



**Request for Proposals**  
for Consultancy Services as an Implementing Consultant for  
**Steam Field Development Baringo-Silali Block**

**GDC/CPS/RFP/046/2014-2015**

**March, 2015**

## **Contents**

SECTION I - LETTER OF INVITATION .....	3
SECTION II – INFORMATION TO CONSULTANTS (ITC) .....	5
Table of Contents .....	5
SECTION II: - INFORMATION TO CONSULTANTS (ITC).....	6
2.1 Introduction.....	6
2.4- Preparation of Financial Proposal.....	10
SECTION III: - TECHNICAL PROPOSAL .....	21
Table of Contents .....	21
Page.....	21
SECTION IV: - FINANCIAL PROPOSAL .....	33
SECTION V: - TERMS OF REFERENCE.....	40

## **SECTION I - LETTER OF INVITATION**

TO:

*Date: March 9,2015*

Dear Sir/Madam,

### **RE: BOGORIA-SILALI GEOTHERMAL PROJECT: IMPLEMENTATION CONSULTANT FUNDED BY KfW**

1.1 The Government of Kenya (GOK) has received a loan Ref. No. 2013.6610.3 from Kreditanstalt für Wiederaufbau (KfW) towards Steamfield Development at the Bogoria-Silali Geothermal Project. One of the components under this support includes Consultancy Services for an Implementing Consultant.

1.2 The Geothermal Development Company (GDC) the Implementing Agency for this project invites proposals for the following consultancy services. As part of its overall mandate, GDC is currently implementing the Steam Field Development in the Bogoria - Silali Geothermal Block. The purpose of the Project is the complete steam field development and the generation and commercialisation of electricity generated from geothermal resources by Independent Power Producers or / and public power producers in the Bogoria-Silali Block.

To ensure the implementation of the above project components in accordance with best practices and to manage project related risks, GDC intends to procure the services of an Implementation Consultant whose role would include:

- i) Monitoring and supervision of drilling works
- ii) Monitoring and supervision of works for Supply of Water Services
- iii) General Project Management for the Bogoria – Silali Project
- iv) Knowledge Transfer and Training of GDC's staff.

1.3 The request for proposals (RFP) includes the following documents:

- Section I - Letter of invitation
- Section II - Information to Consultants  
Appendix to Consultants information
- Section III - Terms of Reference
- Section IV - Technical proposals
- Section V - Financial proposal
- Section VI - Standard Contract Form

1.4 The proposal shall be submitted as per the instructions in the document.

We remain,

Yours sincerely,

**Dr. Silas Simiyu, MBS**  
**The Managing Director & CEO,**  
**Geothermal Development Company Limited,**  
**P.O. Box 100746 – 00101**  
**NAIROBI, KENYA**

## **SECTION II – INFORMATION TO CONSULTANTS (ITC)**

### **Table of Contents**

- 2.1 Introduction
- 2.2 Clarification and amendment of RFP document
- 2.3 Preparation of Technical Proposal
- 2.4 Financial proposal
- 2.5 Submission, Receipt and opening of proposals
- 2.6 Proposal evaluation general
- 2.7 Evaluation of Technical proposal
- 2.8 Public opening and Evaluation of financial proposal
- 2.9 Negotiations
- 2.10 Award of Contract
- 2.11 Confidentiality
- 2.12 Corrupt or fraudulent practices

## **SECTION II: - INFORMATION TO CONSULTANTS (ITC)**

### **2.1 Introduction**

**2.1.1** The Employer named the Appendix to “ITC” will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix. The method of selection shall be as indicated by the Employer in the Appendix.

**2.1.2** The Consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Appendix “ITC” for consulting services required for the assignment named in the said Appendix. A Technical Proposal only may be submitted in assignments where the Employer intends to apply standard conditions of engagement and scales of fees for professional services which are regulated as is the case with Building and Civil Engineering Consulting services. In such a case the highest ranked firm of the technical proposal shall be invited to negotiate a contract on the basis of scale fees. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.

**2.1.3** The Consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain firsthand information on the assignment and on the local conditions, Consultants are encouraged to liaise with the Employer regarding any information that they may require before submitting a proposal and to attend a pre-proposal conference where applicable. Consultants should contact the officials named in the Appendix “ITC” to arrange for any visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.

**2.1.4** The Employer will provide the inputs specified in the Appendix “ITC”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.

**2.1.5** Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the Employer are not reimbursable as a direct cost of the assignment; and (ii) the Employer is not bound to accept any of the proposals submitted.

**2.1.6** The Employer’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate.

**2.1.7** The Tender Document shall be picked at GDC’s offices at no charge or downloaded from GDC’s website: [www.gdc.co.ke](http://www.gdc.co.ke).

**2.1.8** The Employer shall allow the tenderer to review the tender document free of charge before purchase.

## **2.2 Clarification and Amendment of RFP Documents**

**2.2.1** Consultants may request a clarification of any of the RFP documents only up to fourteen [14] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the Employer's address indicated in the Appendix "ITC". The Employer will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited Consultants who intend to submit proposals.

**2.2.2** At any time before the submission of proposals, the Employer may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited Consultants and will be binding on them. The Employer may at his discretion extend the deadline for the submission of proposals.

## **2.3 Preparation of Technical Proposal**

**2.3.1** The Consultants proposal shall be written in English language

**2.3.2** In preparing the Technical Proposal, Consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

**2.3.3** While preparing the Technical Proposal, Consultants must give particular attention to the following:

(i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Consultants shall not associate with the other Consultants invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.

(ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the ToR. The proposal shall however be based on the number of professional staff-time estimated by the firm.

(iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.

(iv) Proposed professional staff must as a minimum, have the experience indicated in Appendix, preferably working under conditions similar to those prevailing in Kenya.

(v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

**2.3.4** The Technical Proposal shall provide the following information using the attached Standard Forms;

(i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.

(ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Employer.

(iii) A description of the methodology and work plan for performing the assignment.

(iv) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.

(v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.

(vi) Estimates of the total staff input (professional and support staff staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.

(vii) A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix "A" specifies training as a major component of the assignment.

(viii) Any additional information requested in Appendix "A".

**2.3.5** The Technical Proposal shall not include any financial information.

## **2.4 Preparation of Financial Proposal**

2.4.1 In preparing the Financial Proposal, Consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate these costs should be broken down by activity.

2.4.2 The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the Consultants, the sub-Consultants and their personnel, unless Appendix "A" specifies otherwise.

2.4.3 Consultants shall express the price of their services in USD.

2.4.4 Commissions and gratuities, if any, paid or to be paid by Consultants and related to the assignment will be listed in the Financial Proposal submission Form.

2.4.5 The Proposal must remain valid for 120 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Employer will make his best effort to complete negotiations within this period. If the Employer wishes to extend the validity period of the proposals, the Consultants shall agree to the extension of participation guarantee, advance payment guarantee, and completion guarantee for the consulting services.

## **2.5 Submission, Receipt, and Opening of Proposals**

2.5.1 The original proposals (Technical Proposal and, Financial Proposal; see paragraph 1.2) shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.

2.5.2 For each proposal, the Consultants shall prepare the number of copies indicated in Appendix "ITC". Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.

**2.5.3** The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked **“TECHNICAL PROPOSAL,”** and the original and all copies of the Financial Proposal in a separate sealed envelope clearly marked **“FINANCIAL PROPOSAL”** and warning: **“DO NOT OPEN WITH THE TECHNICAL PROPOSAL”**. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix “ITC” and be clearly marked, **“DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.”**

2.5.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix “ITC”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.

2.5.5 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the Employer department up to the time for public opening of financial proposals.

## **2.6 Proposal Evaluation General**

2.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the Employer on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix “ITC”. Any effort by the firm to influence the Employer in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant’s proposal.

2.6.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

## **2.7 Evaluation of Technical Proposal**

2.7.1 The evaluation committee appointed by the Employer shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows

	<b>Points</b>
(i) Specific experience of the consultant related to the assignment	(10)
(ii) Adequacy of the proposed work plan and methodology in responding to the terms of reference	(35)
(iii) Qualifications and competence of the key staff for the assignment	(40)

(iv)	Suitability to the transfer of Technology Programme (Training)	(10)
(v)	Participation by nationals among proposed key staff	[05]
<b>Total Points</b>		<b><u>100</u></b>

Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Appendix "ITC".

## **2.8 Public Opening and Evaluation of Financial Proposal**

2.8.1 After Technical Proposal evaluation, the Employer shall notify those Consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The Employer shall simultaneously notify the Consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those Consultants who choose to attend. The opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.

2.8.2 The Financial Proposals shall be opened publicly in the presence of the Consultants' representatives who choose to attend. The name of the consultant, the technical. Scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Employer shall prepare minutes of the public opening.

2.8.3 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors). The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.

2.8.4 The clause is **not applicable** and has therefore intentionally deleted.

2.8.5 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:-

$S_f = 100 \times \frac{F_m}{F}$  where  $S_f$  is the financial score;  $F_m$  is the lowest priced financial proposal and  $F$  is the price of the proposal under consideration. Proposals will be ranked according to their combined technical ( $St$ ) and financial ( $Sf$ ) scores using the weights ( $T$ =the weight given to the Technical Proposal;  $P$  = the weight given to the Financial Proposal;  $T + p = 1$ ) indicated in the Appendix. The combined technical and financial score,  $S$ , is calculated as follows:-  
 $S = St \times T \% + Sf \times P \%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.

2.8.6 The tender evaluation committee shall evaluate the tender within 45(forty) days of from the date of opening the tender.

2.8.7 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).

2.8.8 Where contract price variation is allowed, the variation shall not exceed 15% of the original contract price.

2.8.9 Price variation requests shall be processed by the Employer as per the payment stipulations in the contract.

## **2.9 Contract Negotiations**

2.9.1 Negotiations will be held at the same address as “address to send information to the Employer” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.

2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Employer to ensure satisfactory implementation of the assignment.

2.9.3 The financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).

2.9.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Employer expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Employer will require assurances that the experts will be available for the total time period needed for performing the consulting services. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.

2.9.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Employer and the selected firm will initial the agreed Contract.

2.9.6 The Employer shall appoint a team for the purpose of the negotiations.

## **2.10 Award of Contract**

2.10.1 The Contract will be awarded following negotiations.

2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix "ITC".

2.10.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.10.4 The Employer may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.10.5 The Employer shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.10.6 To qualify for contract awards, the tenderer shall have the following:

Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.

- (a) Legal capacity to enter into a contract for procurement
- (b) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (c) Shall not be debarred from participating in public procurement.
- (d) Shall acknowledge all formal Declarations as part of the Technical Proposal.

## **2.11 Confidentiality**

2.11.1 Information relating to evaluation of proposals and recommendations concerning awards will not be disclosed to the Consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.

## **2.12 Corrupt and fraudulent practices**

2.12.1 The Employer requires that all parties in this Tender, including Consultants and their agents (whether or not declared), sub-contractors, sub-Consultants, service providers or suppliers and any personnel thereof, observe the highest standards of ethics during the selection process and award of the consultancy contract, and during the

performance of the KfW-financed assignment<sup>1</sup>. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.12.2 The Employer defines, for the purpose of this provision, the terms set forth below as follows:

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>2</sup>;

(ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party<sup>3</sup> to obtain financial or other benefit or to avoid an obligation;

(iii) "collusive practice" is an arrangement between two or more parties<sup>4</sup> designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party<sup>5</sup>;

(v) "obstructive practice" is:

(aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 1.22(e) below.

2.12.3 The Employer will reject a proposal for award if it determines that the consultant recommended for award, or any of its personnel, or its agents, or its sub-Consultants, sub-contractors, service providers, suppliers and/or their employees, has directly or indirectly, has engaged

---

<sup>1</sup> In this context, any action taken by a consultant or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers, and/or their employees, to influence the selection process or contract execution for undue advantage, is improper.

<sup>2</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the selection process or performance of the assignment. In this context, "public official" includes KfW staff, and employees of other organizations taking or reviewing selection decisions.

<sup>3</sup> For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the selection process or performance of the assignment and the "act or omission" is intended to influence the selection process or performance of the assignment.

<sup>4</sup> For the purpose of this sub-paragraph, "parties" refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish contract prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.

<sup>5</sup> For the purpose of this sub-paragraph, "party" refers to a participant in the selection process or performance of the assignment.

in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question.

