

**Loan and Project Agreement**

dated \_\_\_\_\_

between

**KfW, Frankfurt am Main**

**("KfW")**

and the

**Republic of Ghana**

**(the "Borrower")**

**Represented by the Ministry of Finance**

for

**EUR 116,600,000.00**

**- Accra-Kumasi transmission line -**

**BMZ-No. 2017 65 254, 2018 65 104 & 2021.65.207**

**CONTENT****Article**

1.	Amount and Purpose of the Loan .....	3
2.	Channelling of the Loan to the Project-Executing Agency .....	4
3.	Disbursement .....	4
4.	Commitment Fee, Interest, and Repayment.....	4
5.	Suspension of Disbursement and Early Repayment .....	7
6.	Costs and Public Charges .....	8
7.	Validity of this Agreement and Representation .....	8
8.	The Project .....	9
9.	Publication and Transfer of Project-related Information.....	11
10.	Miscellaneous Provisions.....	13
	Annex 1a: Compliance Covenants Borrower.....	15
	Annex 1b: Compliance Covenants Project-Executing Agency.....	18
	Annex 2: Form of Legal Opinion of the Legal Adviser to the Borrower .....	22

On the basis of the agreement dated 27 August 2018 and the agreement dated 11 October 2019, in each case, between the Government of the Federal Republic of Germany and the Government of the Republic of Ghana on Financial Cooperation (the "**Government Agreements**"), the Republic of Ghana represented by the Ministry of Finance ("Borrower") and KfW hereby enter into the following Loan and Project Agreement (the "**Agreement**"):

**1. Amount and Purpose of the Loan**

1.1 KfW shall extend to the Borrower a loan not exceeding

EUR 116,600,000.00 (in words: one hundred sixteen million, six hundred thousand Euro)

(the "**Loan**").

This Loan consists of three tranches:

BMZ-No. 2017.65.254: EUR 65,000,000.00 (in Words: sixty-five million euros), ("**Tranche 1**"),

BMZ-No. 2018.23.473: EUR 20,100,000.00 (in Words: twenty million, one hundred thousand euros), ("**Tranche 2**").

BMZ-No. 2021.65.207: EUR 31,500,000.00 (in Words: thirty-one million, five hundred thousand euros), ("**Tranche 3**").

1.2 The Borrower shall channel the Loan in full to Ghana Grid Company Limited, GRIDCo. (the "**Project-Executing Agency**") in accordance with the conditions set forth in Article 2. The Borrower shall ensure that the Project-Executing Agency uses the Loan exclusively to finance the construction of a 330 kV transmission line between Accra and Kumasi (the "**Project**"), and primarily to pay the foreign exchange costs. The Borrower, the Project-Executing Agency and KfW shall determine the details of the Project as well as the goods and services to be financed from the Loan by a separate agreement (the "**Separate Agreement**").

1.3 Taxes and other public charges to be borne by the Borrower or the Project-Executing Agency and import duties shall not be financed from the Loan.

## 2. Channelling of the Loan to the Project-Executing Agency

- 2.1 The Borrower shall channel the Loan to the Project-Executing Agency under a separate financing agreement (the "**Separate Financing Agreement**") either as a grant or at the terms and conditions set forth in Articles 4.2 and 4.4 hereof.
- 2.2 Prior to the first disbursement from the Loan, the Borrower shall send KfW a copy of the Separate Financing Agreement specified in Article **Error! Reference source not found.**
- 2.3 The channelling of the Loan shall not constitute any liability of the Project-Executing Agency to KfW for payment obligations under this Agreement.

## 3. Disbursement

- 3.1 KfW shall disburse the Loan in accordance with the progress of the Project and upon request of the Project-Executing Agency through the Borrower. By the Separate Agreement, the Borrower, the Project-Executing Agency and KfW shall agree on the disbursement procedure, in particular on the evidence to be furnished by the Project-Executing Agency proving that the requested Loan amounts are used for the purpose stipulated in this Agreement.
- 3.2 KfW shall have the right to refuse to make disbursements after 31 December 2029.

## 4. Commitment Fee, Interest, and Repayment

- 4.1 The Borrower shall pay a commitment fee of 0,25% p. a. on the undisbursed Loan amounts. The commitment fee shall be computed for a period beginning three months after the signing of this Agreement and ending on the date at which disbursements are debited.
- 4.2 The Borrower shall pay interest on the Loan at a rate of 0,75% p. a. Interest shall be charged from the dates at which disbursements are debited to the dates at which repayments are credited to KfW's account specified in Article 4.10.
- 4.3 The Borrower shall pay the commitment fee, interest, and any charges on arrears pursuant to Article 4.6 semi-annually on 15 May and on 15 November for the half-year then ending. The first commitment fee shall be due together with the first interest payment.

## 4.4 The Borrower shall repay the Loan as follows:

Rate	Datum		Betrag	
1	May 15,	2029	1.821.000,00	EUR
2	November 15,	2029	1.821.000,00	EUR
3	May 15,	2030	1.821.000,00	EUR
4	November 15,	2030	1.821.000,00	EUR
5	May 15,	2031	1.821.000,00	EUR
6	November 15,	2031	1.821.000,00	EUR
7	May 15,	2032	1.821.000,00	EUR
8	November 15,	2032	1.821.000,00	EUR
9	May 15,	2033	1.822.000,00	EUR
10	November 15,	2033	1.822.000,00	EUR
11	May 15,	2034	1.822.000,00	EUR
12	November 15,	2034	1.822.000,00	EUR
13	May 15,	2035	1.822.000,00	EUR
14	November 15,	2035	1.822.000,00	EUR
15	May 15,	2036	1.822.000,00	EUR
16	November 15,	2036	1.822.000,00	EUR
17	May 15,	2037	1.822.000,00	EUR
18	November 15,	2037	1.822.000,00	EUR
19	May 15,	2038	1.822.000,00	EUR
20	November 15,	2038	1.822.000,00	EUR
21	May 15,	2039	1.822.000,00	EUR
22	November 15,	2039	1.822.000,00	EUR
23	May 15,	2040	1.822.000,00	EUR
24	November 15,	2040	1.822.000,00	EUR
25	May 15,	2041	1.822.000,00	EUR
26	November 15,	2041	1.822.000,00	EUR
27	May 15,	2042	1.822.000,00	EUR
28	November 15,	2042	1.822.000,00	EUR
29	May 15,	2043	1.822.000,00	EUR
30	November 15,	2043	1.822.000,00	EUR
31	May 15,	2044	1.822.000,00	EUR
32	November 15,	2044	1.822.000,00	EUR
33	May 15,	2045	1.822.000,00	EUR
34	November 15,	2045	1.822.000,00	EUR
35	May 15,	2046	1.822.000,00	EUR
36	November 15,	2046	1.822.000,00	EUR
37	May 15,	2047	1.822.000,00	EUR
38	November 15,	2047	1.822.000,00	EUR
39	May 15,	2048	1.822.000,00	EUR
40	November 15,	2048	1.822.000,00	EUR
41	May 15,	2049	1.822.000,00	EUR
42	November 15,	2049	1.822.000,00	EUR

43	May 15,	2050	1.822.000,00	EUR
44	November 15,	2050	1.822.000,00	EUR
45	May 15,	2051	1.822.000,00	EUR
46	November 15,	2051	1.822.000,00	EUR
47	May 15,	2052	1.822.000,00	EUR
48	November 15,	2052	1.822.000,00	EUR
49	May 15,	2053	1.822.000,00	EUR
50	November 15,	2053	1.822.000,00	EUR
51	May 15,	2054	1.822.000,00	EUR
52	November 15,	2054	1.822.000,00	EUR
53	May 15,	2055	1.822.000,00	EUR
54	November 15,	2055	1.822.000,00	EUR
55	May 15,	2056	1.822.000,00	EUR
56	November 15,	2056	1.822.000,00	EUR
57	May 15,	2057	1.822.000,00	EUR
58	November 15,	2057	1.822.000,00	EUR
59	May 15,	2058	1.822.000,00	EUR
60	November 15,	2058	1.822.000,00	EUR
61	May 15,	2059	1.822.000,00	EUR
62	November 15,	2059	1.822.000,00	EUR
63	May 15,	2060	1.822.000,00	EUR
64	November 15,	2060	1.822.000,00	EUR

- 4.5 If a payment to be made in connection with this Agreement falls due on a date that is not a Banking Day, the Borrower must make such payment on the following Banking Day. If the following Banking Day falls within the next calendar month, such payment must be made on the last Banking Day of the current calendar month. A "**Banking Day**" means a day other than a Saturday or Sunday on which commercial banks in Frankfurt am Main, Federal Republic of Germany are open for general business.
- 4.6 If any repayment instalments are not at the disposal of KfW when due, KfW may increase the rate of interest on arrears to the base rate plus 3 % p.a. for the period beginning with the due date and ending at the date at which such repayments are credited to the account of KfW specified in Article 4.10. The "**Base Rate**" is the interest rate disclosed by the Deutsche Bundesbank as base rate at the rate applicable on the relevant due date. In the case of interest arrears, KfW may claim damages. Such damages shall not exceed the amount arrived at if interest were charged on such interest arrears at the base rate prevailing at the due date plus 3 % p.a.
- 4.7 Commitment fee, interest, and any charges on arrears pursuant to Article 4.6 shall be computed on the basis of a 360-day year and 30-day months.

- 4.8 Undisbursed or prematurely repaid Loan amounts shall be credited in equal proportions against all outstanding repayment instalments unless KfW at its own discretion determines a different offsetting mode in a particular case, especially in the case of amounts of lesser volume.
- 4.9 KfW shall be entitled to credit, at its discretion, payments received against payments due under this Agreement or under other loan agreements concluded between KfW and the Borrower.
- 4.10 The Borrower shall, under exclusion of any set-off of counterclaims against such payments, remit all payments under this Agreement in Euro to the following account:

Recipient: KfW

SWIFT-BIC: KFWIDEFF

IBAN: DE56 5002 0400 3100 1203 08

## **5. Suspension of Disbursement and Early Repayment**

- 5.1 Subject to the fulfilment of its obligations under Article 8, the Borrower may at any time
- a) cancel any Loan amounts not yet disbursed, and
  - b) repay the Loan in whole or in part in advance of maturity.
- 5.2 KfW may not suspend disbursements unless
- a) the Borrower has failed to perform its obligations to KfW to make payments when due,
  - b) obligations under this Agreement or under the separate agreements pertaining to this Agreement have been violated,
  - c) the Borrower and the Project-Executing Agency are unable to prove that the Loan amounts have been used for the stipulated purpose,
  - d) the fulfilment of KfW's obligations under this Agreement violates applicable law, or
  - e) extraordinary circumstances arise that preclude or seriously jeopardize the implementation, the operation, or the purpose of the Project, or the performance of the payment obligations assumed by the Borrower under this Agreement.

- 5.3 If any of the situations specified in Article 5.2 a), b), c) or d) has occurred and has not been eliminated within a period determined by KfW, which shall, however, be at least 30 days, KfW may,
- a) in the cases specified in Article 5.2 a), 5.2 b) or 5.2 d), demand the immediate repayment of all outstanding Loan amounts as well as the payment of all interest accrued and any charges on arrears pursuant to Article 4.6;
  - b) in the case specified in Article 5.2 c), demand the immediate repayment of such Loan amounts as the Borrower and the Project-Executing Agency are unable to prove to have been used for the stipulated purpose.

## 6. **Costs and Public Charges**

- 6.1 The Borrower shall make all payments to be effected under this Agreement without any deduction for taxes, other public charges or other costs. In the event that the Borrower is obligated by law or for other reasons to make any such deductions or withholdings on payments, the Borrower will increase its payments by such amount as necessary for KfW to receive in full the amounts due under this Agreement after deduction of taxes and charges.
- 6.2 The Borrower shall pay the transfer and conversion costs accruing in connection with the disbursement and repayment of the Loan.
- 6.3 The Borrower shall bear all taxes and other public charges accruing outside the Federal Republic of Germany in connection with the conclusion and execution of this Agreement.

## 7. **Validity of this Agreement and Representation**

- 7.1 KfW is obligated to make disbursements under this Agreement only if the following conditions precedent have been fulfilled in a manner satisfactory to KfW in form and substance:
- a) The Borrower will have demonstrated to the satisfaction of KfW, by presenting a legal opinion the content of which is essentially in conformity with the specimen in Annex 2 (*Form of Legal Opinion of the Legal Adviser to the Borrower* hereof and by presenting certified copies (each with an official translation into the language of this Agreement) of all documents to which such legal opinion refers, that this Agreement is legally effective and enforceable, in particular, that the Borrower has met all requirements under its constitutional



law and other applicable legal provisions for the valid assumption of all its obligations under this Agreement;

- b) KfW is in possession of an original of this Agreement and the Separate Agreement, each signed with legally binding force. The Minister for Finance and such persons as designated by him or her to KfW and authorized by specimen signatures authenticated by him or her shall represent the Borrower in the execution of this Agreement. The power of representation shall not expire until its express revocation by the representative authorised at the time has been received by KfW.

- 7.3 Amendments or addenda to this Agreement and any notices and statements delivered by the contracting parties under this Agreement shall be in writing. Any such notice or statement shall have been received once it has arrived at the following address of the corresponding contracting party or at such other address of the corresponding contracting party as notified to the other contracting party:

For KfW:

KfW  
Postfach 11 11 41  
60046 Frankfurt am Main  
Federal Republic of Germany  
Fax: +49 69 7431-2944

For the Borrower:

Ministry of Finance  
P.O. Box MB40  
Ministries-Accra  
Republic of Ghana  
Fax: +233 302 668879

- 7.4 Amendments to this Agreement shall not require the approval of the Project Executing Agency.

- 7.5 The Borrower shall send the Project-Executing Agency a copy of this Agreement as well as any amendments thereto as soon as reasonably possible at the correspondence address as stated in the Separate Agreement or at such other address as notified by the Project-Executing Agency.

## 8. The Project

- 8.1 The Borrower shall ensure that the Project-Executing Agency will
- a) prepare, implement, operate and maintain the Project in conformity with sound financial and engineering practices, in compliance with environmental and social standards and substantially in accordance with the Project conception agreed upon between the Borrower, the Project-Executing Agency and KfW;
  - b) assign the preparation and supervision of construction of the Project to independent, qualified consultants, and the implementation of the Project to qualified firms;
  - c) at all times comply with the procurement provisions stipulated in the Separate Agreement including the respective procurement plan;
  - d) maintain, or cause to be maintained, books and records unequivocally showing all costs of goods and services required for the Project and clearly identifying the goods and services financed;
  - e) enable the representatives of KfW at any time to inspect the said books and records and any and all other documentation relevant to the implementation and operation of the Project, and to visit the Project and all the installations related thereto;
  - f) furnish to KfW any and all such information and reports on the Project and its further progress as KfW may request; and
  - g) without delay forward to KfW any queries received by the Borrower from the OECD or its members under the so-called "**Agreement for Untied ODA Credits Transparency**" following the award of the contracts for the supplies and services to be financed from the Loan and shall coordinate the reply to any such query with KfW.
- 8.2 The Borrower, the Project-Executing Agency and KfW shall determine the details of Article 8.1 by the Separate Agreement.
- 8.3 The Borrower shall and shall ensure that the Project-Executing Agency will
- a) ensure the full financing of the Project and, upon request, furnish to KfW evidence proving that the costs not paid from this Loan are covered and
  - b) of its own accord promptly inform KfW of any and all circumstances precluding or seriously jeopardizing the implementation, the operation or the purpose of the Project.

8.4 The Borrower shall assist the Project-Executing Agency in conformity with sound engineering and financial practices in the implementation of the Project and in the performance of the Project-Executing Agency's obligations under this Agreement and any separate agreement pertinent to this Agreement and, in particular, grant the Project-Executing Agency any and all permissions necessary for the implementation of the Project.

8.5 For the transport of the goods to be financed from the Loan the provisions of the Government Agreements, which are known to the Borrower, shall apply.

## 9. Publication and Transfer of Project-related Information

9.1 To comply with internationally accepted principles of utmost transparency and efficiency in the development cooperation, KfW publishes selected information (including results of environmental and social categorization and assessment as well as ex post evaluation reports) about the Project and its financing during pre-contractual negotiations, while the Project-related agreement(s) is (are) being implemented and in the post-contractual stage (hereinafter referred to as the "Entire Period").

The information is published regularly on KfW's website for its business area "KfW Development Bank" (<http://transparenz.kfw-entwicklungsbank.de/>).

The publication of information (either by KfW or third parties in accordance with Article 9.3 below) about the Project and its financing does not include any contractual documentation or any sensitive financial or business-related detailed information about the parties involved in the Project or its financing, such as

- a) information about internal financial data;
- b) business strategies;
- c) internal corporate guidelines and reports;
- d) personal data of natural persons;
- e) KfW's internal rating of the parties' financial position.

9.2 KfW shares selected information about the Project and its financing during the Entire Period with the entities mentioned below, particularly to ensure transparency and efficiency:

- a) subsidiaries of KfW;

- b) the Federal Republic of Germany and its competent bodies, authorities, institutions, agencies or entities;
- c) other implementing organisations involved in German bilateral development cooperation, particularly the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH;
- d) international organisations involved in collecting statistical data and their members, especially the Organisation for Economic Cooperation and Development (OECD), the Paris Club and their respective members (including, for the avoidance of doubt, the participants and observers of the Paris Club);
- e) the Project Executing Agency.
- f) AFD, Worldbank, EIB or other development organisations that engage in projects in energy transmission.

9.3 Furthermore, the Federal Republic of Germany has requested, KfW to share selected information about the Project and its financing throughout the Entire Period with the following entities, which publish the sections relevant to the purpose:

- a) Federal Republic of Germany for the purposes of the International Aid Transparency Initiative (<https://www.bmz.de/de/ministerium/zahlen-fakten/internationale-transparenzstandards-59280>)
- b) Germany Trade & Invest (GTAI) for the purposes of market information (<https://www.gtai.de/gtai-de/trade>);
- c) OECD for the purpose of reporting financial flows in the framework of development cooperation (<http://stats.oecd.org/>);
- d) German Institute for Development Evaluation (DEval) for the purposes of evaluating the overall German development cooperation to ensure transparency and efficiency (<http://www.deval.org/de/>).

9.4 KfW further reserves the right to transfer (including for the purposes of publication) information about the Project and its financing during the Entire Period to other third parties so as to safeguard legitimate interests.

The information is not transferred by KfW to other third parties if the legitimate interests of the Borrower and/or the Project-Executing Agency in the information not being transferred outweigh KfW's interests in it being transferred. The legitimate interests of the Borrower and/or the Project-Executing Agency

particularly include the confidentiality of the sensitive information mentioned in Article 9.1, which is excluded from publication.

Furthermore, KfW is entitled to transfer information to third parties if this is necessary due to statutory or regulatory requirements or to assert or defend claims or other legal rights in court or administrative proceedings.

## **10. Miscellaneous Provisions**

- 10.1 The Borrower undertakes to comply at all times with the obligations set out in Annex 1a (Compliance Covenants Borrower) and shall ensure that the Project-Executing Agency will undertake to comply at all times with the obligations set out in Annex 1b (Compliance Covenants Project-Executing Agency).
- 10.2 If any of the provisions of this Agreement is invalid, all other provisions shall remain unaffected thereby. Any gap resulting therefrom shall be filled by a provision consistent with the purpose of this Agreement.
- 10.3 The Borrower and the Project-Executing Agency may not assign or transfer, pledge or mortgage any claims from this Agreement.
- 10.4 All claims of KfW under this Agreement expire after five years from the end of the year in which any such claim has accrued and in which KfW has become aware of the circumstances constituting such claim or could have become aware of them without gross negligence.
- 10.5 This Agreement shall be governed by the law of the Federal Republic of Germany. The place of performance shall be Frankfurt am Main.
- 10.6 All disputes arising out of or in connection with the present Agreement shall be settled exclusively and finally by an arbitration tribunal. In this regard, the following will apply:
  - a) The arbitration tribunal will consist of one or three arbitrators who will be appointed and will act in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) applicable from time to time.
  - b) The arbitration proceedings will be conducted in Frankfurt am Main. The proceedings will be held in the English language.
  - c) Notwithstanding the foregoing, the arbitration proceedings may be convened at any other place the parties consider appropriate, to hold a hearing for oral arguments, to examine witnesses or to hear experts or the parties, to pursue deliberations amongst its members, to inspect objects, or to review documents.

Done in two originals in the English language.

Frankfurt am Main, [date] \_\_\_\_\_

**KfW**

**Republic of Ghana**

represented by the Ministry of Finance

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

Title:

Done at \_\_\_\_\_

dated \_\_\_\_\_

Annexes

Annex 1a Compliance Covenants Borrower

Annex 1b Compliance Covenants Project-Executing Agency

Annex 2: Form of Legal Opinion of the Legal Adviser to the Borrower

**Annex 1a: Compliance Covenants Borrower****1. DEFINITIONS**

**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 influence improperly the actions of a person.

**Collusive Practice:** an arrangement between two or more persons designed to achieve an improper purpose, including to influence improperly the actions of another person.

**Corrupt Practice:** the promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

**Fraudulent Practice:** any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.

**Obstructive Practice:** (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 it from disclosing its 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.

**Person:** any natural person, legal entity, partnership or unincorporated association.

**Sanctionable Practice:** any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein), which (i) is unlawful under German or other applicable law, and (ii) which has, or potentially could have, a material legal or reputational effect on this Agreement between the Borrower and KfW or its implementation.

