

**BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY**



**TENDER FOR  
CONSULTANCY SERVICES FOR NETWORKS READINESS ASSESSMENT  
FOR MOBILE NUMBER PORTABILITY IN BOTSWANA  
FOR**

**BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY**

REFERENCE NO. **BOCRA/PT/003/2019.20**

Tender Closing Date: **29 MAY 2020**

BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY PRIVATE BAG 00495 GABORONE PLOT 50671, INDEPENDENCE AVENUE, GABORONE
PROCURING ENTITY BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY

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**PUBLIC TENDER NOTICE**  
**Botswana Communications Regulatory Authority**

**Tender No: BOCRA/PT/003/2019.20**

**CONSULTANCY SERVICES FOR NETWORKS READINESS ASSESSMENT  
FOR MOBILE NUMBER PORTABILITY (MNP) IN BOTSWANA FOR  
BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY**

Botswana Communications Regulatory Authority (BOCRA/the Authority) hereby invites companies with substantial experience to tender for consultancy services for Networks Readiness Assessment for Mobile Number Portability in Botswana.

100% Citizen-owned companies domiciled in Botswana must, in order to be considered for the tender, be registered with the Public Procurement Assets and Disposal Board (PPADB) in the following categories:

**Code: 319 – ICT Consultancy Services**  
**Sub-Code: 05 - Telecommunications**

The Invitation to Tender (ITT) document may be purchased at the BOCRA office by interested companies for a non-refundable fee of **P168.00 (One Hundred and Sixty-Eight Pula Only VAT inclusive)**. Payment must be made in the form of cash, bank transfer or bank guaranteed cheque. Below are the bank details:

<b>Bank Name:</b>	<b>First National Bank Botswana Ltd</b>
<b>Branch Name:</b>	<b>Mall</b>
<b>Branch Code:</b>	<b>28-28-67</b>
<b>Account Name:</b>	<b>Botswana Communications Regulatory Authority</b>
<b>Bank Account No:</b>	<b>62011115088</b>
<b>Swift Code:</b>	<b>FIRNBWGX</b>
<b>Reference:</b>	<b>BTA0001</b>

Youth companies shall purchase the ITT at 50% of the fee as per **Presidential Directive CAB 14 (B)/2015**.

Tenders and all supporting documents should be submitted not later than **10:00hrs on 29 MAY 2020** or such other later date as the Authority may advise in writing, to the following address:

**Botswana Communications Regulatory Authority**

**Plot 50671 Independence Avenue**

**Private Bag 00495**

**Gaborone Tel: +267 368 5500**

**Fax: +267 395 7976**

Tenders will be opened at **10:05hrs** on the **29 MAY 2020** at the BOCRA offices. Representatives of the bidders and the general public may attend unless otherwise advised in writing by the Authority.

**RESERVATION AND PREFERENCE OPTIONS**

The tender is reserved for 100% citizen-owned companies as per Government Statutory Instrument No. 23 of 2020. The companies may source experts from international market or form local partnerships to enhance their bids.

Preferences will be applied as per the Economic Diversification Drive (EDD), Citizen Empowerment Scheme and Presidential Directive CAB 34 (B) 2014 for locally manufactured goods and services.

The BOCRA's Standardised Conditions of Contract apply to this procurement, which are contained in the tender documents.

Notwithstanding anything in the foregoing, the Authority is not bound to accept the lowest or any tender offer.

For any further information regarding the tender, contact:

**Procurement Office: 3685500/09/33**

**Contact email: [procurement@bocra.org.bw](mailto:procurement@bocra.org.bw)**

## SECTION 1 Invitation and Instructions to Bidders

1. Botswana Communications Regulatory Authority (“BOCRA/the Authority”) is a statutory body established under the Communications Regulatory Authority Act of 2012. The Authority is mandated to apply the provisions of the Act in a manner which promotes efficient provision of communications services throughout the country. The Act is available from Government Printers in Gaborone, Botswana or may be obtained at the following BOCRA website: <http://www.bocra.org.bw>
2. BOCRA hereby invites experienced and reputable bidders to tender for **Consultancy Services For Networks Readiness Assessment for Mobile Number Portability in Botswana** as detailed in Section 2 of this Invitation to Tender document.
3. 100% Citizen-owned companies domiciled in Botswana must, in order to be considered for the tender, be registered with the Public Procurement Assets and Disposal Board (PPADB) in the following categories:

**Code: 319 – ICT Consultancy Services**  
**Sub-Code: 05 – Telecommunications**

### 4. Reservation and Preference

The tender is reserved for 100% citizen-owned companies as per Government Statutory Instrument No. 23 of 2020. These companies may source experts from international market or form local partnerships to enhance their bids.

Preferences will be applied as per the Economic Diversification Drive (EDD), Citizen Empowerment Scheme and Presidential Directive CAB 34 (B) 2014 for locally manufactured goods and services.

5. The ITT may be purchased by interested persons for a non-refundable fee of **P168.00 (One Hundred and Sixty Eight Pula Only ) VAT inclusive**.
6. Youth companies shall purchase the ITT at 50% of the fee as per Presidential Directive CAB 14 (B) 2015.
7. Tender documents (ITT) may be purchased at:

**Botswana Communications Regulatory Authority**  
**Plot 50671 Independence Avenue**  
**Private Bag 00495**  
**Gaborone, Botswana.**  
**Tel: +267 368 5500, Fax: +267 3957976**

8. The ITT comprises:
  - 8.1 Tender Notice
  - 8.2 Invitation and Instruction to Bidders
  - 8.3 Terms of reference
  - 8.4 Conditions of Contract
  - 8.5 Annexures
    - 8.5.1 Declaration of Secrecy
    - 8.5.2 Form of Tender
    - 8.5.3 Curriculum Vitae Form
    - 8.5.4 Certificate of Authorised Signatory
    - 8.5.5 Declaration Form for Eligibility
    - 8.5.6 Declaration Form: Locally Produced Goods/Services
    - 8.5.7 Declaration Form: EDD
    - 8.5.8 Experience of Tenderer
9. Registered Buyers ("Buyers") of the ITT may submit questions in writing for clarification. Such questions must be addressed to the Chief Executive at the above address and must be received before **20 MAY 2020** or such other later date as the Authority may advise. Questions received after the specified date will not be responded to.
10. All questions submitted by Buyers will be consolidated into one document ("the Clarification Document") which will include the questions and the corresponding responses. The sources of the questions will not be identified. Clarifications of any matters, relating to the tender shall be communicated in writing to all prospective bidders by **22 MAY 2020**.
11. Bidders will not be reimbursed for any expenses incurred in the preparation of their bids.
12. BOCRA's members of staff are not permitted to discuss any issues related to this tender or give any verbal clarifications to any person. All queries are to be addressed using the procedure outlined above. Any effort by the bidder/s to influence BOCRA's members of staff in the tender evaluation, tender comparison or contract award decisions may result in the outright disqualification of their bid.

13. Board Members are prohibited from tendering for any construction, works, supplies or service contract with the Authority.
14. Bid documents shall not be returned to the bidders at the end of the tender evaluation.
15. The panel of evaluators will follow the **Quality and Cost Based Selection (QCBS) Evaluation method**.
16. The bid submission method to be followed is the two-envelope system.
- 16.1 **A Two Envelope system** shall be followed.

The Technical Proposal and the Financial Proposal shall be enclosed in two separate sealed envelopes, one containing the Technical Proposal with its copies and the other one containing the Financial Proposal with its copies. The inner envelope containing the Financial Proposal must be clearly marked "Financial Proposal" and the one containing the Technical Proposal must be clearly marked "Technical Proposal"

The two envelopes must be enclosed together in an outer plain sealed package with no indication of the bidder's name or brand logos outside, bearing only the inscription below.

**TENDER NO: BOCRA/PT/003/2019.20**

**CONSULTANCY SERVICES FOR NETWORKS READINESS ASSESSMENT FOR MOBILE NUMBER PORTABILITY (MNP) IN BOTSWANA TO THE BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY**

17. Tender bids shall be delivered at the BOCRA offices above not later than 1200 hours on the **29 MAY 2020** or such other later date and time as the Authority may advise in writing.
18. The Technical proposal will be opened at **10:05** hours on the **29 MAY 2020** at the BOCRA Offices. Financial proposal will be opened after the evaluation of the Technical Proposal at a date and time to be advised by BOCRA. Representatives of the bidders and the general public may attend unless otherwise advised in writing by the Authority.
19. Faxed or emailed tenders will not be considered.