2.12.4 Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

2.12.5 All Consultants will submit the Declaration of Undertaking as integral part of their Technical Proposal.

## Appendix to Information to Consultants

Information to Consultants Reference	Data	Description
<b>Clause 2.1.1</b>	The Employer	<b>Geothermal Development Company Limited, P.O Box 100746-00101 Nairobi, Kenya</b>
<b>Clause 2.1.2</b>	Submission of proposals	The Consultants are invited to submit both Technical and Financial proposals separately.
<b>Clause 2.1.3</b>	Mandatory Site Visit	There shall be a mandatory site visit for all bidders on <b>Wednesday March 25, 2015 at Bogoria Silali Geothermal prospect site at 8.30am</b> . Bidders are requested to assemble at Soi Lodge Hotel, Kampi Samaki at 8.00am. Bidders shall complete an attendance register and be issued with a certificate of site visit. Travel and accommodation is the responsibility of bidders. OFF ROAD vehicles are recommended.
<b>Clause 2.1.4</b>	The Employer will provide the following inputs:	Refer to the Terms of References (ToR).
<b>Clause 2.2.1</b>	Inquiries by Bidders	For purposes of enquiries, bidders may notify GDC in writing (email in PDF format or by facsimile) at the following address:  One copy to: - Manager, Supply Chain Geothermal Development Company Limited, Kawi House, South C, Bellevue Off Mombasa Road, Red Cross Road

<b>Information to Consultants Reference</b>	<b>Data</b>	<b>Description</b>
		<p>P.O. Box 100746 – 00101 NAIROBI, KENYA</p> <p>E-mail: <a href="mailto:dkyaka@gdc.co.ke">dkyaka@gdc.co.ke</a> &amp; <a href="mailto:pkapto@gdc.co.ke">pkapto@gdc.co.ke</a></p> <p>And copy to: -</p> <p style="padding-left: 40px;">E-mail: <a href="mailto:cindiatsi@gdc.co.ke">cindiatsi@gdc.co.ke</a></p> <p>GDC will respond in writing (e-mail in PDF format) to any request received at least <b>fourteen (14) days</b> prior to the deadline for the submission of tenders i.e <b>Thursday April 9, 2015</b>.</p> <p><b>Any request for clarification must be in the firm’s letterhead and signed, and must be in reference to the specific sections of the tender document properly numbered.</b></p>
<b>Clause 2.5.3</b>	Format and Signing of Tenders	<p>One (1) original and three (3) copies of the <b>Technical</b> and <b>Financial</b> proposals shall be submitted in <b>separate envelopes</b> marked “Technical proposal” and “Financial proposal marked Do not open with technical proposal” and sealed in an outer envelope clearly marked as follows:</p> <p>The original and all copies shall be placed in a sealed envelope clearly marked with the tender No and Tender Description.</p> <p>The outer envelope shall bear the submission address and other information indicated below and be clearly marked, <b>“Do Not Open, Except in Presence of the Opening Committee.”</b></p> <p>(a) To be addressed to the Employer at the following address:</p>

Information to Consultants Reference	Data	Description
		<p><b>Managing Director &amp; CEO Geothermal Development Company Limited Kawi House, South C, Bellevue, Off Mombasa Road, Red Cross Road P. O. Box 100746-00101 NAIROBI, KENYA.</b></p> <p>The completed tenders shall be received, acknowledged at the Kawi House Supply Chain Office and deposited in the tender box located at the Ground Floor.</p> <p>Marked, “<b>Bogoria-Silali Geothermal Project: Implementation Consultant Funded by KfW</b>” and the words: “<b>Do Not Open Before Thursday April 23, 2015</b>” at <b>1400 Hours.</b></p>
<b>Clause 2.5.4</b>	RFP Closing and opening Date	Proposals must be submitted no later than the following date and time: <b>Thursday 1400hrs on April 23, 2015.</b>
<b>Clause 2.6.1</b>	Employers Address	<p>Managing Director &amp; CEO Geothermal Development Company Limited Kawi House, South C, Bellevue, Off Mombasa Road, Red Cross Road P. O. Box 100746-00101 NAIROBI, KENYA.</p>
<b>Clause 2.7.1</b>	Technical proposal evaluation	<p>Criteria, sub-criteria, and point system for the evaluation of Technical Proposals are:</p> <p>(i) Specific experience of the Consultants relevant to the assignment:</p>

<b>Information to Consultants Reference</b>	<b>Data</b>	<b>Description</b>
		<p>Total points for criterion (i): [<b>10</b>]</p> <p>(ii) Adequacy of the proposed methodology and work plan in responding to the Terms of Reference: Total points for criterion (ii): [<b>35</b>]</p> <p>(iii) Key professional staff qualifications and competence for the assignment: Total points for criterion (iii): [<b>40</b>]</p> <p>The number of points to be assigned to each of the above positions or disciplines shall be determined considering the following three sub-criteria and relevant percentage weights:</p> <ol style="list-style-type: none"> <li>1) General qualifications: [30%]</li> <li>2) Adequacy for the assignment: [50 %]</li> <li>3) Experience in region and language: [20%]</li> </ol> <p>Total weight: 100%</p> <p>iv) Suitability of the transfer of knowledge (training) program: Total points for criterion (iv): [<b>10</b>]</p> <p>(v) Participation by nationals among proposed key staff (v) <b>[05]</b></p> <p>Total points for the five criteria: <b>100</b></p> <p>The minimum technical score St required to pass is: <b>75 Points</b></p>
<b>Clause 2.8.4</b>		Not Applicable
<b>Clause 2.8.5</b>	Formulae for determining the Financial Score (Sf)	The formula for determining the financial scores is the following: $S_f = 100 \times F_m / F$ , in which $S_f$ is the financial score, $F_m$ is the lowest price and $F$ the price of the proposal under consideration.

<b>Information to Consultants Reference</b>	<b>Data</b>	<b>Description</b>
		<p>The weights given to the Technical and Financial Proposals are:  T = 80%  P = 20%</p> <p><b>NB:</b> The firm with the highest combined technical and financial score will be recommended for award</p>
<b>Clause 2.8.7</b>		Not Applicable

### **SECTION III: - TECHNICAL PROPOSAL**

#### **Table of Contents**

	<b>Page</b>
1. Technical proposal submission form	
2. Declaration of Undertaking	
3. Firms references	
4. Comments and suggestions of Consultants on the Terms of reference and on data, services and facilities to be provided by the Employer	
5. Description of the methodology and work plan for performing the assignment	
6. Team composition and Task assignments	
7. Format of curriculum vitae (CV) for proposed Professional staff	
8. Time schedule for professional personnel	
9. Activity (work schedule)	



## 1. TECHNICAL PROPOSAL SUBMISSION FORM

[\_\_\_\_\_ *Date*]

To:

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for Implementing Consultancy in accordance with your Request for Proposal dated \_\_\_\_\_ and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, [and a Financial Proposal sealed under a separate envelope].

We understand you are not bound to accept any Proposal that you receive.

We remain,

Yours sincerely,

## 2. DECLARATION OF UNDERTAKING

We underscore the importance of a free, fair and competitive contracting procedure that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present tendering process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the corresponding Guidelines<sup>6</sup>.

We also underscore the importance of adhering to minimum social standards (core labour standards) in the implementation of the project. We undertake to comply with the core labour standards ratified by the country of Republic of Kenya.

We will inform our staff of their respective obligations and of their obligation to fulfil this declaration of undertaking and to obey the laws of the country of Republic of Kenya.

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations, nor of the EU, nor of the German Government, nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the Employer and KfW if this situation occurs at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding on the Employer and/or KfW, the Employer shall be entitled to exclude us/the consortium or, if the contract is awarded to our company/the consortium, to immediately cancel such contract if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion from the tender procedure occurs after the Declaration of Undertaking has been issued.

(Place).....  
(Name of company).....  
(Date).....  
(Signature(s)).....

---

<sup>6</sup> See "Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries" and "Guidelines for Procurement of Goods, Works and associated Services in Financial Cooperation with Partner Countries"

### 3. FIRM'S REFERENCES

#### Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

Using the format below, provide information on each assignment for which your firm either individually, as a corporate entity or in association, was legally contracted.

Assignment Name:	Country
Location within Country: Your	Professional Staff provided by  Firm/Entity(profiles):
Name of Employer: for the assignment.	Employers contact person
Address:	No of Staff-Months; Duration of Assignment:
Start Date (Month/Year):	Completion Date (Month/Year): Approx. Value of Services (Kshs)
Name of Associated Consultants. If any:  Consultants:	No of Months of Professional Staff provided by Associated
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:	
Narrative Description of project:	
Description of Actual Services Provided by Your Staff:	

Firm's Name: \_\_\_\_\_

Name and title of signatory; \_\_\_\_\_

**4. COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE  
TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES  
TO BE PROVIDED BY THE EMPLOYER.**

---

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services and facilities to be provided by the Employer:

- 1.
- 2.
- 3.
- 4.
- 5.

**5. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR  
PERFORMING THE ASSIGNMENT**

---



## **6. TEAM COMPOSITION AND TASK ASSIGNMENTS**

### **1. Technical/Managerial Staff**

### **2. Support Staff**

Name	Position	Task

## **7. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF**

Proposed Position:

---

Name of Firm:

---

Name of Staff:

---

Profession:

---

Date of Birth:

---

Years with Firm: \_\_\_\_\_ Nationality:

---

Membership in Professional Societies:

---

---

Detailed Tasks Assigned:

---

---

### **Key Qualifications:**

*[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].*

---

### **Education:**

*[Summarize college/ university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]*

---

### **Employment Record:**

*[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]*

---

**Certification:**

I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.

\_\_\_\_\_ Date:

\_\_\_\_\_  
*[Signature of staff member]*

\_\_\_\_\_ Date;

\_\_\_\_\_  
*[Signature of authorised representative of the firm]*

Full name of staff member:

\_\_\_\_\_

Full name of authorized representative:

\_\_\_\_\_

### 8. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

Name	Position	Reports Due/ Activities	Months (in the Form of a Bar Chart)												Number of months		
			1	2	3	4	5	6	7	8	9	10	11	12			

Reports Due: \_\_\_\_\_

Activities Duration: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Authorized representative)

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

## 9. ACTIVITY (WORK) SCHEDULE

### (a). Field Investigation and Study Items

*[1<sup>st</sup>, 2<sup>nd</sup>, etc, are months from the start of assignment)*

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>	
Activity (Work)													
_____													
_____													
_____													
_____													

### (b). Staff Task Matrix

	Location	Key Experts	Team Leader		Short-term Experts	Total (Man-Months)	
<b>Activity</b>							
<b>Sub-activity</b>							

### (c). Completion and Submission of Reports

Reports	Date
1. Inception Report	
2. Interim Progress Report (a) First Status Report (b) Second Status Report	
3. Draft Report	
4. Final Report	

## **SECTION IV: - FINANCIAL PROPOSAL**

### **Table of Contents**

1. Financial proposal submission Form
2. Summary of costs
3. Breakdown of price/per activity
4. Breakdown of remuneration per activity
5. Reimbursables per activity
6. Miscellaneous expenses

# 1. FINANCIAL PROPOSAL SUBMISSION FORM

\_\_\_\_\_ [ Date]

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*[Name and address of Employer]*

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for Implementation Consultancy in accordance with your Request for Proposal dated (\_\_\_\_\_) and our Proposal. Our attached Financial Proposal is for the sum of \_\_\_\_\_ inclusive of the taxes.

