**AKRSP**

**Standard Conditions of Contract**

**for the**

**Procurement of Construction Works (Works)**

**between**

**Aga Khan Rural Support Programme (AKRSP)**

**- Contracting Authority / Employer–**

**and**

***[Contractor’s Name]***

**- Contractor -**

**Name of Contract: *Supply of HDPE pipe, excavation, pipe laying and backfilling***

**Serial No.: *SUM-W8-24***

***[dd/mm/yyyy]***

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| **Contract Conditions****Section A: Description and Details of the Contract** | | |
| 1.1 | This Agreement is made between the Aga Khan Rural Support Programme (AKRSP) – the Employer - and as further specified in art. 1.4 and the Contractor as further specified in art. 1.6 below.  Whereas, the Contractor, has obtained a Letter of Acceptance from the Employer for providing the Works and associated services as specified in art. 1.7 below as per quotations were called through national level advertisement.  Whereas, the Employer has engaged the services of the Contractor upon the terms and conditions hereinafter set forth for the purposes of the task; and the Contractor accepts this engagement upon terms and conditions as specified in this works contract between both parties.  Both parties agree that the Employer shall pay material, delivery, and construction cost (Contract amount) as specified in art. 3.1 below, the Technical Specifications (Annex 2), and the Contractor’s bid (Annex 5).  Payments shall be made as specified in art. 3 subject to all applicable taxes.  *[Place and date]* | |
|  | SIGNATUREES For and on behalf of the EmployerJamil Uddin, Genera; Manager/CEOAga Khan Rural Support Programme (AKRSP) | SIGNATUREES  For and on behalf of the Contractor *[name and position]* *[name of Contractor]* |