## 20. Submission Format

The following items shall comprise “**the Technical Proposal**”:

- 20.1 One (1) hardcopy marked **ORIGINAL Technical Proposal** and Five (5) identical copies of the original each marked **COPY**. The ‘Proposal’ shall address in detail, the requirements stipulated in the Invitation to Tender document, Terms of Reference and shall include, *inter alia*;
- 20.2 Valid Tax Clearance Certificate or exemption thereof issued by Botswana Unified Revenue Services. The submitted certificate shall be verified online on the BURS website. Bidders domiciled outside Botswana shall submit a tax exemption certificate for tender purposes as issued by Botswana Unified Revenue Services.
- 20.3 Certified copies of Form 2, Form 13 as issued by Companies & Intellectual Property Authority (CIPA). Where necessary the evaluation committee may, during evaluation stage, verify the authenticity of attached documents with respective offices indicated to have issued the documents. Submitted falsified documents shall result in the rejection of the bid.
- 20.4 Certified copy of Certificate of Incorporation or applicable certificate.
- 20.5 Applicable licence for the services required in this ITT.
- 21. The Technical Proposal shall make no reference to the prices, rates or charges contained in the Financial Proposal.
- 22. The following items shall comprise “**The Financial Proposal**”
  - 18.1. One (1) detailed original Financial Proposal marked **ORIGINAL FINANCIAL PROPOSAL** and **five (5)** copies of the original each marked **COPY**. The ‘Financial Proposal’ shall include a completed and signed Form of Tender and its five (5) copies (**Annexure II**)
  - 18.2. All prices should be quoted in Botswana Pula or any convertible ` currency.
  - 18.3 All applicable taxes must be shown distinctively and separately. All taxes, duties, licence fees and other such charges payable in the bidding company's home country shall be paid by the bidding company.
  - 18.4. The bidding company is responsible for payment of all taxes and duties imposed by the Government of Botswana in respect of services performed



by the bidding company. This includes withholding tax on the amount charged by non-resident company and the applicable rate is 15%. The rate may be varied by Double Tax Avoidance Agreements (tax treaties).

18.5. No escalation in the service fee will be permitted during the contract period.

18.6. The Service Fee should be shown separately from disbursements.

18.7. The tender offers shall remain valid for at least 90 (Ninety) days from the date of tender opening.

23. For local Joint Ventures, Consortium, Associations or any type of Partnerships, each party shall be required to submit its compliance documents accordingly.

23.1 A Joint Venture is defined as a contractual agreement of two or more individuals or companies engaged in a single and or once off business contract for profit without actual long-term partnership or incorporation.

23.2 A Consortium is defined as a short-term arrangement in which several companies from the same or different industry sectors pool their financial and human resources to undertake a large project that benefits all members of the group. The parties normally form a separate company which they jointly own more than 75% of the shares.

23.3 An Association is defined as a group of people organized for a joint purpose. Sometimes a few businesses may create an association if they think teaming up can lead to greater profits for them.

23.4 A Partnership is defined as a business of at least two individuals (partners). In certain jurisdictions, there may be an upper limit to the number of partners. Partners usually have unlimited liabilities. The partnership may be registered or unregistered.

## 24. **Evaluation of Tenders**

20.1 The panel of evaluators will follow the **Quality and Cost Based Selection (QCBS)** evaluation method described below:

20.2 The evaluation of this tender will be carried out in three (3) stages with scores allocated as shown below.

- Stage 1:** Compliance Check stage does not accrue any score but rather is used to check whether the bidders have complied with the necessary requirements;
- Stage 2:** The Technical Evaluation takes a total of 70 points;
- Stage 3:** Financial Evaluation takes a total of 30 points.

## **Stage 1: Compliance Check**

At this stage, the bids will be checked for compliance with the stipulated compliance checklist. The check list shown at Table 1 below will be used for evaluation at Stage 1. Bids that pass this stage will proceed to Stage 2 of the evaluation.

**Table 1: Technical Proposal Compliance Check**

	Description	Yes	No.
1.	A sealed package with no indication of the bidder's name or brand logos outside as per clause.		
2.	<p>Hardcopy Proposal marked ORIGINAL TECHNICAL PROPOSAL (one (1) original)</p> <p>2.1 Copy of valid Tax Clearance Certificate issued by Botswana Unified Revenue Services or exemption from tax, enclosed in the Technical Proposal.</p> <p>2.2 Certified Copies of shareholding and directorship documents (Forms 2 and 13 if applicable) as issued by Companies Intellectual Property Authority enclosed in the Technical Proposal. Bidders who do not require CIPA forms shall provide a letter confirming the same.</p> <p>2.3 Certified Proof of nationality of Directors, Shareholders and Team Members (certified copy of Omang or Passport)</p>		
3.	Certified copy of Certificate of Incorporation or applicable certificate.		
4.	Five (5) Copies of the Original each marked COPY		
5.	PPADB registration name under the following category: Code: <b>Code: 319 – ICT Consultancy Services</b> <b>Sub-Code: 05 – Telecommunications</b>		
5.1	<ul style="list-style-type: none"> <li>PPADB registration will be confirmed online.</li> </ul> <p>Registration documents issued by a body equivalent to PPADB to be submitted by International partners</p>		
6.	Copy of joint venture agreement (if applicable)		
7.	Certificate of Authorised Signatory		
8.	Declaration Form for Eligibility		

**Table 2: Financial Proposal Compliance Check**

	Description	Yes	No.
1.	A sealed package with no indication of the bidder's name or brand logos outside		
2.	One (1) hardcopy marked ORIGINAL FINANCIAL PROPOSAL		
3.	Five (5) identical Copies of the Financial Proposal with the Form of Tender each marked COPY		

20.3 Any bidder who does not comply with the above compliance check list shall be disqualified immediately and shall not be considered in the further stages of evaluation or tender award, subject to clause 21.3 below.

20.4 In cases where a bidder fails to submit the documents listed below, they will be requested to submit during tender evaluation within 2-5 days of notification. Bidders will be notified through telephone or sms or email and then by fax or letter. Non-responsiveness by a bidder shall result in immediate disqualification. All bidders shall submit the signed Form of Tender in the first instance, enclosed in the Financial Proposal without fail, otherwise the bidder shall be disqualified. The documents are:

- i. Copy of valid Tax Clearance Certificate,
- ii. Certified Copies of shareholding or directorship documents (Forms 2 and 13),
- iii. Certified copy of Certificate of Incorporation or applicable certificate.
- iv. Proof of nationality of Directors and Shareholders (certified copy of Omang or Passport)
- v. Copy of joint venture agreement
- vi. Certificate of Signatory
- vii. Declaration Form for Eligibility
- viii. Declaration Form : EDD – Locally Produced Goods/Services

## **Stage 2: Technical Evaluation**

25. This stage shall consider the conformity of the Technical Proposal to the Terms of Reference. The criteria for evaluation shall be as shown in Table 3 below.

**Table 3: Scores for the Technical Evaluation**

Evaluation Criteria	Maximum Attainable
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	<b>Points</b>
Specifications <i>[Assess whether proposed bid meets tender specifications]</i>	20 points
Organisational Capability& Experience <i>[marks to be awarded on evidence of bidder having undertaken similar projects, market experience, reputation, references]</i>	15 points
Team Experience <i>[assess level of relevant qualifications and experience]</i>	15 points
Approach and Methodology <i>(Marks awarded for detailed steps shown to fulfil the objectives, timeframe)</i>	20 points
<b>TOTAL</b>	<b>70points</b>

26. Bidders who score 42points (0%) and above in the Technical Evaluation Stage will be short listed for Citizen Participation and Financial Evaluation.

## **FINANCIAL EVALUATION**

27. The Financial Proposal will only be evaluated after the Technical Evaluation has been completed.
28. Price Preferences shall be applied in line with the Citizen Economic Empowerment Policy according to the following manner:
- 100 % Citizen – Owned Joint Venture = 10%
  - 100% Citizen Owned associations/consortia 10%
  - 100% Citizen Owned companies 9%
29. The evaluation of the financial proposal will be based on the following;

29.1 Correction of arithmetic errors.

### **29.2 Price Preference for Manufacturers**

<b>Turnover Threshold</b>	<b>% preference</b>
Up to P5 Million	- 15% preference
P5 000 001 to P19 999 999	- 10% preference
P20 000 000 and above	- 5% preference

### **29.3 Price Preference for Youth, Women, Rural and Disabled Citizen Companies**

A price preference of up to 3% shall be awarded to citizen companies which are 100% owned by women, youth, disabled persons and companies based rural areas as per the Presidential Directive.

