

## **Terms and Conditions Applicable to the Model Contract for Consulting Services**

### **1. Terms and Conditions**

1. *Conclusion of a contract.* By using this Model Contract (or sections thereof), every User of the Model Contract (hereinafter "User") acknowledges the following Terms and Conditions. These Terms and Conditions are agreed between each User and KfW without requiring that KfW receives the User's acceptance of the Terms and Conditions associated with the use of the Model Contract.

2. *Liability of KfW.* KfW assumes no liability for damages arising from or in connection with the use of the Model Contract, except for intent, gross negligence and injury to life, body or health.

3. *Limitation of the responsibilities of KfW.* KfW has prepared the Model Contract as an example of a contract for consulting services, for which KfW grants its consent in principle. However, KfW assumes in particular no obligation for the review of:

- the legal and factual accuracy of the Model Contract by obtaining internal or external legal advice,
- the factual accuracy of the circumstances underlying the Model Contract,
- the suitability of the Model Contract for the purposes of the User,
- the balance of the Model Contract versus the individual interests of the specific User,
- the contractual drafts prepared using the Model Contract that are submitted to KfW, e.g., for consent, and
- the need to update the Model Contract in the event of changes in legislation.

4. *Obligations of the User.* Every User shall:

- use the Model Contract only after performing a thorough individual review and making the necessary modifications for the specific circumstances.
- engage legal counsel to review the contractual draft based on the Model Contract prior to the conclusion of a contract, in order to investigate the enforceability and effectiveness of the contract under the applicable legislation.

### **II. Notes for the User**

KfW expressly refers every User of the Model Contract to the following:

- KfW prepared this Model Contract based on the FIDIC agreement for consulting services ("White Book"), in order to provide partners of KfW with wording assistance for their contractual relationships with consultants. At the same time, use of this Model Contract facilitates the consent of KfW.
- The Model Contract was not developed based on any specific legal jurisdiction; instead, the choice of governing law is left to the contracting parties. KfW has not investigated whether modifications of the Model Contract are necessary so that it can be used under the respective potential jurisdictions.
- The Model Contract must be adapted to the individual needs of the specific User and should only be signed after the User has reviewed whether the specific contractual provisions are suitable for his individual purposes.

### **III. Structure of the Model Contract**

Section 1: General Conditions – these include the general underlying contractual provisions. Changes in this section usually have a significant impact on the contract and require the prior consent of KfW.

Section 2: Special Conditions – these include the specific details of each individual case. Any modifications or deviations based on the specifics of the project or due to contractual negotiations can be included here.

Section 3: Annexes – depending on the contents, these are either project specific (e.g., TOR, Time Schedule) or generally defined (e.g., Declaration of Undertaking).

# **CONTRACT**

for Consulting Services

dated

[•]

between

[•]

– hereinafter referred to as the “Employer” –

and

[•]

– hereinafter referred to as the “Consultant” –

for

[•]

– hereinafter referred to as the “Project” –

BMZ no. [•]

## CONTENTS

Section	Page
Preamble .....	1
GENERAL CONDITIONS .....	1
<b>§1 General Provisions .....</b>	<b>1</b>
<b>§ 2 The Employer .....</b>	<b>3</b>
<b>§ 3 The Consultant .....</b>	<b>3</b>
<b>§ 4 Commencement, Completion and Amendment of the Services .....</b>	<b>4</b>
<b>§ 5 Remuneration .....</b>	<b>6</b>
<b>§ 6 Liability .....</b>	<b>6</b>
<b>§ 7 Insurance .....</b>	<b>7</b>
<b>§ 8 Disputes and Arbitration Procedure .....</b>	<b>7</b>
SPECIAL CONDITIONS .....	8

## **Preamble**

The Employer desires that the consulting services described in more detail in the Special Conditions be rendered. The Consultant has submitted a bid for these services.

Now therefore, the Employer and the Consultant (hereinafter referred to as the "Parties") hereby agree on the following:

## **GENERAL CONDITIONS**

### **§1 General Provisions**

#### **1.1 APPLICABLE REGULATIONS**

1.1.1 The following regulations are considered to have been agreed between the Parties unless otherwise agreed in the Special Conditions.

