



**Republic of Kenya**



**KfW**

**Ministry of Health - Kenya and KfW  
Support to Health Financing Strategy**

**REQUEST FOR PROPOSALS (RFP)**

**TENDER NO: MOH/DFH-KFW/ONT/01/2021-2022**

**TENDER NAME: CONSULTANCY SERVICES FOR EXTERNAL AUDIT OF:**

**a) PROGRAMME on Health Sector Financing Strategy**

Reproductive Health Output Based Approach (RH-OBA) and Sexual  
Gender Based Violence (SGBV)

Ref-No.BMZ-2010.65.853

**b) PROGRAMME on Development of the Health Sector**

Reproductive Health Output Based Approach (RH-OBA)

Ref-No.BMZ-2007.65.131

**TENDER ISSUING DATE:** 7<sup>th</sup> January, 2022

**TENDER CLOSING DATE:** 28<sup>th</sup> January, 2022 11:00 am Kenyan Time

## **OVERVIEW AND CONTEXT OF THIS PROCUREMENT**

The Governments of Republic of Kenya (GOK) through the Ministry of Health, and the Federal Republic of Germany (FRG) through KfW have jointly funded and implemented two programmes in Kenya since 2006; the Programme on Health Sector Financing Strategy (with two components on Reproductive Health-Output Based Approach (RH-OBA) and Sexual Gender Based Violence (SGBV), among others (Ref-No. BMZ: 2010.65.853) and the Programme on Development of the Health Sector; again with a component on Reproductive Health-Output Based Approach (RH-OBA) among others, (Ref-No. BMZ: 2007.65.131). The core objective of the programmes was to improve equitable access of the economically and socially disadvantaged members of the community to financially feasible and accessible health care particularly in the field of sexual, gender and reproductive health. The programmes have been running in phases of three (3) years each.

## **BRIEF DESCRIPTION OF CONSULTANCY SERVICES**

The detailed terms of reference are included in this dossier as Annex A (Terms of Reference). Broadly, the overall objective is for the consultant to establish an Opinion / a conclusion on the subject matter information (e.g. financial reports and statement of expenditures) for the three disposition funds under the financial positions of both KfW loan/ grant with -Ref-No. BMZ-2010.65.853 (RH-OBA, disposition fund No.8 and SGBV, disposition fund No.14) and Ref-No. BMZ-2007.65.131 (RH-OBA, disposition fund No.19)

## CONDITIONS OF TENDER (COT)

### 1 BIDDING PROCEDURE

#### 1.1 GENERAL

The rules of this tender are in accordance with the latest version of the KfW Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partners (<https://www.kfw-entwicklungsbank.de/PDF/Download-Center/PDF-Dokumente-Richtlinien/FZ-Vergaberichtlinien-V-2021-EN.pdf>). The Ministry of Health as the Project Executing Agency (PEA) carries out this tender.

#### 1.2 Presentation of proposals

The tender should be submitted in one sealed package containing two clearly marked separate envelopes also sealed, one with the description **“Prequalification documents and Technical Proposal”** and the other with the description **“Financial Proposal”**. The financial proposal envelope shall be sealed and no financial information shall be contained in the technical proposal.

The package shall display the following information:

- The title of the call for tenders and reference number,
- The address where the tenders have to be sent,
- The tender's name and number,
- The following words clearly visible: **Request for Proposals – DO NOT OPEN BEFORE THE TENDER OPENING TIME.**

#### 1.3 Language of the proposals

The technical and financial proposals as well as all communication related to the present tender shall be prepared in **English language**.

#### 1.4 Submission of proposals

Tenderers should deposit a sealed package with one (1) original and one (1) copy of each proposal (including a soft copy of the technical proposal) in the manner indicated in 1.2 (above) to the tender box marked **“Ministry of Health”** situated in the **ground floor, Afya House, Cathedral Road, Nairobi Kenya**. The package should be addressed to the Principal Secretary, Ministry of Health, Cathedral Road off Ngong Road. Nairobi, Kenya

The deadline for receipt of proposals at the address mentioned above is **28<sup>th</sup> January, 2022 11:00 am East African Time**. Proposals received after the deadline will not be accepted and will be returned unopened.

The Technical Proposals will be opened in public on **28<sup>th</sup> January, 2022, 11:00 am East African Time** at the Ministry of Health at the GTZ boardroom in presence of the bidders' representatives who choose to attend the tender opening.

### **1.5 Validity period of proposals**

The period of validity of the proposals is **120 days** counted from the deadline for the receipt of tenders.

### **1.6 Information visit to the site**

Not applicable.

### **1.7 Request for additional information**

Any communication or request for additional information concerning this RFP is only permitted in writing to Ministry of Health, and must be received up to ten (10) days before the deadline for the submission of the proposals. Responses to any such request, if the situations warrants, will be in writing and copied to all the bidders who registered during collection of the RFP and have declared intention to submit proposal. Such requests quoting the tender reference number are to be sent to the address of Ministry of Health as indicated below.

The Principal Secretary,

Ministry of Health

P.O. Box 30016-00100

Nairobi, KENYA

Attn: Head of Supply Chain Management Services

Email Address: [procurement@health.go.ke](mailto:procurement@health.go.ke)

### **1.8 Amendments to the RFP Dossier**

Any modification made to this RFP dossier during the Tender period will be communicated forthwith in writing to the bidders who have been provided with the RFP documents or submitted their registration details through Email address: [procurement@health.go.ke](mailto:procurement@health.go.ke) and who have declared intention to bid, together with notice of any extension of the bid period or addendum.

### **1.9 Association**

Consultancy firms may associate in order to enhance capacity. However, the lead firm will be clearly identified in the proposal so as to take contractual responsibilities.

## 2. CONTENTS OF PROPOSALS

### 2.1 Technical proposal

The technical proposal shall contain.

#### **Part A: Corporate status and capacity**

This section shall have the structure and content and be presented in the same sequence as shown below;

##### **a) Cover Letter**

The covering letter comprises the firm's name, address, contact person, telephone, fax and email as well as the relevant data of the associated partners.

##### **b) Presentation of Firm**

Presentation of the firm and associated partners (maximum 10 pages, for each firm separately). This shall include clear statements of type, property and key task of the firm and the associated partners.

##### **c) Organization Documents**

The consultant is expected to provide organization documents comprising of Certificate of Incorporation/ Registration, Valid Tax Compliance certificate and Company Profile.

##### **d) Declarations**

The Tenderer (in case of an association one separate declaration for each member) shall provide the following declarations issued after the date of the invitation letter:

- **Declaration of Association:** duly signed by the associated partners, clearly specifying the intended contractual arrangement between the partners and nominating the lead consultant as well as Letters of Intent of the associated partners (local partners may provide a scan / fax copy of such Letter of Intent).
- **Declaration on Associated Firms:** In a duly signed declaration (in case of an association one separate declaration for each member) the Tenderer has to reveal any links with other firms which may present a conflict of interest in providing the envisaged services. Furthermore, the Tenderer shall submit a legally binding confirmation that — in case of award of contract - he and the firms with which he is associated do not apply as manufacturers, suppliers or construction firms for the same project for which the Tenderer is acting as consultant.
- **Declaration of Undertaking:** A duly signed declaration (in case of an association by all members) pursuant to the wording given in the "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partners" Annex 1 available on <https://www.kfw-entwicklungsbank.de/PDF/Download-Center/PDF-Dokumente-Richtlinien/FZ-Vergaberichtlinien-V-2021-EN.pdf> shall be included.

Bidding firms should note that failure to provide the information described in Article 2.1 Part A (a to d) above shall lead to disqualification of the bid without further assessment, and at no resultant consequence to the PEA or KfW.

## **Part B: Technical approach**

The technical proposal shall contain:

### **a) Critical Analysis of Project Objectives and Terms of Reference (TOR) (1 page)**

The Tenderer is explicitly encouraged to present a detailed critical analysis and the Tenderer's interpretation of the project's objectives and the TOR. This might encompass critical comments and doubts about the suitability, consistency and feasibility of individual aspects and the concept as a whole, if any. The methodology suggested must take constructive account of these.

### **b) Proposed Concept. Methods and Work Plan (<15 pages)**

This section will contain:

- **Conceptual and methodological approach:** proposed to carry out the services. In this context, the Tenderer is explicitly encouraged not to repeat the TOR but to show the suitability of his concept in regard to the TOR and his comments made on these. The approach should include a Work Plan proposing the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports, works and services. The conceptual and methodological approach should show the understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports and tables to be delivered as final output, should be included. The described approach should also include an assessment how the proposal mitigates the risks of the project.
- **A working programme:** (bar chart) showing clearly the different project / study phases as well as the main tasks planned, their duration and their interactions. The chart shall also include milestones, deadlines for discussions, decisions and submission of reports. The schedule has to be consistent with the proposed methodological approach;
- **A staffing schedule:** (bar chart) showing clearly times and places of effective assignment for each professional. The chart shall be completed or accompanied by a table stating the precise periods of duty for each professional by places of assignment. These periods shall be broken down to each project / study phase. In this table the assignment of expatriate and local staff will be treated separately. The Tenderer is encouraged to include junior staff in his team subject to available guidance within a team headed by senior professional staff and application of adequate rates. If certain tasks are not exclusively performed at site, the Tenderer has to

describe how the execution and co-operation between site and home office staff is assured,

- **A statement of work organization** and an organization chart showing the Tenderer's internal organization as well as the envisaged interactions with the PEA and KfW as well as with other stakeholders. Responsibilities within the project team have to be defined; Envisaged back-up services by the home office for the team working locally on technical and administrative questions that could arise during project implementation as well as for the controlling and monitoring of the work / the study;
- **Procedures for Quality Control Management of services** (reports, documents, drawings), including those prepared by associates, sub-consultants and local partners, before submission to the PEA / KfW. Plain reference to ISO 9001 is not considered to be adequate;
- **Planned logistics and facilities for the execution of the services.**

The Tenderer is invited to comment those items of the above mentioned fields that require additional explanation. The texts and information should be compiled and presented in a way that is related to the project. Tenderers shall refrain from long explanations in the style of a textbook. The presentation of diagrams, tables and graphics is preferred.

### **c) Key Staff**

Tenderer shall provide a detailed description of tasks to be performed by each team member (including back-up staff in the home office) as well as details on the selection and experience of the proposed members with regard to their tasks.

Furthermore, the Tenderer shall provide updated curricula vitae (CV) of the proposed international key staff and local / regional assistant staff according to the model given in Sub-Annex B-1. A summary of key staff detailed shall be given in the format Sub-Annex B-2, though in cases of conflict with CV, the CV shall prevail. Key staff should have adequate education, professional experience and experience in the region. Unless stipulated otherwise in the Special Conditions of Tender, region includes the country and neighboring countries with similar political, socio-economic and cultural conditions. It is particularly expected that international key staff has project- and job/post-related experience and has completed similar tasks in similar projects of similar magnitude and with international financing. The CV shall indicate whether the proposed staff member is part of the Tenderer's permanent personnel or not.

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

#### **d) Sub-contractors**

No sub-contracting is expected unless the Tenderer provides very good reasons to do so. In such a case, the Tenderer will clearly specify the services to be carried out by sub-contractors other than those being part of the Consulting association. He shall indicate the firms to whom he intends to sub-contract such services.

### **2.2 Financial proposal**

Based on the quantities of staff and other services the bidders will submit a Financial Proposal. All rates will be in EURO. The Financial Proposal shall contain the following information and be structured as detailed in Annex D. The Financial Proposal shall contain the following information and be structured as detailed in Annex D.