- Women - 3%, Youth - 3%, People with Disability - 3%, Rural based - 3% for procurement values up to P50 000.

#### **29.4 Pro-rating the bid price against the lowest quoted price.**

This means the company that has the lowest price (amongst those which qualified for financial evaluation) will get the maximum score of 30 points. The weighted Financial Score will be calculated as shown below, and then summed up with the Technical Score and the Citizen Empowerment score to get the total combined score.

**Financial score = (Lowest Bid price/ Evaluated Bidder's price) x 30**

#### **30. Tender Award**

- 30.1 The award of the tender will be made to the bidder whose tender has been determined to be the most advantageous to BOCRA and who meets the appropriate standards of Technical Capability, Citizen Participation and Financial resources.
- 30.2 Following the completion of the evaluation process, bidders will be notified in writing as to whether they have been successful or not. Any bidder who wishes to ascertain the grounds on which its bid was not successful should request an explanation from the Authority. Following receipt of such request, the Authority will promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of the Authority. The requesting bidder shall bear all the costs of attending such a debriefing.
- 30.3 BOCRA shall not be obliged to award the tender to the lowest bidder and reserves the right not to award the tender at all, or to award it in whole or in part, at its total discretion and shall not be obliged to give reasons for its decisions.
- 30.4 The bidders should note that the awarding of the tender is subject to an agreed written contract. This tender document shall form part of the contract.

### **31. Cooling off period**

- 31.1 The Authority shall allow a period of **fourteen (14) calendar days** after announcing the award to permit the submission of any complaints from any concerned registered bidder.

### **32. Payment Terms**

Payment of the services rendered shall be made to the Contractor upon successful completion of the project and acceptance by BOCRA and shall be payable in accordance with the schedule outline below:

BOCRA shall pay the Contractor:

- i. 5% of the contract price upon successful completion of the Project Inception Report,
- ii. 30% of the contract price upon successful completion of Interim Report,
- iii. 60% of the contract price upon successful completion of the Draft Final Report,
- iv. The final 5% upon successful completion of the Final Report. The payment will be done after the issuance of completion certificate.

### **33. Project Management**

- 33.1 BOCRA has adopted PRINCE2 methodology and thus bidders are expected to follow the processes and use the appropriate templates for project tracking and reporting. The Project Initiation Document (PID) is attached. It should be noted that the template is a guide and is subject to reviews from time to time.

**Secretary of the Tender Committee**

**END OF SECTION 1 – INVITATION & INSTRUCTIONS TO BIDDERS**

## **SECTION 2 Terms of Reference**

### **TERMS OF REFERENCE**

#### **FOR THE**

**CONSULTANCY SERVICES FOR NETWORKS READINESS ASSESSMENT  
FOR MOBILE NUMBER PORTABILITY (MNP) IN BOTSWANA TO**

**BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY**



## **1. BACKGROUND PURPOSE AND SCOPE OF SERVICES**

- 1.1 Botswana Communications Regulatory Authority (BOCRA) hereby invites tenders from experienced and reputable companies for Consultancy Services on Networks Readiness Assessment for Mobile Number Portability (MNP) in Botswana.
- 1.2 Mobile Number Portability (MNP) is the provision of facilities enabling a customer to change his mobile network operator or service provider while retaining the same telephone number (E.164 format).
- 1.3 BOCRA has the power to introduce Number Portability under the current licences and the move towards greater liberalisation of the ICT market. Portability benefits subscribers and increases the level of competition between service providers which lead to best customer service, greater network coverage and improved quality service.

## **2. DETAILED SPECIFICATIONS**

- 2.1 The Scope of work and specification of services to be supplied is as follows, and the bidder must respond item by item.
- 2.2 Make an assessment of the readiness of the Mobile Network Operator (MNO) infrastructure for implementation of MNP;
- 2.3 Where the infrastructure is not ready, identify what gaps exist, recommend remedies for these gaps, the cost of such, timelines and any other issues relevant to ensuring infrastructure readiness;
- 2.4 Make an assessment and involve BOCRA staff at appropriate levels to ensure local relevance and completeness of analysis. The assessment report should include:
  - 2.4.1 An overview of the concept of Mobile Number Portability explaining the different technical options and porting models available; their merits and de-merits with respect to technical, operational and economic issues that might arise in its implementation in Botswana.
  - 2.4.2 On the basis of the above in paragraph 2.4.1, make a recommendation on the most suitable porting model and solution for Botswana;
  - 2.4.3 Make a position on viability of Fixed porting in Botswana.

## **3. TASK AND DELIVERABLES**

- 3.1 The consultancy is about carrying an assessment of the readiness of MNO networks to implement Mobile Number Portability. Therefore the Consultant is expected to demonstrate a great knowledge of MNP techniques. The Consultant is also expected to study the existing documentation relating to regulation of the MNOs e.g. the Communications Regulatory Authority Act, Numbering Policy and MNO licences.
- 3.2 Readiness assessment primarily covers making an assessment of the technical infrastructure to determine how ready it is to port numbers.

The table below summarises the deliverables of the consultancy:

**Table 1: Deliverable Items**

BRIEF DESCRIPTION	DELIVERABLES
<p>The main objective of the project inception report is to ensure that there is common understanding between BOCRA and the Consultant. Project inception report must clearly articulate the methodology to be followed in the study and project time schedule. Project risks and mitigations must be discussed.</p> <p>The Report shall also give an overview of the concept of Mobile Number Portability explaining the different technical options and porting models available; their associated risks, merits and de-merits with respect to technical, operational and economic issues that might arise in its implementation in Botswana.</p>	Project Inception Report
<p>Interim report includes recommendations on the most suitable porting model and solution for Botswana. The Report shall also cover initial work on network readiness assessment, identified gaps and how MNOs must build capability on their networks to port. Input from MNOs should form part of the Report.</p>	Interim Report
<p>Draft final report contains the full network readiness assessment. It shall contain the following details:</p> <ul style="list-style-type: none"> <li>• An overview of concept of MNP and its objectives.</li> <li>• Different technical options and porting models available; their associated risks, merits and de-merits with respect to technical, operational and economic issues that might arise in its implementation in Botswana.</li> </ul>	Draft Final Report

<ul style="list-style-type: none"> <li>• Recommendations on the most suitable porting model and solution for Botswana.</li> <li>• Network readiness assessment, identified gaps and how each MNO must build capability on their networks to be able to port.</li> <li>• The estimated cost of building capability by each MNO, timelines and any other issues relevant to ensuring infrastructure readiness.</li> <li>• Detailed proposal on resources and structures needed at BOCRA to build capacity to effectively regulate MNP.</li> <li>• Position on viability of Fixed porting in Botswana.</li> </ul>	
The Final Report follows after presentation of Draft Final Report to BOCRA Management with feedback having been incorporated. The Report is primarily an improved version of Draft Final Report and it marks the conclusion of the project.	Final Report

#### 4. ORGANISATIONAL CAPABILITY AND EXPERIENCE

4.1 The bidding company must also submit the following particulars;

Table 2: Particulars to Submitted Bidders

i)		Name of the Company and its physical and postal Addresses	
ii)		Name of the Directors and Shareholders	
iii)	(a)	Registration No.	
	(b)	Licence No. and attached copy	
iv)		Date of Incorporation	
v)		Present strength of the company (human resources, financial and others)	
vi)		Recent list of the Companies and other Institutions at which you have rendered the services (attach list separately)	
vii)		an overview of the company structure covering subsidiary companies, holding companies, financial backers.	
viii)		The locations of depots, agents and service centres appropriate to the supply of the services outlined in this document shall be included in this overview.	

ix)		Where response is being submitted by a group of companies or the prime contractor, the relevant details for each of the partners or sub-contractors should also be submitted in a manner similar to the main bidder. However, it must be noted that the full responsibility of the work will be with the main bidder.	

## 5. TEAM EXPERIENCE

- 5.1 The bidder shall provide names of all members of the project team. The Project Manager, who shall be fluent in spoken and written English, shall be identified.
- 5.2 The bidder shall submit detailed, traceable curriculum vitae for each member of the project team using the format provided.
- 5.3 Bidders shall indicate the relevant experience of each project team member and the specific role of each team member in the project. If no information is given regarding the previously mentioned experience, BOCRA will assume that no experience exists.
- 5.4 The Bidder shall use the CV template/form enclosed to provide:
  - 5.4.1 A detailed CV of the Project Manager and key members of the Bidder's team;
  - 5.4.2 CVs of all team members must indicate their nationality and Identification numbers.
  - 5.4.3 Experience of the team members in performing the requested Services;
  - 5.4.4 Bidders are allowed to source experts from the international market.

