**AKRSP**

**Standard Conditions of Contract**

**for the**

**Procurement of Consulting Services**

**Service Agreement**

**between**

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

**- Contracting Authority / Client –**

**and**

***[Consultant’s Name]***

**- Service Provider -**

**Name of Contract: *[insert name of tender]***

**Serial No.: *[insert number]***

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

**Preface**

Delete this page altogether before the document is being issued to Bidders or the Service Provider.

This Contract Specimen (“Contract”) for the Procurement of Consulting Services has been prepared by the Aga Khan Rural Support Programme (AKRSP) and is based on the AKRSP Supply Contract Form, the AKRSP Procurement Manual, as well as on the Standard Service Agreement Document developed by the KfW Development Bank (KfW).

AKRSP shall use this Contract Specimen along with the Standard Bidding Document for the procurement of consulting services typically by National Competitive Bidding (NCB) ≤ 37 Mio. PKR, financed in whole or in part by KfW out of the disposition fund(s) under the following projects:

* Development of hydropower and renewable energies II (HRE II) (BMZ-No.: 2018 67 068)
* Promotion of startups in Pakistan (BMZ-No.: 2021 67 864).

*[The italicized blue text in square brackets]* is notes to AKRSP staff, providing guidance in preparing a specific bidding document. Such notes shall be adjusted in accordance with the individual tender requirements as following:

***Notes presented in the SBD such as:***

|  |  |  |
| --- | --- | --- |
| 1.1 | Name of Tender(s) and Serial No(s).: | *[…]* |

***Shall be adapted as follows when preparing individual bidding documents.***

|  |  |  |
| --- | --- | --- |
| 1.1 | Name of Tender(s) and Serial No(s).: | Procurement of ESHS consultant, serial no: 2023 – 1 |

***The required information will be filled, the square brackets deleted, the text shall be recte and in black ink.***

***Notes offering selecting options such as:***

|  |  |  |
| --- | --- | --- |
|  | 2.1.1 The number of JV members is limited: | *[ yes/  no]*  *[if yes, insert - if no, delete:* The maximum number of JV members is *[number].]* |

***Shall be adapted as following:***

***If*  *yes:***

|  |  |  |
| --- | --- | --- |
|  | 2.1.1 The number of JV members is limited: | yes/  no  The maximum number of JV members is 3. |

***The required information will be filled, the square brackets deleted, the text shall be recte and in black ink.***

***If*   *no:***

|  |  |  |
| --- | --- | --- |
|  | 2.1.1 The number of JV members is limited: | yes/  no |

***Unused notes shall be deleted from the document before it is issued to Bidders.***

The text in grey ink provides guidance to AKRSP staff only and is to be deleted altogether from the document before it is issued to Bidders or the Service Provider.