#### **a) Cost of Personnel:**

For international and local/regional staff including monthly home office rate, including salary, social charges and overhead cost, bonus, vacation and sick leave, home office cost, all medical examinations, professional training, back-up services from home office (professional, personal and administrative), cost of IT equipment, company's professional insurance, risk and profit.

#### **b) Allowance and accommodation:**

For expatriates (hotel rent or provision of flat/house with provision of furniture and equipment through rent or purchase) and, if necessary, for local staff (per month).

#### **c) International Travel Cost contain:**

- international air fares (based on business class fare), including complementary travel cost (e.g. transfer cost to and from airports, visa, airport tax, excess baggage and / or air freight, medical expenses, visa, etc.) as a lump sum item per round trip.
- air fares for inspection flights, if any

#### **d) Cost for Local Transport contain:**

- Lease or rent of programme vehicles or depreciation cost of vehicles owned by the Tenderer as lump sum item per month of operation;
- Running cost of own or leased/rented vehicles as a monthly lump sum item per car including gasoline, oil, tires and other consumables, all risk insurance, maintenance and repair costs as well as costs for driver. Private



use of official vehicles during off-duty time (if allowed) has to be specified in the Financial Proposal;

- Cost for local air, road and rail travel, if any, as a lump sum item;
- Taxi costs for local transport demand peaks.

**e) Cost for the Local Project Office:**

Shall be offered as monthly lump sum, consisting of

- Office rent;
- Office operation cost (include cleaning, electricity, water, air conditioning, insurance, telecommunication, international and local freight, etc. and all office consumables).

**f) Production of Reports:**

Shall be offered as lump sum item per copy of a specific report covering costs for report production as specified in the TOR or in the Technical Proposal. The cost of progress photographs, whether specifically taken and used for the reports or not, are included in the relevant lump sum item as well.

**g) Miscellaneous cost:**

Includes all expenses that might not be covered by the above categories. These costs should be expressed as lump sum items (preferably) otherwise they will be reimbursed in the currency as occurred upon presentation of documentary evidence. The following examples may fall under miscellaneous cost:

- Preparation and management of workshops.
- Other budgets/provisional sums for various items, services or other expenses as already indicated in the model of statement of costs — if any

No other cost items except those stated above will be accepted in the Financial Proposal and considered for payment. If the Consultant regards an important cost component not covered by the above instructions, he may ask permission to include such item. Such a request shall reach the PEA not later than ten (10) days before submission date.

Taxes shall be indicated separately in the Financial Proposal. A lump sum contract will be concluded.

### **3.PAYMENT CONDITIONS**

#### **3.1 Currency**

All payments will be made in Euro.

#### **3.2 Taxes and duties**

The Consultant shall prepare his offer bearing in mind the applicable law in the employer's country with respect to all taxes, duties, levies and other charges as stipulated in the Standard Consulting contract of KfW.

#### **3.3 Terms of Payment**

The financial proposal shall be considered fixed for the assignment period. The consultant shall assume that payments will be made as shown below;

Advance Payment: 20% of the total Contract sum, due within 30 days upon signing of the contract and Consultants invoice.

Interim Payments: 70% of the total contract sum upon submission and presentation of draft report, and acceptance thereof by Employer.

Final Payment: 10 % upon termination of the services and submission of the Final Report and the acceptance thereof by the PEA and KfW.

If the Consultant requests changes in the disbursement schedule, he has to justify such a request adequately in his Proposal. He may also make suitable and justified proposals for the conversion of reimbursable items to lump sums based on fixed rates. The final payment procedures will be defined during the contract negotiations.

### **4.ORGANIZATION OF SERVICES**

#### **4.1 Programme duration and commencement of services**

The duration of the assignment from commencement of the contract until presentation of deliverables is expected to be three months. However, it is the responsibility of the Consultant to establish his own detailed work project in accordance with his professional judgment and knowledge of the local conditions.

The Consultant shall commence the services as soon as possible however at the latest within two weeks after the entry into force of the Consulting Contract.

## **4.2 Services required**

The services must in all respect satisfy the requirements laid down in the Terms of Reference (TOR) given in Annex A, which will be part of the Consulting Contract. The preparation of the Consultant's proposal includes a critical verification of these services and, if necessary, their completion or modification according to the Consultant's own assessment of the local situation and his professional experience in order to achieve the set programme objectives. In this context, the local standards and laws will be respected.

## **4.3 Performance of services**

The Consultant will co-ordinate all his activities with the programme manager designated by the Ministry of Health. All official communications to the MOH concerning the programme are to be addressed to the designated manager, MOH.

## **4.4 Contribution of the MOH**

The Consultant will take into account in his financial proposal that the MOH will ensure the following:

- Provide the Consultant with all the information, documents, etc. in his possession and necessary for the completion of his services, free of charge, for the duration of the programme;
- Ensure that the Consultant has all the necessary permits to obtain further information and documents;

## 5. EVALUATIONS OF PROPOSALS

### General

The selection of the Consulting firm for the execution of services will be made in accordance with the KfW's latest "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partners.

### Technical proposal

Only the envelope with the Post-Qualification Document and the Technical Proposal will be opened on the submission date. Financial Proposals remain sealed until the technical evaluation is completed. The technical evaluation will be made in two steps.

First the eligibility is confirmed if the covering letter, the presentation of the firm and associated partners, the declarations correspond to the stipulations indicated in chapter 2.1 Part A. Only those Tenders entirely fulfilling the criteria as mentioned hereunder are eligible for the second evaluation step.

In a second step, the Technical Proposal will be evaluated. The quality of the technical proposal will be evaluated on a scale of 0 to 100 points, according to the criteria given below, which will be examined in accordance with the requirements as indicated in the Terms of Reference.

### CRITERIA

1.	<b>Concept, methodology and work plan</b>		<b>40</b>
1.1	Clarity and completeness of the proposal	5	
1.2	Critical analysis of the project objectives and the TOR	15	
1.3	Proposed concepts and methods	20	
2.	<b>Qualifications of proposed staff</b>		<b>60</b>
2.1	Qualifications of proposed core staff for the assignment	35	
2.2	Experience in carrying out similar work in similar context	15	

2.3	Personnel in the home office who will monitor and control the team, and provide back-up services	10	
<b>Total (maximum)</b>			<b>100</b>

If there are minor omissions in relation to the TOR points will be deducted. A Proposal may be disregarded without evaluation under the above criteria if information required under Articles 2.1 Part A and the declarations required in Article 2.1 Part D have not been submitted.

### 5.3 Financial Proposal

After evaluation of the Technical Proposal, the Financial Proposal of the bidder will be opened if the Technical Proposal achieved a minimum score of 70 points. After correcting any arithmetical errors, the evaluation of the financial proposal will be made with and without reimbursable costs.

### 5.4 Final Evaluation

For the purpose of a combined evaluation the Technical Proposal of a bidder will be weighted 60 % as follows:

$PT = 60 * T$ , with;

$PT$  = weighted technical score (points) of the technical Proposal,  
 $T$  = technical score (points) as per technical evaluation,

The Financial Proposal of a Tenderer will be weighted 40 % as follows:

$PF = 40 \cdot (CO/C) * 100$ , with;

$PF$  = attributed score for the Financial Proposal (points),  $C$  = Bidder's corrected price of the Financial Proposal,  $Co$  = lowest corrected Financial Proposal.

The total score of the Tender will be computes as,

$P = PF + PT$ .

The highest ranked bidder, following evaluation will be invited for contract negotiations. The negotiations will cover the Technical Proposal, acceptable alternatives of implementation or staffing, reimbursable items and miscellaneous and the payment pattern.

### 5.5 Consulting contract

The Technical and Financial Proposals of the successful bidder will become part of the contract to be concluded. The employer however, reserves the right to negotiate and adapt those parts of the Tenderer's proposal, which are considered inadequate with the requirements of the work. Fees and unit rates that were taken into

account in evaluating the price quotation are, in principle, not subject to negotiation.

The PEA will prepare a draft contract according to the standard contract form, see Annex. The contract with the selected bidder will come into force upon signing by the bidder and the PEA and approval by KfW.

## **6. OTHER**

**6.1 Cancellation of Tender:** The tender procedure may be cancelled, prior to awarding the Contract, without thereby incurring any liability to the Client, and notwithstanding the stage in the procedures leading to the conclusion of the Contract, if

- Circumstances underlying the Request for Proposals have changed materially;
- No bidder satisfies the criteria for the award of the Contract;
- The price quotations are obviously unreasonable and/or exceed the financial resources earmarked for the contract. In this case, MOH may, as an alternative to re-tendering, enter into negotiations with the winning bidder to try to obtain a satisfactory offer.

In the event of cancellation of the Tender procedure, the bidder shall be notified thereof by MOH. Such bidder shall not be entitled to compensation.

## **6.2 Unsuccessful Tenderers**

After the evaluation of Technical Proposals, Tenderers that have not achieved the minimum required score will be notified in writing. Their Financial Proposals will be returned unopened.

After the winning Tenderer has been notified of the award of Contract, the remaining Tenderers will be informed in writing.

## ANNEX A – TERMS OF REFERENCE

### GERMAN FINANCIAL COOPERATION WITH KENYA MINISTRY OF PUBLIC HEALTH AND SANITATION

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#### *Terms of Reference*

for

*External Audit of three Dispositions Funds the following  
programmes*

#### **PROGRAMME on Health Sector Financing Strategy**

- a. Reproductive Health Output Based Approach (RH-OBA)  
Ref-No.BMZ-2010.65.853; Disposition Fund 8
- b. Sexual Gender Based Violence (SGBV)  
Ref-No.BMZ-2010.65.853; Disposition Fund 14

#### **PROGRAMME on Development of the Health Sector**

- c. Reproductive Health Output Based Approach (RH-OBA)  
Ref-No.BMZ-2007.65.131; Disposition Fund 19

## **1. Background Information on Reproductive Health Output Based Approach**

PROGRAMME on Health Sector Financing Strategy

- a. Reproductive Health Output Based Approach (RH-OBA)      Ref-  
No.BMZ-2010.65.853; Disposition Fund 8

and

PROGRAMME on Development of the Health Sector

- c. Reproductive Health Output Based Approach (RH-OBA)  
Ref-No.BMZ-2007.65.131; Disposition Fund 19

### **(i) RH-OBA Background**

Under the framework of Kenyan German Co-operation, the Government of Kenya has received long-standing support from the Government of the Federal Republic of Germany for the health sector. The support comprises several programmes in the fields of reproductive health and health financing. Overarching goals are to improve access to high quality health services including reproductive health (RH), a decrease in the number of maternal and child deaths, and an increased acceptance of family planning (FP).

With KfW's support, the RH-OBA Voucher Programme was implemented successfully between 2005 and 2016 in the counties of Kisumu, Kitui, Kiambu, Kilifi and Nairobi. The project aim was to pilot poverty-oriented health interventions to increase access to health services in Kenya. This was in line with the vision of having a National Health Financing Policy and Strategy with integral social health insurance system for the country.

Since inception, RH-OBA Vouchers became one of the most accepted and widely used way of accessing health services in the implementation counties. In the view of the project successes the RH-OBA Voucher Programme in Kenya became the most successful in the Sub-Saharan Africa, and was a learning platform for low and medium countries developing such interventions; notably Zimbabwe, Bangladesh, Cambodia, Yemen, Oman and Cameroun – all which are at different stages of initiating similar interventions.

### **(ii) Basic principles of the RH-OBA concept**

Past experience with development aid shows that financing inputs, e.g. facilities and equipment, does not result in the desired improvements to health outcomes. As a change of paradigm, the RH-OBA programme pays on the basis of agreed outputs with pre-defined results rather than financing the inputs. Vouchers for RH and FP services are sold at token prices to patients. For each voucher presented to previously approved health facilities from the private, government, NGOs, and faith-based organizations, the pre-agreed services are provided and the facilities reimbursed at a fixed rate.