## 6. APPROACH AND METHODOLOGY

### 6.1 Methodology

- 6.1.1 The bidder shall provide a proposal setting out its methodology, including the way the Services are to be provided and delivered as stated in the Terms of Reference.

## **6.2 Delivery Schedule**

6.2.1 Delivery schedule shall be as per table 1 (clause 3.2)

6.2.2 The Delivery Schedule and time frame (time Plan) should be stated in the response to the ITT. The duration of the project is **3 months**.

## **6.3 Quality Assurance**

6.3.1 The bidder shall include in their proposal all aspects of quality assurance of the proposed deliverables.

6.3.2 Bidders are required to show how the work is going to be completed to the required standard, within the project cost and on time.

**END OF SECTION 2: TERMS OF REFERENCE**

## **SECTION 3: Draft Contract**

### **DRAFT CONTRACT**

**FOR**

**CONSULTANCY SERVICES FOR NETWORKS READINESS ASSESSMENT**

**FOR MOBILE NUMBER PORTABILITY**

**IN BOTSWANA**

**FOR**

**BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY**

**MADE AND ENTERED INTO BETWEEN**

.....

**and**

**[NAME OF CONTRACTOR]**

**MADE AND ENTERED INTO BY AND BETWEEN;**

**BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY**, a statutory corporation duly established in terms of Section 3 of the Communications Regulatory Authority Act, 2012 having its principal place of business at Plot 50671 Independence Avenue and of Private Bag 00495, Gaborone, Botswana (hereinafter referred to as “the Client”), represented herein by **Mr. Martin Mokgware** in his capacity as the Chief Executive, duly authorised;

And

[*Name of Contractor*] duly established according to the laws of the Republic of Botswana whose principal office and address is at [*Details of the Physical Address for the Contractor*] (hereinafter referred to as the “Contractor”) represented herein by [*Name of the Representative*] in [*his/her*] capacity as [*Designation of the Contractor’s Representative*] the duly authorised;

**PREAMBLE**

**WHEREAS** the Client has accordingly issued a Tender for [*Specify the service required as per the ITT*] and requested the Contractor, as the successful bidder to provide the said services

**AND**

**WHEREAS** the Contractor has agreed to that request, accepted the offer and hereby undertakes to have expertise and experience to provide the required services.

**NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:****1. DEFINITIONS**

For the purposes of this Contract the abbreviations and terminology used in this document shall have the meanings noted below. Unless the context otherwise refers:

- 1.1 “the Act” means the Communications Regulatory Act, 2012;
- 1.2 “the Authority” means BOCRA;
- 1.3 “BOCRA” means the Botswana Communications Regulatory Authority;
- 1.4 “BOCRA Representative” means any person(s) duly appointed by the Chief Executive of BOCRA to ensure that the terms of the Contract are implemented and to represent the Chief Executive in any matter related to the execution of the project;
- 1.5 “Client” means BOCRA or the Authority;
- 1.6 “Contractor” shall mean [*Name of the Contractor*];
- 1.7 “Contractor Representative” means any person(s) duly appointed by the Managing Director of [name of contractor] to ensure that the terms of the Contract are implemented and to represent the Managing Director in any matter related to the execution of the project;
- 1.8 “Contract” means a signed agreement concluded between BOCRA and [*Name of the Contractor*] for the provision of services incorporated these conditions of Contract and including, but not limited to:-



- 1.8.1 Any amendments of the said agreement which have been agreed to in writing between BOCRA and [*Name of contractor*];
- 1.8.2 All the annexures, specifications, terms of reference, plans, drawings and other documents which have been prepared, pursuant to the said agreement;
- 1.9 “Contract Period” means the period during which, this Contract is in force, that is, from the date of commencement of the Contract to the date of termination;
- 1.10 “Contract Price” means the agreed price to be paid by BOCRA for the Services to be provided by the Contractor;
- 1.11 “Force Majeure” shall not include:-
- 1.11.1 Any event caused by the negligence or intentional actions of the Party claiming *Force Majeure* or such Party’s subcontractors or agents or employees;
- 1.11.2 Any event which a diligent Party could reasonably have been expected to take into account at the time of execution of this Agreement or avoid or overcome in the carrying out of its obligations herein;
- 1.12 “Month” shall mean a period of 30 consecutive days, inclusive of weekends and holidays;
- 1.13 “Notice to Remedy” shall mean a written notice issued by a non-defaulting party to a defaulting party to remedy a breach;
- 1.14 Pula” means Botswana currency;
- 1.15 “Reasonable and Prudent Contractor” shall mean a person seeking in good faith to perform its contractual obligations and exercising a degree of

reasonable care, skill, diligence, prudence and foresight in the general execution of its mandate and undertaking, which would ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking, under the same or similar circumstances and conditions as contemplated by this Contract;

1.16 “Services” means provision of [*Specify nature of services*] in accordance with the scope of works set out in this Contract; and

1.17 “Week” shall mean a period of seven (7) consecutive days, inclusive of weekends and holidays.

1.18 In this Contract unless the context otherwise requires:

1.18.1 Clause headings are inserted for convenience only and shall not affect the construction of this Contract;

1.18.2 Words denoting the singular number include the plural and vice versa;

1.18.3 Where figures are referred to in numerals and in words and there is a conflict between the two, the latter shall prevail over the former;

1.18.4 References to persons include references to artificial persons;

1.18.5 Each and every clause of this Contract shall be construed as though both parties participated equally in the drafting of same, and any rule of construction that a document shall be construed against the drafting party, including without limitation, the doctrine commonly known as *contra proferentem*, shall not be applicable to this Contract.

## **2. COMMENCEMENT AND DURATION**

- 2.1 The Contract shall commence on the date of last signature of this Contract and shall be in force for a period of [*Duration*], unless extended by both parties by mutual agreement or terminated earlier by either party in accordance with clause 14 of this Contract.

*Or notwithstanding the date of signature hereof, this Contract shall be deemed to have commenced on the [Date] and shall be in force for a period of [Duration], unless extended by both parties by mutual agreement or terminated earlier by either party in accordance with clause 16 of this Contract.*

### 3. CONTRACT DOCUMENTS

- 3.1 The following documents shall be deemed to form, be read and construed as part of this Contract, namely:
- 3.1.1 The Contractor's Financial Proposal [*dated*], attached as **Annexure A**;
  - 3.1.2 The Contractor's Technical Proposal [*dated*], attached as **Annexure B**;
  - 3.1.3 The Contractor's Terms of Reference Clarification Document [*dated*], attached as **Annexure C**; [*If Applicable*]
  - 3.1.4 Offer Letter from the Client [*dated*], attached as **Annexure D**;
  - 3.1.5 Acceptance Letter from the Contractor [*dated*], attached as **Annexure E** and
  - 3.1.6 Declaration of Secrecy, attached as **Annexure F**.

### 4. CONTRACT PRICE

4.1 The Contract Price payable by the Client to the Contractor for providing services under this Contract is [*Contract price*] (VAT *exclusive/ Inclusive*),

## 5. THE SERVICES

5.1 The Contractor undertakes to provide the services to Client in accordance with the objectives, obligations and deliverables as specified in **Annexure B** and **Annexure C** or as may otherwise be agreed to by the Parties in writing, in furtherance of achieving the objective of the engagement.

## 6. TERMS OF PAYMENT

6.1 The Contract Price shall be payable in accordance with the schedule outline below:

6.1.1 BOCRA shall pay the Contractor 5% (five percent) of the Contract Price for successful completion of Project Inception Report.

6.1.2 The Employer shall pay the Contractor 30% (thirty percent) of the contract price, upon successful completion of Interim Report .

6.1.3 60% (sixty percent) of the Contract Sum will be paid after the Contractor has successful completion of Draft Final Report .

6.1.4 The final 5% (five percent) will be paid after successful completion of Draft Final Report. The payment will be done after the issuance of completion certificate.

6.2 The Contractor is responsible for payment of all taxes and duties imposed by the Government of Botswana in respect of Services performed by the Contractor in connection with this Contract.