We remain,

Yours sincerely,

\_\_\_\_\_ *[Authorized Signature]*

\_\_\_\_\_  
\_\_\_\_\_ *[Name and Title of Signatory]:*

\_\_\_\_\_ *[Name of Firm]*

\_\_\_\_\_ *[Address]*

## 2. SUMMARY OF COSTS

Costs	Currency(ies)	Amount(s)
Subtotal		
Taxes		
Total Amount of Financial Proposal		<hr/>

### 3. BREAKDOWN OF PRICE PER ACTIVITY

Activity NO.: _____	Description: _____
Price Component	Amount(s)
Remuneration	
Reimbursables	
Miscellaneous Expenses	
Subtotal	_____

#### 4. BREAKDOWN OF REMUNERATION PER ACTIVITY

Activity No. _____ Name: _____				
Names	Position	Input(Staff months, days or hours as appropriate.)	Remuneration Rate	Amount
Regular staff  (i) (ii)  Consultants  Grand Total _____ _____				

## 5. REIMBURSABLES PER ACTIVITY

Activity No: \_\_\_\_\_

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

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Air travel	Trip			
2	Road travel	Kms			
3.	Rail travel	Kms			
4.	Subsistence Allowance	Day			
	Grand Total				

## 6. MISCELLANEOUS EXPENSES

Activity No. \_\_\_\_\_ Activity Name:

\_\_\_\_\_

No	Description	Unit	Quantity	Unit Price	Total Amount
1.	Communication costs _____ _____ (telephone, telegram, telex)				
2.	Drafting, reproduction of reports				
3.	Equipment: computers etc.				
4.	Software				
	Grand Total				

## **SECTION V: - TERMS OF REFERENCE**

### **1.0 INTRODUCTION**

The Government of Kenya (GOK) has received a loan Ref. No. 2013.6610.3 from Kreditanstalt fur Wiederaufbau (KfW) for support of Steamfield Development at the Bogoria-Silali Geothermal Project. One of the components under this support includes procurement of an Implementation Consultant to oversee various aspects of the project. The Geothermal Development Company Limited (GDC) is the Implementing Agency for this project.

Bidders participating in this procurement process will be required to submit a Declaration of Undertaking failure to which the bidder's proposal will be rejected.

### **2.0 BACKGROUND TO THE ASSIGNMENT**

Kenya's long-term vision is to become a middle-income country by 2030. To this end, the government has promulgated an economic and social blue-print dubbed "Vision 2030" to guide this development agenda. To achieve the long-term dream, the Government has set itself a Gross-Domestic Product (GDP) growth rate of at least 10% p.a from 2012. The electricity sub-sector is envisaged to grow at the same rate.

The current Least Cost Power Development Plan (LCPDP) that guides the planning in the energy sector projects an increase of electricity demand from the current 8% to over 10% annually upon successful implementation of Vision 2030 initiatives. The current peak power demand stands at about 1,200 MW and is projected to grow to about 19,000 MW over the next 20 years.

To meet the growth in the electricity demand, the government has identified, as a suitable source of power generation, the Country's untapped geothermal potential estimated at more than 10,000 MWe. To this end, the Government has embarked on a program to realize at least 5,000 MW of electricity from geothermal sources by 2030.

To accelerate the realization of the 5,000 MW from geothermal sources the Government formed the Geothermal Development Company (GDC) as a Special Purpose Vehicle (SPV) to undertake the exploration, exploitation and development of geothermal resources in Kenya. As part of this role, GDC has the following mandates:

- (i) Promoting rapid development of geothermal resources in the country;
- (ii) Availing steam to power plant developers for electricity generation;
- (iii) Managing the geothermal reservoirs to ensure constant supply of steam for power generation; and
- (iv) Promoting alternative uses of geothermal resources other than electricity generation.

### **3.0 THE BOGORIA – SILALI GEOTHERMAL PROJECT**

As part of its overall mandate, GDC is currently implementing the Steam Field Development in the Bogoria - Silali Geothermal Block. The purpose of the Project is the complete steam field development and the generation and commercialisation of electricity generated from geothermal resources by Independent Power Producers or / and public power producers in the Bogoria-Silali Block. Phase 1 comprises the development of generation capacity of 800 MWe of an estimated total of 3000 MWe in the Bogoria-Silali Block. This is to contribute to a sustainable, cost efficient and reliable electricity supply in Kenya. Thereby, the Project makes a contribution to the economic development in Kenya as well as to the mitigation of climate change.

Steam field development comprises drilling of all relevant wells, installation of steam gathering system and erection of necessary infrastructure (mainly installation of water supply and access road expansion and / or construction) until the final provision of steam to the power plant operators.

### **4.0 PROJECT ACTIVITIES**

- a) Drilling of up to 20 exploration and appraisal wells. GDC will contract drilling services for up to 20 wells in the Bogoria-Silali Block. Contracted drilling services will be carried out in the following prospects: Baringo, Korosi, Paka and Silali. GDC intends to develop the provision of steam in these prospects in parallel depending on the progress of necessary infrastructure development.
- b) Erection of the corresponding infrastructure and in particular installation of water supply.
- c) Feasibility study: consulting services for the preparation of the complete steam field development of Bogoria-Silali Block Phase 1.
- d) Accompanying consulting services:
  - (i) Implementation Consultant: Preparation of concept and detailed design as required, pre-qualification documents, bidding documents, supervision of the construction and drilling works and overall management of the Project.

- (ii) Transaction Advisor: Assist GDC in order to prepare comprehensive legal agreements between all parties involved in steam field development and electricity generation in the Bogoria-Silali Block.

## **5.0 OBJECTIVES OF THE ASSIGNMENT**

To ensure the implementation of the above project components in accordance with best practices and to manage project related risks, GDC intends to procure the services of an Implementation Consultant whose role would include:

- i) Monitoring and supervision of drilling works
- ii) Monitoring and supervision of works for Supply of Water Services
- iii) General Project Management for the Bogoria – Silali Project
- iv) Knowledge Transfer and Training of GDC’s staff.

## **6.0 SCOPE OF ASSIGNMENT**

The scope of this assignment includes the following:

### **6.1 Task 1: Monitoring and Supervision of the Drilling Works**

GDC is implementing the drilling of fifteen (15) to twenty (20) geothermal wells at the Bogoria-Silali Project using Contracted Drilling Services of two (2) rigs. The role of the Implementing Consultant will be:

- a) Monitor and ensure the project has valid official approvals and licenses over the entire Project period and comply at any time with all conditions and obligations under the respective documents. These shall include:
  - (i) Drilling machinery survey and inspections; Pressure tests of the Blow-out Prevention (BOP) equipment;
  - (ii) Preliminary and Final Acceptance Certificates for the work, equipment and materials for the drilling services; Supervision of drilling equipment inspections and associated documentation;
  - (iii) Drilling equipment inspections after mobilization (to comply with Acceptance of Equipment prior to start drilling);
  - (iv) Supervision of weighing system calibration.
  - (v) Periodic inspection and verification of Contractors safety equipment

- b) Establish, review and update the overall project construction schedule, budget and disbursement schedule, including the [coring, logging and drilling programme](#)
- c) Certification of Contractors' payments requests and maintaining records of payment to the Contractors,
- d) Participate in regular co-ordination meetings with GDC and the drilling contractor (such as pre-spud, daily, weekly and monthly meetings).
- e) Counter check technical calculations regarding usage of drilling consumables and tubular/ tools related to cementing and engineering and string design
- f) Monitor the implementation of the EMP and HSE in all drilling operations in accordance with the IFC Performance Standards and together with GDC prepare progress reports on the environmental monitoring of the drilling process
- g) Preparation of relevant reports as required by GDC and the financing institution on a format to be agreed. Such reports may include:
  - (i) Detailed findings, observations, interpretations including problems encountered and solutions made during the drilling process
  - (ii) Results of well siting studies and sequencing of the drilling program
  - (iii) Well-tests protocols will be submitted according to the well-test Program by GDC to KfW for information purposes

## **6.2 Task 2: Monitoring and Supervision of the Construction Works for Water Supply System**

GDC is implementing the water supply system for the Baringo – Silali Project. The water system will consist of: High-Lift Booster Pumps and Pumping Stations, Victaulic Pipe Transmission Line, Water Storage Tanks, GI Pipes and Associated Accessories. The role of the Implementation Consultant will be:

- a) Review and evaluation of all construction and erection activities by the Contractors,
- b) Certification of Contractors' payments requests and maintaining records of payment to the Contractors,
- c) Review and direction on preventive safety and environmental control measures, and

- d) Review and evaluation of commissioning tests of equipment and Issuing Taking Over Certificates,
- e) Identification and recommendation on rectifying defects during the defect liability period.
- f) Recording all project activities and preparation of Progress Reports for GDC and KfW,

### **6.3 Task 5: Overall Project Management**

As part of the project management role, the Consultant shall carry out the following tasks:

- a) Monitor and ensure the project has valid official approvals and licenses over the entire Project period and comply at any time with all conditions and obligations under the respective documents.
- b) Establish, review and update the overall project construction schedule, budget and disbursement schedule;
- c) Monitor the implementation of the ESIA and the ESMP and prepare quarterly reports as required; and supervision of waste management during and after demobilization, drilling services
- d) Prepare an evaluation report on all quality system related information from the drilling services contractor and manuals on the Standard Operations and Maintenance Procedures for submission to KfW. These shall include a Quality Management Plan, protocols and documentation filing (including electronic access platform for the project documents).
- e) Prepare and update the detailed time, cost, and financing schedule. This shall be updated on a quarterly basis and such schedule is to show, by deadlines and amounts, the intended chronological interrelation of the Project activities and the resulting financial requirements
- f) Support in project management and compiling of documents according to reporting duties agreed between GDC and KfW.
- g) Prepare a financial forecast, to be submitted to KfW showing the expenses caused by the Project and the earnings to be expected for this particular area of operation at the time they occur.
- h) Support GDC in any tendering process for KfW funded activities related to the Project

### **6.4 Task 6: Knowledge Transfer and Training of GDC's staff**

The Consultant will arrange for orderly and timely transfer of all intellectual property accruing from the project to GDC who remain the owners of the same and retain the right to use it at will without further reference to any party except where specifically agreed. This will include design data, calculations and reports; drawings and their basis; etc. The property will be provided in both hard and soft (in CD's) format.

The consultant will also be expected to transfer skills to GDC staff on all aspects of the assignment during the consultancy period. The Consultant must propose training approaches and methods to undertake the knowledge transfer.

#### **a) On Job Training**

The Consultant will provide On-job training for supervision of construction works and project management by attaching project engineers during the implementation of the project.

#### **b) Specialized Training**

Considering the Regional Importance and Complex Nature of the Project, the Consultant shall conduct special/in-depth training for GDC staff at his home office on the following topics:-

- (i) Management of drilling operations;
- (ii) Power Plant Operations and Maintenance;
- (iii) Project Management;
- (iv) Environmental & Social Impact Assessment, and implementation of ESMP
- (v) Project Procurement & Contract Management

The training should be arranged for GDC's experienced staff for each field.

The consultant should elaborate in his proposal the details of training for the above modules and training fields. The Consultant must propose training approaches and methods to undertake the knowledge transfer

The consultant's price for the training should include full accommodation (hotel, meals), visa expenses, local transportation facilities, daily allowance for incidental expenses for one (1) month duration and for each staff, Economy class returns air ticket (round trip air fare) between Kenya and Consultant's home office. The Consultant should allow a provisional amount of **USD 300,000** in his Financial Proposal to cover for training. This figure will not form part of the Financial Evaluation

## **7.0 SKILLS AND EXPERIENCE**

The firms submitting proposals should demonstrate that they can mobilize and deploy multiple skills necessary to undertake the range of tasks set out in this Terms of Reference.

Interested bidders must provide information indicating that they are qualified to perform the services. Consultants may constitute joint-ventures to enhance their chances of qualification.

The Bidder's competence and capability will be established by the following parameters:

- a) A brief profile of the bidder including description of the firm or consortium members incorporation details (Articles and Memorandum of Association, Certificate of Incorporation, joint ventures agreements).
- b) Engineers in their individual capacity having minimum experience of 20 years as drilling engineers and having worked as independent engineers in a geothermal power project can also apply.
- c) Description of experience of the bidder (and consortium members, if any) in undertaking similar work for the last five (5) years and bidders must attach letters of recommendation;
- d) Providing CVs of key staff proposed for the assignment which **MUST** include but not limited to expertise in the following areas;
  - i) A senior Engineer proposed to be designated and to perform as the Team Leader/Project Manager
  - ii) Geothermal or Oil & Gas drilling Expert should have a MSc
  - iii) Procurement Expert
  - iv) Civil Engineer
  - v) Mechanical Engineer
  - vi) Electrical Engineer
  - vii) Environmental & Social Expert
  - viii) Safety Expert
- e) All the proposed staff **MUST** have at least a University Degree and Fifteen (15) years' experience for the Team Leader and Ten (10) years for other experts in handling similar assignments. In addition to this, the Team Leader **MUST** have at least 20 years of experience in construction planning, project management, operation and maintenance of geothermal power plants.