The major advantages of the RH-OBA approach are that it allows:

- resources to be directed towards selected health problems,
- funding of service provision for specific parts of the population,
- introduction of new concepts and tools to health policy-makers and stakeholders,



thus assisting in the development of the health financing strategy,

- Introduction of the idea of pre-payment for quality health services to voucher users.

In addition the output-based approach stimulates private market initiatives and the competition which it promotes amongst providers, encourages providers to improve the quality of care. The approach also promotes efficient utilization of resources by the providers.

### **(iii) RH-OBA Implementation design**

Following the design review carried out in 2010 and thereafter transition to the then Ministry of Public Health and Sanitation, the programme implementation structure was redefined. Key implementation organs were the PEA, Steering Committee, Programme Management Unit supported by management consultants and the Voucher Management Agency as the third party administrator.

The original concept of engaging the services of a third party financial management agent to manage the voucher system and the participation by government, private and FBO health facilities in the scheme has been retained so far. The major structural change were the transfer of programme responsibilities from the NCAPD to the MOPHS and creation of a stand-alone Programme Management Unit that provided technical, administrative and financial oversight within the programme including direct supervision of other agents contracted to provide services within. Programme financing and disbursements.

The first bilateral financing agreements underlying the programme became active in 2005 and ended in October 2008, second from November 2008 to October 2011 while the third and current started from November 2011. The Ministry of Finance usually agrees with the German BMZ on development cooperation assistance and lays down a general framework of financing which results in a Financing Agreement between the MOF and KfW. The particulars regarding implementation of this Financing Agreement are defined further in a Separate Agreement document signed between the implementing agency, MOH, and KfW.

Details pertaining to the execution of subsequent phases of the programme and institutional structures to be involved are described in the respective financing and separate agreements documents, which will form the basis of this audit assignment.

## **2. Background Information on SGBV**

PROGRAMME on Health Sector Financing Strategy

b) Sexual Gender Based Violence (SGBV)

Ref-No.BMZ-2010.65.853; Disposition Fund 14

### **(i) Background to the SGBV Project**

The project was developed by the German Development Cooperation (GDC) with the goal of improving quality and access to sexual and reproductive health including SGBV services in Kenya. The Ministry of Health / Division of Reproductive Health (DRH) was mandated to steer the provision of gender and reproductive health services in Kenya through development of key policies, strategies, guidelines and tools. DRH developed National Guidelines for Management of Sexual Violence that provides standards and protocols for the delivery of quality care to SGBV survivors.

The was developed with the aim of implementing an effective referral system to ensure that survivors benefit from a range of comprehensive services including access to justice by collaborating with the criminal justice system as well as improving cross-sectoral linkages in treatment of SGBV survivors.

The model was implemented within the framework of ongoing output-based-aid (OBA) approach, and utilizing lessons from other pilot financing models such as public-private-partnerships for financing SGBV in Kenya. The specific objectives of the project were;

- a) Identification of potential centres of excellence for SGBV service delivery including specifying their potential roles and responsibilities;
- b) Elaboration of institutional and network set-up that enhances multi-sectoral (health, legal, social) collaboration;
- c) Formulation of capacity development measures for various fields, including services for SGBV survivors, measures at community and legal system level;

## **(ii) Project Rationale**

While there are existing national standards and protocols to guide interventions for SGBV prevention and response, this project seeks to address some of the major challenges in SGBV prevention and response. These include: Strengthening linkages between health and legal sectors as well as, creating awareness, availability of emergency medical, psychosocial and judicial services. The project will also ensure that available service delivery guidelines, registers, post rape care (PRC forms) and Standard Operating Procedures (SOPs) for SGBV are disseminated and made available at the service delivery points.

**Rising statistics:** Recent demographic health survey report (KDHS 2008/9) reveals that one in five Kenyan women (21 %) have experienced sexual violence and this is mostly experienced in familial relationships. The data also reveals that overall, 45 % of women between the ages of 15-49 have experienced either physical or sexual violence. Data from existing GBVR centres of excellence and police data also reveal that over 60% of the cases are perpetrated towards children; a good proportion of SGBV cases are also reported among children aged 5 years and below.

**Quality gaps:** The Kenyan health system has been in crisis due to lack of access to quality health services as well as capacity gaps in both human resources and systems strengthening. Access by the poor to services such as reproductive health including quality comprehensive services for survivors of SGBV has faced numerous challenges through to medical and clinical management, forensics management, long-term psychosocial support and other support such as social services and rehabilitation.

**Financial access barriers:** SGBV financing in Kenya is limited. Much of SGBV response has been integrated within broader HIV response and therefore, national prevention and response interventions are coupled with a myriad of challenges such as stock-outs of supplies and commodities, lack of equipment for SGBV management, limited targeted messaging, limited rehabilitation and safety nets interventions and limited access to justice.

**Gaps in stakeholder collaboration and coordination:** SGBV medical management, psychosocial support and response in Kenya is under the docket of the DRH in collaboration with other government agencies such as Ministry of Gender, Children and Social Development, National Gender and Equality Commission, National AIDS Control Council, Ministry of Medical Services and the Taskforce for the Implementation of the Sexual Offences ACT. There are also many non-government agencies implementing prevention and

response interventions across different levels. A limited number of development partners also support these interventions. There however lacks a coordination and collaboration mechanism at both policy and intervention levels and as such duplication of resources and efforts leading to limited results nationally. The national office at the DRH also needs to be strengthened in terms of capacity building of its staff to effectively co-ordinate and advocate for SGBV service provision as well as stakeholder analysis and coordination.

**Gaps in monitoring and evaluation (M&E) and data management:** Kenya is characterized by underreporting of SGBV cases in both the health and criminal justice systems. This is often due to high stigma associated with GBV as well as lack of information on rights and available services. In addition, the available documentation forms such as the Post Rape Care (PRC) Form used for documenting medical and forensic management are usually insufficient within the health facilities. Post-rape care registers are not available in the facilities and making documentation of sexual violence cases incomplete. The minimal data that is collected by some health facilities is usually not analyzed or fed into the national M&E system. The little data collected is therefore not adequately used for planning purposes. Medico-legal linkages remain weak and access to justice is limited: According to the national standards and protocols, forensic evidence collected from a survivor at a health facility is supposed to be handed over to the police for further submission to the government chemist for analysis. There are challenges in collection, preservation, transportation, and documentation of evidence as well as lack of effective feedback mechanisms between the health and criminal justice systems. There also exists parallel community 'justice systems' in dealing with SGBV and there is limited reporting and presentation to health facilities or police stations. The legal process is also lengthy and expensive and the system is also flawed such that corruption prevails in some instances. Access to justice therefore remains a huge gap for both primary prevention and response; from forensics, to legal aid for survivors, to delays in the juridical process to withdrawal of cases.

### **(iii) Implementation of the SGBV Project**

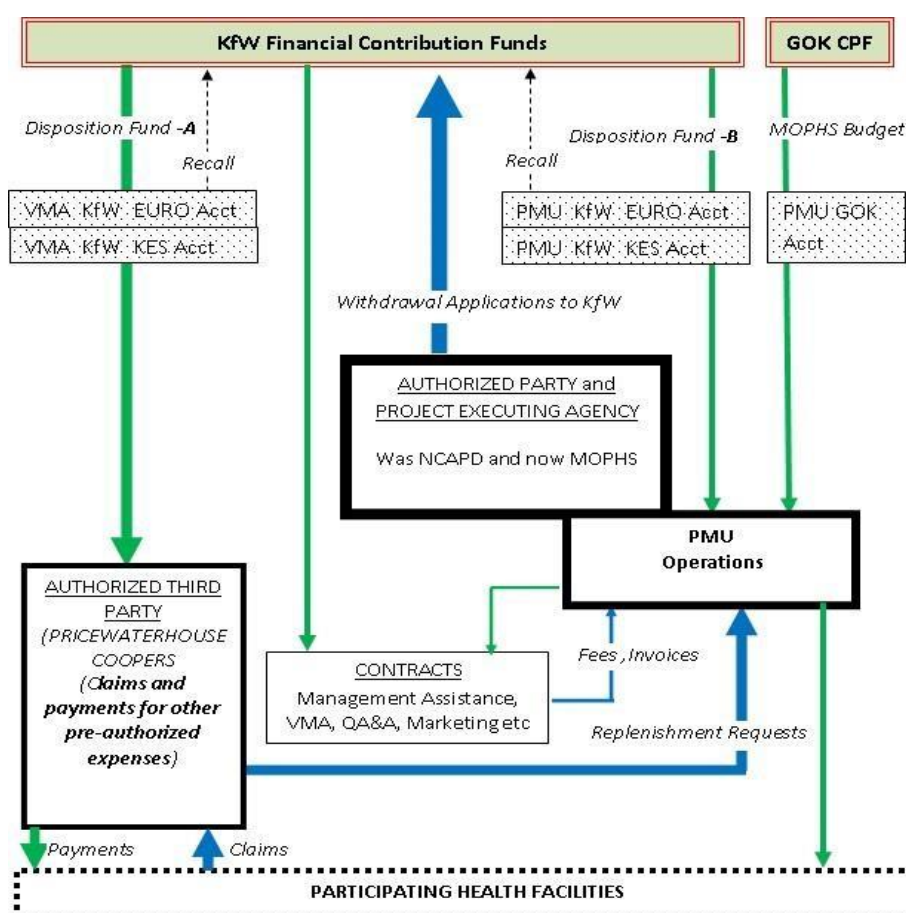
The project was implemented between the years 2012 onwards to 2015. The project was anchored in the Division of Reproductive Health (DRH) with full time consultants engaged to spearhead the project. The project implemented a supply side financing to the health sector providing trainings, inputs and technical assistance to the devolved units and the Ministry of Health.

Survivors who were identified by the project were passed over to the OBA project to receive services in line with the OBA procedures, and the OBA project was mandated to reimburse implementing health facilities for the services provided. The amounts reimbursed for the SGBV project were treated as OBA and thus are captured in the OBA section of this TORs.

### **3. Disbursement procedures**

Upon commencement of a phase, the partners are expected to agree on further breakdown of the budget through an operational plan that details the activities to be implemented and a corresponding budget estimates. The financing mechanisms including disbursement procedures to be applied are as well defined in the bilateral agreement. There are usually two ways of disbursements or payments for claims, a) direct disbursement by KfW to the contractual party rendering goods or services and b) disbursement through a Deposition Fund, where KfW would transfer regularly funds based on 4-months programme forecasts.

Payments from those Disposition Funds are done locally by the PEA. The diagram below depicts the framework of financial flows and disbursement procedures being applied in in both programmes;



The Disposition Funds were opened under the financial conditions of the above mentioned KfW financing agreements as defined in the Annexes “Total Cost and Financing” and “Disbursement Procedure” to KfW’s Separate Agreement.

Accordingly, the Government of Kenya through National Treasury had opened those disposition fund accounts in Euro where financial contributions from Germany through KfW are deposited in Euro.

For payments due, funds are drawn from the Euro disposition fund account to a local special account in Kenyan Shilling, operated by the PEA or VMA for that purpose (Disposition fund –A). A similar account is operated by PMU (DF-B). Funds were withdrawn only upon request from the Project Executing Agency.

These withdrawal requests are to meet the various expenses and payments within the programme under three broad areas; payments for claims from health facilities through the voucher management agent and other expenses like distribution of vouchers, direct payments for consultant fees for various services and, provision for expenses of programme activities implemented through the PMU. Full description of the financing and disbursement arrangements are provided in the respective Financing and Separate Agreement documents for each phase.