**Sanctions:** the economic, financial or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctioning Body.

**Sanctioning Body:** any of the United Nations Security Council, the European Union and the Federal Republic of Germany.

**Sanctions List:** any list of specially designated persons, groups or entities which are subject to Sanctions, as issued by any Sanctioning Body.

## **2. INFORMATION UNDERTAKING**

The Borrower shall

- a) promptly make available to KfW on demand all relevant "know your customer" or similar information about the Borrower as KfW may request;
- b) promptly furnish to KfW on demand all Project-related information and documents of the Borrower and its (sub)contracting and other related parties which KfW requires to fulfil its obligations to prevent any Sanctionable Practice, money laundering and/or terrorism financing as well as for the continuous monitoring of the business relationship with the Borrower which is necessary for this purpose;
- c) inform KfW, promptly and of its own accord, as soon as it becomes aware of, or suspects, any Sanctionable Practice, act of money laundering and/or terrorism financing related to the Project;
- d) furnish to KfW any and all such information and reports on the Project and its further progress as KfW may request for the purposes of this Annex; and
- e) enable KfW and its agents at any time to inspect all other Project-related documentation of the Borrower and its (sub)contracting and other related parties, and to visit the Project and all installations related thereto for the purposes of this Annex.

## **3. REPRESENTATION AND WARRANTY**

- 3.1 With regard to German law or the law of the country of the Borrower, the Borrower represents and warrants that none of the Persons acting in relation to the Project on the Borrower's behalf has committed or is engaged in any Sanctionable Practice, money laundering or financing of terrorism.
- 3.2 The representation and warranty set forth in this Article is made for the first time by execution of this Agreement. It will be deemed to be repeated upon each drawing of the Loan and on each interest payment date, in each case by reference to the circumstances prevailing at that date.



**4. POSITIVE UNDERTAKINGS**

The Borrower undertakes as soon as the Borrower or KfW becomes aware of, or suspects, any Sanctionable Practice, act of money laundering or financing of terrorism, to fully cooperate with KfW and its agents, in determining whether such compliance incident has occurred. In particular, the Borrower shall respond promptly and in reasonable detail to any notice from KfW and shall furnish documentary support for such response upon KfW's request.

**5. NEGATIVE UNDERTAKINGS**

The Borrower will not enter into any transactions or engage in any other activities in relation to the Project that would constitute a breach of Sanctions.

**Annex 1b: Compliance Covenants Project-Executing Agency****1. DEFINITIONS**

**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 influence improperly the actions of a person.

**Collusive Practice:** an arrangement between two or more persons designed to achieve an improper purpose, including to influence improperly the actions of another person.

**Corrupt Practice:** the promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

**Designated Categories of Offences:** the following categories of offences as defined by the FATF Recommendations and the respective interpretative note: participation in an organised criminal group and racketeering; terrorism, including financing of terrorism; trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; illicit trafficking in narcotic drugs and psychotropic substances; illicit arms trafficking; illicit trafficking in stolen and other goods; corruption and bribery; fraud; counterfeiting currency; counterfeiting and piracy of products; environmental crime; murder, grievous bodily injury; kidnapping, illegal restraint and hostage-taking; robbery or theft; smuggling (including in relation to customs and excise duties and taxes); tax crimes (related to direct taxes and indirect taxes); extortion; forgery; piracy; insider trading and market manipulation.

**FATF Recommendations:** such recommendations as defined from time to time by the Financial Action Task Force (FATF). FATF is the inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and the financing of terrorism.

**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.

**Illicit Origin:** the origin of funds obtained through

- a) any offence listed in the Designated Categories of Offences;
- b) any Corrupt Practice;
- c) any Fraudulent Practice; or

d) money laundering.

**Obstructive Practice:** (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 it from disclosing its 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.

**Person:** any natural person, legal entity, partnership or unincorporated association.

**Sanctionable Practice:** any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein), which (i) is unlawful under German or other applicable law, and (ii) which has, or potentially could have, a material legal or reputational effect on this Agreement between the Project-Executing Agency and KfW or its implementation.

**Sanctions:** the economic, financial or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctioning Body.

**Sanctioning Body:** any of the United Nations Security Council, the European Union and the Federal Republic of Germany.

**Sanctions List:** any list of specially designated persons, groups or entities which are subject to Sanctions, as issued by any Sanctioning Body.

## 2. INFORMATION UNDERTAKING

The Project-Executing Agency shall

- a) promptly make available to KfW on demand all relevant "know your customer" or similar information about the Project-Executing Agency and any of its (direct and/or indirect) shareholders, subsidiaries and/or any other affiliates (if any), as KfW may request;
- b) promptly furnish to KfW on demand all Project-related information and documents of the Project-Executing Agency and its (sub)contracting and other related parties which KfW requires to fulfil its obligations to prevent any Sanctionable Practice, money laundering and/or terrorism financing as well as for the continuous monitoring of the business relationship with the Project-Executing Agency which is necessary for this purpose;
- c) inform KfW, promptly and of its own accord, as soon as it becomes aware of or suspects, any Sanctionable Practice, act of money laundering or/and terrorism

- financing by the Project-Executing Agency, any member of its management bodies or other governing bodies or any of its shareholders;
- d) furnish to KfW any and all such information and reports on the Project and its further progress as KfW may request for the purposes of this Annex;
  - e) enable KfW and its agents at any time to inspect all other Project-related documentation of the Project-Executing Agency and its (sub)contracting and other related parties, and to visit the Project and all installations related thereto for the purposes of this Annex.
  - f) inform KfW, promptly and of its own accord, of any event which results in any of the Project-Executing Agency, any member of its management bodies or other governing bodies or any of its shareholders, being or becoming a specially designated national, blocked person or entity maintained on any Sanctions List.

### **3. REPRESENTATIONS AND WARRANTIES**

- 3.1 With regard to German law or the law of the country of incorporation of the Project-Executing Agency, the Project-Executing Agency represents and warrants that the following is true and correct:
- a) In entering into and implementing this Loan Agreement the Project-Executing Agency acts in its own name and for its own account.
  - b) To the best of its knowledge and only in relation to the shareholders known to the Project-Executing Agency pursuant to applicable stock market regulations, neither the Project-Executing Agency's equity nor the funds invested in the Project are of Illicit Origin.
  - c) None of the Project-Executing Agency, its affiliates, subsidiaries or any other Person acting on its or their behalf has committed or is engaged in any Sanctionable Practice, money laundering or financing of terrorism.
  - d) The Project-Executing Agency has not (i) entered into any business relationship with specially designated nationals, blocked persons or entities maintained on any Sanctions List; or (ii) engaged in any other activity that would constitute a breach of Sanctions.
- 3.2 The representations and warranties set forth in this Article are made for the first time by execution of this Agreement. They will be deemed to be repeated upon each drawing of the Loan and on each interest payment date, in each case by reference to the circumstances prevailing at that date.

#### **4. POSITIVE UNDERTAKINGS**

The Project-Executing Agency undertakes

- a) to fully comply with anti-money laundering and terrorism financing standards in accordance with the FATF Recommendations, and implement, maintain and, if necessary, improve its internal standards and guidelines (including without limitation in relation to customer due diligence) appropriate to avoid any Sanctionable Practice, act of money laundering or financing of terrorism; and
- b) as soon as the Project-Executing Agency or KfW becomes aware of or suspects any Sanctionable Practice, act of money laundering or financing of terrorism, to fully cooperate with KfW and its agents, in determining whether such compliance incident has occurred. In particular, the Project-Executing Agency shall respond promptly and in reasonable detail to any notice from KfW and shall furnish documentary support for such response upon KfW's request.

#### **5. NEGATIVE UNDERTAKINGS**

The Project-Executing Agency undertakes

- a) to ensure that its equity and other funds it invests will not be of Illicit Origin;
- b) to ensure that its business will not give rise to any Sanctionable Practice, money laundering or financing of terrorism; and
- c) not to enter into or continue any business relationship with specially designated nationals, blocked persons or entities maintained on any Sanctions List and not to engage in any other activity that would constitute a breach of Sanctions.

**Annex 2: Form of Legal Opinion of the Legal Adviser to the Borrower**

**Note:** Please amend "Republic of COUNTRY"/"COUNTRY" appropriately.

[Letterhead of Legal Adviser]

KfW  
 Department [\_\_\_\_\_] \_\_\_\_\_  
 Attn: [\_\_\_\_\_] (date)  
 Palmengartenstrasse 5 - 9  
 Postfach 11 11 41  
 60325 Frankfurt am Main/Germany

Federal Republic of Germany

Loan Agreement dated \_\_\_\_\_ and made between KfW and  
 [\_\_\_\_\_] ("Borrower") for an amount not exceeding in aggregate  
 EUR \_\_\_\_.000.000,--.

Dear Sir or Madam,

I am [Minister of Justice of] [legal adviser to] [head of the legal department of the  
 \_\_\_\_\_ (please specify ministry or other authority) of] the Republic of  
 COUNTRY. I have acted in that capacity in connection with a loan agreement, dated \_\_\_\_\_  
 (the "Loan Agreement"), and made between the Borrower and yourselves with respect to a  
 loan to be granted by yourselves to the Borrower in an amount not exceeding in aggregate  
 EUR \_\_\_\_.000.000,--.

1. Documents examined

I have examined:

- 1.1 an authentic signed original of the Loan Agreement;
- 1.2 the constitutional documents of the Borrower, in particular:
  - (a) the Constitution of the Republic of COUNTRY, dated \_\_\_\_\_, duly  
 published in \_\_\_\_\_, No \_\_\_\_\_, page \_\_\_\_\_, as amended;

- (b) Law(s) No \_\_\_\_\_ dated \_\_\_\_\_, duly published in \_\_\_\_\_, No \_\_\_\_\_, page \_\_\_\_\_, as amended *[please insert here, if existing, laws (e.g. budget laws) concerning the borrowing of money by the Republic of COUNTRY];*
- (c) \_\_\_\_\_ *[please refer here to other documents, e.g. decrees or resolutions by governmental or administrative bodies of COUNTRY relating to the conclusion of loan agreements by COUNTRY in general or with regard to the conclusion of the Loan Agreement];* and
- (d) the Financial Cooperation Agreement (if applicable) between the Government of the Republic of COUNTRY and the Government of the Federal Republic of Germany dated \_\_\_\_\_ (the "Government Agreement")

and such other laws, regulations, certificates, records, registrations and documents as I have deemed necessary or desirable to examine. In addition, I have made such investigations as I have deemed necessary or desirable for the purpose of giving this opinion.

## 2. Opinion

For the purposes of Article \_\_\_\_\_ of the Loan Agreement, I am of the opinion that under the laws of the Republic of COUNTRY at the date hereof:

2.1 According to Article \_\_\_\_\_ of the Constitution / Article \_\_\_\_\_ of the law on \_\_\_\_\_ *[please specify as appropriate]* the Borrower is entitled to enter into the Loan Agreement and has taken all necessary action to authorise the execution, delivery and performance of the Loan Agreement, in particular by virtue of:

- (a) Law(s) No(s) \_\_\_\_\_ dated \_\_\_\_\_ of the parliament of the Republic of COUNTRY, ratifying the Loan Agreement / approving the execution, delivery and performance of the Loan Agreement by the Borrower / \_\_\_\_\_ *[please insert as appropriate];*
- (b) Resolution(s) No(s) \_\_\_\_\_ dated \_\_\_\_\_ of the Cabinet of Ministers / of the state loan committee / \_\_\_\_\_ *[please insert governmental or administrative bodies of COUNTRY as appropriate];*
- (c) \_\_\_\_\_ *[please refer to other resolutions, decisions etc.].*

2.2 Ms./Mr. \_\_\_\_\_ (and Ms./Mr. \_\_\_\_\_) is (are) duly authorised by \_\_\_\_\_ *[e.g. by law due to her / his position (as Minister of \_\_\_\_\_ / as \_\_\_\_\_), by government resolution \_\_\_\_\_, by power of attorney of \_\_\_\_\_ dated \_\_\_\_\_, etc.]* to sign solely / jointly the Loan Agreement on behalf of the Borrower. The Loan Agreement as signed by Ms./Mr. \_\_\_\_\_ (and Ms./Mr. \_\_\_\_\_) has been duly executed on behalf of the Borrower and constitutes legally binding obligations of the Borrower enforceable against it at law in accordance with its terms.

***[Alternative 1 for Section 2.3, to be used if in addition to the documents specified in Section 2.1 and 2.2 certain official authorisations etc. must be obtained under the laws of the Republic of COUNTRY:]***

2.3 For the execution and performance of the Loan Agreement by the Borrower (including without limitation the obtaining and transfer to KfW of all amounts due thereunder in the currencies specified therein), the following official approvals, authorisations, licenses, registrations and / or consents have been obtained and are in full force and effect:

- (a) Approval of the \_\_\_\_\_ [Central Bank / National Bank / \_\_\_\_\_], dated \_\_\_\_\_, No \_\_\_\_\_;
- (b) Consent of the \_\_\_\_\_ [Minister / Ministry of \_\_\_\_\_], dated \_\_\_\_\_, No \_\_\_\_\_; and
- (c) \_\_\_\_\_ [please list any other official authorisations, licenses and / or consents].

No other official authorisations, consents, licenses, registrations and / or approvals of any governmental authority or agency (including the Central / National Bank of the Republic of COUNTRY) or court are required or advisable in connection with the execution and performance of the Loan Agreement by the Borrower (including without limitation the obtaining and transfer to KfW of all amounts due thereunder in the currencies specified therein) and the validity and enforceability of the Borrower's obligations under the Loan Agreement.

**[Alternative 2 for Section 2.3, to be used only if in addition to the documents specified in Section 2.1 and 2.2 no official authorisations etc. must be obtained under the laws of the Republic of COUNTRY:]**

- 2.3 No official authorisations, consents, licenses, registrations and / or approvals of any governmental authority or agency (including the Central / National Bank of the Republic of COUNTRY) or court are required or advisable in connection with the execution and performance of the Loan Agreement by the Borrower (including without limitation the obtaining and transfer to KfW of all amounts due thereunder in the currencies specified therein) and the validity and enforceability of the Borrower's obligations under the Loan Agreement.
- 2.4 No stamp tax or similar tax or duty has to be paid in connection with the validity or enforceability of the Loan Agreement.
- 2.5 The choice of German law to govern the Loan Agreement and the submission to arbitration in accordance with Article \_\_\_\_\_ of the Loan Agreement are valid and binding. Arbitration awards against the Borrower will be recognised and enforceable in the Republic of COUNTRY according to the following rules: \_\_\_\_\_ [please insert applicable treaty (if any), e.g. the 1958 New York Convention, and / or the basic principles regarding recognition and enforcement of arbitration awards in COUNTRY].
- 2.6 The courts of the Republic of COUNTRY are at liberty to give judgment de-nominated in the currency or currencies specified in the Loan Agreement.
- 2.7 The borrowing by the Borrower under the Loan Agreement and the execution and performance by the Borrower of the Loan Agreement constitute private and commercial acts and not governmental or public acts. Neither the Borrower nor any



of its property has any right of immunity from arbitration, suit, execution, attachment or other legal process.

- 2.8 The Government Agreement is in full force and effect under the constitution and laws of the Republic of *COUNTRY*. [Pursuant to Article 3. of the Government Agreement] [*If the Government Agreement has not entered into force or no Government Agreement is foreseen but a double-taxation agreement does exist*] Pursuant to the \_\_\_\_\_ [*please specify treaty or applicable laws and regulations*] / the Borrower will not be required to make any deduction or withholding from any payment the Borrower has to make under the Loan Agreement and should any such deduction or withholding be subsequently imposed, the provisions of Article \_\_\_\_\_ of the Loan Agreement shall operate so as to require the Borrower to indemnify KfW accordingly.
- 2.9 KfW is not and will not be deemed to be resident, domiciled, carrying on business or be subject to taxation in the Republic of *COUNTRY* by reason only of the execution, performance or enforcement of the Loan Agreement. It is not necessary or advisable that KfW be licensed, qualified or otherwise entitled to carry on business or that KfW appoints agents or representatives in the Republic of *COUNTRY*.

Consequently, the obligations of the Borrower under the Loan Agreement constitute direct and unconditional, legal, valid and binding obligations of the Borrower which are enforceable against the Borrower in accordance with their respective terms.

This legal opinion is limited to the laws of the Republic of *COUNTRY*.

\_\_\_\_\_  
(Place)                      (Date)

[Signature]  
Name: \_\_\_\_\_

Enclosures:

**Note: Please attach certified photocopies of the documents and legal provisions referred to above (with respect to lengthy laws or the Constitution of the Republic of *COUNTRY*, a copy of the relevant provisions would be sufficient) and also provide KfW with an official English or German translation of each of the above documents unless such document is issued in English or German as an official language or unless KfW has indicated that another language is satisfactory.**

# **Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries**

Document version Jan. 2019

1. update as of Jan. 2021

## 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](mailto:FZ-Vergabemanagement@kfw.de)

## Table of Contents

1. Scope of Application and Procurement Framework .....	- 1 -
1.1 Scope of Application of the Guidelines .....	- 1 -
1.2 Fundamental Arrangements .....	- 1 -
1.2.1 Basic Principles .....	- 1 -
1.2.2 Responsibility for Procurement and Contract Performance .....	- 2 -
1.2.3 Declaration of Undertaking .....	- 2 -
1.2.4 KfW's Standard Tender Documents .....	- 3 -
1.3 Eligibility Criteria .....	- 3 -
1.3.1 Rules of Nationality and of Origin .....	- 3 -
1.3.2 Grounds for Exclusion .....	- 3 -
1.3.3 Conflict of Interest .....	- 4 -
1.4 Sanctionable Practice .....	- 5 -
1.5 Social and Environmental Responsibility .....	- 5 -
1.6 Monitoring and Review by KfW .....	- 6 -
1.6.1 General .....	- 6 -
1.6.2 Procurement Plan .....	- 6 -
1.6.3 No-Objection - Prior Review .....	- 6 -
1.6.4 No-Objection - Simplified Review .....	- 7 -
1.6.5 No-Objection - Post Review .....	- 7 -
1.6.6 Renewed No-Objection .....	- 7 -
1.6.7 Advance Tendering .....	- 7 -
1.6.8 Prefinanced Contracts .....	- 8 -
1.6.9 Indirect Financing .....	- 8 -
1.6.10 Sanctions by KfW for Misprocurement .....	- 8 -
2. General Provisions for the Tender Process .....	- 9 -
2.1 Tender Procedures .....	- 9 -
2.1.1 International Competitive Bidding .....	- 9 -
2.1.2 National Competitive Bidding .....	- 9 -
2.1.3 Limited Competitive Bidding .....	- 9 -
2.1.4 Price Quotation .....	- 10 -
2.1.5 Direct Award .....	- 10 -
2.2 Two-Stage and Single-Stage Selection .....	- 11 -
2.3 One-/Two-Envelope Submission of Offers .....	- 12 -
2.4 Preparation of the Tender Process .....	- 12 -

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

2.4.1 Standard Tender Documents and Draft Contract .....	- 12 -
2.4.2 Standards and Technical Specifications, Brand Names .....	- 12 -
2.4.3 Registration and other Administrative Requirements.....	- 13 -
2.4.4 Joint Ventures.....	- 13 -
2.4.5 Language.....	- 13 -
2.4.6 Currencies .....	- 13 -
2.4.7 Taxes and Duties.....	- 14 -
2.4.8 Guarantees and Securities.....	- 14 -
2.4.9 Fees for Tender Documents.....	- 14 -
2.4.10 Submission Deadlines .....	- 14 -
2.4.11 Domestic Preference .....	- 15 -
2.5 Execution of the Tender Process .....	- 15 -
2.5.1 Publication of Tender Notice .....	- 15 -
2.5.2 Communications, Clarification of Tender Documents and Pre-Bid Meeting .....	- 16 -
2.5.3 One Application/Offer per Applicant/Bidder .....	- 16 -
2.5.4 Opening of Applications/Offers.....	- 17 -
2.5.5 Preliminary Examination of Applications/Offers .....	- 17 -
2.5.6 Evaluation of Evidence of Qualification.....	- 17 -
2.5.7 Information and Publication of Prequalified Applicants.....	- 18 -
2.5.8 Evaluation of Offers .....	- 18 -
2.5.9 Clarification of Applications/Offers during Evaluation .....	- 19 -
2.5.10 Extension of Offer Validity .....	- 19 -
2.5.11 Evaluation Report.....	- 19 -
2.5.12 Pre-Award Discussions .....	- 19 -
2.5.13 Information of Bidders and Award of Contract.....	- 20 -
2.5.14 Publication of the Result of the Tender Process.....	- 20 -
2.5.15 Cancellation of a Tender Process .....	- 20 -
2.5.16 Publication of Tender Process Cancellation .....	- 21 -
2.5.17 Debriefing .....	- 21 -
2.6 Procurement Related Complaints .....	- 21 -
2.7 Electronic Procurement .....	- 21 -
3. Provisions for Procurement of Consulting Services.....	- 22 -
3.1 Tender Agents and Agency Contract.....	- 22 -
3.2 Two-Stage Selection for Consulting Services .....	- 22 -
3.3 Pre-Qualification for Consulting Services.....	- 22 -
3.4 Evaluation Methods for Consulting Services .....	- 23 -
3.4.1 Quality and Cost-Based Selection (QCBS).....	- 23 -
3.4.2 Least Cost Based Selection (LCS).....	- 24 -

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

3.4.3 Quality Based Selection (QBS) .....	- 24 -
3.4.4 Fixed Budget Based Selection (FBS).....	- 25 -
3.5 Availability and Replacement of Proposed Key Staff before Award of Contract .....	- 25 -
4. Provisions for Procurement of Works, Plant, Goods & Non-Consulting Services .....	- 25 -
4.1 Engagement of a Consultant.....	- 25 -
4.2 Single- and Two-Stage Selection .....	- 25 -
4.3 (Pre-)Qualification for Works and Plant Contracts .....	- 26 -
4.4 Evaluation Methods for Works, Plant, Goods and Non-Consulting Services .....	- 26 -
4.4.1 Lowest Price Evaluation .....	- 26 -
4.4.2 Bonus-Malus Adjusted Price Evaluation .....	- 26 -
4.4.3 Weighted Evaluation.....	- 27 -
4.4.4 Life Cycle Cost Evaluation (LCC).....	- 27 -
4.5 Alternative Bids.....	- 27 -
4.6 Discounts .....	- 27 -
4.7 Transport and Insurance .....	- 28 -
4.8 Force Account.....	- 28 -
5. Procurement not subject to Public Procurement Regulations, Financial Intermediaries and Special Cases.....	- 28 -
5.1 Procurement not subject to Public Procurement Regulations .....	- 28 -
5.2 Financial Intermediaries .....	- 29 -
5.3 Specific Case of Concessions and Output Based Contracts .....	- 29 -
Appendices .....	- 30 -
Declaration of Undertaking .....	- 31 -
Procurement Plan .....	- 34 -
Minimum Content of a Tender, PQ-Result, Contract Award and Cancellation Notice .....	- 36 -
Evaluation Criteria for Procurement of Consulting Services .....	- 37 -
Minimum Content of Tender Documents .....	- 40 -
Minimum Content of Minutes of Application/Offer Opening and Evaluation Reports .....	- 41 -
Contractual Provisions.....	- 44 -
Models for Guarantees and Securities.....	- 49 -

## Definitions

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

<b>Appendix</b>	Appendix to these Guidelines.
<b>Applicant</b>	Person who submitted an Application in a Tender Process.
<b>Application</b>	Set of documents submitted by an Applicant in order to prove eligibility and qualification to perform the Contract.
<b>Award of Contract</b>	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.
<b>Bid</b>	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.
<b>Bidder</b>	Person who submitted an Offer in a Tender Process.
<b>Coercive Practice</b>	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.
<b>Collusive Practice</b>	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
<b>Consulting Services</b>	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.
<b>Contract</b>	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.
<b>Contractor</b>	Bidder to whom the Contract has been awarded at the end of a Tender Process (e.g. consultant, works contractor or a supplier).
<b>Corrupt Practice</b>	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.
<b>Declaration of Undertaking ("DoU")</b>	Statement of integrity, eligibility and social and environmental responsibility in the format attached as Appendix 1.