## **8.0 PROVISION OF FACILITIES AND OTHER INPUTS**

### **8.1 Office & Stationery**

The Consultant is made aware that the provision of the following facilities/services will be its responsibility:

- a) The provision of accommodation and office facilities/equipment;
- b) The provision of all vehicles and transport arrangements;
- c) Medical arrangements;
- d) Maintenance of security and cleanliness in and around the facilities occupied by its staff

The Consultant will rent and furnish offices for its staff (in Nakuru) as agreed with GDC Project Implementation Team for the duration of the project.

The Consultant will also ensure the offices have sufficient computers (Laptops, Desktops) and printers during the period of the assignment.

The consultant shall also cover all the running cost for consumables and maintenance of the equipment for the complete period of his assignment.

### **8.2 Communication**

All communication related costs made by the Consultant (telephone, fax, Courier, etc.) shall be covered by the Consultant. Taking into account the complex nature of the project, the various groups to be involved in communication and the enormous documents to be handled, a secure electronic Document Management System is recommended besides routine emails, telephone and faxes.

The consultant shall avail internet facilities for the period of his assignment.

### **8.3 Transportation**

The consultant shall provide vehicles for the consultant project managers and GDC's project team. The Consultant shall supply the vehicles within three (3) months after receiving the advance payments.

The price for the vehicles and associated costs shall include all expenses required for the duration of the Consultancy Service Contract such as insurance, registration and plate fees, and local customs, duties charges, etc. The local customs and duty charges should be quoted separately in the local currency.

The consultant shall be responsible for provision of:

- (i) Efficient licensed drivers for each vehicle;
- (ii) Replacement vehicles for vehicles beyond repair or during extensive repair period;
- (iii) Insurance and licences for normal operation on and off site and on and off duty

The consultant shall hand over the vehicles to GDC in good condition within one (1) month from the date of issue of the Operational Acceptance Certificates to the all Construction Contractors.

**c) For Consultant Staff**

For the consultant use only in Kenya;

- One (1) new Latest Model Diesel engine Land Cruiser; swing type back door, 5 speed, Common rail turbo charged diesel with latest model and specifications complete with, air conditioned with power steering, air bag system, Audio (AM/FM/CST + CD player) and as per latest supplier's standard specifications

At the end of the project the vehicles will be handed over in good condition to GDC

**d) For GDC Project Implementation Unit**

- One (1) new Latest Model Diesel engine Land Cruiser; swing type back door, 5 speed, Common rail turbo charged diesel with latest model and specifications complete with, air conditioned with power steering, air bag system, Audio (AM/FM/CST + CD player) and as per latest supplier's standard specifications
- The detail cost of the vehicles including the operation cost will be shown in a separate sheet and included in the financial proposal.

**8.4 Counterpart Personnel**

GDC will not avail counterpart staff for this assignment. Instead GDC staff may be attached to the Consultant on agreement with the Employer for training purposes. Each party may request the other for such attachment and the request will not be unduly denied. The Consultant may assign duties to such staff but he retains responsibility for delivery of all services under his scope.

The Consultant will propose a performance evaluation tool for the attached staff which will be reviewed and agreed by the Employer.

## 8.5 Data to be Provided by the Employer

The Consultant will provide an information request checklist which will be discussed and agreed with GDC. The Employer (GDC) will provide the following facilities

- a) Access to the project area covered by this project,
- b) Liaison with the government and facilitate requirements/supports needed for the Consultant to perform their duties in Kenya.
- c) GDC will arrange and pay for venues for meetings and workshops

## 9.0 MAN-MONTH ALLOCATION

The Consultant shall indicate in his proposal sufficient man-months for proper execution of the project. Considering the technical and financial evaluation, contract shall be awarded to a single consultant whose entire result reflects the evaluation criteria.

The Consultant shall provide a schedule with breakdown for the various activities called for in the TORs. The consultant will be evaluated with the total man-month proposed.

The minimum proposed man-month by the Consultant shall not be less than the estimated man-month by the Employers as follows, for each key personnel and activities.

### 9.1 PROPOSED MAN-MONTHS

NO	CONSULTANTS /EXPERTS	NO	PROPOSED MAN-MONTHS
1	Project Manager	1	12
2	Geothermal Drilling Expert	2	12
3	Civil Engineer	1	4
4	Electrical Engineer	1	1
5	Mechanical Engineer	1	1
6	Procurement/Contract Expert	1	2
7	Social and Environmental Expert	1	12
8	Safety Expert	1	12
9	Resident Site Engineers	4	12
	<b>Total</b>	<b>13</b>	<b>68</b>

## **9.2 CONSULTANT'S FEE**

The Consultant's Fees and Expenses shall include:

- a) Home Office Coordination;
- b) Supervision and Management
- c) All travel expenses;
- d) All personnel expenses;
- e) All field expenses including working equipment and materials, vehicles running cost, house accommodation, etc. for the Project Manager and Deputy Project Managers
- f) Expenses of the workshop Meetings including, travel expenses, accommodation, meals, International transport, allowances/per diem, travel insurance cost of venue, etc.
- g) Project Office Costs

The Financial Proposal shall be clear and formal as possible with breakdowns of each subtotal into remuneration, reimbursable, miscellaneous and grand total. The evaluation will consider all items on the same basis and on equal ground for comparison. All items in the Technical Proposal incurring expense must be supported with a corresponding financial proposal.

## **10.0 TIME SCHEDULE**

GDC has already started the procurement process for the Contractors for the Drilling Services and Provision of Water Supply. The projected commencement of drilling services is in April 2015 whilst the Contractor for Water Supply is expected to commence in February 2015. The projected timelines for the Implementation Consultant is indicated as item C in the Gantt chart below.

It is projected that the procurement process for the Implementation Consultant will be completed by February 2015. The Consultant shall provide services for the period of the drilling services contract.

U	Task Name	Duration	Start	Finish	2015		2016		2017		2018		2019					
					Jun	Nov	Apr	Sep	Feb	Jul	Dec	May	Oct	Mar	Aug	Jan	Ju	
1																		
2	<b>A. Drilling Services</b>	<b>901 day:</b>	<b>Tue 8/12/14</b>	<b>Tue 1/23/18</b>														
3	<b>Procurement</b>	<b>111 day:</b>	<b>Tue 8/12/14</b>	<b>wed 1/14/15</b>														
4	Tender Advert	2 days	Tue 8/12/14	wed 8/13/14														
5	Tender Closing	1 day	Thu 9/25/14	Thu 9/25/14														
6	Technical Evaluation	5 days	Fri 9/26/14	Thu 10/2/14														
7	Kfw No Objection	10 days	wed 10/1/14	Tue 10/14/14														
8	Financial Opening	1 day	Thu 10/16/14	Thu 10/16/14														
9	Financial Evaluation	2 days	Fri 10/17/14	Mon 10/20/14														
10	Kfw No Objection	4 days	Thu 10/30/14	Tue 11/4/14														
11	Negotiation & Contracti	10 days	wed 11/26/14	Tue 12/9/14														
12	Kfw No Objection	24 days	Tue 12/9/14	Fri 1/9/15														
13	Contract Signing	0 days	wed 1/14/15	wed 1/14/15														
14	<b>Implementation</b>	<b>790 day:</b>	<b>wed 1/14/15</b>	<b>Tue 1/23/18</b>														
15	Advance Payment	30 days	wed 1/14/15	Tue 2/24/15														
16	Mobilization	30 days	wed 2/25/15	Tue 4/7/15														
17	Drilling Activities	730 days	wed 4/8/15	Tue 1/23/18														
18	<b>B. Water Supply Services</b>	<b>310 day:</b>	<b>Fri 9/12/14</b>	<b>Thu 11/19/15</b>														
19	<b>Procurement</b>	<b>111 day:</b>	<b>Fri 9/12/14</b>	<b>Fri 2/13/15</b>														
20	Tender Advert	2 days	Fri 9/12/14	Mon 9/15/14														
21	Tender Closing	1 day	wed 10/29/14	wed 10/29/14														
22	Technical Evaluation	8 days	Thu 10/30/14	Mon 11/10/14														
23	kfw No Objection	5 days	Mon 11/10/14	Fri 11/14/14														
24	Financial Opening	1 day	Thu 11/20/14	Thu 11/20/14														
25	Financial Evaluation	5 days	Thu 11/20/14	wed 11/26/14														
26	Kfw No Objection	33 days	wed 11/26/14	Fri 1/9/15														
27	Negotiation & Contracti	10 days	Mon 1/12/15	Fri 1/23/15														
28	kfw No Objection	14 days	Mon 1/26/15	Thu 2/12/15														
29	Contract Signing	1 day	Fri 2/13/15	Fri 2/13/15														
30	<b>Implementation</b>	<b>220 day:</b>	<b>Fri 1/16/15</b>	<b>Thu 11/19/15</b>														
31	Advance Payment	25 days	Fri 1/16/15	Thu 2/19/15														
32	Mobilization	15 days	Fri 2/20/15	Thu 3/12/15														
33	Installation works	180 days	Fri 3/13/15	Thu 11/19/15														
34	<b>C. Implementation Consultant</b>	<b>865 days</b>	<b>Mon 1/12/15</b>	<b>Fri 5/4/18</b>														
35	<b>Procurement</b>	<b>97 days</b>	<b>Mon 1/12/15</b>	<b>Tue 5/26/15</b>														
36	kfw No Objection to RFP	0 days	Mon 1/12/15	Mon 1/12/15														
37	Tender Advert	2 days	Mon 1/12/15	Tue 1/13/15														
38	Tendering	35 days	wed 1/21/15	Tue 3/10/15														
39	Tender Closing	0 days	wed 3/11/15	wed 3/11/15														
40	Technical Evaluation	14 days	wed 3/11/15	Mon 3/30/15														
41	kfw No Objection	5 days	Tue 3/31/15	Mon 4/6/15														
42	Financial opening	1 day	Tue 4/7/15	Tue 4/7/15														
43	Financial Evaluation	5 days	wed 4/8/15	Tue 4/14/15														
44	Kfw No Objection	5 days	wed 4/15/15	Tue 4/21/15														
45	Negotiation & Contracti	14 days	wed 4/22/15	Mon 5/11/15														
46	kfw No Objection	10 days	Tue 5/12/15	Mon 5/25/15														
47	Contract Signing	1 day	Tue 5/26/15	Tue 5/26/15														
48	<b>Implementation</b>	<b>768 day:</b>	<b>wed 5/27/15</b>	<b>Fri 5/4/18</b>														
49	Advance Payment	30 days	wed 5/27/15	Tue 7/7/15														
50	Mobilization	14 days	wed 7/8/15	Mon 7/27/15														
51	Service Period	720 days	Mon 8/3/15	Fri 5/4/18														
52	<b>D. Transaction Advisor</b>	<b>407 day:</b>	<b>Mon 3/2/15</b>	<b>Tue 9/20/16</b>														
53	<b>Procurement</b>	<b>97 days</b>	<b>Mon 3/2/15</b>	<b>Tue 7/14/15</b>														
54	kfw No Objection to RFP	0 days	Mon 3/2/15	Mon 3/2/15														
55	Tender Advert	2 days	Mon 3/2/15	Tue 3/3/15														
56	Tendering	35 days	wed 3/11/15	Tue 4/28/15														
57	Tender Closing	0 days	wed 4/29/15	wed 4/29/15														
58	Technical Evaluation	14 days	wed 4/29/15	Mon 5/18/15														
59	kfw No Objection	5 days	Tue 5/19/15	Mon 5/25/15														
60	Financial Opening	1 day	Tue 5/26/15	Tue 5/26/15														
61	Financial Evaluation	5 days	wed 5/27/15	Tue 6/2/15														
62	Kfw No Objection	5 days	wed 6/3/15	Tue 6/9/15														
63	Negotiation & Contracti	14 days	wed 6/10/15	Mon 6/29/15														
64	kfw No Objection	10 days	Tue 6/30/15	Mon 7/13/15														
65	Contract Signing	1 day	Tue 7/14/15	Tue 7/14/15														
66	<b>Implementation</b>	<b>310 day:</b>	<b>wed 7/15/15</b>	<b>Tue 9/20/16</b>														
67	Advance Payment	25 days	wed 7/15/15	Tue 8/18/15														
68	Mobilization	15 days	wed 8/19/15	Tue 9/8/15														
69	Service Period	270 days	wed 9/9/15	Tue 9/20/16														

## **11.0 REPORTING REQUIREMENTS**

### **11.1 General**

GDC and financiers of the Project consider of utmost importance the timely submission of project reports during the course of the project implementation. Format of the report should be discussed and agreed upon with GDC. The Quarterly Progress Reports (QPRs) including implementation of the Environmental and Social Management Plan (ESMP) shall cover all aspects of Project implementation, including the status of progress against agreed implementation and disbursement schedules for all lots of the project. The QPRs shall also highlight issues affecting Project implementation and proper corrective actions.