#### 4. Subject Matter

The audit shall cover the following three Disposition Funds and all their accounts for the following years:

- a) **BMZ-2010.65.853: Disposition Fund 8: 1st July 2017 – 30<sup>th</sup> June 2021**
- b) **BMZ-2010.65.853: Disposition Fund 14: 1st October 2015 – 30<sup>th</sup> June 2021**
- c) **BMZ-2007.65.131: Disposition Fund 19: 1st July 2015 – 30<sup>th</sup> June 2021**

There are the following accounts:

- a) **BMZ-2010.65.853: Disposition Fund 8**  
(Output Based Approach (OBA)):
  - i. **EUR-Account**  
**Bank:** Standard Chartered Bank  
**Account Number:** 930 6022 985002  
**Account Holder:** PricewaterhouseCoopers (PwC)  
**Currency:** Euro
  - ii. **KES-Account**  
**Bank:** Standard Chartered Bank  
**Account Number:** 010 6022 985016  
**Account Holder:** PricewaterhouseCoopers (PwC)  
**Currency:** Kenya Shillings
- b) **BMZ-2010.65.853: Disposition Fund 14**  
(Sexual Gender Based Violence (SGBV))
  - i. **EUR-Account**  
**Bank:** Standard Chartered Bank  
**Account Number:** 930 8004 101001  
**Account Holder:** Ministry of Health  
**Currency:** Euro
  - ii. **KES-Account**  
**Bank:** Standard Chartered Bank  
**Account Number:** 010 8004 101001  
**Account Holder:** Ministry of Health  
**Currency:** Kenya Shillings
- c) **BMZ-2007.65.131: Disposition Fund 19**  
(Output Based Approach (OBA))
  - i. **EUR-Account**  
**Bank:** Cooperative Bank  
**Account Number:** 22120 161840700  
**Account Holder:** Ministry of Health  
**Currency:** Euro
  - ii. **KES-Account**  
**Bank:** Cooperative Bank  
**Account Number:** 01141 161840701

**Account Holder:** Ministry of Health

**Currency:** Kenya Shillings

There were no petty cash or cash boxes procedures applied.

1. The preparation of the Project Financial Reports (“Financial Reports”), the Summary of Bank Accounts, the Statements of Expenditures (“SOE”) and the disbursement requests (overall “Subject Matter Information”) is the responsibility of
  - (a) PricewaterhouseCoopers (PwC) for the disposition fund No. 8
  - (b) Ministry of Health for disposition funds No. 14 and
  - (c) Ministry of Health for disposition fund No. 19.
2. The financial information has to be established in accordance with consistently applied accounting standards and the underlying agreements governing the use of funds, notably the Loan/Financing Agreement(s) including the corresponding Separate Agreement as well as other agreements channelling Funds to third parties on a grant or loan basis (together the “Relevant Agreements”).

### **Scope**

3. This engagement is a **reasonable assurance engagement** in accordance with International Standard on Assurance Engagements (ISAE 3000 – revised) as published by the International Auditing and Assurance Standards Board of the International Federation of Accountants. This standard requires that the auditor/ practitioner will plan and perform procedures considered necessary to obtain reasonable assurance about the Subject Matter information (including – if necessary – on-site visits).
4. The assurance engagement
  - shall cover in one single Report (“Report”) exclusively all accounts opened in connection with these three Disposition Funds as mentioned above and under paragraph 1 above.

### **Objective**

5. The objective of the assurance engagement (“Objective”) is to permit the auditor/practitioner to express a conclusion on the Financial Reports, the SOE and disbursement requests as far as the Disposition Funds (Subject Matter) are concerned and to obtain reasonable assurance about whether the Subject Matter Information is free from material misstatement regarding proper use of KfW funds according to the criteria mentioned below (paragraph 8).
6. The auditor/practitioner shall consider that mere account transfers as well as advance payments out of the special accounts and out of the cash boxes to service providers which have not been cleared until the end of the Reporting Period cannot be classified as “use of funds” and shall be shown separately in the Summary of Bank Accounts and the SOE.

7. In a form that conveys the auditor's/practitioner's position and based on the Subject Matter Information the auditor/practitioner shall express his conclusion with reasonable assurance on the following criteria ("Criteria"), and shall thus confirm whether in all material aspects:

- (a) The payments out of the Disposition Funds have been made in accordance with the conditions of the Relevant Agreements. Where ineligible expenditures are identified, these should be noted separately in the Report.
- (b) The Disposition Funds have been maintained in accordance with the provisions of the Relevant Agreements. This also comprises cash flows to and from accounts opened in connection with this Disposition Fund as mentioned under paragraph 1 above, as well as interest earned from balances.

Note: Special attention should be given that no contract value exceeds EUR 350.000,00 or equivalent, balance(s) on Local Special Account(s) do not exceed a one month's requirement and balance(s) in petty cash box(es) do not exceed a one day's requirement.

- (c) Expenditures are supported by relevant and reliable evidence (such as contracts, invoices, guarantees etc.). There were no indications that these expenditures had already been financed by other sources.

In addition, project receivables (such as advances, tax claims ...) paid in former Reporting Periods have been cleared and used for project purposes, supported by relevant and reliable evidence.

- (d) The SOE referred to in the Report can be relied upon to support the related disbursement requests. Clear linkage exists between the SOE and disbursement requests presented to KfW and the accounting records of the Entity.
- (e) The procurement process of goods and services financed was in accordance with the Relevant Agreements.

## **Report**

8. The Audit Report shall

- a) be issued by a renowned auditor / practitioner in English language.
- b) be presented (two signed original(s)) according to the timelines in chapter 5 "Timelines".
- c) include at a minimum the following elements:
  - description of the Subject Matter
  - applied criteria to evaluate the Subject Matter and to express the auditor's/practitioner's conclusion as defined under paragraph 8 above
  - identification of the level of assurance obtained
  - informative summary of work performed as to extent, locations, etc.
  - description of significant limitations

- d) state in a separate paragraph any tax amounts or other project related contributions paid and not refunded, if the Relevant Agreements prohibit financing of these costs.
- e) comprise the auditor's/practitioner's statement on the seriousness of observations noted including the consequences of specific deficiencies, if any, also in connection with the internal control system.
- f) contain the following Annexes:
  - Separately for each Disposition Funds: Summary of the auditor's/practitioner's conclusions during the Reporting Period (see Annex A to these ToR)
  - Separately for each Disposition Funds: Schedule showing receipts, transfers and disbursements of all accounts mentioned under paragraph 1 above (see Annex B to these ToR), in particular showing cumulated expenditure less advances not yet cleared resulting from KfW payments since project start.
  - These Terms of Reference (ToR)

### **Management Letter**

9. If considered pertinent, the auditor/ practitioner shall prepare a "Management Letter" in which he will:
  - (a) give comments, observations and recommendations on the accounting records systems and controls examined during the course of the engagement (with special focus on the account(s) under this disposition fund and on the handling of project receivables such as advances, tax claims, etc.).
  - (b) identify specific deficiencies and areas of weakness in relevant systems and controls that have come to the auditor's/practitioner's attention and make recommendations for their improvement.
  - (c) report on actions taken by the management to make improvements with respect to deficiencies and areas of weakness reported in the past;
  - (d) bring to the management's attention any other matters that the auditor/ practitioner considers pertinent.
10. The Auditor will also ascertain whether findings of the previous audits (2011-2015) have been addressed and to what degree.

### **Liability**

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



## **Review**

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

## **5. Timelines**

The client requires the following deliverables submitted by the consultant within the timelines given for each deliverable. In cases of adverse situations affecting the timelines of the deliverables, the consultant will notify the employer and KfW at the earliest possible stage. The key deliverables are:

- a) Letter of engagement – within 1 (one) week from contract signing
- b) First draft audit report and management letter – within 3 (three) months after signing of the contract.
- c) Second draft audit report and management letter – within four weeks after issuing the first draft. Up to two weeks shall be allowed to the Project Executing Agency to address issues arising from the first draft. The report will also indicate the degree to which the PEA has addressed previous external audit findings if any.
- d) Final audit report and opinion as well as management letter of the auditors (see above) – within two weeks after receipt of response from PEA on the second draft and acceptance of report format by KfW

## Annex A (to be attached to every Report)

### SUMMARY

**Name of Project / Programme:** .....

**KfW Ref. No.** .....

**Subject Matter:** .....

**Reporting Period:** .....

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

Applied Criteria	CONCLUSION (YES/NO)**
a) The payments out of the Disposition Fund have been made in accordance with the conditions of the Relevant Agreements. Where ineligible expenditures are identified, these should be noted separately in the Report.	
(b) The Disposition Fund has been maintained in accordance with the provisions of the Relevant Agreements. This also comprises cash flows to and from accounts opened in connection with this Disposition Fund as mentioned under paragraph 1 in the Terms of Reference, as well as interest earned from balances.	
c) Expenditures are supported by relevant and reliable evidence (such as contracts, invoices, guarantees etc.). There were no indications that these expenditures had already been financed by other sources. In addition, project receivables (such as advances, tax claims etc.) paid in former Reporting Periods have been cleared and been used for project purposes, supported by relevant and reliable evidence.	
d) The Statements of Expenditures (SOE) referred to in the Report can be relied upon to support the related disbursement requests. Clear linkage exists between the Statements of Expenditures (SOE), the disbursement requests presented to KfW and the accounting records at the Entity.	
e) The procurement process of goods and services financed was in accordance with the Relevant Agreements.	
f) No other important findings and observations have been disclosed during the engagement.	
g) All observations raised in former reports have been solved by now (for details please refer to page ..... ) – not applicable in case of first report hereunder.	

\*\* Result other than "YES" requires a reference to a page/section of the Report.

## Annex B (to be attached to every Report)

KfW Ref. No. ....		Special account no.	Local Special account 1 **)	Local Special account 2 **)	Petty Cash Box		Total/ Summary
<b>Reporting period from ... to ...</b>		<b>Unified Currency (preferably EUR)</b> <b>**)</b> for accounts in local currency, please add currency and exchange rate used					
a) account balance at the beginning of the reporting period							
b) inflow of funds from KfW (special account)	plus						
c) credit interest or other project related receipts– if any -,	plus						
d) incoming transfers between accounts (only from accounts named here)	plus						
e) outgoing transfers between accounts (only in favour of accounts named here)	less						
f) expenditure (including bank charges) and advances	less						
g) account balance at the end of the reporting period							
<b>Cumulated amounts from project start until end of Reporting Period -KfW funds only-</b>			<b>Unified Currency (preferably EUR)</b>				
a) cumulated inflow of funds (special account)							
b) cumulated cost (without advances not yet cleared)							

## **6. Assignment coverage**

These projects were implemented in the counties of Kitui, Kiambu, Kilifi, Kisumu and selected informal settlements in Nairobi, namely Viwandani and Korogocho as well as the county of Vihiga and Kakamega for the SGBV Project.

All financial documentations for the projects were however maintained and archived in the headquarters of the projects within the Nairobi area (Ministry of Health: Department of Policy Planning and Health Care Financing, Division of Reproductive Health; and PwC Offices).

## **7. Staffing requirements for the assignment**

The chief of Party or the team leader for this assignment is required to be an accredited and fully independent consultant with experience of over 10 years in audit, have at least a Master's degree in Accounting/Finance, be a holder of CPA(K) and be registered with the relevant Professional Body.

Three other assisting consultants must have Bachelor's Degree in Accounting/ Finance, with at least five years' experience in audit, be a holder of CPA(K) and be registered with the relevant Professional Body.

The proposal shall clearly indicate state which staff is going to be assigned to which tasks in this audit.

The consultant will clearly indicate the permanent personnel assigned to specifically provide technical direction, backstopping and administrative support to the core investigating team. The linkages to overall firm's organizational structure should be provided.