<b>ESHS</b>	Environment, Social (incl. issues of sexual exploitation and abuse and gender-based violence), Health and Safety (incl. of security for personnel).
<b>Fraudulent Practice</b>	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.
<b>Funding Agreement</b>	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.
<b>Goods</b>	Commodities, raw material, machinery, equipment, vehicles, and related services, e.g. transportation, insurance, installation, commissioning, training, and initial maintenance.
<b>GTAI</b>	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 ( <a href="http://www.gtai.de">www.gtai.de</a> ).
<b>Guidelines</b>	KfW's Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non Consulting Services in Financial Cooperation with Partner Countries.
<b>Invitation to Bid ("ITB")</b>	Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Bid.
<b>Joint Venture ("JV")</b>	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.
<b>Key Expert</b>	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.
<b>Mandate</b>	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.
<b>Non-Consulting Services</b>	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.
<b>No-Objection</b>	KfW's written notice concerning PEA's documents and decisions in the preparation and execution of a Tender Process.
<b>Obstructive Practice</b>	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



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

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.

<b>Offer</b>	General term for Proposals and Bids.
<b>Partner Country</b>	Country of the PEA, in which the KfW financed project/programme is implemented.
<b>Person</b>	Any natural or legal person or an association of two or more of the foregoing.
<b>Plant</b>	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).
<b>Prequalification</b>	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.
<b>Procurement Plan</b>	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.
<b>Project Executing Agency ("PEA")</b>	Entity in charge of implementing a project, which directly or indirectly receives funds made available under the Funding Agreement.
<b>Proposal</b>	Set of documents submitted by Bidders in order to participate in a Tender Process for procurement of Consulting Services.
<b>Public Procurement Regulation</b>	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.
<b>Request for Application ("RfA")</b>	Set of documents inviting potential Applicants to submit their evidence of qualification to perform the Contract.
<b>Request for Proposal ("RfP")</b>	Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Proposal.
<b>Sanctionable Practice</b>	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.
<b>Single-Stage Selection</b>	Tender Process in which Persons submit their evidence of qualification together with their technical and financial Offer.
<b>Standard Tender Documents ("SDO")</b>	Set of Tender Documents issued by KfW for procurement in KfW-financed Projects.
<b>Subcontractor</b>	Person to whom the Contractor subcontracts parts of the Contract while remaining responsible to the PEA during the Contract performance.

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

<b>Tender Document(s)</b>	RfA, ITB and RfP, including Draft Contract as well as any clarification or amendment thereof during the Tender Process.
<b>Tender Procedure</b>	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.
<b>Tender Process</b>	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.
<b>Terms of Reference ("ToR")</b>	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.
<b>Two-Stage Selection</b>	Tender Process which is divided into two consecutive stages with an upstream Prequalification.
<b>Works</b>	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 KfW<sup>1</sup>. 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 procedure<sup>2</sup>;
- (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**

- 
- 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 Francaise de Developement (AFD) and the European Investment Bank (EIB) in the context of the Mutual Reliance Initiative (MRI).

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

#### **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.

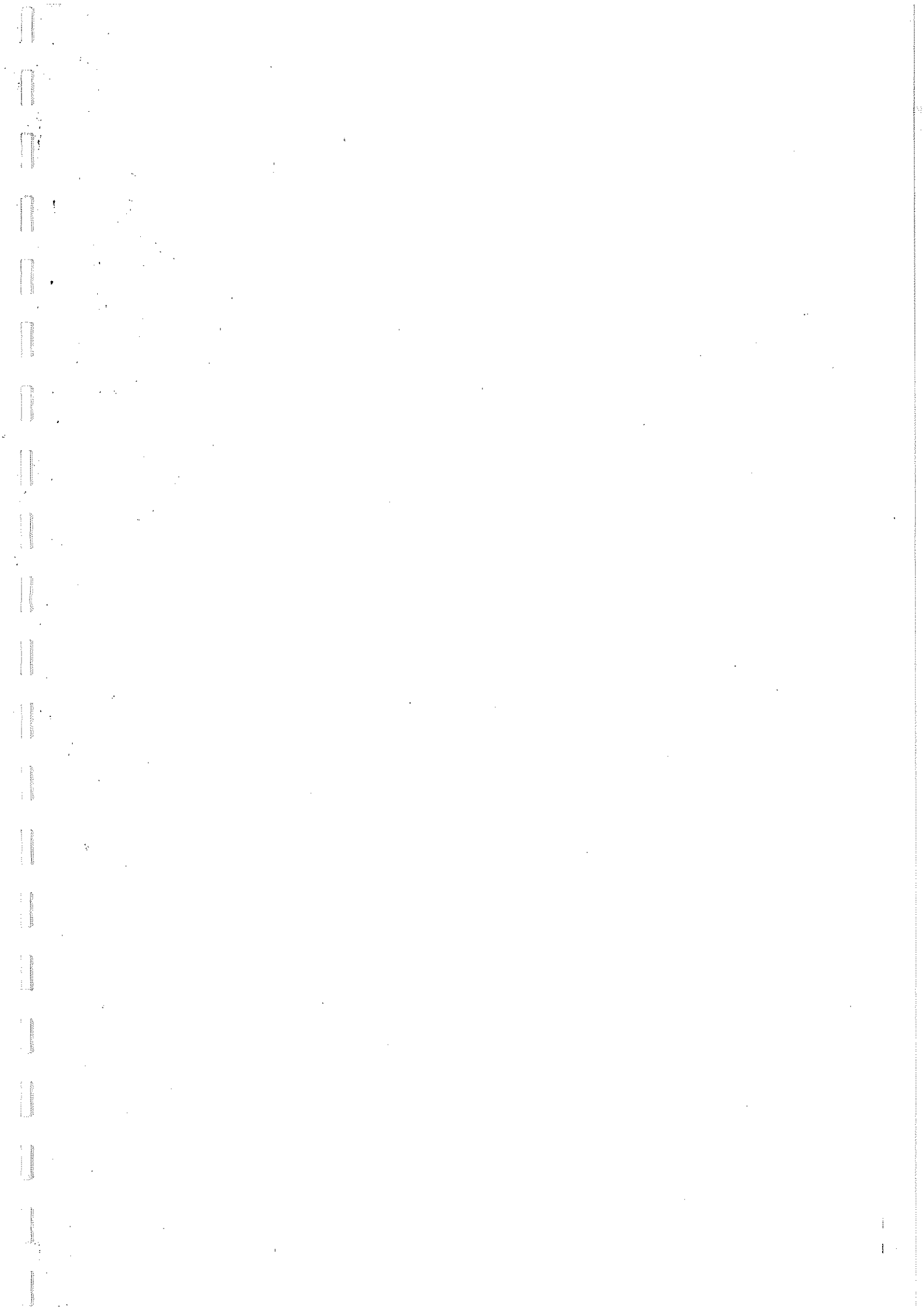
KfW provides financing pursuant to the terms and conditions as set out in the Funding Agreement. No contractual relationship shall be deemed to exist between KfW and any third party other than the PEA. Any communications which may be exchanged between any third party and KfW in the context of a project 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 Subcontractors 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.



- (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.

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.

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.

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 Guidelines<sup>3</sup>, 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 Documents<sup>4</sup>.

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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](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

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 Organization<sup>5</sup> (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

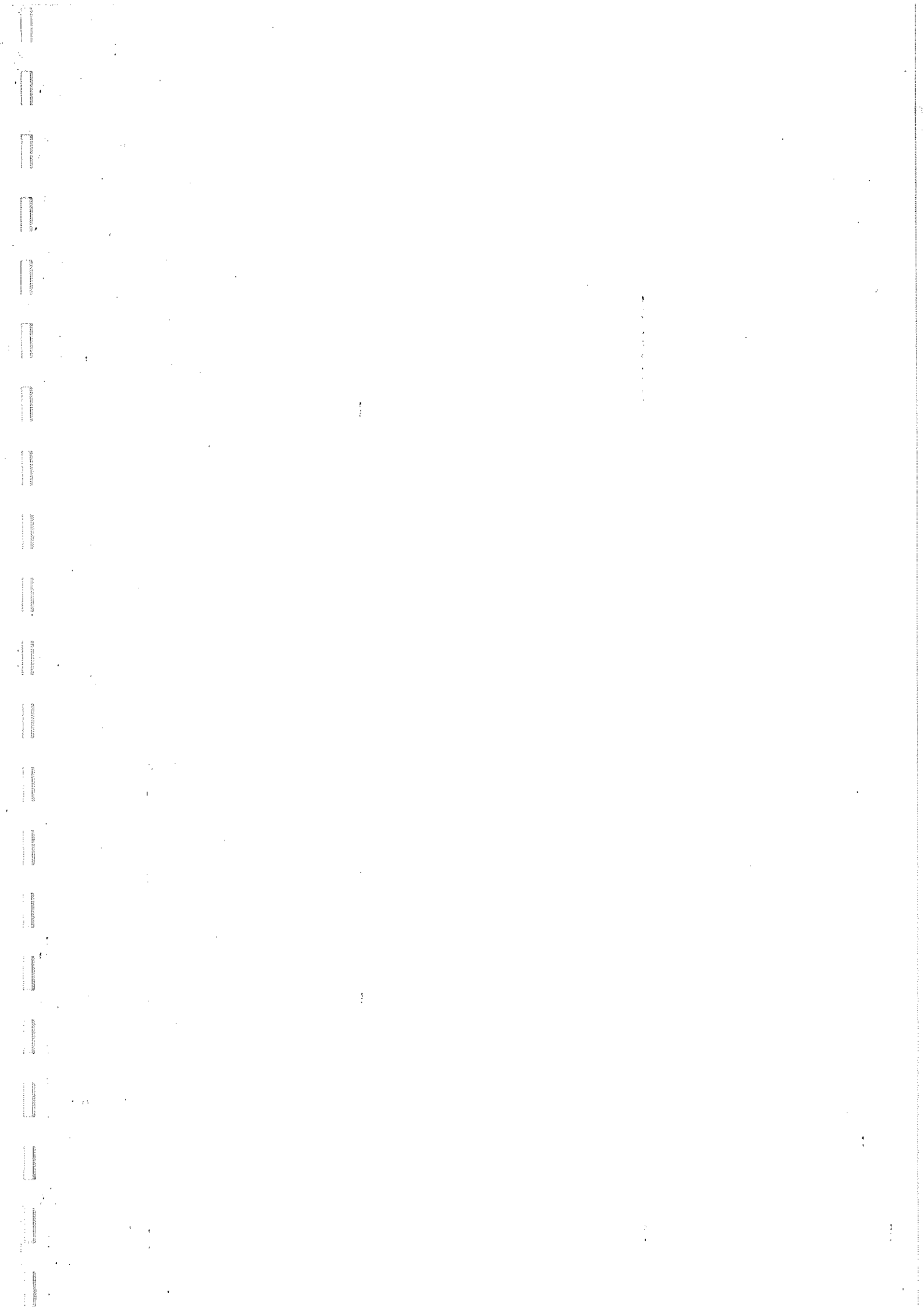
The PEA is required to establish as part of the Funding Agreement a Procurement Plan and implement it accordingly. The Procurement Plan shall identify as far as possible the respective Tender Processes for all KfW-financed Contracts. The initial Procurement Plan shall cover the whole project period and 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.

### 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:

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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.



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.

- (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 value<sup>6</sup> 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,

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<sup>6</sup> 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.

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.

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,



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

- 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 language<sup>7</sup> 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/Offer and the Contract to be concluded may be in the national language of the Partner Country only, if different from the 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.

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

#### **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](http://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 writing<sup>8</sup> and the PEA shall treat information relating the examination, clarification, and evaluation of Applications/Offers 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 the outcome of the evaluation of Applications/Offers, 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/Offers 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/Offers 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 Expert<sup>9</sup> appears in more than one Proposal, all Proposals concerned shall

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<sup>8</sup> 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).

<sup>9</sup> 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.

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/Offers**

The opening of Applications/Offers 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/Offers 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/Offers at the place and time specified in the Tender Documents. The opening shall take place regardless of the number of Applications/Offers received, provided that the Applications/Offers 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

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/Offers during Evaluation**

To assist in the examination, evaluation, and comparison of the Applications/Offers, 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/Offers 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 SDOs<sup>10</sup>,

### 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.

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<sup>10</sup> 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/>

### 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).

#### **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

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## Declaration of Undertaking

Reference name of the Application/Offer/Contract: ("Contract")<sup>11</sup>  
To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")<sup>12</sup> 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/debarr> or respectively on the relevant list of any other multilateral development bank (*in the*

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<sup>11</sup> 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".

<sup>12</sup> 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.

**Appendix 1**

*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.
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

**Appendix 1**

implementation of the Contract and the fundamental conventions of the International Labour Organisation<sup>13</sup> (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.

7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an 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 of<sup>14</sup>: \_\_\_\_\_

Signature:

Dated:

\_\_\_\_\_

<sup>13</sup> 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.

<sup>14</sup> 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.

## 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. <sup>15</sup>	Type <sup>16</sup>	Short Description of Contract Content	Estimated Contract Amount <sup>17</sup>	Source of Funds <sup>18</sup>	Tender Procedure <sup>19</sup>	Stages <sup>20</sup>	Tender Documents <sup>21</sup>	Review by KfW <sup>22</sup>	ESHS risk level <sup>23</sup>	Estimated Tender Publication	Comments <sup>24</sup>
1												
2												
3												
4												
...												

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

<sup>15</sup> KfW's Procurement No. for the respective Tender Process to be provided by KfW's procurement manager; "n/a" if not yet available.  
<sup>16</sup> "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.  
<sup>17</sup> To be completed in the currency of the underlying Funding Agreement with KfW.  
<sup>18</sup> Share (in %) of the Contract financed by KfW, through the PEA's own funds and/or other financing institutions.  
<sup>19</sup> "ICB" for International Competitive Bidding, "NCB" for National Competitive Bidding, "LCB" for Limited Competitive Bidding, "Q" for Price Quotation and "DA" for Direct Award.  
<sup>20</sup> "1" for Single-Stage Selection or "2" for Two-Stage Selection  
<sup>21</sup> Institution whose standardized Tender Documents are used. It is recommended to use KfW's Standard Tender Documents.  
<sup>22</sup> "F" for full review or "S" for simplified review.  
<sup>23</sup> 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 "n/a" 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.  
<sup>24</sup> Contract related explanation / procedural arrangements (e.g. justification for direct award, One-/two-envelope, evaluation method, thresholds for Tender Procedures in programs).

## 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.

## 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
<b>Total Prequalification Score</b>	<b>100</b>

## Appendix 4

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		
<b>Total Technical Score</b>			<b>100</b>	

## Appendix 4

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).

## 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.

## 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.

## 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 Contact 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 "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 institution<sup>25</sup>. 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.

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<sup>25</sup> Further details can be made available on request

## 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]<sup>26</sup>*, 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.

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<sup>26</sup> This guarantee must be issued in the Contract currency only.

*[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].*

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Place, date

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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]*<sup>27</sup> 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]*<sup>28</sup>. 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.]*

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<sup>27</sup> This security must be issued in the Contract currency only.

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

*[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].*

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Place, date

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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*

### Retention Money Security<sup>29</sup>

**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]*<sup>30</sup> 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]*.

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

<sup>30</sup> 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.

This security shall expire not later than *[insert expiry date]*<sup>31</sup>.

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].*

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Place, date

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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.*

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<sup>31</sup> 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."

