

Terms and Conditions Applicable to the Template Contract for Consulting Services

1. Terms and Conditions

1. *Conclusion of a contract.* By using this Model Contract (or sections thereof), every User of the Model Contract (hereinafter "User") acknowledges the following Terms and Conditions. These Terms and Conditions are agreed between each User and KfW without requiring that KfW receives the User's acceptance of the Terms and Conditions associated with the use of the Model Contract.

2. *Liability of KfW.* KfW assumes no liability for damages arising from or in connection with the use of the Model Contract, except for intent, gross negligence and injury to life, body or health.

3. *Limitation of the responsibilities of KfW.* KfW has prepared the Model Contract as an example of a contract for consulting services, for which KfW grants its consent in principle. However, KfW assumes in particular no obligation for the review of:

- the legal and factual accuracy of the Model Contract by obtaining internal or external legal advice,
- the factual accuracy of the circumstances underlying the Model Contract,
- the suitability of the Model Contract for the purposes of the User,
- the balance of the Model Contract versus the individual interests of the specific User,
- the contractual drafts prepared using the Model Contract that are submitted to KfW, e.g., for consent, and
- the need to update the Model Contract in the event of changes in legislation.

4. *Obligations of the User.* Every User shall:

- use the Model Contract only after performing a thorough individual review and making the necessary modifications for the specific circumstances.
- engage legal counsel to review the contractual draft based on the Model Contract prior to the conclusion of a contract, in order to investigate the enforceability and effectiveness of the contract under the applicable legislation.

II. Notes for the User

KfW expressly refers every User of the Model Contract to the following:

- The Model Contract was not developed based on any specific legal jurisdiction; instead, the choice of governing law is left to the contracting parties. KfW has not investigated whether modifications of the Model Contract are necessary so that it can be used under the respective potential jurisdictions.
- The Model Contract must be adapted to the individual needs of the specific User and should only be signed after the User has reviewed whether the specific contractual provisions are suitable for his individual purposes.

III. Structure of the Model Contract

Section 1: General Conditions – these include the general underlying contractual provisions. Changes in this section usually have a significant impact on the contract and require the prior consent of KfW.

Section 2: Special Conditions – these include the specific details of each individual case. Any modifications or deviations based on the specifics of the project or due to contractual negotiations can be included here.

Section 3: Annexes – depending on the contents, these are either project specific (e.g., TOR, Time Schedule) or generally defined (e.g., Declaration of Undertaking).

CONSULTING CONTRACT

dated

[●]

between

[●]

– hereinafter referred to as the “**Employer**” –

[only in case KfW is acting as an agent of the Employer]: represented by

KfW

Palmengartenstraße 5 – 9

60325 Frankfurt am Main

Germany

– hereinafter referred to as “KfW” –]

and

[●]

– hereinafter referred to as the “**Consultant**” –

Relating to project “[●]”

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Preamble

The Employer requests consulting services to be rendered for the Project (as defined below) as designated in the Special Conditions (as defined below). The Consultant has submitted a technical and a financial bid for the Services (as defined below) which has been accepted by the Employer. Therefore, the Parties agree as follows:

General Conditions

Paragraph 1 General Provisions

1.1 DEFINITIONS

Words and expressions used in this Consulting Contract (as defined below) shall have the following meaning, unless the context requires otherwise.

“Agreed Remuneration” means the remuneration agreed pursuant to Paragraph 5 [*Remuneration*].

“Commencement Date” has the meaning given to such term in the Special Conditions.

“Completion Period” means the period for the completion of the Services as set out in the Special Conditions.

“Consulting Contract” means this contract for consulting services, including its Preamble and its Annexes^{1,2}.

“Contract Value” has the meaning given to such term in the Special Conditions.

“Country” has the meaning given to such term in the Special Conditions.

“Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances. It includes, but is not limited to, war, invasion, rebellion, terrorism, riots, civil disorder, natural catastrophe (e.g. earthquake, fire, explosion, hurricane, typhoon, volcanic activity), strikes, lockouts or other industrial action confiscation or any other action by government agencies. It includes, but is not limited to, circumstances such as crises, war or terror that lead to the Foreign Office of the Federal Republic of Germany calling upon German citizens to leave the country or the Project region in response to which the Consultant withdraws all its staff. Force Majeure shall not include (i) any event which is caused by the negligence or wilful action of a Party or such Party's experts, sub-contractors or their respective directors, agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take

¹ If one or several of the Annexes should not be necessary in the actual Contract, to preserve the integrity of the references please retain the numbering of the Annexes and insert the words “not applicable” in the relevant Annexes.

² In case there are Minutes of Negotiations pursuant to the Special Conditions between the Parties these Minutes of Negotiations could be attached as an Annex. But in the interests of clear contractual stipulations, instead of including copious minutes of negotiations it is preferable to incorporate the agreed changes directly into the Special Conditions.

into account at the time of the conclusion of this Consulting Contract and avoid or overcome in the carrying out of its obligations hereunder. Furthermore, Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

“Foreign Currency” means any currency other than the Local Currency.

“Foreign Staff” means the staff who do not hold the citizenship of the Country.

“Funding Agreement” means the *[loan agreement / financing agreement] entered into between KfW and [the Employer] to wholly or partly finances the Services.*

“Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where the members of the JV shall be jointly and severally liable to the Employer for the performance of the Contract and one member has the authority to conduct all business for and on behalf of any and all the members of the JV. The terms Joint Venture and Consortium can be used interchangeably.

“Local Currency” has the meaning given to such term in the Special Conditions.

“Other Costs” means the additional costs of the Consultant to the extent agreed in the Special Conditions.

“Parties” means the Employer and the Consultant.

“Project” means the project specified in the Special Conditions.

“Services” means the contractual services described in **Annex 3** *[Terms of Reference plus Tender Documents]*, **Annex 9** *[The Consultant’s Bid]* and Paragraph 3.1 *[Scope of Services]*, including without limitation any optional services (if any) as well as the standard and special services defined in Paragraph 3.2 *[Standard and Special Services]*.

“Special Conditions” means the terms and conditions set out under the header “Part II: Special Conditions” of this Consulting Contract.

“Standards” means the metric system and German DIN or European EN standards, or internationally recognised standards that are at least equivalent to those published by ISO or IEC.

“Written” or **“in writing”** means written by hand or typed by machine, and produced in a printed or electronic form, the result being a non-editable permanent record.

1.2 INTERPRETATION

Unless a contrary indication appears, in this Consulting Contract:

- 1.2.1 Section, clause, annex and schedule headings are for ease of reference only.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 References to a "**Party**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Consulting Contract.
- 1.2.4 References to a "**director**" include any statutory legal representative(s) of a person pursuant to the laws of its jurisdiction of incorporation.
- 1.2.5 References to this "**Consulting Contract**" or any other agreement or instrument are references to this Consulting Contract or other agreement or instrument as amended, novated, supplemented, extended or restated.
- 1.2.6 References to a "person" shall include any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality).
- 1.2.7 References to euro, EUR or € are references to the lawful currency of the participating states of the European Monetary Union. References to US dollars, USD or US\$ are references to the legal currency of the United States of America.