6.3 The Contractor shall submit invoices identified by invoice numbers, tender number and supporting documents to the Client upon performance

of the services for payment approval. Payment shall be made within 14 days of receipt of invoice upon approval of such invoice by an authorised officer of the Client.

#### 6.4 Disputed Invoices

6.4.1 In the event that an item and/or amount in an invoice submitted by the Contractor is disputed or is subject to question by the Client, the Client shall give prompt notice (with reasons) to the Contractor of its intention to withhold payment, however, the Client shall make payment of the remainder of the invoice which is not in dispute.

6.4.2 The Contractor shall not be entitled to suspend provision of the services on the basis of a disputed invoice.

6.4.3 If following resolution of the dispute the Client is required to make payment of the unpaid disputed amount, it shall make payment of the same within fourteen (14) Business Days of such resolution.

### **7. STANDARDS OF PERFORMANCE AND PERFORMANCE UNDERTAKINGS**

7.1 The Contractor shall:

7.1.1 Carry out all the objectives, obligations and deliverables of the services timely and satisfactorily;

7.1.2 At all times perform the services in an efficient manner all applicable laws and regulations of the Republic of Botswana and instructions, directives, policies and procedures of the Client and shall hold the Client harmless from all consequences of its failure to so comply. Where the services are to be carried out on an existing BOCRA's establishment or other associated

organizations or of the Government of Botswana institutions, the Contractor shall comply with the Regulations of that establishment.

- 7.1.3 Engage personnel who possess the requisite knowledge and skill required to fulfil the obligations herein, however BOCRA reserves the right to require the Contractor to replace any contract staff, whose performance, in the BOCRA's opinion, could detrimentally affect, inter alia the completion of the contract or the quality of work to be undertaken.
- 7.1.4 Act in a thoroughly competent and efficient manner and in the best interests of the Client, so as to provide the Client with the full and complete benefit of the Contractor's experience and expertise in relation to the services; and
- 7.1.5 Give such general and other advice and assistance to the Client in relation to the services as may lie within the field of the Contractor's competence and experience.
- 7.2 The Contractor hereby represents and warrants to the Client that it is experienced and has rendered similar services comparable in size and scope and that it shall exercise, in the performance of the services, the standard of a Reasonable and Prudent Contractor in the field of the services. Furthermore, the Contractor warrants that it is under no contractual or other restrictions or obligations which are inconsistent with the execution of this Contract or which will interfere with the performance of the services.

## **8. PERFORMANCE SECURITY**

- 8.1 On or before the commencement of the performance of the services, the Contractor shall obtain and deliver to the Client a performance bond ("Performance Bond") with a value not exceeding [*specify the limit*] of the

contract price, issued by a reputable financial institution operating and located in the Republic of Botswana, approved in writing by the Client.

- 8.2 The Performance Bond shall remain valid for a period of [*duration*] after the termination date of this Contract.

*In the alternative and depending on the nature of services required, the Client can instead of the performance bond require for a professional indemnity as follows:*

*“The Contractor warrants that it has professional indemnity insurance that is valid as at the date of the commencement of this Contract. Without limiting the Contractor’s liabilities or responsibilities in terms of this Contract, it will provide professional indemnity to cover its liability and responsibilities in terms of this Contract.”*

## **9. DELAYS TO THE PROJECT (LIQUIDATED DAMAGES)**

- 9.1 In the event of any delays resulting from circumstances beyond the control of the Contractor, the time for performance of this Contract may be extended, provided that the Contractor submits written justification for the delay and Client accepts such justification.
- 9.2 Where there is no justification for delay caused by the Contractor, the Client shall impose penalties charged at [*x% of the Contract price for each day/week/month delay*], which penalty shall be deducted by the Client from the contract price payable to the Contractor.

## **10. ADDITIONAL OBLIGATIONS OF THE CONTRACTOR**

- 10.1 The Contractor shall be responsible for the discipline and good behaviour of its staff and shall at the end of Contract, repatriate from Botswana all labour imported by it for the purpose of this Contract, at its own expense.

- 10.2 If, for any reason, any of the Contractor's employees cease to perform work hereunder, the Contractor shall, as immediately as may be practicable, inform BOCRA. Such notification shall be followed by the return to BOCRA of any items and or documentation which may have been issued to the said employee(s) by BOCRA for the purposes of executing this Contract.
- 10.3 The Contractor shall fully indemnify BOCRA against any claims, proceedings, costs or expenses brought against or incurred by BOCRA in respect of any act or conduct of its personnel.
- 10.4 The Contractor shall be responsible throughout the period of the Contract for the provision and cost of any of the following facilities and services which may be required by the Contractor:
- 10.4.1 any work and/or entry permits, licenses, visas, etc. necessary for personnel employed or temporarily engaged by the Contractor;
- 10.4.2 Medical facilities as may be necessary.

## **11. CONTRACT MANAGEMENT AND CONTROL**

- 11.1 A BOCRA Representative will be appointed to carry out quality control and to monitor the implementation of the scope of works and ensure adherence to the terms and conditions of the Contract.
- 11.2 The Contractor shall appoint a qualified, experienced and competent person ("the Project Leader"), for purposes of this Contract, who shall:
- 11.2.1 be fully conversant with the Contract;
- 11.2.2 have sufficient authority to make day to day decisions during the progress of the Contract, in addition to having full control of the Contractor's project personnel;



- 11.2.3 remain unchanged for the duration of the Contract, except where, by mutual agreement, the parties decide otherwise;
- 11.2.4 maintain utmost co-operation with the BOCRA Representative to ensure the successful completion of the Contract;
- 11.2.5 be fluent in both spoken and written English Language.

## **11. INDEPENDENT CONTRACTOR**

- 11.1 The Contractor agrees to render the services as an independent contractor and acknowledges that this Contract does not create any relationship save for Contractor and Client relationship.

## **12. CONFIDENTIALITY OF INFORMATION**

- 12.1 In the performance of services under this Contract or in contemplation thereof, the Contractor and its employees and agents may have access to private or confidential information relating to the work of, or may have access to information of secure, confidential, sensitive or secret nature, which may be owned or controlled by, BOCRA, the Government of Republic of Botswana or other associated institutions and persons made available to the Contractor. The Contractor undertakes that all Information and data so acquired by the Contractor or its employees and agents under this Contract or, in contemplation hereof shall:
  - 12.1.1 be and remain the exclusive property of BOCRA, the Government of the Republic of Botswana or of other institutions or persons who may own or control such information or data;

- 12.1.2 not copy or publish or disclose it to others, or authorise its employees or agents or anyone else to copy or publish or disclose it to others, without the prior written approval of BOCRA;
- 12.1.3 are returned to BOCRA, at the latest, on or before the end of the Contract.
- 12.2 The Contractor shall require all persons employed on this Contract to complete and sign a Declaration of Secrecy Form as issued by BOCRA attached hereto as **Annexure F**.
- 12.3 The Contractor shall ensure that its personnel employed for purposes of providing services herein shall co-operate with BOCRA in providing any information, which may be required for security clearance purposes by BOCRA and/or the Government of the Republic of Botswana.
- 12.4 Notwithstanding the afore-said, the Client reserves the right to disclose to the Government of the Republic of Botswana, or its duly authorized agent, details of this Contract and any information relating to it should it be required by law, request or directive to divulge same.

### **13. PUBLICITY AND PHOTOGRAPHS**

- 13.1 The Contractor shall not advertise or otherwise disclose the appointment of the Contractor or its Sub-Contractors, or the terms of this Contract (save insofar as may be required by law or may be necessary for the due performance of the Contract) without the prior written approval from BOCRA.

- 13.2 All copies, photographs or material relating to this Contract which is intended for publication in any form by the Contractor or any other third party associated with the Contractor must first be submitted in draft form to BOCRA for the approval of BOCRA.

## **14. TERMINATION**

- 14.1 In the event that the Contractor fails to comply with this Contract or cannot complete the services within the agreed time for any unacceptable reason, then the Client shall be entitled to immediately terminate this Contract upon expiry of seven (7) days written Notice to remedy such breach. In such eventuality, the Contractor shall be responsible for the consequences of such termination. Notwithstanding the afore-said, this does not detract from any other rights of recourse that the Client may have against the Contractor.
- 14.2 In the event of termination of the Contract, the Contractor shall be paid pro-rata for that part of the Contract completed to the satisfaction of the Client up to the notified date and time of termination.
- 14.3 Upon termination of the Contract, the Contractor shall be obliged to immediately return to the Client any property, documents, books, records and any other information belonging to the Client in its possession in relation to and as a result of providing the services.
- 14.4 Notwithstanding other termination clauses in this Contract, each party shall be entitled to terminate the Contract subject to 1 (one) month written notice on the other party of such intended termination.