**Ministry of Finance  
GRIDCo**

**Transmission Line Accra-Kumansi  
BMZ Nr. 2017 65 254, 2018 65 104 and 2021  
65 207**

**[Draft]**

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

**10.07.2022**

MATERIAL MEASURES AND ACTIONS		TIMEFRAHE	RESPONSIBLE ENTITY/AUTHORITY
MONITORING & REPORTING			
A	<p><b>REGULAR REPORTING</b> 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 environmental and social (E&amp;S) instruments required under the ESCP, stakeholder engagement activities, functioning of the grievance mechanisms.</p>	Quarterly throughout Project preparation and implementation.	GRIDCO
B	<p><b>INCIDENTS AND ACCIDENTS</b> 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. Provide sufficient detail regarding the incident or accident, indicating immediate measures taken or that are planned to be taken to address it, and any information provided by any contractor and supervising entity, as appropriate. Subsequently, as per KfW's request, prepare a report on the incident or accident and propose any measures to prevent its recurrence.</p>	An Incident Report shall be promptly, but in any event be prepared within 3 workdays after the occurrence.	GRIDCO
ESS 1: ASSESSMENT AND MANAGEMENT OF ENVIRONMENTAL AND SOCIAL RISKS AND IMPACTS			
1.1	<p><b>ORGANIZATIONAL STRUCTURE</b> Appoint at least one environmental and one social specialist for the Project in order to ensure appropriate supervision, monitoring and follow up of development and implementation of environmental and social instruments and to comply with GRIDCo's tasks and responsibilities as per this ESCP and per the Project's E&amp;S Instruments.</p>	Share envisaged staffing and organizational structure for the E&S management of the Projects with KfW at least one month after signing this agreement.  The organizational structure, including specialists, should be maintained throughout Project implementation.	GRIDCO
1.2	<p><b>ENVIRONMENTAL AND SOCIAL ASSESSMENT (ESIA)</b> PEA will undertake and implement environmental and social impact assessment in a manner acceptable to KfW and in line with the E&amp;S Requirements.</p>	Finalize ESIA prior to procurement of the works. Implement the mitigation measures contained in the ESIA throughout the Project implementation.	GRIDCO

	MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
	<p>PEA is supported by the ESIA consultant who will prepare the ESIA for the Transmission Line and components under the Project based on the ESIA Scoping Report, the Update of the Scoping Report and consistent E&amp;S Consultant ToRs. The ToR are subject to KfW's No Objection.</p> <p>Further the PEA is supported in the review and approval of E&amp;S instruments and monitoring of ESHS performance of works contractors by the implementation consultant (IC).</p>		
<p><b>1.3</b></p>	<p><b>MANAGEMENT TOOLS AND INSTRUMENTS</b></p> <p>The ESIA for the Project to comprise an Environmental and Social Management Plan (ESMP), with special sub-plans as appropriate; the ESMP will incorporate the provisions of the Works Requirements as per KfW Standard Bidding Documents and Procurement Guideline. The ESMP will cover the Project's construction- and operational phases and will outline requirements for decommissioning as well. The ESMP will incorporate the relevant provisions of GRIDCo's environmental and social policies, regulations and procedures. The ESMP will be integrated into the Project's Tender Documents and into the contractors' contracts.</p> <p>ESMP to be developed and implemented to the satisfaction of KfW and will include a comprehensive and appropriate monitoring plan covering all measures and provisions of the ESMP.</p> <p>The ESIA and ESMP will be factored into the final design (especially regarding final routing) and ESIA/ESMP will be updated as appropriate prior to the start of the construction phase in order to fully reflect the final design of the Project (Updates of ESIA/ESMP to be integrated in tasks of IC).</p> <p>If required, additional ESIA studies will be undertaken and ESMPs prepared for project components which are not yet part of the current design but will only be determined once the contractors will have commenced to work under their contracts (e.g. borrow pits, spoil areas, access roads).</p>	<p>E&amp;S tools and instruments as mentioned require KfW's review and No Objection.</p> <p>RAP implementation to be completed upon start of construction activities.</p> <p>LRP implementation to start prior to construction phase but may continue during construction phase.</p> <p>Once prepared and approved, tools and instruments apply throughout Project implementation.</p>	<p>GRIDCo</p>

MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
<p>A Stakeholder Engagement Plan (SEP) has to be prepared for the Project and will be continuously updated through project preparation and – implementation. SEP to be in line with ESS 10 and updated and implemented to the satisfaction of KfW.</p> <p>A Resettlement Action Plan (RAP) including a Livelihood Restoration Plan (LRP) will be developed and implemented in line with national legislation and ESS 5 and to the satisfaction of KfW.</p> <p>In case protected areas (i.e., forest reserves) are negatively impacted, a Biodiversity Action Plan, potentially including measures to protect further deforestation in cooperation with the communities, will be developed. The need for such plan is to be defined by the ESIA.</p> <p>No construction works will start until the no-objection from KfW to the RAP implementation process is received. No land take for the Project and no construction activities will be undertaken before full compensation of project affected people has been disbursed and evidence for diligent process has been provided to KfW in a satisfactory manner.</p> <p>The RAP/LRP will be updated as appropriate to fully incorporate any changes in the Project's design and to fully reflect final design.</p>		
<p><b>1.4</b></p> <p><b>PERMITS AND AUTHORIZATIONS</b></p> <p>After No Objection of KfW, submit ToR for scoping report, updated scoping report, ToR for ESIA and ESIA to EPA and other relevant authorities for approval.</p> <p>Obtain relevant environmental permits and approvals through EPA, Forestry Commission, Land Commission, and other relevant authorities.</p> <p>Requirements for other environmental and social permits to be identified during Project preparation/ESIA process.</p> <p>The ESMP to comprise a permit register.</p> <p>Any conditions as contained in permits and approvals will be adhered to and the required actions will be subject to supervision and monitoring.</p>	<p><i>Approvals to be ensured prior of construction and requirements of permits to be adhered to throughout project implementation.</i></p>	<p>GRIDCo and IC</p>
<p><b>1.5</b></p> <p><b>MANAGEMENT OF CONTRACTORS</b></p>	<p><i>Prior to the procurement process for works contracts.</i></p>	<p>GRIDCo and IC</p>



MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
<p>Incorporate the relevant aspects of the ESCP, including the relevant E&amp;S instruments, i.e., the ESMP, into the ESHS specifications of the procurement documents for works contractors and in the respective contracts (KfW standard bidding documents including works requirements).</p> <p>Thereafter ensure that the contractors comply with the ESHS specifications of their respective contracts.</p> <p>Contractors will be required to develop their own PA-ESMPs ("Project Area" or Construction ESMPs).</p> <p>The PEA shall ensure that occupational and public health and safety provisions as per ESMP are consistent with national requirements, relevant ESS and international good practice standards, and put forward to contractors, subcontractors, and to suppliers, in particular those for major supply items. PA-ESMPs will be subject to review, approval and monitoring of contractors' implementation by GRIDCo, supported by the IC.</p>	<p>Approval of PA-ESMP prior to start of construction and implementation throughout the construction.</p>	<p>Contractors, GRIDCo and IC</p>
<p><b>ESS 2: LABOR AND WORKING CONDITIONS</b></p>		
<p><b>2.1</b></p> <p><b>LABOR MANAGEMENT PROCEDURES</b></p> <p>ESMP to comprise a Labor Management Plan (LMP) as sub-plan, in line with national legislation, requirements of the PEA and with ESS2. The LMP will be applicable to direct workers, contracted workers, including casual laborers. Contractors will be required to develop or present their own labor management plans in line with the LMP, to be reviewed and approved by the PEA with the support of the IC.</p> <p>PEA supported by IC to ensure compliance with LMP throughout Project implementation, continuously supervise and monitor diligent implementation.</p>	<p>Approval prior to start of construction</p> <p>Implementation throughout the Project implementation.</p>	<p>Contractors</p> <p>GRIDCo and IC</p>
<p><b>2.2</b></p> <p><b>WORKERS GRIEVANCE MECHANISM FOR PROJECT</b></p> <p>Establish, maintain, and operate a grievance mechanism for Project workers, as described in the LMP and consistent with ESS2, prior to any project implementation, which is accessible to all workforce engaged in Project implementation.</p> <p>PEA and IC will supervise and monitor functioning.</p>	<p>Grievance mechanism operational prior engaging Project workers and maintained throughout Project implementation.</p>	<p>Contractors</p> <p>GRIDCo and IC</p>

MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
<p><b>2.3</b></p> <p><b>OCCUPATIONAL HEALTH AND SAFETY (OHS)</b></p> <p>The Contractors prepare, adopt, and implement occupational, health and safety (OHS) measures specified in the ESHS requirements and the ESMP, including emergency preparedness and response measures for construction and operational phase and Project specific risks such as working at heights and working on electrical systems.</p> <p>The PEA supported by the IC to review and approve contractors OHS Plans (to be in line with the provisions of the ESMP/OHS sub-plan).</p> <p>OHS performance will be supervised by PEA supported by IC, which shall request corrective action as necessary.</p>	<p>OHS plan to be approved prior to start of construction works and to be implemented throughout the Project.</p>	<p>Contractors</p>
<p><b>2.4</b></p> <p><b>PROJECT WORKERS TRAINING</b></p> <p>Implement training of Project workforce designed to heighten awareness of ESHS risks and to avoid/mitigate impacts from construction activities on local communities. Training to cover at minimum the provisions of the ESMP and Works Requirements as per KfW Standard Bidding Documents.</p> <p>Training activities subject to supervision and monitoring.</p>	<p>Prior to and during construction</p>	<p>Contractors</p>
<p><b>2.5</b></p> <p><b>PROJECT WORKERS CODE OF CONDUCT</b></p> <p>Workers Code of Conduct to comprehensively cover, but not be limited to</p> <ul style="list-style-type: none"> <li>- the areas of Gender Based Violence, Sexual Transmitted Diseases and Sexual Exploitation and Abuse, including relevant disciplinary measures, penalties and provisions for prosecution,</li> <li>- prohibition of hunting and any other damage to biodiversity, flora and fauna, specifically in the forest reserves or natural habitats</li> </ul> <p>PEA supported by IC will review and approve contractors Code of Conduct and monitor implementation.</p>	<p>Prior to and during construction</p>	<p>Contractors</p>
<p><b>ESS 3: RESOURCE EFFICIENCY AND POLLUTION PREVENTION AND MANAGEMENT</b></p>		
<p><b>3.1</b></p> <p><b>RESOURCE EFFICIENCY, POLLUTION PREVENTION AND MANAGEMENT</b></p> <p>The ESMP will comprise measures for resource efficiency (e.g., for water and energy use), pollution prevention and management of waste and hazardous materials in the format of a (hazardous) waste management plan.</p>	<p>Approval prior to start of construction Implementation throughout the Project implementation.</p>	<p>Contractors</p>
		<p>GRIDCo and IC</p>

MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
<p>Contractors will have to develop their own management plans (based on the ESMP), diligent implementation to be supervised and monitored by PEA with the support of the IC.</p>		
<p><b>3.2. AIR QUALITY AND EMISSIONS</b></p> <p>Best available technologies will be applied to minimize project-related air emissions during construction and operation of the project (ESMP, design/technologies e.g., for transformers). The ESMP will comprise measures for noise management, in line with national legislation and with the provisions of the World Bank Group EHS Guidelines.</p> <p>The ESIA will include an estimate of gross GHG emissions resulting from the project (construction/operation).</p> <p>Contractors will have to develop their own management plans related to air pollution and noise (based on the ESMP), to be approved and implementation to be monitored by the PEA with the support of the IC.</p>	<p>See time frame for ESMP</p> <p>Approval prior to start of construction Implementation throughout the Project implementation.</p>	<p>GRIDCo and IC</p> <p>Contractors</p>
<p><b>3.4. WATER POLLUTION</b></p> <p>Best available technologies and specific measures will be applied to avoid project-related contaminated runoff and leachate during construction and operation (e.g., oil spills in substations) of the project and protection of waterbodies which are crossed by the transmission line.</p> <p>Contractors will have to develop their own management plans related to water pollution (based on the ESMP), to be approved and implementation to be monitored by the PEA with the support of the IC.</p>	<p>See time frame for ESMP</p> <p>Approval prior to start of construction Implementation throughout the Project implementation.</p>	<p>GRIDCo and IC</p> <p>Contractors</p>
<b>ESS 4: COMMUNITY HEALTH AND SAFETY</b>		
<b>4.1 COMMUNITY HEALTH AND SAFETY</b>		
<p>The Contractors will prepare, adopt, and implement measures and action to assess and manage specific risks and impacts to the community arising from Project activities as will be identified in the ESiAs and ESMPs and as per ESHS requirements. This will inter alia include Code-of-Conduct and measures to prevent gender-based violence (Also see 2.5). Any risks of labor influx or from the operation of security personnel will be addressed as well.</p>	<p>Approval prior to start of construction Implementation throughout the Project's construction and operation. .</p>	<p>Contractors</p> <p>GRIDCo and IC</p>

MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
<p>Contractors' Community Health and Safety Plans will be approved, and implementation monitored by the PEA, supported by IC. During operation, PEA will implement relevant measures as per ESMP.</p>	<p><i>[Indicate timing e.g. Same timeframe than for the preparation and implementation of the ESMPs].</i></p>	<p>Contractors GRIDCo and IC</p>
<p><b>4.2</b> TRAFFIC AND ROAD SAFETY Contractors to adopt and implement measures and actions to assess and manage traffic and road safety risks per ESHS requirements and as per ESMPs. Contractors' performance will be supervised by PEA supported by IC.</p>	<p>Before start of construction and throughout construction phase.</p>	<p>GRIDCo and IC</p>
<p><b>4.3</b> COMMUNITY AWARENESS AND CAPACITY BUILDING: Conduct community capacity development to increase awareness of risks and to avoid and mitigate impacts as per SEP and ESMP provisions. IC to support PEA to undertake regular community awareness raising and capacity building in relevant topics such as grievance mechanism, deforestation, and encroachment of the right of way.</p>		
<p><b>4.4</b> SECURITY PERSONNEL A Security Personnel Management Plan consistent with the requirements of ESS4, in a manner acceptable to KfW has to be prepared, implemented and monitored by PEA supported by the IC.</p>	<p>Prior to engaging security personnel and thereafter implemented throughout Project construction and operation.</p>	<p>GRIDCo and IC</p>
<p><b>ESS 5: LAND ACQUISITION, RESTRICTIONS ON LAND USE AND INVOLUNTARY RESETTLEMENT</b></p>		
<p><b>5.1</b> RESETTLEMENT ACTION PLAN, LIVELIHOOD RESTORATION PLAN PEA, in the course of ESIA preparation and through a specialist study under the ESIA assignment, will explore all options to avoid and if avoidance is not possible minimize land take for the Project and to specifically avoid physical displacement.</p>	<p>RAP implementation to be completed upon start of construction activities.  LRP implementation to start prior to construction phase but may continue during construction phase.  E&amp;S instruments as listed above require KfW's review and approval.</p>	<p>GRIDCo, IC</p>

MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
<p>RAP and LRP to be developed in line with national legislation, GRIDCo's requirements, ESS5, the UN Basic Principles and Guidelines on Development based Evictions and Displacement and the VGGT. The RAP Entitlement Matrix will cover all entitlements, as per national legislation and as per ESS5 including any entitlements related to the LRP. In kind compensation for loss of residential premises and for substantial loss of land in case livelihoods are land based, will be offered to affected people as option of choice and the risks related to cash compensation will be meaningfully explained in the course of engagement of affected people.</p> <p>Gaps between national legislation and the provisions of ESS5 will be identified and addressed appropriately in the RAP/LRP. The RAP budget will cover all measures, including measures for gap closure and implementation of the LRP.</p> <p>The RAP/LRP will be updated to eventually fully reflect the final design of the Project.</p> <p>A kick-off workshop will be held by start of the RAP/LRP development process and upon completion of RAP/LRP documentation, to be organized by PEA supported by ESIA/RAP consultant for all relevant stakeholders.</p>		
<p>5.3 CUT OFF DATE</p> <p>PEA to ensure that in the course of the census/social survey for the RAP the latest, the cut-off date regarding eligibility for entitlements under the RAP/LRP will be established and appropriately and comprehensively communicated with PAP and in the wider project area.</p>	<p>Latest in the course to census/social survey for RAP</p>	<p>GRIDCo</p>
<p>5.4 CONTRACTORS LAND ACQUISITION</p> <p>In case the contractors will undertake temporary land acquisition for any areas as required during construction (e.g. construction camp, lay down areas, access roads), the corresponding provisions of the RAP will apply and be adhered to by the contractors. The RAP will comprise provisions to address impacts from unintended damage which may occur during construction of the Project.</p>	<p>Same timelines as for RAP/LRP</p>	<p>GRIDCo, Contractors</p>
<p>5.5 BUDGET FOR IMPLEMENTATION OF RAP AND LRP</p>	<p>Prior RAP and LRP implementation</p>	<p>GRIDCo</p>

MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
<p>PEA to ensure that it will cover the full budget for comprehensive implementation of RAP and LRP (national and international requirements), including contingencies to cover compensation amounts which cannot be disbursed as per RAP implementation plan, e.g. due to ongoing land disputes, due to absence of entitled persons, or due to pending documentation of entitled PAP.</p> <p><b>5.6 MONITORING AND REPORTING, RAP COMPLETION AUDIT</b></p> <p>Ensure that internal progress monitoring and reporting on RAP/LRP implementation (land acquisition, compensation, resettlement and livelihood restoration) will be undertaken as per RAP provisions. A comprehensive internal monitoring database shall be established and maintained, covering all provisions of the RAP/LRP including grievance management, stakeholder engagement, assistance to vulnerable groups, tracking of households affected by physical displacement by the RAP Consultant and IC.</p> <p>An independent RAP/LRP completion audit will be assigned to a qualified consultant upon completion of RAP/LRP implementation. The RAP/LRP can be deemed as closed and implementation completed, once any findings from the completion audit will be addressed to the satisfaction of KfW.</p>	<p>Monthly reporting on RAP implementation.</p> <p>Independent RAP/LRP Completion Audit upon completion of RAP/LRP implementation.</p>	<p>GRIDCo, IC</p>
<p><b>ESS 6: BIODIVERSITY CONSERVATION AND SUSTAINABLE MANAGEMENT OF LIVING NATURAL RESOURCES</b></p>		
<p><b>6.1 BIODIVERSITY RISKS AND IMPACTS</b></p> <p>A specialist study in order to develop baseline information related to biodiversity will be undertaken in the course of ESIA development and if required as per ESS 6 a Biodiversity Action Plan (BAP) be prepared for the Project. The specialist study will focus on relevant areas regarding biodiversity, such as impacted forest reserves, important bird and biodiversity areas, natural habitats, or traversed wetlands.</p> <p>A specialist study on avifauna will be undertaken and specific avoidance and mitigation measures be developed as required and integrated into the ESMP and forwarded to the Contractors.</p>	<p>Same timeline as for ESIA and ESMP.</p>	<p>GRIDCo, ESIA consultant, IC Contractors</p>

MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
<b>ESS 7: INDIGENOUS PEOPLES/SUB-SAHARAN AFRICAN HISTORICALLY UNDERSERVED TRADITIONAL LOCAL COMMUNITIES</b>		
ESIA Scoping did not find any indication that ESS 7 would be triggered by the Project. In case the further ESIA process would indicate that ESS7 will be triggered, the ESCP will be updated accordingly in order to reflect the relevant requirements.		
<b>ESS 8: CULTURAL HERITAGE</b>		
No significant impacts on cultural heritage are anticipated, however subject to confirmation by ESIA.		
<b>8.1</b> CHANCE FINDS	Before start of construction and throughout construction phase.	Contractors, GRIDCo and IC
The Contractors to prepare, adopt, and implement a chance finds procedure described in the ESMP developed for the Project and the ESHS requirements. PEA supported by IC to review and approve the procedure and monitor implementation.		
<b>ESS 9: FINANCIAL INTERMEDIARIES</b>		
Not relevant		
<b>ESS 10: STAKEHOLDER ENGAGEMENT AND INFORMATION DISCLOSURE</b>		
<b>10.1</b>	STAKEHOLDER ENGAGEMENT PLAN (SEP)	GRIDCo and IC
A project specific SEP will be developed and implemented in line with national legislation, ESS 10 as well as the findings of the Scoping Report and will be regularly updated as the project progresses. The SEP will cover comprehensively all levels and the entire range of activities to be undertaken in the course of stakeholder identification, - information and consultation, by using different methods and channels as appropriate. Special consideration will be given to the SEP provisions for vulnerable groups. The SEP will cover the process of public information and disclosure of the Project's E&S instruments and documentation, including any requirement for non- technical summaries and for translation of relevant information. Results and findings from stakeholder engagement will be incorporated into the relevant E&S instruments as appropriate.		
<b>10.2</b>	PROJECT GRIEVANCE REDRESS MECHANISM (GRM)	GRIDCo and IC
Same timeframe as for SEP.		

	MATERIAL MEASURES AND ACTIONS	TIMEFRAME	RESPONSIBLE ENTITY/AUTHORITY
	<p>PEA to prepare, maintain and operate a grievance mechanism, as part of the SEP, prior to any project implementation, which is accessible to the general public and in particular to individuals affected by the Project. The Grievance Mechanism must be designed to respond to concerns and grievances and to take all measures necessary and appropriate to resolve, or facilitate the resolution of, such concerns and grievances, in a manner acceptable to KfW. Grievance submitted and their resolution shall be documented in a GRM database. GRM to cover special provisions for victims of GBV as appropriate.</p>		
<p><b>10.3</b></p>	<p><b>INFORMATION DISCLOSURE</b></p> <p>Disclose a Project information summary on environmental and social risks and impacts and proposed mitigation measures, including details of the stakeholder engagement process as detailed in paragraph 19 of WB ESS 10. The information shall be made available in the respective project area, in a visible, timely, understandable (e.g. in appropriate languages), accessible and culturally appropriate manner and provide for an adequate time period to allow PAP to voice concerns and suggestions.</p>	<p><i>As per national regulation / prior to commencement of construction</i></p>	<p>GRIDCo and IC</p>



Annex 7

**Procurement Plan**  
(Version No. 1, dated 15.07.2022)

Serial No.	Procurement No. <sup>1</sup>	Type <sup>2</sup>	Short Description of Contract Content	Estimated Contract Amount <sup>3</sup>	Source of Funds <sup>4</sup>	Tender Procedure <sup>5</sup>	Stages <sup>6</sup>	Tender Documents <sup>7</sup>	Review by KfW <sup>8</sup>	ESHS risk level <sup>9</sup>	Estimated Tender Publication	Comments <sup>10</sup>
1		C	Implementation Consultant	4,6 Million EUR	KfW Loan	ICB	2	KfW	F	NE	Q1/2023	
2		W G	General Contractor	100 Million EUR	KfW Loan	ICB	2	KfW	F	NE	Q3/2024	
3												
4												
...												

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

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## **Content and Form of Reporting to KfW**

### **I. Inception Report**

The inception report is to be prepared by the Consultant to document the activities of the Consultant during the inception phase of a project, but it also shall give a preview how the project is intended to be managed and executed. The inception report shall include:

- A detailed Work Plan for the implementation of the project;
- An outline of Section 1 of a Project Planning and Design Report (PPR, see below), if applicable;
- Suggestions for changes that would enhance and improve performance of the system and/ or project;
- Project schedule and detailed cost estimates;
- Identification of additional required studies if necessary;
- Condition assessment of existing equipment/ facilities;
- Outline specifications for all plant and equipment for PEA review/ approval.

### **II. Progress Reports**

The progress reports shall be submitted quarterly from the time of the signing of the Implementation Consultant contract until acceptance of all Project measures. Each report will be submitted within two weeks after the conclusion of the reporting period.

The reports shall be provided in electronic form and include the following information:

#### **1. General Introduction and Project Environment**

- Introduction and short description of the Project (including main objectives, target groups, time frame and associated risks);
- Information on developments of the general economic and sector conditions which are relevant for the successful implementation of the Project (e.g. changes in regulations of the energy sector; changes in the national energy strategy including the planning of high voltage transmission lines and construction of power plants; development of prices and tariff reforms; etc.);
- (If any) Information on developments or changes regarding the target group;
- (If any) Information on major changes within the political and economic environment;
- Information on developments of the Project Executing Agency GRIDCo which are relevant for the successful implementation of the Project (e.g. organizational changes, financial statements, technical capability).

