

Meghalaya Basin Development Authority
c/o Meghalaya State Housing Financing
Co-operative Society Ltd.
Upper Nongrim Hills,
Shillong, East Khasi Hills District
Meghalaya 793003
India

KfW Development Bank

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»» **German Financial Cooperation with India
Climate Change Adaptation in the Himalaya – Component III in Meghalaya –
Protection of Vulnerable Catchment Areas in Meghalaya
EUR 32 million - Loan
No.: 2015 67 643
and
EUR 1 million - Grant
No.: 2015 67 650
Separate Agreement to the Loan, Grant and
Project Agreements dated 24.11.2022**

Dear Sir or Madam,

In accordance with the Loan Agreement and the Grant Agreement entered into between the Republic of India, represented by the Ministry of Finance, Department of Economic Affairs (the "Borrower" and the "Recipient") and KfW ("KfW") dated 24.11.2022 and the Project Agreement entered into between the State of Meghalaya represented by its Governor, Meghalaya Basin Development Authority (MBDA) (the "Project-Executing Agency") and KfW dated 28.11.22 the following shall be determined by the Separate Agreement:

Pursuant to Article 1.2 of the Loan Agreement and the Grant Agreement and Article 1.1 of the Project Agreement:

the details of the Project as well as the services, works, plant and goods to be financed from the Loan and the Grant;

Pursuant to Article 2.1 of the Loan Agreement and the Grant Agreement and Article 3.1 of the Project Agreement:

the disbursement procedure, in particular the evidence proving that the disbursed Loan and Grant amounts are used for the stipulated purpose;



Pursuant to Article 10.2 of the Loan Agreement, Article 6.2 of the Grant Agreement and Article 5.2 of the Project Agreement:

the details pertaining to Article 10.1 (Loan Agreement), Article 6.1 (Grant Agreement) and Article 5.1 (Project Agreement) (Project Implementation).

We propose that the following be agreed upon:

1. **Project Design**

1.1 **Details of the Project**

1.1.1 The proposed Project in the Indian state of Meghalaya is the third component under the Indo-German Programme "Climate Change Adaptation in the Himalaya" with a focus on sustainable community forestry and soil and water conservation. The overall objective of the FC-programme is: Investments in sustainable community forestry models improve natural resources, minimize climate-related risks, and increase rural productivity and income for the local population. The proposed measures under the FC-programme shall serve to improve rehabilitation, protection and sustainable use of forests, their productivity and water resources as well as to develop and strengthen the resilience of forests and vulnerable population against climate change.

1.1.2 The Project concerns climate change adaptation in the Himalaya region through catchment protection with sustainable forest management. The purpose of the Project is to increase the climate resilience of treated ecosystems and watershed livelihoods in the selected Project areas in the state of Meghalaya.

1.1.3 The envisaged Project will contribute to the implementation of the Indian National Action Plan on Climate Change (NAPCC) as well as to the related missions (i.e., Green India Mission, Mission on Himalayan Ecosystems, National Mission on Strategic Knowledge on Climate Change and National Water Mission). Furthermore, the Project will be aligned to the priority areas of the Meghalaya State Action Plan on Climate Change (SAPCC).

1.1.4 The indicators to measure the Project's outcome will consist of:

- Outcome indicator 1: Forest cover is maintained while crown coverage is increased
- Outcome indicator 2: Total income as well as income diversity of target population increased
- Outcome indicator 3: Water discharge and quality has increased by rejuvenating natural sources of water, adopting water conservation and harvesting measures, enhancing their ecological and hydrological processes and by that reducing climate vulnerability of the target group.
- Outcome indicator 4: Innovative mechanisms (including Payment for Environmental Services (PES) and new administrative structure of catchment areas) for planning and management of natural resources are established and financed by the Government of Meghalaya (GoM).

1.1.5 The following outputs (1-4) with their main activities to be financed under the Project are envisaged:

1. Knowledge-based participatory planning and implementation and capacity building:

The output focuses on the development of capacities of the different implementation layers of the Project. It consists of a training needs assessment (TNA) that facilitates targeted capacity building and impactful design of training programmes. Activities include:

- Village Implementation Committees (VIC) receive support through village facilitators
- Establishment of a knowledge management and communication strategy and systems (Project website is developed and made operational, Project learnings are documented etc.)
- Conduct the TNA
- Design and implement training programmes
- Build capacity of the target community for livelihood promotion and catchment management
- Cooperation with a consortium of regional and (inter-)national universities or research institutions to conduct applied research on impacts of land use forms and land use practises on water balances

2. Forests and other ecosystems of the selected catchment areas are enhanced:

The purpose of this output is to conserve soil and enhance forest/green cover and water availability on lands that are exposed and vulnerable to climate change through participative micro-planning approaches and innovative financing models. In this regard, the communities shall be incentivised to protect and extend existing forests through payment of incentives based on a yearly monitoring of efficiency of forest protection measures with a clear focus on natural regeneration wherever possible instead of tree planting. Also, a transformation of conifer to broadleaf forests shall be supported wherever possible by underplanting of pine forests on a model basis. Payments to the target group shall be provided as an incentive for forest protection and follow the principle of "Payment for Environmental Services" (PES) stretching over a period of 5 years in equal yearly instalments to provide incentives for tree growth rather than planting. Any FC funds allocated to the PES system will need to obtain No Objection from KfW. The Government of Meghalaya aims for financing of the PES scheme by the end of the Project out of own resources or end-user paid. Activities include:

- Micro-watershed plans in accordance to well accepted national standards are developed
- Forests are protected and restored through natural regeneration, afforestation and plantations based on forest protection agreements
- Community nurseries are established

- Soil and water conservation measures in open forest areas, grassland and culturable wastelands are performed
- Multi-purpose plants are used for soil stabilization
- Drainage line treatment with civil structures and vegetative means is undertaken
- Forest fires are controlled
- Water, silt and weather monitoring stations are established
- Spring sheds are developed

3. Livelihoods of the vulnerable communities in the catchment areas improve:

The output enhances income and livelihoods of the communities through horticulture, agroforestry, and Sloping Agriculture Land Technologies (SALT). Water harvesting structure units will be developed to ensure water security of the dependent villages.

Activities include:

- Community livelihood plans (forestry, horticulture, agriculture) are developed through consultation
- Primary water harvesting structures are made under the Project and water distribution system is developed by GoM
- Horticulture is promoted.
- SALT is promoted and training on SALT is conducted
- Production of seedlings is undertaken

4. Adoption of best-practice Project management:

The output focuses on developing effective institutional mechanisms for project implementation. Activities include:

- Catchment Management Units (CMU), Village Implementation Committees (VIC) and State Project Management Unit (SPMU) are established, and professional staff is recruited in time as per the HR plan.
- Comprehensive M&E system is developed and implemented
- Social audit of the Project is conducted
- Environmental and Social Management Framework (ESMF) and Community Engagement and Planning Framework (CEPF) is developed and adopted
- Grievance redress mechanism (GRM) is established
- Administrative, fiduciary and procurement systems acceptable to KfW are set up
- Progress of the Project is reported semi-annually to KfW

1.1.6 The detailed criteria for reaching these objectives, the mentioned Project results and the required Project activities as well as the assumptions underlying the Project purpose and the Project results are contained in Annex 1 (*Results Matrix*).

1.1.7 The intervention area shall be the Umiew and Ganol catchments that secure the water supply for the two largest cities in Meghalaya, i.e. Shillong in the East Khasi Hills and Tura in the West Garo Hills. The Project area most likely consists of 106 pre-selected villages in 39 micro-watershed areas. Of these villages, 35 are situated in Ganol and 71 in Umiew. As there are substantially more villages in Umiew catchment per watershed a

targeted approach to the different cultural and social situations may be elaborated for stakeholder engagement within the two catchment areas.

1.1.8 The target group of the Project consists of the rural, mostly indigenous population with traditional land use rights in Meghalaya whose income is highly dependent of the use of natural resources. In the preselected villages, it is expected that approximately 8,000 households will profit from the Project measures.

1.1.9 The design of the Project is based on the documents and the feasibility study "Protection of vulnerable catchment areas in Meghalaya" (Agreco / SUVIGYA, August 2020) available to KfW and the Project-Executing Agency and on the agreements made between KfW and the Project-Executing Agency during the local Project appraisal (Minutes of Meeting, dated November 2nd, 2021).

1.1.10 The following Project activities shall be financed from the Grant:

- Partial payment of consulting services for Project inception and implementation up to EUR 1 million.
- The funds supporting this activity will be disbursed *pari passu* together with the funds supporting this activity out of the loan.

1.1.11 The following Project activities shall be financed from the Loan:

- Partial payment of consulting services of Project inception and implementation
- All other Project activities.

1.2 Time Schedule

The underlying time schedule for the preparation, implementation and operation of the Project is contained in Annex 2 (*Time Schedule*).

The Project duration is envisaged for seven years, ranging from 2023 – 2030. A mid-term review after Project year 3 shall be carried out to provide an independent evaluation of the Project interventions.

1.3 Total Cost and Financing

1.3.1 The estimated total Project cost (the "**Total Cost**") underlying the Project appraisal is approximately EUR 41 million. The Loan amount is EUR 32 million. The Grant amount is EUR 1 million. The composition of Total Costs and the financing plan are contained in Annex 3 (*Total Cost and Financing*) and Annex 4 (*Disbursement Procedure*).

1.3.2 Taxes and other public charges owed by the Recipient, Borrower or by the Project-Executing Agency shall not be financed from the Grant or Loan.

1.3.3 The contribution of the Government of Meghalaya is estimated at approximately 20 % of total Project cost (EUR 8 million) primarily for costs of deputed Project staff, taxes and other public charges and operational costs for Project management infrastructure and Project Management Units (PMU) and for the taxes arising from the consultancy.

1.3.4 According to preliminary estimations, the total consulting cost for the implementation consultant without taxes will be approximately EUR 1.5 million.

1.3.5 In addition, a beneficiary contribution from the target groups, also in the form of in-kind contributions, is desired. This is based on the understanding that contributions from beneficiaries, especially those who gain individual benefits and some contributions in lieu of the community benefits gained, will help in establishing an ownership over the assets created and thereby ensure their sustainability. These contributions should amount to at least 10 % of total labour costs of these measures.

1.4 **Changes in the Project Design**

Any major changes in the Project design (as set out above) shall require KfW's prior consent. The Project-Executing Agency shall inform KfW thereof immediately, stating the reasons, the planned measures and the consequences of the change (including on Total Cost). Execution of such measures may commence only on the basis of revised planning and upon KfW's written consent.

2. **Project Implementation**

2.1 **Responsibilities and Time, Cost and Financing Schedule**

2.1.1 The Meghalaya Basin Development Authority (MBDA) shall be responsible for the implementation of the Project. The Project will be managed at three levels – state level, catchment level and village level. In order to streamline Project implementation, the Project Management Units (PMU) at state and catchment levels will be staffed by core MBDA and Soil and Water Conservation Department (S&WCD) personnel. MBDA will provide all Project management support as well as collaborate and coordinate with various line departments for Project implementation.

Project Governing Structure

2.1.2 A Governing Council (GC) headed by the Chief Secretary of Meghalaya will be established exclusively for the Project vested with powers and functions of decision-making. The council is to review the physical and financial progress of the Project and the functioning of the SPMU. It will consist of representatives from SPMU and relevant institutional stakeholders (i.e., S&WCD, Water Resource Department (WRD), Public Health and

Engineering Department (PHED), Forest Department (FED), Department of Agriculture (DoA), District representatives and Autonomous District Councils (ADCs)).

State Project Management Unit (SPMU)

2.1.3 The SPMU for the Project will be established in Shillong as a separate unit and housed within the premises of MBDA. It shall be headed by one Project Director (PD) and assisted by one Additional Project Director (APD). They will ensure physical and financial achievement of the Project. The SPMU will be supported by numerous professional experts (e.g. Legal experts, M&E, Finance and Procurement, HR, etc.) and staff will either be taken on deputation from various government departments or hired from the market. Among others, the SPMU shall:

- Assure adequate annual budgetary provision and effective utilization
- Assure sufficient and timely flow of funds for the Project activities
- Maintain adequate and competent financial management staff
- Assure appropriate accounting of Project expenditures
- Assure oversight on Project funds spent on the different levels and institutions
- Control assets created under the Project
- Guide, supervise and monitor the operations of the Catchment Management Units (CMU)
- Develop a community operational manual in a participatory manner
- Prepare and submit periodic MIS reports to GoM and KfW
- Arrange training and capacity building programmes for stakeholders
- Maintain all records for physical and financial transaction of the Project
- Preparation and timely submission of financial reports and withdrawal applications in cooperation with the implementation consultant
- Timely submit audit reports to KfW.

Catchment Management Units (CMU)

2.1.4 The CMU will be established at both the catchments under the Project, i.e. Umiew and Ganol, and represent the local implementation bodies under supervision of the SPMU. They will be responsible for the execution of the Catchment Area Plans (CAP) and will work closely with and shall be supported by other line departments, Autonomous District Councils (ADC) and local communities. This support and its specifications and volume shall be clarified for the entire duration of the Project in specific agreements between MBDA and the respective institution prior to any implementation and presented to KfW for prior No Objection. The CMU will be headed by the respective Deputy Commissioners (DC).

Village Implementation Committees (VIC)

2.1.5 The Village Implementation Committees shall be the implementation bodies in the respective villages. They will implement the activities under supervision of the respective CMU. It will also closely cooperate with the traditional institutions. Village councils or headmen should be the first point of contact after the respective environmental and social

safeguard documents have been prepared in cooperation with the implementation consultant and obtained No Objection by KfW. VIC will comprise of at least 10 village members and at least 50 % of the same shall be women. Representatives of village level organizations such as Joint Forest Management Committees, Biodiversity Management Committees and Water User Group Implementation Committees would be desired. The VIC will be supported by community facilitators in preparation and execution of the watershed plans. The community facilitators shall be individuals from the target villages with minimum educational qualification.

Assignment of a Consultant

2.1.6 The Project-Executing Agency shall engage a consultant to support the Project-Executing Agency during the implementation of the Project (the „**Implementation Consultant**“). The contract awarding procedure shall be governed by the “*Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries*”. The Implementation Consultant shall support the Project-Executing Agency in

- (i) elaborating the details of the Project design;
- (ii) designing and implementing the Tender Process (as defined in the “*Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries*” attached in Annex 10 (the “**Procurement Guidelines**”)) in compliance with (i) the Procurement Guidelines and (ii) the environmental and social standards as set out in Section 2.2; and
- (iii) skill and capacity development in various areas and at all levels as per identified needs.
- (iv) in particular the following:
 - Project management including the preparation of guidelines according to KfW procedures (e.g. operational planning, procurement, financial management, reporting)
 - Review and endorsement of Annual Action Plans and Environmental and Social Risk Management documents of the Project before they are submitted to KfW for No Objection
 - Assistance to the SPMU in preparation of technical concepts and financial norms for Project investments (forestry, horticulture, nursery management, soil and water conservation, etc.)
 - Assistance to the SPMU in development and implementation of ESMF, CEPF and SOP
 - Countersigning of reports and documents to KfW
 - Countersigning of requests for disbursements.

The detailed time, cost, and financing schedule for the proper technical and financial implementation of the Project shall be prepared by the Project-Executing Agency without

undue delay in cooperation with the Implementation Consultant and submitted to KfW. Such schedule shall contain, by deadlines and amounts, the intended chronological interrelation of the Project activities and the corresponding financial requirements. If any deviation from such schedule becomes necessary during the implementation of the Project, KfW shall be furnished with a revised schedule and it shall be subject to KfW's consent to the extent required according to Art. 1.4.

2.2 Environmental, Social and Health & Safety Compliance

2.2.1 The Project Executing Agency (PEA) shall at all times carry out its business and operations in compliance with all applicable national environmental, occupational health & safety and social laws and regulations.

2.2.2 The PEA shall comply with the Fundamental Conventions of the International Labour Organization (ILO). Since the ILO Fundamental Conventions have not been fully ratified in India, the PEA shall take appropriate measures to enable alternative means in the scope of the Project to safeguard labour conditions in the intention of the said ILO conventions.

2.2.3 The PEA will ensure that no physical resettlements or forced evictions will be financed within the Project and that only communities will be selected to participate in the Project that match the selection criteria defined by the Feasibility Study and where Free, Prior and Informed Consent (FPIC) as well as absence of land tenure conflicts/disputes can be confirmed.

2.2.4 The PEA will ensure that in situations where law enforcement is unavoidable, any repressive treatment of encroachers and community members will be avoided through measures in compliance with national law and international human rights obligations according to WB ESS 4, the Voluntary Principles on Security and Human Rights and international best practice.

2.2.5 The PEA shall be responsible for the preparation and operation of the Project in compliance with KfW's Sustainability Guideline (2022) and the relevant standards therewith, namely World Bank Environmental and Social Standards (WB ESS), the World Bank Group's General and sector-specific EHS Guidelines as well as the Guidelines on Incorporating Human Rights Standards and Principles, Including Gender, in Programme Proposals for Bilateral German Technical and Financial Cooperation.

Based on the results of the Environmental and Social Scoping (E&S Scoping) conducted as part of the Feasibility Study the PEA will in particular

- a. Ensure that the measures and actions as set out in the Environmental and Social Commitment Plan (ESCP) will be implemented diligently and completely. This includes the development and implementation of the

following safeguard instruments that are to be submitted to KfW for No-Objection at the end of the inception phase:

- Environmental and Social Management Framework (ESMF) with respective requirements construction/works-related activities, including subproject risk screening, Environmental and Social Management Plans (ESMP) and Environmental and Social Codes of Practices (ESCOP);
- Community Engagement and Planning Framework (CEPF), including an FPIC Guideline to guide participatory land use planning, related access and use restrictions and corresponding entitlements for livelihood restoration;

No safeguard-relevant activities are allowed to commence before approval of these safeguard instruments has been given by KfW. In case some Project activities are envisioned to be fast tracked in order to avoid stakeholder fatigue or as entry point activities, these would require to be clearly identified as “no regret measures” not triggering any of the E&S safeguard instruments.

Further details on implementation requirements and agreements are provided in the ESCP of Annex 5.

- b. Ensure that the implementation of the ESCP is monitored and reported as part of the regular Project monitoring requirements and that the ESCP is reviewed regularly and amended as required in agreement between KfW and the PEA.
- c. Ensure that capacity building and training on implementing the measures outlined in the ESMF and CEPF will be provided to Project staff and participating communities and other Project relevant actors (detailed tasks will be set out in the Terms of Reference for the Implementation Consultant).
- d. Ensure that – after KfW’s No-Objection – the ESMF and CEPF, but at least an easy to understand summary of the main environmental and social findings and mitigation measures including the stakeholder engagement process (e.g. Non-Technical Summary) are made publicly available in the respective Project areas as soon as reasonably practicable and/or along the implementation of the program to allow Project affected people to voice concerns and suggestions, and if appropriate, are disclosed on the PEA’s website.

2.2.6 The PEA shall ensure that occupational and public health and safety provisions stemming from the ESMF implementation (e.g. ESMP, ESCOP) are consistent with national

requirements and international good practice standards and put forward to contractors and subcontractors in case civic works/construction activities are foreseen to be contracted out.

2.2.7 The PEA shall develop and implement a grievance mechanism satisfactory to KfW and as outlined in the ESMF and CEPF, which is accessible to the general public and in particular to Project affected persons, and to the workforce engaged in Project implementation.

2.3 Procurement and Contractual Provisions

2.3.1 All Tender Processes to be conducted for any contract financed under the Loan, Grant and Project Agreement shall at all time follow:

- a) the Procurement Guidelines; and
- b) the procurement plan according to the attached model in Annex 6 (*Procurement Plan Model*) as amended or restated from time to time in agreement with KfW (the "**Procurement Plan**"),

unless otherwise agreed between KfW and the Project-Executing Agency in writing.

Article 1.6.2 of the Procurement Guidelines requires the preparation of a procurement plan in the form of Appendix 2 of the Procurement Guidelines which identifies the respective Tender Processes (as defined in the Procurement Guidelines) for all contracts financed under the Loan, Grant and Project Agreement.

The Procurement Plan shall (i) cover the entire lifetime of the Project and (ii) shall in its initial version provide details for at least the initial 18 months as of the date of the Loan, Grant and Project Agreement. The Procurement Plan shall be reviewed and, if necessary, revised thereafter annually and, in case of a revision, such revised version shall be submitted promptly to KfW for No-Objection (as defined in the Procurement Guidelines).

2.3.2 The evaluation of bids and award of contracts shall be carried out by a tender evaluation committee nominated by the Project-Executing Agency with support of the Implementation Consultant. All evaluation reports for tenders shall be countersigned by the Implementation Consultant. The offers, evaluation reports, invoices etc. are to be kept with the Project-Executing Agency for possible inspection.

2.3.3 Any contracts for goods and services (including consulting and expert services financed from the financial contribution) shall be awarded as follows:

- (1) Contracts for good, works, plant and non-consulting services up to and including EUR 10,000 (or INR equivalent) may be awarded directly.
- (2) Directly awarded contracts for small scale investments with villages/villagers may exceed EUR 10,000 (but not exceed EUR 100,000 per individual contract), if fixed investment costs per unit are prior agreed with KfW. Fixed investment costs per unit

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will be developed by the Project-Executing Agency assisted by the Implementation Consultant.

- (3) Assignments of consulting services up to and including EUR 20,000 (or INR equivalent) may be awarded directly, provided that the consultant is particularly or exclusively suitable, an invitation to tender would not bring any economic benefits and the technical and financial proposal are adequate and appropriate.
- (4) Contracts for goods, works, plant and non-consulting services of EUR 10,001 (or INR equivalent) up to and including EUR 100,000 (or INR equivalent) and assignments of consulting services of EUR 20,001 (or INR equivalent) up to and including EUR 100,000 (or INR equivalent) shall be awarded by way of solicitation of at least three proposals from qualified bidders in accordance with the definition of limited competitive bidding and price quotation as set forth in the respective KfW procurement guidelines.
- (5) Contracts for goods, works, plant and non-consulting services and assignments of consulting services of EUR 100,001 up to and including EUR 200,000 (or INR equivalent) shall be awarded by way of national competitive bidding in accordance with the definition of national competitive bidding as set forth in the respective KfW procurement guidelines.
- (6) Contracts for goods, works, plant and non-consulting services and assignments of consulting services in excess of EUR 200,000 shall be awarded by way of international competitive bidding. Unless otherwise stipulated, the procurement of assignments of consulting services in excess of EUR 200,001 shall require a prequalification procedure.
- (7) Any and all exceptions to the above thresholds and corresponding procedures require prior information to and No Objection by KfW.

2.3.4 All procurement procedures shall be thoroughly documented. Upon providing the procurement plan KfW may approve applying the simplified review for some tenders in accordance with the definition of simplified review set forth in the respective KfW procurement guidelines. Upon request, any documents shall be provided to KfW. For international competitive bidding procedures, tender documents (including pre-qualification documents), evaluation reports (including pre-qualification evaluation reports), and final contract drafts shall be submitted to KfW for prior No Objection.

2.3.5 Pre-qualification and tender documents shall always require the submission of a signed Declaration of Undertaking by the bidder. Unless otherwise agreed, pre-qualification and tender documents for the assignment of consulting services shall be based on the KfW standard bidding documents and contracts for the assignment of consulting tender documents.

2.3.6 KfW recommends using its own standardized tender documents, especially in case of international competitive bidding in order to ensure an efficient tender process in compliance with the guidelines. If the Project-Executing Agency is obliged to use different tender documents, the Project-Executing Agency has to ensure compliance with the

provisions of the KfW procurement guidelines. The Implementation Consultant shall verify the compliance of such bidding documents with the KfW provisions.

2.3.7 The Project-Executing Agency shall provide KfW with the relevant documents and information necessary for KfW's monitoring and review of the Tender Process as outlined in Chapter 1.6 of the Procurement Guidelines.

2.3.8 The contractual provisions as outlined in the Procurement Guidelines (see Chapter 2.4 and appendices 7 (Contractual Provisions) and 8 (Models for Guarantees and Securities) to the Procurement Guidelines) shall be incorporated into each contract financed under the Loan, Grant and Project Agreement and, in addition thereto, the following principles shall be observed when concluding contracts financed under the Loan, Grant and Project Agreement:

- a) As import duties shall not be financed from the Loan pursuant to Article 1.3 of the Loan, Grant and Project Agreement, such import duties, if part of the contract value, shall be stated separately in the contracts for the works, plant, goods and services and in the invoices.
- b) If payments due under a contract for works, plant, goods and services are to be made from the Loan, such contract shall include a provision stipulating that any reimbursements, guarantee or similar claimable payments and any insurance payments shall be made for account of the Project-Executing Agency to the following account at KfW, Frankfurt am Main, IBAN: DE53 5002 0400 3800 0000 00, BIC: KFWIDEFF, with KfW then crediting such payments to the account of the Project-Executing Agency. If such payments are made in local currency, such payments shall be made to a special account of the Project-Executing Agency in the country of the Project-Executing Agency and may only be disbursed further with the prior written consent of KfW. Such funds may be re-utilized for the execution of the Project with KfW's prior written consent.

2.4 Special Implementation Agreements

2.4.1 The Project-Executing Agency will ensure that adequate staffing of the SPMU and the CMU will be completed prior to the start of the Start-up/Inception Phase. It is agreed that designated staff should ideally be retained in their positions for at least three years.

2.5 Provisions for the Proper Operation of the Project

To secure the proper operation of the Project, the Project-Executing Agency shall submit an operation and maintenance concept including an operational environmental and social management framework drawn up in cooperation with the Implementation Consultant in the inception phase of the Project. The operational environmental and social management

framework shall encompass an occupational health and safety and labour conditions management plan.

At the same time the Project-Executing Agency shall submit to KfW a budget forecast, drawn up in cooperation with the Implementation Consultant, / for the area of operation in which the Project is located. This forecast is to show that the financing of operation is ensured. The Project-Executing Agency shall periodically update this forecast and ensure that any financing gaps shall be covered in due course. The Project-Executing Agency shall transmit such budget forecast and its revised versions to KfW without any delay.

3. Contracts for Works, Goods, Plant and Services, Reservations and Disbursement

3.1 Contracts and Reservations

3.1.1 KfW will reserve the Loan and Grant amounts on the basis of the contracts concluded for works, goods, plant and services and works implemented. A list of the goods and services to be financed from the Grant and Loan shall be prepared on the basis of the contracts concluded for such goods and services.

Accordingly, KfW shall be furnished with a list of all contracts concluded, drawn up in cooperation with and signed by the Implementation Consultant, containing the following data: contract date and value, designation of good/service, contractor, reference number, amount to be financed from the Loan.

3.1.2 If any Project measures are to be executed by its own staff and not by any third party and, therefore, no contracts have been concluded, KfW shall receive, in lieu of the contracts, a schedule of the measures planned, broken down by main cost categories.

3.1.3 KfW shall inform the Project-Executing Agency upon request of the amounts of the Loan that it has reserved for financing by providing a list of reservations (KfW- "LOGAS", KfW-List Of Goods And Services).

3.2 Disbursement Procedure

The disbursement of the Loan and Grant is subject to the procedures as stipulated in Annex 4 (*Disbursement Procedure*), which forms an integral part of this Agreement. This Disbursement Annex contains the legal provisions and standards concerning the procedures to be used, governing among others, obligations with regard to bank account details, liability in the payment process, exchange rates, specimen signatures, disbursement requests and the documentation to be provided for evidence of use of funds.

4. Reporting and Other Provisions

4.1 Reporting

4.1.1 Until further notice, the PEA shall report to KfW semi-annually on the progress of the Project (progress reports), including the implementation agreements stipulated in Section 2.4. of this Agreement as well as on the development of all other important general conditions including environmental and social performance, topics of occupational health and safety and labour conditions, community relations and grievances which may have occurred. The reporting requirements are further defined in Annex 7 (*Content and Form of Reporting to KfW*) as well as in Annex 8 on environmental and social performance and compliance.

4.1.2 In particular the PEA shall report on all circumstances that might jeopardize the achievement of the overall objective, the Project purpose and the results and shall ensure that its contractors and sub-borrowers report to him accordingly.