The applicable contractual regulations between the Parties (hereinafter referred to as the "Contract") consists of the conditions of this consulting Contract (General Conditions and Special Conditions) along with the following contractual annexes:

Annex 1 [Declaration of Undertaking]

Annex 2 [Remuneration and Invoicing]

Annex 3 [Terms of Reference]

Annex 4 [Project-specific Provisions]

Furthermore, the KfW Guidelines for the Commissioning of Consultants in Financial Cooperation with Partner Countries (available at [www.kfw-entwicklungsbank.de](http://www.kfw-entwicklungsbank.de) under "Procurement") form an integral part of the Contract.

#### **1.2 PARTIES**

1.2.1 The addresses and authorised representatives of the contractual Parties to whom all communications are to be served are listed under the Special Conditions. If the Consultant does not originate from the project country, it shall also nominate to the Employer and KfW an individual at the Consultant's place of business who may be reached at any time in cases of emergency or crisis and shall immediately inform the Employer of any change in this regard

#### **1.3 WRITTEN FORM AND LANGUAGE**

1.3.1 Amendments and supplements to this Contract, including to this written form clause, require the written form and shall be, as with all communication between the Parties, in the language agreed in the Special Conditions of this Contract.

#### **1.4 APPLICABLE LAW**

1.4.1 The Special Conditions contain the law applicable to this Contract.

#### **1.5 ASSIGNMENT AND SUB-CONTRACTS**

1.5.1 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 consent of KfW.

1.5.2 If the Consultant intends to assign part of the contractual Services to others, it shall inform the Employer and KfW thereof at least 14 days before signing a corresponding sub-contract. If the Employer or KfW rejects such an assignment, the Consultant shall refrain from signing the respective sub-contract. In cases where the Services are sub-contracted, the Consultant's obligations to fulfil the Contract shall remain unaffected. The Consultant shall ensure that the sub-contractor fulfils all requirements of this

## **1.6 TRANSFER OF OWNERSHIP AND RIGHTS OF USE**

Contract, in particular also in relation to corruption avoidance and confidentiality.

1.6.1 The Consultant shall transfer to the Employer on the date on which any such rights arise, and in any event no later than on the date on which they are acquired:

- a) all transferable rights arising from the Services performed on the basis of this Contract,
- b) ownership of all studies, reports and associated data and documents that are created in connection with this Contract, or studies, reports and associated data and documents made available to the Employer as well as software produced or adapted and,
- c) on completion of the Services, legal title to the items of equipment obtained by means of this Contract.

Insofar as a transfer of such rights according to (a) is not possible, the Consultant shall irrevocably grant to the Employer unrestricted, transferable, licensable and exclusive rights 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.

1.6.2 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.

## **1.7 CONFIDENTIALITY AND PUBLICATION**

1.7.1 Without prejudice to any statutory obligations of disclosure imposed on it, the Consultant shall keep confidential all documents passed on to it by the Employer and if applicable by KfW, as well as all information exchanged and knowledge acquired concerning this Contract and its implementation, unless the Employer or KfW have authorised disclosure in writing or the information was already in the public domain before the Contract was signed.

## **1.8 CORRUPTION AND FRAUD**

1.8.1 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.

1.8.2 The Consultant warrants with its signature that the declarations named in Annex 1 [Declaration of Undertaking] are true and correct and undertakes that it will fulfil the obligations and rules of conduct set out therein in connection with the implementation of this Contract.

1.8.3 The Consultant undertakes to immediately notify the Employer in detail and in writing if the Consultant is induced by a public official or any other persons to make illegal payments. A public official shall be:

- a) any official or employee of a public authority or an enterprise under the ownership or control of a government;
- b) any person who performs a public function;
- c) any official or staff member of a public international

organisation;

d) any candidate for a political office; or

e) any political party or official of a political party.

## **1.9**

### **REIMBURSEMENTS**

1.9.1 All reimbursements, insurance payments or similar payments, if any, shall be paid to KfW, Frankfurt am Main (BIC: KFWIDEFF, IBAN: DE53 5002 0400 3800 0000 00), in the case of financing from project funds for the account of the Employer, stating the BMZ number or the KfW order number as a reference.

## **1.10**

### **PARTIAL INVALIDITY**

1.10.1 The invalidity or unenforceability of one or more provisions of this Contract will not affect the validity or enforceability of any other provision 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.