#### **2. Prospects of Achieving the Overall Project Goals**

- Information on progress and status of achieving the Project Goals, Specific Objectives and Outcomes, as well as underlying assumptions (see Annex 1 to the Separate Agreement);
- Information on progress and status on the:
  - Construction of Accra-Kumasi transmission line
  - If applicable Construction of New Nkawkaw substation

- Reasons for deviation (if any), assessment of consequences for sustainable Project success, and measures to be taken; Information on any developments that might jeopardize the success of the Project; if so, proposition of additional activities which should be included into the Project;
- Information on the following indicators and statistics:

	Unit	2023	2024	2025	...
<b>Statistics for the Transmission Line</b>					
Length of completed line sections	Km				
Additional amount of electricity transmitted through the line per year (on basis of a network calculation).	GWh per year				
Availability of the transmission line	% of time				
Within the project area, voltage stays within their respective allowed ranges.	+/-%				
Reduction of technical losses in the transmission grid based on a comparison of network calculation with and without the line.	%				
Reduction of greenhouse gas emission due to the reduction in losses.	T CO2 equivalents per year				

### 3. State of Advancement of Project Implementation and Time Schedule

- Progress of implementation of Project components and construction works, in particular (i) tendering process and contract awards, (ii) beginning, progress and completion of design, manufacturing, testing, delivery and reception, erection and installation of equipment, including a table showing the status (Design, manufacturing, FAT, transport, supply, reception, used or venue of storage) of material to be supplied, also including a table with weighted progress of services and works and (iii) commissioning of works;
- Photographical documentation, providing an actual overview of the plant (not applicable for transmission lines) and the works in progress;
- Keeping of time schedule (updating Annex 2 to the Separate Agreement):
  - Comparison of planned schedule and actual performance;
  - Reasons for deviations, with a special view at compensations and land acquisition issues, and remedial measures (if any); assessment of impact of deviations on time of commissioning and/ or financial planning;
- Overview of relevant activities and exchanges during the reporting period, e.g. important meetings, letters or certificates;
  - After operational acceptance of the construction works, the Consultant shall submit a final report on the implementation of the Project, no later than 4 week after the date of the operational acceptance.
- Update of time schedule for the next reporting period, e.g. planned activities.

### 4. Quality issues

- Quality issues during the reporting period;

- Status of other open quality issues.

#### **5. Claims or Request for Change/Variation orders issued**

- Claims or (Requests for) Change/Variation orders issued in the reporting period including all details and submitted justifications; Decisions and further actions;
- Status of other open claims or variation orders.

#### **6. Total Cost and Financing, Loan Utilization**

- Assessment whether the total financing of the Project continues to be ensured;
- Assessment whether all conditions precedent to disbursement have been fulfilled;
- State of disbursements by the end of the reporting period of (i) the KfW loan, and (ii) the total Project funds per currency (updating Annex 3 of the Separate Agreement); how much of them have been utilized, accounted for and disbursed;
- Table with the billing report, summarizing (i) amount paid per contract, (ii) total amount of contracts including amendments (for each currency), and (iii) remainder of contracts, including the difference between the total amount of the contracts and the sum of all invoices being paid, per currency;
- Forecast of disbursements for the next reporting period, with estimated time and amount of disbursement requests, as well as an overview of the payment schedule, at least until December of the current year.

#### **7. Status of Guarantees**

- Modification of guarantees during the reporting period.

#### **8. Capacity Building**

The quarterly reports shall comprise all trainings incl. information about subject, participants, duration, date, venue and the body responsible for the execution. Separate tables shall indicate the trainings already performed and the outstanding trainings.

#### **9. Summary of deliverables**

- Summary of reports and other important deliverables during the reporting period;
- Publications during tendering process or public information about the Project issued during the reporting period.

### III. Environmental and Social Reports and Implementation of Resettlement Action Plan

#### Quarterly reports:

The quarterly reports shall contain all aspects related to the environmental or social measures taken or planned. In particular, the report shall contain:

- Performance and progress regarding the implementation of the Resettlement Action Plan (RAP), in particular, but not limited to
  - Status of compensation payments;
  - Status of delivery of assistance to vulnerable groups;
  - Status of allocation of in kind compensation;
  - Number of grievances received/number of grievances resolved;
  - Status on implementation of livelihood restoration program;
  - Pending issues regarding RAP implementation;
  - Status of external monitoring process;
  - Status of engagement of PAPs;
  - Documentation (MoM, maps, other material to provide evidence of performance).

Prior to the submission of the first report, GRIDCo will submit a template for RAP implementation reporting to KfW, for no objection.

- The status of publication, consultation and compensation of Project Affected People (PAPs) and of land acquisition; if any, information on issues or complaints with respect to compensation payments and resettlement;
- Progress with regard to the Works and Compensation Schedule for the RAP/schedule and activities of physical works/RAP implementation;
- Progress regarding implementation of Livelihood Restoration Plan
- Implementation of and adherence to the Environmental and Social Management Plan (ESMP), including all sub plans, in particular with regards to labor protection, health and safety measures; Information on all accidents or damages/harms caused to people or environment (or absence of any such incident), status of permits and licences, managed grievances, conducted capacity building measures, GRIDCo shall inform about any measures taken to mitigate or remedy the effects or cause of such events.

#### Environmental and Social Report

##### **1. Reporting Period and Context**

Please provide reference to the requirement of the loan agreement and indicate the reporting period.

##### **2. Summary of Project Status**

Please summarize for the reporting period (depending on stage of implementation) without limitation, the Construction progress.

##### **3. Regulatory Compliance**

Please summarize for the reporting period the status compliance with local laws and regulations, the status of Permits and Clearances (also new/ renewed permits, changes in regulatory requirements etc.) inform about inspections by authorities or any audits, Main Observations or Findings and if applies any Fines and Corrective actions).

#### **4. Compliance with International Standards**

Please provide statement regarding compliance with applicable standards.

#### **5. Implementation Status of Environmental and Social Management Plan**

The report shall make clear reference to the respective requirements and report on compliance with the conditions of permit, the environmental and social management plan requirements, incl. any changes or difficulties and corrective actions the PEA may have taken.

In case corrective actions were identified for the previous reporting period, please report on implementation progress/ completion status

#### **6. Air and Noise Emissions/ Wastes/ Effluents Monitoring**

Please provide monitoring results for the reporting period and Results and comparison against conditions of permit, local, and relevant WB ESS, IFC EHS Guidelines Guidelines.

#### **7. Environmental Monitoring Program and Results of Ambient Monitoring**

#### **8. Human Resources Management status**

Please provide a summary for the reporting period regarding number of project workforce (with a special focus on local employment), number of contractors and contractor workforce during construction / operation; and information about training and qualification, EHS supervision structure, certifications

#### **9. Occupational Health and Safety**

Please provide an overview of the health & safety performance during the reporting period; Please provide figures and summaries for events (accidents/ incidents) resulting in fatalities, injuries, key indicator figures (work hours lost, accident frequency rate):

- (i) during Construction (Contractors incl. contractual and daily wage laborers), and
- (ii) ongoing/ extended Operation and Maintenance (Project staff and Contractors, other contractual laborers);

Please provide information about trainings, drills etc. undertaken.

#### **10. Complaints and Grievances**

Please provide a summary of any complaints, grievances, or legal actions/ claims related to environmental or social issues raised by:

- (i) community (including community affected by land take/ resettlement), or
- (ii) workforce (construction/ operation/ contractors);

and describe conflict resolution undertaken

#### **11. ESHS Incident Management**

Please provide a summary of all managed incidents in the reporting period and their status and measures taken to avoid their reoccurrence.

## 12. Stakeholder Engagement Activities/ CSR/ Community Development Activities

Please provide a brief summary of activities (as applicable)

### Other:

With regard to environmental and social matters, the Project Executing Agency shall notify KfW promptly of any event, incident or accident in relation to the project execution regarding environmental and social issues including occupational and community health & safety and labour as well as impacts on adjacent populations that

- (i) has, or is likely to have a direct or potentially material adverse effects;
- (ii) has or is likely to attracted substantial adverse attention of outside parties, created substantial adverse media/ press reports; or
- (iii) gives, or is likely to give rise to material potential liabilities.

## IV. Final Report

Within three months of physical completion and commissioning of the last components of the Project, GRIDCo shall submit the final Project report. It shall cover the entire history of the Project, including but not limited to the planning, contracting, time schedule, cost and financing, and results, as well as a report in relation to the impact indicators of the Project (as set out above on the table).

A draft of the table of content of the final report shall be submitted to KfW for comments in due time.

**Annex 9: Compliance Covenants Project-Executing Agency**

**1. DEFINITIONS**

**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 influence improperly the actions of a person.

**Collusive Practice:** an arrangement between two or more persons designed to achieve an improper purpose, including to influence improperly the actions of another person.

**Corrupt Practice:** the promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

**Designated Categories of Offences:** the following categories of offences as defined by the FATF Recommendations and the respective interpretative note: participation in an organised criminal group and racketeering; terrorism, including financing of terrorism; trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; illicit trafficking in narcotic drugs and psychotropic substances; illicit arms trafficking; illicit trafficking in stolen and other goods; corruption and bribery; fraud; counterfeiting currency; counterfeiting and piracy of products; environmental crime; murder, grievous bodily injury; kidnapping, illegal restraint and hostage-taking; robbery or theft; smuggling (including in relation to customs and excise duties and taxes); tax crimes (related to direct taxes and indirect taxes); extortion; forgery; piracy; insider trading and market manipulation.

**FATF Recommendations:** such recommendations as defined from time to time by the Financial Action Task Force (FATF). FATF is the inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and the financing of terrorism.

**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.

**Illicit Origin:** the origin of funds obtained through

- a) any offence listed in the Designated Categories of Offences;
- b) any Corrupt Practice;
- c) any Fraudulent Practice; or
- d) money laundering.



**Obstructive Practice:** (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 it from disclosing its 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.

**Person:** any natural person, legal entity, partnership or unincorporated association.

**Sanctionable Practice:** any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein), which (i) is unlawful under German or other applicable law, and (ii) which has, or potentially could have, a material legal or reputational effect on this Agreement between the Project-Executing Agency and KfW or its implementation.

**Sanctions:** the economic, financial or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctioning Body.

**Sanctioning Body:** any of the United Nations Security Council, the European Union and the Federal Republic of Germany.

**Sanctions List:** any list of specially designated persons, groups or entities which are subject to Sanctions, as issued by any Sanctioning Body.

## 2. INFORMATION UNDERTAKING

The Project-Executing Agency shall

- a) promptly make available to KfW on demand all relevant "know your customer" or similar information about the Project-Executing Agency and any of its (direct and/or indirect) shareholders, subsidiaries and/or any other affiliates (if any), as KfW may request;
- b) promptly furnish to KfW on demand all Project-related information and documents of the Project-Executing Agency and its (sub)contracting and other related parties which KfW requires to fulfil its obligations to prevent any Sanctionable Practice, money laundering and/or terrorism financing as well as for the continuous monitoring of the business relationship with the Project-Executing Agency which is necessary for this purpose;
- c) inform KfW, promptly and of its own accord, as soon as it becomes aware of or suspects, any Sanctionable Practice, act of money laundering or/and terrorism financing by the Project-Executing Agency, any member of its management bodies or other governing bodies or any of its shareholders;
- d) furnish to KfW any and all such information and reports on the Project and its further progress as KfW may request for the purposes of this Annex;

- e) enable KfW and its agents at any time to inspect all other Project-related documentation of the Project-Executing Agency and its (sub)contracting and other related parties, and to visit the Project and all installations related thereto for the purposes of this Annex.
- f) inform KfW, promptly and of its own accord, of any event which results in any of the Project-Executing Agency, any member of its management bodies or other governing bodies or any of its shareholders, being or becoming a specially designated national, blocked person or entity maintained on any Sanctions List.

### 3. **REPRESENTATIONS AND WARRANTIES**

3.1 With regard to German law or the law of the country of incorporation of the Project-Executing Agency, the Project-Executing Agency represents and warrants that the following is true and correct:

- a) In entering into and implementing this Separate Agreement the Project-Executing Agency acts in its own name and for its own account.
- b) To the best of its knowledge and only in relation to the shareholders known to the Project-Executing Agency pursuant to applicable stock market regulations, neither the Project-Executing Agency's equity nor the funds invested in the Project are of Illicit Origin.
- c) None of the Project-Executing Agency, its affiliates, subsidiaries or any other Person acting on its or their behalf has committed or is engaged in any Sanctionable Practice, money laundering or financing of terrorism.
- d) The Project-Executing Agency has not (i) entered into any business relationship with specially designated nationals, blocked persons or entities maintained on any Sanctions List; or (ii) engaged in any other activity that would constitute a breach of Sanctions.

3.2 The representations and warranties set forth in this Article are made for the first time by execution of this Agreement. They will be deemed to be repeated upon each drawing of the Loan and on each interest payment date, in each case by reference to the circumstances prevailing at that date.

#### **4. POSITIVE UNDERTAKINGS**

The Project-Executing Agency undertakes

- a) to fully comply with anti-money laundering and terrorism financing standards in accordance with the FATF Recommendations, and implement, maintain and, if necessary, improve its internal standards and guidelines (including without limitation in relation to customer due diligence) appropriate to avoid any Sanctionable Practice, act of money laundering or financing of terrorism; and
- b) as soon as the Project-Executing Agency or KfW becomes aware of or suspects any Sanctionable Practice, act of money laundering or financing of terrorism, to fully cooperate with KfW and its agents, in determining whether such compliance incident has occurred. In particular, the Project-Executing Agency shall respond promptly and in reasonable detail to any notice from KfW and shall furnish documentary support for such response upon KfW's request.

#### **5. NEGATIVE UNDERTAKINGS**

The Project-Executing Agency undertakes

- a) to ensure that its equity and other funds it invests will not be of Illicit Origin;
- b) to ensure that its business will not give rise to any Sanctionable Practice, money laundering or financing of terrorism; and
- c) not to enter into or continue any business relationship with specially designated nationals, blocked persons or entities maintained on any Sanctions List and not to engage in any other activity that would constitute a breach of Sanctions.

## ESHS Definitions

**BAP** stands for "Biodiversity Action Plan", a strategic document that establishes the biodiversity goals, residual impacts, rationale, and actions that will enable a no net loss and/or net gain outcome, as defined by WB ESS 6 or IFC PS 6.

**E&S** means environmental and social

**E&S Instruments** means all environmental and social assessments, studies and plans that are required to assess and manage the impacts and risks of a project/program. Examples include the ESIA, ESMP, BAP, SEP, RAP, etc.

**E&S Requirements** has the meaning given to that term in Clause 2.2.3 of this Separate Agreement.

**ESCP** means the "Environmental and Social Commitment Plan", attached as Annex 6 and forming an integral part of this Agreement. The ESCP sets out some of the measures required for a project or program to comply with Clause 2.2 of the Separate Agreement and must be satisfactory to KfW.

**ESHS** means environmental, social, health and safety

**ESIA** refers to the "Environmental and Social Impact Assessment", an instrument used to assess the potential environmental and social impacts of a proposed project, evaluate alternatives, and design appropriate mitigation, management, and monitoring measures.

**ESMP** refers to the "Environmental and Social Management Plan", an instrument that details (a) the measures to be taken during the implementation and operation of a project to eliminate or offset adverse environmental and social impacts, or to reduce them to acceptable levels; and (b) the actions needed to implement these measures.

**Grievance Mechanism** means a formalized process for dealing with workers', clients' and communities' grievances and comments, which is accessible to the general public and in particular to individuals affected by the Project, and to the workforce engaged in the Project implementation. The mechanism must be transparent and designed to respond to concerns and grievances and to take all measures necessary and appropriate to resolve, or facilitate the resolution of, such concerns and grievances or process for dealing with both workers' and communities' grievances. Grievances should be registered and logged regardless of whether they were received in writing or verbally. The complainant should receive an acknowledgement of the receipt of the complaint within a prescribed and reasonable timeframe for a response. Grievance mechanisms should be appropriate for the scope of the project so as to allow effective resolution of issues in a timely manner.

**ILO** means the International Labor Organization, a tripartite United Nations agency which brings together governments, employers and workers of its member states to promote decent working conditions.

**ILO Fundamental Conventions** means the conventions of the International Labor Organization on child labor (conventions numbered C138 and C182), forced labor (conventions numbered C029 and C105), discrimination (conventions numbered C100 and C111) and freedom of association and collective bargaining (conventions numbered C087 and

C098), occupational health and safety (C155 and C187) stemming from the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998.

**LRP** stands for “Livelihood Restoration Plan”, an instrument that describes the actions that will be taken to manage the adverse impacts on PAP’s livelihoods, based on the minimum requirements set by national law and international standards. An LRP must be developed in cases of economic displacement only, if physical resettlement can be excluded.

**No-Objection** means that KfW provides a written consent approval after the review of a respective E&S Instrument.

**NTS** means a “Non-Technical Summary”, this being a short, stand-alone document that presents the main results of an environmental impact assessment report, in an accessible and easy-to-read format, for public consultation

**PAP** means “Project-affected People”, such as individuals or groups, including local communities, who are affected or likely to be affected by a project due to of actual impacts or potential risks to their physical environment, health, security, cultural practices, well-being, or livelihoods. PAP are a type of Stakeholder.

**RAP** stands for “Resettlement Action Plan”, an instrument that specifies the procedures to be followed with regard to resettlement and economic displacement and the actions that will be taken to mitigate adverse effects, compensate losses, and provide development benefits to persons and communities affected by a project, taking into account the minimum requirements set by national law and international standards.

**SEP** stands for “Stakeholder Engagement Plan”, an instrument that provides a working plan for public participation, lists the Stakeholders, the procedures relating to the participation process and a timetable, based on the minimum requirements set by national law and international standards.

**ESHS Incident** means any serious incident (including accidents and complaints) with respect to the environmental, social (including labour and community), health or safety-related aspects of the Project that occurs in relation to either the Borrower’s or any Sub-Borrower’s Project - related activities or in connection with a project financed by the Loan. An incident will, for instance, be considered serious if it

- (i) has, or is likely to have a material adverse effect on the affected persons or environment;
- (ii) has attracted or is likely to attract substantial adverse attention from third parties;
- (iii) may lead to adverse media coverage;
- (iv) gives, or has the potential to give rise to material legal or financial liabilities; or
- (v) would be regarded as a serious ESHS incident by international standards from the perspective of an objective third party.

Examples of such serious incidents include (but are not limited to):

- explosions, spills or workplace accidents, which results in death, serious injuries or material environmental contamination;
- accidents involving members of the public/local communities, resulting in death or serious injuries;

- sexual harassment or -violence involving the project workforce;
- severe threats to public health and safety;
- claims of inadequate resettlement compensation;
- disturbances of natural ecosystems;
- discriminatory practices in stakeholder consultation and engagement (including the right of indigenous people to free, prior and informed consent); and
- any other allegations that require intervention by the police/other law enforcement authorities.

**Stakeholders** refers to PAP, as well as other individuals, groups, or organizations with an interest in the project, which may be due to the project location, its characteristics, its impacts, or matters related public interest ("other interested parties"). Such other interested parties may, for example, include regulators, government officials, the private sector, the scientific community, academics, unions, women's organizations, other civil society organizations, and cultural groups.

**WB ESS** means the "World Bank's Environmental and Social Standards" 1-10.

**WB Group EHS Guidelines** means the "World Bank Group Environmental, Health, and Safety Guidelines". These are technical reference documents with general and industry-specific examples of "Good International Industry Practice" (GIIP) with respect to environmental, health and safety management issues that arise during the construction and operation of projects.

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**German Financial Cooperation with Ghana  
Transmission Line Accra-Kumasi EUR 116,6 million  
No.: 2017 65 254, 2018 65 104 and 2021 65 207  
Separate Agreement to the Loan and Project Agreement dated @**

Dear Madame or Sir,

Reference is made to the loan agreement dated \_\_\_\_\_ 2022 between KfW and the Republic of Ghana ("**Borrower**") represented by the Ministry of Finance (the "**Loan Agreement**") the terms of which are known to Ghana Grid Company Limited (GRIDCo) (the "**Project-Executing Agency**"). The Project-Executing Agency hereby acknowledges that it has received a copy of the Loan Agreement and confirms and agrees that:

- i. it is aware of the obligations entered into by the Borrower thereunder in respect of ensuring that the Project-Executing Agency will perform and/or omit certain actions and/or comply with certain requirements in respect of the Project or otherwise (each an "Indirect Obligation"); and
- ii. it shall fulfil, as its own direct obligation, each Indirect Obligation.

For the avoidance of doubt, the assumption of the Indirect Obligations by the Project-Executing Agency shall in no way limit or prejudice the Borrower's obligations under the Loan Agreement.

In accordance with the Loan Agreement the following shall be determined by Separate Agreement

**Pursuant to Article 1.2:**

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

**Pursuant to Article 2.1:**

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

**Pursuant to 8.2:** the details pertaining to Article 8.1 (Project Implementation).

We propose that the following be agreed upon:

## **1. Project Design**

### **1.1. Details of the Project**

The Project consists of the construction of a 330 kV transmission line from Accra A4BSP substation to Kumasi K2BSP substation as well as the required expansion of these substations. The Project includes all construction measures, environmental and social mitigation measures as well as services to support the implementation and monitoring of the Project.