1.3 RANKING AND ORDER

- 1.3.1 In the event of a conflict between the Special Conditions and the General Conditions or any annex or schedule thereto, the provisions of the Special Conditions shall prevail.
- 1.3.2 In the event of a conflict between General Conditions and any annex or schedule thereto, the provisions set out in the respective annex or schedule shall prevail.
- 1.3.3 In the event of a conflict between the annexes, the provisions set out in the respective preceding annexes shall prevail over the provisions set out in the respective subsequent annexes.

1.4 COMMUNICATION AND LANGUAGE

Any communication to be made under or in connection with this Consulting Contract shall (i) be made in writing and, unless otherwise stated, may be made by fax or letter, and in the language specified in the Special Conditions and (ii) to the extent not otherwise stipulated in the Special Conditions, take effect upon receipt at the addresses specified in the Special Conditions and if by way of fax, when received in legible form.

1.5 GOVERNING LAW

This Consulting Contract is governed by the laws specified in the Special Conditions.

1.6 ENTRY INTO FORCE AND EFFECT

This Consulting Contract enters into force and effect immediately upon (i) execution hereof by both Parties, and (ii) receipt by the Employer of KfW's written confirmation that all conditions precedent to the first disbursement under the Funding Agreement have been satisfied in form and substance satisfactory to KfW. The

**1.7
MEASUREMENTS AND
STANDARDS**

Employer has to inform the Consultant about KfW's written confirmation immediately.

Any drawings, plans and calculations shall be based on the Standards; moreover, the Standards shall be applied to all Services.

**1.8
ASSIGNMENT AND
SUB-CONTRACTING**

1.8.1 The Consultant may not assign or transfer any of its rights or obligations under this Consulting Contract without the prior written consent of the Employer, which, in turn, shall not be provided without the prior written consent of KfW.

1.8.2 The Consultant may conclude or terminate sub-contracts for the performance of any part of the Services only upon prior written consent of the Employer, which, in turn, shall not be provided without the prior written consent of KfW. None of the Consultant's obligations under this Consulting Contract shall be limited, cancelled or in any other way affected by any sub-contracting of Services.

1.8.3 The Consultant shall, and shall contractually oblige each subcontractor (if any), develop and implement measures for the safety of the personnel deployed, adapted to the current security situation. The Consultant undertakes to contractually oblige each subcontractor (if any) contractually to pass on a corresponding obligation to any other subcontractors (if any).

**1.9
COPYRIGHT AND
RIGHTS OF USE**

To the extent not otherwise stated in the Special Conditions, the Consultant shall transfer to the Employer all rights to the Services performed under this Consulting Contract on the date any such rights arise, and in any event at the latest on the date they are acquired by the Consultant. Insofar as a transfer of such rights is not possible, the Consultant shall irrevocably grant the Employer an unrestricted, transferrable, licensable and exclusive right of use and exploitation that is unlimited with respect to time and place of use. Such transfer shall include the right to adapt any transferred rights. The Consultant shall ensure that no third party rights exist or will be exercised that would preclude the aforementioned transfer of rights or their exercise.

**1.10
OWNERSHIP OF
DOCUMENTS AND
EQUIPMENT**

1.10.1 All studies, reports, data and documents such as diagrams, plans, statistics and annexes that are made available to the Consultant by the Employer in relation to the performance of the Services, as well as software (including the respective source codes) produced or adapted to facilitate the performance of the Services, shall remain the property of the Employer. The Consultant shall not be entitled to exercise any right of retention or similar rights with respect to these materials.

1.10.2 The Consultant shall return any equipment made available by the Employer to the Consultant to facilitate the performance of the Services, including any vehicles purchased for the performance of the Services and paid for

fully by the Employer, to the Employer promptly after completion of the Services. The Consultant shall handle and maintain any such equipment with due care.

1.11 CONFIDENTIALITY AND PUBLICATION

1.11.1 The Consultant shall, and shall ensure that its employees, agents and representatives will keep confidential all documents made available to the Consultant by the Employer and/or KfW, as well as all information exchanged and knowledge acquired concerning this Consulting Contract and its implementation, even if such documents, information or knowledge have not been expressly designated as confidential. This obligation of confidentiality upon the Consultant and its employees shall remain effective for a period of 24 months after completion or termination (whichever occurs earlier) of the Consulting Contract.

1.11.2 The obligation of confidentiality set out in this Clause 1.11 shall not apply to information:

- (a) which is or becomes public information other than as a direct or indirect result of any breach of this Consulting Contract;
- (b) which is known by the receiving Party before the date the information is disclosed to the receiving Party in accordance with paragraph (a) above or is lawfully obtained by the receiving Party after that date from a source which is unconnected with the Employer and KfW and which has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.
- (c) the disclosure of which is:
 - i. requested or required by any court of competent jurisdiction or any competent judicial, governmental, banking, taxation, supervisory or other regulatory authority or similar body or necessary to assert or defend claims or other legal rights in court or administrative proceedings;
 - ii. required pursuant to any applicable law or regulation; or
 - iii. made with the prior written consent of the Party providing the information.

1.11.3 Notwithstanding the foregoing each Party is entitled to disclose any information in connection with this Consulting Contract to KfW.

1.12 CONDUCT

During the term of this Consulting Contract, the Consultant shall not, and shall ensure that its Foreign Staff will not, interfere with the political or religious affairs of the Country.

**1.13
SANCTIONABLE
PRACTICE**

1.13.1 The Consultant shall, and shall ensure that its representatives, agents and employees will:

a) comply with all applicable laws, rules, regulations and provisions of the relevant legal systems relating to the performance of any obligations under this Consulting Contract or if failure to comply would impair the Consultant's ability to perform its obligations hereunder,

b) not engage at any time in any Sanctionable Practice; and

c) not enter into or continue any business relationship with specially designated nationals, blocked persons or entities maintained on any Sanctions List and not engage in any other activity that would constitute a breach of Sanctions.

For the purposes of this provision, the following capitalized terms shall have meaning as defined below:

Coercive Practice	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
Collusive Practice	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
Corrupt Practice	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.
Fraudulent Practice	Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
Obstructive Practice	Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice

	or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
Sanctionable Practice	Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Funding Agreement.
Sanctions	The economic, financial or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctioning Body.
Sanctioning Body	Any of the United Nations Security Council, the European Union and the Federal Republic of Germany.
Sanctions List	Any list of specially designated persons, groups or entities which are subject to Sanctions, as issued by any Sanctioning Body.

1.13.2 The Consultant will inform its employees, agents, representatives and subcontractors (if any) engaged under this Consulting Contract of their respective obligations.

1.13.3 The Consultant shall itself and contractually oblige its employees, agents, representatives and subcontractors (if any) to comply in all respects with (i) the Declaration of Undertaking described in Annex 1 [Declaration of Undertaking] and (ii) the laws of the Country.

1.13.4 The Consultant shall, in connection with his/her activities in respect of the Services and/or the Project, treat the persons involved in the Services and/or the Project and any other persons involved at any time respectfully and with high ethical standards (requirement of respectful treatment). The Consultant shall not treat any persons involved in the Services and/or the Project or any other persons differently without a justified reasonable cause (prohibition of discrimination). The Consultant shall not use his position in connection with the Services and/or the Project for abusing of his/her competences and powers (prohibition of abuse). This includes in particular, but is not limited to, the abuse of

a position of power for demanding and receiving sexual acts or harassment. The provisions on Sanctionable Practices shall remain unaffected.

