

REQUEST FOR PROPOSALS

FOR

**TRANSACTION ADVISOR SERVICES TO THE GOVERNMENT OF KENYA
FOR THE PROPOSED NAIROBI SMART STREET LIGHTING PPP PROJECT**

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1 Background

The Government of Kenya (“GOK”) represented by The National Treasury and Planning has entered into a Memorandum of Understanding with the Private Infrastructure Development Group Limited (“PIDG Ltd”) to provide technical assistance support to the Public Private Partnerships Directorate (“PPPD”). As part of the technical assistance support, the United Kingdom’s Foreign, Commonwealth and Development Office (“FCDO”) and PIDG Ltd have committed a grant funding to be used to fund early-stage project preparation costs to help PPPD develop a pipeline of market ready PPP projects which can attract private investment. The grant will finance the following activities under the PPPD technical assistance support programme:

- i. Feasibility studies, marketing activities and market studies, business case preparation and project structuring as PPPs;
- ii. Embedding of technical advisors within the PPPD including environmental and social specialists, legal advisors and transaction advisors in specific sectors including solid waste management, students’ accommodation, special economic zones, roads, bridges and port infrastructure, water and sanitation, energy and health infrastructure; and
- iii. Assisting the PPPD in assessing the need for viability gap funding (“VGF”) requirements for a Project, including financial model reviews and optimizing financial structuring of Projects to minimize the viability gap funding impact on public finances.

2 Introduction to PIDG Ltd

PIDG Ltd is an innovative infrastructure project development and finance organization that mobilizes private investment in sustainable and inclusive infrastructure in Africa and south and south-east Asia. Domiciled in the UK, PIDG Ltd is funded by six governments (the UK, the Netherlands, Switzerland, Australia, Sweden, Germany) and the International Finance Corporation (IFC). PIDG Ltd investments promote socio-economic development within a just transition to net zero emissions, combat poverty and contribute to Sustainable Development Goals (SDGs). Since 2002, PIDG Ltd has committed US\$4.4bn to support 171 infrastructure projects to financial close, mobilizing US\$22.1bn from the private sector. The PIDG-supported projects are expected to provide an estimated 217.7 million people with access to new or improved infrastructure.

PIDG Ltd through its Technical Assistance team will be managing the implementation of activities supported under the PPPD technical assistance support programme. For more detail on PIDG please refer to the website: www.pidg.org.

3 The Nairobi Smart Street Lighting (NSSL) PPP Project

The Government of Kenya (GOK) has made Public Private Partnerships (PPPs) a priority mechanism that can help in the development of assets and provision of services to address the major infrastructure gaps in the country. Several project proposals and feasibility studies have been approved and as of today there is a substantial pipeline of projects just entering the feasibility stage, as well as a small, but growing number of projects entering transaction stage. For several projects, Transaction Advisors (TAs) have

been appointed to assist contracting authorities with the preparation of Feasibility Studies and the implementation of PPP transactions.

With a growing number of project proposals approved, across various sectors and in both levels of governments, the PPP programme in Kenya is gathering pace. To assist with projects closure, the PPPD collaborates with development partners through strategic partnerships to support the implementation of the Kenya's PPP Programme. The Nairobi Smart Street Lighting (NSSL) PPP Project is one of the projects prioritized under the partnership between PIDG Ltd and the GOK.

The GOK and PIDG Ltd (the "Parties") have identified the Nairobi Smart Street Lighting PPP Project for provision of technical assistance in structuring the project for private sector participation. Nairobi Metropolitan Services (NMS), the Contracting Authority is seeking to partner with a private sector partner to develop, modernize, expand, operate and maintain approximately 100,000 street lighting assets to pre-agreed standards for a duration of 10 years. Financing is to be provided by the private party under a PPP arrangement. The technical support by PIDG Ltd is also aimed at supporting the PPPD's sustainability agenda as it seeks to mobilize funds to unlock future PPP projects.

The parties wish to explore the feasibility of the Nairobi Street Lighting project as a public-private partnership (PPP) and thus intend to procure the services of a consortium of experienced transaction advisors to assist through the various phases of the PPP project cycle. These terms of reference invite proposals from a transaction advisor representing a team of suitably qualified and experienced financial, technical, legal, environmental and social specialists to assist in determining the viability of the project as a PPP and thereafter support the procurement of a private party to implement the NSSL Project under a Design, Build, Finance, Maintain and Transfer (DBFMT) PPP arrangement.

4 Terms of Reference

4.1. Introduction

4.1.1. Legal Status of the Contracting Authority

The Nairobi City County is the creation of the Constitution of Kenya 2010 and successor of the defunct City Council of Nairobi. It operates under the auspices of the County Government Act, The Intergovernmental Relations Act, the Urban Areas and Cities Act and a host of other enabling legal instruments. As provided for under Schedule 4 of the Constitution of Kenya, the Nairobi City County is charged with the responsibility of providing a variety of services to residents within its area of jurisdiction. These include services that were hitherto provided by the defunct City Council and the ones that have been transferred from the national Government. The National Government and the Nairobi City County Government signed a Deed of Transfer Agreement on 25th February, 2020, transferring some functions from the Nairobi City County to the National Government. This Deed came into effect on 18th March, 2020. On account of Article 7.1 of the Deed, H. E. the President through Executive Order No. 3 of 2020 established the Nairobi Metropolitan Services (NMS) domiciled in the Executive Office of the President to implement the transferred functions. The Deed of Transfer of functions referred to above transferred the following functions from Nairobi City County Government to National Government:

- a) County Health Services;
- b) County Environment, Water, Sanitation and Energy;
- c) County Planning and Development Services; and
- d) County Transport, Public Works, Utilities and Ancillary Services.

Following the signing of the above Deed of Transfer, NMS became a department under the National Government with the mandate to execute the transferred functions highlighted above. To operationalize the delivery of these services, NMS established the following Technical Directorates: (i) Health Services; (ii) Roads, Transport and Public Works Services; (iii) Housing and Urban Development; (iv) Environment, Water and Sanitation Services, and (v) Energy reticulation and Development. In order to run these transferred functions, NMS requires an annual budget of at least Sh27 billion annually

4.1.2. Status of Street Lighting in Nairobi County

Street and public area lighting is a key service that should be provided by the Government. Good lighting at night is essential for urban ambience and road users as well as safety of properties and the residents. Well-lit streets also boost economic opportunities by expanding the hours of commercial activity after dark. In Nairobi City County, street lighting is either inadequately designed or maintained and/or uses obsolete lighting technology that consumes large amounts of energy and financial resources than necessary whilst not meeting the desired quality of lighting for a metropolis that is also the regional economic and diplomatic hub.

Currently, the County has approximately 3,000 kilometres of road and related transportation structures. At night the city is illuminated by about 60,000 streetlights that are owned by the County, although set-up by either Kenya Power, the private sector or the County itself. The street lighting footprint is comprised of a combination of High-Pressure Sodium Vapor (HPSV); Mercury Vapor (MV) lamps and Light Emitting Diodes (LED)-based streetlights. The street lighting system is spread all over the County but with a higher concentration in the Central Business District (CBD) and less density in the outlying areas.

The current energy consumption attributed to street lighting in the County is estimated at 48 Million KWh per year. In addition, some of the installed streetlights do not have the consumption well accounted through metering by Kenya Power. This is due to some circuits having either 'inaccessible' meters or are just not in existence, mainly due to vandalism where the control pillars are easily accessible. Consequently, some of the energy bills are estimates making the total bill range between KES. 40 Million to KES. 60 Million per month. Other challenges faced by the street lighting system include vandalism of poles for scrap metal and damage by road users through motor vehicle accidents. Most maintenance operations are as a result of street lighting circuits being off due to faulty/vandalized cables & automation (timers, photo cells, contactors) or due to faulty/vandalized lights. Nairobi County only had 7 platform (Bucket aerial lift) vehicles used for maintenance works, however, only 4 vehicles were usually operational at any one given time. NMS has however enhanced this capacity by 6 additional platform vehicles and 6 medium size cranes. On average, the County usually repairs and brings back to operation about 6,000 lights per month on the combined activities as described above. The current annual budget allocation for public street lighting operations and maintenance for the County is KES. 800 Million.

Following a recent GPS mapping exercise carried out in the County to determine the need for street and public lights, it was estimated that the County requires about 40,000 new lighting units to be able to cover the entire road network. In the recent past, together with Kenya Power, the County has worked to add and retrofit its street and public lights with LED technology. Of the total installed light units in the County when NMS took over, 32,000 (58%) were LED-fitted and 23,000 (42%) were HPSV & MV fitted. In addition, NMS has in the recent past retrofitted about 2,000 HPS lamps to LED, and replaced about another 6,900 faulty/vandalized light units. NMS in partnership with Kenya Power has installed about 6,300 new street lights in various locations within the County. There is also an ongoing project to upgrade about 400km of road in the informal settlements, and install streetlights along the road network.

Besides the high energy consumption associated with a street lighting system with nearly half of its lanterns as Non-LED, the system is also not networked. As a result, a Common Management System as a platform for proper asset management does not exist. By definition, therefore, the system is not intelligent in the sense of remote-controlled functions that permit dynamic dimming; trimming and fault detection as well as advanced metering infrastructure for energy consumption. The only automation existing is the automatic switch on and off in the evening and at dawn. It is against this background that a Project to establish a smart street lighting system for Nairobi County has been conceived.