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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 Client - and as further specified in art. 1.3 and the Service Provider as further specified in art. 1.5 below.  Whereas, the Service Provider, has obtained an Acceptance Letter from the Client for providing the Services as specified in Annex 3 – Terms of Reference as per Request for Proposals called through national level advertisement.  Whereas, the Client has engaged the services of the Service Provider upon the terms and conditions hereinafter set forth for the purposes of the Project; and the Service Provider accepts this engagement upon terms and conditions as specified in this Service Agreement between both parties.  Both parties agree that the Client shall pay a Consultancy fee (Contract amount) as specified in art. 3.1 below.  Payments shall be made to as per the schedule specified in art. 3.2 subject to all applicable taxes.  *[Place and date]* | |
|  | SIGNATUREES For and on behalf of the Client*[name and position]*Aga Khan Rural Support Programme (AKRSP) | SIGNATUREES  For and on behalf of the Service Provider *[name and position]* *[name of Service Provider]* |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1.2 | | | Name of Contract(s) and Serial No(s).: | *[…]* |
| 1.3 | | | Name of the Contracting Agency (CA) / Client: | Aga Khan Rural Support Programme (AKRSP) |
|  | | | 1.3.1 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. | |
|  | | | 1.3.2 For notices, the Client 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]* |
| 1.4 | | | Client’s general responsibilities:  1.4.1 The Client shall designate a person mentioned in art. 1.3.2 to act as its representative on all matters pertaining to this Agreement and to facilitate the Service Provider if any support is required.  1.4.2 Provided that the Service Provider has supplied the Client with all the information reasonably required including, but not limited to, drawings, studies and reports, the Client shall take its decision as soon as possible and, in any event, no later than within four (4) weeks following the Service Provider’s written request.  1.4.3 The Client will arrange and release the funds in accordance with the payment schedule after submission of the invoices by the Service Provider, according to art. 3.2.  1.4.4 The Client will provide all data, documentation, and information as relevant to the assignment, when appropriate. | |
| 1.5 | | | Name of the Service Provider / Consultant: | *[Insert complete legal name of the Service Provider / Consultant]* |
|  | | | 1.5.1 In case of a Joint Venture (JV): name of the lead firm: | *[Insert complete legal name incl. registration number of the lead firm]* |
|  | | | 1.5.2 For notices, the Service Provider’s or in case of a JV the lead firm’s address shall be: | 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 | | | Service Provider’s general Responsibilities: | |
|  | | | 1.6.1 The Service Provider shall always act to protect the interest of the Client and shall take all reasonable steps to keep all expenses to a minimum consistent with sound economic practices.  1.6.2 The Service Provider will not disclose any information, received from the Client to any third party unless the Service Provider receives a written permission from the Client to do so.  1.6.3 The Service Provider shall provide all Services included in the Description of Services / Terms of Reference (cf. Annex 3) in full, with due diligence, in compliance with professional practice, the recognised quality standards, and with current scientific and generally accepted engineering standards, and in accordance with the Delivery and Completion Schedule as per art. 2.3. The Service Provider must document its work, the progress of the Project and the decisions it takes in an appropriate form that is acceptable to the Client.  1.6.4 The Service Provider shall, and shall ensure that its representatives, agents and employees will, ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) and, consequently (i) comply with and ensure that all their subcontractors and major suppliers, i.e. for major supply items, comply with international environmental and labour standards, consistent with applicable Pakistani law and regulations and the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties; and (ii) implement any environmental and social risks mitigation measures, as detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.  1.6.5 The Service Provider shall inform the Client 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.  1.6.6 The Service Provider 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 Service Agreement. This obligation shall survive the termination of the Service Agreement for a period of 24 months.  1.6.7 The Service Provider shall employ the staff as per its proposal (cf. Annex 5) to implement the Services. 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. Any changes to the staffing need the prior written approval of the Client. Changes in the staffing can become necessary for the following reasons: (i) upon the Client’s written request which states the reasons for the exchange, any staff member who fails to meet the requirements set out in this Service Agreement; or (ii) if anyone of the Service Provider’s staff becomes unavailable or otherwise inhibited in the performance of its work (e.g. sickness, resignation), for more than one month. | |
| 1.7 | | | Eligible Goods and Services:  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 and Language   * + 1. The Law of the Contract is that of Pakistan.   1.8.2 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:   1. Contract Conditions 2. Annexes consisting of 3. Acceptance Letter in the version issued by the Client towards the Service Provider upon contract award (Annex 1.1) 4. Declaration of Undertaking (Annex 1.2) 5. Minutes of Contract Negotiations (Annex 2) 6. Description of Services / Terms of Reference (Annex 3) 7. Conditions of Tender (Annex 4) 8. Service Provider’s Proposal (Annex 5) | |
|  | 1.9.2 In the event of a conflict between the Contract Conditions and any annex or schedule thereto, the provisions of the Contract Conditions shall prevail.  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. | | | |
|  | | | 1.9.3 Subject to the order of precedence set forth in the Service 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, Delivery and completion, Warranty and Liability**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 2.1 | Contract Period: | | | |
|  | 2.1.1 Entry into force: | This contract enters into force upon the date of signing and latest by *[dd/mm/yyyy].* | |
|  | 2.1.2 Contract duration: | *[select and include or delete:* The contract will expire on *[dd/mm/yyyy]*.  *or*  The contract duration is *[number of days/months].]* | |
| 2.2 | Price Escalation:  In case of an unavoidable increase of unit rates and upon mutual agreement between the Service Provider and the Client unit prices can be subjected to adjustments to reflect any price fluctuations on basis of the official national inflation rate. | | |
| 2.3 | Delivery and Completion | | |
|  | 2.3.1 Delivery schedule: as per Annex 3 – Terms of Reference | | |
| 2.4 | Warranty and Liability  2.4.1 Joint and Several Liability  If the Service Provider is a JV all of its members shall be jointly and severally liable to the Client for the fulfilment of the provisions of the Contract.  For the avoidance of doubt, the Service Provider shall be liable for any services provided by any of its sub-contractors under the Contract if subcontracting is allowed according to art. 2.1.2 of the Conditions of Tender and the Service Provider has already declared so in its bid. | | |
|  | 2.4.2. The Service Provider shall be liable to the Client for culpable breaches of its contractual obligations. The liability of the Service Provider shall be limited to the Contract Value. The foregoing limitation shall not apply in the case of wilful misconduct or gross negligence. The Service Provider’s liability shall terminate according to the Pakistani law. | | |
|  | 2.4.3 Exclusion of consequential damages  The aggregate liability of the Service Provider to the Client, 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 Service Provider to indemnify the Client with respect to patent infringement. | | |
| 2.5 | Insurance:  The Service Provider shall take out and maintain adequate insurance for the entire duration of the Service Agreement including, but not limited to, the following: | | |
|  |  | | professional liability insurance;  personal liability insurance;  *[select if applicable in the contract context, if not applicable, delete:*  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  motor vehicle third party liability insurance and motor vehicle comprehensive hull insurance for the vehicles acquired in connection with this Consulting Contract.*]* |
|  | The costs incurred in connection with the insurances specified above shall be fully compensated by the agreed remuneration and may not be charged separately. | | |