Depending on the actual cost of the project that will only be known after the tender process, one of the following options will be financed:

- Implementation Option 1: Double circuit line including New Nkawkaw substation
- Implementation Option 2: Double circuit line without consideration of New Nkawkaw substation
- Implementation Option 3: Double circuit line, one circuit installed including New Nkawkaw substation
- Implementation Option 4: Double circuit line, one circuit installed without consideration of New Nkawkaw substation

The purpose of the Project is to contribute to an efficient and reliable power supply and to grid stability as the basis for sustainable development in Ghana. The Project supports the strengthening of the financial sustainability of the energy sector and the framework for promoting investments in renewable energy and energy efficiency and thus reinforces Ghana's climate goals and sustainable and inclusive economic growth. The indicators for these objectives, the 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*).

The design of the Project is based on the documents provided by Fichtner GmbH & Co. KG during the preparation of the Project, i.e. the Scenario Selection Report dated May 2022, Scoping Report and the Feasibility Study Report both dated July 2022 available to KfW, the Borrower and the Project Executing Agency (hereinafter also referred to as the "PEA") and on the agreements made between KfW, the Borrower and the PEA during the local Project appraisal, i.e. the Minutes of Meeting dated 13<sup>th</sup> July 2022.

The following Project activities shall be financed from the Loan:

- Construction of a 330 kV transmission line from Accra to Kumasi
- Required expansion of A4BSP and K2BSP substations



- Consulting services of an Owner's Engineer responsible for supporting the PEA in the site supervision and successful implementation of the Project until the end of the warranty period.
- Compensation payments for the people that are affected by the Project (PAPs). This will be processed via a Disposition Fund that will be regularly audited by a professional auditor whose costs will also be financed from the Loan.

The following will be financed out of a special fund for project preparation activities:

- Contract amendment for Fichtner for preparation of the bidding documents for the Engineering, Procurement and Construction (EPC) contractor.
- Consulting services of an Environmental and Social Impact Assessment (ESIA) and Resettlement Action Plan (RAP) consultant.
- Tender Agent for the tender of ESIA, RAP and Owner's Engineer.

## **1.2. Time Schedule**

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

## **1.3. Total Cost and Financing**

The estimated total Project cost (the "**Total Cost**") underlying the Project appraisal is approximately EUR 116 million (implementation option 4). The Loan amount is EUR 116.6 million. The composition of Total Costs and the financing plan are contained in Annex 3 (*Total Cost and Financing*).

Should the loan provided by KfW not be enough to finance the selected option, the PEA will be responsible to secure the financing to cover the gap between the total actual cost of the Project and the loan provided by KfW.

## **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 PEA 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 PEA shall be responsible for the implementation, operation and maintenance of the Project.
- 2.1.2. The PEA shall engage a consultant to support the implementation of the Project (the "Owner's Engineer").
- 2.1.3. The PEA shall be supported by a Tender Agent financed out of a special fund for the tender of the Owner's Engineer.
- 2.1.4. The Owner's Engineer shall support the PEA in
  - (i) reviewing the existing studies and Bidding Documents;
  - (ii) 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 5 (the "Procurement Guidelines")) in compliance with (a) the Procurement Guidelines and (b) the environmental and social standards;
  - (iii) review and update as appropriate ESIA/Environmental and Social Management Plan (ESMP) and RAP in order to ensure full compliance with applicable standards as per the Separate Agreement and to fully reflect the final design of the Project;
  - (iv) undertake thorough performance monitoring of RAP implementation
  - (v) approval of the contractors' designs, execution of factory and on-site receptions of goods and materials, and supervision of the commissioning and testing of equipment and transmission line;
  - (vi) supervision and execution of day-to-day activities of the project management and of the contractors works with a view to ensuring quality, time and cost control;
  - (vii) monitoring of compliance with the environmental, social, health and safety requirements as detailed in the ESMP and RAP, especially regarding compensation, assistance to vulnerable groups, livelihood restoration and grievance management, biodiversity protection, occupational health and safety and public health and safety;
  - (viii) close and continuous supervision of overall environmental, social, health and safety (ESHS) performance of the construction contractors, including reporting and identification of corrective actions as appropriate as well as implementation tracking of such actions;
  - (ix) examination of invoices submitted by contractors whether the services and supplies were actually performed, and payments have fallen due, certify the disbursement requests to be addressed to KfW, and examine whether regulations concerning the disbursement procedure are being adhered to;
  - (x) prepare quarterly reports that have to be submitted by the Project Executing Agency to KfW;

(xi) monitoring during defects and liability period.

2.1.5. The detailed time, cost, and financing schedule for the proper technical and financial implementation of the Project shall be prepared by the PEA without undue delay in cooperation with the Owner's Engineer 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 which 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 definitions set out in Annex 10 shall form an integral part of this Clause 2.2.

2.2.2. The Project Executing Agency shall at all times carry out the environmental, social, health and safety aspects of its business and operations to the satisfaction of KfW and in compliance with all applicable national environmental, occupational health & safety and social laws and regulations.

2.2.3. The PEA shall prepare, implement and operate the Project in compliance with the stricter of (i) national regulation; (ii) applicable permits; (iii) all applicable : World Bank Group Environmental and Social Standards (WB ESS): (iv) the general WB Group Environmental, Health and Safety (EHS) Guidelines; (v) relevant sector-specific WB Group EHS Guidelines for Electric Power Transmission and Distribution, and (vi) the International Labour Organization (ILO) Fundamental Conventions. Even if the ILO Fundamental Conventions have not been fully ratified or translated into national law in Ghana, the PEA shall establish labour conditions that adhere to the applicable sections of the ILO Fundamental Conventions. The above requirements shall form the environmental and social requirements ("**E&S Requirements**") of the Project [www.ifc.org/ehsguidelines](http://www.ifc.org/ehsguidelines).

2.2.4. Without limitation to Clauses 2.2.2 and 2.2.3 above, the PEA shall ensure that the Project is implemented in accordance with the Environmental and Social Commitment Plan (ESCP) attached as Annex 9, in a manner acceptable to KfW. To this end, the PEA shall

- a. ensure that an organizational structure with qualified and experienced staff in adequate numbers as set out in the ESCP is established and maintained to implement the relevant obligations under the ESCP and in this Clause 4.2.
- b. ensure that the measures and E&S Instruments required pursuant to the WB ESS and set out in detail in the ESCP, such as ESIA, ESMP, RAP, Livelihood Restoration Plan (LRP), Stakeholder Engagement Plan (SEP), are prepared and implemented diligently, within the foreseen timelines, and as specified in the ESCP.

- c. ensure that the E&S Instruments and an easy-to-understand Non-Technical Summary (NTS) on environmental and social risks are publicly disclosed as further specified in the ESCP.
- d. ensure that the ESCP is fully complied with even when the implementation of specific measures is to be conducted by other entities, such as contractor and Owners Engineer. The PEA shall contractually oblige these entities to adhere to the relevant ESCP items and to monitor their implementation. To this end, the PEA is further obliged to ensure that these entities, have the capacity to implement all contractual obligations imposed on them by the PEA.
- e. continuously monitor the implementation of the ESCP items and report to KfW as per the provisions of Clause 6.1 and the Reporting Requirements of Annex 8 of this Separate Agreement.
- f. review the ESCP and the corresponding E&S Instruments regularly (at least annually) and jointly with KfW. If, due to changing circumstances, the ESCP or any E&S Instrument is, in the opinion of KfW, no longer in compliance with the E&S Requirements, KfW may request the PEA to amend the ESCP and the relevant E&S Instrument and the PEA shall promptly comply with such request. Unilateral amendments of an ESCP or any E&S Instrument by a PEA shall be submitted to KfW for review and shall be subject to KfW's prior consent.
- g. grant KfW and its representatives access to the Project sites and all relevant documentation, including the ESCP and all E&S Instruments relevant to the Project, in order to allow KfW to independently assess the adherence to the measures set out in the ESCP; and
- f. ensure that sufficient funds are available to cover the costs of implementing the ESCP and shall provide such additional funds as are required to address any unforeseen ESHS risks or impacts related to the Project implementation. It shall further implement such measures as are necessary to remedy such unforeseen ESHS risks and impacts.

2.2.5. In case of any inconsistencies between the ESCP and the provisions of this Separate Agreement, the provisions of this Separate Agreement should prevail.

2.2.6. The PEA shall ensure that

- a. with respect to the Project, its occupational and public health and safety regulations are consistent both with national requirements and international good practice standards. In addition, and as per the "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries" (attached as Annex 5), the PEA shall contractually oblige its contractors, subcontractors and suppliers, in particular those of major supply items, to adhere to the same national and international standards; and
- b. all related bidding documents and project contracts for civil works, plant design, supply and installation oblige contractors, subcontractors, and supervising entities, as applicable, to:
  - i. comply with the relevant aspects of the ESCP and the E&S Instruments referred to therein; and

- ii. adopt and enforce codes of conduct addressing environmental, social, health and safety risks, including where applicable, risks related to sexual exploitation and abuse, sexual harassment, and violence against children, as specified in Annex 5. Such codes of conduct must be made available to all employees/workers and clearly displayed at visible locations at all project sites.

2.2.7. The PEA shall maintain, update or develop and implement a publicly accessible Grievance Mechanism as specified in the ESCP.

### 2.3. Procurement and Contractual Provisions

2.3.1. All Tender Processes to be conducted for any contract financed under the Loan Agreement shall at all times follow:

- a) the Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries (January 2021); and
- b) the procurement plan attached in Annex 7 (*Procurement Plan*) as amended or restated from time to time in agreement with KfW (the "**Procurement Plan**"),

unless otherwise agreed between KfW and the PEA 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 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 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 PEA 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.

2.3.3. 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 Agreement and, in addition thereto, the following principles shall be observed when concluding contracts financed under the Loan Agreement:

- a) As import duties shall not be financed from the Loan pursuant to Article 1.3 of the Loan 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 PEA 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 PEA. If such payments are made in local currency, such payments shall be made to a special account of the PEA in the country of the PEA 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 PEA shall assume all taxes, import duties or fees arising out of the Project implementation.
- 2.4.2. The PEA will apply for an exemption under the land act regarding the need to buy the land that is affected by the project.
- 2.4.3. The PEA ensures that PAPs will be compensated according to the RAP before their land will be entered and construction starts on their land. It has been agreed that these compensations will be paid out of the loan in order not to stall the implementation of the Project. Should the amount of compensations to be paid exceed the estimates this means that the PEA will in the further implementation of the project have to finance other project components to be agreed upon (compare Art. 1.3 Total Cost and Financing).

### **3. Provisions for the Proper Operation of the Project**

#### **3.1. Contracts and Reservations**

- 3.1.1. To secure the proper operation of the Project, the PEA shall submit an operation and maintenance concept including an operational environmental and social management plan drawn up in cooperation with the Owner's Engineer at least 6 months before commissioning of the Project. The operational environmental and social management plan shall encompass an occupational health and safety and labor conditions management plan.
- 3.1.2. At the same time the PEA shall submit to KfW a budget forecast, drawn up in cooperation with the Owner's Engineer, for the area of operation in which the Project is located. This forecast is to show that the financing of operation is ensured. The PEA shall periodically update this forecast and ensure that any financing gaps shall be

covered in due course. The PEA shall transmit such budget forecast and its revised versions to KfW without any delay.

### **3.2. Contracts for Works, Goods, Plant and Services, Reservations and Disbursement**

3.2.1. KfW will reserve the loan amounts on the basis of the contracts concluded for works, goods, plant and services. Accordingly, KfW shall be furnished with a copy of each of said contracts and of any amendment to any of such contracts.

3.2.2. 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).

### **3.3. Disbursement Procedure**

3.3.1. The disbursement of the Loan 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. Contractual Statements and Power of Representation**

4.1.1. The Minister for finance and such persons as designated by him or her to KfW and authorized by specimen signatures authenticated by him or her shall represent the Borrower in the execution of this Separate Agreement. The CEO of GRIDCo and such persons as designated by him or her to KfW and authorized by specimen signatures authenticated by him or her shall represent the PEA in the execution of this Separate Agreement. The powers of representation shall not expire until their express revocation by the respective representative authorised at the time has been received by KfW.

## **5. Publication and Transfer of Project-related Information**

5.1.1. To comply with internationally accepted principles of utmost transparency and efficiency in the development cooperation, KfW publishes selected information (including results of environmental and social categorization and assessment as well as ex post evaluation reports) about the Project and its financing during pre-contractual

negotiations, while the Project-related agreement(s) is (are) being implemented and in the post-contractual stage (hereinafter referred to as the "**Entire Period**").

5.1.2. The information is published regularly on KfW's website for its business area "KfW Development Bank" (<http://transparenz.kfw-entwicklungsbank.de/>).

5.1.3. The publication of information (either by KfW or third parties in accordance with Article 5.1.3 below) about the Project and its financing does not include any contractual documentation or any sensitive financial or business-related detailed information about the parties involved in the Project or its financing, such as

- a) information about internal financial data;
- b) business strategies;
- c) internal corporate guidelines and reports;
- d) personal data of natural persons;
- e) KfW's internal rating of the parties' financial position.

5.1.4. KfW shares selected information about the Project and its financing during the Entire Period with the entities mentioned below, particularly to ensure transparency and efficiency:

- a) subsidiaries of KfW;
- b) the Federal Republic of Germany and its competent bodies, authorities, institutions, agencies or entities;
- c) other implementing organisations involved in German bilateral development cooperation, particularly the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH;
- d) international organisations involved in collecting statistical data and their members, especially the Organisation for Economic Cooperation and Development (OECD), the Paris Club and their respective members (including, for the avoidance of doubt, the participants and observers of the Paris Club);
- e) the Borrower.
- f) the Project Executing Agency.
- g) AFD, Worldbank, EIB or other development organisations that engage in projects in energy transmission.



5.1.5. Furthermore, the Federal Republic of Germany has requested, KfW to share selected information about the Project and its financing throughout the Entire Period with the following entities, which publish the sections relevant to the purpose:

- a) Federal Republic of Germany for the purposes of the International Aid Transparency Initiative (<https://www.bmz.de/de/ministerium/zahlen-fakten/internationale-transparenzstandards-59280>)
- b) Germany Trade & Invest (GTAI) for the purposes of market information (<https://www.gtai.de/gtai-de/trade>);
- c) OECD for the purpose of reporting financial flows in the framework of development cooperation (<http://stats.oecd.org/>);
- d) German Institute for Development Evaluation (DEVal) for the purposes of evaluating the overall German development cooperation to ensure transparency and efficiency (<http://www.deval.org/de/>).

5.1.6. KfW further reserves the right to transfer (including for the purposes of publication) information about the Project and its financing during the Entire Period to other third parties so as to safeguard legitimate interests.

5.1.7. The information is not transferred by KfW to other third parties if the legitimate interests of the Borrower and/or the Project-Executing Agency in the information not being transferred outweigh KfW's interests in it being transferred. The legitimate interests of the Borrower and/or the Project-Executing Agency particularly include the confidentiality of the sensitive information mentioned in Article 5.1.1, which is excluded from publication.

5.1.8. Furthermore, KfW is entitled to transfer information to third parties if this is necessary due to statutory or regulatory requirements or to assert or defend claims or other legal rights in court or administrative proceedings.

## **6. Reporting and Other Provisions**

### **6.1. Reporting**

6.1.1. Until further notice, the PEA shall report to KfW quarterly on the progress of the Project (progress reports), 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 8 (*Content and Form of Reporting to KfW*).

6.1.2. 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.

a) 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 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 PEA (details and reporting templates are given in Annex 8 (*Content and Form of Reporting to KfW*));

(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 PEA (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.

b) 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.

6.1.3. At the time of the physical completion and commissioning of the Project, but before the expiry of the guarantee period at the latest, the PEA shall submit a final report on the measures carried out. The first report on the state of affairs shall be submitted after the first quarter after the signature of the contract of the Owner's engineer. The reports must have been received by KfW not later than 2 weeks after the end of the period under review. The reports shall be countersigned by the Owner's Engineer.

- 6.1.4. If the PEA has charged the Owner's Engineer to write the progress reports and/or the final report, the PEA shall comment on the reports or acknowledge its approval of the content by countersigning the reports.
- 6.1.5. After completion of the Project, the PEA shall report on its further development (see Annex 8 (Content and Form of Reporting to KfW) for details). KfW shall in due course inform the PEA about the end of the reporting period.
- 6.1.6. The PEA will provide the audited corporate annual report and financial statements for each financial year as soon as it is available

## 6.2. Other Provisions

- 6.2.1. The PEA shall send KfW all such documents as are necessary for KfW to give the comments and approvals mentioned above or in the enclosed Procurement Guidelines early enough to allow reasonable time for examination.
- 6.2.2. The PEA shall set up Project sign boards that will contain at least the following message:

" A development project of Government of Ghana, Ghana Grid Company Limited (GRIDCo), co-financed by the Federal Republic of Germany through KfW."

A project seal provided by the German Embassy shall be placed on the project sign board.

- 6.2.3. The above provisions may be amended or modified at any time by mutual consent if this should appear useful for the implementation of the Project or the execution of the Loan and Project Agreement. In all other respects, the provisions of Articles 7.3, and 10 of the Loan Agreement shall apply to this Agreement accordingly.
- 6.2.4. Amendments or addenda to this Separate Agreement and any notices and statements delivered by the contracting parties under this Separate Agreement shall be in writing. Any such notice or statement shall have been received once it has arrived at the following address of the corresponding contracting party or at such other address of the corresponding contracting party as notified to the other contracting party:

For KfW:

KfW  
Postfach 11 11 41  
60046 Frankfurt am Main  
Federal Republic of Germany  
Fax: +49 69 7431 2944

For the Borrower:

Ministry of Finance  
P.O. Box MB40  
Ministries-Accra

Republic of Ghana  
Fax: +233 302 668879

For the Project Executing Agency: Ghana Grid Company Limited  
P. O. Box CS 7979,  
Tema, Ghana

6.2.5. The PEA undertakes to comply at all times with the obligations set out in Annex 9 (Compliance Covenants Project-Executing Agency).

6.2.6. The Borrower and the Project-Executing Agency may not assign or transfer, pledge or mortgage any claims from this Separate Agreement.

Please confirm your consent to the above Separate Agreement by signing in a legally binding form and returning the enclosed copies.

Please forward a copy of the present letter in due course to the Owner's Engineer.

Yours sincerely,

Frankfurt am Main, [date]\_\_\_\_\_

**KfW**

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[signature]

Name:

Name:

Title:

Title :

- Annex 1: Results Matrix
- Annex 2: Time Schedule
- Annex 3: Total Cost and Financing
- Annex 4: Disbursement Procedure
- Annex 5: Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries
- Annex 6: Environmental and Social Commitment Plan (ESCP) if applicable
- Annex 7: Procurement Plan
- Annex 8: Content and Form of Reporting to KfW
- Annex 9: Compliance Covenants Project-Executing Agency
- Annex 10: ESHS Definitions

Read and agreed:

On behalf of Ministry of Finance

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[place, date]

On behalf of GRIDCo

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[signature]

Name:

Title:

## Results Matrix

Transmission line Accra-Kumasi

BMZ-Nr. 2017 65 254, 2018 65 104 and 2021 65 207

Ghana

Results matrix prepared 14.07.2022

Objectives	Success indicators	Verification sources	Assumptions
<p><b>Programme objective of the German-Ghanaian development cooperation</b></p> <p>By improving the financial sustainability of the energy sector and the framework conditions for the promotion of investments in renewable energies and energy efficiency, Ghana's climate protection objectives and its sustainable and inclusive economic development are strengthened.</p>	<p><b>Programme objective indicator 6</b></p> <p>Technical losses in the transmission grid: the technical losses in the transmission grid have been reduced by 1/3 by 2030.</p> <p>Baseline: 5% (2019)</p> <p>Target:</p>	Reporting by GRIDCo	
<p><b>Financial cooperation module objective (outcome level)</b></p> <p>A contribution has been made to an efficient, reliable and climate-friendly electricity supply and to grid stability as a basis for sustainable development.</p>	<p><b>1. Power transmission</b></p> <p>Additional amount of electricity transmitted per year</p> <p>Baseline: 0</p>	<p>Reporting by GRIDCo</p> <p>Reporting by implementation consultant</p> <p>Own estimate based on sector data and data of the project executing agency</p>	<p>Economic development is in line with expectations.</p> <p>No political risks occur (e.g. economic and social policy, instability, conflicts, fragility, governance...).</p>

Objectives	Success indicators	Verification sources	Assumptions
	<p>Target: xxx<sup>1</sup> GWh p.a. from 2<sup>nd</sup> year of operation onwards</p> <p><b>2. Technical losses</b> Reduction of technical losses in the transmission grid Baseline: 4,7% Target: xx<sup>2</sup></p> <p><b>3. Reliability of the line</b> Availability of the line. Baseline: 0 Target: 98%</p> <p><b>4. Climate protection</b> Prevention of greenhouse gas emissions (CO<sub>2</sub> equivalents) through the programme Baseline: 0 Target: xy<sup>3</sup> t CO<sub>2e</sub> /year</p>		Sectoral reforms and the measures set out in the ESRP are implemented as planned.

<sup>1</sup> The value will be defined by the Owner's Engineer on basis of a network calculation. The value will vary depending on which implementation option will be realized.  
<sup>2</sup> The value will be defined by the Owner's Engineer on basis of a comparison with and without the line in the network calculation. The value will vary depending on which implementation option will be realized.  
<sup>3</sup> The reduction of CO<sub>2</sub> emission directly correlates to the reduction of losses; thus the same comments apply for this indicator as for indicator 2.