### **11.2 Inception report**

The Consultant shall submit inception reports to the executing agencies. The inception report shall be submitted within two weeks of contract effectivity. It will outline the Consultant's work plan, define the review and implementation schedule by task, specify submission dates for each one of the required reports in draft form, and assign the personnel by name and date period to each task. The proposed Project schedule shall be broken down by tasks and sub-tasks and presented in chart form in an acceptable form using Microsoft Project.

### **11.3 Progress Reports**

The Consultant shall assist GDC to prepare various reports and documents requested by the financiers from time to time.

The Consultant shall prepare and submit monthly and quarterly progress report to GDC. The quarterly progress reports shall be prepared to satisfy the requirements of KfW.

- a) Monthly Progress Reports to be prepared in a format to be agreed with the lending institutions and availed in soft copy
- b) Quarterly Progress Reports to be prepared in a format to be agreed with the lending institutions and availed in soft copy
- c) Semi-annually environmental and social monitoring reports be prepared in a format to be agreed with the lending institutions and availed in soft copy
- d) A Volume containing the Engineering Design Report including Design Criteria and Drawings, Cost Estimate Report and the Implementation Schedule

- e) Tender documents for the procurement of Contractors for the Steam Gathering System
- f) Tender/Bid evaluation reports
- g) Operation and Maintenance Manuals
- h) Completion Reports and As-Built drawings. The As-Built drawings shall also be provided in transparencies

The reports by contractor shall at least include written description of:

- Progress of the works and expenditure to-date;
- Progress of the works during the month;
- Future planned works and expenditure;
- Technical problems , if any; with their remedies
- Delays of any kind, if any
- List of Consultant's and Contractors' personnel including GDC staff
- List of machinery and equipment scheduled and made available of the works by the contractors; and
- Any other issues, which could facilitate or affect the progress of the work.
- Graphical presentation of physical progress planned/actual; cash flow planned/actual; expected future progress and expenditure;
- Maintenance reports and spare parts pre orders.

#### **11.4 Progress Payments**

The contractors shall submit to the Consultant, statement showing costs for executed works up to the end of the month. The form of the statement shall be in accordance with standard format agreed by GDC and the Consultant. All relevant measurement sheets and quality schedules shall be submitted together with the statement signed by Employer's supervisors employer's and the consultant's site supervisors.

#### **11.5 Project Completion Report (PCR)**

Upon completion of the project construction activities, the Consultant shall prepare a Project Completion Report (PCR) in accordance with GDC and financiers' requirement. The PCR will form a comprehensive record of the design, construction and erection works accomplished including:-

- (i) A description of changes or modifications to the design;
- (ii) Problems encountered and solutions adopted;
- (iii) Overall construction volume, quantities and costs; and
- (iv) Lesson learned

## **12.0 IMPROVEMENT OF TOR**

The Consultant may offer suggestions and improvements to the Terms of Reference, which it considers would result in better implementation of the project. Such proposals if accepted will form part of the Terms of Reference of the proposals submitted by the consultant. The effect on time and cost estimates given under the above clause shall be clearly identified.

**SECTION VI: - MODEL CONTRACT (FORM OF CONTRACT)**

**CONTRACT**

for Consulting Services

dated

[•]

between

Geothermal Development Company

– hereinafter referred to as the “Employer” –

and

[•]

– HEREINAFTER REFERRED TO AS THE “CONSULTANT” –

PROJECT CONSULTANCY SERVICES AS IMPLEMENTING CONSULTANT  
FOR STEAM FIELD DEVELOPMENT BARINGO-SILALI BLOCK

## CONTENTS

Section	Page
<b>Preamble.....</b>	<b>57</b>
<b>General Conditions</b>	<b>57</b>
Paragraph 1    General Provisions	57
Paragraph 2    The Employer.....	69
Paragraph 3    The Consultant .....	73
Paragraph 4    Commencement, Completion, Amendment and Termination of the Services.....	79
Paragraph 5    Remuneration .....	86
Paragraph 6    Liability.....	91
Paragraph 7    Insurance .....	92
Paragraph 8    Disputes and Arbitration Procedure .....	93
<b>Special Conditions .....</b>	<b>96</b>
<b>List of Annexes .....</b>	<b>101</b>

## **Preamble**

The Employer desires consulting services to be rendered for the Project designated in the Special Conditions. The Consultant has submitted a technical and a financial bid for these services. The parties to this Contract therefore hereby agree on the following:

## **General Conditions**

### **Paragraph 1: General Provisions**

(i)  
**DEFINITIONS**

The words and expressions used in this Contract shall have the following meanings assigned to them, unless the context requires otherwise.

The “**Agreed Remuneration**” means the fee to which the Consultant is entitled as described in Paragraph 5 [Remuneration], which shall be payable in accordance with this Contract.

The “**Commission**” means the performance of the Services pursuant to this Contract.

The “**Completion Period**” means the period designated for completion of the Services in the Special Conditions.

The “**Consultant**” shall be the professional undertaking or the professional individual named in the Contract who is appointed by the Employer to perform the Services. This shall include the Consultant’s legal successors as approved by the Employer and subject to prior written consent from KfW.

The “**Contract**”, except where otherwise stated in the Special Conditions, means the conditions of this Contract for consulting services (General Conditions and Special Conditions) together with the following constituent parts of the Contract<sup>7</sup>:

---

**Annex 1** [*Minutes of Negotiations pursuant to the Special Conditions*]<sup>8</sup>

**Annex 2** [*Terms of Reference plus Tender Documents*]

**Annex 3** [*KfW Guidelines for the Assignment of Consultants in Financial Co-operation with Partner Countries*<sup>9</sup>], insofar as these Guidelines do not conflict with the Conditions of this Consulting Contract

**Annex 4** [*Staffing Schedule*]

**Annex 5** [*Equipment and Furnishings to be provided by the Employer and Third-party Services Commissioned by the Employer*]

**Annex 6** [*Time Schedule for the Performance of the Services*]

**Annex 7** [*Statement of Costs*]

**Annex 8** [*The Consultant's Bid – though without the Consultant's terms and conditions of delivery, contract and payment*]

*(N.B.: If by way of exception the procurement guidelines are not made an integral component of the Contract, Item 1.1.19 should be supplemented to include the Declaration of Undertaking, as well as the Model Advance Payment Guarantee and the Model Retention Guarantee.)*

The “**country**” means the country or region to which the Project (or the majority thereof) relates.

The “**date on which execution shall be commenced**” means the day specified in the Special Conditions.

A “**day**” means one calendar day.

“**Financing Agreement**” means the [loan agreement / financing agreement] entered into between KfW and [the Employer] in order to finance [amongst other things] the services hereunder.

---

**“Force Majeure”** means any event whereby one party to the Contract has been prevented from performing the Services due to an unavoidable event such as a natural disaster, hostage-taking, war, revolution, terrorism or sabotage, which, with even the best human judgement and experience and utmost care, could not have been reasonably foreseen in the circumstances, prevented or rendered harmless by economically reasonable means unless such event must be accepted by the relevant party due to its regular occurrence, including, except where otherwise stated in the Special Conditions, circumstances such as crises, war or terror that lead to the Foreign Office of the Federal Republic of Germany calling upon German citizens to leave the country or the Project region in response to which the Consultant withdraws all its staff. If an event occurs as a result of the actions of or risks assumed by a party to the Contract, that event shall not constitute Force Majeure.

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

The Consultant’s **“Foreign Staff”** means all those staff who do not possess the citizenship of the country.

The **“Local Currency”** means the currency of the country.

A **“notice”** means a notification communicated to one party by the other party.

A **“party”/the “parties”** means the Employer and the Consultant.

**“Order Value”** shall have the meaning given to it in A.d. 5.1.1 of the Special Conditions.

The **“Project”** means the project specified in the Special Conditions for which the Services are to be

performed.

The “**Services**” means the contractual services described in **Annex 1** [*Minutes of Negotiations*], **Annex 2** [*Terms of Reference plus Tender Documents*], **Annex 8** [*The Consultant’s Bid*] and Paragraph 3.1 [*Scope of Services*], as well as the standard and special services defined in Paragraph 3.2 [*Standard and Special Services*].

A “**third party**” means any other natural and legal person, according to the context.

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

A “**year**” means 365 days.

(ii)

**INTERPRETATION**

(A) Headings in this Contract shall have no bearing on the interpretation of these Conditions.

- (B) Words in the singular, insofar as the context allows, shall also include the plural and vice versa.
- (C) Reference to either sex shall include both sexes.
- (D) Provisions containing the words “agree”, “agreed” or “agreement” (and all derived grammatical forms thereof) shall require written agreement and signature by both parties<sup>10</sup>.

(iii)  
**RANKING AND ORDER OF  
THE INTEGRAL PARTS OF  
THE CONTRACT**

- (A) For the implementation of this Contract, the parts of the Contract listed below shall take precedence in the order shown below and the Annexes shall take precedence in the order in which they are numbered:

- (1) The agreements of the Contract (General and Special Conditions), without the Annexes.

- (2) The Annexes of the Contract in the order in which they are numbered.

**I. THESE GENERAL CONDITIONS AND THE ANNEXES SHALL REMAIN – EXCEPT WHERE OTHERWISE STIPULATED IN THE PARTS OF THE CONTRACT IN QUESTION – IMMUTABLE.**

- (B) In case of inconsistencies or ambiguities between parts of
-

the Contract that cannot be resolved through the ranking set out in Clause 1.3.1, the Employer shall interpret the parts of the Contract in line with the intention of the parties based on the purpose and intention of the Contract as a whole, including all Annexes.

(iv)  
**COMMUNICATION**

(A) Except where otherwise stipulated, notices, instructions and messages must be communicated between the parties in writing and in the language specified in the Special Conditions, and any such notice, instruction or message may not be unreasonably refused or delayed.

(v)  
**NOTICES**

(A) Except where otherwise stipulated in the Special Conditions, the notices to be served pursuant to this Contract shall take effect upon receipt at the addresses specified in the Special Conditions. The notice may be served in person, by a courier service, by fax (with written confirmation of receipt), by registered letter or by email (only if this is sent in an encrypted and certified form (e.g. S/MIME certificate)).

(vi)  
**LAW AND LANGUAGE**

(A) The Special Conditions shall contain the language or languages of the Contract, the prevailing contractual language and the law governing this Contract.

(vii)  
**ENTRY INTO FORCE OF THE CONTRACT**

(A) This Contract enters into force upon execution by both parties, subject to notification from KfW to the Employer that all

conditions precedent to disbursement under the Financing Agreement have been satisfied in a form and substance satisfactory to KfW.

(viii)  
**MEASUREMENTS AND STANDARDS**

(A) Drawings, plans and calculations shall be based on the metric system and German DIN11 or European EN standards, or internationally recognised standards that are at least equivalent to those published by ISO or IEC are the standards to be applied to the Services performed under the Contract.

(ix)  
**ASSIGNMENT AND SUB-CONTRACTING**

(A) The Consultant shall not have the right to assign or transfer all or any of its rights under this Contract without the prior written consent of the Employer, which shall not be provided without the prior consent of KfW. The Employer's consent shall not be required for the assignment of any amounts due or which shall become due under this Contract.

(B) The Consultant may conclude, terminate or cancel sub-contracts for the performance of a part of the Services that are the subject of this Contract only upon prior written approval by the Employer, which shall not be provided without the prior consent of KfW. In cases where the Services are sub-contracted, the Consultant's obligations to fulfil the Contract shall remain unaffected.