## **§ 2 The Employer**

### **2.1**

#### **DUTY OF COOPERATION**

2.1.1 The Employer is obliged to perform the duties of cooperation to which it is subject free of charge and without delay. During the term of this Contract, the Employer shall, free of charge, in particular place at the disposal of the Consultant all data, documentation and information concerning the contractual Services that are available to it and shall support the Consultant as far as reasonably possible, if applicable also in consultation with KfW.

### **2.2**

#### **TAXES**

2.2.1 If and insofar as the Consultant and its foreign staff are obliged to pay taxes, duties, levies and other charges in connection with the Services performed according to this Contract in the project country, which are connected with:

a) payments to the Consultant or its foreign staff;

b) services which are rendered by the Consultant or its staff;

c) equipment, materials, and supplies necessary for the performance of the services,

and insofar as these costs have not already been allowed for in the Order Value according to the Special Conditions and Annex 2 [Remuneration and Invoicing], on provision of evidence of the corresponding payments the Employer shall include in the final payment to the Consultant a reimbursement for all amounts paid in this regard.

### **2.3**

#### **REMUNERATION**

2.3.1 The remuneration obligations of the Employer are defined in Paragraph 5 [Remuneration]

## **§ 3 The Consultant**

### **3.1**

#### **SCOPE OF SERVICES**

3.1.1 The Consultant shall render the Services assumed by it as described in detail in the Special Conditions and Annex 3 [Terms of Reference] ("Services") in full and on time with the required due care in accordance with professional practice and recognised quality standards (current scientific and generally accepted engineering standards).

3.1.2 Changes to the Services described in paragraph 3.1.1. or the remuneration according to paragraph 5 or changes that affect KfW's legal position may only be agreed with the previous consent

### **3.2 REPORTING**

of KfW.

3.2.1 The Consultant shall report to the Employer according to the Special Conditions about the progress of the Services and shall make any required information available. In the case of longer assignments, the Consultant shall submit regular reports. On completion of the Services, it will draw up a final report for the entire completion period. It shall document its work, the course of the project and the decisions made in a transparent manner.

3.2.2 The Consultant shall inform the Employer promptly of all unusual circumstances that occur during the performance of the Services and about all matters that require the consent of KfW.

### **3.3 DEPLOYMENT OF STAFF**

3.3.1 Insofar as the Parties agree the deployment of key staff, these persons shall be named in Annex 4 [Project-specific Provisions]. The following provisions 3.3.2 and 3.3.3. shall then apply.

3.3.2 If key staff employed by the Consultant need to be replaced, the Consultant shall ensure that the staff member in question is replaced promptly, subject to agreement by the Employer, which may not withhold the same without an objective reason, by an individual with at least equivalent qualifications.

3.3.3 The costs for the withdrawal or replacement of staff during the Contract period shall be borne by the Consultant, unless this occurred on request of the Employer. In this case, the Employer shall bear the costs for the replacement of the staff member, unless the staff member in question does not meet the requirements necessary for fulfilment of the Contract or has interfered in the internal affairs of the project country.

### **3.4 PROJECT-SPECIFIC PROVISIONS**

3.4.1 Annex 4 (Project-specific Provisions) contains the specific project-related features of the project and the Services affecting the Consultant if such arrangements are made by the Parties.

## **§ 4 Commencement, Completion and Amendment of the Services**

### **4.1 COMMENCEMENT AND COMPLETION**

4.1.1 The Special Conditions contain the date of commencement as well as the agreed completion date, which are binding for the Consultant subject to any amendments by the Parties. A detailed time schedule, where required, is appended in Annex 4 [Project-specific Provisions].

4.1.2 Insofar as this Contract provides for optional services, the Consultant shall commence delivery of the optional services not earlier than upon receipt of written notification from the Employer.

### **4.2 PENALTIES FOR DELAY**

4.2.1 If the Consultant fails to perform any of the Services under this Contract within the requisite time period due to 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.

### **4.3 FORCE MAJEURE**

4.3.1 In the event of Force Majeure, the contractual obligations, insofar as affected by such event, shall be suspended for as long as performance remains impossible due to the Force Majeure. Force majeure means if any event whereby one party to the Contract is prevented to a considerable extent from performing the Services due to unavoidable, unforeseeable circumstances, such

as natural disasters, hostage-taking, war, crises, revolution, terrorism and sabotage, that cannot be avoided or rendered harmless and must not be accepted because of its frequency ("Force Majeure"). This also includes in particular orders by the Federal Foreign Office of the Federal Republic of Germany for German citizens to leave the project country or project region. Insofar as an event originates entirely from the sphere of responsibility of one party to the Contract, this event does not qualify as Force Majeure.