<b>Objectives</b>	<b>Success indicators</b>	<b>Verification sources</b>	<b>Assumptions</b>
<p><b>Outputs</b></p> <p>A. 330 kV Transmission line from Accra to Kumasi</p> <p>B. Service of the implementation consultant</p>	<p><b>Indicator A:</b> The transmission capacities created are operational Baseline: no Target: yes</p> <p><b>Indicator B:</b> The proper and sustainable construction of the facilities is ensured. Baseline: no Target: yes</p>	<p>Reporting GRIDCo Reports of the implementation consultant</p>	<p>The framework data, such as the demand for and the supply of electricity, do not deviate much from the forecast. The regulatory framework and the political support do not deteriorate drastically. The project executing agency operates efficiently (collection efficiency and maintenance).</p>
<p><b>Activities in the module</b></p> <p>Detailed planning Tenders Supervision of construction Deliveries and services Commissioning</p>	<p><i>Not to be filled in!</i></p>	<p><i>Not to be filled in!</i></p>	<p>The implementation is proceeding as planned and the time schedules are being adhered to. The project-executing agency has the personnel and organisational capacities to implement the programme. The connection and development measures are provided in a timely manner.</p>







### Annex 3: Total Cost and Financing for Accra-Kumasi Transmission Line

(Option 4: Double circuit line, one circuit installed without consideration of substation New Nkawkaw)

Project measures (2)	Total cost (5)		% of total cost	Financing			
	(GH¢ m)	(EUR m)		FC loan (EUR m)	Special fund (EUR m)	Own contribution GoG (GH¢ m)	Total financing (EUR m)
	1. Substations (3)	38,65	5,12	1.1%	5,12	0,00	0,00
2. Transmission line (4)	654,41	86,70	73.0%	86,70	0,00	0,00	86,70
3. Tender Agent for Owners Engineer, ESIA, RAP	0,45	0,06	0.1%	0,00	0,06	0,00	0,06
4. Owners Engineer (5)	34,65	4,59	3.9%	4,59	0,00	0,00	4,59
5. Environmental & Social Studies	6,79	0,90	0.8%	0,00	0,90	0,00	0,90
6. RAP/LRP implementation cost	71,71	9,50	8.1%	9,50	0,00	0,00	9,50
<b>Total base cost</b>	<b>806,66</b>	<b>106,87</b>	<b>100,0%</b>	<b>105,91</b>	<b>0,96</b>	<b>0,00</b>	<b>106,87</b>
Contingencies	80,67	10,69	9.1%	10,69	0,00	0,00	10,69
<b>Financing requirement (6)</b>	<b>887,33</b>	<b>117,56</b>	<b>100,0%</b>	<b>116,60</b>	<b>0,96</b>	<b>0,00</b>	<b>117,56</b>

Financed through	Total		%
	(GH¢ m)	(EUR m)	
<b>FC loan</b>	<b>880,10</b>	<b>116,60</b>	<b>99%</b>
BMZ No. 2017 65 254	490,62	65,00	55%
BMZ No. 2018 65 104	151,71	20,10	17%
BMZ No. 2021 65 207	237,76	31,50	27%
<b>Special fund</b>	<b>7,25</b>	<b>0,96</b>	<b>1%</b>
<b>Own contribution GoG</b>	<b>0,00</b>	<b>0,00</b>	<b>0%</b>
<b>Total financing</b>	<b>887,34</b>	<b>117,56</b>	<b>100%</b>

Notes:

(1) Exchange rate: EUR 1 = GH¢ 7.5480 (Mid interbank FX rate as of 04.07.2022)

(2) The assumptions for estimate of individual cost items are based on the Feasibility Study dated June 2022 and discussions held as part of the Appraisal Mission in July 2022

(3) The foreign component for substations is assumed to be 80%

(4) The foreign component for transmission lines is assumed to be 60%

(5) Assumption: 5 % of the total cost for substations and transmission line each

(6) Should the loan provided by KfW not be enough to finance the selected option, the PEA will be responsible to secure the financing to cover the gap between the total actual cost of the Project and the loan provided by KfW

Officer in Charge: Eva-Maria Rommel  
phone: 0049 69 7431 2928  
email: eva-maria.rommel@kfw.de

## Disbursement Procedure

German Financial Cooperation with Ghana  
Loan Agreement of KfW for EUR 116,600,000.00  
Project: Transmission Line Accra-Kumasi  
KfW-Reference Number (Project No./ BMZ No.): 2017 65 254, 2018 65 104 and  
2021 65 207

### 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 3.1 of the Agreement, the party authorized to request disbursements shall be the **Ghana Grid Company Limited (GRIDCo)** (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.

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. LAc5  
 Palmengartenstr. 5-9  
 60325 Frankfurt am Main  
 GERMANY

**German Financial Cooperation with Ghana**  
**Loan Agreement of KfW for EUR 116,600,000.00**  
**Project: Transmission Line Accra-Kumasi**  
**KfW-Reference Number (Project No./ BMZ No.): 2017 65 254, 2018 65 104 and**  
**2021 65 207**

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 one<sup>1</sup> 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").

<i>NAME</i>	
<i>FUNCTION</i>	
<i>SPECIMEN SIGNATURE</i>	

<i>NAME</i>	
<i>FUNCTION</i>	
<i>SPECIMEN SIGNATURE</i>	

<i>NAME</i>	
<i>FUNCTION</i>	
<i>SPECIMEN SIGNATURE</i>	

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*

<sup>1</sup> Please change wording if joint signatures are required.



MODEL FOR LETTER REQUESTING DISBURSEMENT ADVICES VIA E-MAIL

[Please use official letterhead]

KfW  
Attn. Bke4  
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.<sup>2</sup> 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)<sup>3</sup>

Yours sincerely,

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

<sup>2</sup> Please note that disbursement advices sent via e-mail are .pdf files.

<sup>3</sup> 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	Article 1
Simplified Direct Disbursement Procedure	Construction of a 330 kV transmission line from Accra to Kumasi	Article 1
Disposition Fund	Required expansion of A4BSP and K2BSP substations Compensation Payments	Article 1

## 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 Direct Disbursement Procedure

Within the framework of the **Simplified Direct Disbursement Procedure**, KfW pays the contractor directly based on the underlying contract for goods and/or services. 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-2**.

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 contract 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.

Within the framework of the Simplified Direct Disbursement Procedure, each disbursement request must be accompanied - if applicable according to the respective underlying contract for goods and/or services - by the following Supporting Documents, in each case in accordance with the stipulations set forth in Part A of this Annex :

- copies of commercial invoice(s) for the goods and/ or services to be financed in accordance with the provisions of the underlying contract;
- optionally: consultant's checklist based on the model in **Attachment B-2** documenting essential verifications undertaken for the purposes of the Simplified Direct Disbursement Procedure;
- non-objection by KfW in case expenses exceed the contractually agreed budget lines.

### 3 Disposition Fund

The funds assigned to goods and services shall be disbursed according to the **Disposition Fund Procedure (Special Account)** provided that the value of each underlying contract does not exceed **EUR 500.000,00** or equivalent. Contracts exceeding EUR 500,000.00 or equivalent shall be disbursed according to the Simplified Direct Disbursement Procedure.

Details concerning the **Disposition Fund Procedure** are described in the "General Terms for Disbursements under the Disposition Fund Procedure" ("General Terms", **Attachment B-3**), which are fully applicable and binding, unless explicitly agreed otherwise herein. In case of discrepancies between the General Terms and these Special Provisions, the latter will take precedence.

**By derogation from the General Terms, the following shall apply:**

The Certifying Party as Implementation Consultant, who assist the Authorized party shall assume the obligations foreseen for this purpose in the General Terms and its Annex G.

Article 3.4: The audit costs shall be paid out of the Disposition Fund.

MODEL FOR DISBURSEMENT REQUEST (DIRECT DISBURSEMENT CONSULTANT)

Sender:

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

.....  
Date

KfW  
Attn. Bke4  
Palmengartenstr. 5-9  
60325 Frankfurt am Main  
GERMANY

**German Financial Cooperation with Ghana**  
**Loan Agreement of KfW for EUR 116,600,000.00**  
**Project: Transmission Line Accra-Kumasi**  
**KfW-Reference Number (Project No./ BMZ No.): 2017 65 254, 2018 65 104 and**  
**2021 65 207**

**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 ... <sup>4</sup>
<b>TOTAL AMOUNT REQUESTED FOR DISBURSEMENT<sup>5</sup>:</b>				

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

<b>Beneficiary (company name/ address)</b>	
<b>Account no./ IBAN (if applicable)</b>	
<b>Account-holding bank/ BIC</b>	
<b>Correspondent bank<sup>6</sup>/ BIC</b>	

<sup>4</sup> In case of pari passu or pro rata co-financing.

<sup>5</sup> Please make sure to specify currency.

<sup>6</sup> 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.

---

*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
<b>1 Remuneration</b>									
1.1.									
1.1.1.									
...									
...									
<b>Subtotal: Remuneration</b>									
<b>2. Reimbursables</b>									
2.1.									
2.1.1.									
...									
...									
<b>Subtotal: Procurements</b>									
<b>3. Contingencies</b>									
					Total Costs at actual				
					Advance Payment (Recovery)				
					Contract Sum				
					Invoice No. (x)				



MODEL FOR DISBURSEMENT REQUEST (SIMPLIFIED DIRECT DISBURSEMENT)
---

Sender:

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

Date

KfW  
 Attn. Bke4  
 Palmengartenstr. 5-9  
 60325 Frankfurt am Main  
 GERMANY

German Financial Cooperation with Ghana  
 Loan Agreement of KfW for EUR 116,600,000.00  
 Project: Transmission Line Accra-Kumasi  
 KfW-Reference Number (Project No./ BMZ No.): 2017 65 254, 2018 65 104 and 2021 65 207

**Disbursement Request No.  
 SIMPLIFIED DIRECT DISBURSEMENT PROCEDURE**

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

Underlying contract and date	Invoice number/ date	Amount invoiced	Amount financed by KfW	Amount financed by ... <sup>7</sup>
<b>TOTAL AMOUNT REQUESTED FOR DISBURSEMENT<sup>8</sup>:</b>				

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

<b>Beneficiary (company name/ address)</b>	
<b>Account no./ IBAN (if applicable)</b>	
<b>Account-holding bank/ BIC</b>	
<b>Correspondent bank<sup>9</sup>/ BIC</b>	

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

- commercial invoice(s)
- Consultants Checklist

<sup>7</sup> Only applicable in case of pari passu co-financing.

<sup>8</sup> Please make sure to specify currency.

<sup>9</sup> 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.

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.

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

**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)
<b>Goods/Services as presented in the invoice have been performed</b>	
The payment is in line with the payment conditions and the payment schedule	
<b>If applicable: Financing Shares as stipulated in the Separate Agreement are correct</b>	
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)	
<b>If applicable: price adjustment complies with the contract</b>	
Amounts and calculations are correct	
<b>Documents as required in the contractual payment conditions have been submitted</b>	
Performance and Advance Payment Guarantees (if foreseen) are correct in form and amount as well as valid for at least 6 weeks.	

**GENERAL TERMS**  
**for Disbursements under the Disposition Fund Procedure**  
**("General Terms")**

**Structure**

1	SPECIAL ACCOUNT/ LOCAL SPECIAL ACCOUNT(S) .....	1
1.1	Special Account .....	2
1.2	Local Special Account(s).....	2
1.3	Petty Cash .....	2
2	LIABILITIES .....	2
2.1	General Obligations .....	2
2.2	Special Obligation regarding the Special Account/ Local Special Account(s) .	3
3	PROCEDURE / EXECUTION .....	3
3.1	Initial Disbursement .....	3
3.2	Replenishment and Evidence on the Use of Funds .....	4
3.2.1	Replenishment .....	4
3.2.2	Amount to be replenished .....	4
3.2.3	Evidence on the use of Funds .....	4
3.2.4	Repayment to KfW .....	5
3.3	Documentation .....	5
3.4	Audit arrangements .....	5
3.5	Suspension and repayment .....	6

**1 SPECIAL ACCOUNT/ LOCAL SPECIAL ACCOUNT(S)**

The Authorized Party or the Authorized Third Party (if appointed) shall open one Special Account (as defined below) as well as, if required, one or more Local Special Account(s) (as defined below) with a renowned bank in the Authorized Party's/Authorized Third Party's own name. KfW shall have the right to object to the account-holding bank. The Authorized Party or the Authorized Third Party (if appointed) shall limit the number of bank accounts to the quantity indispensably required. If it intends to open more than three bank accounts within the framework of the Disposition Fund, the Authorized Party or Authorized Third Party shall provide KfW with a written explanation regarding the necessity of more than three accounts. KfW shall have the right to object to more than three accounts after stating reasons.

**1.1 Special Account**

- **"Special Account"** refers to the bank account KfW remits Funds to directly.
- Generally, the currency of the Special Account shall be EURO.

### 1.2 Local Special Account(s)

- "**Local Special Account**" refers to any bank account held for project purposes in a currency other than the currency of the Special Account which is replenished by means of transfers from the latter.
- Transfers from the Special Account to the Local Special Account(s) shall not exceed the amount of expenditures planned for the period of one month.

The Special Account as well as all Local Special Account(s) shall bear interest. If this is not the case, the Authorized Party/ Authorized Third Party shall provide an adequate explanation in the fields provided for this purpose in **Annex A** to these General Terms.

### 1.3 Petty Cash

In exceptional cases, petty cash may be held and replenished from the Special Account or Local Special Account(s). However, the amount of petty cash shall not exceed the amount of expenditures planned for the period of one day. If a lack of local infrastructure makes cashless payments disproportionately difficult or even impossible, the amount of petty cash held may, by way of exception, exceed the amount of expenditures planned for the period of one day. The Authorized Party/ Authorized Third Party (if appointed) shall be obliged to keep a cash book which shall be reconciled on a regular basis.

## 2 LIABILITIES

### 2.1 General Obligations

- a. The Authorized Party shall ensure that at all times its employees or any other persons acting on its behalf comply with all obligations and liabilities under the Separate Agreement relating to the disbursement and the use of Funds.
- b. In case an Authorized Third Party is appointed, the Authorized Party shall ensure that such obligations and liabilities will be contractually passed on to the Authorized Third Party, in particular by including the "Terms of reference Authorized Third Party" set forth in **Annex F** into the contract with the Authorized Third Party. Failure to do is a breach of the Agreement and may lead to the consequences set out therein. The Authorized Third Party shall certify, as Certifying Party and in accordance with the stipulations set forth in Part A of this Annex, that the information and confirmations contained in the respective disbursement requests are true, correct and up-to date.

In case an implementation consultant is charged with assisting the Authorized Party with the implementation of the Disposition Fund, the Authorized Party shall ensure that the respective obligations and liabilities will be contractually passed on to the implementation consultant, in particular by including the "Terms of reference for the Implementation Consultant" set forth in **Annex G** into the contract with the consultant. The Consultant shall certify, as Certifying Party and in accordance with the stipulations set forth in Part A of this Annex, that the information and confirmations contained in the respective disbursement requests are true, correct and up-to date.

- c. Any credit interest and other income (e.g. penalties, guarantee refunds, etc.) shall be credited to the Special Account and may only be used in accordance with Article 2.1.c
- d. Payments out of the bank account(s)/ petty cash shall be made only for the purposes agreed upon in the Separate Agreement and in accordance with the "Total Cost and Financing Plan" included in the Separate Agreement. At no point

in time may the Funds on the bank account(s)/ petty cash be used to cover expenses which are ineligible for financing in the Agreement or Separate Agreement or have yet to be approved by KfW. In particular, this applies to taxes and other public charges to be borne by the Borrower/ Recipient/ Project-Executing Agency.

## 2.2 Special Obligation regarding the Special Account/ Local Special Account(s)

With regard to the bank account(s) and petty cash mentioned in Article 1 above, the Authorized Party shall ensure itself and shall ensure that the Authorized Third Party or third parties involved in the financial transaction if any, will:

- a. submit to KfW upon request information on the bank account(s)/ petty cash at any time;
- b. inform KfW promptly and without undue delay of any garnishments imposed on the bank account(s)/ petty cash by third parties;
- c. keep the bank account(s)/ petty cash exclusively for transactions under the Disposition Fund and replenish them only with KfW Funds; and
- d. keep the bank account(s) on a credit balance basis.

The Authorized Party or the Authorized Third Party (if appointed) will inform the account-holding bank of these obligations and legitimize it to the extent legally possible to disclose information on the bank account(s) to KfW upon KfW's request.

## 3 PROCEDURE / EXECUTION

### 3.1 Initial Disbursement

KfW shall make an initial disbursement to the Special Account upon fulfilment of the relevant conditions in the Agreement, Separate Agreement and submission to KfW of a disbursement request by the Authorized Party in accordance with the stipulations set forth in Part A of this Disbursement Annex, provided that such disbursement request shall contain all the information and confirmations as are required by the model in **Annex A**.

The initial disbursement request (cf. **Annex A**) must be accompanied by the following Supporting Documents, in each case in accordance with the stipulations set forth in Part A of this Disbursement Annex:

- presentation of a confirmation of bank account details by the account holding bank (copy is sufficient) including the BIC of a correspondent bank if the account holding bank is not located in the requested currency's currency area.
- presentation of a forecast of expenditures reflecting the individual budget positions for the first four-month accounting period using **Annex D** (columns 1, 2 & 7);

In case of Local Special Account(s), KfW may make the initial disbursement to the Special Account before the details of the Local Special Accounts and the corresponding declarations as foreseen by Annex A have been submitted to KfW. However, no Funds may be transferred from the Special Account to the Local Special Account(s) until the submission of such information and declarations.

### 3.2 Replenishment and Evidence on the Use of Funds

#### 3.2.1 Replenishment



To request replenishment of the Special Account, the Authorized Party shall submit the following documents to KfW, in each case in accordance with the stipulations set forth in Part A of this Disbursement Annex:

- disbursement request containing all the information and confirmations as are required by the model in **Annex B**;
- "Summary of Bank Accounts" for the accounting period for which evidence on the use of Funds is being submitted (**Annex C**);
- copies of bank account statements for the Special Account and Local Special Account(s) (if applicable) for the entire accounting period;
- "Statement of Expenditures" (SOE) including forecast for the next four-month accounting period (**Annex D**).

### 3.2.2 Amount to be replenished

The maximum amount to be replenished is calculated by subtracting the total of the account balances on the Special Account, Local Special Account(s) and petty cash at the end of the accounting period from the forecast for the next four-month accounting period.

### 3.2.3 Evidence on the use of Funds

The Authorized Party is obligated to furnish evidence on the use of funds within the deadlines set forth below.

In general this shall happen by submission by the Authorized Party of a disbursement request to KfW accompanied by the Supporting Documents referred to in Article 3.2.1, in each case in accordance with the stipulations set forth in Part A of this Disbursement Annex, which is considered evidence on the use of Funds for the respective accounting period. These documents are subject to further review within the scope of the Audit set forth in Article 3.4.

If the Authorized Party does not intend to request replenishment, evidence on the use of Funds must nevertheless be submitted by the Authorized Party to KfW in accordance with the stipulations set forth in Part A of this Disbursement Annex. In this case, the required documentation to submit evidence on the use of Funds comprises:

- pro forma disbursement request containing all the information and confirmations as are required by the model in **Annex B**, with the amount requested for replenishment of the Special Account equalling zero;
- "Summary of Accounts" for the accounting period for which evidence on the use of Funds is being submitted (**Annex C**)
- copies of bank account statements for the Special Account and Local Special Account(s) (if applicable) for the entire accounting period;
- "Statement of Expenditures" (SOE) including forecast for the next four-month accounting period (**Annex D**).

The Authorized Party shall present evidence on the use of Funds not later than four months either after

- the preceding replenishment, or
- the end of the last accounting period for which evidence on the use of Funds was submitted (if no replenishment was effected),

whichever is later.

For the final accounting period, the documentation submitted as evidence on the use of Funds shall include bank account statements for the Special Account and all Local

Special Account(s) (if applicable) showing a balance of zero or the amount which will be repaid to KfW at the end of the accounting period.

Furthermore, the Authorized Party shall ensure that all evidence on the use of Funds is made available to KfW within four months of conclusion of all measures or completion of the Project/ Programme.

#### 3.2.4 Repayment to KfW

If the total of the account balances on the Special Account, the Local Special Account(s) and petty cash is greater than the amount of expenditures forecasted for the next four-month accounting period, the difference must be repaid to KfW. To this end, the Authorized Party or the Authorized Third Party (if appointed) shall transfer the difference to the following bank account of its own accord and after having notified KfW to this effect.

All repayments shall be made to:

KfW, Frankfurt am Main  
BIC: KFWIDEFF  
IBAN: DE53 5002 0400 3800 0000 00

quoting the KfW reference number.

#### 3.3 Documentation

Original documents to be held available according to Article 2.5 of Part A of the Disbursement Annex shall include statements of bank accounts, bank confirmations of exchange rates applied, bank guarantees, any other bank vouchers and any other documents proving that supplies and services have been duly delivered and performed, i.e. commercial invoices, shipping documents, payment and acceptance certificates etc.

#### 3.4 Audit arrangements

The Authorized Party/ Authorized Third Party shall assign an external auditor/ practitioner to examine annually, in compliance with the "Terms of Reference: Assurance Engagement for Funds Disbursed under the Disposition Fund Procedure" (**Annex E**) whether or not the Disposition Fund has been managed properly. The annual audit reports (signed original documents including the corresponding "Statement on Internal Control", if any) shall be presented to KfW no later than three months after the end of the Authorized Party's financial year.