**1.14
SOCIAL AND
ENVIRONMENTAL
RESPONSIBILITY**

The Consultant shall, and shall ensure that its representatives, agents and employees will, ensure compliance with the Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) as outlined in KfW's Sustainability Guideline (October 01, 2019 as amended from time to time) and, consequently:

where relevant, implement any environmental and social and health and safety risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the Employer and/or KfW. The Consultant will report on the status of implementation of ESHS measures and plan items as contractually agreed.

**1.15
REIMBURSEMENTS**

Unless otherwise set out in the Special Conditions, the Consultant shall make all reimbursements, insurance payments, guarantee payments or similar payments to the extra account of the Employer specified in the Special Conditions.

**1.16
SEVERABILITY AND
WRITTEN FORM**

1.16.1 If any provision of this Consulting Contract is or becomes invalid, void or ineffective or if this Consulting Contract contains unintentional gaps, this will not affect the validity or effectiveness of the remaining provisions of this Consulting Contract and this Consulting Contract will remain valid and effective, save for the void, invalid or ineffective provisions, without any Party having to argue and prove the Parties' intent to uphold this Consulting Contract even without the void, invalid or ineffective provisions.

1.16.2 The void, invalid or ineffective provision shall be deemed replaced by such valid and effective provision which comes as close as possible to the purpose and intent of the invalid provision in legal or economic terms and any unintentional gap shall be deemed to be filled with a provision which best suits the purpose and intent of this Consulting Contract.

1.16.3 Any supplements and amendments to this Consulting Contract – including to this Article 1.15.3 – must be made in writing. Any waiver by the Parties of this writing requirement must also be in writing.

**1.17
ROLE OF KfW**

For the avoidance of doubt, notwithstanding any consent, no-objection and/or other rights which may be conferred to KfW pursuant to this Consulting Contract, KfW shall not and shall not be deemed to be a Party to this Consulting Contract and shall have no obligations hereunder.

Paragraph 2 The Employer

2.1 INFORMATION

During the term of this Consulting Contract, the Employer, shall, within a reasonable period of time and at its own cost and expense, provide the Consultant with all data, documentation and information required or expedient for the performance of the Services that are available to it. This shall also include all Services- and Project-related provisions of any separate agreements relating to the Funding Agreement or to any other loan or grant made in respect of the Project, and, to the extent that KfW's consent is required by this Consulting Contract and has been granted by KfW, the documents evidencing such consent.

2.2 DECISIONS AND COOPERATION

Where the Employer is vested with any discretion or decision right under this Consulting Contract, it shall, provided that the Consultant has supplied the Employer with all the information reasonably required by the Employer including, but not limited to, drawings, studies and details of any replacement staff, exercise such discretion or (as applicable) take its decision pursuant to this Consulting Contract as soon as possible following the Consultant's written request and, in any event, no later than the end of the expiry period specified in the Special Conditions.

2.3 SUPPORT

2.3.1 The Employer will support, to the extent reasonably possible, the Consultant in discharging its obligations pursuant to this Consulting Contract. The Employer shall make available to the Consultant as soon as reasonably practicable and in full all the services necessary for the performance of its tasks as detailed in Annex 3 [*Terms of Reference plus Tender Documents*].

2.3.2 In addition, the Employer shall support the Consultant, the Consultant's employees and directors and, where applicable, their [immediate] relatives in:

- (a) obtaining as soon as reasonably practicable any documents necessary for entering, residing in, working in and leaving the Country (visa, work permit etc.);
- (b) granting and/or obtaining unrestricted access to the Project where necessary for the performance of the Services;
- (c) the import, export and customs clearance of personal items and of goods and commodities required for the performance of the Services;
- (d) securing return transport in cases of emergency;
- (e) obtaining permission to import Foreign Currency that is required by the Consultant for the performance of the Services and for personal use by its Foreign Staff;
- (f) obtaining permission to export the money paid by the Employer to the Consultant under this Consulting Contract; and

- (g) providing access to other organisations for the purpose of obtaining information to be procured by the Consultant in relation to the performance of its obligations hereunder or any of the matters set out under any of the foregoing sub-paragraphs (a) through (f) above.

2.4 TAXES

- 2.4.1 The Consultant is responsible for meeting any and all tax liabilities in the Employer's country arising out of the Consulting Contract, unless it is stated otherwise in the Special Conditions. Tax liabilities of the Consultant outside the Employer's country are considered to be included in the Remuneration and may not be charged separately.
- 2.4.2 If, after the date of signing of this Consulting Contract by the Parties, there is any change in the applicable law in the Employer's country with respect to taxes and/or duties which increases or (as the case may be) decreases the cost incurred by the Consultant in performing the Services, then the Remuneration and other expenses otherwise payable to the Consultant under this Consulting Contract shall be increased or (as the case may be) decreased accordingly by agreement to be concluded between the Parties hereto.

2.5 SERVICES AND FURNISHINGS

The Employer shall make available to the Consultant, at the Employer's cost and expense, such technical and other equipment and offices as described in Annex 6 [*Equipment and Furnishings to be provided by the Employer and Third-party Services Commissioned by the Employer*] for the purpose of performing the Services.

2.6 CONTACT PERSONS OF THE EMPLOYER

The Employer shall appoint two natural persons to act as the Employer's contact person and deputy to the Consultant in relation to this Consulting Contract, and the Employer further undertakes to appoint a substitute contact person without undue delay should either of the two individuals appointed (or the respective substitutes) no longer be available. The contact persons shall be set out in the Special Conditions.

Paragraph 3 The Consultant

3.1 SCOPE OF SERVICES

- 3.1.1 The Consultant shall deliver the Services in full and on time.
- 3.1.2 The Consultant shall cooperate in good faith with any third parties commissioned by the Employer pursuant to Paragraph 2.5 [*Services and Furnishings*]. The Employer shall not be liable for any costs, losses or liabilities caused by any of these third parties or their performance, except in the case of willful misconduct, gross negligence, death or bodily injury. In addition, the Consultant must, to the extent possible, comprehensively coordinate the services rendered by such third parties with the Services.

3.2 REPORTING AND INFORMATION

- 3.2.1 The Consultant shall report to the Employer and KfW on the progress of the Services in accordance with the Special Conditions and/or the Terms of Reference as applicable. The Consultant shall inform the Employer and KfW promptly of all extraordinary circumstances (including, without limitation, any compliance-relevant circumstances or substantial suspicions) that arise during the performance of the Services and of all matters requiring KfW's approval.
- 3.2.2 The Consultant shall, at its own cost and expense, promptly deliver all records, documents and information requested by the Employer and/or KfW in connection with this Consulting Contract. This obligation shall survive the termination of the Consulting Contract for a period of 24 months.