## **15. INDEMNITY BY CONTRACTOR**

15.1 The Contractor shall indemnify and hold harmless the Client from liabilities or claims arising from:

15.1.1 Any loss, claim and/or proceedings, whatsoever arising under Botswana laws, customs, decrees, traditions in respect of personal injury to and/or death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Contract, unless due to any proven act of neglect of the Client or of any person for whom the Client is proven to be responsible;

15.1.2 Any expense, loss, claim and/or proceedings in respect of any loss, injury and/or damage whatsoever to any property movable and/or immovable insofar as such loss, injury and/or damage arises out of or in the course of and/or by reason of the carrying out of the Contract and provided always that the same is due to any negligence, omission and/or default of the Contractor, its servants or agents or any sub-Contractors of the Contractor.

## **16. LIENS**

16.1 The services under the Contract shall be provided free from all claims, liens and charges whatsoever.

## **17. TERMINATION BECAUSE OF FORCE MAJEURE**

17.1 In the event that either party must terminate the Contract not because of any fault or shortcoming of the other party but because of Force Majeure, then the Contractor shall be entitled to reimbursement of its expenses only for the work done and approved by the Client as satisfactory. Only expenses for which valid invoices and receipts are provided will be reimbursed upon approval.

- 17.2 The Contractor shall be paid for the proportion of the services which have been completed to the satisfaction of the Client up to the notified date and time of termination.

## **18. BANKRUPTCY, JUDICIAL MANAGEMENT AND/OR WINDING UP**

- 18.1 The Client may immediately terminate this Contract and all matters having a direct contractual relationship thereto for which the Client may otherwise be liable under the terms of this contract, should the Contractor for any reason become insolvent, be placed under provisional judicial management, be in the process of winding up or should it become apparent that the Contractor is unable to pay its debts as they mature, and this situation is not reversible within a period of 60 days from commencement thereof.

## **19. GIFTS**

- 19.1 The Contractor shall not offer or give or agree to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Contract or for showing or for bearing to show favour or disfavour to any person in relation to this Contract.
- 19.2 Any breach of this agreement by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by it or acting on its behalf in relation to this Contract, shall entitle the Client to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination.

## **20. SURVIVAL OF CERTAIN CLAUSES OF THE CONTRACT**

20.1 The following Conditions 12, 13, 15, 22, 22, 23 and 24 shall survive any termination or expiration of this agreement.

## **21. DISPUTE RESOLUTION**

21.1 In the event that the Contractor and the Client fail to agree on the settlement of any matters concerning this Contract, the dispute shall first be referred by either party to the office of the Chief Executives (or highest executive office) of both parties for resolution. Resolution of the dispute must be done within 7 (seven) working days, failing which the dispute shall be referred to a single arbitrator to be designated/appointed by the Chairman of the Botswana Institute of Arbitrators ("BIA") upon request by any of the Disputing Parties.

21.2 The seat of the arbitration shall be Gaborone, Botswana, and the arbitration shall be held in Gaborone and be conducted in accordance with the formalities and/or procedures of the BIA Rules.

## **22. GOVERNING LAW AND LEGISLATION**

22.1 This Contract is made under and shall be construed in accordance with the laws of Botswana.

## **23. INTELLECTUAL PROPERTY RIGHTS, NFRINGEMENT OF PATENTS, TRADEMARKS OR COPYRIGHTS**

23.1 The Contractor may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("Materials") that the Contractor owns in performing the services.

23.2 The Contractor shall indemnify the Client for any loss, damage, expense or liability that may result due to any claims or infringement of any patent,

trademark or copyright based on any service rendered to the Client in this Contract. The Contractor shall defend or settle at its own expense any action or suit against the Client for which the Contractor is responsible hereunder. The Client shall have a right to participate in the defence strategy of the said suit.

- 23.3 The Client shall notify the Contractor of any claim or infringement, which the Client becomes aware of, and for which the Contractor is responsible, and shall co-operate with the Contractor in every reasonable way to facilitate the defence of any such claim.

## **24. BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY SYSTEM IDENTIFICATION**

- 24.1 No Botswana Communications Regulatory Authority system identification, logo or representation thereof, references to Botswana Communications Regulatory Authority or their contractors, or references to Botswana Communications Regulatory Authority codes, drawings or specifications, will be used in any of the Contractor's advertising or promotional efforts in reference to activities undertaken by the Contractor hereunder, without the written permission of the BOCRA. The Contractor shall remove any Botswana Communications Regulatory Authority identification, trade names, trademarks, insignia, symbols or evidences of BOCRA's approval, prior to any use or disposition of material left in his possession after the determination of this Contract.
- 24.2 The Contractor agrees to indemnify the Client or its agents and associates against any claim arising out of the Contractor's failure to comply with

clause 24.1 above. This clause does not modify the Confidentiality of Information clause.

## **25. VARIATION**

- 25.1 The Client may vary the services to be provided in this project, subject to mutual agreement with the Contractor.
- 25.2 If, during the execution of the Contract, a requirement arises for additional works, which are outside those prescribed in the Contract, and the documents referenced therein, the Contractor and the Client may discuss the best means of undertaking such works.
- 25.3 Any variations and amendments to this Contract shall be made in writing and signed for by both parties.

## **26. WAIVER**

- 26.1 No waiver on the part of either Party of any rights arising from breach of any provision of this Contract, shall constitute a waiver of rights in respect of any subsequent breach of the same or any other provision, save to the extent that the specific waiver is recorded in writing.

## **27. TAXES AND DUTIES**

- 27.1 All taxes, duties, licence fees and any other such charges payable in the Contractor's home country in respect of the Contract shall be paid by the Contractor.



27.2 The Contractor is responsible for payment of all taxes and duties imposed by the Government of Botswana in respect of services performed by the Contractor in connection with this Contract.

## **28. CESSION**

28.1 The Contractor shall not cede or assign its rights or benefits under this Contract other than monies due or to become due or in any way transfer its obligations or any part thereof without the prior written consent of the Client, which consent shall not be unreasonably withheld.

## **29. SUBCONTRACTING AND ASSIGNMENT**

29.1 The Contractor shall not subcontract any part or portion of the services to any other person without the prior written consent of the Client.

29.2 This Contract or any rights or benefits hereunder shall not be assignable, transferable or divisible in whole or in part by the Contractor without the prior written consent of the Client.

## **30. SEVERANCE AND PRECEDENCE OF CONTRACT OVER ANNEXURES (APPENDICES)**

30.1 If any provision of this Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed not to form part of this Contract, and the validity and enforceability of the other provisions of this Contract shall not be affected.

30.2 Where there is any conflict between any provision of this Contract and a provision of any Annexures hereto, this Contract shall take precedence.

## **31. COUNTERPARTS**

31.1 This Contract may be signed in separate counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one of the same instrument.

## **32. NOTICES AND REQUESTS**

Notices or requests shall be deemed to be duly given or made when they have been delivered to the following addresses:

### **To the Client:**

Name: Chief Executive  
Botswana Communications Regulatory Authority  
Private Bag 00495  
Plot 50671 Independence Avenue  
Gaborone, Botswana  
Telephone: +267 3957755  
Fax: +267 3957976  
Email [ce@bocra.org.bw](mailto:ce@bocra.org.bw)

### **To the Contractor;**

Name: Managing Director  
[Name of Contractor]  
[Postal Address]  
[Physical Address]  
Gaborone, Botswana  
Telephone: +267 [Telephone Inumber]  
Fax: +267 [Fax]

Email :

The Parties undertake to inform each other in writing immediately of any changes of the above information.

**IN WITNESS WHEREOF**, the Parties hereto have signed this Contract in two originals, of which they have taken one each.