With regard to environmental and social matters, including occupational and community health & safety and labor issues as well as impacts on adjacent population, the PEA shall notify KfW promptly (further details to be found in Annex 9) of any event, incident or accident in relation to the Project execution, regarding details of

- i. any incident of an
 - o environmental nature;
 - o occupational health and safety nature;
 - o public health and safety nature;
 - o material complaints and grievances addressed to the Project-Executing Agency;

(in particular, but not limited to, any explosion, spill or workplace accident which results in death, serious or multiple injuries or material environmental contamination, accidents of members of the public/local communities, resulting in death or serious or multiple injuries, sexual harassment and - violence involving Project workforce or in relation to severe threats to public health and safety, inadequate resettlement compensation, disturbances of natural ecosystems, discriminatory practices in stakeholder consultation and engagement (including the right of indigenous peoples to Free, Prior and Informed Consent), any allegation that require intervention by the police/other law enforcement authorities, such as loss of life, sexual violence or child abuse);

- ii. any incident of a social nature (including without limitation any violent labour unrest or dispute with local communities);
- iii. any other incident of an environmental or social nature occurring on or nearby any site, plant, equipment or facility of the Project-Executing

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Agency (the incidents mentioned in (i) to (iii), in the following the "Incidents"), which

- has, or is likely to have a material adverse effect; or
- has attracted or is likely to arouse substantial adverse attention of outside parties or to create substantial adverse media/press reports; or
- gives, or is likely to give rise to material potential liabilities.

Notification will comprise, in each case, (i) a specification of the nature of the Incidents and the on-site and off-site effects of such Incidents and (ii) details of any action the PEA proposes to take in order to remedy the effects of these Incidents. The PEA shall keep KfW informed about any progress in respect of such remedial action.

4.1.3 At the time of the physical completion and commissioning of the Project, but before the expiry of the guarantee period at the latest, the Project-Executing Agency shall submit a final report on the measures carried out. The first report on the state of affairs shall be submitted as of 30th of April 2023. The reports must have been received by KfW not later than 6 weeks after the end of the period under review. The reports shall be countersigned by the Implementation Consultant.

4.1.4 If the Project-Executing Agency has charged the Implementation Consultant to write the progress reports and/or the final report, the Project-Executing Agency shall comment on the reports or acknowledge its approval of the content by countersigning the reports.

4.1.5 After completion of the Project, the Project-Executing Agency shall report on its further development (see Annex 7 (*Content and Form of Reporting to KfW*) for details). KfW shall in due course inform the Project-Executing Agency about the end of the reporting period.

4.1.6 At the beginning of the Project a baseline survey will be conducted to determine baseline values for the Project indicator so that Indicators can be compared with the results of the ex-post Project impact evaluation to assess actual impact of the Project. Socio-economic impacts will be recorded and monitored through processes, which involve local people's participation.

4.1.7 Quantity and quality of physical implementation of Project measures (e.g. afforestation, S&W conservation measures) will be checked annually by an external Project monitoring institution (independent third-party verification). The key function of the third-party monitoring is an independent control of the results of the planting and rehabilitation measures as well as of the engineering measures. The external monitor shall check a representative sample of completed works.

Annexes

- Annex 1: Results Matrix
- Annex 2: Preliminary Time Schedule
- Annex 3: Total Cost and Financing Plan
- Annex 4: Disbursement Procedure
- Annex 5: Environmental and Social Commitment Plan (ESCP)
- Annex 6: Procurement Plan Model
- Annex 7: Content and Form of Reporting to KfW
- Annex 8: Template for Reporting on Environmental, Social, Health and Safety (ESHS) Performance and Compliance for "Green Sector" Projects
- Annex 9: Serious Incident Reporting Template in the context of nature conservation and natural resource management Projects
- Annex 10: Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries

Read and agreed:

New DELHI 28/11/22

[place and date]

Meghalaya Basin Development Authority
 c/o Meghalaya State Housing Financing Cooperative Society Ltd.
 Upper Nongrim Hills,
 Shillong, East Khasi Hills District
 Meghalaya 793003
 India



[signature]

Name:

RAJEEV KUMAR ARORA

Title:

Dy CEO / MBDA



Annex 1: Results Matrix

Name of component

Project no. (BMZ-No.)

Climate Change Adaptation Programme in the Himalayas – Component III: Meghalaya**2015 67 643, 2015 67 650**

Country/Region

Results matrix compiled on

India**18.05.2022**

Objectives	Indicators	Sources	Assumptions
<p>DC-Programme objective: <i>Public and private sector interventions improve sustainable natural resource management, minimize the risks of climate change and increase productivity, income and employment in rural areas</i></p>			<p><i>Do not fill!</i></p>
<p>Project outcome: <i>Climate resilience of treated ecosystems and watershed livelihoods in the selected project areas is increased</i></p>	<p>Indicator 1: <i>Forest cover is maintained while crown coverage is increased</i></p> <p><i>Baseline value: tbd in the baseline study</i></p> <p><i>Target value: tbd in the baseline study</i></p>	<ul style="list-style-type: none"> • <i>Baseline study from the inception phase</i> • <i>Reports of MBDA</i> • <i>Consultant reports</i> • <i>External monitoring report</i> • <i>Household surveys</i> 	<p><i>Refer to assumptions related to the project outcome.</i></p> <p><i>Government of Meghalaya supports and promotes implementation of its new Water Policy of 2019.</i></p> <p><i>Umiew and Ganol are declared as Critical Catchments under the</i></p>

	<p>Indicator 2: <i>Total income as well as income diversity of target population increased</i></p> <p><i>Baseline value: tbd in the baseline study</i></p> <p><i>Target value: tbd in the baseline study</i></p>		<p><i>Meghalaya Protection of Catchment Area Act 1990.</i></p>
	<p>Indicator 3: <i>Water discharge and quality has increased by rejuvenating natural sources of water, adopting water conservation and harvesting measures, enhancing their ecological and hydrological processes and by that reducing climate vulnerability of the target group.</i></p> <p><i>Baseline value: tbd in the baseline study</i></p> <p><i>Target value: tbd in the baseline study</i></p>		

	<p>Indicator 4: <i>Innovative mechanisms (including Payment for Environmental Services (PES) and new administrative structure of catchment areas) for planning and management of natural resources are established and financed by the Government of Meghalaya.</i></p> <p><i>Baseline value: tbd in the baseline study</i></p> <p><i>Target value: tbd in the baseline study</i></p>		
<p>Outputs:</p> <p><i>Output 1: Knowledge-based participatory planning and implementation and capacity building</i></p>	<p>Indicator 1.a.: Training Needs Assessment (TNA) has been undertaken and training programmes are conducted.</p> <p>Baseline value: tbd</p> <p>Target value: tbd</p>	<p><i>All information from regular project monitoring reports</i></p>	<p><i>Political stability in Meghalaya</i></p> <p><i>No major natural disasters occur during project period</i></p> <p><i>Sufficient local labour is available for implementation of project activities</i></p>

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	<p>Indicator 1.b.: Knowledge management and communication strategy is developed and implemented.</p> <p>Baseline value: tbd Target value: tbd</p> <p>Indicator 1.c.: Number of published papers in Indian or international reviewed journals as output of a cooperation with a consortium of regional and (inter-)national universities or research institutions to conduct applied research on impacts of land use forms and land use practises on water balances.</p> <p>Baseline value: tbd Target value: tbd</p>		<p><i>Efficient, effective, and timely budget planning by the Government of Meghalaya and MBDA</i></p> <p><i>Sufficient capacity of local communities to supply seedlings for the project</i></p> <p><i>Free prior and informed consent is sought before preparation of MWP</i></p> <p><i>Traditional institutions agree to cooperate in the management of the catchment and allocate land for watershed treatment</i></p> <p><i>Land on both sides of the main rivers is recognized as community reserve through community consultations</i></p>
<p><i>Output 2: Forests and other ecosystems of the selected catchment areas are enhanced</i></p>	<p>Indicator 2.a.: Micro Watershed Plans (MWPs) including appropriate soil and water conservation measures are</p>		<p><i>Landowners, farmers and traditional institutions are willing to</i></p>

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	<p>developed and integrated into respective catchment area plans (CAPs).</p> <p>Baseline value: 0 Target value: 39 MWPs (26 for Ganol and 13 for Umiew)</p> <p>Indicator 2.b: Area under protection and sustainable forest management (including riverside plantations) increases.</p> <p>Baseline value: tbd Target value: 6340 ha</p> <p>Indicator 2.c.: Area under grassland management practices increases.</p> <p>Baseline value: tbd Target value: 2080 ha</p> <p>Indicator 2.d.: Area of land effected by fires reduced.</p>		<p><i>adopt SALT practices in bun cultivated and Jhum areas</i></p> <p><i>Shillong and Tura city authorities are willing to share the water charges with the community institutions managing their project assets</i></p>
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Output 3: Livelihoods of the vulnerable communities in the catchment areas improve

Baseline value: tbd
Target value. tbd

Indicator 3.a.: Agricultural area that has formerly been Jhum (Ganol) or Bun (Umiew) cultivated is managed through SALT or modified SALT practices respectively.

Baseline value: tbd
Target value: 630 ha (Ganol) + 1800 ha (Umiew) = 2430 ha

Indicator 3.b.: Payment for Environmental Services (PES) is piloted.

Baseline value: tbd
Target value: tbd

Indicator 3.c.: Water harvesting, storage and improvement

All information from regular project monitoring reports

25

structures are developed for livelihood activities.

Baseline value: tbd

Target value: tbd

Indicator 3.d.: O&M system is established and operational.

Baseline value: tbd

Target value: tbd

Indicator 3.e.: Number of people with increased resilience towards water scarcity has increased.

Baseline value: tbd

Target value: tbd

Indicator 2.f.: Return of investments of livelihood interventions meets the expectations.

Baseline value: tbd

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<p><i>Output 4: Adoption of best-practice project management</i></p>	<p>Target value: tbd</p> <p>Indicator 4.a.: SPMU, CMUs and VICs are established and operational.</p> <p>Baseline value: tbd Target value: tbd</p> <p>Indicator 4.b.: A comprehensive M&E system including E&S frameworks and plans is developed and operational.</p> <p>Baseline value: tbd Target value: tbd</p> <p>Indicator 4.c.: Capacity building on ESMF/CEPF requirements, including FPIC, Gender Action Plan and the GRM is regularly provided to the PEA, implementing agencies, local facilitators and communities.</p> <p>Baseline value: tbd</p>	<p><i>All information from regular project monitoring reports</i></p>	
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	Target value: tbd		
<p>Activities within the project</p> <p>Activities under Output 1:</p> <ul style="list-style-type: none"> - Village Implementation Committees (VIC) receive support through village facilitators - Establish knowledge management and communication strategy and systems (project website is developed and made operational, project learnings are documented etc.) - Conduct TNA - Design and implement training programmes - Build capacity of the target community for livelihood promotion and catchment management - Cooperation with a consortium of regional and (inter-)national universities or research institutions to conduct applied research on impacts of land use forms and land use practices on water balances <p>Activities under Output 2:</p>	Do not fill!	Do not fill!	<p>Watershed Department has well established watershed planning framework</p> <p>MBDA has sufficient infrastructure to provide training to the stakeholders</p> <p>Communities are open to try agriculture practices other than bun cultivation and Jhumming.</p> <p>Sand and silt mining units along the Umiew river and its tributaries are willing to cooperate</p> <p>Technical support staff are available in Meghalaya and can be retained during the project period</p>

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- *Micro-watershed plans in accordance to well accepted national standards are developed*
- *Forests are protected and restored through natural regeneration, afforestation and plantations based on forest protection agreements*
- *Community nurseries are established*
- *Soil and water conservation measures in open forest areas, grassland and culturable wastelands are performed*
- *Multi-purpose plants are used for soil stabilization*
- *Drainage line treatment with civil structure and vegetative means is undertaken*
- *Forest fires are controlled*
- *Water, silt and weather monitoring stations are established*
- *Spring sheds are developed*

Activities under Output 3:

- *Community livelihood plans (forestry, horticulture, agriculture) are developed through consultation*
- *Primary water harvesting structures are made under the project and water distribution system is developed by the GoM*

2

- Horticulture is promoted
- SALT is promoted and training on SALT is conducted
- Producing of seedlings

Activities under Output 4:

- Catchment management units (CMU), Village Implementation Committees (VIC) and state project management unit (SPMU) are established, and professional staff is recruited in time as per the HR plan
- Comprehensive M&E system is developed and implemented
- Social audit of the project is conducted
- Environment and Social Management Framework (ESMF) and Community Engagement and Planning Framework (CEPF) is developed and adopted
- Grievance redress mechanism (GRM) is established
- Administrative, fiduciary and procurement systems acceptable to KfW are setup
- Progress of the project is reported semi-annually to KfW

2

Annex 2: Preliminary Time Schedule

S. No.	Particulars	1				2				3				4				5				6				7							
		Inception																															
		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4				
COMPONENT 1																																	
1.1	VIC support by village facilitators																																
1.2	Knowledge mgt. and communications																																
1.3	Training and capacity building																																
1.4	Cooperation with a consortium of regional and (inter-)national universities or research institutions to conduct applied research on impacts of land use forms and land use practises on water balances																																
1.5	PMC services																																
COMPONENT 2																																	
2.1	Watershed panning (MWP)																																
2.2	Forests are protected and restored through natural regeneration, afforestation and plantations based on forest protection agreements																																
2.3	Development of community Nurseries																																
2.4	S&WC measures																																
2.5	Multi-purpose plants are used for soil stabilisation																																
2.6	Drainage line treatment with civil structures																																
2.7	Forest fires are controlled																																
2.8	Water, silt and weather monitoring stations are established																																
COMPONENT 3																																	
3.1	Community livelihood plans (forestry, horticulture, agriculture) are developed through consultation																																
3.2	Primary water harvesting structures are made under the project and water disribution system is developed by GoM																																

26

Annex 3: Total Cost and Financing Plan

Costs								
	Output	Total Cost		KfW contribution		GoM contribution		
		(INR Lakh)	(EUR Million)	(INR Lakh)	(EUR Million)	(INR Lakh)	(EUR Million)	GoM %
1	Knowledge-based participatory planning and implementation and capacity building	1.011,21	1,20	69,72	0,08	940,80	1,12	93,3%
2	Forest and other ecosystems of selected catchment areas are enhanced	20.253,46	24,11	19.804,68	23,58	449,40	0,54	2,24%
3	Livelihoods of the vulnerable communities in the catchment areas improve	4.608,42	5,49	3.891,72	4,63	715,68	0,85	15,4%
4	Adoption of best-practice project management	5.956,00	7,09	1.733,76	2,06	4.225,20	5,03	70,94%
	Total Base Cost	31.829,09	37,89	25.499,88	30,35	6.331,08	7,54	19,9%
	Contingencies (rd. 8% for FC)	2.610,91	3,1	2.220,12	2,65	388,92	0,46	
	Total Project Cost	34.440,00	41,00	27.720,00	33	6.720,00	8	19,5%

€ Exchange rate 84

Financing					
Financed by	Cost in Indian currency (INR Lakh.)	Costs in foreign currency (EUR Mio.)	Total		%
			INR Lakh	EUR Mio.	
KfW Bank					
Loan	0,00	32,0	26.880,00	32,0	78%
Grant	0,00	1,0	840,00	1,0	2.4%
Total FC	0,00	33,0	27.720,00		
Contribution by GoM	6.720,00	0,0	6.720,00	8,0	19.5%
Total Financing	6720,00	33,0	34.440,00	41,0	100%

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Officer in Charge: Marco Knuth
phone: 0049 69 7431 9128
email: marco.knuth@kfw.de

Disbursement Procedure

German Financial Cooperation with India
Loan Agreement of KfW for EUR 32.000.000,00 and Grant Agreement of KfW for
EUR 1.000.000,00
Project: Climate Change Adaptation in the Himalaya –
KfW-Reference Number (Project No./ BMZ No.): 2015 67 643 (Loan) / 2015 67 650
(Grant)

INTRODUCTION

This Annex stipulates the disbursement procedure for funds to be disbursed by KfW (the "**Funds**") under the above-mentioned Loan/ Grant Agreement (the "**Agreement**"). The agreed disbursement procedure allows KfW to monitor the contractual use of Funds and ensures that disbursements are only made in accordance with the progress of the Project/Programme financed.

In accordance with the Articles 2.1 of the Agreement, the party authorized to request disbursements shall be **The Meghalaya Basin Development Authority (MBDA) via Government of India (CAAA)** (the "**Authorized Party**"), represented by the Authorized Representative and duly appointed Authorized Signatories (each as defined in Article 1 below).

Subject to any express provision to the contrary in this Annex, terms used herein shall have the meaning ascribed thereto in the Agreement and the respective Separate Agreement.

Please contact the KfW-official indicated above (quoting KfW's reference number) if you have any questions about the disbursement procedure.

PART A – General Provisions

1 Disbursement Request

Any disbursement request (including in the case of a disposition fund procedure any pro forma disbursement request to be delivered to KfW in order to provide evidence on the use of Funds) together with such supporting documents as are required to be delivered to KfW as supporting documents to such disbursement requests pursuant to

the provisions of Part B of this Annex (each a "**Supporting Document**") shall be submitted to KfW in each case by the individuals who have been authorized to do so by the formal representative of the Authorized Party ("**Authorized Representative**") and of whom KfW has received specimen original signatures according to the model provided in Attachment A-1 (the "**Authorized Signatory/Signatories**").

Disbursement requests

- shall be based on the models provided in Part B of this Annex,
- shall indicate the KfW reference number,
- shall be numbered consecutively throughout the Project/ Programme,
- shall be duly signed by the Authorized Signatory/Signatories,
- and shall be submitted in original to KfW's FC Disbursement and Loan Management department (BKe).

Exceptions shall be subject to KfW's prior consent. In case of such exceptions, the Authorized Party releases KfW from all liability regarding any damage resulting from false transmission, due in particular to transmission errors, abuse, misunderstanding, or mistakes.

Where Part B provides that any third party shall make any declaration of confirmation *vis-à-vis* KfW on, and/or countersign, a disbursement request or any Supporting Document, such third party (each a "**Certifying Party**") will do so through signature and company stamp and/or full name.

2 General Disbursement Provisions

2.1 Bank Details

It is the obligation of the Authorized Party to supply KfW with complete and correct bank details for disbursements including correspondent bank details if relevant. KfW shall not be liable for any damage, loss, costs or liability caused by failed bank transfers including, without limitation, if the amount requested by the Authorized Party cannot be credited to the bank account specified in the disbursement request in the currency requested, or if the Authorized Party fails to indicate complete and correct bank account details in the respective disbursement request unless such damage, loss, costs or liability was caused by KfW's gross negligence or wilful misconduct.

If KfW determines that the information provided in the disbursement request is incomplete or incorrect, KfW is, without incurring any liability (other than in the case of KfW's gross negligence or wilful misconduct), entitled to complete or replace the bank account details by using publicly available information (such as Bankers Almanac for determining the correspondent bank) and/or information set out in the underlying invoice. KfW is entitled to use said account details for all further disbursements, unless a subsequent disbursement request by the Authorized Party contains new complete and correct information.

2.2 Currency of Disbursement

Except to the extent that the Agreement, the Separate Agreement or this Annex contain any provision to the contrary, disbursements shall be made in the currency indicated in the disbursement request to the bank account specified in the disbursement request.

Notwithstanding the foregoing, if (i) the currency indicated in the disbursement request is not readily available to KfW in the amount requested, or (ii) the disbursement in the currency indicated would contravene any law or regulation applicable to KfW, KfW shall give notice to the Authorized Party and, without incurring any liability (other than in the case of KfW's gross negligence or wilful misconduct), be entitled to disregard the disbursement request. The foregoing shall be without prejudice to the Authorized Party's right to submit another disbursement request for a disbursement in Euro or the currency committed in the Agreement

If the Authorized Party requests a disbursement in a currency other than the currency committed in the Agreement (the "Foreign Currency"), KfW will debit the Project with the total equivalent in the currency committed of the amount expended by KfW for the procurement of the Foreign Currency (inclusive of incidental expenses). Notwithstanding the foregoing, KfW is entitled to request that the final disbursement request shall be for an amount in the currency committed in the Agreement.

If the Authorized Party requests a payment of the equivalent of an amount denominated in one currency (the "**First Currency**") in another currency (the "**Second Currency**") (e.g. equivalent of USD in EUR), KfW shall, unless a clear stipulation to the contrary exists either in the Agreement, the Separate Agreement, this Annex or the contract which forms the basis of the payment, be entitled to use a market-oriented exchange rate to convert the amount from the First Currency to the Second Currency.

2.3 Liability Limitation

KfW shall not be liable for delays caused by transferring banking institutions in the disbursement or remittance of Funds or if the Authorized Party fails to provide a duly executed disbursement request in accordance with Articles 1, 2.1 and 2.2 above. If, however, KfW is responsible for any delay, its liability will, other than in cases of gross negligence or wilful misconduct, be limited to the payment of interest accrued.

2.4 Disbursement Advice

Following each disbursement, KfW shall send a disbursement advice to the Borrower/Recipient. Provided that an e-mail address has been communicated to KfW using the model in Attachment A-2, this disbursement advice shall be sent via e-mail on the payment date. If no e-mail address is provided, KfW shall send a summary of disbursement advices to the Borrower/Recipient by regular mail on a monthly basis.

2.5 Documentation

Without prejudice to any provisions to the contrary in the Agreement, the Separate Agreement or this Annex, any original documentation evidencing the proper expenditure of Funds disbursed according to the provisions of this Annex (including, but not limited to invoices, certificates, etc.) shall be kept for a minimum of five years after completion of the Project/ Programme, and shall be accessible for inspection by KfW or any third party instructed by KfW (e.g. auditors) at all times. Upon request, KfW

or any third party instructed by KfW shall be furnished with copies of any such documentation.

To the extent a consultant is involved in the financial administration of a project in a supervisory role, this consultant shall be entitled to receive information directly from KfW with regard to all project related transactions effected by KfW on behalf of the Authorized Party. This includes KfW's list of contracts and amounts reserved for financing under the Agreement and disbursement advices.

3 Additional confirmations

In addition to specific confirmations required in Part B for specific disbursement procedures, each disbursement request shall in addition contain the following confirmations by the Authorized Party:

General confirmations

- The Authorized Signatory submitting the disbursement request on behalf of the Authorized Party is authorized to do so.
- The goods and/ or services and/or sub-loans to be financed have not already been financed from other grants or long-term loans.
- The facts, statements and representations contained in the disbursement request and any attachments thereto are true and correct.

Representations and warranties

- All disbursement conditions as stated in the Agreement are fulfilled.
- The Agreement is still in full force and effect and there is neither a reason for termination nor a potential reason for termination.

Each disbursement request shall also repeat all the representations (if any) as are required to be repeated pursuant to the Agreement.

The foregoing is without prejudice to any additional confirmations and information which may be required to be provided on the disbursement request pursuant to Part B of this Annex.

Attachments

- A-1) Model of a Letter Designating Authorized Signatories
- A-2) Model for a letter requesting emailing of disbursement advices

MODEL FOR LETTER DESIGNATING AUTHORIZED SIGNATORIES

[Please use official letterhead]

KfW
 Attn. LEB5
 Palmengartenstr. 5-9
 60325 Frankfurt am Main
 GERMANY

German Financial Cooperation with India
Loan Agreement of KfW for EUR 32.000.000,00 and Grant Agreement of KfW for
EUR 1.000.000,00
Project: Climate Change Adaptation in the Himalaya –
KfW-Reference Number (Project No./ BMZ No.): 2015 67 643 (Loan) / 2015 67 650
(Grant)

Dear Sir/ Madam,

Reference is made to the Agreement. Capitalised terms used, but not defined herein, shall have the meaning ascribed thereto in the Agreement or, if not defined in the Agreement, in the Separate Agreement pertaining thereto. We would like to inform you that any one¹ of the persons whose authenticated specimen signature appears below is authorized to sign any paper-based disbursement requests, in each case on behalf of the Borrower/ Recipient/Project-Executing Agency ("Authorized Signatory/ Signatories").

NAME	
FUNCTION	
SPECIMEN SIGNATURE	

NAME	
FUNCTION	
SPECIMEN SIGNATURE	

NAME	
FUNCTION	
SPECIMEN SIGNATURE	

Any previous designations of Authorized Signatories are hereby revoked. To comply with KfW's identification requirements, we hereby enclose legible and certified copies of the identification papers of a) each Authorized Signatory and b) the Authorized Representative. Their authenticity must either have been confirmed by an employee of KfW or the copies must be certified by a notary public or person equivalently empowered.

Yours sincerely,

.....
 Date/ Signature/ Name/ Office of Authorized Representative as designated in Loan/ Grant Agreement

¹ Please change wording if joint signatures are required.

MODEL FOR LETTER REQUESTING DISBURSEMENT ADVICES VIA E-MAIL

[Please use official letterhead]

KfW
Attn. Bke1
Palmengartenstr. 5-9
60325 Frankfurt am Main
GERMANY

Fax No.: +49 69 7431-3514

Dear Sir/ Madam,

We kindly request KfW to send disbursement advices to the following e-mail address on the payment date instead of sending a monthly summary of disbursement advices by regular mail.² We take note of the fact that this e-mail address will be used **for all Projects/ Programmes** in which we are Borrower/ Recipient/ Project-Executing Agency of KfW. Any e-mail address previously communicated to KfW for this purpose is hereby revoked.

(PLEASE ENTER **ONE** E-MAIL ADDRESS HERE)³

Yours sincerely,

.....
Date/ Signature/ Name/ Office of Authorized Representative as designated in Loan/ Grant Agreement

² Please note that disbursement advices sent via e-mail are .pdf files.

³ To avoid difficulties in case of a change of responsibilities, KfW recommends entering an unvarying e-mail address such as a group e-mail address.



PART B – Disbursement Procedures

The Funds will be disbursed pursuant to the following procedure(s), provided in each case that all conditions for the respective disbursement pursuant to the Agreement and the Separate Agreement (including this Annex) are fulfilled:

Disbursement Procedure	Measures / Contracts to be Financed	According to the Separate Agreement and/or Annex 3 "Cost & Financing" Article/Position
Direct Disbursement Procedure Consultant	Consulting Services	Separate Agreement Article 1.1.10 and 2.1.6
Simplified Reimbursement with Auditor	All other services/positions	Separate Agreement Article 1.1.5, Total Cost and Financing plan Output 1-4

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1 Direct Disbursement Procedure (Consultant)

Within the framework of the **Direct Disbursement Procedure (Consultant)**, KfW pays the consultant directly based on the underlying consultant contract. Disbursements will be made upon receipt and after evaluation of a disbursement request submitted to KfW by the Authorized Party in accordance with the stipulations set forth in Part A of this Annex, provided that each disbursement request shall contain all the information and confirmations as are required by the model in **Attachment B-1**.

Within the framework of the Direct Disbursement Procedure (Consultant), each disbursement request must be accompanied - if applicable according to the underlying consulting contract - by the following Supporting Documents, in each case in accordance with the stipulations set forth in Part A of this Annex:

- copy of consultant's invoice,
- in case of time-based remuneration the invoice shall be accompanied by a performance list stating contract value, previous cumulative expenses, current expenses, cumulative expenses and remaining budget as well as, if applicable, the deduction for recovery of the advance payment as well as retention money. A model which may be used is provided in **Attachment B-1**.
- in case of price escalation: evidence for the calculation of the contractually agreed index,
- list of expenditures for ancillary expenses/ reimbursable costs including date, description of expenditure, amount and applied exchange rate.

2 Simplified Reimbursement Procedure with Auditor

Within the framework of the **Simplified Reimbursement Procedure**, the Authorized Party shall pay the amounts due in full before submitting a disbursement request to KfW. The pre-financed amounts will be reimbursed by KfW upon receipt and after evaluation of a disbursement request submitted to KfW by the Authorized Party in accordance with the stipulations set forth in Part A of this Annex, provided that each disbursement request shall contain all the information and confirmations as are required by the model in **Attachment B-2**.

Payments shall be made to the following account:

Account holder/account name	
Bank	
BIC	
Account number	
IBAN (where applicable)	
BIC of correspondent bank ⁴	

A disbursement request may be submitted to KfW either every three months beginning with the first payment effected by the Authorized Party or as soon as the total amount pre-financed has reached EUR 1.000.000,00, whichever happens earlier.