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

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| 3.1 | Contract amount (lump sum): | *[…]* PKR |
| 3.2 | Payment regime of Contract: | Payments shall be issued through  *[select and include or delete:*  crossed cheques  *or*  online transfer*]*  on written request of the Service Provider. Cheques shall be prepared in name of the Service Provider. Payment(s) shall be subject to deduction of all taxes as required by applicable laws in Pakistan. |
|  | 3.2.1 Advance payment:  The Advance payment should be between 20-30% of the total contract amount. | *[select  yes or  no*  *if yes, insert – if no, delete: [%]* 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 including banking details.*]* |
|  | 3.2.2 Advance Payment Guarantee: | *[select  yes or  no*  *if yes, insert – if no, delete:* 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 Client. A delay or an omission of the advance payment guarantee does not release the Service Provider of any of the obligations under this contract.*]* |
|  | 3.2.3 Interim payment(s): | *[select  yes or  no*  *if yes, insert – if no, delete: [%]* of total Contract amount, i.e. *[number]* PKR in *[number]* as interim payment(s), payable against valid interim payment invoice(s) within *[number]* days  *select and include or delete:*  according to milestones as per Annex 3 – Terms of Reference  *or*  upon a [monthly/quarterly] basis as per services rendered and based on the unit prices set out in Annex 5 – Service Provider’s Proposal. |
|  | 3.2.4 Final payment: | yes  *[%]* of total Contract amount as final payment, payable within *[number]* days after finalization of all services, acceptance of the final report by the relevant authorities and against an original final invoice incl. detailed adjustments and banking details. |
| 3.3 | Taxes  The Service Provider 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 Service Provider to present appropriate documentary evidence for such exemption prior to payment(s). | |
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# **Section D: Suspension and Contract Termination**

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| --- | --- |
| 4.1 | Suspension:  The Client may, by written notice of suspension to the Service Provider, suspend all payments to the Service Provider 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 Service Provider to remedy such failure within a period not exceeding twenty-one (21) calendar days after receipt by the Service Provider of any such notice. |
| 4.2 | Impediment:  If the performance of the Services is impeded or delayed by the Client or the Client’s contractual partners (“impediment”) and such impediment leads to an increase in the costs, the scope or the duration of the Services, the Service Provider shall immediately notify the Client of the circumstances and the possible consequences.  If an impediment is caused by the Client’s wilful misconduct, intent or negligence, the Service Provider shall be entitled to reimbursement of the costs incurred by it as a result of such impediment, provided that the Service Provider proves the incurrence of these costs to the Client. |
| 4.3 | Termination:  Both parties may terminate the Contract by giving not less than fourteen (14) days' written notice. |
|  | 4.3.1 Termination by the Client:  4.3.1.1 Termination for Default  The Client may terminate the Contract in whole or in part if (i) the Service Provider fails to deliver any or all of the Services in accordance with the specifics of art. 2.3, or (ii) if the Service Provider fails to perform any other obligation under the Contract that warrants a contract termination.  In the event the Client terminates the Contract in whole or in part for default, the Client may procure, upon such terms and in such manner as it deems appropriate, Services similar to those undelivered or not performed, and the Service Provider shall be liable to the Client for any additional costs for such similar Services. However, the Service Provider shall continue performance of the Contract to the extent not terminated.  4.3.1.2 Donor Contract Termination:  The Client 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 Service Provider under the Contract is terminated, and the date upon which such termination becomes effective.  4.3.1.3 In the case of a termination or suspension of the Service Agreement, the Service Provider shall be entitled to demand payment of: (i) the due but unpaid proportion of the Agreed Remuneration for the Services performed until the date of termination or suspension; and (ii) if the termination or suspension of the Service Agreement is not caused by a default by the Service Provider, all necessary and evidenced expenditures of the Service Provider arising from the discontinuing of the Services, provided, however, that the Service Provider must mitigate its loss and deduct any proceeds of such mitigation. |
|  | 4.3.1.4 If a Force Majeure situation as per art. 5.11 prevents the fulfilment of the Service Agreement for a period of more than thirty (30) days, the Client is entitled to a contract termination. |
|  | 4.3.2 Termination by the Service Provider:  4.3.2.1 The Service Provider may terminate the Service Agreement in whole or in part if (i) the Client fails to release the funds as per art. 3.2 within sixty (60) days after having declared taking over, or (ii) if the Client is in material breach of its obligations pursuant to this Service Agreement and has not remedied the same within forty-five (45) days or such longer period as the Service Provider may have subsequently approved in writing, following receipt by the Client of the Service Provider’s notice specifying such breach. |
|  | 4.3.2.2 If a Force Majeure situation as per art. 5.11 prevents the fulfilment of the Service Agreement for a period of more than sixty (60) days, the Service Provider is entitled to a contract termination. |
|  | 4.3.3 Termination Procedure:  Upon termination of the Service Agreement or giving notice thereof, the Service Provider 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 Client shall determine the settlement/payment/refund of Service Provider’s fees in consultation with the Service Provider. |