3.3 STAFFING

- 3.3.1 The Consultant shall employ the staff specified in Annex 5 [*Staffing Schedule*] to implement performance of the Services. The list of designated key staff and any changes to it shall require the prior written approval of the Employer and KfW.
- 3.3.2 Upon the Employer's request, the Consultant shall terminate the contract of, or release or replace, any staff member who fails to meet the requirements set out in this Consulting Contract or violates Paragraph 1.12 [*Conduct*]. Any such request of the Employer must be submitted in writing to the Consultant and must state the reasons for the requested termination, release or replacement.
- 3.3.3 If any staff employed by the Consultant need to be replaced, the Consultant shall ensure that the staff member in question is replaced promptly by an individual with at least equivalent qualifications and experience.
- 3.3.4 If the Consultant terminates the contract of, or releases or replaces, any staff during the term of this Consulting Contract, any costs thus accrued shall be borne by the Consultant.

3.4 CONTACT PERSON OF THE CONSULTANT

- 3.4.1 The Consultant shall appoint a natural person as its contact person for the Employer in relation to this Consulting Contract, and the Consultant further undertakes to appoint a substitute contact person without undue delay should the individual appointed (or its substitute) no longer be available.
- 3.4.2 Moreover, the Consultant shall specify and provide contact details to the Employer and KfW for an individual, as well as a deputy, at the Consultant's place of business who can be reached at any time in cases of emergency or crisis. The Consultant shall notify the Employer and KfW without delay of any change of any such elected person or its contact details.

Paragraph 4 Commencement, Completion, Amendment and Termination of the Services

4.1 COMMENCEMENT AND COMPLETION

- 4.1.1 The Consultant shall begin performing the Services on the Commencement Date. The Consultant shall deliver the Services in accordance with the time schedule set out in Annex 7 [*Time Schedule for the Performance of the Services*], and shall complete the Services within the Completion Period (for the avoidance of doubt, subject to any adaptations (if any) in accordance with paragraph 4.1.3 below).
- 4.1.2 In the case of optional services (if any), the Consultant shall commence delivery of such optional services not earlier than upon receipt of notification from the Employer, subject to the Employer having received KfW's prior written consent.
- 4.1.3 Any change to the time schedule in Annex 7 [*Time Schedule for the Performance of the Services*] due to a reasonable request by either party shall be mutually agreed upon in writing.

4.2 PENALTIES FOR DELAY AND DISSATISFACTORY SERVICES

- 4.2.1 If the Consultant culpably fails to perform any of the Services within the respective time agreed for such Services, the Consultant shall, except to the extent that the Special Conditions include a stipulation to the contrary, be obliged to pay to the Employer a penalty in an amount of 0.5% of the contract value for every week of delay, subject to an overall cap of 8% of the contract value. Any claims which the Employer may have as a consequence of such delay (if any) shall be deemed to be settled by such payment. The foregoing shall be without prejudice to the Employer's right of termination pursuant to Paragraph 4.6.2 [*Suspension and Termination*].
- 4.2.2 In the case the Consultant has not provided the Services in accordance with the provisions set out in this Consulting Contract to the satisfaction of the Employer and if this has (i) been notified by the Employer to the Consultant and (ii) not been remedied by the Consultant within 21 days upon receipt of such notification, and provided that the Employer has requested payment of a penalty in accordance with Paragraph 4.2.1 [*Penalties for Delay and Dissatisfactory Services*] above, the Employer and KfW shall be entitled to prohibit the Consultant from mentioning this Project as a reference for future project tenders.

4.3 FORCE MAJEURE

- 4.3.1 In the event of a Force Majeure, the contractual obligations, to the extent affected by such event, shall be suspended for as long as performance remains impossible due to the Force Majeure, provided that one Party receives notification of the Force Majeure event from the other Party within two weeks after its occurrence. Any and all liability of the Consultant for damages arising due to its absence caused by the Force Majeure is excluded, provided that this shall not apply to any damages which the Consultant could have,

but has wilfully or negligently not, mitigated in light of the circumstances at that time.

4.3.2 In the event of a Force Majeure, the Consultant shall be entitled to an extension of the Completion Period equal to the delay caused by such Force Majeure. If the performance of the Services is rendered permanently impossible by the Force Majeure, or if the Force Majeure event continues for more than 180 days, either Party to this Consulting Contract shall be entitled to terminate the Consulting Contract.

4.3.3 In the case of a suspension or termination of the Consulting Contract due to Force Majeure, the Consultant shall be entitled to claim from the Employer payment of:

- (a) a proportionate amount of the Agreed Remuneration for the Services performed up to the occurrence of the Force Majeure; and
- (b) all necessary and evidenced expenditures of the Consultant arising from the discontinuing of the Services,

in each case in accordance with the principles agreed in Paragraph 5 [*Remuneration*] and the Special Conditions as well as the principles set out in Paragraph 4.6.4 [*Suspension or Termination*].

4.3.4 The Consultant must, however, mitigate its loss and deduct any proceeds of such mitigation, which shall include:

- (a) any remuneration paid to the Consultant in consideration for working on other projects during the time the Consultant was (but for the discontinuation) scheduled to work on the Project; and
- (b) any remuneration that the Consultant could reasonably have earned in consideration for working on other projects during the time the Consultant was (but for the discontinuation) scheduled to work on the Project, but which the Consultant has not received as a result of the Consultant's wilful misconduct or negligence.

4.3.5 The Consultant shall not have any further payment claims as a consequence of the Force Majeure Event.

4.4 SUSPENSION OR TERMINATION

4.4.1 The Employer may, with the prior written consent of KfW, fully or partially request suspension of the Services or terminate this Consulting Contract, in each case by serving written notice of at least 30 days. In this event, the Consultant must immediately take all measures necessary to ensure that the Services are discontinued and any expenditures minimised. The Consultant shall hand over all reports, drafts and documents to be prepared by the date in question to the Employer. If the suspension continues for more than 180 days, the Consultant may terminate the Consulting Contract. In the case of such termination

Paragraph 4.5 [*Force majeure*] shall apply mutatis mutandis.

- 4.4.2 If the Consultant fails to meet any of its contractual obligations within the agreed time for such obligations, the Employer may serve a notice upon the Consultant and request it to duly perform its Services. If the Consultant fails to remedy the performance deficit within a reasonable time frame as determined by the Employer which shall be, however, not less than 21 days of having been called upon to do so by the Employer, the Employer shall be entitled, after this period has elapsed, to terminate the Consulting Contract by written notice.
- 4.4.3 The Consultant may terminate this Consulting Contract if any amounts due and payable to it under this Consulting Contract have not been reasonably disputed or paid within 60 days after the receipt by the Employer of the corresponding invoice, provided that (i) the Consultant has delivered to the Employer a written reminder within 30 days after the initial 60 days deadline has passed and (ii) the Employer has not paid the due amounts within a further grace period of 30 days upon receipt by it of such reminder. Without prejudice to the right to terminate due to Employer's nonpayment the Consultant may suspend the performance of this Contract if and for so long as any amounts due and payable under this Consulting Contract have not been reasonably disputed or paid within 60 days after the receipt of the Consultant's corresponding invoice by the Employer, provided that the Consultant has submitted a written reminder notice to the Employer after the initial 60 days deadline has passed and the Employer does not pay the due amounts within a further period of 21 days after the reminder notice.
- 4.4.4 In the case of a termination or suspension of the Consulting Contract, the Consultant shall be entitled to demand payment of:
- (a) the due but unpaid proportion of the Agreed Remuneration for the Services performed until the date of termination or suspension; and
 - (b) if the termination or suspension of the Consulting Contract is not caused by a default by the Consultant, all necessary and evidenced expenditures of the Consultant arising from the discontinuing of the Services, provided, however, that the Consultant must mitigate its loss and deduct any proceeds of such mitigation, which shall include:
 - (i) any remuneration paid to the Consultant in consideration for working on other projects during the time the Consultant was (but for the termination or suspension) scheduled to work on the Project; and
 - (ii) any remuneration that the Consultant could reasonably have earned in consideration for

working on other projects during the time the Consultant was (but for the termination or suspension) scheduled to work on the Project, but which the Consultant has not received as a result of the Consultant's wilful misconduct or negligence.