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| 1.2 | Name of Contract and Serial No.: | ***Supply of HDPE pipe, excavation, pipe laying and back filling, SUM-W8-24*** |
| 1.3 | Type of Contract: | *lump sum contract,* |
| 1.4 | Name of the Contracting Agency (CA) / Employer: | Aga Khan Rural Support Programme (AKRSP) |
|  | 1.4.1 The Aga Khan Rural Support Programme (AKRSP) is a not-for-profit organization registered under section 42 of Companies Act, 2017. It works to improve the livelihoods of people living in the Gilgit-Baltistan and Chitral. AKRSP works in the fields of social organization, institutional development, resource development, natural resource management, infrastructure development and entrepreneurship and market development. | |
|  | 1.4.2 For notices, the Employer address shall be: | Attention: *[Insert full name of person]*  Street: *[Insert street address and number]*  City: *[Insert name of city or town]*  ZIP Code: *[Insert postal ZIP code, if applicable]*  Telephone: *[Include telephone number, including city codes]*  E-mail address: *[Insert e-mail address]* |
| 1.5 | Employer’s general responsibilities:  1.5.1 The Employer shall designate a person mentioned in art. 1.4.2 to act as its representative on all matters pertaining to this Agreement and to facilitate the Contractor if any support is required.  1.5.2 The Employer shall give the Contractor effective access to, temporary rights-of-way, and possession of the Site within such times as required to enable the Contractor to commence and proceed the Works without disruption. If possession of the site or a part thereof is not given as required the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event (cf. art. 3.7).  1.5.3 The Employer shall have made available to the Contractor for his information all relevant data in the Employer’s possession as required to enable the Contractor to commence and proceed the Works without disruption (e.g. on sub-surface and hydrological conditions at the Site, including environmental aspects).  1.5.4 The Employer will make decisions on relevant documents (e.g. drawings, specifications, etc) as soon as reasonably possible and latest within 28 calendar days. Delays will be treated as Compensation Events in accordance with art. 3.7.  1.5.5 The Employer shall check the Contractor’s work and notify the Contractor of any Defects that are found.  1.5.6 The Employer shall take over the Works when the Works have been completed in accordance with art. 2.2.5 and all defects (if any) have been remedied in accordance with art. 2.2.6. For this purpose, the Employer shall issue a Certificate of Completion.  1.5.7 The Employer will arrange and release the funds in accordance with the payment schedule and after submission of the invoices by the Contractor, according to art. 3.2. | |
| 1.6 | Name of the Contractor: | *[Insert complete legal name of the Contractor / Vendor]* |
|  | 1.6.1 In case of a Joint Venture (JV): name of the lead firm: | *[Insert complete legal name incl. registration number of the lead firm]* |
|  | 1.6.2 For notices, the Contractor’s or in case of a JV the lead firm’s address is: | Attention: *[Insert full name of person, if applicable]*  Street Address: *[Insert street address and number]*  City: *[Insert name of city or town]*  ZIP Code: *[Insert postal ZIP code, if applicable]*  Telephone: *[Include telephone number, including city codes]*  E-mail address: *[Insert e-mail address, if applicable]* |
|  | 1.6.3 The Contractor’s personnel responsible for Environmental, Social, Health, and Safety (ESHS) aspects are: | Name: *[Insert full names of persons]*  Telephone: *[Include telephone numbers, including city codes]*  E-mail address: *[Insert e-mail addresses, if applicable]* |
| 1.7 | Contractor’s general Responsibilities: | |
|  | 1.7.1 The Contractor shall always act to protect the interest of the Employer and shall take all reasonable steps to keep all expenses to a minimum consistent with sound economic practices.  1.7.2 The Contractor shall furnish the Employer such information related to the Works as the Employer may from time-to-time reasonably request.  1.7.3 The Contractor will not disclose any information received from the Employer to any third party unless the Contractor receives a written permission from the Employer to do so.  1.7.4 The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract, Specifications, and Drawings (including achieving the passing of the Tests on Completion), within the Time for Completion for the Works, and with the Employer’s instructions, and shall remedy any defects in the Works within reasonable time.  1.7.5 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. The Contractor shall be furthermore responsible for all Contractor’s Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract.  1.7.6 The Contractor shall take all reasonable steps to protect the environment and all persons affected by the Project (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Contractor shall plan, execute, implement, and document all measures in accordance with the ESMP table (Annex 2.2) and report on any incidents and accidents within the Project Area (cf. art. 4.1) promptly to the Employer.  1.7.8 The Contractor shall always adhere to the byelaws, codes and regulations of the Pakistan Engineering Council accessible via the following link: <https://www.pec.org.pk/>  1.7.9 The Contractor shall adhere to the AKRSP Code of Conduct and Social Safeguards Conditions (Annex 3) shall implement it within the Project. The Contractor shall familiarize personnel and workers with both documents and related provisions.  1.7.10 Eligible Goods: Goods and services from countries under embargo from Germany, the European Union, and / or the United Nations are not eligible. In addition, Goods and services from countries which are legally barred in the country of the contracting agency are not eligible. | |
| 1.8 | Contractual Law, applicable legislation, and Language   * + 1. The Law of the Contract is that of Pakistan.   1.8.2 In addition to national law the Contractor shall comply with the Code of Conduct as well as the Policy for Environmental Sustainability and Social Safeguarding of the Aga Khan Foundation (Annex 3).  1.8.3 The Language of the Contract is English. | |
| 1.9 | Documents constituting this contract and order of precedence: | |
|  | 1.9.1 The Contract is constituted by the following documents whose order equals the order of precedence in the event of a conflict between any of the enlisted documents:   1. Contract Conditions 2. Annexes consisting of 3. Acceptance Letter in the version issued by the Employer towards the Contractor upon contract award (Annex 1.1) 4. Declaration of Undertaking (Annex 1.2) 5. Technical Specifications incl. Description of Works and ESMP table (Annex 2) 6. AKRSP Code of Conduct (Annex 3) 7. Conditions of Tender (Annex 4) 8. Contractor’s Bid (Annex 5) | |
|  | 1.9.2 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole. | |