4.3.2 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.

4.3.3 If the performance of the Services is rendered permanently impossible by the Force Majeure, or if the Force Majeure lasts for longer than 180 days, both Parties shall be entitled to terminate the Contract. In this case, the Services performed up to the time of the Force Majeure and all documented necessary expenditure of the Consultant arising from the discontinuation of the Services shall be invoiced on the basis of contractual prices. Neither party shall make any further claims.

4.3.4 Any and all liability of the Consultant for damages arising due to its absence caused by the Force Majeure is excluded. It is, however, obliged to take all actions open to it to minimise the damages. Conversely, the Employer is not liable for additional costs incurred by the Consultant for the duration of the interruption.

## **4.4 TERMINATION**

4.4.1 The Employer is entitled to terminate this Contract if the Consultant culpably fails to meet its contractual obligations, the performance of its Services is not in compliance with the Contract, or the Services are not performed in a timely fashion. In this case, the Consultant is solely 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 damage caused by this default.

4.4.2 The Consultant may terminate this Contract if the Employer does not pay any amounts due and payable to it under this Contract or does not make payment in a timely fashion. In this case it may demand the agreed remuneration but must, however, deduct any expenses that it has saved by termination of the Contract or any income that it has earned from other deployments of its staff or which it has not earned as the result of wilful actions or omissions.

4.4.3 Before a notice of termination is served according to paragraphs 4.4.1 and 4.4.2., the respective other Party is to be served notice of breach of its contractual obligations and to be granted a grace period of at least 30 days to remedy this.

4.4.4 The Employer, with the prior consent of KfW, may suspend or terminate this Contract after serving written notice of at least 30 days without stating reasons. In the case of suspension, the Employer shall reimburse the Consultant for the resulting, unavoidable costs. In the case of termination, the legal consequences of paragraph 4.4.2 shall apply accordingly.

4.4.5 In the event of suspension or termination, the Consultant is obliged to immediately take measures to limit damages. On termination, all previously created drafts, reports or other documents or such that are to be created by the termination date are to be passed on to the Employer.



## **4.5 CORRUPTION AND FRAUD**

4.5.1 If it is proven that the Consultant has breached Paragraph 1.8 [Corruption and Fraud] or that the Declaration of Undertaking in Annex 1 is untrue or will become so, 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 without observing a period of notice.

## **§ 5 Remuneration**

### **5.1 REMUNERATION OF THE CONSULTANT**

5.1.1 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 2 [Remuneration and Invoicing] contains a detailed breakdown.

### **5.2 TERMS OF PAYMENT**

5.2.1 The Employer shall pay the Consultant's remuneration to the account named in Annex 2 [Remuneration and Invoicing] according to the following schedule:

- a) Advance payment, due within 60 days of entry into force of this Contract.
- b) Instalments, if applicable, shall be paid upon presentation of corresponding invoices with a maximum of one payment per quarter. 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.
- c) The final payment shall be made against presentation of a corresponding invoice after the Services have been properly performed in full, they have been accepted (if applicable) and approval of the final report by the Employer and KfW. In the case of inadequate performance, the Employer is entitled, with prior consent of KfW, to a reasonable reduction of the final payment.

5.2.2 Unless otherwise agreed, payments shall be made within a period of 60 calendar days after receipt of the invoice by the Employer.

5.2.3 Optional services as per paragraph 4.1.2. will be settled in connection with the final invoice.

### **5.3 AUDITING**

5.3.1 For services or partial 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 retain all settlement-related documents for five years and authorises the Employer and KfW to audit these at any time.

## **§ 6 Liability**

### **6.1 LIABILITY OF THE CONSULTANT**

6.1.1 The Consultant shall be liable to the Employer for verifiably culpable breaches of its contractual obligations, particularly breaches of Paragraph 3 [The Consultant]. It is likewise liable for its subcontractors to the same extent. Liability for consequential damage is excluded. Furthermore, the liability of the Consultant shall be limited to the Order Value. The limitation of liability stated in the two preceding sentences shall not apply for premeditation and gross negligence.

### **6.2 LIABILITY OF THE**

6.2.1 The Employer shall be liable to the Consultant for

## **EMPLOYER**

verifiably culpable breaches of its contractual obligations, particularly breaches of Paragraph 2 [The Employer]. Liability for consequential damage is limited to premeditation and gross negligence. Liability for injury to life, limb or health shall remain unaffected.