4.4.5 If the termination or suspension of the Contract has been caused due to a default of the Consultant, the Employer shall be entitled to demand compensation for any direct damages caused by the default.

4.5 BREACH OF PARAGRAPH 1.13

4.5.1 If the Consultant has breached Paragraph 1.13 [*Sanctionable Practice*], the Employer may, notwithstanding any sanctions which may be applicable according to the law of the Country or any other legal system, terminate this Consulting Contract in writing with immediate effect.

4.5.2 The Employer may also terminate this Consulting Contract in writing with immediate effect if the Declaration of Undertaking submitted by the Consultant [in accordance with Paragraph 1.13.3] is untrue or inaccurate in any respect or if the any obligations thereunder have been breached.

4.6 RIGHTS AND OBLIGATIONS OF THE PARTIES IN CASE OF TERMINATION

For the avoidance of doubt, a termination of this Consulting Contract shall not prejudice or affect any rights, claims or obligations of any Party which have arisen before the termination takes effect. Notwithstanding the foregoing, in the case of a termination pursuant to Paragraph 4.7 [*Breach of Paragraph 1.13*] the Employer shall be entitled, in cooperation with KfW, to request the repayment of any remuneration (in total or in part considering the circumstances of the violations) which has been paid to the Consultant pursuant to this Contract. The burden of proof that a case of termination is given lies with the Employer.

Paragraph 5 Remuneration

5.1 FORMS OF REMUNERATION

In consideration for the performance of the Services, the Employer shall pay to the Consultant the remuneration as agreed in the Special Conditions subject to the conditions listed therein and the conditions set out below, and subject further to Annex 8 [*Cost Calculation and Invoicing Table*], depending on the type of Services agreed which may be either

- (a) lump sum services; or
- (b) time-based services.

5.2 GENERAL PAYMENT TERMS

To the extent not otherwise agreed in the Special Conditions, the Employer shall pay the Consultant's remuneration as follows:

- (a) An advance payment as set forth in the Special Conditions, but not exceeding 20% of the Contract Value shall be due within 30 days following the date of this Consulting Contract upon presentation of an invoice and against presentation of an advance payment guarantee if required in accordance with the Special Conditions.
- (b) Instalments shall be paid upon presentation of corresponding invoices with a maximum of one payment per quarter. The first invoice following the advance payment shall not be issued before the expiry of three months following the Commencement Date.
- (c) The final payment shall be made after the Services have been performed in full and written confirmation has been provided by the Employer to the Consultant and prior written non-objection has been obtained from KfW.

5.3 PAYMENT CONDITIONS

- (a) In case of a lump sum remuneration, payments to the Consultant shall be made in a pre-determined number of instalments as further specified in the Special Conditions. In case the instalments are to be made dependent on milestones, these will be clearly stipulated in the Special Conditions.
- (b) In case of a time-based remuneration, payments to the Consultant shall be made based on the unit prices set forth in Annex 8 [*Cost Calculation and Invoicing Table*] as further specified in the Special Conditions. Each invoice shall be accompanied by a list of expenditures based on Annex 8 [*Cost Calculation and Invoicing Table*].
- (c) Other Costs, if any, shall be invoiced together with the agreed instalments. Unless the remuneration for Other Costs is included in the lump sum instalments, the invoices must be accompanied by a list of expenditures based on Annex 8 [*Other Cost Calculation and Invoicing Table*].

The original documentation evidencing the Other Costs shall be sent to the Employer, unless this Consulting

Contract has been entered into pursuant to an agency contract in which case the original documentation shall remain with the Consultant and be delivered to the Employer or (as the case may be) KfW promptly upon request of the Employer.

5.4 LIMITATIONS

- (a) The remuneration of the Consultant (including, for the avoidance of doubt, Other Costs, if any) shall not exceed the Contract Value set forth in the Special Conditions.

5.5 INVOICING

- (a) Payments are made against invoices. The original invoices shall specify (i) the period for which the underlying Services have been performed and (ii) correct banking details and shall be addressed to the Employer.

In the case of conclusion of this Consulting Contract pursuant to an agency contract: the Consultant's invoices (other than the final invoice) shall be addressed to the Employer "c/o KfW". Except for the final invoice, the Consultant shall send each original invoice to KfW and a copy of each invoice to the Employer directly. The original final invoice is to be addressed to the Employer and KfW will receive a copy.

- (b) With each invoice the Consultant implicitly declares that the performance and/or costs invoiced have actually incurred and that the lists accompanying the respective invoices are true and complete.

5.6 PAYMENT DEADLINE

- (a) Other than in the case of an advance payment or unless otherwise stated in the Special Conditions, payment shall be made within 60 days of presentation of a verifiable invoice by the Consultant to the Employer.
- (b) If the Employer does not make the payment within the period set out in Paragraph 5.6(a) [*Payment Deadline*] and the Employer has not raised an objection pursuant to Paragraph 5.7 [*Objection to Invoices*] within that date, the Employer shall pay to the Consultant a compensation at the rate agreed in the Special Conditions. This shall be calculated on a daily basis from the date on which the relevant amount became due and payable in the currency set out in the Special Conditions. The Consultant shall have no further rights or claims arising from any delay of the Employer.

5.7 OBJECTION TO INVOICES

Should the Employer object to any invoice of the Consultant (or any aspect or part thereof), the Employer shall notify the Consultant of its intention to withhold payment and shall state the reasons why. If the Employer objects only to a part of an invoice, it shall pay that part of the invoiced amount to which it has not objected within the period specified in Paragraph 5.6 [*Payment Deadline*].

5.8 AUDITING

For any Services (or parts thereof) that are not remunerated on a lump-sum basis, the Consultant shall maintain up-to-date records that meet professional standards and that clearly and systematically indicate the Services provided and the time and expense involved. The Consultant shall permit the Employer and KfW (as well as their respective advisors and auditors) to audit these records at any time and make copies of them.

Paragraph 6 Liability

6.1 GENERAL LIABILITY OF THE CONSULTANT

The Consultant shall be liable to the Employer for culpable breaches of its contractual obligations, including, without limitation, of its obligations under Article 3 [*The Consultant*]. The liability of the Consultant shall be limited to the Contract Value. The foregoing limitation shall not apply in the case of wilful misconduct or gross negligence.

6.2 LIABILITY FOR SUB- CONTRACTORS

For the avoidance of doubt, the Consultant shall also be liable for the Services provided by a sub-contractor pursuant to Paragraph 1.8 [*Assignment and Sub-contracting*].