In accordance with the terms set forth in **Attachment B-2** which are to be included into the contract for consulting services, the consultant, acting as Certifying Party, shall certify the invoice(s) submitted by confirming for the benefit of KfW on or prior to the submission of the disbursement request that all obligations according to the underlying contract for goods and/ or services have been met and payment has fallen due, that all documents presented (including bank guarantees) comply with the conditions of the underlying contracts for goods and/ or services and that the disbursement request meets the requirements of the Agreement, Separate Agreement and particularly this Annex. The confirmation shall be made in accordance with the stipulations set forth in Part A of this Annex.

The Authorized Party shall assign an external auditor to examine annually (in compliance with KfW's "Terms of Reference: Audit of Funds under the Reimbursement Procedure", see **Attachment B-3**) whether the payments were effected in accordance with the Agreement and the respective Separate Agreement. An original of each audit report shall be sent to KfW in due course after the period under review. The costs for the auditor shall be shall be paid from Project Funds.

⁴ If the account-holding bank is not located in the currency area of the currency of payment the additional BIC of the correspondent bank is obligatory:

e.g. EUR payment to India (EUR is not a currency of payment in India) – the BIC of the correspondent bank must be indicated
e.g. EUR payment to France (EUR is the currency of payment in France) – NO BIC of the correspondent bank is requested

Within the framework of the Simplified Reimbursement Procedure, each disbursement request must be accompanied by the following Supporting Documents, in each case in accordance with the stipulations set forth in Part A of this Annex :

- Statement of Expenditures (SOE), reflecting the budget agreed upon in the Annex "Total Cost and Financing" of the Separate Agreement;
- optionally: consultant's Checklist based on the model in **Attachment B-2** documenting essential verifications undertaken for the purposes of the Simplified Reimbursement Procedure;
- non-objection by KfW in case expenses exceed the contractually agreed budget lines.



MODEL FOR DISBURSEMENT REQUEST (DIRECT DISBURSEMENT CONSULTANT)

Sender:

Authorized Party according to the Introduction of Annex
"Disbursement Procedure" to Separate Agreement

Date

KfW
Attn. Bke1
Palmengartenstr. 5-9
60325 Frankfurt am Main
GERMANY

German Financial Cooperation with India
Loan Agreement of KfW for EUR 32.000.000,00 and Grant Agreement of KfW for EUR 1.000.000,00.
Project: Climate Change Adaptation in the Himalaya –
KfW-Reference Number (Project No./ BMZ No.): 2015 67 643 (Loan) / 2015 67 650 (Grant)

Disbursement Request No.
DIRECT DISBURSEMENT PROCEDURE (CONSULTANT)

In conformity with the underlying contract(s) specified below, copies of which were forwarded to you, the following services were rendered and are to be paid:

Underlying contract and date	Invoice number/ date	Amount invoiced	Amount financed by KfW	Amount financed by ... ⁵
TOTAL AMOUNT REQUESTED FOR DISBURSEMENT⁶:				

We kindly ask KfW to disburse the total amount requested for disbursement from the above-mentioned Agreement as follows:

Beneficiary (company name/ address)	
Account no./ IBAN (if applicable)	
Account-holding bank/ BIC	
Correspondent bank⁷/ BIC	

⁵ In case of pari passu or pro rata co-financing.

⁶ Please make sure to specify currency.

⁷ Only applicable if the account-holding bank is not located in the requested currency's currency area. In this case, please enter the account-holding bank's correspondent bank in the requested currency's currency area.

In accordance with the provisions of Part B of the Annex "Disbursement Procedure" to the Separate Agreement, we enclose the following documents as supporting evidence:

- copy/ copies of consultant's invoice(s)
- if applicable: performance list
- in case of price escalation evidence for the calculation of the contractually agreed index
- list of expenditures for reimbursable costs (if applicable)

We hereby confirm that

- The Authorized Signatory submitting the disbursement request on behalf of the Authorized Party is authorized to do so.
- The goods and/ or services to be financed have not already been financed from other grants or long-term loans.
- The facts, statements and representations contained in the disbursement request and any attachments thereto are true and correct.
- All disbursement conditions as stated in the Agreement are fulfilled
- The Agreement is still in full force and effect and there is neither a reason for termination nor a potential reason for termination.

.....
*Authorized Signatory/ Signatories
of the Authorized Party*



Model for Performance List / Statement of Cost

Item No.	Description	Unit	Contractual Quantity	Unit Rate EUR	Contract Value EUR	Previous cumulative Expenses EUR	This Invoice EUR	Current cumulative Expenses EUR	Remaining Budget EUR
1	Remuneration								
1.1.									
1.1.1.									
...									
...									
	Subtotal: Remuneration								
2.	Reimbursables								
2.1.									
2.1.1.									
...									
...									
	Subtotal: Procurements								
3.	Contingencies								
	Total Costs at actual								
	Advance Payment (Recovery)								
	Contract Sum								
	Invoice No. (x)								

MODEL FOR DISBURSEMENT REQUEST (SIMPLIFIED REIMBURSEMENT)

Sender:

.....
Authorized Party according to the Introduction of
Annex "Disbursement Procedure" to Separate
Agreement

.....
Date

KfW Bankengruppe
Attn. Bke1
Palmengartenstr. 5-9
60325 Frankfurt am Main
GERMANY

German Financial Cooperation with India
Loan Agreement of KfW for EUR 32.000.000,00 and Grant Agreement of KfW for EUR 1.000.000,00
Project: Climate Change Adaptation in the Himalaya –
KfW-Reference Number (Project No./ BMZ No.): 2015 67 643 (Loan) / 2015 67 650 (Grant)

Disbursement Request No.
SIMPLIFIED REIMBURSEMENT PROCEDURE

In conformity with the enclosed Statement of Expenditures, the following goods/ services were duly supplied/ rendered and **have been paid by us in full**:

SOE No.	Date	Total amount	Amount to be financed by KfW	Amount to be financed by ... ⁸
TOTAL AMOUNT REQUESTED FOR DISBURSEMENT⁹:				

We kindly ask KfW to disburse the total amount requested for disbursement from the above-mentioned Agreement as follows:

Beneficiary (company name/ address)	
Account no./ IBAN (if applicable)	
Account-holding bank/ BIC	
Correspondent bank¹⁰/ BIC	

⁸ Only applicable in case of pari passu co-financing.

⁹ Please make sure to specify currency.

¹⁰ Only applicable if the account-holding bank is not located in the requested currency's currency area. In this case, please enter the account-holding bank's correspondent bank in the requested currency's currency area.

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In accordance with the provisions of Part B of the Annex "Disbursement Procedure" to the Separate Agreement, we enclose the following documents as supporting evidence:

- Statement of Expenditures
- Consultants Checklist
- Non-Objection of KfW

The Consultant hereby declares that

- the payment requested in this disbursement request has fallen due, the respective invoice(s) correspond(s) to the underlying contract(s) and all documents required have been presented and comply with the requirements stipulated by the Agreement, the Separate Agreement and the Disbursement Annex.
- the facts and – to our best knowledge - statements and representations contained in the disbursement request and any attachments thereto are true and correct.

.....
*Consultant's company name/ Signature of
Representative*

We hereby confirm that

- The Authorized Signatory submitting the disbursement request on behalf of the Authorized Party is authorized to do so.
- The goods and/ or services to be financed have not already been financed from other grants or long-term loans.
- The facts, statements and representations contained in the disbursement request and any attachments thereto are true and correct.
- All disbursement conditions as stated in the Agreement are fulfilled.
- The Agreement is still in full force and effect and there is neither a reason for termination nor a potential reason for termination.

.....
*Authorized Signatory/ Signatories
of the Authorized Party*



Statement of Expenditures (SOE) for KfW Project No./ BMZ No.					
<i>Accounting period:</i> —					
1	2	3	4	5	6
Budget position according to Annex "Total Cost and Financing"/ Contract	Amount budgeted/ contract amount	Expenditure in preceding accounting periods	Expenditure in current accounting period	Total expenditure to date	Amount still to be disbursed
TOTAL					

Note:
In column 1, please indicate the budget positions according to the Annex "Total Cost and Financing" of the Separate Agreement and allocate the respective contracts concluded to each budget position.

Handwritten mark

**Terms of Reference for Consultants
in Connection with KfW's Simplified Direct Disbursement Procedure and Simplified
Reimbursement Procedure**

The Consultant will

1. examine whether the invoice(s) and additional documents for the disbursement request are complete and whether contractual requirements to receive payments have been fulfilled.

In particular, the Consultant will:

- a) determine whether the supplies and services invoiced have been performed according to the respective contract.
- b) (in case of supply contracts) examine, based on random sampling, whether amounts and budget lines as stated in the invoice correspond to those as stipulated in the contract;

In case the contractor has submitted a Statement of Expenditure (SoE) or bill of quantities, the Consultant will examine whether cumulative expenditures do not exceed budget lines and whether cumulative expenditures are in coherence with the SoE or bill of quantities previously submitted.

- c) (in case of construction contracts) examine, whether main budget lines as presented in the invoice correspond to those as stipulated in the contract, whether cumulative expenditures do not exceed budget lines and whether cumulative expenditures are in coherence with previously submitted SoEs based on the bill of quantities.
- d) If the SoE or bill of quantities submitted by the contractor does not fulfil the requirements as mentioned in 1.b) and 1.c), the Consultant will request a non-objection to the disbursement of the responsible project manager at KfW, and will attach related documentation to the invoice.
- e) check whether advances have been cleared / worked off and retention money has been deducted according to contract.
- f) examine whether price adjustments are applicable and are calculated in line with the contract.
- g) examine whether further documentation, such as transport and/or delivery certificates, is required, whether such documentation meets the formal requirements as stipulated in the contract(s) and whether the items and amounts presented on the respective documents are correct.

2. examine whether guarantees have been presented by the contractor in accordance with contractual requirements.

If applicable, the Consultant will:

- a) ensure that the form and amount of all guarantees meet the requirements of the construction or supply contract(s).

- b) monitor the validity of all guarantees and ensure, if required, that the guarantee period is being extended in due time.
3. examine whether the disbursement request meets the requirements as stated in the underlying agreement between KfW and the Employer, (such as the Separate Agreement, and particularly in the Annex "Disbursement Procedure", hereafter defined as the "Underlying Agreement").

In particular, the Consultant will ensure that:

- a) each disbursement request corresponds to the form provided in the Underlying Agreement.
- b) the amount of the disbursement request only includes expenditures/costs to be financed by KfW, e.g. with regard to eligibility of financing taxes.
- c) in case of joint financing of the respective programme, the financing share to be delivered by the Borrower/Recipient/Project Executing Agency has been considered.
- d) bank details provided on the disbursement request and on the invoice are the same, and if applicable, correspond to those as stated in the contract.
4. in case the simplified reimbursement procedure is being applied, examine in addition to items 1. to 3. whether
- a) evidence on the use of funds has been presented in the form of an SoE as stipulated in the Underlying Agreement;
- b) cumulative expenditures do not exceed budget lines as stipulated in the contract and that cumulative expenditures are in coherence with previously submitted SoEs;
- c) expenditures as presented in the SoE correspond to services due/invoices submitted by the contractors.
- d) expenditures as presented in the SoE have already been disbursed to contractors / service providers.

If the SoE submitted by the contractor does not fulfil the requirements mentioned above, the Consultant will request a non-objection to the disbursement of the responsible project manager at KfW, and will attach related documentation to the SoE.

In so far as the above mentioned conditions are met, the Consultant will

- provide a confirmation for the benefit of, and addressed to, KfW that the contractual obligations have been met and payment has fallen due; such confirmation to be provided on or prior to the submission of each disbursement request and in such form as the Employer may request in accordance with the Underlying Agreement.
- hand over all relevant documentation to the Employer/Authorised Party. However, as long as documents remain with the Consultant, KfW reserves the right to obtain originals and copies of such documents.

The Consultant may also refer to the Checklist attached to the ToR (cf. Annex "Consultant Checklist"), which can also be submitted with the request for disbursement in order to facilitate KfW's verification.

Annex Consultant Checklist

	Checked / Comment (if necessary)
Goods/Services as presented in the invoice have been performed	
The payment is in line with the payment conditions and the payment schedule	
If applicable: Financing Shares as stipulated in the Separate Agreement are correct	
Goods/Services invoiced are in line with contractual bills of quantities/unit costs; cumulative expenditures are in line with contractual amounts - if not: Project manager approved the respective overrun(s)	
If applicable: price adjustment complies with the contract	
Amounts and calculations are correct	
Documents as required in the contractual payment conditions have been submitted	
Performance and Advance Payment Guarantees (if foreseen) are correct in form and amount as well as valid for at least 6 weeks.	

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TERMS OF REFERENCE (“TOR”)
Assurance Engagement in accordance with ISAE 3000 – revised
for Funds disbursed under the
Reimbursement Procedure or Simplified Reimbursement Procedure Objective

The Reimbursements (“Subject Matter”)

1. The present assurance engagement shall cover all funds pre-financed in full by [Name of Authorized/Authorized Third Party, Project Executing Agency and/or other Project Implementation Unit concerned] (the “Entity”) which were later on reimbursed by KfW under the financial conditions of KfW loan/grant no. ... [KfW reference no.] for financing of ... [(part of) name of project/programme] (the “Project”)
2. The preparation of the Project Financial Reports (“Financial Reports”), the Statements of Expenditures (“SOE”) and the related disbursement requests (overall “Subject Matter Information”) is the responsibility of the Entity.
3. The financial information has to be established in accordance with consistently applied accounting standards and the underlying agreements governing the use of funds, notably the Loan/Financing Agreement(s) including the corresponding Separate Agreement as well as other agreements channelling Funds to third parties on a grant or loan basis (together the “Relevant Agreements”).

Scope

4. This engagement is a **reasonable assurance engagement** in accordance with International Standard on Assurance Engagements (ISAE 3000 – revised) as published by the International Auditing and Assurance Standards Board of the International Federation of Accountants. This standard requires that the auditor/ practitioner will plan and perform procedures considered necessary to obtain reasonable assurance about the Subject Matter Information (including – if necessary – on-site visits).
5. The assurance engagement
 - will be effected annually (“Reporting Period”).
 - shall cover in one single Report (“Report”) exclusively all expenditures listed in the SOE referred to in the Report.

Objective

6. The objective of the assurance engagement (“Objective”) is to permit the auditor/practitioner to express a conclusion on the Financial Reports, the SOE and the related disbursement requests as far as the Subject Matter is concerned and to obtain reasonable assurance about whether the Subject Matter Information is free from material misstatement regarding proper use of KfW funds according to the criteria mentioned below (paragraph 8).
7. The auditor/practitioner shall consider that mere account transfers, advances to any other accounts, to cash boxes or to service providers which have not been cleared until

the end of the Reporting Period cannot be classified as "use of funds" and shall be shown separately in the SOE.

8. In a form that conveys the auditor's/practitioner's position and based on the Subject Matter Information the auditor/practitioner shall express his conclusion with reasonable assurance on the following criteria ("Criteria"), and shall thus confirm whether in all material aspects:
- (a) The payments by the Entity to the final beneficiaries have been made in accordance with the conditions of the Relevant Agreements. Where ineligible expenditures are identified, these should be noted separately in the Report.
 - (b) Expenditures are supported by relevant and reliable evidence (such as contracts, invoices, guarantees etc.). There were no indications that these expenditures had already been financed by other sources. In addition, project receivables (such as advances, tax claims ...) which had not been cleared but reimbursed from KfW funds in former Reporting Periods, have been duly cleared in this Reporting Period and been used for project purposes, supported by relevant and reliable evidence.
 - (c) The SOE referred to in the Report can be relied upon to support the related disbursement requests. Clear linkage exists between the SOE and disbursement requests presented to KfW and the accounting records of the Entity.
 - (d) The procurement process of goods and services financed was in accordance with the Relevant Agreements.

Reports

9. The **Report(s)** shall
- (a) be issued by a renowned auditor/practitioner in English language.
 - (b) be presented annually (signed original(s)) not later than three months after the end of the Reporting Period covered.

The final audit report shall be presented no later than three months after the end of the Reporting Period in which the final reimbursement under the Subject Matter was effected.
 - (c) include at a minimum the following elements:
 - description of the Subject Matter
 - applied criteria to evaluate the Subject Matter and to express the auditor's/practitioner's conclusion as defined under paragraph 8 above
 - identification of the level of assurance obtained
 - informative summary of work performed as to extent, locations, etc.
 - description of significant limitations
 - (d) state in a separate paragraph that taxes or other contributions have not been included in the reimbursement requests to KfW, if the Relevant Agreements prohibit financing of these costs.

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- (e) comprise the auditor's/practitioner's statement on the seriousness of observations noted including the consequences of specific deficiencies, if any, also in connection with the internal control system.
- (f) contain the following Annexes:
 - Summary of the auditor's/practitioner's conclusions during the Reporting Period (see Annex A to these ToR)
 - Schedule showing reimbursements by KfW and disbursements by the Entity to final beneficiaries, in particular showing cumulated figures (see Annex B to these ToR)
 - SoE referred to in the Report
 - These Terms of Reference (ToR)

Management Letter / Statement on Internal Control

10. If considered pertinent, the auditor/practitioner shall prepare a "Management Letter" or "Statement on Internal Control" in which he will:
- (a) give comments, observations and recommendations on the accounting records systems and controls examined during the course of the engagement (with special focus on the handling of project receivables such as advances, tax claims, etc.);
 - (b) identify specific deficiencies and areas of weakness in relevant systems and controls that have come to the auditor's/practitioner's attention and make recommendations for their improvement;
 - (c) report on actions taken by the management to make improvements with respect to deficiencies and areas of weakness reported in the past;
 - (d) bring to the management's attention any other matters that the auditor/ practitioner considers pertinent.

Liability

11. The amount of the professional liability insurance shall be based on local/regional standards for audit companies. When prompted to do so, the auditor/practitioner will provide KfW with evidence of his liability insurance.

Review

12. The auditor/practitioner shall keep documentation supporting his conclusion until at least five years after completion of the assurance engagement and shall have them accessible at all times for review by KfW or any third party commissioned by KfW.

Annex A
(to be attached to every Report)

SUMMARY [Issued on the auditor's/ practitioner's letterhead]

Name of Project / Programme:

KfW Ref. No.

Subject Matter:

Reporting Period:

Within the scope of our reasonable assurance engagement under the above mentioned Project / Programme, performed in accordance with International Standard on Assurance Engagements (ISAE 3000 revised), we express our conclusion on the following points:

Applied Criteria	CONCLUSION (YES/NO)**
a) The payments by the Entity to the final beneficiaries have been made in accordance with the conditions of the Relevant Agreements. Where ineligible expenditures are identified, these should be noted separately in the Report.	
b) Expenditures are supported by relevant and reliable evidence (such as contracts, invoices, guarantees etc.). There were no indications that these expenditures had already been financed by other sources. In addition, project receivables (such as advances, tax claims etc.) which had not been cleared but reimbursed from KfW funds in former Reporting Periods, have been duly cleared in this Reporting Period and been used for project purposes, supported by relevant and reliable evidence.	
c) The Statements of Expenditures (SOE) referred to in the Report can be relied upon to support the related reimbursement requests. Clear linkage exists between the SOE, the disbursement requests presented to KfW and the accounting records at the Entity.	
d) The procurement process of goods and services financed was in accordance with the Relevant Agreements.	
e) No other important findings and observations have been disclosed during the engagement.	
f) All observations raised in former reports have been solved by now (for details please refer to page) – not applicable in case of first report hereunder.	

** Result "NO" requires a reference to a page/section of the Report.

Date:

Stamp/Signature Auditor / Practitioner:

[Issued on the auditor's/ practitioner's letterhead]

Annex B
(to be attached to every Report)

KfW Ref. No.		
1. Reporting Period from ... to ...		Currency:
a) expenditure	/	
b) reimbursements from other donors – if any	less	
c) reimbursements from KfW	less	
d) balance at the end of the Reporting Period (If the balance is not zero, or the expenditure does not correspond to the SOE of the Reporting Period, please explain)	/	
e) total project receivables such as advances, tax claims etc. reimbursed from KfW funds but not cleared by the end of this Reporting Period - if any -	/	

Date: Stamp/Signature Auditor / Practitioner:

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Annex 5

**Meghalaya Basin Development Authority
(MBDA)**

**Climate Change Adaptation in the Himalaya –
Component III in Meghalaya**

**ENVIRONMENTAL and SOCIAL
COMMITMENT PLAN (ESCP)**

June, 2022

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ENVIRONMENTAL AND SOCIAL COMMITMENT PLAN

1. The **Government of India** (the Borrower and Recipient) through the **Meghalaya Basin Development Authority (MBDA)** as the Project Executing Agency (PEA) will implement the **Climate Change Adaptation in the Himalaya – Component III in Meghalaya** (the Project). **KfW Development Bank** (hereinafter KfW) has agreed to provide financing for the Project.
2. PEA will implement material measures and actions so that the Project is implemented in accordance with the Environmental and Social Standards (ESSs) of World Bank and additional requirements stipulated by KfW's Sustainability Guideline (2022). This Environmental and Social Commitment Plan (ESCP) sets out material measures and actions, any specific E&S safeguard documents or plans, as well as the timing for each of these.
3. PEA will also comply with the provisions of any E&S documents required under the ESS and referred to in this ESCP, such as the Environmental and Social Management Framework (ESMF) and the Community Engagement and Planning Framework (CEPF), including the Guideline on Free Prior and Informed Consent (FPIC).
4. PEA is responsible for compliance with all requirements of the ESCP even when implementation of specific measures and actions is conducted by other actors.
5. Implementation of the material measures and actions set out in this ESCP will be monitored and reported to KfW by PEA as required by the ESCP and the conditions of the legal agreement, and KfW will monitor and assess progress and completion of the material measures and actions throughout implementation of the Project.
6. As agreed by KfW and PEA, this ESCP may be revised from time to time during Project implementation, to reflect adaptive management of Project changes and unforeseen circumstances or in response to assessment of Project performance conducted under the ESCP itself. In such circumstances, PEA will agree to the changes with KfW and will update the ESCP to reflect such changes. Agreement on changes to the ESCP will be documented through the exchange of letters signed between KfW and PEA. The PEA will promptly disclose the updated ESCP.
7. Where Project changes, unforeseen circumstances, or Project performance result in changes to the risks and impacts during Project implementation, the PEA shall provide additional funds, if needed, to implement actions and measures to address such risks and impacts.

MATERIAL MEASURES AND ACTIONS		TIMEFRAME	RESPONSIBILITY
MONITORING AND REPORTING			
A	<p>REGULAR REPORTING</p> <p>Prepare and submit to KfW regular monitoring reports on the environmental, social, health and safety (ESHS) performance of the Project, including but not limited to the implementation of the ESCP, status of preparation and implementation of E&S safeguard documents required under the ESCP, stakeholder engagement activities, and functioning of the Grievance Redress Mechanism (GRM). The ESHS reports shall adhere to the ESHS reporting template annexed to the Separate Agreement (Annex 8) and be submitted as part of the regular monitoring reports.</p>	<p>Quarterly as part of regular project monitoring and reporting.</p>	<p>PEA</p>
B	<p>INCIDENTS AND ACCIDENTS</p> <p>Promptly notify KfW of any incident or accident related to the Project which has, or is likely to have, a significant adverse effect on the environment, the affected communities, the public or workers. The definition of such incidents and accidents is provided in the Serious Incident Reporting Template annexed to the Separate Agreement (Annex 9) that shall be used to structure the respective report on the incident or accident and any proposed measures to cope with it and prevent its recurrence.</p>	<p>Notify KfW by email within 72h after taking notice of the incident or accident and submit a detailed report to KfW within 10 workdays.</p>	<p>PEA</p>
ESS 1: ASSESSMENT AND MANAGEMENT OF ENVIRONMENTAL AND SOCIAL RISKS AND IMPACTS			
1.1	<p>ORGANIZATIONAL STRUCTURE</p> <p>Establish and maintain an organizational structure with qualified staff and resources to support the Project's management of E&S impacts and risks. This includes to appoint at least one E&S focal point within PEA to be responsible for the daily management and supervision of environmental and social risks and impacts at central level.</p> <p>Procure and deploy at least one international and one national E&S consultant, as part of the Project Implementation Consultant's (PIC) team, with expertise in environmental and social safeguards to support PEA in the development of E&S safeguard documents, their implementation, monitoring and reporting as well as for providing training and capacity building on E&S safeguard requirements to project staff on a regular basis.</p>	<p>Prior to the commencement of the Project inception phase and maintain its engagement throughout Project implementation.</p> <p>As part of the PIC tender and maintain engagement until the end of the project with more extensive inputs required during the first two years of the project's lifetime.</p>	<p>PEA</p> <p>PEA</p>

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MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBILITY
<p>1.2 ENVIRONMENTAL AND SOCIAL ASSESSMENT</p> <p>Based on the results of the Environmental and Social Scoping (E&S Scoping) conducted as part of the Feasibility Study, three E&S safeguard documents will be developed in parallel to the technical guidelines during the inception phase and then diligently implemented:</p> <p>Environmental and Social Management Framework (ESMF): With the main objective to avoid and manage negative environmental, occupational and community health and safety risks (ESS 1, 2, 3, 4, and 6) potentially caused by the implementation of project activities at the village level, the ESMF shall provide the procedures and tools to be applied for the identification and assessment of these risks, for the preparation of the required mitigation measures as well as for the corresponding monitoring and reporting on E&S compliance. As such, the ESMF includes E&S screening and eligibility checks against exclusion criteria, risk assessment and categorization, definition of applicable safeguard instruments, as well as requirements for their diligent implementation, monitoring and reporting at the village-level. Depending on the risk significance of project activities, there will be two main types of safeguard instruments that may result from the ESMF and that will have to be applied, chiefly (but not limited) at the village-level as part of the Village Plans (VPs): (i) Environmental and Social Management Plans (ESMPs) mainly required for construction or rehabilitation works with substantial material input and moderate E&S risks; and (ii) Environmental and Social Codes of Practice (ESCOPs) chiefly required for lower risk activities that involve basic physical work without the use of heavy machinery or equipment and limited material input;</p> <p>Community Engagement and Planning Framework (CEPF): Apart from the environmental, occupational and community health and safety risks of the Project, some of its activities will inevitably result in restrictions on land use and access to natural resources which are anticipated to adversely impact on local subsistence livelihoods. Although considered a community-based Project which will not involve the compulsory acquisition of land under eminent domain WB ESS 5 still requires a) the use of an adequate community decision-making process based on voluntary, informed consensus; and b) the adoption of appropriate measures to mitigate adverse impacts on vulnerable community members and in particular on people that would disproportionately suffer from livelihood losses. The appropriate safeguard instrument to adhere to these requirements is a CEPF, which sets out the step-by-step procedures for stakeholder engagement and decision-making at the village-level, especially on how decisions on land use change and restrictions are made, how mitigation of potential livelihood losses, in particularly on the most vulnerable community members (women, elderly or ethnic minorities etc.), are considered and grievances will be managed. As such, the CEPF includes key elements of WB ESS 5</p>	<p><i>End of inception phase and prior to on-the ground activity, except for first entry-point and planning activities in pilot villages.</i></p> <p><i>The ESMF requires KfW review and approval by the end of the inception phase and prior to any E&S related field operations that would have to adhere to ESMF requirements.</i></p> <p><i>The CEPF requires KfW review and approval by the end of the inception phase and prior to any E&S related field operations that would have to adhere to CEPF requirements.</i></p>	<p>PEA</p> <p>PEA</p> <p>PEA</p>