---

(x)  
**RIGHTS TO THE RESULTS  
OF WORK, COPYRIGHT**

- (A) Except where otherwise stated in the Special Conditions of this Contract, the Consultant shall transfer to the Employer all transferrable rights to the Services performed under this Contract on the date any such rights arise, and in any event at the latest, on the date they are acquired. Insofar as a transfer of such rights is not possible<sup>12</sup>, the Consultant shall irrevocably grant the Employer an unrestricted, transferrable, licensable and exclusive right of use and exploitation that are unlimited with respect to time and place of use. Such transfer shall include the right to adapt any transferred rights. The Consultant shall ensure that any relevant creator of such transferrable rights waives its exercise of any such relevant rights.
- (B) If the Consultant employs third parties (e.g. employees) to perform the Services, it shall ensure that these parties allow him to transfer and/or grant the rights in full. The Consultant shall ensure that third parties waive the exercise of any relevant rights.
- (C) The Consultant shall issue all information requested by the Employer and KfW in connection with this Contract, and shall make available free of charge all requested records, documents and information. This obligation shall remain effective after termination of the Contract for a period of 24 months.
-

(xi)  
**OWNERSHIP OF DOCUMENTS  
AND EQUIPMENT**

- (A) All studies, reports and pertinent data and documents such as diagrams, plans, statistics and annexes that are made available to the Consultant in the performance of the Commission, as well as software (including the respective source codes) produced or adapted for consideration as part of the Commission, shall become the property of the Employer. The Consultant shall not be entitled to exercise a right of retention with respect to these materials.
- (B) Equipment, including vehicles purchased for the performance of the Consultant's Services and paid for fully by the Employer, shall be handed over to the Employer after completion of the Services. The Consultant shall handle with due care and maintain any such equipment.

(xii)  
**CONFIDENTIALITY AND  
PUBLICATION**

- (A) The Consultant shall, and shall ensure that its employees, keep confidential all documents passed on to it by the Employer and KfW, as well as all information exchanged and knowledge acquired concerning this Contract and its implementation, even if such documents have not been expressly designated as confidential. This obligation of confidentiality upon the Consultant and its employees shall remain effective after termination of the Contract. It shall not apply to disclosure to a court or to a public authority, insofar as this disclosure is made on the basis of legal obligations or by order of a court or a public authority. It shall also not apply to those materials, information and

knowledge acquired for which and insofar as the Employer or KfW has given written consent for publication.

(B) The obligation of confidentiality set out in Clause 1.12.1 shall not apply to information which:

(1) was demonstrably already known to the recipient when the Contract was concluded, or thereafter was made known by a third party, without this having constituted any violation of a confidentiality agreement, legal regulations or official orders; or

(2) is publicly known upon conclusion of the Contract or is made publicly known thereafter, insofar as this is not based on a violation of this Contract.

(xiii)  
**CONDUCT**

(A) During the term of this Contract, the Consultant and its Foreign Staff shall not interfere with the political or religious affairs of the country.

(xiv)  
**CORRUPTION AND FRAUD**

(A) When discharging their obligations under this Contract, the Consultant, its representatives and its employees shall comply with all applicable laws, rules, regulations and provisions of the relevant legal systems, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

(B) The Consultant shall not offer or grant either directly or indirectly any improper

advantages to public officials (as defined below) or other individuals in connection with its bid in the tendering process. In addition, it shall not offer or grant any such incentives or conditions when implementing the Contract. The Consultant shall be obliged to notify the Employer in detail immediately in writing if the Consultant is prompted by a public official or any other persons to make illegal payments.

- (C) The Consultant will inform its members of staff of their respective obligations as well as their obligation to comply with the Declaration of Undertaking and to obey the laws of the country.
- (D) A public official shall be:
  - (1) any official or employee of a public authority or an enterprise under the ownership and control of a government;
  - (2) any person who performs a public function;
  - (3) any official or staff member of a public international organisation, such as the World Bank;
  - (4) any candidate for a political office, or
  - (5) any political party or official of a political party.

(xv)  
**REIMBURSEMENTS**

- (A) All reimbursements, insurance payments, guarantee payments or similar payments, if any, shall be made for the account of the Employer to KfW, Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, which KfW shall credit to the Employer. If such payments are made in Local Currency,

they shall be made to a special account of the Employer specified in the Special Conditions. The amounts reimbursed for the portion financed by KfW may, with KfW's consent, be used again, principally for further implementation of the Project.

(xvi)

**PARTIAL INVALIDITY**

- (A) The invalidity or unenforceability of one or more provisions of this Contract will not affect the validity or enforceability of any other provisions of this Contract. Any invalid or unenforceable provision shall be replaced by a valid and enforceable provision which approximates as closely as possible the economic purpose of the invalid or unenforceable provision. The same shall apply accordingly in cases of omissions.

## **Paragraph 2: The Employer**

### **(i) INFORMATION**

(A) During the term of this Contract, the Employer, within a reasonable period of time, shall, free of charge, place at the disposal of the Consultant, all data, documentation and information concerning the Services covered by the Commission that are available to it. This shall also include all Commission and Project related provisions of the separate agreements relating to any loan made in respect of the Project, the Project documents entered into between the Employer and KfW and consents of KfW as required by this Contract.

### **(ii) DECISIONS/ COOPERATION**

(A) Subject to the Consultant having provided the Employer with all the necessary information including, but not limited to, drawings, studies and replacement staff, the Employer shall make its decisions pursuant to this Contract as soon as possible after the Consultant requests such duty to be performed in writing and, in any event, no later than the end of the expiry period specified in the Special Conditions.

### **(iii) SUPPORT**

(A) The Employer will support, as far as reasonably possible, the Consultant in discharging its obligations pursuant to this Contract. The Employer shall make available to the Consultant in good time and in full all the services necessary for the performance of its tasks as detailed in **Annex 2** [*Terms*

*of Reference plus Tender Documents*].

(B) In addition, the Employer shall support the Consultant, the Consultant's staff and where applicable relatives of the Consultant in:

(1) obtaining in good time any documents necessary for entering, residing in, working in and leaving the country (visa, work permit etc.);

(2) granting and/or obtaining unrestricted access to the Project where necessary for the performance of the Services;

(3) the import, export and customs clearance of personal items and of goods and commodities required for performance of the Services;

(4) securing return transport in cases of emergency;

(5) obtaining permission to import Foreign Currency that is required by the Consultant for the performance of the Services and for personal use by its Foreign Staff;

(6) obtaining permission to export the money paid by the Employer to the Consultant under this Contract; and

(7) providing access to other organisations for the purpose of obtaining information to be procured by the Consultant.

(iv)  
**TAXES**

(A) Subject to the following provisions, the Employer shall ensure that the Consultant and its Foreign Staff are exempted from all taxes, duties, levies and other charges that are legally prescribed in the Employer's country, in

connection with:

- (1) payments to the Consultant or to its Foreign Staff in connection with the performance of the Services;
- (2) services performed by the Consultant or its staff in connection with the fulfilment of their tasks;
- (3) equipment, materials, and supplies necessary for the performance of the Services, including motor vehicles and personal belongings of the Foreign Staff that are brought into the country of the Employer and shipped out after completion of the Services or that have been destroyed in the course of the performance of the Services.

(B) If it is impossible to meet the obligations arising from Paragraph 2.4.1 [*Taxes*] due to contrary legal provisions, the Employer shall, provided it is legally permissible and except where otherwise stipulated in the Special Conditions of this Contract, upon submission of proof of the payments made, reimburse the Consultant all the amounts paid without delay.

(v)  
**EQUIPMENT AND OFFICES**

(A) For the purposes of performing the Services, the Employer shall make available to the Consultant, free of charge, technical and other equipment and offices to the extent described in **Annex 5** [*Equipment and Furnishings to be provided by the Employer and Third-party Services commissioned by the Employer*].

(vi)  
**CONTACT PERSONS OF THE**

(A) The Employer shall appoint two natural persons to act as the

**EMPLOYER**

Employer's contact person and deputy to the Consultant under this Contract, and the Employer further undertakes always to appoint another contact person without delay should either of the two individuals appointed no longer be available.

(vii)

**THIRD-PARTY SERVICES**

(A) The Employer is obliged, at its own expense, to make the necessary provision for the performance of those services by third parties commissioned by it, as described in **Annex 5** [*Equipment and Furnishings to be provided by the Employer and Third-party Services commissioned by the Employer*].

(viii)

**PAYMENT FOR SERVICES**

(A) The Consultant shall receive from the Employer remuneration for the Services performed under this Contract in accordance with Article 5 [*Remuneration*].

### Paragraph 3: The Consultant

#### i) SCOPE OF SERVICES

(A) The Consultant shall deliver the Services in full and on time.

(B) The Services to be performed by the Consultant encompass all the part services described and explained in this Contract and its Annexes, in particular in Annex 1 [Minutes of Negotiations] Annex 2 [Terms of Reference plus Tender Documents] and Annex 8 [The Consultant's bid]. Furthermore, the Consultant must deliver all the standard and special services as defined in Paragraph 3.2.1. [Standard and Special Services].

(C) The Consultant shall work together with third parties commissioned by the Employer pursuant to Paragraph 2.7 [*Third-party services*]. The Employer is not responsible for these third parties or their performance. In addition, the Consultant must comprehensively coordinate their services with its own services, as far as possible.

#### (ii) STANDARD AND SPECIAL SERVICES

(A) In addition to the Services specified explicitly in the Contract, the Consultant shall also perform all other services, if necessary, that are not listed under the contractual services, but are customarily required in order to properly discharge the contractual obligations ("**standard services**"). The standard services shall be fully compensated through the

Agreed Remuneration.

- (B) “**Special Services**” are services that are not included under the contractual or standard services, but must necessarily be delivered by the Consultant in order to properly perform its duties under the Contract, because the external circumstances of service delivery have changed unexpectedly, or because the Employer has suspended the Services pursuant to Paragraph 4.5 [*Force majeure*], or because the Employer, with the prior consent of KfW, requires services that were not included in the invitation to tender but are necessary.

(iii)  
**DUE DILIGENCE**

- (A) Except where otherwise stipulated in this Contract, or otherwise legally stipulated within the country or within another legal system (including the legal system in the Consultant’s jurisdiction) by provisions that impose higher demands than this Contract, when performing its obligations under this Contract the Consultant shall exercise due diligence and provide the Services in compliance with professional practice and to the recognised quality standards, in accordance with current scientific and generally accepted engineering standards. The Consultant must document its work, the progress of the Project and the decisions it takes in an appropriate form that is acceptable to the Employer, bearing in mind the requirements arising from Paragraph 5.7 [*Auditing*].

(iv)  
**REPORTING**

- (A) The Consultant shall report to the Employer and KfW on the progress of the Services in accordance with the Special Conditions. Except where otherwise stipulated in the Special Conditions, in case of longer assignments such as construction management, training or operational support, the Consultant shall draw up quarterly reports, and following the conclusion of the Services draw up a final report covering the entire Completion Period. The reports shall include a comparison of targeted and actual values for the planned activities; the progress of construction; developments in the time frame; financial developments; and information on any problems and identification of possible solutions.
- (B) The Consultant shall inform the Employer promptly of all extraordinary circumstances that arise during the performance of the services and of all matters requiring KfW's approval.
- (C) Furthermore, the Consultant shall, upon request, supply the Employer with information in connection with the Services.

(v)  
**STAFFING**

- (A) The Consultant shall employ the staff specified in Annex 4 [Staffing Schedule] to implement performance of the Services. The list of designated key staff and any changes to it shall require the prior written approval of the Employer and KfW.
- (B) The Employer may require the Consultant to terminate the contract of, or replace, any staff member who fails to meet the requirements or violates Paragraph 1.13 [Conduct]. Any such demand must be submitted in writing to the Consultant stating the reasons for it.
- (C) If staff employed by the Consultant need to be replaced, the Consultant shall ensure that the staff member in question is replaced promptly by an individual who possesses at least equivalent qualifications.
- (D) If any one of the Consultant's staff falls ill for more than one month and this jeopardises the performance of this Contract by the Consultant, the Consultant shall replace this staff member with another staff member who possesses at least equivalent qualifications.
- (E) Staff shall only be replaced after prior approval by the Employer, such approval not to be unreasonably withheld. The exchange, replacement, or planned dispensation of replacement (as exception to existing rules) of key staff specified by name shall require the prior approval of KfW.
- (F) If the Consultant must terminate the contract of, or

replace, any staff during the Contract period, the costs thus accrued shall be borne by the Consultant, except where staff are removed or replaced at the Employer's request. In this case, the Employer shall meet the costs of replacing the staff member, unless the staff member in question does not meet the requirements or has violated Paragraph 1.13 [Conduct].