6.3 PERIOD OF LIABILITY

The Consultant's liability shall terminate according to the law governing the Consulting Contract as set out in the Special Conditions, unless a different point of time has been agreed in the Special Conditions.

6.4 LIABILITY FOR CONSEQUENTIAL DAMAGE

Liability for consequential damages is excluded.

6.5 LIABILITY OF THE EMPLOYER

The Employer shall be liable for culpable breaches of its contractual obligations, including, without limitation, of its obligations under Paragraph 2 [*The Employer*].

Paragraph 7 Insurance against Liability and Damages / Guarantees

7.1 INSURANCE AGAINST LIABILITY AND DAMAGES

7.1.1 The Consultant shall take out and maintain adequate insurance for the entire duration of the Consulting Contract and on the terms specified in the Special Conditions, including, but not limited to, the following:

- (a) professional liability insurance;
- (b) personal liability insurance;
- (c) equipment insurance covering loss of or physical damage to all equipment acquired, used, provided or paid for by the Employer within the context of this Consulting Contract; and
- (d) motor vehicle third party liability insurance and motor vehicle comprehensive hull insurance for the vehicles acquired in connection with this Consulting Contract.

7.1.2 The costs incurred in connection with the insurance specified in Paragraph 7.1.1 [*Insurance Against Liability and Damages*] shall be fully compensated by the Agreed Remuneration and may not be charged separately.

7.1.3 The Employer shall take out the insurances to the extent agreed in the Special Conditions.

7.2 GUARANTEES

Any guarantees shall be in the form set out in Annex 10 [*Form of Advance Payment Guarantee*] and shall always be provided as bank guarantees issued in favour of the Employer as beneficiary. They must be acceptable to the Employer and KfW. The original of the guarantee shall be sent to the Employer, with a copy, together with a confirmation of delivery of the original, to be sent to KfW.

Paragraph 8 Disputes and Arbitration Procedure

8.1 ARBITRATION PROCEDURE

If the Parties do not reach amicable agreement, disputes arising out of or in connection with this Consulting Contract shall finally and exclusively be settled by a single arbitrator appointed and proceeding in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris. The place of arbitration and the language of the arbitration procedure shall be stipulated in the Special Conditions.

Part II: Special Conditions

Ad Article 1: General Provisions

Ad 1.1: Definitions

“Completion Period”: The completion period shall be the period starting on the Commencement Date and ending on [●].

“Country”: [●]

“Project”: [●] BMZ no. [●] as further specified in Annex 3.

[Insert description of Project]

“Commencement Date”: [insert date] / the date [falling [●] weeks after]/[of] the entry into force of this Consulting Contract.

[The date on which execution shall be commenced can be identical with the date on which the contract enters into force or it can lie after the date on which the contract enters into force. The date on which execution shall be commenced can be defined in absolute terms (first option) if the timeline of events is fixed or it can be defined relative to the date on which the contract enters into force (second option) if the date on which the contract enters into force cannot be determined in advance. The option that does not apply shall be erased. Usually, between the date on which the contract enters into force and the date on which execution shall be commenced a mobilization phase is planned for, whose length may be up to four weeks depending on nature and scope of the task.]

Ad 1.4: Communication and Language

The language for notices, instructions, reports and other communication shall be [●].

Notices

Address of the Employer

Postal address [●]

Email: [●]

Phone: [●]

Fax: [●]

Address of the Consultant

Postal address

Email: [●]

Phone: [●]

Fax:

Tax Residence of the Consultant and all JV Partners:

Address of KfW

Postal address

Palmengartenstrasse 5 – 9

60325 Frankfurt

Germany

[The general address for KfW should be specified or changed according to the project in question]

Email: [●]@kfw.de

Phone: +49 (69) 7431-[●]

Fax: +49 (69) 7431-[●]

Ad 1.5: Governing law

The law governing this Consulting Contract shall be [●].

[For contracts signed by KfW on behalf of the Employer pursuant to an agency contract, German law must always be agreed.]

[If this Consulting Contract is concluded in more than one language, only the [●] language version shall be legally binding.]

[If the Consulting Contract is concluded in more than one language.]

Ad 1.9: Copyright and rights of use

[●]

Ad 1.15: Reimbursements

Account details of the Employer's extra account for all reimbursements: [●]

Ad Article 2: The Employer

Ad 2.2: Decisions and cooperation

[Distinguish as and where appropriate] Decisions/discretions/cooperative actions of the Employer pursuant to Paragraph 2.2 [Decisions/cooperation] must be taken/exercised/performed at the latest within [●] days/weeks from receipt by the Employer of the respective written request of the Consultant.

Ad 2.4: Taxes

[Paragraph to be deleted altogether if KfW concludes the Consulting Contract on behalf of the Employer pursuant to an agency contract]

The contractual parties agree on the following provisions regarding taxes and public duties in the country of the Employer: **[●]**

[Clarification is required for local taxes and local public duties that may need to be paid or reimbursed, if applicable, differentiated according to e.g. VAT, withholding tax, public duties such as contract registration fees or mandatory fees to a regulatory body, or equivalent. The agreements below should be fully in line with the relevant instructions to Consultants in the request for proposal and shall not substantially modify these instructions.]

[Depending on the legal situation governing the Contract the following general cases may occur:

- *the Consultant and its foreign staff are exempted from local taxes and public duties. , The legal act testifying the tax exemption is attached to the Contract,*
- *the Consultant and its foreign staff are subject to local taxes and public duties directly attributable to the Contract*
 - *and the Employer will reimburse the Consultant for these local taxes and public duties paid by the Consultant to the tax authorities*
 - *or the Employer will pay these taxes and duties on behalf of the Consultant to tax authorities.*
 - *In such cases the Contract should specify the nature and amounts of taxes and the procedure of invoicing by the Consultant and the mode of payment by the Employer,*
- *the Consultant and its foreign staff are subject to local taxes and public duties directly attributable to the Contract which will be borne by the Consultant and its staff. In such cases offered prices are considered inclusive of local taxes and public duties, i.e. local taxes and public duties shall be considered to be included in the overhead cost calculation and will not be subject to any separate payment.*

The contractual provisions shall reflect the relevant case]

Ad 2.6: Contact persons of the Employer

The Employer's contact persons shall be **[●]**.

Contact details **[●]**.

The Employer's deputy shall be **[●]**.

Contact details **[●]**.

Ad Article 3: The Consultant

Ad 3.2: Reporting and information

[●]

[Indicate nature, scope and frequency of reports, including a final report, throughout the period of the Contract.]

Ad 3.4.1: The Consultant's contact person

The Consultant's contact person shall be [●].

Contact details [●].

The deputy shall be [●].

Contact details [●].

Ad 3.4.2: The Consultant's contact person for cases of emergency or crisis

The Consultant's contact person for cases of emergency or crisis shall be [●].

Contact details [●].

The deputy shall be [●].

Contact details [●].

Ad Article 5: Remuneration

Ad 5.1: Forms of Remuneration

In consideration of the Services, the Employer shall pay to the Consultant an amount of

up to [●] in [● currency]

(the "Contract Value").