## **8. Duration of the assignment**

The assignment should cover the shortest period to perform the required audits. It is expected that the assignment will be finalized and contract terminated within a period of up to five (5) months from the contract signing.

## **9. Responsibilities of the Client**

- a) providing all needed statements, reports and documents the consultants will require
- b) arranging all necessary appointments for the consultants
- c) Timely consideration and sign-off of deliverables from the consultant

## **10. Responsibilities of the Consultants**

- a) Submitting to all required deliverables in a timely and professional manner to the Client and KfW
- b) Identifying all needed appointments and informing the Client and KfW accordingly;
- c) Ensuring that the final reports is presented in a format acceptable within the professional standards
- d) The consultants should have their own equipment
- e) Consultants meet personal costs incurred during the assignment

## **Annex B —Model for Presentation of CVs and Staff Characteristics**

### **Sub-annex B-I Presentation of Curricula Vitae**

Comprehensive Curricula Vitae of the definitely assigned personnel shall be presented in form as shown below:

1. Family name:
2. First names:
3. Date of birth:
4. Nationality:
5. Education:
6. Language skills, mark 1 (worst) to 5 (best) for competence:
7. Membership of professional bodies:
8. Other skills:
9. Present position:
10. Years within the firm.
11. Key qualifications (relevant to the programme):
12. Specific country experience:
13. Professional experience record (projects):

<b>Institution</b>		
Date: from (month/year) to (month/year)		
Degree(s) or Diploma(s) obtained		
Country	Date: from (month/year) to (month/year)	
Date: from - to month/ year		
Location		
Company		
Position		
Description		

Others (e.g. publications):

## Sub-annex B-2 Presentation of Staff Characteristics

The following data have to be indicated for the key experts proposed for the different posts. They have to be backed unambiguously by details in the CV. In case of contradictions found during evaluation, details of the CV prevail. Tables may be adjusted according to the proposal and to the number of proposed key staff

### Key staff position

Criteria	Name	
Professional education related to project and post	degree(s)	
Professional experience, from first job after professional education	years	
Specific project-related experience. Similar project with similar tasks	No of projects with > 1 year input	
Regional Experience	countries	
Employment status with firm	Years as employee	
In case of associate/retainer: accumulated years during short- or long-term assignments for the bidder	accumulated years	
Leadership experience (team leader, project manager)	N ° of projects	

### Home Office Support (Backstopping)

Criteria	Name	
Professional Experience	Years	
Regional Experience	Countries	
Management Experience	Years	
Years with firm	Years	

## Annex C - Declaration of Undertaking

Reference name of the Application/Offer/Contract: ("Contract")<sup>1</sup>

To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")<sup>2</sup> subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
  - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganization or being in any analogous situation;
  - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
  - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
  - 2.4) having been subject, within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
  - 2.5) not having fulfilled applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the PEA's country;
  - 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or

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<sup>1</sup> Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries".

<sup>2</sup> The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

- 2.7) being guilty of misrepresentation in supplying the information required as condition to participation in this Tender Procedure.
3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:
- 3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
  - 3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
  - 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;
  - 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;
  - 3.5) in the case of procurement of Works, Plant or Goods:
    - i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
    - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;
4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
6. In the context of the Tender Process and performance of the corresponding Contract:
- 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;
  - 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
  - 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation<sup>3</sup> (ILO) and international environmental treaties. Moreover, we

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<sup>3</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on



shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.

7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an auditor appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Duly empowered to sign in the name and on behalf of<sup>4</sup>: \_\_\_\_\_

Signature:

Dated:

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working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

<sup>4</sup> In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

## Annex D - Model for Financial Proposal — Cost Break-down

<b>SUMMARY</b>	<b>Amount EUR</b>
1. — Foreign personnel	
2. — Allowances for foreign staff	
2. — Local personnel	
Sub-Total — Staff cost	
4 — Local transport	
5 — Project office	
6 — Reports and documents	
Sub-Total Logistics (Local transport, Project office, Reports and documents)	
<b>Total - Fixed Costs</b>	
International travel costs	
Equipment costs	
Miscellaneous costs	
<b>TOTAL – REIMBURSABLE COSTS</b>	
<b>GRAND TOTAL</b>	

## **Terms and Conditions Applicable to the Template 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:

- 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).

June 2021

## CONSULTING CONTRACT

dated

[•]

between

### MINISTRY OF HEALTH

– hereinafter referred to as the “**Employer**” –

and

[•]

– hereinafter referred to as the “**Consultant**” –

Relating to:

**a) PROGRAMME on Health Sector Financing Strategy**

Reproductive Health Output Based Approach (RH-OBA)  
Ref-No.BMZ-2010.65.853; Disposition Fund 8 and 14

**b) PROGRAMME on Development of the Health Sector**

Sexual Gender Based Violence (SGBV)  
(Ref-No.BMZ-2007.65.131); Disposition Fund 19

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## Preamble

The Employer requests consulting services to be rendered for the Project (as defined below) as designated in the Special Conditions (as defined below). The Consultant has submitted a technical and a financial bid for the Services (as defined below) which has been accepted by the Employer. Therefore, the Parties agree as follows:

## General Conditions

### Paragraph 1 General Provisions

#### 1.1 DEFINITIONS

Words and expressions used in this Consulting Contract (as defined below) shall have the following meaning, unless the context requires otherwise.

**“Agreed Remuneration”** means the remuneration agreed pursuant to Paragraph 5 [*Remuneration*].

**“Commencement Date”** has the meaning given to such term in the Special Conditions.

**“Completion Period”** means the period for the completion of the Services as set out in the Special Conditions.

**“Consulting Contract”** means this contract for consulting services, including its Preamble and its Annexes<sup>5, 6</sup>.

**“Contract Value”** has the meaning given to such term in the Special Conditions.

**“Country”** has the meaning given to such term in the Special Conditions.

**“Force Majeure”** means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances. It includes, but is not limited to, war, invasion, rebellion, terrorism, riots, civil disorder, natural catastrophe (e.g. earthquake, fire, explosion, hurricane, typhoon, volcanic activity), strikes, lockouts or other industrial action confiscation or any other action by government agencies. It includes, but is not limited to, 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. Force Majeure shall not include (i) any event which is caused by the negligence or wilful action of a Party or such Party's experts, sub-contractors or their respective directors, agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take

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<sup>5</sup> 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.

<sup>6</sup> In case there are Minutes of Negotiations pursuant to the Special Conditions between the Parties these Minutes of Negotiations could be attached as an Annex. But in the interests of clear contractual stipulations, instead of including copious minutes of negotiations it is preferable to incorporate the agreed changes directly into the Special Conditions.

into account at the time of the conclusion of this Consulting Contract and avoid or overcome in the carrying out of its obligations hereunder. Furthermore, Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

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

**“Foreign Staff”** means the staff who do not hold the citizenship of the Country.

**“Funding Agreement”** means the [loan agreement / financing agreement] entered into between KfW and [the Employer] to wholly or partly finances the Services.

**“Joint Venture (JV)”** means an association with or without a legal personality distinct from that of its members, of more than one Consultant where the members of the JV shall be jointly and severally liable to the Employer for the performance of the Contract and one member has the authority to conduct all business for and on behalf of any and all the members of the JV. The terms Joint Venture and Consortium can be used interchangeably.

**“Local Currency”** has the meaning given to such term in the Special Conditions.

**“Other Costs”** means the additional costs of the Consultant to the extent agreed in the Special Conditions.

**“Parties”** means the Employer and the Consultant.

**“Project”** means the project specified in the Special Conditions.

**“Services”** means the contractual services described in **Annex 3** [Terms of Reference plus Tender Documents], **Annex 9** [The Consultant’s Bid] and Paragraph 3.1 [Scope of Services], including without limitation any optional services (if any) as well as the standard and special services defined in Paragraph 3.2 [Standard and Special Services].

**“Special Conditions”** means the terms and conditions set out under the header “Part II: Special Conditions” of this Consulting Contract.

**“Standards”** means the metric system and German DIN or European EN standards, or internationally recognised standards that are at least equivalent to those published by ISO or IEC.

**“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.



## **1.2 INTERPRETATION**

Unless a contrary indication appears, in this Consulting Contract: Section, clause, annex and schedule headings are for ease of reference only.

The singular includes the plural and vice versa.

References to a "**Party**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Consulting Contract.

References to a "**director**" include any statutory legal representative(s) of a person pursuant to the laws of its jurisdiction of incorporation.

References to this "**Consulting Contract**" or any other agreement or instrument are references to this Consulting Contract or other agreement or instrument as amended, novated, supplemented, extended or restated.

References to a "person" shall include any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality).

References to euro, EUR or € are references to the lawful currency of the participating states of the European Monetary Union. References to US dollars, USD or US\$ are references to the legal currency of the United States of America.

## **1.3 RANKING AND ORDER**

In the event of a conflict between the Special Conditions and the General Conditions or any annex or schedule thereto, the provisions of the Special Conditions shall prevail.

In the event of a conflict between General Conditions and any annex or schedule thereto, the provisions set out in the respective annex or schedule shall prevail.

In the event of a conflict between the annexes, the provisions set out in the respective preceding annexes shall prevail over the provisions set out in the respective subsequent annexes.

## **1.4 COMMUNICATION AND LANGUAGE**

Any communication to be made under or in connection with this Consulting Contract shall (i) be made in writing and, unless otherwise stated, may be made by fax or letter, and in the language specified in the Special Conditions and (ii) to the extent not otherwise stipulated in the Special Conditions, take effect upon receipt at the addresses specified in the Special Conditions and if by way of fax, when received in legible form.

## **1.5 GOVERNING LAW**

This Consulting Contract is governed by the laws specified in the Special Conditions.

## **1.6 ENTRY INTO FORCE AND EFFECT**

This Consulting Contract enters into force and effect immediately upon (i) execution hereof by both Parties, and (ii) receipt by the Employer of KfW's written confirmation that all conditions precedent to the first disbursement under the Funding Agreement have been satisfied in form and substance satisfactory to KfW. The

**1.7  
MEASUREMENTS AND  
STANDARDS**

Employer has to inform the Consultant about KfW's written confirmation immediately.

Any drawings, plans and calculations shall be based on the Standards; moreover, the Standards shall be applied to all Services.

**1.8  
ASSIGNMENT AND  
SUB-CONTRACTING**

The Consultant may not assign or transfer any of its rights or obligations under this Consulting Contract without the prior written consent of the Employer, which, in turn, shall not be provided without the prior written consent of KfW.

The Consultant may conclude or terminate sub-contracts for the performance of any part of the Services only upon prior written consent of the Employer, which, in turn, shall not be provided without the prior written consent of KfW. None of the Consultant's obligations under this Consulting Contract shall be limited, cancelled or in any other way affected by any sub-contracting of Services.

The Consultant shall, and shall contractually oblige each subcontractor (if any), develop and implement measures for the safety of the personnel deployed, adapted to the current security situation. The Consultant undertakes to contractually oblige each subcontractor (if any) contractually to pass on a corresponding obligation to any other subcontractors (if any).

**1.9  
COPYRIGHT AND  
RIGHTS OF USE**

*To the extent not otherwise stated in the Special Conditions, the Consultant shall transfer to the Employer all rights to the Services performed under this Consulting Contract on the date any such rights arise, and in any event at the latest on the date they are acquired by the Consultant. Insofar as a transfer of such rights is not possible, the Consultant shall irrevocably grant the Employer an unrestricted, transferrable, licensable and exclusive right of use and exploitation that is 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 no third party rights exist or will be exercised that would preclude the aforementioned transfer of rights or their exercise.*

**1.10  
OWNERSHIP OF  
DOCUMENTS AND  
EQUIPMENT**

All studies, reports, data and documents such as diagrams, plans, statistics and annexes that are made available to the Consultant by the Employer in relation to the performance of the Services, as well as software (including the respective source codes) produced or adapted to facilitate the performance of the Services, shall remain the property of the Employer. The Consultant shall not be entitled to exercise any right of retention or similar rights with respect to these materials.