**THE CLIENT**

**Martin Mokgware**

(For and on behalf of Botswana Communications Regulatory Authority)

\_\_\_\_\_

duly authorised hereto in his position as the Chief Executive

Date: \_\_\_\_/\_\_\_\_\_/ 2018

Place: **GABORONE**

**WITNESSES:** 1. \_\_\_\_\_

2. \_\_\_\_\_

**THE CONTRACTOR**

**[Name of the Designated Representative]**

(For and on behalf of Accore Enterprises (PTY) LTD)

\_\_\_\_\_

duly authorised hereto in his/her position as [Designation]

Date: \_\_\_\_/\_\_\_\_/ 2018

Place: **GABORONE**

**WITNESSES:** 1. \_\_\_\_\_

2. \_\_\_\_\_

**ANNEXURE F: DECLARATION OF SECRECY**

(To be completed by the Contractor engaged in this Contract)

**DECLARATION TO BE SIGNED AT THE COMMENCEMENT OF CONTRACT NO. [Tender Number] FOR THE BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY**

To [Name of Contractor]:

Our attention has been brought to the Botswana Communications Regulatory Authority's requirements that some information on matters concerning their establishments, operation and documents, from which in the course of our duties on this Contract we may obtain, shall remain and be treated as being of a secret nature and that we shall not divulge any such information ("Confidential/ Secret Information") so gained to any other person except as may be necessary to carry out our duties whilst working on this Contract.

We understand that in the event of our giving, selling or otherwise divulging any such matter which should be treated as secret, the Botswana Communications Regulatory Authority and/or the Government of the Republic of Botswana may take such steps as they consider necessary to bring any action against us that they may deem appropriate.

"Confidential/ Secret Information" means information provided by the Botswana Communications Regulatory Authority, its subsidiaries and/or the Government of Botswana, which is provided or disclosed to the signatory as Confidential/Secret. No information will be considered Confidential/Secret Information to the extent that the information:

- a) is in the public domain through no fault of the signatory either before or after disclosure; or
- b) is in the possession of the signatory prior to the disclosure; or
- c) is rightfully received from a third party without breach of any obligation of Secrecy.

Signed: .....

Surname (Block Letters): .....

Forename(s): .....

Witnessed by (Signature): .....

Witness' Surname (Block Letters): .....

Witness' Forename(s): .....

Date: .....

**ANNEXURE I****SECRECY DECLARATION**

(To be completed by each employee of the Contractor engaged in this Contract)

DECLARATION TO BE SIGNED AT THE COMMENCEMENT OF  
EMPLOYMENT ON CONTRACT NO. ....  
FOR THE BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY

To Whom it may concern:

My attention has been brought to the Botswana Communications Regulatory Authority's requirements that some matters concerning their establishments, operation and documents, from which in the course of my duties on this Contract I may obtain information, shall remain and be treated as being of a secret nature and that I shall not divulge any such information ("Secret Information") so gained to any other person except as may be necessary to carry out my duties whilst working on this Contract.

I understand that in the event of my giving, selling or otherwise divulging any such matter which should be treated as secret, the Botswana Communications Regulatory Authority and/or the Government of the Republic of Botswana may take such steps as they consider necessary to bring any action against me that they may deem appropriate.

"Secret Information" means information provided by the Botswana Communications Regulatory Authority and/or the Government of Botswana, which is provided or disclosed to the signatory and marked as Secret. If the information is initially disclosed orally then (1) it must be designated as Secret at the time of the initial disclosure and (2) within twenty (20) days after disclosure, the information must be reduced to writing and marked as Secret. No information will be considered Secret Information to the extent that the information:

- a) is in the public domain through no fault of the signatory either before or after disclosure;  
or
- b) is in the possession of the signatory prior to the disclosure; or
- c) is rightfully received from a third party without breach of any obligation of Secrecy.

Signed .....

Surname (Block Letters) .....

Forename(s) .....

Witnessed by (Signature).....

Witness' Surname (Block Letters).....

Witness' Forename(s) .....

Date .....

## ANNEXURE II FORM OF TENDER

*[Bidder's name and address]*

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

TO: The Chief Executive  
Botswana Communications Regulatory Authority  
Private Bag 00495  
Gaborone  
BOTSWANA

Dear Sir,

### **Tender No. BOCRA/PT/001/2019.2020**

The undersigned hereby offers to ..... for the Botswana Communications Regulatory Authority as described in the Request for Proposal for the total fee of: (in figures): \_\_\_\_\_  
(in words): \_\_\_\_\_

We confirm that if a contract was agreed between BOCRA and ourselves with respect to the ..... such a contract would include BOCRA's Invitation to Tender Documents including all Sections and Annexures, Terms and Conditions, as generally applies to the industry and agreed to by BOCRA.

The undersigned confirms that the validity of this Proposal is for a period of 90 (ninety) calendar days from the Tender Closing Date.

Dated this \_\_\_\_\_ day \_\_\_\_\_ 20\_\_\_\_\_

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

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Duly authorised to sign Proposals for and on behalf of:

Bidder's Name: \_\_\_\_\_

Bidder's Registered Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Bidder's Telephone No. \_\_\_\_\_

Bidder's Facsimile No. \_\_\_\_\_

Bidder's Email Address 1 \_\_\_\_\_

Bidder's Email Address 2 \_\_\_\_\_



**ANNEXURE: III****Botswana Communications  
Regulatory Authority****CURRICULUM VITAE OF KEY PERSONNEL****Name:****Date of Birth:****Profession:****Nationality:****Current Position:****Years with the firm:****Qualification and Experience:****Education:****Professional Membership:****Experience Record:****Languages:****Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, this data correctly describes me, my qualifications and my experience.

\_\_\_\_\_  
*[Signature of the team member]*

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

**ANNEXURE: IV****BOCRA**

<b>TENDER RETURNABLE DOCUMENTS</b>	<b>TENDER SCHEDULES CERTIFICATE OF AUTHORISED SIGNATORY</b>
--	---

Indicate the status of the tenderer by ticking the appropriate box hereunder. The tenderer must complete the certificate set out below for the relevant category.

<b>A COMPANY</b>	<b>B PARTNERSHIP</b>	<b>C JOINT VENTURE</b>	<b>D SOLE PROPRIETOR</b>	<b>E OTHER</b>

**A. Certificate for company**

I, \_\_\_\_\_, authorised representative of \_\_\_\_\_  
\_\_\_\_\_, hereby confirm that by resolution of the board Mr/Ms \_\_\_\_\_  
\_\_\_\_\_, acting in the capacity of \_\_\_\_\_, was authorised  
to sign all documents in connection with this tender offer and any contract resulting from it on behalf of the  
company.

**B. Certificate for partnership**

We, the undersigned, being the key partners in the business trading as \_\_\_\_\_  
\_\_\_\_\_ hereby authorise Mr/Ms \_\_\_\_\_, acting in the capacity of \_\_\_\_\_  
\_\_\_\_\_, to sign all documents in connection with the tender offer for Contract \_\_\_\_\_  
\_\_\_\_\_ and any contract resulting from it on our behalf.

<b>NAME</b>	<b>ADDRESS</b>	<b>SIGNATURE</b>	<b>DATE</b>

**NOTE:** This certificate is to be completed and signed by all of the partners. Attach additional pages if more space is required.

Furthermore we attach to this Schedule a copy of the partnership agreement which incorporates a statement that all partners are liable jointly and severally for the execution of the contract and that the lead partner is authorised to incur liabilities, receive instructions and payments and be responsible for the entire execution of the contract for and on behalf of any and all partners.

**C. Certificate for Joint Venture**

We, the undersigned, are submitting this tender offer in Joint Venture and hereby authorise Mr/Ms \_\_\_\_\_, an authorised signatory of the company \_\_\_\_\_, acting in the capacity of lead partner, to sign all documents in connection with the tender offer for Contract \_\_\_\_\_ and any contract resulting from it on our behalf.

This authorisation is evidenced by the attached power of attorney signed by legally authorised signatories of all the partners to the Joint Venture.

Furthermore we attach to this Schedule a copy of the joint venture agreement which incorporates a statement that all partners are liable jointly and severally for the execution of the contract and that the lead partner is authorised to incur liabilities, receive instructions and payments and be responsible for the entire execution of the contract for and on behalf of any and all the partners.

NAME OF FIRM	ADDRESS	AUTHORISING SIGNATURE, NAME & CAPACITY
Lead partner		

**D. Certificate for sole proprietor.**

I, \_\_\_\_\_, hereby confirm that I am the sole owner  
of the business trading as \_\_\_\_\_.

**E. Certificate for other.**

I, \_\_\_\_\_, hereby confirm that I am \_\_\_\_\_  
of the business trading as \_\_\_\_\_

THUS SIGNED AND SWORN TO BEFORE ME COMMISSIONER OF OATHS AT \_\_\_\_\_  
ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_, AT \_\_\_\_\_AM / PM, THE DEPONENT HAVING  
ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION AND  
THAT IT IS BINDING ON HIS CONSCIENCE.