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

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| --- | --- | --- | --- |
| 5.1 | Any variation of the terms and conditions of the Service Agreement must be agreed in advance and in writing between the Service Provider and the Client. | | |
| 5.2 | If the tasks defined in the Service Agreement are not fulfilled to the satisfaction of the Client within the requested time limit, the Client 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 Client. | | |
| 5.3 | The Service Provider 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 Service Provider has already declared so in its bid or unless expressively stated/approved in writing by the Client. The Service Provider shall be solely responsible for deliverables at agreed timelines as per this contract and the Client shall not consider the delays caused by any means e.g., sub-contracting. | | |
| 5.4 | This Contract is issued based on a project agreement between the KfW Development Bank (KfW) and the Client. Timing of payments by the Client 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 unforeseen reasons. | | |
| 5.5 | Relationship between the parties:  The documents constituting the Service Agreement do not imply an offer of employment as the Client’s staff (regular, temporary, or otherwise). The Client does not accept any liability for acts of third parties, accident, sickness, or losses of any kind, however caused, arising in the course of or from the performance of the Service Agreement. The Service Provider is advised to take out whatever insurance is appropriate to cover such risks and contingencies. The Client shall not be responsible for any risk coverage costs or damages associated with humans or materials of the Service Provider employed for the purpose of this Contract. | | |
| 5.6 | Intellectual Property Right:  All legal rights in works in connection with the contract shall vest in the Client. The Service Provider recognizes that such rights include, but not limited to, intellectual property, copyrights and other rights are rests with the Client. | | |
| 5.7 | 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 Client and the Service Provider responsible for the confidentiality of the whole or partial e.g., bar codes, serial numbers etc. of the equipment. | | |
| 5.8 | | 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. | |
| 5.9 | | 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. | |
| 5.10 | Non-Consumed Equipment and Resources:  All equipment and other resources paid for or supplied by the Client which remain unutilized or unconsumed shall remain vested in and revert to the Client upon contract closure, unless otherwise expressly stated in this contract. | | |
| 5.11 | | Force Majeure:  5.11.1 For the purposes of this Service Agreement, “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.  5.11.2 If a Force Majeure situation arises, the Service Provider shall promptly notify the Client in writing of such condition and the cause thereof. Unless otherwise directed by the Client in writing, the Service Provider 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.  5.11.3 During a Force Majeure situation the execution of the contract may be suspended in which case the Service Provider shall not be liable for forfeiture of its Performance Security, penalites, 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. | |
| 5.12 | | Service Provider 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. |

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| --- | --- |
| 5.13 | Resolution of Disputes / Arbitration Procedure:  5.13.1 The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Service Agreement or its interpretation.  5.13.2 Any dispute or difference arising out of the Service 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.  5.13.3 Services under the Service Agreement shall, if reasonably possible, continue during the arbitration proceedings and no payment due to or by the client shall be withheld on account of such proceedings. |
| 5.14 | Inspections and Audit by the KfW:  The Service Provider shall permit the KfW and/or persons appointed by the KfW to inspect all accounts and records relating to the performance of the Service Agreement 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 Client towards the Service Provider 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 Service Providers 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 of Annex 1.2**

# **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 of Annex 1.2**

# **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 – Minutes of Contract Negotiations**

*[When the contract will be finalized after successful contract award: Insert here the mutually signed Minutes of Contract Negotiations.]*

# **Annex 3 – Description of Services / Terms of Reference**

*[When the contract will be finalized after successful contract award: Insert here the Description of Services / Terms of Reference in the version issued by the Client towards the Bidders.]*

# **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 Client towards the Bidders.]*

# **Annex 5 – Service Provider’s Proposal**

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