# **Section B: Contract Period, Taking Over, Warranty and Liability periods**

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| 2.1 | Contract Period: | |
|  | 2.1.1 Entry into force: | *[select and include or delete:* This contract enters into force upon the date of signing and latest by *[dd/mm/yyyy]*  .: This contract enters into force upon the date of signing and provision of a performance security in accordance with art. 2.3.*.* |
|  | 2.1.2 Contract duration: | The contract duration is *365 days (from to)* |
| 2.2 | Time Control, Completion, Testing, and Taking over | |
|  | 2.2.1 As soon as reasonably possible after the date of receipt of the Letter of Acceptance, the Contractor shall submit to the Employer for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In case of a lump sum contract, the activities in the Program shall to the extent applicable be consistent with the defined milestones as per the payment schedule in art. 3.2.3 and the Description of Works (Annex 2.a).  2.2.2 Such Program shall be updated by the Contractor and submitted to the Employer on a regular basis and latest when changes occur and/or the Contractor is requested to do so by the Employer.  2.2.3 The Contractor shall warn the Employer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Employer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Contract duration period. The estimate shall be provided by the Contractor as soon as reasonably possible.  2.2.4 The Works shall be completed within the Contract duration period as per art. 2.1.2 or in case of updates to the Program in accordance with updated completion time(s), if any. The Employer shall extend the Contract duration period if a Variation (cf. art. 3.4) is issued, or a Compensation Event (cf. art. 3.6) occurs which makes it impossible for Completion to be achieved by the intended Contract duration period.  2.2.5. Upon Completion of the Works the Contractor shall request the Employer to issue a Certificate of Completion of the Works, and the Employer shall do so upon deciding that the whole of the Works is completed.  2.2.6 If tests/inspections are required to establish Completion of the Works the Contractor shall at its own expense and at no additional cost to the Employer carry out all such tests and/or inspections of the Works and Related Services as required and provide the Employer with a report of the results of any such test(s) and/or inspection(s).  2.2.6.1 In case of successful testing the Employer shall issue the Certificate of Completion as soon as reasonably possible.  2.2.6.2 In case of defects the Employer shall notify the Contractor of any defects and request remedial works. The Contractor shall carry out all remedial works within the given time. If the Contractor has not corrected a Defect within the time specified by the Employer, the Employer shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.  2.2.7 The Employer shall take over the Site and the Works as soon as reasonably possible and latest within seven calendar days after having issued the Certificate of Completion.  2.2.8 The Contractor agrees that neither the execution of a test and/or inspection of the Works and Goods or any part thereof, nor the attendance by the Employer, nor the issue of any test or other report, shall release the Contractor from any warranties or other obligations under the Contract. | |
| 2.3 | Defects Liability Period and Clearance of Site  2.3.1 Upon receiving the Certificate of Completion, the Contractor shall remove any remaining Contractor’s equipment, surplus material, wreckage, rubbish, and temporary works from the Site.  2.3.2 The Employer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion (cf. art. 2.2.5) and lasts for 365 calendar days.  2.3.3 The Defects Liability Period shall be extended for as long as Defects remain to be corrected. Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Employer’s notice. If the Contractor has not corrected a Defect within the time specified in the Employer’s notice, the Employer shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.  2.3.4 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor’s cost if the loss or damage arises from the Contractor’s acts or omissions. | |
| 2.4 | Liability  2.4.1 The Contractor is liable for all damages to the environment and people caused by the execution of the works, or the methods used for execution, unless it is established that the execution or methods were necessary, according to the provisions of the Contract or an Employer’s instruction.  2.4.2 Exclusion of consequential damages  The aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Amount as per art. 3.1, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.  2.4.3 Joint and Several Liability  If the Contractor is a JV all of its members shall be jointly and severally liable to the Employer for the fulfilment of the provisions of the Contract. | |
| 2.5 | Risks and Insurance  2.5.1 The Employer does not accept any liability for acts of third parties, accident, sickness, or losses of any kind, however caused, arising during or from the performance of the Contract. The Contractor is advised to take out whatever insurance is appropriate to cover such risks and contingencies. The Employer shall not be responsible for any risk coverage costs or damages associated with humans or materials of the Contractor employed for the purpose of this Contract.  2.5.2 At minimum the Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date as per art. 2.1.1 to the end of the Defects Liability Period as per art. 2.3.2, according to minimum the contract amount as per art. 3.1 for the following events which are due to the Contractor’s risks:   1. loss of or damage to the Works, Plant, and Materials; 2. loss of or damage to Equipment; 3. loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and 4. personal injury or death. | |