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MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBILITY
<p>on eligibility and entitlements for compensation/restoration of livelihood losses, a Technical FPIC Guideline on how to ascertain the Free Prior and Informed Consent (FPIC) of villages in line with WB ESS 7, as well as WB ESS 10 on community consultation, information disclosure and grievance redress. While the CEPF details out the requirements for community engagement and planning at a framework-level it will be operationalized at the village-level, chiefly through the representative Village Implementation Committees (VIC) and by applying Village Land Use Planning (VLUP) through Participatory Rural Appraisal (PRA) exercises that form the basis of Village Plans (VP), such as Micro-watershed Plans (MWPP), and Forest Protection Agreements (FPA).</p> <p>The ESMF and CEPF are developed at a framework level and require translation into village-level management plans as part of the VP/MWPP etc. As such a generic outline of an VP/MWPP shall be submitted to KfW for review and approval as part of the inception phase.</p> <p>The ESMF and CEPF are to be considered elemental management tools that will be fully aligned with the technical detail design and all relevant technical guidelines of the Project and integrated into its respective planning, implementation and MRE (Monitoring, Reporting and Evaluation) framework.</p> <p>In case some Project activities are envisioned to be fast tracked in order to avoid stakeholder fatigue or as entry point activities, these would require to be clearly identified as “no regret measures” not triggering any of the E&S safeguard instruments.</p> <p>The ESMF and CEPF development shall influence the possible refinement of the selection criteria developed as part of the Feasibility Study and to identify the villages eligible to be participating in the project.</p> <p>The ESMF and CEPF are to be disclosed publicly on the PED’s website.</p>	<p>PEA</p> <p><i>Officially confirmed VP/MWPP, including VLUPs and forest protection/watershed management agreements, during Project implementation.</i></p> <p>PEA</p> <p><i>Submit generic VP/MWPP outline to KfW for review and approval at the end of the inception phase.</i></p> <p>PEA</p> <p><i>Submit MRE framework, including ESMF/CEPF requirements to KfW for review and approval by the end of the inception phase.</i></p> <p>PEA</p> <p><i>Submit list of no-regret measures to KfW for review and approval by the end of the inception phase.</i></p> <p>PEA</p> <p><i>Submit criteria to KfW for review and approval by end of the inception phase.</i></p> <p>PEA</p> <p><i>Disclosed ESMF, CEPF and SOP on PED’s website at the end of the Project’s inception phase.</i></p>	<p>PEA</p>
<p>1.3 MANAGEMENT TOOLS AND INSTRUMENTS</p> <p>The requirements of the ESMF and CEPF will be diligently implemented, and their implementation monitored and reported throughout Project execution. This requires:</p> <ul style="list-style-type: none"> ▪ Screening of relevant activities in accordance with the ESMF: The first three filled-out E&S Screening Checklist will be submitted to KfW for review and approval; 	<p>Prior to the implementation of relevant activities.</p>	<p>PEA</p>

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MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBILITY
<ul style="list-style-type: none"> ▪ Developing and implementing respective ESMPS/ESCOPs to any relevant activities based on the E&S Screening: The first two ESMPS and ESCOPs will be submitted to KfW for review and approval; ▪ Submitting the Standard Operating Procedures (SOP) on fire management and control established by the Meghalaya Forest Department to KfW; ▪ Applying FPIC procedures in accordance with the CEPF to the establishment of the VLUP, VP/MWP. The progress on VP/MWP with corresponding land use, forest protection and watershed management agreements, livelihood restoration measures to compensate livelihood losses is to be reported to KfW as part of the regular reporting. 	<p>Prior to the implementation of relevant activities.</p> <p>Prior to the implementation of relevant activities.</p> <p>As part of the regular reporting.</p>	<p>PEA</p> <p>PEA</p> <p>PEA</p>
<p>1.4</p> <p>BUDGET</p> <p>Allocate sufficient funds in project budget lines for ensuring diligent implementation of ESMF and CEPF, with a particular emphasis on ensuring diligent FPIC procedures, compensating or restoring adverse impacts on livelihoods. Project activities that have associated negative livelihood impacts beyond the Project's financial resources to mitigate these impacts to acceptable levels (pre-displacement) run the risk of violating KfW requirements and should therefore be amended or not to be preceded at all. Thus, any financial values suggested in the Feasibility Study for livelihood support requires further refinement during the inception phase in order to come up with values that are proportionate to the actual livelihood losses at the community level and can sufficiently restore livelihoods to pre-displacement levels for the most and disproportionately affected and vulnerable members as well as improve the standard of living at the community level.</p>	<p>Allocation of budget lines to CEPF/ESMF measures during the inception phase and diligent use of funds throughout Project implementation.</p>	<p>PEA</p>
<p>1.5</p> <p>MANAGEMENT OF CONTRACTORS</p> <p>Some project activities may involve contractors/subcontractors to carry out physical works. Where such works will be tendered-out ESMPS/ESCOPs will have to be incorporated into respective procurement documents and corresponding ESHS specifications.</p> <p>Monitor and ensure that the contractors/subcontractors comply with the ESHS specifications of their respective contracts. Monitoring of this compliance will be conducted by the E&S consultants of the PIC.</p>	<p>Prior to the start of bidding during preparation of the procurement documents.</p> <p>Throughout Project implementation.</p>	<p>PEA</p> <p>PEA</p>

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MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBILITY
ESS 2: LABOR AND WORKING CONDITIONS		
<p>2.1 OCCUPATIONAL HEALTH AND SAFETY (OHS) MEASURES</p> <p>Based on the ESMF, implement ESMF/ESCOP measures and actions to assess and manage specific risks and impacts related to the OHS of workers, including community workers.</p> <p>In case forest fire fighting activities will be performed under the Project manage corresponding OHS risks through adherence to the SOP on fire management and control established by the Meghalaya Forest Department for which trainings will be provided to fire protection committees at the village-level.</p>	<p><i>Throughout Project implementation.</i></p> <p><i>Throughout Project implementation.</i></p>	<p>PEA</p> <p>PEA</p>
<p>2.2 GRIEVANCE MECHANISM FOR PROJECT WORKERS</p> <p>Based on the ESMF, establish, maintain, and operate a grievance mechanism for Project workers, and have respective requirements incorporated into contractor ESMFs/ESCOPs.</p>	<p><i>Grievance mechanism operational prior engaging Project workers and maintained throughout Project implementation.</i></p>	<p>PEA</p>
ESS 3: RESOURCE EFFICIENCY AND POLLUTION PREVENTION AND MANAGEMENT		
<p>3.1 RESOURCE EFFICIENCY AND POLLUTION PREVENTION AND MANAGEMENT</p> <p>Based on the ESMF, implement ESMF/ESCOP measures and actions to assess and manage specific risks and impacts related to resource efficiency and pollution, for example regarding waste management, use of natural fertilizers and biological insect control (no use of pesticides or agrochemicals allowed) in nurseries. Non-hazardous wastes such as polybags from nurseries or solid wastes, such as cement, stones, gravel that may get accumulated at construction sites of sub-projects, but will be recovered and disposed in environmentally safe and sound manners.</p>	<p><i>Throughout Project implementation.</i></p>	<p>PEA</p>
ESS 4: COMMUNITY HEALTH AND SAFETY		
<p>4.1 COMMUNITY HEALTH AND SAFETY</p> <p>Based on the ESMF, implement ESMF/ESCOP measures and actions to assess and manage specific risks and impacts related to community health and safety.</p>	<p><i>Throughout Project implementation.</i></p>	<p>PEA</p>

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MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBILITY
<p>4.2 GENDER</p> <p>Based on the ESMF, implement ESMF/ESOP measures to avoid and manage specific risks and impacts related to Gender-Based Violence (GBV) in civic works.</p> <p>In addition, mainstream gender considerations into all community engagement and planning activities in order to promote gender equality and women's empowerment in the community-level decision-making processes of the Project and ensure their contribution and considerations to the establishment of VICs.</p>	<p><i>Throughout Project implementation.</i></p> <p><i>Throughout Project implementation.</i></p>	<p>PEA</p> <p>PEA</p>
<p>4.3 CONFLICT SENSITIVITY</p> <p>Avoid any locations with significant land or forest resource conflict by applying the selection criteria defined during the inception phase.</p>	<p><i>Throughout Project implementation.</i></p>	<p>PEA</p>
ESS 5: LAND ACQUISITION, RESTRICTIONS ON LAND USE AND INVOLUNTARY RESETTLEMENT		
<p>5.1 PARTICIPATORY LAND USE PLANNING, AGREEMENTS ON LAND ACCESS AND USE RESTRICTIONS FOR FOREST PROTECTION AND WATERSHED MANAGEMENT</p> <p>The project will neither acquire land under eminent domain nor involve the compulsory physical resettlement of households. Instead, any land use and access restrictions for forest protection and watershed management as well as allocations of land will be decided, negotiated and agreed in a participatory manner by the villages themselves. Based on the CEPF and its accompanying FPIC Guideline measures will be implemented to ensure the inclusive and participatory community engagement and planning when establishing the VICs and facilitation of VLUP, VP/WMP and related agreements on forest protection, watershed management as well as corresponding land access and use restrictions and livelihood restoration.</p> <p>All CEPF measures will be led by Community/Village Facilitators and will be supported by the E&S consultants of the PIC.</p>	<p><i>Throughout Project implementation.</i></p> <p><i>Throughout Project implementation.</i></p>	<p>PEA</p> <p>PEA</p>
<p>5.2 LIVELIHOOD RESTORATION</p>	<p><i>Throughout Project implementation.</i></p>	<p>PEA</p>

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MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBILITY
<p>Any losses of livelihoods from land based economic activities which may result from land use planning will be addressed in line with the CEPF by providing adequate household- and/or community-level livelihood restoration measures commensurate to the livelihood losses as part of the VP/MWP and based on the identification of negatively impacted households through the PRA/VLUP. Particular attention will be paid to establish alternative low impact livelihoods that could materialize quickly.</p> <p>Demonstrate through respective impact monitoring efforts that project affected people have a) received all compensatory and livelihood restoration measures as stipulated by the CEPF, and b) been provided with adequate opportunity to reestablish their livelihoods to pre-displacement levels.</p>	<p><i>Throughout Project implementation.</i></p>	<p>PEA</p>
<p>5.3</p> <p>LAND TENURE SECURITY</p> <p>Although the project is envisioned to be implemented on land that completely belongs to the participating communities/traditional institutions, the complexity of the existing land tenure system, where ownership rights are often overlapping between traditional, non-codified (governed by customary practices and village conventions) and non-traditional but codified tenure (e.g., Autonomous District Council, ADC), may make it difficult in certain situations to establish if the land is privately/governmentally owned or belongs to the community. Therefore, careful assessments of the land tenure situation as well as intensive community engagement are required when developing and agreeing on VLUPs that would then serve as a basis for codified VPs/MWPs.</p> <p>In addition, an Memorandum of Understanding (MoU) between the PEA and every participating community may be established to safeguard that the project does not inadvertently compromise existing legitimate rights or have other unintended consequences, e.g. through the conversion of community lands into state land due to increased forest coverage, but instead provide land tenure security to participating communities that will be maintained beyond the project.</p>	<p><i>Throughout Project implementation.</i></p> <p><i>To be confirmed during the inception phase and, if found relevant, to be applied throughout Project implementation.</i></p>	<p>PEA</p>
<p>ESS 6: BIODIVERSITY CONSERVATION AND SUSTAINABLE MANAGEMENT OF LIVING NATURAL RESOURCES</p>		
<p>6.1</p> <p>BIODIVERSITY RISKS AND IMPACTS</p> <p>In line with ESMF requirements appropriate management of biodiversity risks will include site assessments prior to plot selection, ESMPs or ESCOPs for construction and small civil works as well as guarantees for sustaining environmental flows in river beds and avoiding impacts related to wildlife and flora. Supply of construction material from riverbeds will not be permitted.</p>	<p><i>Throughout Project implementation.</i></p>	<p>PEA</p>

MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBILITY
ESS 7: INDIGENOUS PEOPLES/SUB-SAHARAN AFRICAN HISTORICALLY UNDERSERVED TRADITIONAL LOCAL COMMUNITIES		
<p>7.1 FREE PRIOR AND INFORMED CONSENT (FPIC)</p> <p>As the Project will be implemented in Meghalaya where 90% of the population belongs to Scheduled Tribes all villages will be required to ascertain their FPIC to the commencement of any activity under the project and throughout the process of establishing VP/MWP, VLUPs, and related agreements on forest protection and watershed management. Based on the CEPP and the FPIC Guideline the inclusive and voluntary engagement and decision-making processes of the project as well as institutional arrangements for grievance redress will be ascertained at the village level throughout the entire community planning and engagement process to ensure the full inclusion of all relevant village members. This process will start from the first contact of communities and is then maintained throughout project implementation.</p> <p>The FPIC process will be led by Community/Village Facilitators and will be supported by the E&S Specialists of the PIC in order to ensure that communities are free to make their own decisions regarding the project and are not forced or coerced into making decisions that they are not in agreement with.</p>	<p><i>Throughout Project implementation.</i></p> <p><i>Throughout Project implementation.</i></p>	<p>PEA</p> <p>PEA</p>
ESS 8: CULTURAL HERITAGE		
<p>8.1 CHANCE FINDS</p> <p>Although the project does not intend to affect any known Physical Cultural Resources (PCRs) chance find procedures will be incorporated into ESMPs/ESCOPs in order to avoid any impacts on historical, cultural, and/or religious sites within project areas.</p>	<p><i>Throughout Project implementation.</i></p>	<p>PEA</p>
ESS 10: STAKEHOLDER ENGAGEMENT AND INFORMATION DISCLOSURE		
<p>10.1 STAKEHOLDER ENGAGEMENT PLAN PREPARATION AND IMPLEMENTATION</p>	<p><i>Throughout Project implementation.</i></p>	<p>PEA</p>

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MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBILITY
<p>The project will apply a community-based approach and implement all forest management activities through a fully participatory consultation process in line with FPIC requirements. As such all villages will be approached in the spirit of honest and constructive collaboration. Based on the CEPP and the FPIC Guideline the socially inclusive and participatory engagement of all communities and adherence to FPIC principles will be ensured throughout project implementation.</p> <p>In case deemed necessary by PEA/PIC and KfW, a stand-alone Stakeholder Engagement Plan (SEP) will have to be developed and implemented to ensure that all relevant stakeholder apart from the participating villages are appropriately informed and consulted.</p>	<p>If relevant, submit SEP to KfW for review and approval at the end of the inception phase and then implement it throughout Project implementation.</p>	<p>PEA</p>
<p>10.2 GRIEVANCE REDRESS MECHANISM (GRM)</p> <p>Based on the CEPP, a project-level GRM will be established to receive and resolve any complaints and grievances at the central/PEA-level.</p> <p>In addition, and based on the CEPP, community level-GRMs will be set up in each participating community (probably governed by VICs) to receive and resolve any complaints and grievances at the community level.</p>	<p>By end of the inception phase and maintained throughout implementation;</p> <p>Prior to VLUP development and maintained throughout Project implementation;</p>	<p>PEA</p> <p>PEA</p>
CAPACITY SUPPORT (TRAINING)		
<p>CS1 TRAINING TO BE PROVIDED AND TARGETED GROUPS</p> <p>Training shall be provided by the national and international E&S consultants of the PIC on the following topics and to the following target groups:</p> <ul style="list-style-type: none"> ▪ PEA Staff and the E&S focal point within PEA: On ESMF, CEPP and FPIC implementation. This training shall also include filling out E&S Screening Checklists, developing ESMFs/ESCOPs for project activities and implementing FPIC procedures, including the GRM; ▪ Village/Community Facilitators: On applying the FPIC Guideline and facilitating the community engagement and planning processes in line with CEPP requirements; ▪ Firefighters: On SOP implementation regarding forest fire management and control; ▪ VICs: On CEPP/FPIC implementation; 	<p>During inception phase and throughout Project implementation</p> <p>During Project implementation</p> <p>During Project implementation</p> <p>During Project implementation</p> <p>During Project implementation</p>	<p>PIC</p> <p>PIC</p> <p>PIC</p> <p>PIC</p> <p>PIC</p>

Procurement Plan Model

(Version No. _____, dated _____)

Serial No.	Procurement No. 1	Type 2	Short Description of Contract Content 3	Estimated Contract Amount 4	Source of Funds 5	Tender Procedure 6	Stages 7	Tender Documents 8	Review by KfW 9	ESHS risk level 10	Estimated Tender Publication	Comments 11
1												
2												
3												
4												
...												

Agreement(s):List of other procurement related general arrangements or exceptions, if any.

1: KfW's Procurement No. for the respective Tender Process to be provided by KfW's procurement manager; "n/a" if not yet available.
 2: "C" for Consulting Services, "W" for Works, "G" for Goods, "P" for Plant and "NC" for Non-Consulting Services.
 3: Short description of the Consulting Services, Works, Goods, Plant or Non-Consulting Services.
 4: To be completed in the currency of the underlying Funding Agreement with KfW.
 5: Share (in %) of the Contract financed by KfW, through the PEA's own funds and/or other financing institutions.
 6: "ICB" for International Competitive Bidding, "NCB" for National Competitive Bidding, "PQ" for Price Quotation and "DA" for Direct Award.
 7: "1" for Single-stage Selection or "2" for Two-Stage Selection
 8: Institution whose standardized Tender Documents are used. Generally, KfW's standardized Tender Documents shall be used.
 9: "F" for full review or "S" for simplified review.
 10: "B" for Level 1/basic, "E" for Level 2/elevated, "H" for Level 3/high or "n/a" if not applicable and "NE". If an ESIA is not yet available. The level reflects the ESHS category of the specific Consulting Services, Works, Goods, Plant or Non-Consulting Services to be procured, but not the ESHS classification of the whole Project.
 11: Documentation of any further explanation or procedural agreements (e.g. One- or Two-Envelope procedure, Evaluation Method).

Content and Form of Reporting to KfW

The following table of content shall be used as an orientation for semi-annual reporting as defined under section 4, reporting and other provisions. The reporting shall be made in a critical, focused and compact manner. Risks for achieving project results and mitigation measures shall be mentioned and discussed. The reports shall not be submitted later than six weeks after the end of the given period.

1. **Executive Summary**
 - *A summary of all relevant reporting topics (not more than one page)*
2. **Developments, activities and project achievements of the period under review**
 - 2.1 Sectoral developments
 - e.g. relevant developments on state or union level and information on other externally funded projects in the sector.
 - 2.2 Implementation of activities and outputs as agreed (see Annex 1)
 - 2.3 Cost and finance, including contribution
 - Update of cost and financing plan, level of expenditures and disbursements
 - 2.4 Time schedule
 - Is implementation in time and as per agreed time schedule?
 - 2.5 Environmental, Social and Health & Safety Compliance, security risks
3. **Current situation of target group / beneficiaries**
4. **Outcome of regular meetings (e.g. Governing Council)**
5. **PMU – Project management – Staffing situation**
6. **Status / Achievement of Outcomes and Outputs including status of indicators (see Annex 1)**
7. **Risk and need for action**

ANNEX 8: TEMPLATE FOR REPORTING ON ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY (ESHS) PERFORMANCE AND COMPLIANCE FOR "GREEN SECTOR" PROJECTS, SUCH AS IN NATURE CONSERVATION, FOREST LANDSCAPE RESTORATION AND NATURAL RESOURCE MANAGEMENT

Introduction:

As for all KfW-financed projects Environmental, Social, Health and Safety (ESHS) performance and compliance is required to be monitored, reported and evaluated (MRE) during all stages of the project cycle with the main objective of ensuring that supported activities comply with the Relevant Standards and requirements laid out in the project's respective environmental and social safeguard instruments as well as the Separate Agreement. This template shall be used for the periodical MRE of the project and should be filled out and annexed to the regular technical progress reports. While this template presents the minimum information to be included from an ESHS perspective, it is to be considered generic and requires amendments according to the impact indicators and requirements stemming from the respective safeguard instruments that have been developed for the project. The template is to be completed by the responsible party for ESHS matters.

There might be questions that are not applicable to the specific project and others where further information will be necessary to complete. Please, indicate which sections are not relevant.

Please use as much space as needed and replace/delete all italic descriptions in the respective rows as these are only for illustrative purposes. The space provided in the table should not be a limit. Add rows if needed, and attach relevant documents and photos (with cross-reference indicated).

PROJECT BASIC INFORMATION		
Project Title:		
Project Location (Country/Province):		
Project Objective:		
Project Executing Agency (PEA):		
Report Date:		
Please provide contact details of the responsible person(s) completing this questionnaire for further communication:		
Position:	Name:	Email Address:

PROJECT STATUS REGARDING THE IMPLEMENTATION/MANAGEMENT OF ESHS MEASURES	
Reporting Period:	<i>Please state month and year (from / to)</i>

Current Project Phase:	
Budget spent:	
Budget spent on ESHS matters:	
Implementing Agents:	
Nature of Sources:	<i>Please list all different sources of information used to compile this report, including participatory/ community monitoring results etc.</i>

HUMAN RESOURCES MANAGEMENT / EMPLOYEES	
Total number of permanent project employees currently in the project:	<i>Change since last report:</i>
Number of casual/temporary employees, including community workers, currently and contractually engaged in the project:	<i>Change since last report:</i>
Number of employees contractually engaged through third parties (e.g. local institutions, NGOs, other organizations, subcontractors, etc.) in the project:	<i>Change since last report:</i>
Number of female employees engaged (permanent/temporary) in the project:	<i>Change since last report:</i>
Number of staff in charge of the project's ESHS performance and compliance (e.g. ESHS Manager, Stakeholder Relations Manager, Livelihood Development Specialist, Security Advisor, Land Use Planner, Foresters etc.):	<i>Change since last report:</i>

PROJECT ACTIVITIES AND STATUS
Please describe the main ESHS-related activities and measures that have taken place during the reporting period (including maps for illustrative purposes), any changes to the scope of the project, any significant changes applied to safeguard instruments as well as any potential changes which may become relevant in the upcoming reporting period, all compared to the initial project proposal (new activities, changes to the target areas etc.). The summary can be in form of bullet points.

ASSESSMENT AND MANAGEMENT OF ESHS IMPACTS	
ESHS Risk Category as of KfW Sustainability Guideline:	<input type="checkbox"/> A <input type="checkbox"/> B+ <input type="checkbox"/> B <input type="checkbox"/> C
Please list the applicable Safeguard Instruments (e.g. Environmental and Social Management Framework (ESMF), Process Framework (PF), Community Planning and Engagement	

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Framework (CEPF), Resettlement Policy Framework (RPF), Indigenous Peoples Planning Framework (IPPF), and corresponding sub-plans, such as Environmental and Social Management Plans (ESMP), Environmental and Social Codes of Practice (ESCOP), Livelihood Restoration Plans (LRP), Resettlement Action Plans (RAP), Indigenous Peoples Plans (IPP) or any other safeguard instrument applied or to be applied as a result of the impacts identified during the respective reporting period.

In addition, please briefly describe the key objectives and measures of these Safeguard Instruments in bullet points and how they are aligned with the technical approach of the Project.

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OVERVIEW – DESCRIPTION OF RELEVANT ESHS ISSUES

This chapter is to provide an overview of the most relevant ESHS findings encountered during the reporting period:

Please consider the following aspects for each of the ESHS topics:

- What were the ESHS impacts (positive and negative) encountered during the reporting period?
- What mitigation measures haven been taken to address any of the encountered negative impacts?
- Were there any challenges when implementing these measures and what was done to overcome these during the reporting period or is foreseen to be done for the next reporting period?

Topic:	Identified Findings / Issues etc.
General E&S Management	<i>Please describe the general E&S management approach applied during the reporting period for identifying, assessing, avoiding, reducing and managing ESHS risks and impacts and how this approach was aligned with the overall project implementation.</i>
Labour & Working Conditions / Trainings	<i>Please describe the occupational health and safety (OHS) risks and impacts encountered during the reporting period as well as implemented mitigation measures (for project staff, contractors and community workers), please refer to the different relevant activities and the corresponding sites in the project areas to illustrate risks.</i>
Resources & Pollution	<i>Please describe any pollution risks resulting from project activities encountered during the reporting period as well as implemented mitigation measures (e.g. pollution due to poor use of agrochemicals, pesticides, fertilizers or contamination of soils through poor waste management practices etc.).</i>

OVERVIEW – DESCRIPTION OF RELEVANT ESHS ISSUES	
Community Health & Safety	<i>Please describe the risks and impacts in relation to community health and safety (H&S) encountered during the reporting period as well as implemented mitigation measures (including risks in relation to security and human rights aspects in the context of law enforcement, Gender-Based Violence (GBV), human wildlife conflict (HWC), as appropriate).</i>
Access and Use Restrictions / Land Acquisition / Resettlement	<i>Please describe the risks and impacts which occurred in the course of activities related to land acquisition, physical resettlement as well as in regard to restrictions on access and use of land and natural resources encountered during the reporting period and the corresponding mitigation measures taken, with a focus on vulnerable groups (e.g. the poor, landless, female headed households, people with physical disabilities, children etc.).</i>
Biodiversity & Natural Resources	<i>Please list the risks and impacts in relation to biodiversity, natural resources (flora and fauna) as well as ecosystem services encountered during the reporting period and the mitigation measures implemented,</i>
Indigenous Peoples	<i>Please describe the risks and impacts from activities undertaken during the reporting period in relation to indigenous peoples, ethnic minorities or underserved traditional local communities and the mitigation measures taken (e.g. FPIC protocols).</i>
Cultural Heritage	<i>Please list the risks and impacts from activities during the reporting period in relation to tangible and intangible cultural heritage as well as the mitigation measures implemented.</i>
Stakeholder Engagement / Grievance Management	<i>Please list the risks and impacts from activities during the reporting period as well as the mitigation measures implemented in relation to stakeholder engagement (information disclosure, consultation, negotiation), social inclusion and empowerment of socially discriminated or marginalized groups as well how grievance have been addressed.</i>

ESHs CAPACITY BUILDING AND TRAINING
Summarize any ESHs related capacity building or training provided to project staff or communities, incl. any activities in this regard that are foreseen to be provided during the next reporting period.

EXTERNAL ESHS CHECKS

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Have there been any ESHS checks or inspections conducted by local authorities or regulatory bodies during the reporting period?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<i>If yes, please also indicated date of the check and implementing party:</i>
Have there been any ESHS non-compliance(s) of national law or any other regulations reported during/after the check?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<i>If yes, please describe the nature of non-compliance(s) and any corrective actions:</i>

SERIOUS INCIDENTS AND ACCIDENTS
<p>Summarize any unplanned or uncontrolled serious incident and accident with a materially adverse effect on staff, community members or the environment within the Project's Area of Influence (Aol) or an event that had the potential to have material or immaterial adverse effects on the Project execution, or gives rise to potential liabilities or reputational risks that could jeopardize the achievement of the Project's overall objectives as encountered during the reporting period. The summary should be based on the detailed "Serious Incident Reporting Template" as annexed to the project's Separate Agreement as well as in the respective ToR of the Consultancy Services and include information on corrective actions taken in order to remedy the effects of the incident and prevent reoccurrence. grievance and complaints and what is foreseen to address outstanding issues.</p>

GRIEVANCE MANAGEMENT
<p>Summarize any grievance or complaint received during the reporting period as well as the status on resolution.</p> <ul style="list-style-type: none"> • Workers complaints and grievances (e.g. related to labour/accommodation conditions) and their resolution; • Community/third party grievances, any ESHS issues-related legal action/litigation against the project as well as their resolution.
<p>Please provide information on how successful the implementation of the measures taken were to resolve the described grievance and complaints and what is foreseen to address outstanding issues.</p>

LESSONS LEARNED
<p>If there have been lessons learned in regards to ESHS risks and impacts as well as their management during the reporting period, please describe them briefly.</p>

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OUTLOOK

Please describe recommendations for ESHS-related adaptive management and actions to be foreseen by the project for the next reporting period (planned activities and results).
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Annex 9: Serious Incident Reporting Template in the context of nature conservation and natural resource management Projects

As part of the reporting requirements stipulated in the Separate Agreement, the PEA has committed to inform and report to KfW on all Serious Incidents (SI) resulting from or in the context of the Project.

In this context, any SI must be reported immediately after the incident occurred to KfW. Given the time it may take to prepare a full SI report, the PEA is requested to provide an immediate email (within 72h) to KfW as an initial notification while the complete report is being prepared. The full SI report shall be submitted no later than 10 work days after first notification. For detailed reporting this SI Reporting Template shall be used.

Definition of SI

A SI shall be defined as any unplanned or uncontrolled event with a materially adverse effect on workers, community members or the environment within the Project's Area of Influence (AoI) or an event that has the potential to have material or immaterial adverse effects on the Project execution, or gives rise to potential liabilities or reputational risks that could jeopardize the achievement of the Project's overall objectives.