4.2. The Proposed Smart Street Lighting Project

The Proposed Project seeks to establish a smart street lighting system, which will entail the installation entirely of new lighting fixtures and LED lamps as well as retrofitting existing lighting fixtures with LED lamps to end up with an estimated 100,000 lighting units. Primary focus will be on solar-powered LED streetlights as opposed to conventional grid-based lighting. In addition, the Project will establish a Common Management System (CMS) underpinned by a suitable technology as the anchor of the smart street lighting system. Smart street lighting seeks to control entire public lighting systems from remote devices. It requires streetlights to be connected – usually using a wireless technology - and for each individual streetlight to be represented digitally in a CMS so that it can be controlled and managed via a central dashboard. By establishing the CMS, the proposed Project will enable Nairobi County's street lighting system efficient by, reducing energy consumption and creating safer, more liveable places to live and work.

The proposed Project will combine LED lighting and smart controls into a single system and thus reduce energy consumption and correspondingly lower emissions. According to industry experts, LEDs use approximately 40-50% less energy than HPS or MV bulbs. Across sub-Saharan Africa, installing and maintaining solar-powered LED streetlights as opposed to conventional grid-based lighting could reduce upfront installation costs by at least 25%, electricity consumption by 40% and the maintenance costs of lighting by up to 60%. Adding lighting controls can save an additional 20-30% because controls enable the introduction of variable lighting policies dynamically controlled via the CMS dashboard. The Project will, therefore, facilitate the implementation of variable lighting policies in Nairobi County. Variable lighting policies may include dimming, or raising, the lighting levels. In addition, it may include trimming the burning hours and curfew switching of certain lights, or the entire system. A variable lighting policy will reduce the amount of energy consumed without any service degradation. This means reduced carbon emissions and lower energy costs.

Through deploying smart controls, the Project will facilitate the grouping of lights by area or function and subsequently profile them so that residential areas; major crime areas and key traffic routes can all be treated differently. As the needs of a neighbourhood changes, the lighting policy can be easily adapted without any need to visit the site. In addition, different lighting policies will be applied to streetlights grouped by location or by specific function. As a result, the Project will deliver a tailored and customizable lighting service flexible to the needs of the community.

The Project will establish a dynamic street lighting asset inventory for Nairobi County. An up-to-date asset inventory is critical for billing and maintenance purposes. Through the process of installing GPS-enabled controls during the LED upgrade, the proposed Project will create an opportunity to build a dynamic asset inventory with new lights automatically commissioning themselves and making their locations known in the CMS. The resulting asset register will be stored in central system databases and integrated with the County's asset management or GIS systems. The Project will, therefore, not only deliver a comprehensive and accurate asset inventory but also one that is updated in real-time and that is easily accessed via any user-based device.

The smart controls on the streetlights to be deployed by the proposed Project will form part of a system to improve metering of the system's energy consumption. Smart controls commonly contain a meter chip which can measure energy consumption to a high degree of accuracy. As a result, energy bills will be precise and based on actual usage, thus potentially creating savings for the County.

Streetlight maintenance routines are leaner and more efficient when guided by a CMS and intelligent controls. The proposed system will facilitate the identification of faults in real-time resulting in less time spent out on-sites doing diagnostics and potentially less exposure to risk where streetlights sit on busy roads.

4.3. The Transaction Advisor's Scope of Work

To prepare for the eventual procurement of the private party that will Design, Build, Finance, Maintain and Transfer (DBFMT) the proposed Nairobi Smart Street lighting Project, the services of a Transaction Advisor are required to undertake the following tasks:

Phase 1: Undertake a comprehensive feasibility study for the Project.

Phase 2: If required afterwards, provide advisory services for the procurement of the private party for the project.

4.3.1 Technical Due Diligence

- (a) In relation to the technology component of the project, the Transaction Advisor is expected to:
- specify the suitable technology to anchor the CMS;
 - develop the coverage map;
 - develop the base station position and distribution;
 - undertake capacity planning;
 - undertake the frequency planning; and
 - develop the output specifications and link them to the payment mechanism.
- (b) Define and specify the Remote Monitoring and Control System, other supporting systems, fixtures, appurtenances and infrastructure necessary for the proper functioning of 100,000 LED Smart Street lighting system. Include a supporting system to incorporate existing LED lights already installed into the smart system, or what to do with them, and also what to do with the retrofitted inefficient lights.
- (c) Map the existing street light network including all electrical systems necessary for the proper functioning of the luminaires, underground conduits, panels, junction boxes, manholes, hand holes etc. The purpose of mapping the existing street lighting network is to facilitate the eventual preparation of bids at the procurement stage as well as the delineation of the envisaged service area under the PPP Contract.
- (d) Assess the adequacy of the existing electricity supply infrastructure to power the proposed smart street lighting system and recommend alternative sources of power by integrating solar or any other innovative green energy source. In addition, investigate the viability of using composite eco-friendly poles in those sections of the proposed service area where new poles have to be erected.
- (e) Formulate a reference design of the Remote Monitoring and Control System (RMCS), including specifying installation of any necessary hardware such as a node or gateway and enablement of backhaul communication resulting in the lighting unit being enabled for control via the RMCS. The system design should also facilitate remote reading of electricity meters. However, linkage to be done with the power utility not to duplicate this function in case they have the same.
- (f) Formulate a reference design for an Asset Management Information System (AMIS) foreshadowing asset management requirement such as a database of the Asset Management Work, including references to lighting units; documents related to Asset Management Work (e.g., user manuals, as-built drawings, etc.); and a user-customizable Graphic User Interface (GUI).
- (g) Formulate the specifications for the Smart Street lighting system's fixtures such as metal poles; composite poles; brackets and arms; luminaires; glare shields; handholes; T-base/base cover; anchor bolts; anchor bolt covers and foundations.
- (h) Consider and put forward an energy management plan that is linked to specifications, including dimming of fixtures; schedule for the hours of operation and locations as per the rated wattage of luminaires at operational levels, and any methods, scheduling or power management tools that can be deployed to achieve the desired power usage.
- (i) Provide estimates of the proposed Project's capital costs and operation and maintenance costs, including upgrades and system major maintenance schedules;
- (j) Define service performance standards such as the required level of illuminance and light quality; a calibrated outage profile for purposes of enforcement of penalties for non-performance; cure periods for defined outages and system non-performance
- (k) Formulate a base case project implementation schedule with detailed activities and their timing.

- (l) Undertake case study analysis on two similar PPP Smart Street Lighting Projects but not limited to those carried out by the TA and make recommendations, if necessary, for a benchmarking exercise to the two projects for NMS to see first-hand where and how the smart streetlighting has been implemented as a PPP arrangement. This activity should be part of the technical due diligence during the Feasibility Study stage.
- (m) Incorporate the requirements for the project to meet green certification standards applicable to national, regional and international standards e.g green star.

4.3.2. Legal Due Diligence

- (a) Assess whether the applicable legal, regulatory and institutional framework permits NMS to implement the proposed Project and the extent to which NMS functions or use of State property can legally be performed by a private party in a possible PPP;
- (b) Make recommendations on the mandatory project approvals and consents from relevant regulatory bodies
- (c) Ascertain that the existing regulatory and institutional framework sanctions the proposed PPP option;
- (d) Investigate any regulatory matter such as tax, labour, environmental, foreign exchange, local content, public participation, competition, power sector, ICT and communications and other legislations that may impact or impede the private party's ability to deliver the Project as expected and advise accordingly;
- (e) Propose appropriate institutional arrangements for the Project taking into consideration the roles and responsibilities of NMS and other government agencies and entities as well as the private party;
- (f) Ascertain the powers confirmed on NMS as the Contracting Authority to award and enter into long-term contracts, including the commitment of long-term budgetary appropriations;
- (g) Consider and advise on matters relating to site and land use and planning consents specific to the proposed Project; and
- (h) Advise on statutes relating to general contract law and banking law suitable to support PPP project financing.

4.3.3. Financial and Economic Due Diligence

- (a) **Financial Analysis:** through financial modelling, the Transaction Advisor is to investigate the revenue requirements of the proposed project in the context of the debt service requirements and equity return hurdle of the private party;
- (b) **Economic Analysis:** The Transaction Advisor is to undertake an economic review to assess the value of the Project on the economy of both the Nairobi County and the nation. The analysis will establish the economic rationale for the Project. An economic and social cost benefit analysis will assess both qualitative and quantitative economic and social costs and benefits of the proposed Project including determination of the Economic Internal Rate of Return and the Cost-Benefit Ratio for the Project; and
- (c) **Financial Modelling:** The financial modelling will entail the construction of a financial model, which will be used as a standard financial model for the Project, based on the same output specifications assumed in the proposed PPP structure. The Transaction Advisor, through a combination of its experience and econometric modelling, is expected to determine the rate of return expectations of potential private sector bidders. The model should, therefore, cover the same categories of whole life-cycle costs as the proposed technical solution and be within comparable contract period(s). The financial modelling should evaluate the affordability of the project to the Contracting Authority; determine the Project's financing requirements and evaluate the alternative financing structures; undertake sensitivity analysis to test the resilience of the model to changes in assumptions and risks over the Project term and

estimate the FCCL (fiscal commitments and contingent liability) that are likely to arise as a result of implementing the project. The computation of the estimates must be consistent with the FCCL Management Framework for PPP projects in Kenya.