In accordance with the Terms of Reference, the Services will be rendered as

[please select:

☐ Lump sum services

☐ Time based services

Ad 5.2 (a): General Payment Terms

[Total amount of the advance payment: EUR[●]

equalling [●]% of the Contract Value *[if applicable: excluding Other Costs]*

Please select

- ☐ Prior to any advance payment, the Consultant must present an advance payment guarantee in the entire amount of such advance payment in the form set out in Annex 10. Such guarantee shall be provided as a bank guarantee in favour of the Employer as beneficiary. It must be acceptable to the Employer and KfW. The original of the guarantee shall be sent to the Employer, with a copy, together with a confirmation of delivery of the original, to be sent to KfW.
- ☐ An advance payment guarantee will not be required.]

5.3: Payment Conditions

Please delete such alternatives as are inapplicable [choose A or B]::

A) Lump sum services

[●] EUR advance payment relating to the lump sum services.

equalling **[●]** % of the total remuneration for the lump sum services .

This advance payment [relating to the lump sum services] will not be deducted from the further lump-sum instalments.

Instalments

Payment shall be made in **[●]** instalments [, each for an amount of **[●]**]/[as follows: **[●]**].

*[If applicable: In derogation of Art. 5.2(b), instalments will be made every **[●]** months.]*

[Payments shall generally be made quarterly; any more frequent payments need to be approved by KfW transaction management department.]

*If applicable: In derogation of Art. 5.2.(b) payment shall be made based on the fulfilment of the respective milestone as follows: **[●]***

[Please specify in detail the respective milestones and the corresponding payment amounts for the achievement of such milestones.]

[●] EUR as the final payment

[The instalments should be arranged in a way that the final payment for the lump sum services will amount to approximately 10 %, of the Contract Value.]

B) Time based services

[●] EUR advance payment relating to the time based services

equalling [●] % of the total remuneration for the time based services]]

Instalments

Instalments will be invoiced on the basis of the Cost Calculation and Invoicing Table (Annex 8) and the unit prices set out therein and substantially in the form of the model invoicing sheet enclosed in Annex 8.

[If applicable: In derogation of Art. 5.2(b), instalments will be made every [●] months.

Payments shall generally be made quarterly; any more frequent payments need to be approved by KfW transaction management department.]

The advance payment [relating to the time based services] of [●] EUR will be deducted from each instalment on a pro rata basis. A retention of [●]% will be deducted from each instalment and will constitute the final payment.

[●] EUR as the final payment

[The instalments should be arranged in a way that the final payment for time based services will amount to approximately 10 %, of the Contract Value.]

C) Other Costs

Other Costs, if any, will be invoiced together with the instalments on the basis of and substantially in the form set out in the Cost Calculation and Invoicing Table (Annex 8) stating the actual costs and exchange rates applied.

Ad 5.5: Invoicing

The Consultant's invoice shall indicate the BMZ-No. (see Definition of "Project" pursuant to Article 1.1).

Payments may be made to the Consultant directly by KfW according to the direct disbursement procedure if agreed between KfW and the Employer.

Payments shall be made to the following account:

Account holder: [●]

Bank: [●]

Account number: [●]

[where applicable:

IBAN: [●]

BIC: [●]

If the Consultant's account-holding bank is not located in the currency area of the currency of payment:

BIC of correspondent bank: [●]

[If applicable: The Consultant Contract has been entered into on the basis of an Agency Contract. Invoices for advance payments and instalments must therefore be sent to KfW (addressed to the Employer c/o KfW) in accordance with article 5.5.a) of the General Conditions.]

Ad 5.6: Payment deadline

Agreed compensation for overdue payments pursuant to Paragraph 5.6 [Payment Deadline]: [●] per cent per year, in relation to the outstanding amount.

Ad Article 6: Liability

Ad 6.3: [Period of liability]

[Please choose applicable alternative or delete altogether.]

The Consultant's liability shall terminate [insert date] [or] [[●] year[s] after the final acceptance of the structures or units (if any) planned and supervised by it.]]

Ad Article 7: Insurance

The insurance [●] shall be taken out and maintained by the Consultant, the insurance [●] by the Employer. [N.B.: Complete as appropriate]

Ad Article 8: Disputes and Arbitration Procedure

Ad 8.1: Arbitration Procedure

The place of arbitration shall be [●].

The language of the arbitration procedure shall be [●].

(Place, date)

(for the Employer)

(for the Consultant)

List of Annexes

[Note: If one or several of the Annexes are not necessary in the respective Contract, to preserve the integrity of the references please retain the numbering of the Annexes and insert the words “not applicable” in the relevant Annexes.]

Annex no.	Title
1	Declaration of Undertaking
2	Minutes of Negotiation (if relevant)
3	Terms of Reference plus Tender Documents
4	Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Co-operation with Partner Countries (in the version valid on the date the bid was submitted)
5	Staffing Schedule
6	Equipment and Furnishings to be provided by the Employer and Third-party Services Commissioned by the Employer
7	Time Schedule for the Performance of the Services
8	Cost Calculation and Invoicing Table
9	The Consultant's Bid
10	Form of Advance Payment Guarantee (if relevant)

Declaration of Undertaking

Reference name of the Application/Offer/Contract: ("Contract")³

To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")⁴ subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
 - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
 - 2.2) having been convicted by a final judgment or a final administrative decision or a preliminary investigation/charge is pending against us for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings, or have been subject to (financial) sanctions and/or embargo provisions by the United Nations, the European Union or the Federal Republic of Germany. This exclusion criterion is also applicable to legal persons whose shares (or the majority thereof) are owned or de facto controlled by natural or legal persons against whom such judgments, administrative decisions, (financial) sanctions and/or embargoes have been imposed and – in the case of (financial) sanctions and/or embargoes – these restrictive measures continue to apply;
 - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
 - 2.4) having been subject, within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
 - 2.5) not having fulfilled the applicable fiscal obligations with regard to the payment of taxes at the respective tax residence and in the country of origin of the PEA (*contractors based in Annex 1 countries (<https://www.consilium.europa.eu/de/policies/eu-list-of-non-cooperative-jurisdictions/>) must submit a fully completed and legally countersigned declaration of tax conformity (Appendix 1 to the Declaration of Undertaking) in addition to the Declaration of Undertaking at the time of award of the contract/contract review. This shall become an integral part of the contract. Failure to submit may result in exclusion from the awarding procedure. For contractors based in countries not listed as Annex 1 countries, only the Declaration of Undertaking must be submitted, and not the declaration of tax conformity*);

³ Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries".

⁴ The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

- 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or
- 2.7) being guilty of misrepresentation in supplying the information required as condition to participation in this Tender Procedure.
3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:
- 3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- 3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;
- 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;
- 3.5) in the case of procurement of Works, Plant or Goods:
- i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
 - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;
4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
6. In the context of the Tender Process and performance of the corresponding Contract:
- 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice or violate the Guidelines during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;
- 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
- 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation⁵

⁵ In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

Appendix 1

(ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.

7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an auditor appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf of⁶: _____

Signature:

Dated:

⁶ In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

Declaration of tax conformity – binding confirmation for legal persons

Name of company

I hereby confirm with my signature that:

1. I am authorised to make this declaration on behalf of the above company;
2. the company properly pays all taxes in accordance with the tax laws of the country in which the company is domiciled;
3. the company is not currently nor has been in the past involved in any legal proceedings concerning the taxation of the company;
4. the company will duly pay taxes that may arise from the provision of contracted services;
5. all information and statements provided in advance are complete, accurate in terms of content and currently correct.