The Consultant shall return any equipment made available by the Employer to the Consultant to facilitate the performance of the Services, including any vehicles purchased for the performance of the Services and paid for fully by the

Employer, to the Employer promptly after completion of the Services. The Consultant shall handle and maintain any such equipment with due care.

### **1.11 CONFIDENTIALITY AND PUBLICATION**

The Consultant shall, and shall ensure that its employees, agents and representatives will keep confidential all documents made available to the Consultant by the Employer and/or KfW, as well as all information exchanged and knowledge acquired concerning this Consulting Contract and its implementation, even if such documents, information or knowledge have not been expressly designated as confidential. This obligation of confidentiality upon the Consultant and its employees shall remain effective for a period of 24 months after completion or termination (whichever occurs earlier) of the Consulting Contract.

The obligation of confidentiality set out in this Clause 1.11 shall not apply to information:

which is or becomes public information other than as a direct or indirect result of any breach of this Consulting Contract;

which is known by the receiving Party before the date the information is disclosed to the receiving Party in accordance with paragraph (a) above or is lawfully obtained by the receiving Party after that date from a source which is unconnected with the Employer and KfW and which has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

the disclosure of which is:

- i. requested or required by any court of competent jurisdiction or any competent judicial, governmental, banking, taxation, supervisory or other regulatory authority or similar body or necessary to assert or defend claims or other legal rights in court or administrative proceedings;
- ii. required pursuant to any applicable law or regulation; or
- iii. made with the prior written consent of the Party providing the information.

Notwithstanding the foregoing each Party is entitled to disclose any information in connection with this Consulting Contract to KfW.

### **1.12 CONDUCT**

*During the term of this Consulting Contract, the Consultant shall not, and shall ensure that its Foreign Staff will not, interfere with the political or religious affairs of the Country.*

### 1.13 SANCTIONABLE PRACTICE

The Consultant shall, and shall ensure that its representatives, agents and employees will:

- a) comply with all applicable laws, rules, regulations and provisions of the relevant legal systems relating to the performance of any obligations under this Consulting Contract or if failure to comply would impair the Consultant's ability to perform its obligations hereunder,*
- b) not engage at any time in any Sanctionable Practice; and*
- c) not enter into or continue any business relationship with specially designated nationals, blocked persons or entities maintained on any Sanctions List and not engage in any other activity that would constitute a breach of Sanctions.*

For the purposes of this provision, the following capitalized terms shall have meaning as defined below:

Coercive Practice	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
Collusive Practice	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
Corrupt Practice	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.
Fraudulent Practice	Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
Obstructive Practice	Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's

	access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
Sanctionable Practice	Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Funding Agreement.
Sanctions	The economic, financial or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctioning Body.
Sanctioning Body	Any of the United Nations Security Council, the European Union and the Federal Republic of Germany.
Sanctions List	Any list of specially designated persons, groups or entities which are subject to Sanctions, as issued by any Sanctioning Body.

The Consultant will inform its employees, agents, representatives and subcontractors (if any) engaged under this Consulting Contract of their respective obligations.

The Consultant shall itself and contractually oblige its employees, agents, representatives and subcontractors (if any) to comply in all respects with (i) the Declaration of Undertaking described in Annex 1 [Declaration of Undertaking] and (ii) the laws of the Country.

The Consultant shall, in connection with his/her activities in respect of the Services and/or the Project, treat the persons involved in the Services and/or the Project and any other persons involved at any time respectfully and with high ethical standards (requirement of respectful treatment). The Consultant shall not treat any persons involved in the Services and/or the Project or any other persons differently without a justified reasonable cause (prohibition of discrimination). The Consultant shall not use his position in connection with the Services and/or the Project for abusing of his/her competences and powers (prohibition of abuse). This includes in particular, but is not limited to, the abuse of a position of power for demanding and receiving sexual acts or harassment. The provisions on Sanctionable Practices shall remain unaffected.

**1.14  
SOCIAL  
ENVIRONMENTAL  
RESPONSIBILITY**

**AND**

The Consultant shall, and shall ensure that its representatives, agents and employees will, ensure compliance with the Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) as outlined in KfW's Sustainability Guideline (October 01, 2019 as amended from time to time) and, consequently:

where relevant, implement any environmental and social and health and safety risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the Employer and/or KfW. The Consultant will report on the status of implementation of ESHS measures and plan items as contractually agreed.

**1.15  
REIMBURSEMENTS**

*Unless otherwise set out in the Special Conditions, the Consultant shall make all reimbursements, insurance payments, guarantee payments or similar payments:*

if in Foreign Currency, for the account of the Employer to KfW, Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00; and

if in Local Currency, to the special account of the Employer specified in the Special Conditions.

**1.16  
SEVERABILITY  
WRITTEN FORM**

**AND**

If any provision of this Consulting Contract is or becomes invalid, void or ineffective or if this Consulting Contract contains unintentional gaps, this will not affect the validity or effectiveness of the remaining provisions of this Consulting Contract and this Consulting Contract will remain valid and effective, save for the void, invalid or ineffective provisions, without any Party having to argue and prove the Parties' intent to uphold this Consulting Contract even without the void, invalid or ineffective provisions.

The void, invalid or ineffective provision shall be deemed replaced by such valid and effective provision which comes as close as possible to the purpose and intent of the invalid provision in legal or economic terms and any unintentional gap shall be deemed to be filled with a provision which best suits the purpose and intent of this Consulting Contract.

Any supplements and amendments to this Consulting Contract – including to this Article 1.15.3 – must be made in writing. Any waiver by the Parties of this writing requirement must also be in writing.

**1.17  
ROLE OF KFW**

For the avoidance of doubt, notwithstanding any consent, no-objection and/or other rights which may be conferred to KfW pursuant to this Consulting Contract, KfW shall not and shall not be deemed to be a Party to this Consulting Contract and shall have no obligations hereunder.

## Paragraph 2    The Employer

### 2.1 INFORMATION

During the term of this Consulting Contract, the Employer, shall, within a reasonable period of time and at its own cost and expense, provide the Consultant with all data, documentation and information required or expedient for the performance of the Services that are available to it. This shall also include all Services- and Project-related provisions of any separate agreements relating to the Funding Agreement or to any other loan or grant made in respect of the Project, and, to the extent that KfW's consent is required by this Consulting Contract and has been granted by KfW, the documents evidencing such consent.

### 2.2 DECISIONS AND COOPERATION

Where the Employer is vested with any discretion or decision right under this Consulting Contract, it shall, provided that the Consultant has supplied the Employer with all the information reasonably required by the Employer including, but not limited to, drawings, studies and details of any replacement staff, exercise such discretion or (as applicable) take its decision pursuant to this Consulting Contract as soon as possible following the Consultant's written request and, in any event, no later than the end of the expiry period specified in the Special Conditions.

### 2.3 SUPPORT

The Employer will support, to the extent reasonably possible, the Consultant in discharging its obligations pursuant to this Consulting Contract. The Employer shall make available to the Consultant as soon as reasonably practicable and in full all the services necessary for the performance of its tasks as detailed in Annex 3 [*Terms of Reference plus Tender Documents*].

In addition, the Employer shall support the Consultant, the Consultant's employees and directors and, where applicable, their [immediate] relatives in:

- obtaining as soon as reasonably practicable any documents necessary for entering, residing in, working in and leaving the Country (visa, work permit etc.);

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

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

- securing return transport in cases of emergency;

- 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;

- obtaining permission to export the money paid by the Employer to the Consultant under this Consulting Contract; and

providing access to other organisations for the purpose of obtaining information to be procured by the Consultant in relation to the performance of its obligations hereunder or any of the matters set out under any of the foregoing sub-paragraphs (a) through (f) above.

## **2.4 TAXES**

The Consultant is responsible for meeting any and all tax liabilities in the Employer's country arising out of the Consulting Contract, unless it is stated otherwise in the Special Conditions. Tax liabilities of the Consultant outside the Employer's country are considered to be included in the Remuneration and may not be charged separately.

If, after the date of signing of this Consulting Contract by the Parties, there is any change in the applicable law in the Employer's country with respect to taxes and/or duties which increases or (as the case may be) decreases the cost incurred by the Consultant in performing the Services, then the Remuneration and other expenses otherwise payable to the Consultant under this Consulting Contract shall be increased or (as the case may be) decreased accordingly by agreement to be concluded between the Parties hereto.

## **2.5 SERVICES AND FURNISHINGS**

The Employer shall make available to the Consultant, at the Employer's cost and expense, such technical and other equipment and offices as described in Annex 6 [*Equipment and Furnishings to be provided by the Employer and Third-party Services Commissioned by the Employer*] for the purpose of performing the Services.

## **2.6 CONTACT PERSONS OF THE EMPLOYER**

The Employer shall appoint two natural persons to act as the Employer's contact person and deputy to the Consultant in relation to this Consulting Contract, and the Employer further undertakes to appoint a substitute contact person without undue delay should either of the two individuals appointed (or the respective substitutes) no longer be available. The contact persons shall be set out in the Special Conditions.



## Paragraph 3 The Consultant

### 3.1

#### SCOPE OF SERVICES

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

The Consultant shall cooperate in good faith with any third parties commissioned by the Employer pursuant to Paragraph 2.5 [*Services and Furnishings*]. The Employer shall not be liable for any costs, losses or liabilities caused by any of these third parties or their performance, except in the case of willful misconduct, gross negligence, death or bodily injury. In addition, the Consultant must, to the extent possible, comprehensively coordinate the services rendered by such third parties with the Services.

### 3.2

#### REPORTING AND INFORMATION

The Consultant shall report to the Employer and KfW on the progress of the Services in accordance with the Special Conditions and/or the Terms of Reference as applicable. The Consultant shall inform the Employer and KfW promptly of all extraordinary circumstances (including, without limitation, any compliance-relevant circumstances or substantial suspicions) that arise during the performance of the Services and of all matters requiring KfW's approval.

The Consultant shall, at its own cost and expense, promptly deliver all records, documents and information requested by the Employer and/or KfW in connection with this Consulting Contract. This obligation shall survive the termination of the Consulting Contract for a period of 24 months.

### 3.3

#### STAFFING

The Consultant shall employ the staff specified in Annex 5 [*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.

Upon the Employer's request, the Consultant shall terminate the contract of, or release or replace, any staff member who fails to meet the requirements set out in this Consulting Contract or violates Paragraph 1.12 [*Conduct*]. Any such request of the Employer must be submitted in writing to the Consultant and must state the reasons for the requested termination, release or replacement.

If any staff employed by the Consultant need to be replaced, the Consultant shall ensure that the staff member in question is replaced promptly by an individual with at least equivalent qualifications and experience.

If the Consultant terminates the contract of, or releases or replaces, any staff during the term of this Consulting Contract, any costs thus accrued shall be borne by the Consultant.

### **3.4 CONTACT PERSON OF THE CONSULTANT**

The Consultant shall appoint a natural person as its contact person for the Employer in relation to this Consulting Contract, and the Consultant further undertakes to appoint a substitute contact person without undue delay should the individual appointed (or its substitute) no longer be available.

Moreover, the Consultant shall specify and provide contact details to the Employer and KfW for an individual, as well as a deputy, at the Consultant's place of business who can be reached at any time in cases of emergency or crisis. The Consultant shall notify the Employer and KfW without delay of any change of any such elected person or its contact details.