4.3.4. Risk Allocation.

The Transaction Advisor will be required to identify all possible risks in the construction and operation of the Project, the probability of each risk arising, the value of each risk and the strategies and cost of mitigating the risks. In doing so, the Transaction Advisor is expected to set out a risk allocation matrix that quantifies the risks associated with the recommended Project configuration, and propose how each of the risks should be anticipated, methods for mitigating the risk and recommendations on the proper allocation of the risk. This information shall be of interest to NMS in its review of the fiscal risk commitments and contingent liabilities assumed in the proposed Project structure. The risk matrix shall contain the following information:

- risk and its description;
- expert's estimate of the probability that the risk will be realized, together with the rationale/assumption;
- expert's estimate of the impact of the risk as a percentage of the base;
- the base or amount;
- most likely timing of the risk event;
- cost of the risk in NPV terms;
- risk distribution between public and private parties in terms of percentage of costs borne;
- distribution of cost of the risk between parties in terms of NPV amount; and
- mitigation of risk.

4.3.5. Environmental, Social and Health Impact Assessment

The objectives of the ESHIA are to ensure that all environmental and social consequences due to construction and operations of the proposed street lighting project are evaluated and addressed as part of the mitigation measures incorporated into its final design. The ESHIA will initially be based on the preliminary design, then proposed mitigation measures can be incorporated into the final design, and finally provide a reassessment of impacts based on the final design. Key tasks are as follows:

- (a) Identify significant and secondary environmental social, health and safety issues associated with project design, construction and operation;
- (b) Identify measures needed to ensure compliance with both IFC performance standards and PIDG Ltd.'s Health, Safety, Environmental and Social Management Systems ("HSES-MS") PIDG ESHIA Guidance and benchmarks;
- (c) Identify relevant stakeholders and describing requirements for the integration of stakeholder engagement (public participation) during the ESIA process, with special consideration of local conditions.
- (d) Provide guidance on Stakeholder Mapping including the development of an outline for Stakeholder Engagement Management Plan (SEMP) and Grievance Redress Mechanism (GRM);
- (e) Identify the range of project siting, design and operational alternatives that need to be considered;
- (f) Identify the environmental, social, health and safety impacts and risks pertaining to the project;
- (g) Identify and describe an institutional framework relevant to project implementation;
- (h) Define the environmental, social, health and safety baseline needed to better assess the magnitude, significance and temporality of the potential impacts and risks;

- (i) Identify relevant prevention, mitigation, management and monitoring measures and arrangements that need to be considered;
- (j) Provide an indicative outline of the contents of:
 - (i) a comprehensive ESHIA, including the content of each section with a focus on major environmental and social impacts and proposed mitigation measures; and
 - (ii) Environmental and Social Management Plan (ESMP).

4.3.6. PPP Structure Options Analysis

The Transaction Advisor will be expected to formulate a suitable PPP Project structure providing the following:

- Detailed description of the type of PPP Project option proposed and the rationale for its selection;
- Anticipated key roles and responsibilities of the private sector and the Contracting Authority;
- A summary assessment of the proposed Project fiscal impact on public finances;
- A summary of the output specifications for the Project;
- Other potential services that may be provided or commercial activities that may be undertaken by the private partner and not included in the initial Project description;
- Key risk allocation;
- Outline of payment mechanism;
- Indicative financing structure (appropriate equity returns, debt service cover ratios and costs of debt etc. and
- Envisaged PPP Project procurement process map.

4.3.7. Project Agreement Heads of Terms

Based on the proposed risk allocation and PPP Project structure in Paras 4.3.4 and 4.3.6 above, the Transaction Advisor will be expected to set out the Heads of Terms for the Project Agreement (PA) whose conclusion would mark the culmination of the PPP Project procurement process. The Project Agreement Heads of Terms will set out key contract provisions, including any non-negotiable clauses provided by GoK. The PA Heads of Terms should also contain a section on disclosure of information, which should incorporate the disclosures outlines in the PPP Disclosure framework.

4.3.8. Market Sounding

To ensure that the views of prospective lenders, investors, contractors, equipment suppliers, etc. are incorporated in the structuring of the proposed project, the Transaction Advisor shall undertake a Market Sounding exercise that shall include the following tasks:

- Organizing a meeting with NMS officials to provide an overview of the approach to market sounding;
- Preparing of a Market Sounding document that will include a Project Profile. The Project Profile is expected to set out the objectives of NMS; provide an overview of the Project; lay out the process and timetable for procurement and provide an outline Risk Allocation as well as provide a summary of the key issues to be discussed with the market actors;
- Set out the rationale for the identification of market actors that are to be approached and provide a long list of individual entities to be approached;
- Engage the market as described above and receive feedback;
- Prepare a Market Sounding Report and

- The Contracting Authority in consultation with the PPP Directorate may elect to have a market sounding event. If this option is exercised, the Transaction Advisor will be expected to facilitate such an event by way of mobilizing the attendance of relevant market players and in presenting the project.

4.3.9. Governance and Communication Plan

The Transaction Advisor shall develop a Communication Plan incorporating a matrix of all relevant stakeholders and users that will be identified to ensure they are committed to the project, and propose arrangements for continued communication and consultation.

Further the Transaction Advisor shall propose a Project Governance Plan and shall guide NMS and the PPPD on required project governance structures and processes to ensure timely and effective decision making.

The Transaction Advisor shall propose criteria for a credible and well-resourced Project Team and Processes including credible and experienced advisers who may need to be appointed to manage the procurement phase, assure an effective bidding process and evaluation strategy and ensure that appropriate assessment will be carried out to demonstrate that the proposed approach is expected to meet any value-for-money criteria (to the extent required by policy).

4.3.10. Support to the Contracting Authority

The Feasibility Study Report and the Fiscal Commitments and Contingent Liability (FCCL) assessment will be submitted in the first instance to NMS and the PPP Directorate, and subsequently to the PPP Committee for approval. The Transaction Advisor shall assist NMS in presenting the project for approval (including the conduct of Project briefings) at the NMS board-level and before the PPP Committee for approval. The Transaction Advisor shall address all of the NMS' project team, including the PPP Node and Project Appraisal Team (PAT)) as well as the PPPD, project concerns and clarifications until an approval is accorded by the relevant entities. The Transaction Advisor will also provide assistance in securing approval of the projects estimated Fiscal Commitments and Contingent Liability (FCCL) from the Public Debt Management Office (PDMO) through the preparation of the FCCL estimates required under the FCCL Framework for PPP projects in Kenya and defending the same, if required, before the PDMO team. If necessary, the Transaction Advisor shall assist the CA in obtaining PPP Committee regulatory approvals and Government support to the Project (financial, guarantee, legal etc.) as recommended in the Feasibility Study. The Transaction Advisor will assist the CA in securing the necessary NEMA approvals on the ESIA.

4.3.11. Procurement of the PPP Project.

The Transaction Advisor shall only proceed with this stage of the assignment if the Project is found to be technically, economically, financially, legally and environmentally viable during the Feasibility Study (FS) stage and following the approval of the project by the PPP Committee. This stage of the assignment will entail several components, which are outlined below:

- **Development of PPP Implementation Plan including the Procurement Strategy.** The Transaction Advisor shall;
 - a. update the transaction documents (if required to do so);
 - b. recommend an appropriate bid strategy in accordance with the PPP Act (i.e., develop a blueprint of the bid process and appropriate governance for the bidding process);

- c. prepare a detailed Project Implementation Plan which will set out a clear timetable for the project implementation and will cover all the tasks required of all parties to procure the Project, identifying: (i) Tasks; (ii) Timing; (iii) Responsibilities for each task; and, (iv) Key approval/ decision points and milestones. Preferably using MS Project, or equivalent software, indicating all the key tasks, deliverables, milestones, responsibilities, timetables and critical path for successful project implementation. This detailed plan will be discussed and agreed with NMS and the PPPD before engagement.
- **Project Information Memorandum ("PIM"):** The Transaction Advisor will be expected to prepare a PIM for issue to interested parties that may wish to participate in or learn more about the proposed project. The information contained in the PIM should be of a non-confidential nature. The PIM will include (but is not limited to) the following information: background and rationale for the proposed project including country context; statement from the appropriate Minister/ Governor in support of the proposed project; a summary of the key business case issues; project scope; regulatory issues; project term; other unique project matters; key project participants and timetable for implementation.
 - **Request for Qualification Documentation ("RFQ"):** The Transaction Advisor will propose and agree on the contents of the RFQ document with NMS and PPPD; recommend technical and financial pre-qualification criteria for the prequalification of bidders, in line with market practice and comparable transactions (where possible); based on selection criteria agreed by NMS, coordinate and lead the development of an evaluation framework for pre-qualification of bidders with relevant input from NMS and other advisers as appropriate and take a leading role in the development of the RFQ, ensuring input from the CA and any specialist advisers.
 - **Prequalification:** The TA will provide advice and support to the Prequalification Committee in the evaluation of the technical, financial and legal responses received in the RFQ submissions from Prospective Bidders. In addition, they will provide input to, and support the production of the evaluation report on the RFQ submissions for approval by assisting the CA in non-logistical preparations of a bidders' conference and support such conference as required.
 - **Request for Proposals ("RFP") Documentation:** The TA will take the leading role in the production of the RFP documentation, including but not limited to: production of the "Instructions to Bidders" section of RFP ensuring key input from NMS and the PPP Directorate; setting the detailed deliverables list; develop the Project Agreement (PA) for issue to Bidders; develop the payment mechanism and performance standards; setting up and managing the content, and access to the project data room; support NMS in obtaining approval to issue the RFP; production of evaluation criteria for approval by NMS for inclusion in the RFP; assist NMS to obtain all required statutory approvals; draft appropriate statutory notices for publication and obtain approval to publish the same through the CA. In preparation of the RFP and other bid/procurement documentation such as the draft project agreement, the TA, should ensure that the PPP Disclosure framework is appropriately reflected and standard clauses on PPP disclosure approved by GoK are included in the documentation.
 - **Bid Period:** The TA will receive Pre-Qualified Bidder queries and co-ordinate response in a timely manner, ensuring input from NMS and the PPP Directorate as required; advise NMS on the implications of Pre-Qualified Bidder queries having consulted with NMS and the PPP Directorate as required; support NMS in all bid processes including (without limitation) preliminary bidder meetings, competitive dialogue meetings, if required and any other meetings as requested by NMS ensuring accurate minutes are taken and distributed; attend meetings with NMS; ensure the Data Room is always

available and up to date acting as joint administrator with NMS; update the RFP if required in response to Pre-Qualified Bidder queries and the competitive dialogue process; ensure compliance by NMS and other specialist advisers with the requirements of the RFP and report formally and informally to NMS as required.