(vi)  
**CONTACT PERSON OF THE  
CONSULTANT**

(A) The Consultant shall appoint for the exercise of all rights and obligations arising from this Contract a natural person as its contact person for the Employer under this Contract.

(B) The Consultant shall specify and provide respective contact data to the Employer and KfW for an individual at the Consultant's place of business who can be reached at any time in cases of emergency or crisis as well as a deputy of the Consultant. The Consultant shall notify the Employer and KfW without delay of any change of elected person or their contact data.

(vii)  
**INDEPENDENCE OF THE  
CONSULTANT**

(A) The Consultant undertakes that neither the Consultant nor any enterprise associated with the Consultant shall bid for the Project as manufacturer, supplier, or building contractor. This prohibition also applies to any bidding for any further consulting services, insofar as such consulting services might lead to a restriction of competition or a conflict of interests. Any violation of this stipulation may lead to the immediate cancellation of this Contract and require the

reimbursement of any and all costs incurred by the Employer up to the time of such violation as well as compensation for any and all losses and damages incurred by the Employer as a result of such cancellation.

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

(i)  
**COMMENCEMENT AND  
COMPLETION**

(A) The Consultant shall begin performing the Services on the prescribed date on which execution of the Contract shall take place, but not earlier than and without undue delay after the Contract has come into force. The Consultant shall deliver the Services in accordance with the time schedule in Annex 6 [Time Schedule for the Performance of the Services], and shall complete the Services within the Completion Period, subject to any further extensions to this Contract.

(B) In relation to optional services (if any), the Consultant shall commence delivery of the optional services not earlier than upon receipt of notification from the Employer, subject to the Employer having received KfW's prior consent.

(C) Any change to the time schedule in **Annex 6** [*Time Schedule for the Performance of the Services*] due to a reasonable request by either party shall be mutually agreed upon in writing.

(ii)  
**PENALTIES FOR DELAY**

(A) If the Consultant fails to perform any of the Services under this Contract within the requisite time period, for reasons he must warrant, the Employer shall, unless the Special Conditions include a derogation, be authorised to

inflict a penalty of 0.5% of the Order Value for every week of delay, subject to a cap of 8% of the Order Value. Beyond such penalty, the Employer may not bring any further claims arising from the delay in the performance of the Services. The right of termination shall remain unaffected.

(iii)  
**AMENDED SERVICES**

(A) Subject to the prior consent of KfW, the Employer shall be entitled to require an amendment of the Contract (amended or additional services or amended deadlines/periods for execution – “**amended services**”).

- (B) In this case, the Agreed Remuneration and the Completion Period shall be adjusted accordingly by mutual agreement of the parties. The Consultant shall submit proposals for performance of and remuneration for the amended services.
- (C) The Consultant shall execute the amended services if the Employer agrees, in writing, to the remuneration proposal. If the parties do not agree on the remuneration proposal within three months of the Consultant commencing delivery of the Services, the entitlement to remuneration shall be treated as a dispute under Article 8 [*Disputes and Arbitration Procedure*].

(iv)  
**IMPEDIMENT**

- (A) If the performance of the Services is impeded or delayed by the Employer or the Employer's contractual partners ("impediment") such that the impediment leads to an increase in the costs, the scope or the duration of the Services, the Consultant shall immediately notify the Employer of the circumstances and the possible consequences.
- (B) If an impediment falls within the sphere of risk of the Employer or if the impediment is caused by the Employer through intent or gross negligence, the Consultant shall be entitled to reimbursement of the costs incurred by it as a result of the impediment, subject to these costs being evidenced.

(v)  
**FORCE MAJEURE**

- (A) In the event of Force Majeure, the contractual obligations, as far as affected by such event, shall be suspended for as long as performance remains impossible due to the Force Majeure, provided that one party to the Contract receives notification of the Force Majeure event from the other party within two weeks after its occurrence. Any and all liability of the Consultant for damages arising due to its absence caused by the Force Majeure is excluded.
- (B) In the event of Force Majeure, the Consultant shall be entitled to an extension of the Contract equal to the delay caused by such Force Majeure. If the performance of the Services is rendered permanently impossible by the Force Majeure, or if the Force Majeure event lasts for longer than 180 days, both parties to this Contract shall be entitled to terminate the Contract.
- (C) In case of suspension or termination of the Contract due to Force Majeure, the Services performed up to the time of the Force Majeure and all necessary expenditure (which is evidenced) of the Consultant arising from the discontinuing of the Services shall be invoiced on the basis of contractual prices. Neither party shall make any further claims.

(vi)  
**SUSPENSION OR  
TERMINATION**

- (A) The Employer may, with the prior consent of KfW, fully or partially suspend the Services

or terminate this Contract after serving written notice of at least 30 days. In this event, the Consultant must immediately take all measures necessary to ensure that the Services are discontinued and the expenditure minimised. The Consultant shall hand over all reports, drafts and documents to be drawn up by the date in question to the Employer. If the suspension lasts longer than 180 days the Consultant may terminate the Contract. In case of termination Paragraph 4.5.3 [Force majeure] shall apply mutatis mutandis.

- (B) If the Consultant fails to meet its contractual obligations without sufficient reason; in accordance with the Contract; or on time, the Employer may serve a notice upon the Consultant and request it to duly perform its Services. If the Consultant fails to remedy the performance deficit within a period of 21 days of having been called upon to do so by the Employer, the Employer shall be entitled, after this period has elapsed, to terminate the Contract by written notice.
- (C) The Consultant may terminate this Contract if any amounts due and payable to it under this Contract have not been paid within 60 days after the receipt of the corresponding invoice, as long as the Consultant has given the Employer a written reminder within a period of 30 days after the initial 60 day deadline has passed and the Employer does not pay the due amounts within a further period of 30 days after this notice.

(D) If the termination of the Contract is not due to a default on the part of the Consultant, the Consultant shall be entitled to demand the Agreed Remuneration. The Consultant must, however, mitigate its loss and deduct any proceeds of such mitigation, which shall include (i) any remuneration paid to the Consultant working on other projects during the time the Consultant was scheduled to work on the Project (ii) any remuneration that the Consultant would have earned working on other projects during the time the Consultant was scheduled to work on the Project, but which the Consultant has not received as a result of the Consultant's wilful actions or omissions.

(E) If the termination of the Contract is due to a default on the part of the Consultant, the Consultant shall be entitled to demand the Agreed Remuneration for the Services performed until the date of termination but not yet remunerated. The Employer shall be entitled to demand compensation for the direct damages caused by the default.

(vii)  
**CORRUPTION AND FRAUD**

(A) If it is proven that the Consultant has breached Paragraph 1.14 [*Corruption and fraud*], the Employer may, notwithstanding the various punishments or other sanctions to which the Consultant is subject according to the law of the country or any other legal system, terminate this Contract in writing. The

Employer may also terminate this Contract in writing if the Declaration of Undertaking submitted by the Consultant in conjunction with its bid is untrue.

(viii)

**RIGHTS AND OBLIGATIONS  
OF THE PARTIES IN CASE  
OF TERMINATION**

- (A) Termination of the Contract shall not prejudice or affect the rights, claims or obligations of the parties until the date on which the cancellation takes effect.

(b) **Paragraph 5: Remuneration**

(i)  
**REMUNERATION OF THE  
CONSULTANT**

(A) The Consultant shall receive the remuneration agreed in the Special Conditions for performing the Services owed under this Contract, subject to the conditions listed therein and the conditions below. **Annex 7** [*Statement of Costs*] contains a detailed list of conditions.

(ii)  
**TERMS OF PAYMENT**

(A) Except where otherwise agreed in the Special Conditions, the Employer shall pay the Consultant's remuneration as follows:

(1) **Advance payment**, due within 30 days of execution of this Contract upon presentation of an invoice.

(2) The **instalments** shall be paid upon presentation of corresponding invoices with a maximum of one payment per quarter. The first invoice for the first instalment shall be presented, at the earliest, 3 months after the contractually agreed commencement of the Services. The Employer shall have the right to suspend payment of instalments at any stage in the event of substantial deviations from the time schedule and/or insufficient performance on the part of the Consultant. This right shall also apply to payments which are not based on output-related evidence of performance. If the payment of instalments is suspended, the Employer must proceed in accordance with Paragraph 5.6 [*Objections to Invoices*].

(3) The **final payment** shall be made after the Services have been

performed in full and confirmation had been provided by the Employer and KfW to that Consultant.

- (B) Only in cases of agency contracts: the Consultant's invoices shall be addressed to the Employer "c/o KfW". KfW shall receive the original invoice. A copy of the invoice shall be sent to the Employer directly. The original final invoice is to be addressed to the Employer, and KfW will receive a copy.
- (C) Any guarantees shall be in the form set out in Annexes 10 and 11 and shall always be provided as bank guarantees made out to the Employer as beneficiary. They must be acceptable to the Employer and KfW. The original of the guarantee shall be sent to the Employer, with a copy, together with a confirmation of delivery of the original, to be sent to KfW.

(iii)  
**METHOD OF PAYMENT**

- (A) Payment shall be made according to the conditions set out in the Special Conditions.

(iv)  
**PRICE ADJUSTMENT**

- (A) Except where agreed otherwise in the Special Conditions, the following conditions shall apply with respect to prices. The prices specified in **Annex 7** [*Statement of Costs*] shall apply to the Completion Period specified in the Special Conditions and for a period of 3 months thereafter. After this date, prices may be adjusted if the official level of prices and wages in the Consultant's country of origin (Foreign Currency costs) or in the Employer's country (Local Currency costs) has increased, as measured using the base indices specified in the Special Conditions, and this is proven

by the Consultant. The following formula shall be used to calculate this:

$$\text{II. } PN = PO \cdot (0.15 + 0.85 \cdot LN/LO)$$

III. PN = REVISED PRICE, PO = BASE PRICE,

IV. LN = REVISED INDEX, LO = BASE INDEX.

V. THE PRICE WILL NOT BE CALCULATED UNTIL PUBLICATION OF THE FINAL PRICE INDEX.

- (B) Except where otherwise agreed in writing, the Consultant shall only be entitled to remuneration for special services if the services are amended pursuant to Paragraph 4.3 [*Amended Services*].

(v)  
**PAYMENT DEADLINE**

- (A) Except in relation to advance payment and where otherwise stated in the Special conditions, payment shall be made within 60 days of presentation of a verifiable invoice by the Consultant to the Employer.
- (B) If the Employer does not make the payment within the period set out in Paragraph 5.5 [*Payment Deadline*], except where the Employer has raised an objection pursuant to Paragraph 5.6 [*Objection to Invoices*], the Consultant shall be paid compensation at the rate agreed in the Special Conditions. This shall be calculated on a daily basis from the date on which the invoice fell due in the currency agreed. The agreed compensation shall satisfy all the Consultant's claims arising from the Employer's delay.

(vi)  
**OBJECTION TO INVOICES**

- (A) Should the Employer object to the whole or part of an invoice of the Consultant, the Employer shall notify the Consultant of its intention to withhold payment and shall state the reasons why. If the Employer objects only to a part of the invoice, it shall pay that part of the invoice to which it has not objected within the period specified in Paragraph 5.5 [*Payment Deadline*].

(vii)  
**AUDITING**

- (A) For services or part services that are not remunerated on a lump-sum basis, the Consultant shall be obliged to maintain up-to-date records that meet professional standards and that clearly and systematically indicate the services provided and the time and expense

involved. The Consultant shall permit the Employer and KfW to audit these records at any time and make copies of them during the term of the Contract.

(viii)  
**CURRENCY**

(A) The Special Conditions shall indicate the currency applicable to the Contract.

(c) **Paragraph 6: Liability**

(i) **LIABILITY OF THE CONSULTANT FOR BREACHES OF CONTRACT FOR WHICH HE IS RESPONSIBLE**

(A) The Consultant shall be liable to the Employer for verifiably culpable breaches of its contractual obligations, particularly breaches of Article 3 [*The Consultant*]. The liability of the Consultant shall be limited to the respective insurance sum, insofar as this is higher than the Order Value. Otherwise the liability of the Consultant shall be limited to the Order Value. This shall not affect the liability for premeditation and gross negligence.

(ii) **LIABILITY OF THE CONSULTANT FOR SUB-CONTRACTORS**

(A) The Consultant shall also be liable for the Services provided by a sub-contractor pursuant to Paragraph 1.9 [*Assignment and Sub-contracting*].