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

### **4.1 COMMENCEMENT AND COMPLETION**

The Consultant shall begin performing the Services on the Commencement Date. The Consultant shall deliver the Services in accordance with the time schedule set out in Annex 7 [*Time Schedule for the Performance of the Services*], and shall complete the Services within the Completion Period (for the avoidance of doubt, subject to any adaptations (if any) in accordance with paragraph 4.1.3 below).

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

Any change to the time schedule in Annex 7 [*Time Schedule for the Performance of the Services*] due to a reasonable request by either party shall be mutually agreed upon in writing.

### **4.2 PENALTIES FOR DELAY AND DISSATISFACTORY SERVICES**

If the Consultant culpably fails to perform any of the Services within the respective time agreed for such Services, the Consultant shall, except to the extent that the Special Conditions include a stipulation to the contrary, be obliged to pay to the Employer a penalty in an amount of 0.5% of the contract value for every week of delay, subject to an overall cap of 8% of the contract value. Any claims which the Employer may have as a consequence of such delay (if any) shall be deemed to be settled by such payment. The foregoing shall be without prejudice to the Employer's right of termination pursuant to Paragraph 4.6.2 [*Suspension and Termination*].

In the case the Consultant has not provided the Services in accordance with the provisions set out in this Consulting Contract to the satisfaction of the Employer and if this has (i) been notified by the Employer to the Consultant and (ii) not been remedied by the Consultant within 21 days upon receipt of such notification, and provided that the Employer has requested payment of a penalty in accordance with Paragraph 4.2.1 [*Penalties for Delay and Dissatisfactory Services*] above, the Employer and KfW shall be entitled to prohibit the Consultant from mentioning this Project as a reference for future project tenders.

### **4.3 FORCE MAJEURE**

In the event of a Force Majeure, the contractual obligations, to the extent affected by such event, shall be suspended for as long as performance remains impossible due to the Force Majeure, provided that one Party 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, provided that this shall not apply to any damages which the Consultant could have, but has

wilfully or negligently not, mitigated in light of the circumstances at that time.

In the event of a Force Majeure, the Consultant shall be entitled to an extension of the Completion Period 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 continues for more than 180 days, either Party to this Consulting Contract shall be entitled to terminate the Consulting Contract.

In the case of a suspension or termination of the Consulting Contract due to Force Majeure, the Consultant shall be entitled to claim from the Employer payment of:

a proportionate amount of the Agreed Remuneration for the Services performed up to the occurrence of the Force Majeure; and

all necessary and evidenced expenditures of the Consultant arising from the discontinuing of the Services,

in each case in accordance with the principles agreed in Paragraph 5 [*Remuneration*] and the Special Conditions as well as the principles set out in Paragraph 4.6.4 [*Suspension or Termination*].

The Consultant must, however, mitigate its loss and deduct any proceeds of such mitigation, which shall include:

any remuneration paid to the Consultant in consideration for working on other projects during the time the Consultant was (but for the discontinuation) scheduled to work on the Project; and

any remuneration that the Consultant could reasonably have earned in consideration for working on other projects during the time the Consultant was (but for the discontinuation) scheduled to work on the Project, but which the Consultant has not received as a result of the Consultant's wilful misconduct or negligence.

The Consultant shall not have any further payment claims as a consequence of the Force Majeure Event.

#### **4.4 SUSPENSION OR TERMINATION**

The Employer may, with the prior written consent of KfW, fully or partially request suspension of the Services or terminate this Consulting Contract, in each case by 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 any expenditures minimised. The Consultant shall hand over all reports, drafts and documents to be prepared by the date in question to the Employer. If the suspension continues for more than 180 days, the Consultant may terminate the Consulting Contract. In the case of such termination Paragraph 4.5 [*Force majeure*] shall apply mutatis mutandis.

If the Consultant fails to meet any of its contractual obligations within the agreed time for such obligations, 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 reasonable time frame as determined by the Employer which shall be, however, not less than 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 Consulting Contract by written notice.

The Consultant may terminate this Consulting Contract if any amounts due and payable to it under this Consulting Contract have not been reasonably disputed or paid within 60 days after the receipt by the Employer of the corresponding invoice, provided that (i) the Consultant has delivered to the Employer a written reminder within 30 days after the initial 60 days deadline has passed and (ii) the Employer has not paid the due amounts within a further grace period of 30 days upon receipt by it of such reminder. Without prejudice to the right to terminate due to Employer's nonpayment the Consultant may suspend the performance of this Contract if and for so long as any amounts due and payable under this Consulting Contract have not been reasonably disputed or paid within 60 days after the receipt of the Consultant's corresponding invoice by the Employer, provided that the Consultant has submitted a written reminder notice to the Employer after the initial 60 days deadline has passed and the Employer does not pay the due amounts within a further period of 21 days after the reminder notice.

In the case of a termination or suspension of the Consulting Contract, the Consultant shall be entitled to demand payment of:

- the due but unpaid proportion of the Agreed Remuneration for the Services performed until the date of termination or suspension; and

- if the termination or suspension of the Consulting Contract is not caused by a default by the Consultant, all necessary and evidenced expenditures of the Consultant arising from the discontinuing of the Services, provided, however, that the Consultant must mitigate its loss and deduct any proceeds of such mitigation, which shall include:

- (i) any remuneration paid to the Consultant in consideration for working on other projects during the time the Consultant was (but for the termination or suspension) scheduled to work on the Project; and

- (ii) any remuneration that the Consultant could reasonably have earned in consideration for working on other projects during the time the Consultant was (but for the termination or suspension) scheduled to work on the Project, but

which the Consultant has not received as a result of the Consultant's wilful misconduct or negligence.

If the termination or suspension of the Contract has been caused due to a default of the Consultant, the Employer shall be entitled to demand compensation for any direct damages caused by the default.

**4.5  
BREACH OF  
PARAGRAPH 1.13**

If the Consultant has breached Paragraph 1.13 [*Sanctionable Practice*], the Employer may, notwithstanding any sanctions which may be applicable according to the law of the Country or any other legal system, terminate this Consulting Contract in writing with immediate effect.

The Employer may also terminate this Consulting Contract in writing with immediate effect if the Declaration of Undertaking submitted by the Consultant [in accordance with Paragraph 1.13.3] is untrue or inaccurate in any respect or if the any obligations thereunder have been breached.

**4.6  
RIGHTS AND  
OBLIGATIONS OF THE  
PARTIES IN CASE OF  
TERMINATION**

For the avoidance of doubt, a termination of this Consulting Contract shall not prejudice or affect any rights, claims or obligations of any Party which have arisen before the termination takes effect. Notwithstanding the foregoing, in the case of a termination pursuant to Paragraph 4.7 [*Breach of Paragraph 1.13*] the Employer shall be entitled, in cooperation with KfW, to request the repayment of any remuneration (in total or in part considering the circumstances of the violations) which has been paid to the Consultant pursuant to this Contract. The burden of proof that a case of termination is given lies with the Employer.

## **Paragraph 5      Remuneration**

### **5.1 FORMS OF REMUNERATION**

In consideration for the performance of the Services, the Employer shall pay to the Consultant the remuneration as agreed in the Special Conditions subject to the conditions listed therein and the conditions set out below, and subject further to Annex 8 [*Cost Calculation and Invoicing Table*], depending on the type of Services agreed which may be either

lump sum services; or

time-based services.

### **5.2 GENERAL PAYMENT TERMS**

To the extent not otherwise agreed in the Special Conditions, the Employer shall pay the Consultant's remuneration as follows:

An advance payment as set forth in the Special Conditions, but not exceeding 20% of the Contract Value shall be due within 30 days following the date of this Consulting Contract upon presentation of an invoice and against presentation of an advance payment guarantee if required in accordance with the Special Conditions.

Instalments shall be paid upon presentation of corresponding invoices with a maximum of one payment per quarter. The first invoice following the advance payment shall not be issued before the expiry of three months following the Commencement Date.

The final payment shall be made after the Services have been performed in full and written confirmation has been provided by the Employer to the Consultant and prior written non-objection has been obtained from KfW.

### **5.3 PAYMENT CONDITIONS**

In case of a lump sum remuneration, payments to the Consultant shall be made in a pre-determined number of instalments as further specified in the Special Conditions. In case the instalments are to be made dependent on milestones, these will be clearly stipulated in the Special Conditions.

In case of a time-based remuneration, payments to the Consultant shall be made based on the unit prices set forth in Annex 8 [*Cost Calculation and Invoicing Table*] as further specified in the Special Conditions. Each invoice shall be accompanied by a list of expenditures based on Annex 8 [*Cost Calculation and Invoicing Table*].

Other Costs, if any, shall be invoiced together with the agreed instalments. Unless the remuneration for Other Costs is included in the lump sum instalments, the invoices must be accompanied by a list of expenditures based on Annex 8 [*Other Cost Calculation and Invoicing Table*].

The original documentation evidencing the Other Costs shall be sent to the Employer, unless this Consulting Contract has been entered into pursuant to an agency

contract in which case the original documentation shall remain with the Consultant and be delivered to the Employer or (as the case may be) KfW promptly upon request of the Employer.

#### **5.4 LIMITATIONS**

The remuneration of the Consultant (including, for the avoidance of doubt, Other Costs, if any) shall not exceed the Contract Value set forth in the Special Conditions.

#### **5.5 INVOICING**

Payments are made against invoices. The original invoices shall specify (i) the period for which the underlying Services have been performed and (ii) correct banking details and shall be addressed to the Employer.

In the case of conclusion of this Consulting Contract pursuant to an agency contract: the Consultant's invoices (other than the final invoice) shall be addressed to the Employer "c/o KfW". Except for the final invoice, the Consultant shall send each original invoice to KfW and a copy of each invoice to the Employer directly. The original final invoice is to be addressed to the Employer and KfW will receive a copy.

With each invoice the Consultant implicitly declares that the performance and/or costs invoiced have actually incurred and that the lists accompanying the respective invoices are true and complete.

#### **5.6 PAYMENT DEADLINE**

Other than in the case of an advance payment or unless 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.

If the Employer does not make the payment within the period set out in Paragraph 5.6(a) [*Payment Deadline*] and the Employer has not raised an objection pursuant to Paragraph 5.7 [*Objection to Invoices*] within that date, the Employer shall pay to the Consultant a compensation at the rate agreed in the Special Conditions. This shall be calculated on a daily basis from the date on which the relevant amount became due and payable in the currency set out in the Special Conditions. The Consultant shall have no further rights or claims arising from any delay of the Employer.

#### **5.7 OBJECTION TO INVOICES**

Should the Employer object to any invoice of the Consultant (or any aspect or part thereof), 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 an invoice, it shall pay that part of the invoiced amount to which it has not objected within the period specified in Paragraph 5.6 [*Payment Deadline*].



## **5.8 AUDITING**

For any Services (or parts thereof) that are not remunerated on a lump-sum basis, the Consultant shall 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 (as well as their respective advisors and auditors) to audit these records at any time and make copies of them.

## **Paragraph 6      Liability**

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

The Consultant shall be liable to the Employer for culpable breaches of its contractual obligations, including, without limitation, of its obligations under Article 3 [*The Consultant*]. The liability of the Consultant shall be limited to the Contract Value. The foregoing limitation shall not apply in the case of wilful misconduct or gross negligence.

### **6.2 LIABILITY FOR SUB- CONTRACTORS**

For the avoidance of doubt, the Consultant shall also be liable for the Services provided by a sub-contractor pursuant to Paragraph 1.8 [*Assignment and Sub-contracting*].

### **6.3 PERIOD OF LIABILITY**

The Consultant's liability shall terminate according to the law governing the Consulting Contract as set out in the Special Conditions, unless a different point of time has been agreed in the Special Conditions.