- **Tender Evaluation:** The TA will advise and support the Evaluation Committee in the evaluation of Pre-Qualified Bidder RFP response ensuring compliance with the evaluation criteria specified in the RFP; produce and populate the evaluation matrix with the input of the members of the Evaluation Committee; advise and assist the Evaluation Committee in raising and obtaining response from Pre-Qualified Bidder to clarifications as required and assist the Evaluation Committee in the production and approval of the Evaluation Report.
- **Bidder Negotiations and Financial Closure:** The TA shall update the Public Sector Comparator (PSC), Value For Money (VFM) and affordability model using updated costs based on Pre-Qualified Bidder prices and revenue information from the CA; coordinate the conduct of all negotiations, supporting NMS on all aspects of any negotiations of terms with the preferred bidder; support NMS throughout the process of finance raising for the Project, up until Financial Close, by providing oversight of the financing process; support NMS in reviewing, commenting and negotiating the project documents (for example PA, Direct Agreement, Installation Prime Contracts, O&M Contract, PA Schedules, Government support measures etc.); attend and support in all negotiation meetings; assist and advise NMS in preparing the Project Report, FCCL Report and any report as required.

4.4. Qualifications

The Transaction Advisor (TA) will be a firm or consortium of firms. The TA shall be managed by a Lead Advisor who should be either the Financial Advisor or Technical Advisor. The Lead Advisor will be held accountable in terms of the Transaction Advisory contract for ensuring Project deliverables and for the professional conduct and integrity of the team. The TA will collectively cover the range of technical (including environmental and social), financial (including economic) legal and other expertise required to procure the Project through a PPP transaction. The Lead Advisor shall enter into contract with PIDG Ltd.

The TA should have the skills and experience necessary to undertake the range of tasks set out in this Terms of Reference. The skills and experience required of the Transaction Advisor include a combination of electrical engineering; civil engineering and information technology specialists. The TA's experience should at the minimum include:

- experience on at least two projects that included the design, construction, operations, and asset management of a large street light network;
- experience on at least two large LED street light network projects, comparable in scale and scope to that of the proposed project;
- experience with utility relocation and coordination on at least two projects of comparable size and complexity; and
- experience with design and implementation of at least one RMCS system.

In addition to the requirements set out above:

- (a) The TA should have a minimum of ten (10) years of PPP transaction advisory experience covering financial and legal aspects of project delivery as well as environmental and social (E&S) assessment. The firm or consortium of firms must have experience of having conducted a minimum of 3 Environmental and Social

- Impact Assessment (ESIA) assignments for large scale infrastructure projects done within the last 10 years;
- (b) Specific experience gained in the last 10 years in the setup of a smart street lighting system of comparable scale as that envisaged by the proposed project; and
- (c) Experience in developing countries or similar jurisdiction.

The TA will be invited to propose for the CA's approval their preferred staffing complement by way of professional discipline and headcount. With respect to the engineering staff, they are to have a minimum of 10 years' experience and be registered professional engineers. The information technology specialist is expected to have a minimum of 10 years of experience in the design, development, and management of information systems and asset management systems and have a degree in a relevant discipline. The minimum qualifications and experience of the Transaction Advisor team members are tabulated below:

No	Position	Qualifications and Experience
1	Technical Experts	<p>The Technical Experts will include a combination of electrical engineering; civil engineering and information technology specialists with:</p> <ul style="list-style-type: none"> ▪ experience on at least two projects that included the design, construction, operations, and asset management of a large street light network; ▪ experience on at least two large LED street light network projects, comparable in scale and scope to that of the proposed project; ▪ experience with utility relocation and coordination on at least two projects of comparable size and complexity; and ▪ experience with design and implementation of at least one RMCS system. <p>The Technical experts with engineering background should have a minimum of 10 years' experience and be registered professional engineers. The information technology specialist is expected to have a minimum of 10 years of experience in the design, development, and management of information systems and asset management systems and have a degree in a relevant discipline.</p>
2	Financial Expert	<p>At least 10 years of professional experience in project finance, with a proven track record in financial analysis and financial modelling of PPP projects.</p> <p>Demonstrated experience in dealing with financial institutions, such as investment banks, global insurance and guarantee products, etc., and experience in raising funds for similar PPP projects. Good English communication and writing skills are essential.</p>

No	Position	Qualifications and Experience
		University degree in Finance/Financial Engineering, Master of Business Administration, Business Economics or any other relevant field.
3	PPP Legal Expert	<p>A minimum of 10 years' experience in drafting PPP contractual agreements and other related documents/agreements; PPP procurement and resolving legal issues, policy and institutional assessment; and, successful preparation of PPP projects with at least one financially closed PPP project. Good English communication and writing skills are essential.</p> <p>University degree in Law, with excellent knowledge of the applicable laws in the infrastructure, environment, and municipal sectors.</p>
4	Kenya Legal Expert	<p>A minimum of 10 years' demonstrated experience in drafting commercial agreements in Kenya, with additional merit for PPP-type agreements, demonstrable knowledge and experience of the legal, regulatory and institutional framework for PPPs in Kenya and of the infrastructure sector, relevant experience of public procurement/ transaction management.</p> <p>The legal expert must demonstrate expertise and experience in drafting Project Agreements comprising of PPP Concession Agreement, Shareholders Agreements, relevant sub-contractor agreements such as the EPC and O&M Sub contractor agreements. Good English communication and writing skills are essential.</p> <p>University degree in Law and postgraduate qualification in Law.</p>
5	Environmental Specialist/Team Leader	<p>The specialist should have over 10 years' experience and must have served similar position in at least 4 assignments of similar nature. The specialist should be familiar with existing Kenyan environmental laws and IFC Performance Standards on Environmental and Social Sustainability including environmental health and safety guidelines.</p> <p>Advanced degree in environmental studies or related field and must be a NEMA registered lead expert. Good English communication and writing skills are essential.</p>
6	Social Development Expert	Advanced university degree in social studies or related field with over 10 yrs. experience and must have served in similar capacity in at least 4 assignments of similar nature. She/he will establish the socio-economic environment of the proposed project area, including land use; assess likely impact of the project and proposed mitigation measures. The expert will ensure that consultations with interested and affected parties are conducted in accordance with procedures and regulations of Kenya and the IFC Performance Standards on Environmental and Social Sustainability including community health and safety guidelines.

No	Position	Qualifications and Experience
		Good English communication and writing skills are essential.

The preceding description of the team composition is however not intended to be prescriptive.

4.5. Duration of the Assignment

It is estimated that the consultancy services would require a period of not more than 12 months. Bidders are expected to include, as a part of their proposal, anticipated dates of delivery time is of essence and the shorter the period the better for the contracting authority and therefore the shorter the delivery period, the better. Bidders are expected to provide a comprehensive and detailed Project Implementation Plan, preferably using Microsoft Project, or equivalent software, indicating all the key tasks, deliverables, milestones, responsibilities, timetables and critical path for successful project implementation. This detailed plan will be discussed and agreed with PIDG Ltd, PPPD and NMS before signing the contract. In addition, the Transaction Advisor shall submit an Inception Report including an updated detailed work plan for project implementation, covering tasks and responsibilities of all parties involved not just the Transaction Advisor's personnel. Every two weeks thereafter the Transaction Advisor will hold progress meetings with PIDG Ltd, PPPD and NMS to discuss any key constraints encountered by the Transaction Advisor, work planned for the subsequent period, inputs and support needed from PIDG Ltd, PPPD and NMS and other parties and will update the work plan accordingly. All reports shall be submitted to PIDG Ltd, PPPD and NMS in electronic format as MS Word document (latest version) and printed in 4 copies. Models and workflow, process and data diagrams shall be submitted electronically in their appropriate dynamic application files.

4.6. Remuneration Schedule and Disbursement Arrangements

The Transaction Advisor contract will be a lump sum contract and will be paid on the basis of timely and acceptable deliverables over an envisaged contract period of 18 calendar months. The remuneration schedule is as set out below:

No	Deliverable	Payment Amount
1	Inception report	10%
2	Completion of Feasibility Study Phase Deliverables include Feasibility Study Report and ESHIA report	30%
3	Completion of RFQ and PIM documentation Completion of ALL Bidding documentation in the RFP deliverables phase	10%
4	Completion of Tender Evaluation phase deliverables	10%
5	Commercial close	15%

6	Financial Close, approval of project closeout report and case study	25%
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The Transaction Advisor is also expected to recommend their preferred remuneration schedule in their Financial Proposals. This will be negotiated with the successful bidder prior to the signing of the contract.