# **Section C: Contract Value, Cost Control, Payment Terms, and Penalties**

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| 3.1 | Contract amount: | *[…]* PKR |
|  | The Bill of Quantities (BoQ) in case of a unit price contract/contract component and/or the Schedule of Prices (SoP) in case of a lump sum contract/contract component as per art. 1.3 shall contain priced items for the Works to be performed by the Contractor. The BoQ and/or the SoP are/is used to calculate the Contract Price.  When the Program in case of a unit price contract according to art. 1.3 is updated the Contractor shall provide the Employer with an updated cash flow forecast. | |
| 3.2 | Payment regime of Contract: | Payments shall be issued through  *:*  crossed cheques  *or*  online transfer |
|  | on written request of the Contractor. Cheques shall be prepared in name of the Contractor. Payment(s) shall be subject to deduction of all taxes as required by applicable laws in Pakistan. All ppayments shall be adjusted for deductions for advance payments and retention.  Items of the Works for which no rate or price has been entered in the BoQ and/or SoP shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.  If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made. | |
|  | 3.2.1 Advance payment: | *yes*  *50%* of total Contract amount, i.e. *[number]* PKR as advance payment, payable within *[number]* days after Contract award and against an original advance payment invoice.*]* |
|  | 3.2.2 Advance Payment Guarantee: | *yes*  *:* The advance payment guarantee has to be submitted latest together with the advance payment invoice. Without valid advance payment guarantee payment of an advance payment cannot be effected by the Employer. A delay or an omission of the advance payment guarantee does not release the Contractor of any of the obligations under this contract.*]* |
|  | 3.2.3 Interim payment(s): | *yes*  The Contractor shall submit payment certificates of the work executed minus the proportionate amounts for the advance payment and retention money according to the following milestones:  **20% payment i.e. PKR** ……… of the total amount PKR…… will be paid upon the completion of 70% work done as per set standard and after verification by relevant engineer.  **20% payment i.e. PKR** ……… of the total amount PKR…… will be paid upon the completion of 100% work done as per set standard and after verification by relevant engineer.  The Employer shall pay the Contractor the approved amounts within 28 days of the date of each certificate. |
|  | 3.2.4 Retention and final payment: | yes  The Employer shall withhold **10 %** of the total contract amount as retention money to secure the procurement. |
|  | The retention money shall be deducted from the instalments as laid out in art. 3.2.3 proportionately and the Contractor shall indicate these deductions on any of its invoices.  The retention money shall be released by the Client against receipt of corresponding invoices in the following manner:   1. 50% of the retention money will be repaid to the Contractor upon issuance of the Certificate of Completion in accordance with art. 2.2.4. 2. The remaining 50% will be repaid to the Contractor as final payment, when the Defects Liability Period has passed in accordance with art. 2.2.5. | |
| 3.3 | Taxes  The Contractor shall pay all taxes, duties, fees, and other impositions as may be levied under the applicable Law, the amount of which is deemed to have been included in the contract price. In case of any exemption from tax deduction, it shall be responsibility of the Contractor to present appropriate documentary evidence for such exemption prior to payment(s). | |
| 3.4 | Changes in the Contract Price and Variation Orders  3.4.1 In case of unit price contracts or unit price contract components only in accordance with art. 1.3: If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Employer shall adjust the rate to allow for the change. The Employer shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.  3.4.2 The Contractor shall provide the Employer with a quotation for carrying out the Variation when requested to do so by the Employer on basis of the rates in the BoQ and/or SoP. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the BoQ and/or SoP, the quotation by the Contractor shall be in the form of new rates for the relevant items of work. | |
| 3.5 | Penalty / Liquidated damages | *yes*  If the Contractor fails to perform any or all of the Works within the contract duration period as per art. 2.1.2, the Employer may deduct **0.5%** of the aggregate price of the unperformed Works for each five days of delay until actual performance.  The maximum penalty amount shall be: **10%** of the total Contract Amount as per art. 3.1. Once the maximum is reached, the Employer may terminate the Contract pursuant to art. 5.2.1.1. |
| 3.6 | Contractor’s failure to perform its contractual obligations:  If the Contractor fails to perform any ESHS obligations or work under the Contract, the value of this work or obligation, as determined by the Employer, may be withheld until the work or obligation has been performed, and/or the cost of rectification or replacement, as determined by the Employer, may be withheld until rectification or replacement has been completed. Failure to perform includes, but is not limited to the following:   1. failure to comply with any ESHS obligations or work described in the Description of Works and/or ESMP table which may include: working outside site boundaries, excessive dust, failure to keep public roads in a safe usable condition, damage to offsite vegetation, pollution of water courses from oils or sedimentation, contamination of land e.g. from oils, human waste, damage to archeology or cultural heritage features, air pollution as a result of unauthorized and/or inefficient combustion; 2. failure to take appropriate occupational health and safety measures as defined in the ESMP, if any; 3. failure to update the ESMP in a timely manner to address emerging ESHS issues, or anticipated risks or impacts; 4. failing to have appropriate consents/permits prior to undertaking Works or related activities; 5. failure to submit progress reports incl. ESHS requirements in a timely manner, if required in the Description of the Works (Annex 2); 6. failure to implement remediation as instructed by the Employer within the specified timeframe. | |
| 3.7 | Compensation Events  The following shall be Compensation Events:  3.7.1 The Employer does not give access to whole or a part of the Site in accordance with art. 1.5.2.  3.7.2 The Employer does not issue Drawings, Specifications, or instructions required for the execution of the Works on time and in accordance with art. 1.5.4.  3.7.3 Ground conditions are substantially more adverse than could reasonably have been assumed from the information issued to bidders (including the site investigation reports), from information available publicly and from a visual inspection of the Site.  3.7.4 The Employer modifies the input required from other contractors or third parties in a way that affects the work of the Contractor under the Contract.  3.7.5 Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.  3.7.6 The Employer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.  3.7.7 The advance payment is delayed unreasonably and as of no fault of the Contractor.  3.7.8 The effects on the Contractor of any of the Employer’s Risks.  3.7.9 The Employer instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.  3.7.10 The Employer unreasonably delays issuing a Certificate of Completion.  If a Compensation Event would cause additional cost or would prevent the work being completed within the intended contract duration period in accordance with art. 2.1.2, the Contract Price as per art. 3.1 shall be increased and/or the intended contract duration shall be extended accordingly, whichever is more feasible. | |

