and rights as expressly provided in and as regards the GCA and any ensuing contract.

9.14 Force Majeure

9.14.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:

- a) war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;*
- b) ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;*
- c) rebellion, revolution, insurrection, military or usurped power & civil war;*
- d) riot, commotion or disorder except where solely restricted to employees servants or agents of the parties;*
- e) un-navigable storm or tempest at sea.*

9.14.2 Notwithstanding the provisions of the GCA, neither party shall be considered to be in default or in breach of its obligations under the GCA or any ensuing contract to the extent that performance of such obligations is prevented by any circumstances of *force majeure* which arise after the GCA.

9.14.3 If either party considers that any circumstances of *force majeure* are occurring or have occurred which may affect performance of its obligations it shall promptly notify the other party and provide reasonable proof of such circumstances.

9.14.4 Upon the occurrence of any circumstances of *force majeure*, the law firm shall endeavor to continue to perform its obligations so far as is reasonably practicable. The law firm shall notify CLE of the steps it proposes to take including any reasonable alternative means for performance, which is not prevented by *force majeure*. The law firm shall not take any such steps unless directed so to do by CLE.

9.14.5 If the law firm incurs additional costs in complying with CLE's directions under sub clause 9.14.4, then notwithstanding the provisions of the GCA and any ensuing contract,

the amount thereof shall be agreed upon with CLE and added to the fees and charges payable.

- 9.14.6 If circumstances of *force majeure* occurs and continues for a period of twenty one (21) days then, notwithstanding that the law firm may by reason thereof have been granted an extension of time for performance of the services, either party shall be entitled to serve upon the other seven (7) days' notice to terminate the instructions. If at the expiry of the period of twenty-eight (28) days, *force majeure* shall continue, the services at the option of either party shall terminate.

SECTION X - TENDER FORM

Date:

Tender No.

The Council of Legal Education,
Karen Office Park,
Langa'ta Road, Karen
P.O Box 829 - 00502,
Nairobi, Kenya.

Ladies and Gentlemen,

1. Having read, examined and understood the Prequalification Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Law firm, offer to render and perform Legal Services in accordance and conformity with the said tender document and in particular the Method of Charging for Services that are made part of this Tender.
2. We undertake, if our Tender is accepted, to perform and provide the Services in accordance with the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the Professional Indemnity Cover insurance from a reputable insurance company in a sum that is no less than that which we submitted for purposes of evaluation in the Tender.
4. We agree to abide by this Tender for a period of.....days (**law firm please indicate validity of your Tender**) from the date fixed for tender opening as per the Prequalification Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Tender, together with CLE's written acceptance thereof and notification of appointment shall not constitute a contract, between us. The contract shall be formed between us when CLE duly issues instructions to us on any specific matter or assignment.

6. We understand that CLE is not bound to accept and prequalify any Tender it may receive.

Yours sincerely,

Full name of law firm

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp of the law firm

***NOTES:**

1. CLE requires a validity period of at least one hundred and twenty (120) days.
2. This form must be duly signed and stamped.

SECTION XI - CONDITIONS OF APPOINTMENT FORM

THIS AGREEMENT made this.....day of.....20..... BETWEEN THE COUNCIL OF LEGAL EDUCATION, a corporate body, established by the Legal Education Act 27, of 2012, Laws of Kenya, and of Post Office Box Number 829-00502, Nairobi in the Republic of Kenya with its office situated at Karen Office Park, Langáta Road, Karen, Nairobi in the Republic aforesaid (*hereinafter referred to as the “CLE”*) of the one part,

AND

..... (*law firm’s full name and principal place of business*) a duly registered law firm according to the Registration of Business Names Act, Chapter ____ of the laws of Kenya and of Post Office Box Number..... (*full address i.e. e-mail, physical and postal of law firm*) in the Republic aforesaid, (*hereinafter referred to as the “law firm”*) of the other part;

WHEREAS CLE invited tenders to prequalify for certain services, that is to say for **Legal Services** under Pre-Qualification Tender Number..... (*CLE insert Prequalification Tender number*)

AND WHEREAS CLE has selected the Tender by the law firm for Appointment to render the Services as and when called upon to do so;

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Appointment and the Prequalification Tender Document.
2. Unless the context or express provision otherwise requires: -
 - a) reference to “this Agreement” includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
 - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.

- c) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
 - d) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “*law firm*” or “*the lawyer*” or “*the Consulting firm*” or “*the Successful law firm*” the covenants, agreements obligations expressed to be made or performed by the law firm shall be deemed to be made or performed by such persons jointly and severally.
 - e) where there are two or more persons included in the expression the “*law firm*” or “*the lawyer*” or “*the Consulting firm*” or “*the Successful law firm*” any act default or omission by the law firm or the lawyer or the Consulting firm or the Successful Law firm shall be deemed to be an act default or omission by any one or more of such persons.
3. In consideration of the payments to be made by CLE to the law firm, the law firm hereby covenants with CLE to perform and provide the Services and remedy any defects thereon in conformity in all respects with the provisions of these Conditions.
 4. CLE hereby covenants to pay the law firm in consideration of the proper performance and provision of the services and the remedying of defects therein, the sum as may become payable under the provisions of any ensuing Contract.
 5. The following documents shall constitute the Conditions between CLE and the law firm and each shall be read and construed as an integral part of these Conditions: -
 - a) this Conditions of Appointment Form
 - b) the Service Level Agreement
 - c) the General Conditions of Appointment as per the Pre-Qualification Tender Document
 - d) the Method of Charging for Services submitted by the law firm and agreed upon with CLE.
 - e) Partners and Team Composition
 - f) the Professional Indemnity Cover
 - g) CLE’s Notification of Appointment dated.....
 - h) the Tender Form signed by the law firm
 - i) the Declaration Form signed by the law firm

6. In the event of any ambiguity or conflict between the documents listed above, the order of precedence shall be the order in which the documents are listed in 5 above except where otherwise mutually agreed in writing.
7. The period of appointment shall begin from the Confirmation date and end on the last day of the month of the Pre-qualification period, or, such other date as CLE may signify to the law firm.
8. No failure or delay to exercise any power, right or remedy by CLE shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
9. Notwithstanding proper completion of performance or parts thereof, the provisions of these Conditions shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise agreed upon by both parties.
10. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service.
11. For the purposes of Notices, the contacts of CLE shall be the Secretary, Council of Legal Education, 2nd Floor, Karen Office Park, Lang'ata Road, Post Office Box Number 829-00502, Nairobi, Kenya, e-mail: info@cle.or.ke. The contacts for the law firm shall be the law firm's contacts as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya the day and year first above written.

SIGNED for and on behalf of CLE

CHIEF EXECUTIVE OFFICER

SIGNED BY AND ON BEHALF OF THE LAW FIRM)

in the presence of:

) _____

) NAME & SIGN. OF PARTNER

)

AND

)

)

) _____

) NAME & SIGN. OF PARTNER

in the presence of:

)

)

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) _____

in the presence of:

) NAME & SIGN. OF PARTNER

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