5 General Instructions in Relation to the Preparation of Tenders

5.1 Costs of Preparation

Bidders shall bear all their costs associated with the preparation and submission of their proposals.

5.2 Right to Cancel, Clarify or Vary the Procurement Process

PIDG Ltd is not committed to any course of action as a result of:

- issuing this RFP;
- communicating with a bidder or its representatives in respect of the RFP; or
- any other communication between PIDG Ltd, PPPD, NMS and any other party.

By taking part in this RFP process, bidders accept that PIDG is not bound to accept any proposal and that PIDG reserve the right not to proceed with the RFP or conclude a contract for some or all of the Services.

PIDG Ltd reserves the right to waive, amend, add to or withdraw all or any part of the RFP at any time during the procurement exercise.

5.3 Bidders' Contact Person

Bidders must provide a single point of contact in their organization for all correspondence relating to this RFP. PIDG Ltd shall not be responsible for contacting bidders through any route other than their nominated person. Bidders accept that it is their responsibility to notify any changes relating to their contact person promptly.

5.4 Bids Submission

The technical proposal and the password protected financial proposal must be submitted by **29th November 2021 at 10:00 a.m.** East African Time (GMT+3) to the email address below. Completed proposals must be sent via e-mail to the PIDG Ltd Contact Person, referenced as **"TRANSACTION ADVISOR SERVICES TO THE GOVERNMENT OF KENYA FOR THE PROPOSED NAIROBI SMART STREET LIGHTING PPP PROJECT"**. An acknowledgement will be sent in return to confirm receipt. A proposal sent by any other method may be viewed as non-compliant and rejected.

Jasper Onyango
Regional Technical Assistance Manager
The Private Infrastructure Development Group Ltd
Jasper.onyango@pidg.org

Copy to:

Luke.Foley@pidg.org

Any request for clarification must be submitted by **7th of November 2021** to the email address provided above. All contact by any interested parties with PIDG Ltd relating to this RFP must be addressed to the PIDG Contact Person named above.

5.5 Clarifications about the Procurement Process

Should any interested person require any clarification, please contact the PIDG Contact Person. Requests for clarification must be in writing and will be accepted up to **17.00 EAT on 7th November 2021**. Save to the extent that a request is expressly stated in writing by a bidder to be made on a 'commercially in confidence' basis requests for clarifications and their respective responses will be distributed to all persons who have requested a copy of the RFP, without information about the source of the request. If there is any doubt as to whether a request concerns confidential information, then PIDG Ltd Contact Person will advise the person concerned who may either give written permission for distribution of the response (which shall be in advance of the preparation of the response) or withdraw the request.

5.6 Conflicts of Interest

Bidders must disclose in their proposals (or at any later stage if becoming aware after submission of tenders) any circumstances, including personal, financial and business activities that will, or might, give rise to a conflict of interest as a result of taking part in this competition or in performing the Services under a contract. Conflict(s) include potential, actual and perceived conflicts. This also applies to any sub-contractors proposed by bidders. Any bidder who fails to comply with this requirement may be excluded from this procurement process.

Where bidders identify any potential conflicts in their tenders (or later stage), they should state how they intend to avoid or mitigate such conflicts. PIDG reserves the sole and absolute discretion to exclude any tender which, in its opinion, gives rise to, or could potentially give rise to, a material conflict of interest.

If, following submission of a proposal, a bidder becomes aware of any circumstances that could give rise to an undisclosed conflict the bidder must advise the PIDG Contact Person as soon as possible and propose measures that may be taken to eliminate or mitigate such conflict. Failure to comply with this obligation could lead to the disqualification of the bidder in question from the procurement process.

5.7 Change of Control

The PIDG Contact Person must be informed immediately in writing of any change in the structure, control, composition or membership of a bidder which takes place at any time prior to execution of the contract. A change deemed material by PIDG Ltd may lead to the bidder's exclusion from the procurement process.

5.8 Warnings and Disclaimers

All information provided to interested persons in relation to this procurement process is provided in good faith and is believed to be correct at the time of issue. However, PIDG Ltd and its advisors exclude all liability for any inaccuracy or inadequacy and no express or implied warranty is given in relation to accuracy or adequacy of the information provided. This exclusion extends to liability in relation to any statement, opinion or conclusion contained in, or any omission from information in this RFP including its annexures and in respect of any other written or oral communication to any interested person. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of PIDG Ltd or its advisors.

In submitting their proposals, bidders must rely on their own enquiries and on the terms and conditions set out in the contract attached as **Annexure 2** hereto, subject to the limitations and restrictions specified in it.

Neither the issue of this RFP, nor any of the information provided in relation to it, should be regarded as a commitment or representation on the part of PIDG, PIDG (or any other person) to enter into any contractual arrangement.

5.9 Procurement Timetable

Subject to any changes notified to potential suppliers by PIDG in accordance with the General Instructions in Relation to the Preparation of Tenders the following timescales shall apply to this Procurement Process:

Activity	Anticipated Date	Note
Issuance of Request for Proposal (RFP)	29 October 2021	
Clarifications and Questions Period	07 November 2021	Clarification Questions Period closes at 17:00 EAT (GMT+3)
Clarification Questions Response	15 November 2021	
Bid Submission Date	29 November 2021	Candidate responses due by 10:00 EAT (GMT+3)
Contract Award Date	29 December 2021	

5.10 Instructions for Completion of Tenders

Completed proposals must be sent via e-mail to the PIDG Contact Person and an acknowledgement receipt will be sent in return to confirm receipt. A proposal sent by any other method will be viewed as non-compliant and rejected. Also note that the Technical Proposal **MUST** not contain any Financial Proposal details.

Completed Technical Proposals should include:

- Cover page
- Understanding of the scope
- A clear technical approach and methodology
- Timeline and Deliverables
- Confirmation and acceptance of all the sections and each of the Annexures in this RFP
- Project team structure with clear identification of roles and responsibilities of all team members
- Team member Curriculum Vitae (CVs) with each CV not being more than 3 pages in the format attached in **Annexure 5**
- Firm Credentials (in the format attached in **Annexure 6**)
- One case study of a similar project undertaken by the bidder to be included as an appendix to the Technical Proposal

Completed **PASSWORD PROTECTED** Financial Proposal should be submitted together with the Technical Proposal as a **SEPARATE PASSWORD PROTECTED DOCUMENT**. Financial Proposal submitted without password protection will be viewed as non-compliant and lead to the rejection of the bid.

- Proposed payment schedule
- Breakdown of reimbursable expenses and remuneration presented for each phase of the project
- A rate card and team cost breakdown in the format attached in **Annexure 4**
- Under the summary of Costs presenting total reimbursable and total remuneration, a bidder must mention whether the total costs are inclusive or exclusive of VAT which should be computed and shown separately.

Note that only bidders whose technical score will be equal to or more than 70% will be contacted to provide passwords for their financial proposals and progress to the final stage of evaluation. Any bidder whose technical proposal will have a score less than 70% will not have their financial proposal opened.

6 Budget and Terms of Payment

The total cost should include fees and all expenses (including all taxes, transfer, remittance fees and all out of pocket expenses).

The payment terms are provided in **Annexure 3** of this document.

6.1 Scoring Matrix

Criteria, sub-criteria, and point system for the evaluation of Full Technical Proposal	Weighting
<p>Experience in similar projects including a case study in developing countries</p> <p>Specific experience of the Consultants relevant to the assignment</p>	10%
<p>General qualifications</p> <p>Adequacy of the proposed methodology and work plan in responding to the Terms of Reference:</p> <p>a) Technical approach and methodology [15 points]</p> <p>b) Work plan [5 points]</p> <p>c) Organization and staffing [5 points]</p>	25%
<p>Adequacy for the assignment</p> <p>Key professional staff qualifications and competence for the assignment:</p> <p>Technical Experts [30 points]</p> <p>Financial Expert [15 points]</p> <p>PPP Legal Expert [5 points]</p>	65%

Kenya Legal Expert	[5 points]	
Environmental Specialist	[5 points]	
Social Development Expert	[5 points]	
Total Technical Proposal score		100%
Note that the pass mark will be 70%		

The formula for determining the financial scores is the following:

$S_f = 100 \times F_m / F$, in which S_f is the financial score, F_m is the lowest price and F the price of the proposal under consideration.

The weights given to the Technical and Financial Proposals are:

$T = 0.8$, and

$F = 0.2$

Proposals will be ranked according to their combined technical (S_t) and financial (S_f) scores using the weights (T =the weight given to the Technical Proposal; F = the weight given to the Financial proposal; $T + F = 1$).

The combined technical and financial score, S , is calculated as follows:

$S = S_t \times T \% + S_f \times F \%$. The firm achieving the highest combined technical and financial score will be invited for negotiations.

ANNEXURE 1 – PIDG OPPS

The Transaction Advisor shall abide by the PIDG Operating Policies and Procedures (PIDG OPPs) as relevant to the role and duties of the Transaction Advisor.

The PIDG OPPs can be found here: https://www.pidg.org/resources/?filter_cat=operating-policies-and-procedures)

ANNEXURE 2 - CONTRACT FOR SERVICES

CONTRACT FOR CONSULTANCY SERVICES

Section 1

FORM OF CONTRACT

CONTRACT FOR: [insert]

THIS CONTRACT is made this [insert] 2021

BETWEEN:

The Private Infrastructure Development Group Ltd, a company incorporated and registered in England and Wales with company number 11265124 whose registered office is at 6 Bevis Marks, London, EC3A 7BA (“Client”)

AND:

[insert full name of company], a company incorporated and registered in [insert] with company number [insert company number] whose registered office is situated at [insert registered address] (“Consultant”).