# **Section D: Environmental, Social, Health, and Safety (ESHS) Definitions and Requirements**

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| 4.1 | Project Area and Site:  4.1.1 Under the Contract the term “Project Area” means:   * + 1. The land where work will be carried out; or     2. The land necessary for the implantation of construction facilities (work camp, workshops, offices, storage areas, concrete production plants) and including special access roads; or     3. Quarries for aggregates, rock material and riprap; or     4. Borrow areas for sand and other selected material; or     5. Stockpiling areas for backfill material or other demolition rubble; or     6. Any other location, specifically designated in the Contract as a Project Area.   The term “Project Area” encompasses any individual Project Area or all Project Areas.  4.1.2 For the sake of clarity, Project Area is a different concept than Site:  Project Area defines an area within which the Contractor is to comply with environmental, social, health and safety obligations defined in the present ESHS Specifications.  Site is the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and where right of access to, and possession of, is to be given by the Employer to the Contractor. The Employer is under no similar obligation for any area located outside the Site, even if within the Project Area, where access is at Contractor’s risk. Site is included in the Project Area. The Project Area is then of greater geographical extent than the Site. |
| 4.2 | The ESHS Specifications refer to:   1. Protection of the natural environment (water, air, soil, vegetation, biological diversity) in areas within any Project Area and its surroundings, i.e. including but not limited to access roads, quarries, borrow areas, stockpiling of backfill material, camps or storage areas; 2. Health and safety conditions to be maintained for the Contractor’s personnel and any other person present on the Project Areas, or along access routes; 3. Working practices and the protection of people and populations living near the Project Area, but exposed to the general disturbance caused by works. |