\_\_\_\_\_  
COMMISSIONER OF OATHS

CAPACITY:

**ANNEXURE: V**

BOCRA	<b>TENDER RETURNABLE DOCUMENT</b>	<b>DECLARATION OF ELIGIBILITY</b>
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Declaration to establish that Directors, shareholders, partners, members have not participated through any other bid for the same tender.

**PART A**

I, \_\_\_\_\_ (full name), in my capacity as ..... (state position in Entity)

hereby declare that on my behalf, and on behalf of the owners, partners / directors/ shareholders /administrators and/or Other (Please specify) .....

of: ..... (name of Entity )

of: .....

..... (Postal/physical address)

that, in connection with the enclosed tender,

All information contained herein is true and not misleading, and it is to the best of my knowledge factual and binding on the Entity and/or its Representatives. I state that the (State Name of Entity) ..... and/or its representatives confirm that they have not, through other entities, participated in the same tender and offer the same products in response to the same items.

NOTE THAT: In the case of competing franchises, the franchises may bid for the same item but with different products. Item means the commodity required by the procuring entity indicated in the ITT. Product means the commodity offered by the bidder.

I declare and confirm that the Entity and/or its Representatives have in fact not participated in the same tender and offered the same products in response to the same items, through any other registered company or other entity. I hereby provide a current list of Directors/ Administrators/ Partners/ Members and/or Shareholders for the Company/Partnership/ Society/Joint Venture/ Private Foundation/Statutory Body and/or other (Please specify) .....

	<b>DIRECTORS/MEMBERS/ PARTNERS NAME and/OR Other (Please Specify).....</b>	<b>CAPACITY IN ENTITY</b>	<b>NATIONALITY</b>	<b>PERCENTAGE OF SHAREHOLDING</b>
1				
2				
3				
4				
5				
6				
7				

	SHAREHOLDERS NAME	NATIONALITY	PERCENTAGE OF SHAREHOLDING
1			
2			
3			
4			
5			
6			
7			

**If more space is required attach additional sheet. Note that Public companies should state which stock exchange the company is listed under.**

I further acknowledge that should any of the directors, partners, and shareholders, members/administrators /(others please specify) be found to be associated in a similar or other manner in another company/entity, participating in this tender and offering the same products in response to the same items, this shall disqualify this Company/Partnership/ Society/Joint Venture/ Private Foundation/Statutory Body, and whichever company or other entity the said director/partner/shareholder/member and/or administrator is consequently involved in.

I further acknowledge that should the Company /Partnership/ Society/Joint Venture/ Private Foundation/ Statutory Body or any of its affiliates or subsidiaries be found to have participated in the same tender and offered the same products in response to the same items, the said Company/Partnership/ Society/Joint Venture/ Private Foundation/Statutory Body/(others please specify) and its affiliates and/or subsidiaries shall be disqualified.

The Company/Partnership/ Society/Joint Venture/ Private Foundation/ Statutory Body/(others please specify), through its agents, employees or directors has not illegally communicated with any member of the procuring department or the Public Procurement and Asset Disposal Board, except as may be permitted in the relevant "instructions to tenderers" or by law.

The Company/Partnership/ Society/Joint Venture/ Private Foundation/Statutory Body/(others please specify), through its agents, employees, partners, members, administrators and/or directors has not paid or offered to pay any consideration, favour or promise to any member of the procuring department or any person employed by or associated with BOCRA or its Committees.

I declare that this tender is submitted by us in our own right and we have not colluded in any way with any other /potential tenderer in the production and submission of this tender other than in the establishment of a joint venture or sub-contractor arrangement as fully and correctly declared in the tender.

I acknowledge that if after the award of this tender any of these declarations are found to be false then any contract(s) between ourselves and the procuring department and/or BOCRA shall be terminated forthwith and we may be barred from future tendering for government services and liable to possible prosecution.

I confirm that our entity has undertaken not to collude to withdraw from a tender award, only for the reason that an unsuccessful bidder be awarded the tender. I confirm further that the entity has undertaken not to engage in frivolous complaints and litigation that frustrates project implementation.

SIGNED: ..... NAME: .....

DATED:.....

.....  
Entity

Stamp

**PART B**

1. Declaration to establish Eligibility for Reservation and Price Preferences for 100% Citizen Owned Contractor / Companies and other Entities.
2. The declaration shall be signed by all Businesses tendering for reserved contracts and contracts subject to preferences, as a condition of each tender.
3. The 100% citizenship requirements for shareholders, etc contained therein shall not withstand any previous consents and practice, be pre condition for the award of any reserved tender.

**Definition**

4. The following definitions shall apply to this declaration:

**100% Citizen Owned Contractor / Company:** a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Botswana.

**Control:** the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of managerial and financial authority and power in determining the policies and directing the operations of the business.

**Net Amount:** the financial value of the Contract at the time of the award of the Contract, exclusive of sales tax which the law requires the Employer to pay to the Contractor.

**Owned:** Having all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest or shareholding as demonstrated by an examination of the substance as well as the form of ownership arrangements

5. The company operates banking and savings accounts, the only authorised signatories are:

- |                                   |                       |
|-----------------------------------|-----------------------|
| i. ....                           | .....                 |
| (Bank Name and Name of signatory) | (Omang No. /Passport) |
| ii. ....                          | .....                 |
| (Bank Name and Name of signatory) | (Omang No. /Passport) |
| ii. ....                          | .....                 |
| (Bank Name and Name of signatory) | (Omang No. /Passport) |
| iv. ....                          | .....                 |
| (Bank Name and Name of signatory) | (Omang No. /Passport) |

6. Undertakings

The Tenderer confirms that it is a 100% Citizen owned contractor/ company and undertakes to remain a Citizen Contractor for the duration of the Contract. The Tenderer further undertakes not to subcontract more than 30% of the Net Amount to non-Citizen Contractors in the performance of the Contract.

## 7. Sanctions relating to reserved treatment

Any changes in Ownership or Control which violate the definition of a Citizen Contractor or the subcontracting of more than 25% of the Net Amount of the Contract to non-Citizen Contractors shall be sufficient reason for the Procuring Department to terminate the Contract.

8. All the shareholders of .....(Name of company) have read this declaration and agree to its contents.

- a) All the shareholders hereby give consent verification of the information provided above and understand that this may include but not limited to the verification of assets, liabilities, accounts, bonds and undertake to notify the competent authorities of any change to the information provided in this Declaration within seven days of such occurrence.
- b) I understand and declare that each matter here deposited to is essential for the tender validity of ..... (Name of company)'s

**NB:** The Procuring Entity reserves the right to confirm the authenticity of the information provided above.

THUS SIGNED AND SWORN TO BEFORE ME COMMISSIONER OF OATHS AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_, AT \_\_\_\_AM / PM, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION AND THAT IT IS BINDING ON HIS CONSCIENCE.

\_\_\_\_\_  
COMMISSIONER OF OATHS

CAPACITY:



**ANNEXURE: VI**

<b>BOCRA</b>	<b>TENDER RETURNABLE DOCUMENTS</b>	<b>DECLARATION FORM: LOCALLY PRODUCED GOODS/SERVICES</b>

The Presidential Directive Cab 34(B) 2014 on New EDD, requires Central Government, Local Authorities and all Parastatal Organisations to purchase all their products from locally based manufacturers and service providers, provided that the goods and services are locally available, competitively priced and meet tender specifications in terms of quality standard as certified or recognized by Botswana Bureau of Standards (BOBS) or other recognized certifying bodies.

You are therefore, required to purchase only locally produced products and services for this tender. In the event the locally produced products or services are not available, the Contractor should seek authority from the Procuring Entity to procure products from other sources.

I / we ..... *(Name and capacity)*  
 certify that the above Tender Instruction has been incorporated into my/our Tender and will purchase the products from locally based manufacturers and service providers as per the Presidential Directive.

**Name** ..... **of**  
**Tenderer** .....

**Signature of Tenderer** *(Authorized Signatory)* .....

**Designation** .....

**Date** .....

**Company Stamp** .....

## DECLARATION FORM FOR EDD

[illegible]

**ANNEXURE: VII**

Republic of Botswana	<b>TENDER RETURNABLE DOCUMENTS</b>	<b>TENDER SCHEDULES EXPERIENCE OF TENDERER</b>
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The following is a statement of similar works successfully executed by myself/ourselves:

<b>Employer, contact person and telephone number.</b>	<b>Description of contract</b>	<b>Date completed</b>