(each a “Party” and together “the Parties”).

WHEREAS:

- A. the Client requires the Consultant to provide the services as described in the Terms of Reference at Section 3 (“the Services);
- B. the Consultant has agreed to provide the Services on the terms and conditions set out in this Contract;

IT IS HEREBY AGREED as follows:

1. Documents

This Contract is comprised of the following documents:

Section 1	Form of Contract
Section 2	General Conditions
Section 3	The Services
Section 4	Special Conditions
Section 5	Schedule of Prices

This Contract constitutes the entire agreement between the Parties in respect of the Consultant’s obligations and supersedes all previous communications between the Parties, other than as expressly provided for in Section 3 and/or Section 4.

2. Duration of the Contract

This Contract shall commence on [insert start date] (the “Commencement Date”) and shall expire on [insert end date] (the “End Date”) unless this Contract is extended or terminated earlier in accordance with its terms and conditions.

3. Key Personnel

The following Key Personnel shall perform the Services:

- (i)
- (ii)

and/or such other individuals that the parties may agree in writing from time to time should be Key Personnel for the purposes of this Contract.

4. Fees

The maximum amount payable by the Client for the Services provided under this Contract shall not in any circumstances exceed the sum of US\$ [insert] ([insert total in words] United States Dollars) inclusive of all taxes, costs and disbursements (“the **Financial Limit**”).

This Contract has been made in two originals and may be executed in any number of counterparts, and this has the same effect as if the signatories on the counterparts were on a single copy of this Contract.

For and on behalf of The Private Infrastructure Development Group Ltd

By:
Title:

For and on behalf of [insert full legal name of consultant]

By:
Title:

Section 2

GENERAL CONDITIONS

DEFINITIONS AND INTERPRETATION

1. Definitions

“Advantage”: includes, but is not limited to money, loan, fee, stock, contractual right or interest, real estate, personal property, or other interests arising from business relationships, gifts, meals, entertainment, contributions or donations, travel and travel related expenses, below-market discounts, refunds, rebates, preferential treatment in the provision of, or preferential access to business opportunities or offers of employment, goods or services that do not have a commercially reasonable justification, or other improper inducements.

“Anti-Bribery Laws”: means any applicable law, rule, regulation and other legally binding measure relating to the prevention of bribery, corruption or similar or related activities in a Relevant Jurisdiction, including (without limitation) the Bribery Act 2010 of the United Kingdom.

“Applicable Law”: means the laws or regulations, regulatory policies, guidelines or industry codes in a Relevant Jurisdiction or which apply to the provision of the Services.

“Associated Persons”: means in relation to an organisation, a person (including an employee, agent or subsidiary) who performs or has performed services (including within the meaning of section 8 of the Bribery Act 2010 and Part 3, section 44(4) of the Criminal Finances Act 2017 regarding the corporate offences of failure to prevent facilitation of tax evasion (as amended or superseded from time to time)) for that organisation or on its behalf and in respect of whose actions or inactions the organisation may be liable under Anti-Bribery Laws and/or the Criminal Finances Act 2017, including, as appropriate, contractors, sub-contractors, intermediaries, joint ventures and consortium partners.

“Client Materials”: means all documents, information, items and materials in any form (whether owned by the Client or a third party), which are provided by the Client to the Consultant in connection with the Services.

“Code of Conduct”: means the Code of Conduct of the PIDG (please refer to [Code of Conduct](#)).

“Confidential Information”: means information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, products, affairs and finances of the PIDG Group or any clients of the PIDG Group for the time being confidential to the PIDG Group or any clients of the PIDG Group and trade secrets including, without limitation, technical data and know-how relating to the business of the PIDG Group or any clients of the PIDG Group or any of their consultants, clients, Clients, agents, distributors, shareholders or third-party managers, whether or not such information (if in anything other than oral form) is marked confidential.

“Consultant's Personnel”: means any person instructed pursuant to this Contract to undertake any of the Consultant's obligations under this Contract, including the Key Personnel, and the Consultant's employees, agents and sub-contractors.

“Control”: means in relation to a Party the beneficial ownership of more than 50% of the issued capital of that Party, or the legal power to direct or cause the direction of the general management of that Party or holding company thereof.

“Data Protection Legislation”: means all legislation and regulatory requirements in force from time to time relating to the use of Personal Data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the retained EU law version of the GDPR (**“UK GDPR”**); the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Commissioner (as defined in clause 26.1) or other relevant regulatory authority, as well as (ii) GDPR (if applicable).

“Deliverables”: means any outputs of the Services and any other documents, products and materials provided by the Consultant to the Client as specified in Section 3 and any other documents, products and materials provided by the Consultant to the Client in relation to the Services.

“Force Majeure”: means in relation to a Party any circumstances beyond the reasonable control of that Party, including without limitation, any of the following: (a) war, acts of warfare, hostilities (whether war be declared or not) invasion, incursion by armed force, act of hostile army, nation, terrorist or enemy; (b) riot, uprising against constituted authority, civil commotion, disorder, rebellion, organised armed resistance to the government, insurrection, revolt, military or usurped power, civil war; (c) earthquake, flood, fire, arson, storm, lightning, tempest, accident, or other acts of God; (d) pandemic, epidemic, explosion, disease, hijacking, sabotage or crime; or (e) act of government or governmental authority, including any relevant regulator.

“GDPR”: means Regulation (EU) 2016/679, as amended, consolidated or replaced from time to time.

“Group”: means in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.

“HSES”: means health, safety, environment and social.

“Intellectual Property Rights”: means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“PIDG” means the Private Infrastructure Development Group, the multi-donor arrangement established in 2002 by the UK Department for International Development, the Swedish International Development Cooperation Agency, the Netherlands Directorate for Sustainable Economic Development and the Swiss Secretariat for Economic Affairs to provide a strategic approach to developing financing for private infrastructure investment.

“PIDG Group”: means the Private Infrastructure Development Group Trust (**“PIDG Trust”**), the Client and any other corporate entity established by the PIDG Trust or the Client for the furtherance of PIDG’s activities (each a **“PIDG Company”** and together the **“PIDG Companies”**) and any subsidiary or holding company (as defined in the Companies Act 2006) of the Client or a PIDG Company.

“Regulatory Authority”: means any regulatory or governmental body, (including the United Kingdom’s Financial Conduct Authority and the Prudential Regulatory Authority), responsible for enforcing Applicable Laws or otherwise having jurisdiction over the activities of either Party.

“Relevant Jurisdiction”: means all jurisdictions relevant to the provision of the Services by the Consultant to the Client, including, without limitation:

- (a) the jurisdiction of the Client;
- (b) the jurisdiction of the Consultant;
- (c) the jurisdiction where any employee or contractor of the Consultant involved in providing the Services is located; and
- (d) the jurisdiction where the Services are being provided from.

“Sanctions”: means economic or financial sanctions enacted, administered or enforced by the United Nations, the United States of America, the United Kingdom or the European Union (or any of its present or future Member States).

2. Interpretation

2.1 Unless expressly provided otherwise in the Contract, a reference to legislation or a legislative provision:

- (a) is a reference to it as amended, extended or re-enacted from time to time; and
- (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

2.2 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2.3 A reference to writing or written includes fax and email.

2.4 In the event of any inconsistency between the Form of Contract (Section 1), these General Conditions (Section 2) and the Special Conditions (Section 4), the Special Conditions shall prevail.

OBLIGATIONS OF THE CONSULTANT

3. Obligations

3.1 The Consultant shall from the Commencement Date and for the duration of the Contract provide the Services to the Client in accordance with the terms of the Contract.

3.2 The Consultant shall meet any performance dates for the Services specified in Schedule 3 or that the Client notifies to the Consultant.

3.3 In providing the Services, the Consultant shall:

- (a) co-operate with the Client in all matters relating to the Services, and comply with all instructions of the Client;

- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Consultant's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Consultant's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services will conform with all descriptions, standards and specifications set out in Schedule 3, and that the Deliverables shall be fit for any purpose that the Client expressly or impliedly makes known to the Consultant;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Client, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Client's premises;
- (j) hold all Client Materials in safe custody at its own risk, maintain the Client Materials in good condition until returned to the Client, and not dispose or use the Client Materials other than in accordance with the Client's written instructions or authorisation;
- (k) not do or omit to do anything which may cause the Client to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Consultant acknowledges that the Client may rely or act on the Services; and
- (l) comply with all applicable sections of the Code of Conduct when performing the Services.

4. Personnel

- 4.1 All members of the Consultant's Personnel shall be appropriately qualified, experienced to ensure that the Consultant complies with all the Consultant's obligations under this Contract.
- 4.2 No changes or substitutions may be made to the Key Personnel listed in Clause 3 of Section 1 of this Contract without the Client's prior written consent.
- 4.3 If the Client considers any member of the Consultant's Personnel unsuitable, the Consultant shall substitute such member as quickly as reasonably possible without direct or indirect charge to the Client with a replacement acceptable to the Client.
- 4.4 The Consultant is responsible for all acts and omissions of the Consultant's Personnel and for the health, safety and security of such persons and their property.

- 4.5 Nothing in this Contract is intended to or shall be deemed to make the Client the employer of the Consultant's Personnel, nor shall this Contract establish any partnership or joint venture between the Parties.
- 4.6 Except as expressly provided the Consultant is not the agent of the Client and has no authority to represent and shall not purport to represent or imply or enter into any commitments on behalf of the Client in any respect.