SI could encompass one or more of the following aspects:

- Health and safety of Project workers (including on-site subcontractors/suppliers/community workers), such as workplace accidents which result in serious injuries or death, discovery of child or forced labour in the Project context including the supply chain, kidnapping of Project staff, grievances on serious Occupational Health and Safety-related incidents etc.;
- Health and safety as well as livelihood conditions of adjacent communities, such as serious injuries, death or substantial loss of assets (e.g., livestock) due to human wildlife conflicts, accidents in relation to infrastructure established or equipment provided in the Project context (e.g., drowning in canals or water reservoirs), involvement in traffic accidents caused by Project related activities, exposure to hazardous substances, grievances on serious Community Health and Safety-incidents etc.;
- Threats to the social cohesion of communities caused by the project, such as violent unrest and protests, disputes with local communities and Project personnel, intra- or intercommunal conflicts etc.;
- Human rights violations in the conduct of anti-poaching and/or law enforcement activities which result in death, serious injuries or substantial damage to/confiscation or loss of community or private property, torture in custody, other forms of violence involving Project personnel, contractors/subcontractors and/or members of state security agents(police, gendarmerie, military etc.) related to Project activities etc.;
- Forced evictions from territories of protected areas or from other sites related to the Project and which results in demolition of permanent or temporary shelter and assets etc.;

- Discrimination of local communities rights in relation to restrictions on traditional lands, territories, resources or cultural heritage, but in particular regarding indigenous peoples' rights due to the infringement of the Free, Prior and Informed Consent (FPIC) Principle etc.;
- Gender-based violence associated with personnel employed or engaged by the Project executing entity or through third parties, such as sexual exploitation, sexual abuse, or sexual harassment, physical violence against women etc.;
- Environmental risks due to unintended Project consequences which result in serious environmental contamination, destruction or degradation of forests, habitats and natural resources (air, water, soil) etc.;
- Legal non-compliances, such as breach of national environmental and social laws, violation of international treaties or threatened legal actions to be filed against the PI/EA or Project members, resulting in fines or court action;
- Reputational risks to all involved actors, such as negative media coverage, NGO accusations or any other activity that could result in substantial adverse attention of outside parties including media/press reports.

Full SI Reporting

The Full SI Reporting shall provide answers to the following questions: *What happened? How did it happen? Why did it happen? What needs to be corrected? What will be done as corrective actions, when and by whom?*

Full SI Reporting will comprise in each case

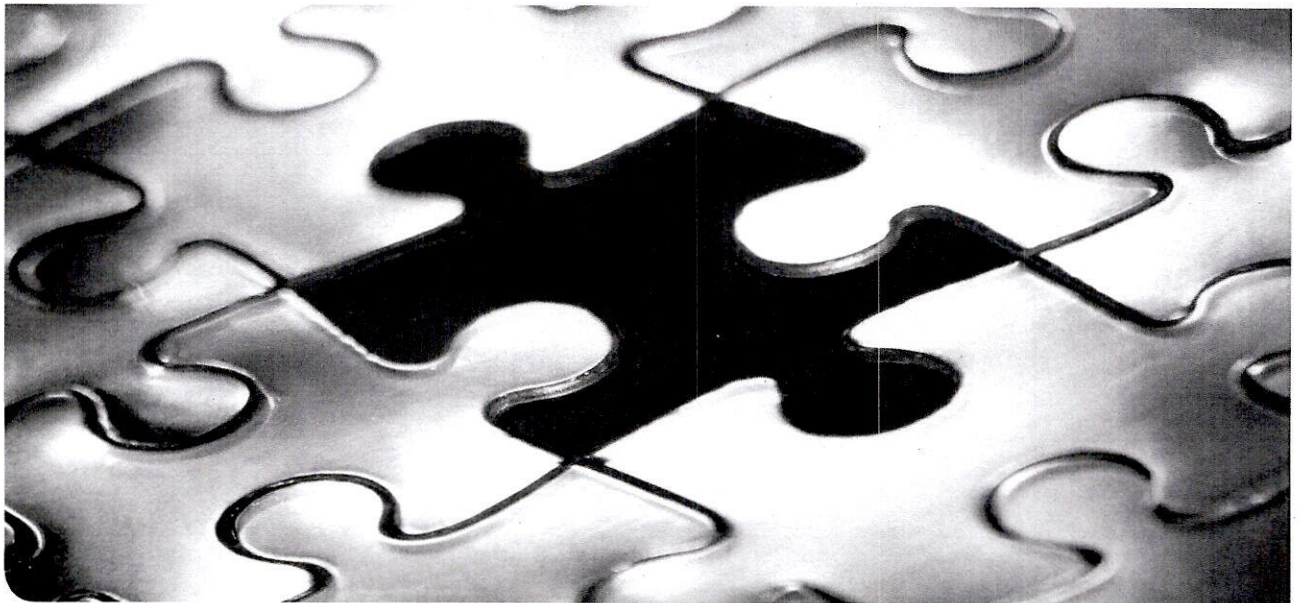
- i. a description of the nature of the SI and its on-site and off-site effects;
- ii. a root-cause analysis of the SI, including specifications on roles and responsibilities; procedures in place as well as potential management failings; and
- iii. details of any immediate response and ongoing corrective actions in order to remedy the effects of the SI and prevent reoccurrence, including regulation of potential liabilities.

Information provided should be clear, unambiguous, and factual (i.e. free from interpretation). Any gaps in the information provided should be highlighted and addressed in the investigation.

Information on SI case closure

The PEA shall keep KfW informed about any progress in respect of remedial actions as well as any open issues/conflicts with regard to the incident that would require further clarification (e.g. complaints/grievances by the victims' families etc.) through regular updates.

General Information			
Project name, country, region			
Name of Grantee			
Name of the entity submitting the information			
Name of main person(s)/organizations/companies involved in causing the Incident			
Name of the alleged victim(s), their age, sex, and place of residence, and in cases involving a group or community as much information as possible			
Details about the Incident			
Date and time of the Incident (approximate, if exact details are unknown)			
Location of the Incident (approximate, if exact details are unknown)			
Type of Incident	<i>Health and Safety of Workers</i> <input type="checkbox"/>	<i>Indigenous Peoples' rights</i> <input type="checkbox"/>	
	<i>Community Health and Safety</i> <input type="checkbox"/>	<i>Gender-based Violence</i> <input type="checkbox"/>	
	<i>Social Cohesion</i> <input type="checkbox"/>	<i>Stability of the Environment</i> <input type="checkbox"/>	
	<i>Human Rights</i> <input type="checkbox"/>	<i>Legal Compliance</i> <input type="checkbox"/>	
	<i>Forced Evictions</i> <input type="checkbox"/>	<i>Reputational Risk</i> <input type="checkbox"/>	
Detailed chronological description of the Incident and its circumstances (attach photos)			
Root Cause Analysis			
Detailed description of key causal factors, including outside factors or potential management failings and identification of absent/inadequate/failed/unused management and control measures (e.g., non-compliances with E&S measures or standards)			
Specification of roles and responsibilities relevant to the Incident, including the involvement of authorities			
Description of any reaction to the Incident by the victims, involved families or communities as well as local/national/international media			
Methods applied for conducting the root cause analysis, (e.g., interviews, document reviews, site visits, police reports etc.)			
Immediate Response and Corrective Actions			
Description of immediate response and related responsibilities, such as person(s) taken to hospital, police informed, national authorities involved etc.			
Description of corrective actions, next steps and related responsibilities to prevent the Incident from happening again and/or follow up to close the case or proceed with further investigations(include short action table with responsibilities and schedule)			
Incident Report Approval			
	Position	Name	Date
Prepared by			
Approved by (Senior Management)			



● KfW Development Bank

»» Guidelines for Procurement

Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partners

Document version January 2019
1. update as of January 2021

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KFW

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PREFACE

Financial Cooperation as part of German Development Cooperation is implemented by KfW Development Bank (KfW) as a public financial institution. Its function is to finance investments in economic and social infrastructure, poverty alleviation, environmental protection and the conservation of natural resources by providing loans on favourable terms and grants as well as complementary assistance and training measures. On behalf of the German Government and its Ministries (the Federal Ministry for Economic Cooperation and Development (BMZ), the Federal Foreign Office (AA) and others), KfW provides funding to its partners. In addition to full funding by KfW, projects may be financed in full or in part by a mandator, such as the European Union.

Sustainability with respect to economic, ecologic and social matters is an overarching objective in Financial Cooperation. KfW is committed to ensuring during preparation, design, implementation and operation of the underlying projects and programmes that this objective is met, and that funding is used for the intended purpose. Therefore, all parties involved shall comply with the principles of competition, fairness, transparency, confidentiality, economic efficiency and sustainability during the procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services (in each case as defined below).

The purpose of these Guidelines is to specify KfW's requirements for procurement and contracting and to set out in detail the scope of monitoring and reviews undertaken by KfW. These Guidelines are part of the Funding Agreement (as defined below) between KfW and its partners.

Version: January 2021

Revisions to previous Version (January 2019):

- Correction of typos, unclear or inconsistent formulations
- Clarification as to the application of simplified / post review (1.6.4, 1.6.5)
- Threshold for international competitive bidding for Goods increased to EUR 1 Mio. (2.1.1)
- Adaptation of the minimum submission period for price quotations (2.4.10)
- Clarification as to the exclusivity of Key Experts added (2.5.3)
- Cause for cancellation of a Tender Process added (2.5.15 (5))
- Wording as to weighted evaluation shortened (3.4.1) and defined more precisely (Annex 4)
- Need for definition of responsiveness added (4.4.3)
- Procurement Plan: exemplary contents of table deleted, and definitions provided in the footnotes adapted (Annex 2)
- Clarification as to the signing of evaluation reports (Appendix 6)

Feedback on or questions about this document should be in writing to the following address:
FZ-Vergabemanagement@kfw.de

Definitions

Capitalized terms used in the Guidelines have the meaning ascribed to them in this Section

Appendix	Appendix to these Guidelines.
Applicant	Person who submitted an Application in a Tender Process.
Application	Set of documents submitted by an Applicant in order to prove eligibility and qualification to perform the Contract.
Award of Contract	Legally binding signing of the Contract by the PEA and the Contractor or submission of a letter of formal acceptance of an Offer by the PEA, whichever is first.
Bid	Set of documents submitted by a Bidder in order to participate in a Tender Process for procurement of Non-Consulting Services, Works, Goods and Plant.
Bidder	Person who submitted an Offer in a Tender Process.
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.
Consulting Services	Services of an advisory/professional nature, including in particular the provision of expert/strategic advice, management services, coaching, policy development, implementation and communication services as well as advisory and project-related services, e.g. feasibility studies, project management, engineering services, supervision of construction, finance and accounting services, as well as training and organisational development.
Contract	Legally binding written agreement signed between the PEA and the Contractor for Consulting Services, Works, Goods, Plant, or Non-Consulting Services which is awarded to a Bidder at the end of a Tender Process.
Contractor	Bidder to whom the Contract has been awarded at the end of a Tender Process (e.g. consultant, works contractor or a supplier).
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.
Declaration of Undertaking ("DoU")	Statement of integrity, eligibility and social and environmental responsibility in the format attached as Appendix 1.

ESHS	Environment, Social (incl. issues of sexual exploitation and abuse and gender-based violence), Health and Safety (incl. of security for personnel).
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.
Funding Agreement	Agreement between (a) KfW and a borrower (in the case of a loan) or (b) KfW and a recipient (in the case of a grant), setting out the terms and conditions pursuant to which funding is made available by KfW.
Goods	Commodities, raw material, machinery, equipment, vehicles, and related services, e.g. transportation, insurance, installation, commissioning, training, and initial maintenance.
GTAI	Germany Trade and Investment GmbH ("GTAI"), the economic development agency of the Federal Republic of Germany which publishes diverse project and procurement related information on its website (www.gtai.de).
Guidelines	KfW's Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non Consulting Services in Financial Cooperation with Partner Countries.
Invitation to Bid ("ITB")	Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Bid.
Joint Venture ("JV")	Joint Venture (JV) means an association with or without a legal personality distinct from that of its members, of more than one Person where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the PEA for the performance of the Contract.
Key Expert	A single individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Contract and whose CV is taken into account during the evaluation.
Mandate	KfW may be given a Mandate to carry out project funding with financial means of a mandator (e.g. European Union) based on a mandate agreement.
Non-Consulting Services	Services which are not Consulting Services. Non-Consulting Services are normally bid and contracted on the basis of performance of measurable outputs, and for which performance standards can be clearly identified and consistently applied, e.g. topographical and geotechnical surveys, soil investigations, aerial surveys and remote sensing, drilling, aerial photography, satellite imagery, mapping and similar operations, transport and distribution of Goods.
No-Objection	KfW's written notice concerning PEA's documents and decisions in the preparation and execution of a Tender Process.
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.

Offer	General term for Proposals and Bids.
Partner Country	Country of the PEA, in which the KfW financed project/programme is implemented.
Person	Any natural or legal person or an association of two or more of the foregoing.
Plant	Equipped facilities, executed on the basis of design, supply, installation, commissioning, maintenance, modification and protection (e.g. power plant, sewage plant or a production facility).
Prequalification	First stage of a Two-Stage Selection to identify a number of eligible and qualified Applicants, who will then be invited to submit an Offer.
Procurement Plan	Document defined in Article 1.6.2 and set up by the PEA listing all Tender Processes for Contracts financed by KfW including key procurement related information.
Project Executing Agency ("PEA")	Entity in charge of implementing a project, which directly or indirectly receives funds made available under the Funding Agreement.
Proposal	Set of documents submitted by Bidders in order to participate in a Tender Process for procurement of Consulting Services.
Public Procurement Regulation	Law or legal regulation established by the state of the PEA for the public procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services in the Partner Country.
Request for Application ("RfA")	Set of documents inviting potential Applicants to submit their evidence of qualification to perform the Contract.
Request for Proposal ("RfP")	Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Proposal.
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.
Single-Stage Selection	Tender Process in which Persons submit their evidence of qualification together with their technical and financial Offer.
Standard Tender Documents ("SDO")	Set of Tender Documents issued by KfW for procurement in KfW-financed Projects.
Subcontractor	Person to whom the Contractor subcontracts parts of the Contract while remaining responsible to the PEA during the Contract performance.

Tender Document(s)	RfA, ITB and RfP, including Draft Contract as well as any clarification or amendment thereof during the Tender Process.
Tender Procedure	Type of procedure (e.g. ICB, NCB, LCB Direct Award) undertaken to approach Persons for the procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services.
Tender Process	Process carried out to procure Consulting Services, Works, Goods, Plant or Non-Consulting Services, starting with the publication of a tender notice/invitation to submit an Offer, as the case may be, and ending with Award of Contract or cancelation of a Tender Process.
Terms of Reference ("ToR")	Description of the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the PEA and the Contractor, and expected results and deliverables of a Consulting Services Contract.
Two-Stage Selection	Tender Process which is divided into two consecutive stages with an upstream Prequalification.
Works	Construction, repair, rehabilitation, deconstruction, restoration and maintenance of civil work structures as well as related services, e.g. transportation, installation, commissioning and training.

1. Scope of Application and Procurement Framework

1.1 Scope of Application of the Guidelines

These Guidelines apply to the procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services by the PEA in projects and programmes financed in full or in part by KfW¹. The Guidelines are applicable as well if funding is made available as follows:

- (1) In the case of mandates, unless where otherwise agreed with the provider of the mandate funds;
- (2) in the case of co-financing by KfW and one or several other development partners. However, in such an event, the Guidelines may be, in all or in part, replaced by rules set out jointly with other development partners prior to any procurement procedure²;
- (3) in the case of advanced tendering as per Article 1.6.7;
- (4) in the case of Contracts prefinanced by the PEA as per Article 1.6.8
- (5) in the case of indirect financing (e.g. budget support, policy-based lending, result-based lending or joint programs and funds including multi donor trust funds) as per Article 1.6.9;
- (6) in certain cases of funding to financial intermediaries (e.g. regional or national development banks or funds or specialised financial institutions) for the financing of economic or social infrastructure by final beneficiaries or borrowers as per Article 5.2. The Guidelines do not apply if the financial intermediary on-lends the funding to private borrowers which bear the financial risk.

In accordance with the Funding Agreement the Guidelines are binding on the PEA and any other entity officially in charge of procurement. The Guidelines apply without prejudice to the Public Procurement Regulation or other applicable local laws and regulations. In the case of a conflict between the Guidelines and the Public Procurement Regulation or other applicable local laws and regulations the PEA undertakes to inform KfW of its own accord and without undue delay in order to agree on provisions prior to any procurement that best preserve the basic principles as outlined in Article 1.2.1.

1.2 Fundamental Arrangements

1.2.1 Basic Principles

The Guidelines reflect the following basic principles which apply in KfW-financed procurement in accordance with internationally recognised practices:

Competition

Procurements must be carried out on the basis of competitive bidding. The procedures to be chosen for the procurement must address the maximum number of potential Applicants/Bidders.

Fairness

Potential Applicants/Bidders must be given equal opportunity to participate in a Tender Process. Unequal treatment of (potential) Applicants/Bidders must be prevented.

¹ The Guidelines apply analogically to KfW's procurement in its own name up to the applicable EU procurement thresholds.

² In particular, KfW is party to a partnership agreement with Agence Française de Développement (AFD) and the European Investment Bank (EIB) in the context of the Mutual Reliance Initiative (MRI).

Transparency

The Tender Process must be thoroughly documented. Such information must be made available to all parties involved in accordance with their respective right to information.

Confidentiality

All procurement-related information is confidential. Only the parties involved shall have access to the relevant information in accordance with their respective right to information.

Economic Efficiency and Sustainability

In the interest of an efficient use of funds provided by KfW the aim of procurements is to award Contracts to Bidders with the best cost-performance-ratio. The Tender Process must take into account criteria that reflect not only the price, but also quality as well as technical and sustainability aspects.

Proportionality

The basic principles set out above must be applied appropriately, taking into consideration all relevant circumstances and the balance of interests during the respective Tender Process.

1.2.2 Responsibility for Procurement and Contract Performance

The PEA is responsible for the preparation and implementation of the procurement and the administration and performance of the Contracts. The relationship between the PEA, Applicants/Bidders and Contractors is exclusively governed (i) by the Tender Documents, (ii) the respective Contract and (iii) applicable laws and regulations.

KfW provides financing pursuant to the terms and conditions as set out in the Funding Agreement. No contractual relationship shall be deemed to exist between KfW and any third party other than the PEA. Any communications which may be exchanged between any third party and KfW in the context of a project shall not constitute and shall not be interpreted as constituting any undertaking or a stipulation by KfW in favor of such a third party.

KfW may suspend or terminate a Funding Agreement without the Contractors being informed beforehand and without being entitled to claim from KfW any direct right to the amounts which, as the case may be, originate from such financing.

Unless otherwise agreed in the Funding Agreement, the PEA undertakes to retain and to make available to KfW (or an agent appointed by KfW) for a period of at least six (6) years from the date of fulfilment or termination of a Contracts records and documents relating to the Tender Process and the implementation of the Contract, in particular those documents which are subject to KfW's No-Objection as per Article 1.6.3.

1.2.3 Declaration of Undertaking

The PEA and the respective Contractor (including all JV partners and proposed or engaged Sub-contractors under the Contract) shall observe the highest standard of ethics and respect social and environmental standards during the Tender Process and the implementation of a Contract. The PEA shall require Applicants/Bidders to provide a duly signed Declaration of Undertaking as part of any Application, Offer and Contract (see Appendix 1). In the case of co-financing, the Declaration of Undertaking may be replaced by a specific statement approved by all co-financiers prior to any Tender Process.

Should the Declaration of Undertaking not be provided or should the declarations or commitments by Applicants, Bidders or Contractors included therein not be complied with, KfW is entitled to take further measures in accordance with Articles 1.3.2 and 1.3.3.

1.2.4 KfW's Standard Tender Documents

KfW provides a set of Standard Tender Documents (SDO) for use in Projects with financing from KfW and highly recommends the use thereof, especially in the case of ICB in order to ensure an efficient Tender Process in compliance with the Guidelines. If the PEA is obliged to use Tender Documents others than KfW's SDOs, the PEA has to ensure compliance with the provisions of the Guidelines in particular as per Article 1.5 and the general requirements included in Appendix 5.

1.3 Eligibility Criteria

1.3.1 Rules of Nationality and of Origin

Consulting Services, Works, Goods, Plant and Non-Consulting Services are eligible for KfW financing regardless of the country of origin of the Contractors (including Subcontractors and suppliers for the execution of the Contract), except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.

1.3.2 Grounds for Exclusion

Applicants/Bidders (including all members of a JV and proposed or engaged Subcontractors under the Contract) shall not be awarded a KfW-financed Contract if, on the date of submission of their Application/Offer or on the intended date of Award of Contract, they:

- (1) are bankrupt, being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;
- (2) have been:
 - a) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union and/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;
 - b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practise during any Tender Process or the performance of any Contract or for an irregularity affecting the EU's financial interests, unless they provide supporting information together with their DoU which shows that this conviction is not relevant in the context of the respective KfW financed Contract;
- (3) have been subject, within the last five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless (i) this termination was challenged and (ii) dispute resolution is still pending or has not confirmed a full settlement against them;
- (4) have not fulfilled applicable fiscal obligations regarding payments of taxes either the country where they are constituted or the PEA's country;
- (5) are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individuals available on the World Bank's website or any other multilateral development bank, and cannot demonstrate with supporting information along with their DoU that the exclusion is not relevant in the context of the relevant KfW financed Contract;
- (6) have given a misrepresentation in supplying the information requested by the PEA as condition to participation in the Tender Process of the relevant Contract.

The Procurement Documents issued by the PEA shall include the above exclusion criteria.

1.3.3 Conflict of Interest

Applicants/Bidders (including all members of a JV and proposed or engaged Subcontractors under the Contract) shall be disqualified in a procurement process if they:

- (1) are 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 has been fully resolved to the satisfaction of KfW;
- (2) have a business or a family relationship with a PEA's staff involved in the Procurement 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) are controlled by or control another Applicant or Bidder or are under common control with another Applicant or Bidder, receive from or grant subsidies directly or indirectly to another Applicant or Bidder, have the same legal representative as another Applicant or Bidder, maintain direct or indirect contacts with another Applicant or Bidder which allow

them to have or give access to information contained in the respective applications or Offers, to influence them or influence the decisions of the PEA;

- (4) in the case of a Tender Process for Consulting Services:
 - a) are engaged in a Consulting Services activity which, by its nature, may be in conflict with the assignment that they would carry out for the PEA;
 - b) were directly involved in drawing up the ToR or other relevant information for the Tender Process. This shall not apply to consultants who have produced preparatory studies for the project or who were involved in a preceding project phase, insofar as the information they prepared, especially feasibility studies, was made available to all Bidders and the preparation of the ToR was not part of the activity.
 - c) were during the last 12 months prior to publication of the Tender Process indirectly or directly linked to the project in question through employment as a staff member or advisor to the PEA and are or were able in this connection to influence the Award of Contract.
- (5) in the case of a Tender Processes for Goods, Works, Plant or Non-Consulting Services:
 - a) prepared or have been associated with a consultant who prepared specifications, drawings, calculations and other documentation for the Tender Process;
 - b) have been recruited or are proposed to be recruited, themselves or any of their affiliates, to carry out Works supervision or inspection for this Contract.
- (6) are state-owned entities, which are not able to provide evidence that (a) they are legally and financially autonomous and (b) they do operate under commercial laws and regulations.

1.4 Sanctionable Practice

The PEA and the Contractors (including all members of a JV and proposed or engaged Subcontractors under the Contract) must observe the highest standard of ethics during the Tender Process and the implementation of the Contract. To such end the PEA undertakes to:

- (1) include provisions in all Tender Documents and Contracts financed in whole or in part by KfW whereby the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that in the case of being awarded a Contract they will not engage in any Sanctionable Practice;
- (2) include in the Contracts, a provision pursuant to which the Contractors must permit KfW and in the case of financing by the European Union also to European institutions having competence under European 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 relating to the Tender Process and the performance of the Contract and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (1) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (2) declare misprocurement and exercise its rights on the ground of the Financing Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or execution of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

1.5 Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social (including issues of sexual exploitation and abuse and gender based violence), Health and Safety (ESHS) standards. As such KfW has elaborated Sustainability Guidelines³, in line with relevant World Bank/IFC standards, defines a common binding framework to incorporate ESHS standards into the planning, appraisal, implementation, and monitoring of projects financed by KfW.

To assist the PEA during the Tender Process and the implementation of individual Contracts, KfW provides SDOs for ICB procedures which include the relevant ESHS requirements, which need to be adapted to the specific ESHS risks of the individual Contract. The relevant results of an environmental and social impact assessment (ESIA), an environmental and social management or commitment plan (ESMP/ESCP) or any other document dealing with ESHS risk mitigation in the respective project elaborated during project preparation, shall be taken into account in the preparation of the Tender Documents⁴.

If the PEA is obliged to use other Tender Documents than the SDOs, the PEA has to ensure compliance with the ESHS requirements contained therein by integrating the respective ESHS requirements with project specific adaptations into its own Tender Documents.

The PEA ensures that Contractors undertake in the respective Contract to:

- (1) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items for the Contract comply with international environmental and labour standards, consistent with applicable laws and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organization⁵ (ILO) and international environmental treaties; and
- (2) implement any environmental and social risk mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan/framework (ESMP/ESMF) 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.

The above-mentioned undertakings by Applicants, Bidders and Contractors are part of the Declaration of Undertaking as per Appendix 1.

1.6 Monitoring and Review by KfW

1.6.1 General

KfW monitors compliance of the Tender Processes with the provisions of the Guidelines and provides No-Objection as outlined below. A No-Objection by KfW shall not relieve the PEA from its contractual obligations under the Funding Agreement.

1.6.2 Procurement Plan

The PEA is required to establish as part of the Funding Agreement a Procurement Plan and implement it accordingly. The Procurement Plan shall identify as far as possible the respective Tender Processes for all KfW-financed Contracts. The initial Procurement Plan shall cover the whole project period and provide details for at least the first 18 months as of the Funding Agreement date. The Procurement Plan shall be reviewed and, if necessary, revised thereafter annually and shall be submitted timely to KfW for No-Objection of the revised version. The Procurement Plan template is enclosed in Appendix 2.

³ For further details please see KfW's Sustainability Guidelines on https://www.kfw-entwicklungsbank.de/PDF/Download-Center/PDF-Dokumente-Richtlinien/Nachhaltigkeitsrichtlinie_EN.pdf

⁴ This applies to projects/programmes appraised after January, 1st 2019 only

⁵ In the 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.

1.6.3 No-Objection - Prior Review

For Tender Processes above the ICB thresholds as per Article 2.1.1 prior review by KfW as outlined below is mandatory. Before publication or notification to third parties, and preferably before any communication for approval to a national regulatory or supervisory public procurement entity, the PEA shall submit to KfW the documents below as far as applicable in the respective Tender Process. KfW issues No-Objection notices if the proposed documents and decisions comply with the Guidelines:

- (1) Tender Notice(s) (specimen see Appendix 3);
- (2) Request for Application, including evaluation details (specimen see Appendix 5);
- (3) evaluation report of Prequalification, including opening minutes (specimen see Appendix 6);
- (4) Request for Proposal or Invitation to Bid, including evaluation method and criteria-(specimen see Appendix 5);
- (5) evaluation report of Offers, including opening minutes; in the case of separate evaluation of the technical and financial Offer, the technical evaluation report shall be sent to KfW for No-Objection before opening of the financial Offers (specimen see Appendix 6);
- (6) if applicable, request for pre-award discussions with the next ranked Bidder and for cancellation of the Tender Process with appropriate justification and proposal for further action (details see Article 2.5.15);
- (7) prior to Award of Contract, the draft Contract (including the Declaration of Undertaking); and
- (8) if applicable, prior to its signature, any subsequent Contract amendments.

If standardised Tender Documents are used for several similar Tender Processes throughout a project, KfW's individual No-Objections to the documents listed above under (1), (2) and (4) may be replaced by one common No-Objection to a standardised version of the respective Tender Documents.

1.6.4 No-Objection - Simplified Review

For Tender Processes below the ICB threshold KfW may agree on a simplified review instead of prior review as per Article 1.6.3 if KfW is satisfied with the applicable tender documents and modalities.

