

CONSULTING CONTRACT

dated

June 02, 2025

between

WWF Armenian Branch

11/1 Proshyan Str.

0019 Yerevan, Republic of Armenia

hereinafter referred to as the **"Employer"**

And

PROPARK ARII PROTEJATE SRL

Strada Lunga, no. 175, Braşov, Romania

hereinafter referred to as the **"Consultant"**

Consultancy Services for

"Development and delivery of a capacity building and training programme aligned with international standards and best practice for Ecopatrol services staff in Armenia"

Relating to the

"Biodiversity and Protected Areas Component"

of the project

"Biodiversity and Sustainable Local Development in Armenia"

BMZ-NR.: 2018 670 01

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Background

The Government of Germany has made a financial commitment to support the Government of the Republic of Armenia in their efforts to conserve Armenia's rich biodiversity and to promote local development. Grant funds up to 26.2 million Euros have been earmarked for this project by the German Government, provided through the Federal Ministry for Economic Cooperation and Development (BMZ) and to be implemented by KfW Development Bank. It is intended to build on the long-term support of the German Government towards the conservation of the Caucasus Ecoregion.

The proposed activity covered by this Consulting Contract is being supported under the framework of the "Biodiversity and Sustainable Local Development in Armenia, Biodiversity and Protected Areas Component". This Component is part of the larger project "Biodiversity and Sustainable Local development in Armenia" (BSLD) which is being implemented by the Ministry of Environment of the Republic of Armenia (MoEnv) as the Project Executing Agency (PEA) with KfW grant financing.

The consortium of WWF Armenia/WWF-Caucasus has been appointed as the Implementation Consultant to support the PEA in delivery of this project component. Under the Separate Agreement to the Grant Agreement¹, all procurement activities are delegated by the PEA to the Implementation Consultant including management of the Disposition Fund and the concluding and signing of Contracts for Goods, Works and Services within the Project on behalf of the PEA.

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:

¹ German Financial Cooperation with the Republic of Armenia - Biodiversity and sustainable local development in Armenia, BMZ No.: 2018 670 01 - Separate Agreement to the Grant Agreement dated 03 December 2018 and to the Amendment of the Grant Agreement dated 04 August 2021.

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^{2,3}.

"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 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.

² 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.

³ 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.

"Funding Agreement" means the *[loan agreement / financing agreement]* entered into between KfW and *[the Employer]* to wholly or partly finance 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:

- 1.2.1 Section, clause, annex and schedule headings are for ease of reference only.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 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.
- 1.2.4 References to a "**director**" include any statutory legal representative(s) of a person pursuant to the laws of its jurisdiction of incorporation.
- 1.2.5 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.
- 1.2.6 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).
- 1.2.7 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

- 1.3.1 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.
- 1.3.2 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.
- 1.3.3 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 Employer has to inform the Consultant about KfW's written confirmation immediately.

1.7 MEASUREMENTS AND STANDARDS

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**

- 1.8.1 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.
- 1.8.2 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.
- 1.8.3 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**

- 1.10.1 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.
- 1.10.2 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**

- 1.11.1 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.

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

- (a) which is or becomes public information other than as a direct or indirect result of any breach of this Consulting Contract;
- (b) 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.
- (c) 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.

1.11.3 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

1.13.1 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.

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

1.13.3 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.

1.13.4 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 AND ENVIRONMENTAL RESPONSIBILITY

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 to the extra account of the Employer specified in the Special Conditions.

**1.16
SEVERABILITY AND
WRITTEN FORM**

- 1.16.1 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.
- 1.16.2 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.
- 1.16.3 Any supplements and amendments to this Consulting Contract – including to this Article 1.16.3 – 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**

- 2.3.1 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*].
- 2.3.2 In addition, the Employer shall support the Consultant, the Consultant's employees and directors and, where applicable, their [immediate] relatives in:
- (a) obtaining as soon as reasonably practicable any documents necessary for entering, residing in, working in and leaving the Country (visa, work permit etc.);

- (b) granting and/or obtaining unrestricted access to the Project where necessary for the performance of the Services;
- (c) the import, export and customs clearance of personal items and of goods and commodities required for the performance of the Services;
- (d) securing return transport in cases of emergency;
- (e) 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;
- (f) obtaining permission to export the money paid by the Employer to the Consultant under this Consulting Contract; and
- (g) 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 subparagraphs (a) through (f) above.

2.4 TAXES

- 2.4.1 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.
- 2.4.2 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

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| 3.1
SCOPE OF
SERVICES | <p>3.1.1 The Consultant shall deliver the Services in full and on time.</p> <p>3.1.2 The Consultant shall cooperate in good faith with any third parties commissioned by the Employer pursuant to Paragraph 2.5 [<i>Services and Furnishings</i>]. 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.</p> |
| 3.2
REPORTING AND
INFORMATION | <p>3.2.1 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.</p> <p>3.2.2 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.</p> |
| 3.3
STAFFING | <p>3.3.1 The Consultant shall employ the staff specified in Annex 5 [<i>Personnel Schedule</i>] 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.</p> <p>3.3.2 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 [<i>Conduct</i>]. 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.</p> <p>3.3.3 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.</p> <p>3.3.4 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.</p> |
| 3.4
CONTACT
PERSON OF THE
CONSULTANT | <p>3.4.1 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.</p> <p>3.4.2 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.</p> |

Paragraph 4**Commencement, Completion, Amendment and Termination of the Services****4.1
COMMENCEMENT
AND
COMPLETION**

- 4.1.1 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).
- 4.1.2 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.
- 4.1.3 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**

- 4.2.1 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 4.4 [*Suspension or Termination*].
- 4.2.2 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**

- 4.3.1 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.
- 4.3.2 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.

4.3.3 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) a proportionate amount of the Agreed Remuneration for the Services performed up to the occurrence of the Force Majeure; and
- (b) 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 4.4 [*Suspension or Termination*].

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

- (a) 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
- (b) 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.

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

4.4 SUSPENSION OR TERMINATION

4.4.1 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.

4.4.2 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.

4.4.3 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.

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

- (a) the due but unpaid proportion of the Agreed Remuneration for the Services performed until the date of termination or suspension; and
- (b) 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.

4.4.5 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

4.5.1 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.

4.5.2 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 4.5 [*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

- (a) lump sum services; or
- (b) 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:

- (a) 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.
- (b) 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.
- (c) 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

- (a) 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.
- (b) 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*].
- (c) 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

- (a) 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

- (a) 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.

- (b) 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

- (a) 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.
- (b) 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**

7.1.1 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:

- (a) professional liability insurance;
- (b) personal liability insurance;
- (c) 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
- (d) motor vehicle third party liability insurance and motor vehicle comprehensive hull insurance for the vehicles acquired in connection with this Consulting Contract.

7.1.2 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.

7.1.3 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.