5. Sub-contractors

- 5.1 The Consultant shall not sub-contract any of its obligations under this Contract without the prior written consent of the Client.
- 5.2 If, having obtained the Client's consent, the Consultant sub-contracts any of its obligations, the sub-contract shall be in writing and shall: -
- (a) provide that payments due to the sub-contractor shall be made not more than 30 days after provision to the Consultant of a valid invoice;
 - (b) include rights for the Consultant and obligations on the sub-contractor to ensure that the Client's rights to require replacement of personnel (as set out in Clause 4.2 of Section 2) and the Client's rights and the Consultant's obligations as set out in Clauses 3 and 7 to 12 (inclusive) of Section 2 can be enforced against the sub-contractor; and
 - (c) impose on and secure from the sub-contractor obligations equivalent to those imposed under this Contract.

6. Client remedies

- 6.1 If the Consultant fails to perform the Services by the applicable dates, the Client shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Consultant;
 - (b) to refuse to accept any subsequent performance of the Services which the Consultant attempts to make;
 - (c) to recover from the Consultant any costs incurred by the Client in obtaining substitute services from a third party;
 - (d) to require a refund from the Consultant of sums paid in advance for Services that the Consultant has not provided; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Client which are in any way attributable to the Consultant's failure to meet such dates.
- 6.2 If the Consultant has supplied Services that do not comply with the requirements of **Error! Bookmark not defined.****Error! Reference source not found.** then, without limiting or affecting other rights or remedies available to it, the Client shall have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Consultant;

- (b) to return the Deliverables to the Consultant at the Consultant's own risk and expense;
- (c) to require the Consultant to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;
- (d) to refuse to accept any subsequent performance of the Services which the Consultant attempts to make;
- (e) to recover from the Consultant any expenditure incurred by the Client in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Client arising from the Consultant's failure to comply with **Error! Bookmark not defined.Error! Reference source not found..**

6.3 These Conditions shall extend to any substituted or remedial services provided by the Consultant.

6.4 The Client's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

7. Disclosure of Information

7.1 The Consultant and the Consultant's Personnel shall not, without the prior written consent of the Client, disclose to any third party any Confidential Information obtained during or arising from this Contract (other than in the proper performance of this Contract or as may be required by authority of competent jurisdiction) nor use any Confidential Information for any purpose other than the performance of the Services.

7.2 No publicity is to be given by the Consultant to this Contract without the prior written consent of the Client.

7.3 In accordance with the Code of Conduct, information contained in this Contract relating to the identity and nationality of the Consultant, a description of the Services and the duration and value of the Contract will be published on www.pidg.org.

8. Intellectual Property Rights

8.1 In relation to the Client Materials:

- (a) the Client and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials; and
- (b) the Client grants to the Consultant a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this agreement solely for the purpose of providing the Services to the Client.

8.2 In relation to the Deliverables:

- (a) the Consultant assigns to the Client, with full title guarantee and free from all third-party rights, all Intellectual Property Rights in the Deliverables;
- (b) the Consultant shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the

Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction;
and

- (c) the Consultant shall, promptly at the Client's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Client may from time to time require for the purpose of securing for the Client all right, title and interest in and to the Intellectual Property Rights assigned to the Client in accordance with Clause 8.2(a).

- 8.3 The Consultant warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Client Materials) by the Client shall not infringe the rights, including any Intellectual Property Rights, of any third party.

9. Access and Audit

- 9.1 The Consultant shall keep accurate and systematic accounts, files and records ("the **Records**"). The Records shall clearly identify, among other things, the basis upon which invoices have been calculated and the Consultant shall keep the Records throughout the duration of this Contract and for 6 years following its termination.

- 9.2 The Consultant shall upon request provide the Client or its representative's unrestricted access to the Records in order that the Records may be inspected and copied. The Consultant shall co-operate fully in providing to the Client or its representative's answers to such enquiries as may be made about the Records.

- 9.3 Where it is found by the Client that any overpayment has been made to the Consultant the Consultant shall reimburse the Client such amount within 28 days of the date of the Client's written demand.

10. Anti-bribery and Corruption

- 10.1 The Consultant acknowledges that the Client has a zero tolerance of bribery and corruption.

- 10.2 The Consultant will and will require that the Consultant's Personnel, all its directors, officers, employees and Associated Persons comply with all applicable Anti-Bribery Laws.

- 10.3 The Consultant covenants throughout the term of this Contract to use all reasonable endeavours to procure that none of the Consultant's Personnel, its directors, officers, employees and Associated Persons will engage in any activity, practice or conduct or take any action, directly or indirectly, which would constitute an offence under any applicable Anti-Bribery Laws.

- 10.4 In connection with the Services the Consultant will either:

- (a) comply, and require the Consultant's Personnel, its directors, officers, employees and Associated Persons to comply, with PIDG's Anti-Bribery and Integrity Policy as amended from time to time; or
- (b) maintain throughout the term of the Contract and comply with and require the Consultant's Personnel, its directors, officers, employees and Associated Persons to comply with, the Consultant's own anti-corruption policies, procedures and systems which are no less stringent than PIDG's Anti-Bribery and Integrity Policy to ensure compliance with all applicable Anti-Bribery Laws.

10.5 The Consultant will, as soon as the Consultant is made aware, promptly report to the Client:

- (a) any request or demand for a bribe, kickback, facilitation payment or any other undue financial or other Advantage of any kind received by the Consultant or any of the Consultant's Personnel, its directors, officers, employees or Associated Persons; and/or
- (b) any allegations or proceedings or investigation against the Consultant, the Consultant's Personnel, its directors, officers, employees or Associated Persons in connection with bribery or corruption; or
- (c) if a Public Official (as such term is defined in the applicable Anti-Bribery Laws) becomes an employee, consultant, agent or associate of the Consultant or any of its Associated Persons.

10.6 The Consultant represents and warrants that:

- (a) None of the Consultant, any member of the Consultant's Personnel or, to the knowledge of the Consultant, any of its directors, officers, employees or Associated Persons, is aware of or has taken any action, directly or indirectly, that could result in a violation by such persons of Anti-Bribery Laws, to which the Consultant, any other member of the Consultant's Personnel or any of its directors, officers, agents, employees or Associated Persons are subject and, without limitation, they have not (directly or indirectly) (i) offered, paid, promised to pay or authorised the payment of any money or other Advantage that could constitute a bribe, (ii) solicited, accepted or received any money or other advantage that could constitute a bribe or (iii) given, promised to give or authorised the giving of anything of value to any Public Official (as such term is defined in the applicable Anti-Bribery Laws) in contravention of the applicable Anti-Bribery Laws;
- (b) The Consultant has conducted its business in compliance with applicable Anti-Bribery Laws and has instituted and maintained policies, procedures and systems designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with such Anti-Bribery Laws, including the maintenance of complete and accurate books and records and an effective system of internal accounting controls; and
- (c) No investigation, proceedings or claim has been initiated against the Consultant or any of the Consultant's Personnel or, to the knowledge of the Consultant, any of its directors, officers, employees or Associated Persons, by any governmental, administrative, judicial or regulatory body, authority or organisation in relation to any applicable Anti-Bribery Laws.

- 10.7 The Consultant shall indemnify and hold harmless and keep indemnified the Client, its directors, officers, employees and agents from and against all and any liability or loss suffered or incurred in any jurisdiction by the Client, its directors, officers, employees or agents due to a breach by the Consultant, the Consultant's Personnel, its directors, officers, employees or Associated Persons of any applicable Anti-Bribery Laws.
- 10.8 If any taxation authority in any jurisdiction brings into any charge to taxation any sum payable under the indemnity contained in this clause, the amount so payable will be increased by such amount as will ensure that the person to whom payment is made will retain, after deduction of the taxation so chargeable, the amount it would have retained had no such tax been payable.
- 10.9 In order that the Client may ensure its own compliance with the applicable Anti-Bribery Laws, the Consultant agrees, on reasonable notice, to allow the Client to inspect its anti-corruption policies, procedures and systems and, where necessary, to make any recommendations for improvement that may be found to be necessary. Such inspection is to be carried out as expeditiously as possible and with as minimum disruption to the business of the Consultant as possible.

11. Tax Evasion Facilitation Offence

- 11.1 The Consultant will not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence under the Criminal Finances Act 2017.
- 11.2 In the event that the Consultant, any of the Consultant's Personnel or, where applicable, any individual or company or other legal entity which (whether directly or indirectly) owns or Controls the Consultant is or become(s) subject to Sanctions, the Client shall be entitled at the Client's absolute discretion and immediately to:
- (a) cease carrying out or suspend its obligations under this Contract; and/or
 - (b) terminate this Contract.

12. Conflict of Interest

- 12.1 Neither the Consultant nor any of the Consultant's Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.
- 12.2 The Consultant and the Consultant's Personnel shall notify the Client immediately of any real, apparent or potential conflict together with recommendations as to how the conflict can be avoided.

13. Indemnity

- 13.1 The Consultant shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with:
- (a) any claim brought against the Client for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services (excluding the Client Materials); and
 - (b) any claim made against the Client by a third party arising out of, or in connection with, the supply of the Services.
- 13.2 This **Error! Bookmark not defined.**13 shall survive termination of the Contract.