If the initial disbursement is effected during the first half of the financial year, the first audit shall be presented to KfW no later than three months after the end of that financial year.

If the initial disbursement is effected during the second half of the financial year, the first audit shall be presented to KfW not later than three months after the end of the following financial year. In this case, the period under review may cover up to 18 months.

The final audit report shall be presented no later than three months after the end of the financial year in which the final payment out of the Special Account or a Local Special Account is effected or six months after the final payment out of the Special Account or a Local Special Account, whichever occurs earlier.

The audit costs for the external auditor shall be borne by the Authorized Party.

#### 3.5 Suspension and repayment

KfW is entitled to reduce the total amount of the Disposition Fund or cancel it entirely (and replace it by a different disbursement procedure) at any time in its sole discretion.

Furthermore, KfW is entitled to suspend replenishments of the Disposition Fund if an event occurs that leads to the right to suspend disbursements or to terminate the Agreement.

Nothing in this Annex shall restrict KfW's right under the Agreement to demand the immediate repayment of all Funds not adequately proven to have been used for the agreed purpose and the Recipient's/ Borrower's and (if applicable) the Project-Executing Agency's obligation to inform KfW immediately and on their own initiative of its inability to prove the correct use of Funds.

In any case, the Authorized Party or the Authorized Third Party (if appointed), is obliged to return any Funds on the Special Account(s) or Local Special Account(s) to KfW upon KfW's first written demand.

### **Annexes**

A Model for Disbursement Request for Initial Disbursement

B Model for Submission of Evidence on the Use of Funds & Subsequent Disbursement Requests

C Model for Summary of Bank Accounts

D Model for Statement of Expenditures

E Terms of Reference: Assurance Engagement for Funds Disbursed Under the Disposition Fund Procedure

F Terms of Reference: Authorized Third Party (if applicable)

G Terms of reference for the Implementation Consultant (if applicable)

PLEASE USE THIS MODEL FOR THE INITIAL REQUEST.

KfW  
Att. BKe4  
Palmengartenstr. 5-9  
60325 Frankfurt am Main  
GERMANY

German Financial Cooperation with Ghana  
Loan Agreement of KfW for EUR 116,600,000.00  
Project: Transmission Line Accra-Kumasi  
KfW-Reference Number (Project No./ BMZ No.): 2017 65 254, 2018 65 104 and 2021 65 207

**Confirmation of Bank Account Details & (Initial) Disbursement Request No.  
DISPOSITION FUND PROCEDURE**

Dear Sir/ Madam,

This is to confirm the opening of the following bank account(s) for the purpose of maintaining a Disposition Fund under the above-mentioned Project:

Special Account			
<i>Account No./ IBAN<sup>10</sup></i>		<i>Account name</i>	
<i>Account currency</i>		<i>Account holder</i>	
<i>Account-holding bank/ BIC</i>		<i>Correspondent bank/ BIC<sup>11</sup></i>	
The account ...	<input type="checkbox"/> bears interest. <input type="checkbox"/> does not bear interest, because:		

Local Special Account (if applicable) <sup>12</sup>			
<i>Account No./ IBAN</i>		<i>Account name</i>	
<i>Account currency</i>		<i>Account holder</i>	
<i>Account-holding bank/ BIC</i>			
The account ...	<input type="checkbox"/> bears interest. <input type="checkbox"/> does not bear interest, because:		

The account-holding bank/s has/ have been informed that all accounts mentioned above are to be maintained exclusively on a credit balance basis and are to be used for payments to be made from purpose-tied Funds of the German Financial Cooperation or comparable programmes financed by KfW. Subject to applicable law, the account-holding bank/s has/have further been authorized to provide KfW with information regarding account balance and activity without having to obtain the account holder's consent in advance.

<sup>10</sup> The use of an IBAN may be mandatory. Please check the respective country requirements.

<sup>11</sup> 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.

<sup>12</sup> Concerning any Local Special Account(s), the provision of bank account details, the confirmations regarding the Authorized Party's/ Authorized Third Party's obligation to inform the account-holding bank as well as the Declaration of Assignment (if applicable) are not essentially required for the initial disbursement and may be submitted with subsequent disbursement requests. However, funds may not be transferred to a Local Special Account before all of the above have been provided to KfW.

**According to the attached forecast of expenditures for the first four-month accounting-period, we request an initial disbursement amounting to Currency \_\_\_\_\_ to the Special Account indicated above.**

Documents enclosed:

- Statement of Expenditures (SOE) pursuant to model provided in Annex D with filled in columns 1, 2 & 7.
- Copy of or original confirmation of bank account details by account holding bank (including BIC of correspondent bank if applicable<sup>13</sup>)

We hereby confirm that

- the Authorized Signatory serving 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.

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

.....  
*Authorized Third Party or Consultant (if applicable)*

<sup>13</sup> 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.

*Please contact the officer in charge (of KfW's FC Disbursement and Loan Management Department/BKe) in order to receive the tables in excel format*

PLEASE USE THIS MODEL FOR ALL DISBURSEMENT REQUESTS  
FOLLOWING THE INITIAL DISBURSEMENT

**KfW**  
Att. BKe4  
Palmengartenstr. 5-9  
60325 Frankfurt am Main  
GERMANY

**German Financial Cooperation with Ghana**  
**Loan Agreement of KfW for EUR 116,600,000.00**  
**Project: Transmission Line Accra-Kumasi**  
**KfW-Reference Number (Project No./ BMZ No.): 2017 65 254, 2018 65 104 and 2021 65 207**

**Submission of Evidence on the Use of Funds & Disbursement Request No.  
DISPOSITION FUND PROCEDURE**

Dear Sir/Madam,

In accordance with the agreed Disposition Fund Procedure, we hereby submit documentary evidence on the use of Funds, provide a forecast of expenditures for the next four-month accounting period and request replenishment of the Special Account as specified below:

We confirm that expenditures in the amount indicated to the right were made from the Special Account, the Local Special Account(s) and petty cash in conformity with the provisions of the Disposition Fund Procedure and were not financed from any other sources. The original documentary evidence is kept at our office in <i>Please enter city</i> . and is available for inspection by KfW or any third party instructed by KfW at any time. <sup>1</sup>		<i>Currency</i>
A	Expenditures during the next four-month accounting period according to forecast:	<i>Currency</i>
B	Total balance on all bank accounts and petty cash at the end of the accounting period according to Summary of Bank Accounts:	<i>Currency</i>
C	Amount requested for replenishment of Special Account <sup>2</sup> :	<i>Currency</i>

**Please remit the amount requested to our Special Account:**

<b>Account No./ IBAN<sup>3</sup></b>	
<b>Account holder</b>	
<b>Account name</b>	
<b>Account-holding bank/ BIC</b>	
<b>Correspondent bank/BIC<sup>4</sup></b>	

<sup>1</sup> Please ensure that the amount indicated to the right is consistent with the amount indicated as Declared use of funds of the Summary of Bank Accounts (Annex C, total of line 13)).

<sup>2</sup> C = A - B

<sup>3</sup> The use of an IBAN may be mandatory. Please check the respective country requirements.

<sup>4</sup> Only applicable if the account-holding bank is not located in the requested country's currency area. In this case, please enter the account-holding bank's correspondent bank in the requested currency's currency area.

**Account currency**

We hereby confirm that there have been no changes with regard to the account details or correspondent bank(s) as compared to the information communicated in the Confirmation of Bank Account Details & (Initial) Disbursement Request.

The account-holding bank/s has/ have been informed that all accounts held within the framework of the Disposition Fund Procedure are to be maintained exclusively on a credit balance basis, shall bear interest (if not, please explain) and are to be used for payments to be made from purpose-tied Funds of the German Financial Cooperation or comparable programmes financed by KfW. Subject to applicable law, the account-holding bank/s has/have further been authorized to provide KfW with information regarding account balance and activity without having to obtain the account holder's consent in advance.

Documents enclosed:

- Summary of Bank Accounts pursuant to model provided in **Annex C**
- bank statements for the entire accounting period for all bank accounts held within the framework of the Disposition Fund Procedure
- Statement of Expenditures (SOE) pursuant to model provided in **Annex D**
- Forecast (as per column 7 of SOE, **Annex D**)

The Authorized Party and the Authorized Third Party/Consultant herewith confirms that the Disposition Fund has been managed in conformity with the contractual provisions contained in KfW's underlying Grant/Loan Agreement, Separate Agreement and Disbursement Annex, that payments from the Disposition Fund have been made based on eligible contracts, that the enclosed Summary of Accounts and Statement of Expenditures have been completed accurately and that all figures indicated are true and correct and that the payment may be effected in accordance with KfW's contractual provisions and standards agreed upon for this Programme/Project.

We hereby confirm that

- the Authorized Signatory serving 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.

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

.....  
*Authorized Third Party or Consultant (if applicable)*





Declared use of funds (Expenditures SOE 13 + Bank Charges - Credit Interest) (lines 8+9+10)	0,00
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Instructions:

After the initial disbursement request, this Summary of Bank Accounts shall be an integral part of each disbursement request. Figures provided here shall reflect the actual cash flow during the entire accounting period and be consistent with the corresponding bank statements. Please ensure that all calculations are correct.

- (1) Please enter the accounting period for which evidence on the use of Funds is currently being submitted. The documents submitted here should succeed those submitted last, there should be no gap between them. Generally, accounting periods under the Disposition Fund Procedure cover four months.
- (2) Please enter the requested information for all bank accounts held within the framework of the Disposition Fund Procedure. "Special Account" refers to the bank account KfW remits Funds to directly. "Local Special Account" refers to any bank account held for project purposes in a currency other than the currency of the Special Account which is replenished by means of transfers from the latter.
- (3) Please enter the balance held on each bank account (and petty cash, if applicable) in the respective currency at the beginning of the accounting period. The values shall be equal to the balance at end of accounting period as per last Evidence on the Use of Funds & Disbursement Request.
- (4) Please enter the total amount of Funds which were credited from KfW during the accounting period
- (5) Please enter the total amount of funds debited from any account or petty cash and transferred to other account or petty cash during the accounting period (only within accounts indicated in this table).
- (6) Please enter the total amount of funds credited into any account or petty cash coming from any other account or petty cash during the accounting period (only within accounts indicated in this table). Please note that the total of line 6 shall be consistent with total of line 5.
- (7) Please enter the total amount of inflows coming from guarantee or insurance refunds which were credited at the respective bank account (and petty cash) during the accounting period.
- (8) Please enter the total amount of funds which were debited from the respective bank account (and spent from petty cash) during the accounting period, excluding bank charges. The result should be consistent with the total of Column 4 of the attached SOE (after adjustments)
- (9) Please enter the total amount of bank charges which were debited from the respective bank account (and petty cash) during the accounting period.
- (10) Please enter the total amount of credit interest which was credited at the respective bank account (and petty cash) during the accounting period.
- (11) Please enter the balance held on each bank account (and petty cash) in the respective currency at the end of the accounting period as per bank statements. Please convert the respective figures to EUR using reasonable market exchange rates at the date of the disbursement request
- (12) Please indicate the reasonable market exchange rates at the date of the disbursement request applied for conversions of line 11.
- (13) Declared use of funds shall be calculated only for the last column (Total) as sum of lines 8+9+10 (Expenditures Current Period as per SOE + Bank Charges - Credit Interest)
- (14) Please note that the total of each line (3 until 11) shall be the sum of the columns in EUR of the respective line.



Attachment B-3  
Annex D  
Page 2

In all subsequent SOEs, please ensure that the total in column 4 is consistent with the total of line 8 reported on the Summary of Bank Accounts.

All figures shall be indicated in EUR, except for column 4b Foreign Currency.

\*Please enter other relevant adjustments to reflect the real cash flow during the period (e.g. high volume of checks considered as expenditures in the SOE during the accounting period but still not debited from the account, advances already paid to contractors or project-partners which represented cash outflow but were not worked off/not considered as SOE, other country specifics). Please add an explanation below the table.

PLEASE CONTACT THE OFFICER IN CHARGE (OF KFW'S FC DISBURSEMENT AND LOAN MANAGEMENT DEPARTMENT/BKe) IN ORDER TO RECEIVE THE TABLES IN EXCEL FORMAT

## TERMS OF REFERENCE ("ToR")

### Assurance Engagement in accordance with ISAE 3000 – revised for Funds disbursed under the Disposition Fund Procedure

#### The Disposition Fund ("Subject Matter")

1. The Disposition Fund is opened under the financial conditions of KfW Agreement no. ... [KfW reference no.] for financing of ... (part of) [project/ programme] (the "Project") as defined in the Annexes "Total Cost and Financing" and "Disbursement Procedure" to KfW's Separate Agreement and consists of the following account(s):
  - Special Account No. ... opened with ... [name of bank] opened/kept by .... [name of account-holder]
  - Local Special Account(s) No(s) - if any - ... opened with ... [name of bank] opened/kept by .... [name of account-holder]
  - Petty Cash / Cash Box(es)... – if any - kept by .... [name of account-holder]
2. The preparation of the Project Financial Reports ("Financial Reports"), the Summary of Bank Accounts, the Statements of Expenditures ("SOE") and the disbursement requests (overall "Subject Matter Information") is the responsibility of ... [Name of Authorized/ Authorized Third Party, Project-Executing Agency and/or other Project Implementation Unit(s) concerned] (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 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 accounts opened in connection with this Disposition Fund as mentioned under paragraph 1 above.
  - shall comprise 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 disbursement requests as far as the Disposition Fund (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 as well as advance payments out of the special accounts and out of the cash boxes 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 Summary of Bank Accounts and 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 out of the Disposition Fund 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) The Disposition Fund has been maintained in accordance with the provisions of the Relevant Agreements. This also comprises cash flows to and from accounts opened in connection with this Disposition Fund as mentioned under paragraph 1 above, as well as interest earned from balances.  
Note: Special attention should be given that no contract value exceeds EUR 500.000,00 or equivalent, balance(s) on Local Special Account(s) do not exceed a one month's requirement and balance(s) in petty cash box(es) do not exceed a one day's requirement.
  - (c) 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 ...) paid in former Reporting Periods have been cleared and used for project purposes, supported by relevant and reliable evidence.
  - (d) 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.
  - (e) 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 payment out of the Special Account or a Local Special Account is effected or six months after the final payment out of the Special Account or a Local Special Account, whichever occurs earlier.

- (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 any tax amounts or other project related contributions paid and not refunded, if the Relevant Agreements prohibit financing of these costs.
- (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 receipts, transfers and disbursements of all accounts mentioned under paragraph 1 above (see Annex B to these ToR), in particular showing cumulated expenditure less advances not yet cleared resulting from KfW payments since project start.
  - Summary of Bank Accounts and 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 account(s) under this disposition fund and 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 criteria:

Applied Criteria	CONCLUSION (YES/NO)**
a) The payments out of the Disposition Fund 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) The Disposition Fund has been maintained in accordance with the provisions of the Relevant Agreements. This also comprises cash flows to and from accounts opened in connection with this Disposition Fund as mentioned under paragraph 1 in the Terms of Reference, as well as interest earned from balances.	
c) 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.) paid in former Reporting Periods have been cleared and been used for project purposes, supported by relevant and reliable evidence.	
d) The Statements of Expenditures (SOE) referred to in the Report can be relied upon to support the related disbursement requests. Clear linkage exists between the Statements of Expenditures (SOE), the disbursement requests presented to KfW and the accounting records at the Entity.	
e) The procurement process of goods and services financed was in accordance with the Relevant Agreements.	
f) No other important findings and observations have been disclosed during the engagement.	
g) 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 and signature of the Auditor/Practitioner:



[Issued on the auditor's/ practitioner's letterhead]  
(to be attached to every Report)

**Annex B**

KfW Ref. No. ....		Special account no.	Local Special account 1 **)	Local Special account 2 **)	Petty Cash Box		Total/ Summary
<b>Reporting period from ... to ...</b>		<b>Unified Currency (preferably EUR)</b> **) for accounts in local currency, please add currency and exchange rate used					
a) account balance at the beginning of the reporting period							
b) inflow of funds from KfW (special account)	plus		X	X	X	X	X
c) credit interest or other project related receipts- if any -,	plus						
d) incoming transfers between accounts (only from accounts named here)	plus						X
e) outgoing transfers between accounts (only in favour of accounts named here)	less						X
f) expenditure (including bank charges) and advances	less						
g) account balance at the end of the reporting period							
<b>Cumulated amounts from project start until end of Reporting Period -KfW funds only-</b>			<b>Unified Currency (preferably EUR)</b>				
a) cumulated inflow of funds (special account)			X	X	X	X	X
b) cumulated expenditure less advances not yet cleared							

Date: Stamp and Signature of the Auditor/Practitioner:

**Terms of reference for the Authorized Third Party in connection with the  
“Disposition Fund Procedure” of KfW**

The Consultant shall

- administer a Disposition Fund on behalf of the Employer according to the “Supplementary Conditions of KfW for Payments under the Disposition Funds Procedure”

For this purpose the Consultant shall

- Open a trust account / trust accounts, which shall bear interest.
- Ensure, that payments to contractors are being effected according to the relevant supply and service contracts and establish an adequate internal control system e.g. for the release of payments.
- Keep records of all disbursements effected out of the Disposition Fund according to the supply and service contracts financed out of the disposition fund and the cost categories agreed upon.
- Support the Employer in establishing requests for replenishments of the Disposition Fund in order to maintain an adequate liquidity position.
- Establish the statements of expenditures to be sent to KfW as evidence of the use of funds together with supporting documents e.g. bank account statements.
- Ensure a periodical audit of the disposition fund by an independent auditor on the basis of Terms of Reference provided by KfW.
- Inform the Employer and KfW immediately if relevant problems occur.

**Terms of reference for the Implementation Consultant with regard to the  
"Disposition Fund Procedure" of KfW**

- If the Consultant is charged with assisting the Employer in the implementation of a Disposition Fund in accordance with the Disposition Fund Procedure of KfW, he/she is responsible for the **quality assurance**. In this role the Consultant shall assist the Employer in managing a Disposition Fund including its (local) special account(s) and sub-account(s) according to the Special Provisions and "General Terms for Disbursements under the Disposition Funds Procedure" as stated in the Annex "Disbursement Procedure" to the Separate Agreement between KfW and the Employer (the Separate Agreement).

For this purpose, the Consultant shall

- Verify that payments/bank transfers to special accounts, sub-accounts and contractors are being effected according to supply and services contracts or other relevant contractual agreements, that the value of such contracts does not exceed the amount specified in the Special Provisions in the Annex "Disbursement Procedure" and supervise if payments to local accounts are made based on a one-month forecast (if applicable).
- Assist the Employer in archiving or archive himself all documents concerning the special account(s) and sub-accounts. These documents must be available anytime upon request of KfW and of international auditors conducting an Assurance Engagement.
- Monitor expenditures and verify that expenditures are in line with a budget approved by KfW. With regard to individual budget lines, deviations and/or changes must be approved by the responsible project manager at KfW.
- Support the Employer in preparing disbursement requests and/or evidence on the use of funds within the deadlines agreed upon with KfW based on the templates provided in the Annex "Disbursement Procedures" and covering the respective accounting period (usually four or six months) as stated in the Separate Agreement. This includes evidence of use of funds in cases in which no replenishment of funds is requested. In particular, the Consultant will verify the following documents which are to be submitted together with the disbursement request:
  - **Statement of Expenditures (SoE)** clearly presenting expenditures of the preceding accounting period as well as planned expenditures for each budget line for the following accounting period.
  - **Bank account statements** for each special account and all sub-accounts (covering the respective accounting period).
  - **Summary of bank account(s)** (consistent to the accounting period as stated in the SoE) for each special account and all sub-account(s) as well as an overall summary of all funds still available in the accounts.
- By counter-signing or electronically validating (via KfW E-Disbursement Platform if used) the disbursement request the Consultant implicitly confirms that bank account statements of all special accounts and sub-accounts have been checked against the amount of expenditures presented in the SoE for the respective accounting period. The Consultant also confirms that the information provided is correct and that relevant documents as evidence on expenditures made via the special account(s) and sub-accounts have been provided by the Employer. In particular, the Consultant will check and verify final balances of local accounts and petty cash.

- In case expenditures have been made in another currency than EUR, the Consultant shall illustrate and confirm the exchange rate applied (for the respective accounting period) for the calculation of expenditures as presented in the SoE and summary of bank account(s).
  - Verify that the amounts listed in the SoE, the Summary of bank account(s), the bank account statements, and the replenishment request are congruent or else, if there are deviations, provide an explanation satisfactory to KfW.
  - Proactively inform KfW in a timely manner about possible delays of evidence of use of funds including reasons.
  - Support processes related to annual audits of the disposition fund by an independent auditor on the basis of Terms of Reference provided by KfW. This includes ensuring that the audit report is issued within the deadlines stipulated in the General Terms and proactively informing KfW in a timely manner (including reasons) if the audit report is delayed.
  - Inform the Employer and KfW immediately if any issues related to the management of the disposition fund occur.
  - Consult the Employer and KfW with regard to closing any of the special and local / sub-account(s).
- In the end the Consultant shall explicitly confirm when signing or electronically validating the disbursement request that
  - The payments from the Disposition Fund have been made based on eligible contracts and the enclosed Summary of Accounts and Statement of Expenditures have been completed accurately and that all figures indicated are true and correct.
  - Any further information and – to his best knowledge - confirmations contained in the disbursement request and any supporting documents thereto are true and correct.