### **6.4 LIABILITY FOR CONSEQUENTIAL DAMAGE**

Liability for consequential damages is excluded.

### **6.5 LIABILITY OF THE EMPLOYER**

The Employer shall be liable for culpable breaches of its contractual obligations, including, without limitation, of its obligations under Paragraph 2 [*The Employer*].

## **Paragraph 7 Insurance against Liability and Damages / Guarantees**

### **7.1 INSURANCE AGAINST LIABILITY AND DAMAGES**

The Consultant shall take out and maintain adequate insurance for the entire duration of the Consulting Contract and on the terms specified in the Special Conditions, including, but not limited to, the following:

professional liability insurance;

personal liability insurance;

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

motor vehicle third party liability insurance and motor vehicle comprehensive hull insurance for the vehicles acquired in connection with this Consulting Contract.

The costs incurred in connection with the insurance specified in Paragraph 7.1.1 [*Insurance Against Liability and Damages*] shall be fully compensated by the Agreed Remuneration and may not be charged separately.

The Employer shall take out the insurances to the extent agreed in the Special Conditions.

### **7.2 GUARANTEES**

Any guarantees shall be in the form set out in Annex 10 [*Form of Advance Payment Guarantee*] and shall always be provided as bank guarantees issued in favour of 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.

## **Paragraph 8   Disputes and Arbitration Procedure**

### **8.1 ARBITRATION PROCEDURE**

If the Parties do not reach amicable agreement, disputes arising out of or in connection with this Consulting 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.

## **Part II: Special Conditions**

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

#### **Ad 1.1: Definitions**

**“Completion Period”:** The completion period shall be **Three (3) Months**

**“Country”:** [ Kenya]

**“Project”:** Consultancy Services: External Audit of the:

##### **a) PROGRAMME on Health Sector Financing Strategy**

Reproductive Health Output Based Approach (RH-OBA)  
Ref-No.BMZ-2010.65.853; Disposition Fund 8 and 14

##### **b) PROGRAMME on Development of the Health Sector**

Sexual Gender Based Violence (SGBV)  
(Ref-No.BMZ-2007.65.131); Disposition Fund 19

as further specified in Annex 3.

**“Commencement Date”:** Two weeks of the entry into force of this Consulting Contract.

#### **Ad 1.4: Communication and Language**

The language for notices, instructions, reports and other communication shall be **English**.

##### **Notices**

Address of the Employer

The Principal Secretary  
Ministry of Health  
P.O Box 30016-00100  
Nairobi, Kenya

Address of the Consultant

Postal address

Email: [•]

Phone: [•]

Fax:

Address of KfW

KfW  
Palmengartenstrasse 5-9  
60325 Frankfurt Germany  
Email: Gerald.Laezer@kfw.de  
Phone: +49 (69) 7431-3469

**Ad 1.5: Governing law**

The law governing this Consulting Contract shall be **Kenyan Law**

**Ad 1.9: Copyright and rights of use**

Ministry of Health, Department of Family Health

**Ad 1.14: Reimbursements**

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

**Ad Article 2: The Employer**

**Ad 2.2: Decisions and cooperation**

Decisions/discretions/cooperative actions of the Employer pursuant to  
Paragraph 2.2 [Decisions/cooperation] must be taken/performed at the latest  
within **Seven (7)** days from receipt by the Employer of the respective written  
request of the Consultant.

**Ad 2.4: Taxes**

The contractual parties agree on the following provisions regarding taxes and  
public duties in the country of the Employer: **will be in line with the  
Kenyan VAT and Taxes regulations**

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

Head, Department of Family Health.

Ministry of Health.

Email:headdfh2016@gmail.com

The Employer's deputy shall be [●].

Project coordinator

Ministry of Health

Department of Family Health

### **Ad Article 3: The Consultant**

#### **Ad 3.2: Reporting and information**

[●]

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

#### **Ad 3.4.1: The Consultant's contact person**

The Consultant's contact person shall be [●].

Contact details [●].

The deputy shall be [●].

Contact details [●].

#### **Ad 3.4.2: 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: Forms of Remuneration**

In consideration of the Services, the Employer shall pay to the Consultant an amount of

up to [●] in [● currency]

(the "**Contract Value**").

In accordance with the Terms of Reference, the Services will be rendered as

*[please select:*

☒ Lump sum services

☐ Time based services

#### **Ad 5.2 (a): General Payment Terms**

[Total amount of the advance payment: EUR[●]

equalling [●]% of the Contract Value *[if applicable: excluding Other Costs]*

*Please select*

☒ Prior to any advance payment, the Consultant must present an advance payment guarantee in the entire amount of such advance payment in the form set out in Annex 10. Such guarantee shall be provided as a bank guarantee in favour of the Employer as beneficiary. It 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.

☐ An advance payment guarantee will not be required.]

### 5.3: Payment Conditions

#### **A) Lump sum services**

**[●] EUR advance payment** relating to the lump sum services.

equalling **[●]** % of the total remuneration for the lump sum services .

This advance payment [relating to the lump sum services] will not be deducted from the further lump-sum instalments.

#### **Instalments**

Payment shall be made in **three (3)** instalments as follows:

Advance Payment: 20% of the total Contract sum, due within 30 days upon signing of the contract and Consultant's invoice.

Interim Payments: 70% of the total contract sum upon submission and presentation of draft report.

Final Payment: 10 % upon termination of the services and submission of the Final Report and the acceptance thereof by the PEA and KfW.

#### **B) Other Costs**

Other Costs, if any, will be invoiced together with the instalments on the basis of and substantially in the form set out in the Cost Calculation and Invoicing Table (Annex 8) stating the actual costs and exchange rates applied.

#### **Ad 5.5: Invoicing**

The Consultant's invoice shall indicate the BMZ-No. (see Definition of "Project" pursuant to Article 1.1).

Payments may be made to the Consultant from the disposition fund.

Payments shall be made to the following account:

**Bank Transfer (account details will be inserted upon contract award)**



**Ad 5.6: Payment deadline**

Agreed compensation for overdue payments pursuant to Paragraph 5.6  
[Payment Deadline]: **9** per cent per year, in relation to the outstanding amount.

**Ad Article 7: Insurance**

The insurance [●] shall be taken out and maintained by the Consultant, the insurance [●] by the Employer. *[N.B.: Complete as appropriate]*

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

**Ad 8.1: Arbitration Procedure**

The place of arbitration shall be **Nairobi, Kenya**

The language of the arbitration procedure shall be **English**

(Place, date)

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

\_\_\_\_\_  
(for the Consultant)

### **List of Annexes**

***[Note: If one or several of the Annexes are not necessary in the respective 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.]***

<b>Annex no.</b>	<b>Title</b>
1	Declaration of Undertaking
2	Minutes of Negotiation (if relevant)
3	Terms of Reference plus Tender Documents
4	Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Co-operation with Partner Countries (in the version valid on the date the bid was submitted)
5	Staffing Schedule
6	Equipment and Furnishings to be provided by the Employer and Third-party Services Commissioned by the Employer
7	Time Schedule for the Performance of the Services
8	Cost Calculation and Invoicing Table
9	The Consultant's Bid
10	Form of Advance Payment Guarantee (if relevant)

## Declaration of Undertaking

Reference name of the Application/Offer/Contract: ("Contract")<sup>7</sup>

To: ("Project Executing Agency")

9. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")<sup>8</sup> subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
10. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
  - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganization or being in any analogous situation;
  - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
  - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
  - 2.4) having been subject, within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
  - 2.5) not having fulfilled applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the PEA's country;
  - 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or

<sup>7</sup> Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries".

<sup>8</sup> The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

2.7) being guilty of misrepresentation in supplying the information required as condition to participation in this Tender Procedure.

11. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:

3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;

3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;

3.5) in the case of procurement of Works, Plant or Goods:

iii. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;

iv. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;

12. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.

13. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.

14. In the context of the Tender Process and performance of the corresponding Contract:

6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;

6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and

6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation<sup>9</sup> (ILO) and international environmental treaties. Moreover, we

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<sup>9</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on

shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.

15. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an auditor appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project.
16. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Duly empowered to sign in the name and on behalf of<sup>10</sup>: \_\_\_\_\_

Signature:

Dated:

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working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

<sup>10</sup> In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

**Minutes of Negotiation** (if relevant)

**Terms of Reference plus Tender Documents**

**Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services 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)

**Cost Calculation and Invoicing in [EUR preferably]**  
**Package A – Lump Sum Services**

<b>Detailed Cost Calculation – Fees, Transport, Logistics</b> (for information only not basis for payments)				
<b>1. Foreign Staff Cost</b>	<b>Unit</b>	<b>Quantity</b>	<b>Lump sum unit rate</b>	<b>Contract amount</b>
1.1 Team Leader	month	...		
1.2 NN	month	...		
1.3 ...	month	...		
<b>Sub-total Foreign staff</b>				
<b>2. Local Staff Cost</b> (incl. allowances and accommodation, see explanation)				
2.1 NN	month	...		
2.2 ...	month	...		
<b>Sub-total Local staff</b>				
<b>3. Allowance, Accommodation, Complementary Travel Costs for Foreign Staff</b>				
3.1 Allowance, accommodation - Long-term staff	month	...		
3.2 Allowance, accommodation - Short-term staff	month	...		
<b>Sub-total Allowance and accommodation</b>				
<b>4. International Travel</b>				
4.1 International return flights	flight	...		
4.2 Complementary travel costs	flight	...		
4.3 .... other international flights	flight	...		
<b>Sub-Total International flights</b>				
<b>5. Local Travel &amp; Transport Cost</b>				
5.1 Vehicle lease/rent or use of own vehicles	month	...		
5.2 Vehicle O&M incl. driver, assurance, repairs	month	...		
5.3 Other local transport (short-term, peak)	day	...		
5.4 Local flights	flight	...		
<b>Sub-total Local transport</b>				
<b>6. Project Office</b>				
6.1 Office rent	month	...		
6.2 Office operation	month	...		
<b>Sub-total Project office</b>				
<b>7. Reports and Documents</b>				
7.1 ... (Type of reports/documents to be stated)	/doc	...		
7.2 ...	...	...		
<b>Sub-total Reports and documents</b>				
<i>If 8./9. Equipment / Miscellaneous items are part of lump sum service price add relevant column(s)</i>				
<b>Total Package A – Lump Sum Services</b>				





**The Consultant's Bid**

# Advance Payment Guarantee (N/A)

**Beneficiary:** *[Insert name and Address of Employer]*

**Date of issue :** *[Insert date]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name and address of Contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the **Contractor**”) has entered into Contract No. *[insert reference number of the Contract]* dated *[insert Contract date]* with the Beneficiary, for the execution of *[insert object of the Contract and brief description of the contractual content]* (hereinafter called “the **Contract**”). Furthermore we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert amount and currency in words and figures]*<sup>11</sup>, representing *[insert percentage in words and figures]* percent of the Contract price is to be made against an advance payment guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

The advance payment guarantee shall come into force and effect as soon as the advance payment has been credited to the Contractor on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

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

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

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

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

This guarantee shall be automatically reduced pro rata in accordance with the payments performed by the Guarantor hereunder and expire not later than *[insert expiry date]*.

Any demand for payment must be received by us at this office on or before that date by letter or encoded telecommunication.

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

*[As preferred option regarding guarantee rules insert:* This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]

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<sup>11</sup> This guarantee must be issued in the Contract currency only.



*[In the case the issuing bank will not add the preferred option, insert: This guarantee is governed by the law of [insert country of jurisdiction where the bank's branch issuing the guarantee is physically located].*

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Place, date

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Guarantor's authorised signature(s)

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