# **Section E: Suspension and Contract Termination**

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| 5.1 | Suspension:  The Employer may, by written notice of suspension to the Contractor, suspend all payments to the Contractor hereunder for failure to perform any of its obligations under this contract, provided that such notice of suspension shall specify the nature of the failure, and shall request the Contractor to remedy such failure within a period not exceeding twenty-one (21) calendar days after receipt by the Contractor of any such notice. |
| 5.2 | Termination:  Both parties may terminate the Contract by giving not less than fourteen (14) days' written notice. |
|  | 5.2.1 Termination by the Employer:  5.2.1.1 Termination for Default  The Employer may terminate the Contract in whole or in part if (i) the Contractor fails to perform any or all of the Works in accordance with the Technical Specifications (Annex 2) or (ii) if the Contractor fails to perform any other obligation under the Contract that warrants a contract termination (e.g. as per art. 3.6).  In the event the Employer terminates the Contract in whole or in part for default, the Employer may procure, upon such terms and in such manner as it deems appropriate, Works or Related Services similar to those not performed, and the Contractor shall be liable to the Employer for any additional costs for such Works or Related Services. However, the Contractor shall continue performance of the Contract to the extent not terminated.  In case of penalties as per art. 3.5 the Employer may terminate the Contract if the maximum penalty amount has been withheld for failure of the Contractor to deliver the Goods and Related Services as contracted.  5.2.1.2 Donor Contract Termination:  The Employer may at any time terminate the Contract if the underlying financing contract with the KfW is terminated. The notice of termination shall specify that termination is because of donor contract termination, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.  The Goods that are complete and ready for delivery within fourteen (14) days after the Contractor’s receipt of notice of termination shall be accepted by the Employer at the Contract terms and prices. Delivery of the remaining Goods will be cancelled, and the Contractor will be paid an agreed amount for partially completed Goods and Related Services previously procured by the Contractor. |
|  | 5.2.1.3 If a Force Majeure situation as per art. 6.10 prevents the fulfilment of the Contract for a period of more than thirty (30) days, the Employer is entitled to a contract termination. |
|  | 5.2.2 Termination by the Contractor:  5.2.2.1 The Contractor may terminate the Contract in whole or in part if (i) the Employer fails to release the funds as per art. 3.2 within sixty (60) days after having declared taking over, or (ii) if the Employer is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five days or such longer period as the Contractor may have subsequently approved in writing, following receipt by the Employer of the Contractor’s notice specifying such breach. |
|  | 5.2.2.2 If a Force Majeure situation as per art. 6.10 prevents the fulfilment of the Contract for a period of more than sixty (60) days, the Contractor is entitled to a contract termination. |
|  | 5.2.3 Termination Procedure:  Upon termination of the Contract or giving notice thereof, the Contractor shall take immediate steps to bring the Services to a close in a prompt and orderly manner and to reduce expenditures to a minimum. The Employer shall determine the settlement/payment/refund of Contractor’s fees in consultation with the Contractor. All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor’s default. |