## **§ 7 Insurance**

### **7.1**

#### **INSURANCE**

7.1.1 For the term of the Contract the Consultant shall take out at its own expense all insurance cover that is required and customary in order to insure its professional and personal risks, including as a minimum a professional liability insurance policy. On request by the Employer, the Consultant shall present proof of this insurance.

## **§ 8 Disputes and Arbitration Procedure**

### **8.1**

#### **ARBITRATION PROCEDURE**

8.1.1 If the Parties do not reach amicable agreement, disputes arising out of or in connection with this Contract shall finally and exclusively be settled by a single arbitrator appointed and proceeding in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris. The place of arbitration and the language of the arbitration procedure shall be stipulated in the Special Conditions.

# **SPECIAL CONDITIONS**

(the references refer to the respective paragraphs in the General Conditions)

## **Preamble**

**Project:** [•] .

## **Ad 1.1 Applicable Regulations**

Annex 2 [Remuneration and Invoicing] omitted.

## **Ad 1.2 Contractual Parties and Contacts**

Employer is [•]

The Employer's contact person is [•]

Address of Employer:

Postal address [•]

Email: [•]

Phone: [•]

Consultant is [•]

The Consultant's contact person [•]

Address of Consultant

Postal address: [•]

Email: [•]

Phone: [•]

Address of KfW:

Postal address Palmengartenstrasse 5 – 9  
60325 Frankfurt / Germany

Email: info@kfw.de

Phone: +49 (69) 7431 - 0

Fax: +49 (69) 7431 - 2944

## **Ad 1.3 Language**

The language of the Contract is [•] .







**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 of the kind described in the corresponding [KfW Guidelines for the Engagement of Consultants in Financial Cooperation with Partner Countries](#).

We also underscore the importance of adhering to environmental and social standards in the implementation of the Project. We undertake to comply with applicable labour laws and the Core Labour Standards of the International Labour Organization (ILO) as well as national and applicable international standards of environmental protection and health and safety standards.

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

We also declare that we 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 we will immediately inform the Employer and KfW if this situation occurs at a later stage.

We acknowledge that, in the event that we are added to a list of sanctions that is legally binding on the Employer and/or KfW, it shall be entitled to exclude us or, if the contract is awarded to our company, 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))

**BMZ No. [●]  
 Programm / Project [●]  
 Schedule of Consulting Services / Period [●]  
 Invoice No. [●]**

as contractually agreed						invoicing			
Item <sup>1</sup>	Description <sup>2</sup>	Unit <sup>3</sup>	Quantity <sup>4</sup>	Unit Rate <sup>5</sup> EUR	Contract Sum <sup>6</sup> EUR	Previous Cumulative Expenses <sup>7</sup> EUR	This Invoice <sup>8</sup> No. (x) EUR	Current Cumulative Expenses <sup>9</sup> EUR	Remaining Budget <sup>10</sup> EUR
1									
2									
3									
4									
5									
Total costs at actual - Contract Sum					0,00	0,00	0,00	0,00	0,00
					11	12	13	14	15
Advance Payment					0,00		0,00	0,00	0,00
<b>Invoiced Amount</b>							<b>0,00</b>		

**Abbreviations and explanations:**

- <sup>1</sup> Reference according to cost sheet
- <sup>2</sup> E.g. field personnel, travel costs
- <sup>3</sup> E.g. hours, days, month, flights, item
- <sup>4</sup> Numerical unit
- <sup>5</sup> Cost per unit
- <sup>6</sup> Contractually agreed price in total (quantity multiplied by unit rate)
- <sup>7</sup> Already invoiced/disbursed

- <sup>8</sup> Accounting / billing period
- <sup>9</sup> Previous cumulative expenses plus this invoice
- <sup>10</sup> Contract Sum minus Current Cumulative Expenses
- <sup>11</sup> Advance Payment Amount (if applicable)
- <sup>12</sup> Previous recovery
- <sup>13</sup> Current recovery
- <sup>14</sup> Total recovery (previous recovery plus current recovery)
- <sup>15</sup> To be recovered (Advance Payment minus total recovery)



**Terms of Reference**

**- not applicable -**

**Project-specific Provisions**

- not applicable -

**Key staff**

**Schedule]**