In a simplified review KfW provides No-Objection to the Tender Process upon submission of the draft Contract. In the case of serial procurement using the same Tender Documents and Contract specimen KfW may, after review and No-Objection to the first Tender Process, agree to replace the No-Objection by regular procurement audits or reviews.

1.6.5 No-Objection - Post Review

KfW does not provide No-Objection based on a post review of the Tender Process after Award of Contract except for special financing modalities (e.g. disposition fund, prefinanced contracts as per Article 1.6.8).

1.6.6 Renewed No-Objection

Amendments, modifications or clarifications to the documents or decisions as per Articles 1.6.2. to 1.6.5. taking place after KfW's No-Objection to it require KfW's renewed No-Objection if they have significant implications on the project budget, the cost estimate of the Contract, on competition, the agreed technical overall concept, the terms of an assignment or the time schedule of the Tender Process or the implementation of the Contract.

1.6.7 Advance Tendering

Advance tendering means that the PEA initiates the Tender Process prior to the finalisation of the underlying Funding Agreement. If KfW has agreed upon a written request to advance tendering, KfW will issue provisional No-Objections. The No-Objections shall become effective if and only when the respective Funding Agreement enters into force, it being understood that such provisional No-Objection may under no circumstances be understood to constitute a

commitment by KfW to finance the Contract, which remains strictly conditional upon the signing of the Funding Agreement.

1.6.8 Prefinanced Contracts

In certain cases, the PEA may have awarded a Contract and financed it in whole or in part without any involvement by KfW beforehand. KfW may agree to finance or reimburse the PEA for payments made under such a Contract. In such a case the PEA is required to demonstrate to the satisfaction of KfW that the Contract to be financed or reimbursed has been procured in compliance with the basic principles as outlined in Article 1.2.1 of the Guidelines. The PEA shall further provide a formal statement on the absence of any cases of Sanctionable Practice during the Tender Process or the performance of the Contract as well as on the eligibility of the Contractor under the Guidelines. In the event that during the Tender Process complaints have been made or during Contract execution claims by the Contractor have been made, KfW's funding shall only be granted if the PEA provides written evidence that such complaints have been handled to the full satisfaction of KfW and that Contractor's claims are reasonable.

1.6.9 Indirect Financing

In addition to the financing of direct investments in projects or programmes in which individual contractual content (e.g. Consulting Services, Works, Plant, Goods, Non-Consulting Services) is procured, KfW supports other forms of indirect funding for infrastructure and non-infrastructure programmes (e.g. budget support, policy-based lending, result-based lending or joint programs and funds including multi donor trust funds). Under these forms of funding the transfer of funds is linked to the achievement of pre-defined goals or disbursement-linked indicators. The funds thus transferred are managed in accordance with the budgetary procedures of the partner country and/or the PEA generally without monitoring of individual Tender Processes.

Unless otherwise agreed, a fiduciary review of the procedures including the procurement system of the partner country and/or, the procedures and the capacities of the PEA by KfW take place prior to the signing of the Funding Agreement on the basis of the basic principles as outlined in Article 1.2.1 of these Guidelines. An overall positive result of this review is a precondition for indirect financing. Depending on the nature of the operation and the outcome of the review KfW may request the PEA to implement remedial actions and/or may intensify its monitoring.

1.6.10 Sanctions by KfW for Misprocurement

Without prejudice to sanctions set out in Article 1.4. above in the case of an act of Sanctionable Practice, should the KfW reviews reveal at any time the non-compliance with the provisions of the Guidelines by the PEA, KfW is entitled to declare misprocurement and to exercise any of its rights under the Funding Agreement. Where appropriate KfW is entitled to cancel the part of the funds allocated to contracts which have not been procured in compliance with the provisions and is entitled to reimbursement or early repayment in full or in part.

For the avoidance of doubt, if a Contract is awarded following a No Objection, KfW is still entitled to declare misprocurement and to take the measures set out herein if it subsequently turns out that KfW's No-Objection was issued on the basis of incomplete, inaccurate or misleading information provided by the PEA, or that the terms and conditions of the Contract were modified without KfW's No-Objection.

2. General Provisions for the Tender Process

2.1 Tender Procedures

The following types of Tender Procedures - in descending order of their level of competition - are available:

- International Competitive Bidding (ICB)
- National Competitive Bidding (NCB)
- Limited Competitive Bidding (LCB)
- Price Quotation
- Direct Award

All Contracts with an estimated value above the thresholds as per Article 2.1.1. shall be subject to International Competitive Bidding as standard procedure unless exceptions as per Article 2.1.2 to 2.1.5 apply. In any case, a Tender Procedure with a higher level of competition than requested as per Article 2.1.2 until 2.1.5 may be applied at the PEA's discretion.

The choice of Tender Procedure shall be outlined in the Procurement Plan.

2.1.1 International Competitive Bidding

In the case of ICB, the Tender Notice is published internationally to attract international Persons to participate in the Tender Process. Contracts with an estimated value⁶ above the thresholds below (ICB thresholds) shall be subject to ICB:

- 5,000,000 EUR (five million Euro) for procurement of Works or Plant
- 1,000,000 EUR (one million Euro) for procurement of Goods; and
- 200,000 EUR (two hundred thousand Euro) for procurement of Consulting and Non-Consulting Services.

2.1.2 National Competitive Bidding

In the case of NCB, the Tender Notice is published nationally. However, international Persons shall not be excluded from participation. NCB may be chosen for estimated Contract values below the ICB thresholds and exceptionally in duly justified cases for estimated Contract values above the ICB thresholds, provided that

- (1) adequate competition in terms of quantity and quality on national level is expected and
- (2) the Contract is most likely not of interest on international level in view of the scope of the Contract and its implementation conditions (e.g. project size, logistical reasons, price level).

2.1.3 Limited Competitive Bidding

In the case of LCB, the Tender Process is restricted to a limited number of preselected, qualified Persons, which are invited to submit an Offer.

Not less than three qualified Persons shall be requested to submit an Offer. To this end, the PEA will present to KfW a list of the proposed Persons from which Offers will be solicited plus a cost estimate and will demonstrate their qualification for the envisaged activity i.e. overall experience, human resources, financial resources and expertise in relation to the subject of the Contract. Where insufficient information is available, Bidders shall be requested to submit such qualification details together with the Offers solicited.

⁶ Amounts are inclusive of any options and net of value added taxes (VAT). KfW might exceptionally agree to increased ICB thresholds in duly justified cases.

LCB may be chosen

- (1) for Contract amounts below the ICB thresholds if a NCB Tender Procedure would be inappropriate in view of the Contract amount and this is permitted by the Public Procurement Regulation or,
- (2) for Contract amounts above the ICB thresholds if only a very limited number of Persons is capable of meeting the requirements of the Contract content and this can be demonstrated by extensive market knowledge or,
- (3) a fair competition is unlikely in view of the respective market situation (e.g. profit versus non-profit organisations) independent of the Contract amount.

2.1.4 Price Quotation

In the case of Price Quotation, at least three preselected qualified Persons are requested to submit an Offer. The request for quotation shall specify the technical requirements, other relevant information and the evaluation method. The selection of the Contractor is generally based on the lowest price evaluation method.

Price Quotation may only be chosen for the procurement of highly standardised commercially obtainable off-the-shelf Goods and Non-Consulting Services, that do not require elaborated specifications/task descriptions by the PEA, nor elaborated technical Offers by the Bidders (e.g. standard vehicles, office supplies, standard computer hard- and software, transport and distribution of Goods, topographical survey, food supplies). The composition of the Bidders to be invited shall ensure a fair competition, i.e. preferably only local or only international Bidders.

2.1.5 Direct Award

In the case of Direct Award, only one preselected, qualified Person is invited to submit an Offer on the basis of a functional description, a specification or terms of reference, as the case may be, elaborated by the PEA.

The PEA shall verify the appropriateness and competitiveness of the Offer as well as the Contract to be concluded and demonstrate the qualification of the selected Bidder. The outcome of this verification procedure must be documented in writing.

Direct Award may be chosen in particular in the following cases:

- (1) Amendment of existing contracts, that means if
 - a) the total aggregate amount of the amendments is significantly lower than the initial Contract value (as a general rule less than 25 % of the initial Contract value), or the amendment does not justify a new competitive Tender Process, and
 - b) the nature and scope of the amendment does not result in a substantial modification of the initial Contract content;
- (2) In follow-on phases of a project, if all the following criteria are fulfilled
 - a) where attention was drawn to this potential follow-on phase in the precedent Tender Documents,
 - b) provided that the first Contract was awarded on a competitive basis,
 - c) the Contractor's performance in the previous phase is satisfactory, and
 - d) the specifications or the terms of reference are largely identical;
- (3) Following a cancellation of a Tender Process as per Article 2.5.15, provided
 - a) no fundamental changes have been made to the original terms and conditions of the Contract, and
 - b) a further competitive tender procedure is unlikely to produce appropriate results;
- (4) For reasons for extreme urgency,
 - a) brought about by unforeseeable events not attributable to the PEA (e.g. in the cases of natural disaster, crisis or conflict), and
 - b) where it is impossible to comply with the time limits set for the other procedures and laid down in Articles 2.4.10;

- (5) Unique selling point, that means, if due to a specific combination of expertise and experience required, technical reasons/features or the protection of exclusive rights (e.g. patent, copyright), the Contract can only be performed by a specific Person;
- (6) Contracts with an estimated Contract amount below 20,000 EUR (twenty thousand Euro).

2.2 Two-Stage and Single-Stage Selection

During a Tender Process in general Bidders are required to submit the following documents

- (1) Evidence of qualification
- (2) Technical part of an Offer and
- (3) Financial part of an Offer

either in a single stage or in two stages.

Two-Stage Selection

In a Two-Stage Selection the Tender Process is divided into two consecutive stages:

In the first stage, the Prequalification, Applicants are required on the basis of a Request for Application (RfA) to demonstrate their qualification in terms of experience, capacity and resources to perform the Contract. Applicants which fulfil the requirements as per RfA are considered prequalified.

In the second stage prequalified Applicants are invited to submit a technical and financial Offer.

Single-Stage Selection

In a Single-Stage Selection the Tender Process is conducted in one stage, which means Bidders submit their evidence of qualification together with the technical and financial Offer.

Apart from that, the same criteria as laid down for the Two-Stage Selection apply.

Selection Methods in different Tender Procedures

In the case of ICB and NCB both selection methods are applicable, and in the case of LCB, Price Quotation and Direct Award only the One-Stage Selection method applies.

For further details see Article 3.2 concerning selection methods for the procurement of Consulting Services, and Article 4.2 concerning selection methods for the procurement of Works, Goods, Plant and Non-Consulting Services.

2.3 One-/Two-Envelope Submission of Offers

The term one-/two-envelope submission refers to the way the technical and financial part of the Offer are submitted, either in one or in two separate envelopes. In a single stage selection without prior prequalification the technical part of the Offer includes the Bidder's evidence of qualification.

The submission form depends on the evaluation method as described in Article 3.4 and 4.4. Generally, one-envelope submission is adequate, if the evaluation is based on the lowest price. Two-envelope submission is required, if the Bidder's technical Offer is evaluated on a point-system. In such case, the technical Offer is opened and evaluated first while the financial Offer remains unopened which allows for an unbiased evaluation of the technical Offer. Upon finalisation of the technical evaluation the financial Offers of those Bidders who fulfilled the technical requirements indicated in the Tender Documents will be opened and evaluated further.

The financial Offers of the Bidders who did not fulfil the technical requirements remain unopened and shall be sent back to the Bidders or, if agreed upon, deleted in compliance with legal data protection requirements.

2.4 Preparation of the Tender Process

The following provisions shall be observed during the preparation of the Tender Process. The Tender Documents shall reflect the key information as of the latest version of the Procurement Plan.

2.4.1 Standard Tender Documents and Draft Contract

The PEA is encouraged, especially in the case of an ICB, to use the SDOs (see Article 1.2.4 and 1.5). If the PEA is obliged to use other Tender Documents the RfA, RfP and ITB shall at least include the items as per Appendix 5.

Tender Documents shall include a draft Contract or at least inform on the major contractual and commercial conditions (e.g. payment terms, required guarantees, applicable law, provisions for price adjustment, if any, defects liability period, force majeure), which adhere to the contractual provisions as per Appendix 7.

2.4.2 Standards and Technical Specifications, Brand Names

Standards and technical specifications shall be designed to ensure quality and performance of the contractual content while promoting the broadest possible competition. In the case of an ICB, the Tender Documents shall specify internationally accepted and widespread standards, e.g. ISO/IEC or EN based standards. If such international standards do not exist or are inappropriate, national standards may be specified. In all cases, the Tender Documents shall state that equipment, material, or workmanship meeting other standards that are at least substantially equivalent to the specified standards will also be accepted.

Specifications shall be based on relevant technical characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications shall be avoided. If it is justified to specify a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words 'or equivalent' shall be added after such a reference to permit the acceptance of Offers for Goods that have similar characteristics and performance at least substantially equivalent to those specified.

2.4.3 Registration and other Administrative Requirements

In the case of ICB the Tender Documents shall provide for foreign participants in Tender Process the possibility of submitting documentary evidence of an equivalent nature to those required in the PEA's country. The registration of an Applicant/Bidder or the presentation of administrative documentary evidence in the country in which the Contract is implemented may be a condition precedent to the Award of Contract (in such case, this shall be stipulated in the Tender Documents), but the absence of documentary evidence at the stage of Prequalification or Submission of an Offer should not lead to an automatic rejection of the Application/Offer.

2.4.4 Joint Ventures

Applicants/Bidders may form JVs with domestic and/or foreign Persons to enhance their qualifications and capabilities. A JV may be for the long term (independent of any particular Contract) or for a specific Contract. Joint Ventures of Applicants/Bidders without joint and several liability of the partners are not acceptable. Applicants/Bidders shall be free to select their JV partners.

2.4.5 Language

In the case of procurement under ICB Tender Documents and Offers shall be prepared in one of the following four international languages at the PEA's discretion: English, French, Spanish or Portuguese. If the national language is different from these international languages, the Tender Documents may also be published in the national language⁷ and Applicants/Bidders may be permitted to submit the documents in the national language in addition to the international language version. However, in the case of discrepancies, the text in the international language version of the documents shall prevail. The same applies to the Contract to be concluded and which shall be signed and binding in the international language only.

In the case of procurement under NCB, Tender Documents, Applications/Offers and the Contract to be concluded may be in the national language of the Partner Country only, if different from the

⁷ The PEA bears responsibility for the translation and, if applicable, the respect of the copyright.

four international languages. In such a case the PEA has the responsibility to furnish to KfW an accurate translation of documents subject to KfW's No-Objection in one of the four international languages, unless otherwise agreed.

2.4.6 Currencies

The Tender Documents shall specify the currencies of the Offers, preferably EUR or the currency of the Funding Agreement. The PEA may specify in the Tender Documents that the part of the Offer reflecting local costs (to be incurred in the PEA's country) can be priced in local currency.

For the purpose of Offer evaluation and comparison, the Tender Documents shall indicate an official source for the exchange rates and a reference date (usually prior to the deadline for the submission of bids or proposals) which shall be used to convert all Offers into one currency.

2.4.7 Taxes and Duties

The PEA shall inform Bidders in the Tender Documents on relevant regulations on local taxes and public duties in the Partner Country or if Contractors and its staff are exempted from local taxation. Only identifiable local taxes and public duties directly attributable to a Contract shall be considered. Taxes and duties to be paid outside the Partner Country by the Contractor and its staff are considered to be included in the overhead cost calculation.

In general, Bidders shall indicate in their Offer separately the provisional sums for taxes and duties to be paid in the Partner Country and these provisional sums shall not be considered in the financial evaluation.

The Contract concluded with the winning Bidder shall reflect the relevant provisions of the Tender Documents including the handling of taxes, the mode of payment and remuneration of local taxes and public duties as well as provisions for changes in the relevant national legislation after Contract Award (for details see Appendix 7).

2.4.8 Guarantees and Securities

Any advance payment by the PEA is conditional upon the Contractor submitting an advance payment guarantee for the same amount under terms accepted by the PEA and should not exceed twenty (20) percent of the Contract amount. The PEA may, however, in agreement with KfW, decide to waive this condition depending on the nature or the volume of the Contract and, subject to this being specified in the Tender Documents.

A bid security, a performance security and a retention money security in accordance with the usual business practice of the particular sector are generally required in the case of Works, Plant, Goods and Non-Consulting Services Contracts but generally not in the case of Consulting Services Contracts (details and specimen see Appendix 7 and 8).

2.4.9 Fees for Tender Documents

If a fee is charged for the Tender Documents, it shall be reasonable and reflect only the effective cost of their printing and delivery to prospective Applicants/Bidders.

2.4.10 Submission Deadlines

In order to allow Applicants/Bidders to carefully prepare their Application/Offer and to arrange the shipment in time, especially for international Applicants/Bidders, the minimum time periods for the submission of Applications and Offers in ICB Tender Procedures shall be as follows:

- (1) preparation of an Application (from the date of the publication of the latest tender notice until the Application submission deadline): minimum **30 calendar days**; and
- (2) preparation of a technical and financial Offer (from the date of the publication of the tender notice or the sending of the RfP/ITB to the Bidders or prequalified Applicants until the deadline for submission of Offers): minimum **45 calendar days**.

In the case of complex Contracts, the minimum time for the preparation of a technical and financial Offer shall be increased appropriately. In duly justified cases (e.g. intensive clarifications or amendments to Tender Documents) a prolongation of the submission period may be granted, however such an extension should not take place later than 10 calendar days before the submission deadline. Tender Documents shall be made available during the entire submission period.

Any reduction of the above-mentioned minimum time periods for the submission of Applications and Offers require KfW's prior No-Objection.

In the case of an NCB the relevant provisions of the Public Procurement Regulation applies, in the case of LCB the deadline for submission of Offers may be reduced appropriately, but should be no less than **20 calendar days**. Consequently, the deadline for clarification requests shall be adapted accordingly. For Price Quotation and Direct Award, the submission deadline shall be appropriate in relation to the contractual content.

Applications/Offer received after the submission deadline shall be rejected, unless late submission was due to events of force majeure (e.g. natural disasters, war). Late submission due to courier services and/or custom clearance shall not be considered as events of force majeure.

2.4.11 Domestic Preference

If applicable laws require the PEA to revert to domestic preference, KfW may agree to it, on the condition that

- (1) it is conducted in a fully transparent manner by applying a margin of preference for Goods produced locally, or for contractors for Works from the PEA's country, and that it is expressly provided for in the Tender Documents, and
- (2) it shall not lead to a de facto exclusion of foreign competition.

In any case, the domestic preference margin shall not exceed 15 % of the import price excluding taxes in the case of procurement of Goods or 7.5 % of the price in the case of procurement of Works and shall not be applicable to Consulting Services.

2.5 Execution of the Tender Process

The following provisions shall be observed during the execution of the Tender Process.

2.5.1 Publication of Tender Notice

In the case of ICB and NCB the PEA shall arrange a public tender notice, inviting Persons to participate in a Tender Process. The tender notice shall contain at least a brief summary of the tender content and timelines (see Appendix 3). The tender notice is regarded as the official start of a Tender Process.

Tender notices for ICB procedures are mandatorily to be published on the GTAI website, www.gtai.de, and on a national level in accordance with the applicable Public Procurement Regulations.

Tender notices for NCB procedures shall be published at national level in accordance with the applicable Public Procurement Regulations.

The publication of tender notices may be in electronic or printed form and be complemented by publication in specialised media. However, the publication of tender notices in different media shall be made at the same time and in no case prior to GTAI's publication.

LCB, Price Quotation and Direct Award procedures do not require the publication of a tender notice.

For the minimum content of a Tender Notice see Appendix 3.

2.5.2 Communications, Clarification of Tender Documents and Pre-Bid Meeting

Communications between the PEA and (potential) Applicants/Bidders during the different stages of the Tender Process shall be in writing⁸ and the PEA shall treat information relating the examination, clarification, and evaluation of Applications/Offer in such way as to avoid disclosure of their contents to any other (potential) Applicant/Bidder participating in the Tender Process, or any other party not authorised to have access to this type of information, until the PEA notifies

⁸ The term "in writing" means communicated or recorded in written form. It includes, e.g. mail, e-mail, fax or communication through an electronic procurement system (provided that the electronic system is accessible, secure, ensures integrity and confidentiality, and has sufficient audit trail features).

the outcome of the evaluation of Applications/Offer, in accordance with the procedures in the applicable Tender Documents.

Potential Applicants/Bidders may request clarifications to the Tender Documents prior to the deadline for clarification requests stated in the Tender Document. Requests shall be sent in writing to the PEA's address indicated in the Tender Documents. Any other enquiries or interventions by Applicants/Bidders are prohibited and will lead to the exclusion of the Applicant/Bidder.

The PEA's response to a request for clarification shall not disclose information which might give an unfair advantage. Any modification to issued Tender Documents shall be introduced in the form of an addendum to the Tender Documents. All clarifications and addenda of Tender Documents shall be in writing. They shall be sent simultaneously to each recipient of the original Tender Documents or published in the same medium as the tender notice in sufficient time to enable potential Applicants/Bidders to take appropriate action, which means no later than ten (10) calendar days prior to the submission deadline as per Article 2.4.10.

The Tender Documents may state that a pre-bid meeting and/or site-visit for all potential Bidders will be organised by the PEA during the bid submission period in order to obtain on-site information or for the inspection of the available documents. These meetings are exclusively intended to familiarise potential Bidders with the site conditions and the available working documents and shall under no circumstances provide any competitive advantages. The PEA shall keep a written record of such meetings.

2.5.3 One Application/Offer per Applicant/Bidder

Applicants/Bidders (including individual members of any JV) shall submit only one Application/Offer, either in their own name or as part of a JV in another Application/Offer. If an Applicant/Bidder, including any JV member, submits or participates in more than one Application/Offer, all Applications/Offer concerned shall be rejected.

Subcontractors may participate in the capacity as Subcontractor in more than one Application/Offer, unless competition would be adversely affected, and this is reflected in the Tender Documents. However, if a Subcontractor's qualification has been taken into account for the qualification of an Applicant this Subcontractor shall only participate in the respective Proposal. If a Subcontractor submits an Application/Offer in its own name, all Applications/Offer concerned shall be rejected.

Key Experts in Proposals for Consulting Services shall not participate in more than one Proposal, unless competition would be adversely affected, and this is reflected in the Tender Documents. In the case the same Key Expert⁹ appears in more than one Proposal, all Proposals concerned shall be rejected unless a bidder can demonstrate to have obtained the exclusive right of the respective Key Expert to include its curricula vitae in the proposal before the submission deadline has passed.

2.5.4 Opening of Applications/Offer

The opening of Applications/Offer shall in any case be conducted by a committee consisting of at least two independent members.

In the case of procurement of Works, Goods and Plant the opening of Applications/Offer shall be conducted in public in the presence of representatives of the Applicants/Bidders that wish to attend. Such a meeting shall be held very shortly after the deadline time for the submission of the Applications/Offer at the place and time specified in the Tender Documents. The opening shall take place regardless of the number of Applications/Offer received, provided that the Applications/Offer are received before end of the Application/Offer submission deadline.

When documents (evidence of qualification, technical and financial Offer) are to be submitted in separate envelopes with subsequent evaluation, an opening session shall take place for each envelope. The opening of the second envelope requires KfW's prior No-Objection to the evaluation result of the preceding envelope, unless otherwise agreed.

In the public opening session, the following shall be read aloud:

- the name of the Applicant/Bidder and

⁹ An individual (natural Person) which is not part of the regular staff ("freelancer") but engaged temporarily as Key Expert for the relevant Contract shall not be considered as Subcontractor in this context.

at the public opening of the financial Offers

- the price of the Offer,
- including any alternative Offers or discounts.

For each (public or non-public) opening session minutes shall be prepared and signed by all members of the committee, and optionally by the representatives of the Bidders that wish to do so.

2.5.5 Preliminary Examination of Applications/Offers

The preliminary examination is to verify if the Applicants/Bidders are eligible and if the Applications/Offers received are substantially complete as required by the Tender Documents before proceeding to the detailed evaluation. Applications/Offers from non-eligible Applicants/Bidders or that are not substantially complete shall be rejected. Applications/Offers shall not be rejected for minor technical or administrative nonconformities.

2.5.6 Evaluation of Evidence of Qualification

Following the preliminary examination, the next step in the evaluation of an Application/Offer is the Applicant's/Bidder's evidence of qualification. Depending on the nature of the Contract the evaluation of the qualification might be on a pass/fail basis and/or through a scoring system.

Qualification of Applicants/Bidders

The evaluation of the evidence of qualification focuses solely on the respective Applicant/Bidder and shall not take into account any qualifications of its subsidiaries, parent entities, affiliates or any other Person different from the Applicant/Bidder, unless they are associated in the form of a JV with joint and several liability. Exceptionally an Applicant/Bidder with insufficient financial track record (e.g. start-up or spin-off companies) can demonstrate its financial qualification by presenting a legally binding letter of comfort of a financially sound parent company (to be demonstrated).

Qualification of Subcontractors

The qualification of Subcontractors is usually not taken into account unless the Applicant explicitly requests for it. In such a case the Applicant is obliged to include the respective performance of the Subcontractor bindingly in the Offer as indicated in the Application.

Modifications after Submission of Application

In the case of Two-Stage Selection, prequalified Bidders shall request PEA's approval for any modification in their legal status or in the composition of a JV. Such approval shall not be rejected by the PEA unless the proposed modification would result in a deterioration of the position of the Bidder with respect to the initial qualification.

For further details on qualification and evaluation see Article 3.3 for procurement of Consulting Services, and Article 4.3 for procurement of Works and Plant.

2.5.7 Information and Publication of Prequalified Applicants

The PEA shall notify all Applicants in writing of the names of those Applicants who have been prequalified. In addition, those Applicants who have been disqualified will be informed separately.

In the case of an ICB and NCB the list of prequalified Applicants who will be invited to submit an Offer (prequalification-result notice), shall be published by the PEA after KfW's No-Objection to the prequalification evaluation report on GTAI's website, in the case of an ICB, and preferably in the same medium in which the original tender notice was published, in the case of an NCB.

For the minimum content of a Prequalification notice please see Appendix 3.

2.5.8 Evaluation of Offers

The evaluation criteria and methodology shall be appropriate in view of the type, nature, market conditions, and complexity of the Contract content as detailed in Articles 3.4 and 4.4. The evaluation of the Offers shall strictly follow the methods and criteria as specified in detail in the Tender Documents.

In the case of Two-Stage Selection, criteria evaluated in the Prequalification shall not be evaluated a second time. However, the PEA may request Bidders to confirm that their qualification as of their Application remains unchanged.

The technical evaluation of Proposals/Bids is to verify if and to which extent the Offer fulfils the technical requirements stipulated in the Tender Documents. Depending on the evaluation methodology the technical evaluation is on a pass/fail basis or on a point system.

The financial evaluation is to correct arithmetical errors, to verify if the offered technical content and the financial Offer correspond and for price adjustments due to missing items or due to the evaluation method to the extent specified in the Tender Documents.

Abnormally Low Bids

An abnormally low Bid is one in which the Offer price, in combination with other elements of the Offer, appears so low either in comparison with the PEA's estimate or with the average of competing Offer or in the case of Consulting Services with the estimated expert-month that it raises material concerns with the PEA as to the capability of the Bidder to perform the Contract for the offered price. The PEA shall ask for written clarifications and shall require detailed price breakdown from the Bidder concerned

The Offer in question shall be rejected in the absence of satisfactory answers from the Bidder to those requests for clarification or if the detailed price breakdown evidences one or several inconsistencies between the technical Offer and the price offered and therefore reasonable doubts persist as to whether the required Contract content can be provided at the price offered and if this is reasonably expected to pose a considerable risk to the performance of the Contract.

2.5.9 Clarification of Applications/Offer during Evaluation

To assist in the examination, evaluation, and comparison of the Applications/Offer, the PEA may, at its discretion, ask Applicants/Bidders for a clarification, given a reasonable time for a response. Any clarification submitted by an Applicant/Bidder that is not in response to a request by the PEA shall not be considered. The PEA's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Offer shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the PEA during the evaluation of the Offers, in accordance with the Tender Document.