# **Section F: Standard Terms and Conditions**

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| 6.1 | Any variation of the terms and conditions of the contract must be agreed in advance and in writing between the Contractor and the Employer. | | | |
| 6.2 | If the tasks defined in the Contract are not fulfilled to the satisfaction of the Employer within the requested time limit, the Employer reserves the right to recuperate any funds already paid and to withhold any future payments until completion of all tasks to the satisfaction of the Employer. | | | |
| 6.3 | The Contractor has no right to sub-contract work under this contract unless subcontracting is allowed according to art. 2.1.2 of the Conditions of Tender and the Contractor has already declared so in his bid or unless expressively stated/approved in writing by the Employer. The Contractor shall be solely responsible for deliverables at agreed timelines as per this contract and the Employer shall not consider the delays caused by any means e.g., sub-contracting.  The Contractor shall furthermore ensure that all Subcontractors and Suppliers (in particular those for major supply items) are familiar with the ESHS requirements and guidelines valid on Site and Project Area. | | | |
| 6.4 | This Contract is issued based on a project agreement between the KfW Development Bank (KfW) and the Employer. Timing of payments by the Employer may be contingent upon the receipt of funds from the KfW or termination of contract if impacted by any problems in flow of funds from the KfW due to unseen reasons. | | | |
| 6.5 | Relationship between the parties:  The documents constituting the Works Contract do not imply an offer of employment as the Employer’s staff (regular, temporary, or otherwise). | | | |
| 6.6 | Intellectual Property Right:  All legal rights in works in connection with the contract shall vest in the Employer. The Contractor recognizes that such rights include, but not limited to, intellectual property, copyrights and other rights are rests with the Employer. | | | |
| 6.7 | Confidentiality:  All equipment shall be open and available for user and donor inspection through KfW. Where circumstances reasonably require confidentiality, any information can be specified as confidential by the Employer and the Contractor responsible for the confidentiality of the whole or partial e.g., bar codes, serial numbers etc. of the equipment. | | | |
| 6.8 | | Contractual Ethics:  No fees, gratuities, rebates, gifts, commissions, or other payments, other than those shown in the agreement, have been given or received in connection with the selection process or in the contract execution. | | |
| 6.9 | | Notices and Requests:  Any notice or request required or permitted to be given or made under this Contract shall be in writing in the English language. Such notice or request shall be deemed to be duly given or made when it shall have been delivered by hand, emailed, or faxed to the party to which it is required to be given or made at such party's address through official email address, registered post or courier specified in this contract. | | |
| 6.10 | | Force Majeure:  6.10.1 For the purposes of this contract, “Force Majeure” means an event which is beyond the reasonable control of a contract 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, and subject to those requirements, included, but is not limited to war, riots, civil disorder, earthquake, fire, explosion, storm flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by the Government agencies.  Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.  6.10.2 If a Force Majeure situation arises, the Contractor shall promptly notify the Employer in writing of such condition and the cause thereof. Unless otherwise directed by the Employer in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. If due to the Force Majeure event works have to be ceased the Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.  6.10.3 During a Force Majeure situation the execution of the contract may be suspended in which case the Contractor shall not be liable for forfeiture of its Performance Security, penalties, or termination for default if and to the extent that it’s delay in performance or other failure to perform its obligations under the Contract is the result of an such situation. | | |
| 6.11 | | Contractor complaint management: | Any complaints shall be addressed in writing to Manager Procurement through email; [procurement\_akrsppk@akdn.org](mailto:procurement_akrsppk@akdn.org). The complaint will be addressed according to the AKRSP Procurement Policy Complaint Addressing Clause. |
| 6.12 | | Resolution of Disputes / Arbitration Procedure:  6.12.1 The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.  6.12.2 Any dispute or difference arising out of the agreement which cannot be settled amicably within thirty (30) days after receipt by one party of the other party’s request for such amiable settlement may be submitted by either party for settlement in accordance with the provisions of the Arbitration Act, 1940 (Act No. X of 1940) and of the Rules made thereunder as amended from time to time. The venue of arbitration shall be in Pakistan Gilgit-Baltistan.  6.12.3 Services under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due to or by the Employer shall be withheld on account of such proceedings. | | |
| 6.13 | | Inspections and Audit by the KfW:  The Contractor shall permit the KfW and/or persons appointed by the KfW to inspect all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the KfW if requested by the KfW. | | |

# **Annexes**

# **Annex 1 – Formal Documents**

# **Annex 1.1 - Acceptance Letter**

*[When the contract will be finalized after successful contract award: Insert here the Acceptance Letter in the version issued by the Employer towards the Contractor upon contract award.]*

# **Annex 1.2 - Declaration of Undertaking**

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

To: ("Project Executing Agency")

* 1. We recognise and accept that KfW only finances projects of the Project Executing Agency (“PEA”) 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) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;

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 (Appendix1 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 I countries, only the Declaration of Undertaking must be submitted, and not the declaration of tax conformity;

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.

* 1. 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:

* 1. 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;
  2. 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;
  3. 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.
  4. 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.
  5. 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 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 Contractors 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 Organisation (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.

* 1. 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.
  2. 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 of :

Signature: Dated:

# **Appendix 1**

# **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))

# **Appendix 1**

# **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

5. services;

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)

# **Annex 2 – Technical Specifications**

# **Annex 2.1 – Description of Works incl. Bill of Quantities/Schedule of Prices**

*[Insert here the Description of Works incl. Bill of Quantities/Schedule of Prices in the version to be issued by the Employer towards the Bidders, i.e. prior tendering.]*

# 

# **Annex 2.2 – ESMP Table**

*[Insert here the ESMP table in the version approved by KfW and to be issued by the Employer towards the Bidders, i.e. prior tendering.]*

# **Annex 3 – Code of Conduct, Policy for Environmental Sustainability and Social Safeguarding of Aga Khan Foundation**

*[Insert here the Code of Conduct, Policy for Environmental Sustainability and Social Safeguarding of Aga Khan Foundation in the version to be issued by the Employer towards the Bidders, i.e. prior tendering.]*

# **Annex 4 – Conditions of Tender**

*[When the contract will be finalized after successful contract award: Insert here the Conditions of Tender in the version issued by the Employer towards the Bidders.]*

# **Annex 5 – Contractor’s Bid**

*[When the contract will be finalized after successful contract award: Insert here the Contractor’s Bid in the version submitted by the Contractor before closing of the submission deadline.]*