.....
(Place)

.....
(Date)

.....
(Name of the consultant)

.....
(Signature(s))

Declaration of tax conformity – binding confirmation for natural persons

I hereby confirm with my signature that:

1. I make this declaration in my name/on my own account;
2. I duly pay taxes that I am obliged to pay under the tax law of my country of residence;
3. I am not currently involved in tax law court proceedings, nor have I been in the past;
4. I will duly pay taxes that may arise from the provision of contracted services;
5. I have filled in all the information and statements of this confirmation in full, accurately in terms of content and that they are up to date at this time.

.....
.....

(Place)

(Date)

(Name of the person)

.....
(Signature)

Minutes of Negotiation (if relevant)

Terms of Reference plus Tender Documents

Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Co-operation with Partner Countries

(in the version valid on the date the bid was submitted)

Staffing Schedule

(pursuant to the Consultant's Bid; where applicable in the version subsequently negotiated)

**Equipment and Furnishings to be provided by the Employer and Third-party
Services Commissioned by the Employer**

Time Schedule for Delivery of the Services

(pursuant to the Consultant's Bid; where applicable in the version subsequently negotiated)

**Cost Calculation and Invoicing in [EUR preferably]
Package A – Lump Sum Services**

Detailed Cost Calculation – Fees, Transport, Logistics (for information only not basis for payments)				
1. Foreign Staff Cost	Unit	Quantity	Lump sum unit rate	Contract amount
1.1 Team Leader	month	...		
1.2 NN	month	...		
1.3 ...	month	...		
Sub-total Foreign staff				
2. Local Staff Cost (incl. allowances and accommodation, see explanation)				
2.1 NN	month	...		
2.2 ...	month	...		
Sub-total Local staff				
3. Allowance, Accommodation, Complementary Travel Costs for Foreign Staff				
3.1 Allowance, accommodation - Long-term staff	month	...		
3.2 Allowance, accommodation - Short-term staff	month	...		
Sub-total Allowance and accommodation				
4. International Travel				
4.1 International return flights	flight	...		
4.2 Complementary travel costs	flight	...		
4.3 other international flights	flight	...		
Sub-Total International flights				
5. Local Travel & Transport Cost				
5.1 Vehicle lease/rent or use of own vehicles	month	...		
5.2 Vehicle O&M incl. driver, assurance, repairs	month	...		
5.3 Other local transport (short-term, peak)	day	...		
5.4 Local flights	flight	...		
Sub-total Local transport				
6. Project Office				
6.1 Office rent	month	...		
6.2 Office operation	month	...		
Sub-total Project office				
7. Reports and Documents				
7.1 ... (Type of reports/documents to be stated)	/doc	...		
7.2 ...	...	...		
Sub-total Reports and documents				
<i>If 8./9. Equipment / Miscellaneous items are part of lump sum service price add relevant column(s)</i>				
Total Package A – Lump Sum Services				

Cost Calculation and Invoicing in [EUR preferably] Package B – Time Based Services

Detailed Cost Calculation – Fees, Transport, Logistics				
1. Foreign Staff Cost	Unit	Quantity	Lump sum unit rate	Contract amount
1.1 Team Leader	month	...		
1.2 NN	month	...		
1.3 ...	month	...		
Sub-total Foreign staff				
2. Local Staff Cost (incl. allowances and accommodation, see explanation)				
2.1 NN	month	...		
2.2 ...	month	...		
Sub-total Local staff				
3. Allowance, Accommodation, Complementary Travel Costs for Foreign Staff				
3.1 Allowance, accommodation - Long-term staff	month	...		
3.2 Allowance, accommodation - Short-term staff	month	...		
Sub-total Allowance and accommodation				
4. International Travel				
4.1 International return flights	flight	...		
4.2 Complementary travel costs	flight	...		
4.3 other international flights	flight	...		
Sub-Total International flights				
5. Local Travel & Transport Cost				
5.1 Vehicle lease/rent or use of own vehicles	month	...		
5.2 Vehicle O&M incl. driver, assurance, repairs	month	...		
5.3 Other local transport (short-term, peak)	day	...		
5.4 Local flights	flight	...		
Sub-total Local transport				
6. Project Office				
6.1 Office rent	month	...		
6.2 Office operation	month	...		
Sub-total Project office				
7. Reports and Documents				

[illegible]

Annex 8

7.1 ... (Type of reports/documents to be stated)	/doc	...							
7.2 ...	...	...							
Sub-total Reports and documents									
8. Equipment Costs									
8.1 Office equipment									
8.2 Project vehicles									
8.3 Other equipment to be handed over/consumed									
Sub-total Equipment Costs									
9. Miscellaneous									
9.1 Other miscellaneous items/services									
9.2 Security measures									
Sub-total Miscellaneous									
Total Package B – Time Based Services									
minus Advance payment									
minus Retention									
Total									

**Cost Calculation and Invoicing in [EUR preferably]
Other Costs**

Contract Allowance			Model for invoicing							
			Total previous invoices		This invoice (actual quantity and actual amount)			Total to date	Remaining Budget	
	Unit	Provisional Contract Amount EUR	Cum. Quantity	Cum. Amount EUR	Quantity	Amount local currency (if appl.)	Exchange rate (if appl.)	Amount EUR	Amount EUR	Amount EUR
10. Uncertain expenses										
10.1. aus 8.										
10.2. aus 9.										
11. Contingencies/other										
11.1. General Contingencies		...								
11.2....		...								
11.3.		...								
Total Other Costs										

The Consultant's Bid

Advance Payment Guarantee

Beneficiary: *[Insert name and Address of Employer]*

Date of issue : *[Insert date]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name and address of Contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the **Contractor**”) has entered into Contract No. *[insert reference number of the Contract]* dated *[insert Contract date]* with the Beneficiary, for the execution of *[insert object of the Contract and brief description of the contractual content]* (hereinafter called “the **Contract**”). Furthermore we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert amount and currency in words and figures]*⁷, representing *[insert percentage in words and figures]* percent of the Contract price is to be made against an advance payment guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary’s first demand, supported by the Beneficiary’s statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

The advance payment guarantee shall come into force and effect as soon as the advance payment has been credited to the Contractor on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account of the Beneficiary on which payments are to be made]*, for the account of *[Insert name of the Beneficiary and the Beneficiary’s country]*.

This guarantee shall be automatically reduced pro rata in accordance with the payments performed by the Guarantor hereunder and expire not later than *[insert expiry date]*.

Any demand for payment must be received by us at this office on or before that date by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

[As preferred option regarding guarantee rules insert: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.*]*

[In the case the issuing bank will not add the preferred option, insert: This guarantee is governed by the law of *[insert country of jurisdiction where the bank’s branch issuing the guarantee is physically located]**].*

Place, date

Guarantor’s authorised signature(s)

⁷ This guarantee must be issued in the Contract currency only.

Note: All italicised text (including footnotes) is for use in preparing this form and shall be deleted from the final version.