2.5.10 Extension of Offer Validity

If an extension of the Offer validity period is necessary, this shall not lead to changes in the Offer prices. The extension entitles the Bidders to withdraw their Offers upon expiry of the original binding period without allowing the bid bond to be drawn. KfW reserves the right to refrain from financing if the Tender Process is unduly delayed.

2.5.11 Evaluation Report

The PEA's evaluation committee shall prepare and sign a detailed report on the evaluation of Applications/Offer with the minimum content and in the format as described in Appendix 6.

The PEA shall submit to KfW the evaluation report and award recommendation in a timely manner to permit KfW's comment to be issued before expiry of the validity period. KfW reserves the right to refrain from financing if the report is not submitted in due time.

2.5.12 Pre-Award Discussions

The PEA shall award the Contract during the Offer validity period to the Bidder who's Offer has been evaluated as responsive, lowest evaluated Bid or highest ranked Offer.

In exceptional cases, the procurement can give rise to discussions with the first ranked Bidder after final Offer evaluation prior to Award of Contract.

The Bidder shall not be required as a result of the pre-award discussions to provide additional Consulting Services, Works, Goods, Plant or Non-Consulting Services that are not set out in the Tender Documents or to modify its initial Offer as a condition to the Award of Contract nor to modify unit prices except for the correction of arithmetical or computational errors.

The pre-award discussions shall also determine the taxes and duties that shall be due locally (they may be estimated on a provisional basis in the financial Offer but are not to be evaluated)

and decide the manner in which they will be paid for, taking into account the provisions set out in the RfP/ITB.

The content of such pre-award discussions shall not be legally binding before the Award of Contract. It is highly recommended to integrate modifications resulting from such discussions to the relevant parts of the contractual documents (e.g. time schedule, Terms of Reference, specifications, price schedules, Contract) as far as possible, otherwise the signed minutes of pre-award discussions shall form part of the Contract.

In the case of failure, the PEA may enter into pre-award discussions with the next ranked Bidder, subject to prior No objection by KfW.

2.5.13 Information of Bidders and Award of Contract

Upon successful completion of the pre-award discussions, if any, the PEA shall inform all Bidders on the result of the Tender Process in writing and subsequently award the Contract to the successful Bidder.

The information sent to the Bidders shall contain the name and the Contract amount of the winning Bidder and, if relevant, the combined Offer scores of the winner and the respective Bidder.

2.5.14 Publication of the Result of the Tender Process

In the case of an ICB and NCB upon completion of the Tender Process the PEA shall publish the result of the Tender Process (award notice) on GTAI's website, in the case of an ICB, and preferably in the same medium in which the original tender notice was published, in the case of an NCB.

For the minimum content of the award notice please see Appendix 3.

2.5.15 Cancellation of a Tender Process

A Tender Process may be cancelled when

- (1) there has been a lack of competition, or
- (2) all Offers received are not substantially compliant with the requirements of the Tender Documents, or
- (3) none of the technical Proposals meet the minimum requirements, or
- (4) all the offered prices are substantially higher than the latest updated cost estimate or the available budget, or
- (5) the underlying fundamental conditions for the Tender Process have changed significantly prior to award of the Contract.

A lack of competition shall not be determined solely on the basis of the number of Offers received. Even when only one Offer is submitted, the Tender Procedure may be considered valid, if (i) the procurement was satisfactorily published, (ii) the qualification criteria were not unduly restrictive and (iii) prices are reasonable in comparison to market values.

If the PEA rejects all Offers, the PEA shall analyse the causes that led to this situation (inadequate publication, prequalification requirements, conditions and scope of Contract, design and specifications, scope of services, etc.) and remedy this before relaunching the RfP/ITB. The PEA shall not reject all Offers and relaunch a RfP/ITB using the same unmodified Tender Documents solely for the purpose of seeking lower prices.

If the rejection is due to non-compliance with the Tender Documents or technical requirements, the PEA should after thorough investigation adjust the Tender Documents or the technical requirements. In such case, the PEA may request new Offers from all of the initially prequalified Applicants if a Prequalification had taken place or those that submitted an Offer in response to the initial RfP or ITB.

If the price of the first ranked and compliant Offer significantly exceeds the latest cost estimate or the available budget, the PEA shall investigate the reasons for such overrun and envisage increasing the budget, if the increased prices are justifiable or re-launching the RfP/ITB as per the provisions above. Alternatively, the PEA may, enter into negotiations with the first ranked Bidder to seek to obtain a satisfactory Contract on the basis of a reduction of the scope of the Contract and/or a modification to the sharing of risks and responsibilities in order to reduce the Contract

price. This is only allowed when the modifications envisaged do not call into question the initial ranking of Offers following the evaluation.

The cancellation of a Tender Process and the subsequent steps require KfW's prior No-objection.

2.5.16 Publication of Tender Process Cancellation

In the case of an ICB and NCB upon cancellation of a Tender Process the PEA shall publish corresponding information (cancellation notice) on GTAI's website, in the case of an ICB, and preferably in the same medium in which the original tender notice was published, in the case of an NCB.

For the minimum content of the cancellation notice please see Appendix 3.

2.5.17 Debriefing

Unsuccessful Applicants or Bidders may make a written request to the PEA for a debriefing. The PEA shall provide a timely and meaningful debriefing to the Applicant/Bidder informing on major shortcomings and weaknesses of the Application, respectively on the Offer in relation to the winning Bidder. No additional information shall be disclosed, the debriefing shall not include point-by-point comparisons with other Applications/Bidder's Offers and information that is confidential.

2.6 Procurement Related Complaints

Applicants/Bidders who consider that actions or decisions by the PEA in the course of the Tender Process result in an unfair disadvantage may file a procurement related complaint. Unless the complaints mechanism in the Public Procurement Regulation provides otherwise, such a complaint shall be addressed in writing to the PEA, with copy to KfW, detailing the grounds for the complaint with reference to the applicable provisions in the Tender Documents or other applicable regulations. Upon receipt of such a complaint the PEA shall promptly handle the complaint and respond to the complainant in writing detailing the result of the complaint's handling. Should the handling of the complaint by the PEA not be possible within three (3) working days after the receipt of the complaint the PEA should at least acknowledge its receipt and respond to the complainant with the results of the complaint's handling within ten (10) working days from the acknowledgment of the receipt.

The PEA shall ensure that all complaints and its handling in a KfW financed Tender Process are brought to the knowledge of KfW for monitoring in due time. The award of a Contract shall not take place until all complaints have been handled adequately.

2.7 Electronic Procurement

The PEA may use an electronic system to distribute tender documents, provided that KfW is satisfied with its adequacy. If Tender Documents are distributed electronically, the electronic system shall be secure to avoid modifications to the Tender Documents and shall not restrict the access of Applicants and Bidders to the Tender Documents. The PEA may also use an electronic system permitting Applicants and Bidders to submit Applications and Offers by electronic means, provided KfW is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and integrity of Applications and Offers submitted, and employs acceptable management procedures to establish date and time of submission, and facilitate modification and withdrawal. The system used must also record access to the submitted application and offer documents. Access before the deadline for submission or to the financial offer prior to the release of the technical evaluation by KfW in the event of a two-envelope procedure must be excluded. All accesses/retrievals of the submitted application and offer documents must be listed as part of the opening protocol and submitted to the KfW.

The use of e-reverse-auctions as part of an e-procurement system shall be limited to highly standardised and unambiguously specified Goods or Non-Consulting Services if there is adequate competition among Persons and the lowest price only is considered for award.

3. Provisions for Procurement of Consulting Services

3.1 Tender Agents and Agency Contract

At the PEA's discretion or upon KfW's recommendation assistance from a specialised consultant (so-called tender agent) may be obtained for certain steps of the Tender Process. With the exception of the Award of Contract, the assistance may range from individual support to a complete delegation of the PEA's respective tasks and shall be agreed upon in the Contract between PEA and Tender Agent. The No-Objection provisions as set out in Article 1.6 apply unchanged.

In exceptional cases, KfW may assist the PEA in the Tender Process upon express request and based on an agency contract between PEA and KfW. If not agreed otherwise, such an agency contract encompasses the delegation of the entire Tender Process to a tender agent with KfW signing the Contract on behalf of the PEA.

3.2 Two-Stage Selection for Consulting Services

In the case of an ICB and in the case of an NCB above the thresholds as per Article 2.1.1 the Two-Stage Selection with Prequalification of Applicants is the standard selection procedure for the procurement of Consulting Services. A Single-Stage Selection is not recommended in such cases as the latter may result in a reduced number of Bidders due to the fact that the elaboration of an Offer comprising the evidence of qualification, a technical and financial Proposal represents a significant effort without increasing the likelihood of Award of Contract.

3.3 Pre-Qualification for Consulting Services

In order to establish the qualification of eligible Applicants to perform the Contract the following criteria shall be taken into account:

- (1) Overall financial situation and minimum turn-over in relation to the estimated Contract value;
- (2) Experience in implementing similar projects in the subject matter, in the relevant sector, function and role as per the requirements of the project (e.g. studies, surveys, design, tendering and contracting, technical/organisational/financial project management, ESHS, maintenance and operation, specialised technical/legal/management expertise), generally within the last five years;
- (3) Geographical experience in similar countries or environments;
- (4) Access to expertise relevant for the assignment, possibly supplemented with external resources and available own human resources and capacities, including backstopping capacities.

The qualification requirements shall be chosen in relation to the size and complexity of the Contract content.

Applications are considered responsive if they comply with all pass/fail-criteria and score at least 70 % of the total points. Only Applicants who submitted a responsive Application are considered as qualified to perform the Contract. A ranking of all qualified Applicants will be established based on their score and if not otherwise laid down in the Tender Documents, the five top ranked Applicants shall be invited to submit a Proposal in the second stage. Should the number of prequalified Applicants be below the predefined number as per Tender Documents the Tender Process may be continued with these prequalified Applicants.

For further details see Appendix 4 and KfW's SDOs¹⁰,

3.4 Evaluation Methods for Consulting Services

The following evaluation methods may be used for evaluation of Proposals, with Quality and Cost-Based Selection (QCBS) being the recommended standard method.

3.4.1 Quality and Cost-Based Selection (QCBS)

The two-envelope submission applies to QCBS.

Technical Evaluation

The technical evaluation shall focus on the proposed concept and methodology as well as on the proposed staff for the execution of the Contract as detailed in Appendix 4. Technical Proposals are considered responsive if they achieve at least the technical minimum score of 75 % of the total points for the technical Proposal. Non-responsive technical Proposals are rejected at this step.

Financial Evaluation

If payments are based on agreed hourly, daily, weekly, or monthly rates for staff and on reimbursable items using actual expenses and/or agreed unit prices (time-based Contract) as per RfP, the evaluation committee will (a) correct any computational or arithmetical errors and adjust the prices if they fail to reflect all inputs, which, in accordance with the RfP have to be indicated and priced separately, using the highest rates for the corresponding items indicated in the financial Proposals of competing Proposals.

In the case of a discrepancy between the technical and financial Proposals in indicating quantities of input, the technical Proposal prevails and the evaluation committee shall correct the quantification indicated in the financial Proposal so as to make it consistent with that indicated in the technical Proposal, apply the relevant unit price included in the financial Proposal to the corrected quantity, and correct the total Proposal cost.

If payments are linked to outputs/deliverables, such as studies, design services, elaboration of Tender Documents (lump-sum Contract) as per RfP, the consultant is deemed to have included all prices in the financial Proposal and therefore no price adjustments shall be made. The total price, net of taxes shall be considered as the offered price.

If the Contract combines time based and lump sum services, the evaluation shall apply these provisions accordingly.

Notwithstanding the above, the offered price may be adjusted for reimbursable items to allow for comparison, but only for such items explicitly requested to be offered in the RfP.

Weighting

The weighting should generally be 80% for the technical Proposal and 20% for the financial Proposal 4.

The overall score will be calculated by summing up the technical and financial score per Proposal and the Proposal selected for Award of Contract is the one that obtains the highest overall score as further detailed in Appendix 4.

3.4.2 Least Cost Based Selection (LCS)

The Contract is awarded to the lowest-priced, substantially responsive Proposal. A Proposal is considered responsive, if it complies with the minimum requirements as defined in the Tender Documents. This selection method may only be envisaged for standard, non-complex Consulting Services of limited cost (e.g. translation work).

¹⁰ For further details about the evaluation of qualification criteria see KfW's SDOs available at <https://www.kfw-entwicklungsbank.de/International-financing/KfW-Development-Bank/Publications-Videos/Publication-series/Guidelines-and-contracts/>

3.4.3 Quality Based Selection (QBS)

The two-envelope submission applies to QBS.

The QBS method may be used on exceptional basis for the procurement of Consulting Services which cannot be functionally described, are not yet marketable and require significant creative input by Bidders. This method may be used for complex projects or projects with major technical impacts, but in this case, caution is required as it carries a risk of technical overpricing and requires an extremely good knowledge of market prices on the part of the PEA in order to conduct the financial evaluation properly. It may also be used for the short-term recruitment of individual consultants with limited size, if the rates for such services are well known.

The Contract is awarded to the highest scored technical Proposal.

3.4.4 Fixed Budget Based Selection (FBS)

A maximum budget is indicated in the RfP and the highest scored technical Proposal is selected, provided that the price Proposal is within the budget. The maximum budget must be determined appropriately (neither overestimated nor underestimated on the basis of a detailed assessment of the expert-months/days required and of market prices). Subject to this important reservation, this method may be worthwhile, notably in the case of small studies and simple services.

3.5 Availability and Replacement of Proposed Key Staff before Award of Contract

With the submission of the Proposal the Bidder confirms the unrestricted availability of the proposed Key Experts in accordance with the requirements defined in the Tender Documents in the case of Award of Contract. After finalisation of the evaluation and before Award of Contract or any pre-award discussions, whichever is first, the PEA shall request the consultant proposed for Award of Contract to confirm the availability of the proposed Key Experts.

Should any of the proposed Key Experts during the initial Proposal validity period become unavailable for duly justified reasons beyond the control of the consultant (e.g. sickness or accident), the consultant shall propose an alternative expert with an equal or better qualification. If the replacement Key Expert's qualification is not equal or better than the qualification of the initial candidate, the Proposal shall be rejected.

If an extension of the Proposal validity period becomes necessary, Bidders shall be requested to confirm the availability of the Key Experts along with their response to the extension request by the PEA. At this stage Bidders shall be allowed to propose replacement Key Expert(s) without justification. The replacement Key Expert(s) shall have equal or better qualification otherwise the Proposal shall be rejected.

4. Provisions for Procurement of Works, Plant, Goods & Non-Consulting Services

4.1 Engagement of a Consultant

Planning, design, tendering, contracting and implementation supervision of Works, Plant and Goods Contracts requires considerable and frequently interdisciplinary expertise and absorbs significant resources. Therefore, KfW highly recommends the engagement of specialised and experienced consultants to assist the PEA during project preparation and implementation.

4.2 Single- and Two-Stage Selection

For Works and Plant Contracts, whether a Single or a Two-Stage Selection is applied depends on the nature and complexity of the assignment.

For Goods and Non-Consulting Service Contracts generally a Single-Stage Selection is appropriate.

In any case only Bidders with adequate qualification, experience and financial capacity in relation to the Contract content and volume shall be considered for the evaluation of Bids according to the provisions included in the Tender Documents.

4.3 (Pre-)Qualification for Works and Plant Contracts

In order to establish the qualification of eligible Applicants/Bidders to perform the Contract the following criteria shall be taken into account:

- (1) Overall financial situation and minimum turn-over in relation to the estimated Contract value, including pending litigation,
- (2) General and specific construction experience in implementing similar projects, generally within the last five years, and
- (3) Experience, capacity and handling of environmental, health and safety (ESHS) issues, with special focus on occupational health and safety (OHS) on site. Depending on the ESHS risks the Tender Documents shall include a minimum score/level to be achieved by Applicants/Bidders.

The qualification requirements shall be chosen in relation to the size and complexity of the Contract and shall not unduly limit the competition.

All Applicants/Bidders considered qualified will be invited to submit a Bid in the case of Two-Stage Selection, or their Bids will be considered further in the case of Single-Stage Selection.

4.4 Evaluation Methods for Works, Plant, Goods and Non-Consulting Services

4.4.1 Lowest Price Evaluation

When applying the lowest price evaluation method, the Contract will be awarded to the Bidder who is qualified to perform the Contract and whose financial Bid has been determined to be the responsive, lowest evaluated Bid (after correction of arithmetical errors) and is substantially responsive to the requirements contained in the Tender Documents.

This evaluation method is appropriate for Works Contracts for which a detailed design (including drawings, itemised bill of quantity and technical specifications) is provided in the Tender Documents. The lowest price evaluation method is also suitable for highly standardised off-the shelf Goods and Non-Consulting Services.

This method relies on the price as award criterion.

4.4.2 Bonus-Malus Adjusted Price Evaluation

This evaluation method is partly identical with the lowest price evaluation method. However, once the lowest evaluated price is determined this figure may be adjusted either by a factor below or above 1.0 or by a positive or negative price mark-up. The adjustment factor or the price adjustment is derived by comparing the values of technical parameters of major technical components offered by Bidders to reference values and calculate the adjustment accordingly as indicated in the Tender Document.

Such a method allows to take into account during the evaluation certain features or parameters of individual items of the Bid or the whole of it by charging such aspects financially with a bonus or a malus. For example, when purchasing power transformers or generators the Tender Documents may specify a target efficiency ratio and during Bid evaluation each percent above or below that value will be credited or charged by a certain fixed amount or a percentage of the Bid price.

The method of such a price adjustment and the reference values shall be clearly defined in the Tender Documents and should be limited to few important items whose features or parameters are easily verifiable and measurable.

The award criterion of this evaluation method is the lowest adjusted price.

4.4.3 Weighted Evaluation

In a weighted evaluation scheme, each of the technical and the financial Bids are evaluated separately and are attributed a score. The weighted score of both are added up to the combined score. The Bid with the highest evaluated combined score will be awarded the Contract.

The application of such an evaluation scheme is suitable in the cases where the PEA provides in the Tender Documents a functional description of the Contract content instead of a detailed design. Bidders elaborate and submit on this basis a technical Bid of their own which is evaluated strictly in accordance with the criteria published in the Tender Documents.

The evaluation procedure follows the steps as indicated for QCBS for consultants outlined in Article 3.4.1. The Tender Documents shall specify a minimum score for the technical Bid to be considered as technically responsive and shall include a precise definition of responsiveness. The weighting of the technical Bid should not exceed the weighting of the financial Bid.

4.4.4 Life Cycle Cost Evaluation (LCC)

The LCC evaluation method takes into account the cost occurring during the whole life-cycle of the Contract content (e.g. Works, Goods, etc.) such as:

- (1) Investment cost (e.g. the purchase price incl. all associated cost elements),
- (2) Operation and maintenance cost (e.g. energy, consumables, spare parts, repair),
- (3) End of life costs (e.g. for removal, disposal, recycling) and costs attributed to environmental externalities (e.g. emissions of greenhouse gases or pollutants), to be considered only in exceptional cases, if the local market provides reliable and verifiable cost figures (end of life cost) or if internationally recognised calculation methods are used (environmental cost).

This evaluation method may be used when the additional cost of (2) and, if applicable (3) over the specified life of the Contract content are estimated to be considerable in comparison with the initial investment cost (1) and may vary among different Bids due to different technical solutions proposed by Bidders. The Tender Documents shall clearly and in detail specify the calculation methods and parameters (e.g. calculation period, discount rate and other factors and parameters to be taken into account). The application of the LCC evaluation method requires highly qualified expertise for the elaboration of Tender Documents and Bid evaluation.

4.5 Alternative Bids

The Tender Documents may allow Bidders to submit alternative Bids, in order to minimise costs or permit technically attractive solutions. The Tender Documents shall, in such case, indicate clearly the evaluation method of such alternative Bids.

4.6 Discounts

A Bid may include an unconditional discount, which is always taken into account during the evaluation. The Bid shall indicate the manner in which the discount is to be applied.

If the Bid is divided into several lots, Bidders may also offer one or several conditional discounts in the case they would be awarded several lots. In such a case, this discount shall only be taken into consideration under the terms indicated in the Tender Documents and provided that all Bids, for all lots, are submitted and opened at the same time.

4.7 Transport and Insurance

Bidders shall submit their Bid according to the international rules established by the International Chamber of Commerce for the interpretation of commercial terms used for international trade

(Incoterms). The Bids shall preferably be requested on the basis of CIP (Carriage and Insurance Paid to a named place of destination) for Goods.

The Contract content shall be insured to an appropriate and customary extent against risks that may arise during transport and the implementation of the project. Its replacement or recovery by means of the insurance must be possible. The insurance policies should be established in the currency of the relevant Contract.

4.8 Force Account

Recourse to force account, that is the implementation of Works using the PEA's own personnel and equipment, may in certain cases be envisaged if it is the only available method, namely, but not exclusively, in the case of Works which cannot be quantified in advance, small and scattered Works (routine maintenance on an infrastructure network) or emergency Works, and is subject to KfW's prior consent.

To obtain KfW's prior consent, the PEA shall provide KfW with:

- (1) information justifying the use of force account,
- (2) information evidencing its capacity of performing the said work, and
- (3) the implementation schedule along with a breakdown of the estimated cost.

5. Procurement not subject to Public Procurement Regulations, Financial Intermediaries and Special Cases

5.1 Procurement not subject to Public Procurement Regulations

Certain PEAs may, due to their legal status, not be bound to the Public Procurement Regulations in the Partner Country (e.g. private banks and firms, privatised entities, NGOs, UN organisations). Subject to prior approval of KfW, the PEA may use their own internal procurement regulations or, in the absence thereof shall rely on the provisions of the Guidelines.

PEAs not subject to Public Procurement Regulations and having no internal procurement regulations may elaborate a project specific procurement manual, which presents the procedures they intend to apply for procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services.

If PEAs apply their existing or newly elaborated procurement regulations, they shall confirm that these comply with the basic principles of the Guidelines as outlined in Article 1.2.1 and reflect commercial state-of-the-art business practice in the relevant sector. In the case of a conflict between the Guidelines and the PEAs procurement regulations KfW and the PEA will agree on appropriate provisions prior to any procurement.

KfW reserves the right to request the PEA to publish tender notices as outlined in Article 2.5.1 especially for major Contracts above the ICB thresholds.

The No-Objection provisions as laid down in these Guidelines apply accordingly as agreed upon between PEA and KfW.

5.2 Financial Intermediaries

In certain cases, KfW's funding for infrastructure projects is provided via financial intermediaries to final beneficiaries who are subject to the Public Procurement Regulation due to their legal status (e.g. municipalities, state owned entities). In such cases KfW requires that the procurement procedures applied comply with the basic principles of the Guidelines as outlined in Article 1.2.1. Unless otherwise agreed in the Funding Agreement, the financial intermediary will monitor the

procurement by the final beneficiaries and subsequently report on it as part of its regular reporting procedures to KfW.

For procurement undertaken by the financial intermediary for its own needs (e.g. Consulting Services, Goods) the provisions of the Guidelines apply.

5.3 Specific Case of Concessions and Output Based Contracts

In the cases where KfW finances projects implemented under a public concession or in which the Contractor is paid for outputs (e.g. BOT models, auctions, least cost subsidy selection, supply of energy), the following applies:

- (1) If the concessionaire or Contractor has been selected following a fair and transparent competitive procedure which is acceptable to KfW the said concessionaire or Contractor may freely procure Works, Goods, Plant, No-Consulting Services or Consulting Services for the fulfillment of the Contract using its own procedures unless the Tender Documents for the Contract provide otherwise; or
- (2) If the selection of the concessionaire took place without competition the provisions of the Guidelines shall apply.

Appendices

Appendix 1 – Declaration of Undertaking

Reference name of the Application/Offer/Contract: ("Contract")¹¹

To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")¹² 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 applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the PEA's country;
 - 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/debar> 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 a condition of participation in the Tender.

¹¹ 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, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries".

¹² 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.

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 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 Organisation¹³ (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

¹³ 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.

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 agent 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 of¹⁴: _____

Signature:

Dated:

¹⁴ 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.

Appendix 2 – Procurement Plan

User's Guidance Notes for the Preparation of a Procurement Plan

Article 1.6.2 of the Guidelines requires the PEA to prepare a Procurement Plan which identifies for each Contract to be financed in whole or in part by KfW:

- Contract type (Consulting Services, Goods, Works, Plant or Non-Consulting Services) and content,
- estimated Contract amount and the source(s) of funds,
- envisaged Tender Procedure and Single- or Two Stage Selection,
- envisaged standardised Tender Documents,
- type of review required by KfW (full or simplified review),
- estimated ESHS classification (low, medium, high risk) per Contract as provisional indication at the time of first establishment of the procurement plan
- estimated date of tender publication or, in the case of limited competition, date of inviting firms to submit proposals.

For serial Contracts with similar content and procedures one single Contract might be included and explained in the comment column. In the case of programs for which no individual Contracts can be identified in advance, the Procurement Plan may include the envisaged Tender Procedures and possibly thresholds for different types and values of Contracts as far as possible. The application of simplified review requires KfW consent as per Article 1.6.4

The Procurement Plan shall be initially created at least for the first 18 months as of the date of the Funding Agreement (Version 1) and shall be updated thereafter when necessary, but at least on an annual basis. Updates, amendments or modifications of the Procurement Plan are subject to KfW's renewed No-Objection.

Along with the Procurement Plan the PEA shall provide KfW with the respective rational or explanations in order to document compliance with the Guidelines (e.g. justification in the case of a LCB or a Direct Award).

The Procurement Plan is an annex to a separate agreement to the Funding Agreement or directly to the Funding Agreement. An amendment to the Funding Agreement due to an update, amendment or modification of the Procurement Plan is necessary only, if they have significant implications on the Funding Agreement or imply significant increases of agreed budget items.

For the sake of clarity, KfW's No-Objection to changes in the Procurement Plan does not imply acceptance by KfW of the financing of new Contracts or the increased cost of Contracts unless such financing has been agreed upon by KfW as part of the cost and financing schedule in the Funding Agreement.

The establishment of a Procurement Plan is generally not required for prefinanced Contracts as per Article 1.6.8, for indirect financing as per Article 1.6.9 and funding through financial intermediaries as per Article 5.2.

Appendix 2 – Procurement Plan

(Version No. _____, dated _____)

Serial No.	Procurement No. ¹⁵	Type ¹⁶	Short Description of Contract Content	Estimated Contract Amount ¹⁷	Source of Funds ¹⁸	Tender Procedure ¹⁹	Stages ²⁰	Tender Documents ²¹	Review by KfW ²²	ESHS risk level ²³	Estimated Tender Publication	Comments ²⁴
1												
2												
3												
4												
...												

Additional agreement(s): *List of other procurement related general arrangements or exceptions, if any.*

15 KfW's Procurement No. for the respective Tender Process to be provided by KfW's procurement manager, "na" if not yet available.

16 "C" for Consulting Services, "W" for Works, "G" for Goods, "P" for Plant and "NC" for Non-Consulting Services. Incl. Contracts contracted beforehand, if any.

17 To be completed in the currency of the underlying Funding Agreement with KfW.

18 Share (in %) of the Contract financed by KfW, through the PEA's own funds and/or other financing institutions.

19 "ICB" for International Competitive Bidding, "NCB" for National Competitive Bidding, "LCB" for Limited Competitive Bidding, "O" for Price Quotation and "DA" for Direct Award.

20 "1" for Single-Stage Selection or "2" for Two-Stage Selection

21 Institution whose standardized Tender Documents are used. It is recommended to use KfW's Standard Tender Documents.

22 "F" for full review or "S" for simplified review.

23 Relevant for works and plant contracts and for goods contracts only if it contains significant construction works. "L" for low, "M" for medium, "H" for high ESHS risk classification or "na" if not applicable. The ESHS risk level of a specific Contract is not necessarily identical with the Environmental and Social risk category of the whole project/programme. The classification at project appraisal may be indicative and finalised when an ESMP is available but latest when preparing the Tender Documents for the Contract. See also KfW's Standard Tender Documents for further guidance.

24 Contract related explanation / procedural arrangements (e.g. justification for direct award, One-two-envelope, evaluation method, thresholds for Tender Procedures in programs).