(iii) **PERIOD OF LIABILITY**

(A) The Consultant's liability shall terminate on the date of the acceptance of the Services and in the event the Contract does not provide for acceptance of the Services, on the date of performance of the contractually agreed Services in full, unless a different point of time is provided in the Special Conditions.

(iv) **LIABILITY FOR CONSEQUENTIAL DAMAGE**

(A) Liability for consequential damage is excluded.

(v) **LIABILITY OF THE EMPLOYER**

(A) The Employer shall be liable for verifiably culpable breaches of its contractual obligations, particularly breaches of Paragraph 2 [*The Employer*].

(d) **Paragraph 7: Insurance**

(i) **INSURANCE AGAINST  
LIABILITY AND DAMAGES**

(A) The Consultant shall take out insurance for the period of the Contract, on the terms specified in the Special Conditions, including, but not limited to, the following:

(1) **professional liability insurance;**

(2) **personal liability insurance;**

(3) **equipment insurance covering loss of or physical damage to all equipment acquired, used, provided or paid for by the Employer within the context of this Contract; and**

(4) **motor vehicle third party liability insurance and motor vehicle comprehensive insurance for the vehicles acquired in connection with this Contract.**

(B) The costs incurred in connection with the insurance specified in Paragraph 7.1.1 [*Insurance Against Liability and Damages*] shall be fully compensated by the Agreed Remuneration.

(e) **Paragraph 8: Disputes and Arbitration Procedure**

(i)  
**AMICABLE SETTLEMENT**

(A) Should a dispute arise from or in connection with this Contract, the representatives of the parties authorised to settle disputes shall, within 21 days of one party submitting a written request to the other party, endeavour in good faith to settle the dispute amicably.

(ii)  
**MEDIATION**

(A) if an amicable settlement cannot be reached within a period of 3 months after the written request pursuant to paragraph 8.1 [*amicable settlement*], the parties may, insofar as both sides agree, attempt to settle the dispute in accordance with the special conditions by way of mediation prior to initiating arbitral proceedings. notwithstanding this, the parties may agree to begin mediation immediately. unless the parties agree otherwise within a period of 14 days, either party may require that the mediator is appointed by the institution named in the special conditions.

Mediation shall begin no later than 21 days after the mediator has been appointed. The mediation process shall be implemented in accordance with the procedure selected by the appointed mediator.

All negotiations and talks held in the course of mediation shall be treated confidentially, unless they are concluded in a written, legally binding contract.

If the parties accept the recommendations of the mediator or agree to settle the dispute another way, the agreement reached shall be recorded in writing and signed by the representatives of

the parties.

- (B) If the dispute is not settled within 3 months after the mediator has been appointed, the dispute shall be settled by way of the arbitration procedure pursuant to Paragraph 8.3 [*Arbitration Procedure*].

(iii)  
**ARBITRATION  
PROCEDURE**

- (A) If the parties do not reach amicable agreement pursuant to Paragraph 8.1 [*Amicable settlement*] or by way of mediation pursuant to Paragraph 8.2 [*Mediation*], the dispute shall finally and exclusively be settled – except where otherwise stipulated in the Special Conditions – in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris by one or several arbitrators appointed in accordance with the Rules. The place of arbitration and the language of the arbitration procedure shall be stipulated in the Special Conditions.

# **SPECIAL CONDITIONS**

## **Ad Article 1: General Provisions**

### **Ad 1.1: Definitions**

**“Completion Period”:** The completion period shall be [●].

**“Force majeure”:** Force majeure

[●]

**“Project”:** The consulting services shall be performed for [●],  
BMZ no. [●] (the “Project”).

**“Date on which execution shall be commenced”:** The date on  
which execution shall be commenced is [●] / The date on which  
execution shall be commenced lies [●] weeks after the day on  
which the contract comes into force<sup>13</sup>.

### **Ad 1.4: Communication**

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

### **Ad 1.5: Notices**

#### Address of the Employer

Postal address [●]

Email: [●]

Phone: [●]

Fax: [●]

#### Address of the Consultant

Postal address

Email: [●]

Phone: [●]

---

Fax:

Address of KfW14

Postal address

Palmengartenstrasse 5 – 9  
60325 Frankfurt  
Germany

Email: info@kfw.de

Phone: +49 (69) 7431-[•]

Fax: **+49 (69) 7431-[•]**

**Ad 1.6: Law and language**

The language(s) of the Contract shall be [•].

[The prevailing contractual language shall be [•].]

The law governing this Contract shall be [•]15.

**Ad 1.10: Rights to the results of work, copyright**

[•]

**Ad 1.15: Reimbursements**

Account details of the Employer's special account for reimbursements in Local Currency: [•]

**Ad Article 2: The Employer**

**Ad 2.2: Decisions/cooperation**

Decisions/cooperative actions<sup>16</sup> of the Employer pursuant to Paragraph 2.2 [Decisions/cooperation] must be taken/performed at the latest within [•] days/weeks.

**Ad 2.4: Taxes<sup>17</sup>**

---

The contractual parties agree on the following provisions regarding taxes and levies [●] [*Clarification is required for the taxes/levies that may need to be paid or reimbursed (if applicable, differentiated according to e.g. sales/value added tax, corporate tax, other taxes/levies etc.). The applicable provisions should be mentioned in the tender offer.*]

**Ad 2.6: Contact person of the Employer**

The Employer's contact person shall be [●].  
The Employer's deputy shall be [●].

**Ad Article 3: The Consultant**

**Ad 3.3: Due diligence**  
[●]

**Ad 3.4: Reporting**

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

**Ad 3.6.1: The Consultant's contact person for handling of the Contract**

The Consultant's contact person for handling of the Contract shall be [●].

Contact details [●].

The deputy shall be [●].

Contact details [●].

**Ad 3.6.2: The Consultant's contact person for cases of emergency or crisis**

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

Contact details [●].

The deputy shall be [●].

Contact details [●].

**Ad Article 5: Remuneration**

**Ad 5.1.1: Remuneration**

For the services to be rendered by the Consultant under this Contract the Employer shall pay the sum of

[●] in [● currency]18]

("Order Value").

The Order Value is composed of:

Fixed fee: [●] in [● currency]

Ancillary expenses lump sum19: [●] in [● currency]

[Ancillary expenses upon proof [●] in [● currency]20

[The Order Value is exclusive of the following options not commissioned:

Option [●] in [● currency]

---

**Annex 7** [*Statement of Costs*] contains a detailed statement of costs.

**Ad 5.2: Terms of payment**

The Consultant's remuneration shall be paid against presentation of an invoice, indicating the BMZ-No. (KfW-Reference No., see § 1.1. Definitions "Project"), as follows:

[•] EUR advance payment. [•] possible stipulation on the advance payment guarantee<sup>21</sup>

[•] EUR instalments<sup>22</sup>

[•] EUR as the final payment<sup>23</sup>

[•] possible stipulation on the retention guarantee<sup>24</sup>.

**Ad 5.3: Method of payment**

[•]

**Ad 5.4.1: Price adjustment**

Ceiling Amount for price adjustment is 15% of original contract price

Base index foreign currency costs:

Base index local currency costs: [•]

**Ad 5.5: Payment deadline**

Agreed compensation for overdue payments pursuant to Paragraph 5.5 [*Payment Deadline*]: [•] per cent per year, in relation to the outstanding amount.

**Ad 5.8: Currency**

The applicable currency for the Contract shall be [•].

**Ad Article 6: Liability**

**Ad 6.3: Period of liability**

The Consultant's liability shall terminate 25 [•].

**Ad Article 7: Insurance**

The insurance [•] shall be taken out by the Consultant, the insurance [•] by the Employer. [*N.B.: Complete as appropriate to the case in hand. Please indicate here the sums insured and the maximum number of claims per year (maximisation).*]

**Ad Article 8: Disputes and Arbitration Procedure**

**Ad 8.2: Mediation**

The mediator shall be appointed by [•] and the appointment shall be binding for the parties<sup>26</sup>.

The costs of the mediation and of the mediator's services shall be shared equally between the parties.

**Ad 8.3: Arbitration Procedure**

The place of arbitration shall be [•].

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

---

(Place, date)

\_\_\_\_\_  
(for the Employer)

\_\_\_\_\_  
§ 1 **(for the Consultant)**

## LIST OF ANNEXES

Annex no.	Title
1	Minutes of Negotiations
2	Terms of Reference plus Tender Documents
3	Guidelines for the Assignment of Consultants in Financial Co-operation with Developing Countries (in the version valid on the date the bid was submitted)
11114	Staffing Schedule
5	Equipment and Furnishings provided by the Employer and Third-party Services Commissioned by the Employer
6	Time Schedule for the Performance of the Services
7	Statement of Costs
8	The Consultant's Bid
9	Declaration of Undertaking
10	Advance Payment Guarantee
11	Model Retention Guarantee

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



**Minutes of Negotiations<sup>21</sup>**

Annex 1

**Terms of Reference plus Tender Documents**

**Guidelines for the Assignment of Consultants in Financial Co-operation  
with Partner Countries**

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

**Staffing Schedule**

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

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

**Time Schedule for Delivery of the Services**

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

**Time Schedule for the Performance of the Services**

**Statement of Costs**

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

**The Consultant's Bid**

**Declaration of Undertaking**

We underscore the importance of a free, fair and competitive contracting procedure that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible incentives to any public servant or other person nor accepted such incentives in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present tendering process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the corresponding Guidelines<sup>27</sup>.

We also underscore the importance of adhering to minimum social standards (core labour standards) in the implementation of the Project. We undertake to comply with the core labour standards ratified by the country of Republic of Kenya.

We will inform our staff of their respective obligations and of their obligation to fulfil this Declaration of Undertaking and to obey the laws of the country of Republic of Kenya.

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations, nor of the EU, nor of the German Government, nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the Employer and KfW if this situation occurs at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding on the Employer and/or KfW, the Employer shall be entitled to exclude us/the consortium or, if the contract is awarded to our company/the consortium, to immediately cancel such contract if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion from the tender procedure occurs after the Declaration of Undertaking has been issued.

.....

(Place)

(Date)

.....

(Name of company)

.....

(Signature(s))

\_\_\_\_\_

**Model Advance Payment Guarantee**

Address of guarantor bank: ...  
.....  
.....  
.....

Address of beneficiary (Employer): ....  
.....  
.....  
.....

On ..... you concluded with (name and full address)  
.....  
..... ("Contractor") a Contract for  
..... (Project, object of the Contract) at a price of  
.....

According to the provisions of the contract, the Contractor receives an advance payment in the amount of .....  
.....equalling  
..... % of the contract value, as an advance payment.

We, the undersigned  
..... (bank),  
waiving all objections and defences under the aforementioned Contract, hereby irrevocably and independently guarantee to pay on your first written demand any amount advanced to the Contractor up to a total of  
.....

(in words .....)  
against your written declaration that the Contractor has failed to perform the aforementioned Contract.

This guarantee shall come into force as soon as the advance payment has been credited to the account of the Contractor. This guarantee shall be automatically reduced pro rata in accordance with the payments performed.

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, for account of (Employer/project executing agency/purchaser).

This guarantee shall expire not later than ....  
by which date we must have received any claims by letter or coded telecommunication.

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

.....  
.....

Place, date

Guarantor

**Model Retention Guarantee**

Address of guarantor bank: ...  
.....  
...  
.....  
.....  
.....

Address of beneficiary (Employer): ....  
.....  
.....  
.....  
.....

On ..... you concluded with (name and full address)  
.....  
..... (“Contractor”) a Contract for  
..... (Project, object of the  
Contract) at a price of  
.....

According to the provisions of the Contract, the Contractor receives the amount of  
.....  
..... equalling .....  
% of the Contract value, as a final payment.

We, the undersigned  
..... (bank), waiving all  
objections and defences under the aforementioned contract, hereby irrevocably and  
independently guarantee to pay on your first written demand an amount up to a total of  
.....

(in words .....)

against your written declaration that the Contractor has failed to perform the  
aforementioned contract.

In the event of any claim under this guarantee, payment shall be effected to KfW,  
Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, for  
account of (Employer/project executing agency/purchaser).

This guarantee shall expire not later than .....  
by which date we must have received any claims by letter or coded telecommunication.

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

.....  
.....  
Place, date .....