Appendix 3 – Minimum Content of a Tender, PQ-Result, Contract Award and Cancellation Notice

Tender Notice

The PEA shall prepare a tender notice to be published as per Article 2.5.1 including at least the following information:

- Partner Country,
- name and address of the PEA,
- Application/Offer submission details (submission deadline, address, language, originals, copies, etc.),
- title of the project,
- title of the Contract/Lot being procured,
- KfW's procurement number of the Contract being procured,
- type of notice (Tender Notice, PQ-Result Notice, Award Notice, or Cancellation Notice),
- brief description of the project, the context, time schedule and further information,
- brief description of the Contract content to be procured, and
- address where the complete Tender Documents can be obtained.

Prequalification-Result Notice

In the case of Two-Stage Selection, the PEA shall prepare a PQ-result notice to be published as per Article 2.5.7 including at least the following information:

- list with name and country of prequalified Applicants, and
- reference to initial tender notice (including corrigenda, addenda if any), e.g. electronic link to initial tender notice or copy of initial tender notice.

Award Notice

The PEA shall prepare an award notice as per Article 2.5.14 including at least the following information:

- name and country of successful Contractor,
- start and end date of the Contract,
- Contract amount, and
- reference to initial tender notice, e.g. electronic link to initial notice or copy of initial notice.

Cancellation Notice

The PEA shall prepare a cancellation notice as per Article 2.5.16 including at least the following information:

- information about cancellation of Tender Process, and
- reference to initial tender notice, e.g. electronic link to initial notice or copy of initial notice.

Addenda/Corrigenda to Initial Notices

Any addenda/corrigenda to an initial notice shall be published in due time and in the same medium as the initial notice with a reference to the initial notice.

Appendix 4 – Evaluation Criteria for Procurement of Consulting Services

1. Pre-Qualification

To be qualified for a Consulting Services Contract under an ICB procedure Applicants shall demonstrate their qualification in terms of financial capacity, experience and resources in relation to the requirements of the tasks and risks.

The verification of the financial capacity of Applicants shall be the basis of audited income statements and/or balance sheets and take into account the annual turn-over and the profitability of at least the last three years. The annual turn-over should be three times the estimated annual payments received out of the Contract amount; the ratio might be reduced for short term assignments or increased for long-term assignments. Profitability may be demonstrated through a positive cash-flow (in average) and (indirectly) the availability of a credit line. Applicants which do not fulfil the requirements of the Request for Applications shall be rejected.

For verification of adequate experience and resources the following criteria and scoring system should be applied with appropriate project relevant modifications.

Qualification criteria	Scoring Range
1. Applicant's Experience	40–60
1.1 Experience in implementing similar projects <i>Description of the key features, reference projects shall demonstrate in order to be considered similar to the assignment. If applicable separate sub-criteria for ESHS requirements should be added here.</i>	25–35
1.2 Experience with working-conditions in developing and/or transition countries/in particular regions.	15–25
2. Applicant's Capabilities	40–60
2.1 Qualitative assessment of the Applicant's available Expertise <i>Assessment of the quality of the expertise, to which the Applicant has access to, possibly completed with external expertise for the execution of the assignment in relation to the project team profiles described in the prequalification request. If applicable separate sub-criteria for ESHS requirements should be added.</i>	25–35
2.2 Quantitative assessment of the Applicant's Human Resources Capacity <i>Assessment of the Applicants own human resources in relation to the required expertise as described in the prequalification document. If applicable separate sub-criteria for ESHS requirements should be added.</i>	10–20
3. Is the Application concise and related to the project?	5
Total Prequalification Score	100

It is strongly recommended that sub-criteria descriptions be made as detailed and specific as possible. No other sub-criteria are allowed during evaluation than the ones indicated in the prequalification document.

If the Consulting Services are dedicated to project design, tendering and implementation supervision services for Works or Plant Contracts with ESHS risks and no specialised ESHS consultant is engaged, candidates shall be required to demonstrate the ability and capacity to specify and design relevant mitigation and protective measures and to monitor its implementation on site in addition to the above-mentioned requirements. However, ESHS requirements shall be carefully and adequately designed to reflect the ESHS risks associated to the individual Contract under consideration.

In such cases a percentage between 10% and 25% of the qualification criteria 1.1, 2.1 and 2.2 shall be applied to such ESHS experience and capability of the Applicant. The qualification criteria and scheme above shall be adapted accordingly.

Only Applications scoring 70% or more of the total points will be considered as qualified for the Contract. However, if the number of prequalified Applicants exceeds a predefined number as specified in the RfA Applicants will be invited as per their ranking. The number of Applicants to be invited shall be at least five (5) but not more than eight (8). Should the number of prequalified Applicants be below the predefined number the Tender Process may continue with a reduced number of candidates, if i) the Tender Notice has been published widely and ii) the prequalification criteria have not been too ambitious. Otherwise the Tender Process should be cancelled, followed by a new Tender Process more widely published and/or with amended qualification criteria.

For projects with significant ESHS risks during implementation the prequalification document may specify that Applications which do not meet the minimum ESHS score (usually 70% of the total of the ESHS sub-criteria) shall be rejected, independent from the total score.

2. Evaluation of Proposals

The technical evaluation shall be based on the following criteria and point system. No additional criteria or sub-criteria than those indicated in the RFP shall be used for the evaluation of the technical Proposals.

1.	Concept and methodology		35	
1.1	Clarity and completeness of the tender	5		
1.2	Critical analysis of the project objectives and the Terms of Reference (TOR)	10		
1.3	Proposed concepts and methods <i>[If applicable add separate sub-criteria for ESHS requirements]</i>	20		
2.	Qualifications of proposed staff <i>[If applicable add separate sub-criteria for ESHS requirements to the team or individual team members]</i>		65	
2.1	Team leader/portfolio manager	30		
2.2	Other Key staff to be employed on the project	30		
2.3	Personnel in the home office who will monitor and control the team, and provide back-up services	5		
Total Technical Score			100	

The sub-criteria and point system indicated above are indicative. It is strongly recommended that sub-criteria descriptions be made as detailed and specific as possible. Depending on the nature of the assignment the distribution of points may vary from the one indicated above between 35 to 65 points for the staff proposal.

In the case the project structure does not foresee the assignment of a dedicated ESHS consultant during execution of Works/Plant Contracts by contractor(s) the implementation consultant will be required to oversee that ESHS requirements are adequately addressed and adhered to during project implementation. In line with the ESHS requirements during the prequalification phase, the evaluation of the consultant's concept and the proposed team shall take into account ESHS aspects accordingly.

In such a case a percentage between 10% and 25% of the score for concept and methodology (1.3) and for the proposed team (2.) shall be dedicated to ESHS). The Consultant shall be required to demonstrate which of the team member(s) are responsible for such ESHS issues. The evaluation criteria and scheme above shall be adapted accordingly.

For projects with significant ESHS risks during implementation the RfP may specify that technical Proposals which do not meet the minimum ESHS score (usually 70% of the total of the ESHS sub-criteria) shall be rejected, independent from the Total Technical Score.

The evaluation of the technical and the financial Proposals shall take place as detailed in Article 3.4.1. Upon conclusion of the technical evaluation the weighted technical score of those Proposals having achieved the technical minimum score shall be calculated as follows:

$PT = WT * T$, with

PT = weighted technical score (points) of the technical Proposal,

WT = weight (factor) of the technical Proposal

T = technical score (points) as per technical evaluation,

After evaluation of the relevant financial Proposals the financial score shall be calculated:

$PF = WF * (Co / C) * 100$ points, with

PF = weighted financial score (points) of the financial Proposal,

WF = weight (factor) of the financial proposal

Co = lowest evaluated price (monetary units) of all financial Proposals

C = evaluated price (monetary units) of the financial Proposal,

and finally, the overall score shall be calculated as follows:

$P = PF + PT$ and whereas $WT + WF = 1$.

Under Quality Cost based selection (QCBS) method the weightings should generally be 80% (WT = 0.8) for the technical Proposal and 20% (WF = 0.2) for the financial Proposal, under Fixed Budget Selection (FBS) and Quality Based Selection (QBS) methods the weighting of the technical proposal is 100 % (WT = 1). For Least Cost Selection (LCS) only the price is relevant for the ranking (WF = 1).

Appendix 5 – Minimum Content of Tender Documents

Request for Application

Requests for Application are to be used for Prequalification of Applicants in Tender Processes with Two-Stage Selection.

KfW provides SDOs for Prequalification for Consulting Services and for Works/Plant Contracts. If the PEA uses other Tender Documents for Prequalification, they shall not deviate in a substantive manner from the above mentioned documents and include the following minimum content:

- (1) General information about the PEA issuing the tender, source of funds and entity conducting the Tender Process including contact details;
- (2) description of the whole Prequalification process, including e.g. conditions of participation, format and list of documents to be submitted by Applicants, deadlines for clarification requests and Application submission, evaluation criteria and method;
- (3) short description of the Contract content
- (4) application forms, which reflect the eligibility and evaluation criteria and
- (5) KfW's Declaration of Undertaking.

Request for Proposal/Invitation to Bid

Requests for Proposal/Invitations to Bid are to be used for selection of Contractors in Tender Processes with Two-Stage or Single-Stage Selection.

KfW provides SDOs for the procurement of Consulting Services, Goods, Works, Small Works and Plant (design, supply installation). If the PEA uses other Tender Documents for selection of Contractors, they shall not deviate in a substantive manner from the above mentioned respective documents and include the following minimum content:

- (1) General information about the PEA issuing the tender, source of funds and entity conducting the Tender Process including contact details;
- (2) description of the whole Offer process, including e.g. conditions of participation, format and list of documents to be submitted by Bidders, deadlines for clarification requests and Offer submission, evaluation criteria and method;
- (3) (continued) eligibility criteria, (continued) qualification criteria and – in the case of Single-Stage Selection - evaluation method of the latter.
- (4) detailed Terms of Reference/technical specifications, including e.g. context of the project and ESHS requirements, expected outcomes of the Contract, respective responsibilities of the contracting parties and duration of the Contract;
- (5) draft Contract;
- (6) Forms or requirements for the preparation of the technical and financial Offer, which reflecting the specifies requirements
- (7) KfW's Declaration of Undertaking.

Appendix 6 – Minimum Content of Minutes of Application/Offer Opening and Evaluation Reports

The PEA shall provide KfW with a report of the opening (minutes of Application/Offer opening) and of the evaluation of Applications (Prequalification evaluation report) and Offers (Proposal/Bid evaluation report) as defined in the Guidelines.

These reports contain in general the following information and shall be provided for No-Objection in the format as requested by KfW:

Minutes of Application/Offer Opening

- (1) Names of persons in charge of Application/Offer opening (Application/Offer opening committee);
- (2) Names of other participants (e.g. representatives of Applicants/Bidders);
- (3) Date, time and venue of Offer opening;
- (4) Statement on the status of the envelopes:
 - timely or delayed delivery,
 - number of Application/Offer originals/copies,
 - envelope(s) sealed properly;
- (5) Short description of opening procedure:
 - Which envelope has been opened? Outer/inner envelope? Envelope containing qualification documents, technical Offer and/or financial Offer?
 - Which envelopes remain closed?
 - For financial Offer opening: price as per price sheet to be stated;
- (6) Date of preparation of the report and signature of all members of the Application/Offer opening committee.

For paperless e-procurement Tender Processes equivalent evidence of Offer opening needs to be provided.

Prequalification and Offer Evaluation Reports

On completion of the Application/Offer evaluation KfW is furnished with a detailed report on the evaluation and comparison of the Applications/Offer and with a substantiated recommendation for the invitation of prequalified Applicants (RfP/ITB) or Award of Contract, as the case may be, that must be coordinated with any government agencies of the Partner Country whose involvement may be required.

- (1) Introduction
 - Short information on project and Contract content;
 - Tender Procedure (e.g. ICB, NCB), Single- or Two-Stage Selection, One- or Two-Envelope Submission undertaken;
 - What/which stage/envelope is being evaluated in the present report (e.g. Prequalification evaluation, technical Offer evaluation, financial Offer evaluation, combined evaluation);
 - Names of persons in charge of Application/Offer evaluation (members of Application/Offer evaluation committee);
 - Start and end of Application/Offer submission period, including any extensions thereof with reasoning and proof of its publication;
 - Date and medium of publication of tender notice and in the case of Two-Stage Selection PQ-result notice, or when and how took the invitation to interested/preselected Persons place? (evidence of publication to be attached as annex to the report in the case of an ICB and an NCB);

- In the case of a pre-bid meeting: date, time and venue; participants and minutes of discussion (minutes of meeting to be attached as annex to the report);
- Clarifications/addenda to Tender Documents during the Application/Offer submission period (any clarifications with Applicants/Bidders during the Application/Offer submission period and during the evaluation phase to be attached as annex to the report).

(2) Results of Preliminary Examination

- Names of all Applicants/Bidders (minutes of Application/Offer opening to be attached as annex to the report);
- If the Application/Offer fails preliminary acceptance, the reasons must be clearly explained (Since rejection at this stage puts the Application/Offer out of any further considerations, it should be ensured that the decision to reject is justifiable.);
- Applications/Offers which have been considered for further evaluation.

(3) Application/Offer Evaluation Process

- Basis for evaluation (e.g. KfW's Guidelines, Tender Documents, Public Procurement Regulations);
- Results of evaluation (usually a summary is provided in the report and details are provided as annex to the report)
 - pass/fail criteria: have they been met or not?
 - scoring criteria: every score needs to be justified in accordance with the evaluation criteria and matrix.

(4) Conclusion

- List of Applicants proposed to be invited to submit an Offer (Prequalification evaluation report), or which Bidders have submitted a technically responsive Offer and can be considered for financial evaluation, or which Bidders have submitted a responsive financial offer;
- List of identified errors, omissions, deficiencies or other subject matter for each Offer substantially compliant with the requirements of the RfP/ITB and which will be subject to clarifications before Award of Contract;
- Which Applicants/Bidders are rejected and for what reason;
- Final ranking, which Offer is first ranked/has the lowest evaluated price and thus is proposed for Award of Contract;
- Signature of all members of the Application/Offer evaluation committee. If required, the procuring entity / PEA shall demonstrate to KfW's satisfaction, that findings and conclusion of the evaluation report submitted represent the procuring entity / PEA's official opinion.

In order to assess the provided reports KfW reserves the right to ask the PEA for further documents, e.g. complete Offers or extracts thereof.

Appendix 7 – Contractual Provisions

Contracts between the PEA and its Contractors for Consulting Services, Works, Plant, Goods and Non-Consulting Services Contracts shall include appropriate terms and conditions with a fair distribution of risks between the contractual parties and shall adhere to the contractual provisions below.

1. Contract Models

Contracts shall be based on internationally recognised and accepted model Contracts such as those published by FIDIC (Fédération Internationale des Ingénieurs Conseils) for Works and Plant. For Consulting Services KfW makes available a model Contract reflecting international best practice. These Contract forms are integrated in KfW's standardised Tender Documents, which the PEA is encouraged to use. The original general conditions of Contract of these model Contracts shall remain unchanged. Any project specific adaptation shall be included in their special conditions without substantial modification of the general conditions of Contract.

In the case of using other Contract forms the provisions included therein shall adhere to the rules below for Contracts awarded under ICB and as far as applicable in Contracts under NCB. Unless otherwise agreed, the draft Contracts require KfW's No-Objection before signing.

The Tender Documents shall include a draft Contract model or at least inform on the major contractual and commercial conditions (e.g. payment terms, required guarantees, applicable law, provisions for price adjustment, if any, defects liability period, force majeure).

2. Contractual Requirements

2.1 Performance Parameters

Performance parameters or characteristics which were taken into account during the evaluation of Offers for Work, Plant or Goods (e.g. efficiency ratio, cost of consumables, output performance, emissions) shall be reflected in the Contract as offered by the Bidder, or as finally agreed upon by the contractual parties. The Contract should also include provisions in the case of variations of such parameters over time and indemnification in the case of underachievement.

2.2 Liability

Provisions regarding liability between the contractual parties shall be formulated in such a manner as to prevent any gaps in liability. Whenever a JV is awarded a Contract the JV partners shall be jointly and severally liable.

2.3 Defaults

The Contract shall include provisions such as suspension and termination, addressing contractual defaults by either party.

2.4 Payment Terms

Payment terms shall be in accordance with the international commercial practices applicable to the type of Contract (Consulting Services, Works, Plant, Goods and Non-Consulting Services) and be designed for efficient disbursement procedures (e.g. minimum disbursement amounts, especially if agreed in the Funding Agreement; avoidance of multiple recipients of payments, notably in the case of JVs; payments preferably in EUR or USD).

Contracts for Goods usually provide for full payment on the delivery and inspection (if required) of the contracted Goods, except for Contracts involving installation and commissioning; for such contracts, a portion of the payment may be made as advance payment and final payment after the Contractor has complied with all its obligations under the Contract.

Contracts for Works, Plant and Non-Consulting Services may be either ad measurement Contracts or lump sum Contracts. Typically, ad measurement Contracts are most suited when the PEA provided the design for the contractual content and/or the nature of the contractual content is not suitable for lump sum remuneration due to high unforeseen risks (e.g. rehabilitation of a power plant). Ad measurement Contracts usually include an advance payment of up to twenty (20) percent, regular interim payments depending on the progress and a final payment of up to

ten (10) percent, payable upon taking over or the issuance of the preliminary acceptance. Lump sum remuneration is applied mostly to Contracts under which the Contractor is responsible for the design of the Works or Plant to be delivered (e.g. turn-key Contracts, design-build-operate Contracts). Payment terms usually include either regular percentage based instalments or instalments against the achievement of predefined milestones.

Contracts for Consulting Services may include remuneration on a lump sum or on a time based basis or a combination of both. Typically, feasibility studies, expert opinions, short term advise, construction design and elaboration of Tender Documents are most suited for lump sum remuneration. Payment terms usually include either regular percentage based instalments or instalments against the delivery of documents or services. Implementation supervision services and long term technical assistance or training services are usually remunerated on a time based basis. Such Contracts foresee an advance payment of up to twenty (20) percent, regular interim payments, preferably on a quarterly basis and a final payment generally between five (5) and ten (10) percent, payable upon acceptance of the services.

2.5 Guarantees and Securities

The presentation of an advance payment guarantee in the same amount as the advance payment is generally conditional for the payment of the advance payment. The advance payment guarantee ensures that in the case Contracts are not performed the PEA will be refunded. Depending on the volume and the associated risk, KfW may agree to waive this requirement.

A performance security in accordance with the usual business practice in the particular sector is generally required to guarantee that all contractual obligations will be duly fulfilled by the Contractor throughout the whole Contract period for Contracts for Works, Goods, Plant and major Non-Consulting Services Contracts. The performance security amounts up to ten (10) percent of the Contract value until preliminary acceptance and a portion of it, usually half of the initial amount, shall be extended to cover the defects liability period or the maintenance period.

A retention money security is required if after preliminary acceptance the terms of payment foresee the payment of retention money withheld on interim payments. The retention money security usually is half the amount of the performance security and is to guarantee that Contractors fulfill the remaining obligations after preliminary acceptance during the defects liability or the maintenance period.

Both, the advance payment guarantee, and the performance security shall be abstract guarantees, valid until the secured performance has been affected. In the event of a postponement of the completion date laid down in the initial Contract, the PEA needs to request an extension of the performance security and retention money security from the Guarantor. Such request shall be in writing and must be made prior to the expiration date established in the security.

Contractors shall be allowed to submit guarantees or securities by a reputable bank of their choice. However, if the guarantor is located outside the PEA's country, if it is not enforceable, the guarantor shall have a correspondent financial institution located in the PEA's country to make it enforceable. In exceptional cases and upon prior approval, KfW may accept guarantees and securities from insurances.

For specimen of the various types of guarantees and securities see Appendix 8. Other forms of guarantees or securities require KfW's approval.

2.6 Price Adjustment

The Contract shall state either a) that Contract prices shall be fixed or b) that Contract price adjustments will be made to reflect any changes in major cost components of the Contract, such as labour and materials. The Contract may include the possibility of either a general price adjustment applicable after a predefined number of month (generally between 18 to 24) from a defined date (generally Offer submission or Offer expiry date) for all contractual items or an index-based price adjustment for price sensitive items (e.g. steel, cooper, aluminum or fuel) applicable at the time of purchase or billing.

The formula, the applicable price indices, and the base date for application shall be clearly defined in the Contract. The Contract shall also have appropriate provisions for treatment of the impact changes in laws and regulations on the Contract, including taxes and duties in the PEA's country, if after 28 days prior to the date of Offer submission, that subsequently affects the Contract completion period/delivery date and/or the Contract price.

2.7 Taxes, Duties and Levies

Contracts shall have provisions on the treatment of taxes and public duties, payable by the Contractor in the Partner Country and reflect the tax provisions in the Tender Documents. Generally, only identifiable local taxes and public duties directly attributable to the Contract shall be considered in this context (e.g. VAT or withholding tax on revenue or income generated through the Contract). Depending on the legal situation governing the Contract the following general cases may occur:

- the Contractor and its staff are exempted from local taxes and public duties, in such cases a copy or at least a reference to the legal act testifying the tax exemption should be attached to the Contract,
- the Contractor and its staff are subject to local taxes and public duties directly attributable to the Contract and the PEA will either remunerate the Contractor or pay these taxes and duties on behalf of the Contractor to tax authorities. In such cases the Contract should specify the nature and amounts of taxes and the procedure of invoicing by the Contractor and the mode of payment by the PEA,
- the Contractor and its foreign staff are subject to local taxes and public duties directly attributable to the Contract which will be borne by the Contractor 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 Contract shall include a provision for the handling of any changes in local tax law after Award of Contract which has an effect on the cost incurred by the Contractor or its foreign staff and should include the mode of remuneration of an increase or decrease in costs.

For the sake of clarity, other local taxes not directly attributable to the Contract (e.g. profit tax, corporate tax, income tax) as well as tax liabilities of the Contractor and its staff outside the Partner Country shall be included in the overhead cost calculation and will not be subject to any separate remuneration.

2.8 Warranty/Defects Liability Period

The Contractor's warranty or defects liability period shall be defined in accordance with international industry practice, generally 12 to 24 months. The Contract should further include provisions if the Contractor fails to remedy defects after a given time for reasons attributable to him.

2.9 Liquidated Damages

The time for the completion of Works/delivery of Goods or services shall be specified, generally in the form of a contractual time schedule. Provisions for liquidated damages or similar provisions shall be included in the Contract when delays in the delivery of Consulting Services, Goods, completion of Works, or failure of the Goods, Works, and Non-Consulting Services to meet performance requirements would result in extra cost or loss of revenue or other benefits to the PEA. The amount of the liquidated damages is usually a specific amount or a portion in relation to a time unit (e.g. an amount of money or percentage of the Contract price per week) with a ceiling (usually five to 10 per cent of the Contract price).

In exceptional cases provision may also be made for a bonus to be paid to Contractors for completion of Works or delivery of Goods ahead of the times specified in the Contract, when an earlier completion or delivery would be of benefit to the PEA.

2.10 Insurance

Contracts shall include types and terms of insurance to be provided by Contractors. Normally Works, Plant and complex Goods contracts shall include an 'all risk' type of insurance policy shall be specified to ensure replacement in the event of damage or loss and injury to any person and Contractor's personnel and damage to property.

Transport insurance for Goods shall be at least 110% (one hundred and ten) of the CIP price of the Goods on an "all risks" basis and should include war risks and strike clauses.

Contracts for Consulting Services should include insurance cover for professional and personal liabilities and, if relevant, insurance for loss or damage for equipment or for motor vehicle third

party liability for vehicles if such equipment or vehicles are paid by the PEA and used by consultant, in the context of the Contract.

In the case of Contracts in foreign currency payments due from the insurer shall be made in the same currency of the Contract or in a freely convertible currency on an account to be provided by the PEA after consultation with KfW.

2.11 Force Majeure

The Contract shall include provisions for events of force majeure that prevent the parties to perform their contractual obligations. Such events are beyond the control of any of the parties to the Contract, such as natural disasters, war, or disruption of public order. The provisions shall include stipulations for adequate adaptation of the contractual time schedule, extraordinary measures by a Contractor to prevent or reduce damage, reimbursement of the Contractor for such measures and a termination clause, in the case force majeure persists including the mode of compensation of the Contractor.

2.12 Applicable Law, Settlement of Disputes and Arbitration

The applicable law shall be specified in the Contract as well as the procedure for the settlement of disputes and arbitration. The provisions should foresee an amicable settlement of disputes between the parties as the first option. In complex infrastructure projects the nomination of one or more dispute adjudicators should be foreseen as well as the rules for the arbitration procedure. The last and final instance for the settlement of disputes should be international commercial arbitration, preferably by recourse to the International Chamber of Commerce (ICC). Instead or in addition to dispute adjudication a mediation procedure might also be taken into account, especially for Contracts with a small Contract values.

KfW shall not be appointed as an arbitrator, nor be requested to appoint one.

2.13 Use of Results

The Contractor shall grant the PEA and KfW and, if required the provider of the funds (e.g. German Government or European Union) the right to use, to share, to publish, to duplicate, to quote free of charge the results of the project, including reports and documents relating to it.

2.14 Communication and Visibility

The Contractor shall be required to indicate the provider of the funds for the Contract (e.g. the German Government or European Union) according to the requirements of the respective institution²⁵. Depending on the nature of the Contract this may include an indication on the provider of the funds on documents, on publicity material or on reports as well as a logo on vehicles, major equipment and major supplies purchased with these funds and indications on the provider of the funds on temporary construction site display panels or an acknowledgment on permanent display panels.

The Contractor shall grant KfW the right to publish, on an annual basis on its internet site, the following information: title of the Contract/Project, nature and purpose of the Contract/Project, name and locality of the Contractor and amount of the Contract/Project in accordance with the applicable data protection laws.

2.15 Declaration of Undertaking

A Declaration of Undertaking as per Appendix 1 duly signed by the Contractor shall be attached to the Contract as an integral part of it.

²⁵ Further details can be made available on request

Appendix 8 – Models for Guarantees and Securities

Advance Payment Guarantee

Beneficiary: *[insert name and address of PEA]*
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]*²⁶, 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.

[For guarantees issued in foreign currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[insert name of the Beneficiary and the Beneficiary's country]*.

[For guarantees issued in local currency insert the following:]

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 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.]*

²⁶ This guarantee must be issued in the Contract currency only.

[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)

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

Performance Security

Beneficiary: *[insert name and address of PEA]*

Date of Issue: *[insert date]*

PERFORMANCE SECURITY No.: *[insert security 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, a performance security is required for *[insert percentage in words and figures]²⁷* percent of the Contract price.

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 security 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.

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[insert name of the Beneficiary and the Beneficiary's country]*.

[For guarantees issued in local currency insert the following:

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 security shall expire not later than *[insert expiry date]²⁸*. By this date we must have received any claims for payment 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)

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

²⁷ This security must be issued in the Contract currency only.

²⁸ This security shall be valid for at least 28 calendar days as of the completion date laid down in the Contract (including warranty obligations).

Retention Money Security²⁹

Beneficiary: *[insert name and address of PEA]*

Date of Issue: *[insert date]*

RETENTION MONEY SECURITY 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, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the taking-over certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money amount and currency in words and figures or if the amount guaranteed under the Performance Security when the taking-over certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money security.

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 security amount and currency in words and figures]*³⁰ upon receipt by us of the Beneficiary's first demand supported by the Beneficiary's statement, whether in the demand itself or in 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 show grounds for the demand or the sum specified therein.

The retention money security shall come into force and effect as soon as the second half of the Retention Money 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.

[For securities issued in foreign currency insert the following:]

In the event of any claim under this security, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[insert name of the Beneficiary and the Beneficiary's country]*.

[For securities issued in local currency insert the following:]

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

This security shall expire not later than *[insert expiry date]*³¹.

By this date we must have received any claims for payment 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.

²⁹ This model is designed for Works, Plant and similar Contracts; if used exceptionally, for Consulting Services the text needs to be adapted

³⁰ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the taking-over certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated in the Contract currency(ies) only.

³¹ Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in the Contract. The Beneficiary should note that in the event of an extension of this date for completion of the Contract, the Beneficiary would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Beneficiary might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

[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)

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