14. Insurance

- 14.1 During the term of the Contract and for a period of [two] years thereafter, the Consultant shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Client's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

PRICE AND PAYMENT

15. Applicable Provisions and Financial Limit

- 15.1 Unless different provisions are substituted in Section 4, Clauses 16 to 19 inclusive shall apply in relation to price and payment.
- 15.2 The components which comprise the Financial Limit are set out in the Schedule of Prices, Section 5. No expenditure may be incurred in excess of the Financial Limit and no variations between components shown in the Schedule of Prices in Section 5 are permitted without the prior written authority of the Client.

16. Price/Fees

16.1 Any price or fees payable (as set out in Section 1 and Section 5) are deemed to cover the cost of salary, leave allowances and bonuses of the Consultant's Personnel and all profit, any applicable taxes (including value added tax or equivalent tax), insurances, super-annuation, non-working days and all other costs including, but not limited to, clothing, passports, visas and vaccinations and overheads of whatsoever nature that may be incurred except those otherwise specifically provided for in this Contract, if any.

17. Expenses

17.1 The Consultant will subject to the terms of this Contract be reimbursed up to the limit of the reimbursable expenses set out in Section 5.

18. Invoicing Instructions

18.1 Unless otherwise expressly provided in Section 4 or Section 5, invoices should be submitted monthly in arrears to 'The Finance Team, The Private Infrastructure Development Group Ltd, 10th Floor, 6 Bevis Marks, London EC3A 7BA' for payment by the Client and in accordance with the remainder of Clause 18.

18.2 The Client shall unless otherwise expressly provided in Section 4 make payments due by direct credit. All invoices must contain details of the account to which payments are to be made.

18.3 Invoices should include the Consultant's form of letterhead and bear an original signature. They should be numbered sequentially and dated. The final invoice presented in connection with this Contract should be endorsed "Final Invoice".

18.4 All invoices should contain details of reimbursable expenditure if any in accordance with Section 4 or 5 of this Contract.

18.5 Invoices for reimbursable expenditure if any shall be accompanied by evidence of expenditure satisfactory to the Client. The Client may request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this is not provided within a reasonable time.

18.6 Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment. The Client reserves the right not to pay any amount due in respect of an invoice received by the Client more than 90 days after the day of the Consultant becoming entitled to invoice for the payment to which it relates.

19. Payments

19.1 Subject to the Client being satisfied that the Consultant is or has been carrying out its duties, obligations and responsibilities under this Contract, sums duly approved shall be paid within 30 days of receipt of a valid invoice.

19.2 Payment shall be made in the currency of the Financial Limit to the account nominated by the Consultant. Reimbursable expenditure (if any) arising in a different currency shall (subject to the Financial Limit) be reimbursed (in the currency of the contract) at the exchange rate stated on Oanda.com on the date on which the expenditure in question was paid for by the Consultant.

19.3 If for any reason the Client is dissatisfied with the Consultant's performance of its duties, obligations or responsibilities under this Contract, an appropriate sum may be withheld from any payment otherwise due. In such event the Client shall identify the particular duties, obligations or responsibilities with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon performance satisfactory to the Client or resolution of outstanding queries.

19.4 Should the Client determine after paying any amount under this Contract that the Consultant has not performed its duties, obligations or responsibilities satisfactorily, the Client may recover, or withhold from further payments, and a proportionate amount until the position has been remedied to the Client's satisfaction.

FORCE MAJEURE AND TERMINATION

20. Force Majeure

20.1 Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the Party not affected may terminate this Contract by giving 30 days' written notice to the affected Party.

21. Termination

21.1 Without limiting or affecting any other right or remedy available to it, the Client may terminate the Contract:

- (a) with immediate effect by giving written notice to the Consultant if:
 - (i) there is a change of control of the Consultant; or

- (ii) the Consultant's financial position deteriorates to such an extent that in the Client's opinion the Consultant's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (iii) the Consultant commits a breach of **Error! Bookmark not defined.Error! Reference source not found.**,

(b) for convenience by giving the Consultant [two] months' written notice.

21.2 Without limiting or affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:

- (a) the other Party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [thirty] days after being notified [in writing] to do so;
- (b) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

22. Consequences of termination

22.1 On termination of the Contract for any reason or on expiry, the Consultant shall immediately deliver to the Client all Deliverables whether or not then complete, and return all Client Materials. If the Consultant fails to do so, then the Client may enter the Consultant's premises and take possession of them. Until they have been returned or delivered, the Consultant shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

22.2 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

22.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

GENERAL PROVISIONS

23. Variations

23.1 No variation in the terms or scope of this Contract shall be effective without the Client's prior written consent. The Client shall have no liability in respect of work performed outside the Services set out in Section 3.

24. Assignment

24.1 The Consultant shall not, without the prior written consent of the Client, assign or transfer or cause to be assigned or transferred, whether actually or as the result of takeover, merger or other change of identity or character of the Consultant, any of its rights or obligations under this Contract or any part, share or interest therein.

25. Confidentiality

25.1 The Consultant shall not (except in the exercise of its duties hereunder or to the extent required by Applicable Laws or pursuant to an order or request of a court or any other person or body of competent jurisdiction or any Regulatory Authority with the requests of which the Party in question customarily complies) either during the continuance of this Contract or thereafter disclose any Confidential Information relating to or to the affairs of the Client, the PIDG Group or their clients to any person not authorised by the Client to receive such information, and each of the Parties will use its reasonable endeavours to prevent any such disclosure as aforesaid whether by any officer, employee or agent or itself or by anyone else.

25.2 This restriction shall not apply:

- (a) to information that is available in the public domain, except where this is the result of the violation of this confidentiality clause (or the breach of confidentiality obligations of another person in circumstances whereby the relevant party should reasonably be aware that person was under a duty of confidentiality to another Party);
- (b) if non-disclosure would render the Consultant liable to legal or administrative sanctions;
- (c) if the Client has given prior written approval to the disclosure, provided that, if the Consultant reasonably determines that it is required to make any disclosure of any Confidential Information for any of the reasons described in this clause it will, so far as is practicable prior to making such disclosure, consult with the Client as to the disclosure requirement with a view to allowing the Client an opportunity to take such steps as are necessary to preserve the confidentiality of the information, including taking legal action or to seek to minimise the degree of information which must be disclosed.

25.3 The Consultant shall not, and shall procure that the Consultant's Personnel do not, use any of the Client's or the PIDG Group's Confidential Information received otherwise than for the purposes of this Contract.

25.4 The Consultant undertakes to restrict access to Confidential Information by the Consultant's Personnel to those individuals who have a genuine need of such access in order to provide the Services and shall ensure that such Consultant's Personnel are aware of, and comply with, the confidentiality obligations in this Contract.

25.5 To the extent not prohibited under Applicable Laws, the Consultant undertakes to notify the Client immediately when it becomes aware of any unauthorised access to the Confidential Information.

25.6 Neither during the term of this Contract nor after its termination shall either Party do or commit, or omit to do, any act, matter or thing which would or might prejudice or bring into disrepute in any manner the business or reputation of the other Party hereto or any director or officer thereof.

26. Security Requirements

26.1 The Consultant shall, and shall procure that the Consultant's Personnel shall, take all necessary steps to ensure that all data or information belonging to the Client which comes into its possession or control in the course of providing the Services is protected in accordance with the Client's information security policies, and in particular the Consultant shall:

- (a) take all necessary precautions to avoid the introduction of any malware that could affect the Services and consequently PIDG Ltd.'s systems and will take appropriate measures should it discover the existence of any malware of any kind;
- (b) conduct adequate IT security testing and install appropriate anti-virus systems;
- (c) take all necessary precautions to avoid the intrusion of any unauthorised persons or systems that could affect the Services and subsequently the Client's systems;
- (d) take all the necessary security measures regarding the Consultant's Personnel in order to avoid any unauthorised access to Confidential Information;
- (e) take appropriate measures should it note the existence of any viruses;
- (f) conduct adequate tests and ensure the level of traceability of access;
- (g) inform the Client immediately in the event of any third-party unauthorised access, of the introduction of malware, and any usage that does not comply with the scope of the Services;
- (h) take all necessary precautions at the infrastructure level in order to protect the integrity of the Confidential Information; and
- (i) implement, in the required timeframe, all necessary actions following the observation of a lack of security originating from an audit or permanent monitoring process.

27. Data Protection

27.1 For the purposes of this Clause 27, the terms **Commissioner, controller, data subject, personal data, personal data breach, processor** and **processing** shall have the meaning given to them in the UK GDPR.

27.2 The Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 27 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation. To the extent applicable, the Parties will also comply with their obligations under the Kenya Data Protection Act, 2019.

- 27.3 The Parties have determined that, for the purposes of the Data Protection Legislation the Consultant shall process the personal data set out in Section 4 (the “**Client personal data**”) as processor on behalf of the Client.
- 27.4 Section 4 sets out the scope, nature and purpose of processing of the Client personal data by the Consultant, the duration of the processing and the types of personal data and categories of data subject.
- 27.5 Without prejudice to Clause 27.3, the Consultant shall, in relation to Client personal data:
- (a) process that personal data only on the documented written instructions of the Client unless the Consultant is required by Applicable Laws to otherwise process the personal data. Where the Consultant is relying on Applicable Laws as the basis for processing the personal data, the Consultant shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Consultant from so notifying the Client on grounds of public interest. The Consultant shall immediately inform the Client if, in the opinion of the Consultant, the instructions of the Client infringe the Data Protection Legislation;
 - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client personal data and against its accidental loss, damage or destruction, including inter alia as appropriate:
 - (c) the pseudonymisation and encryption of Client personal data;
 - (d) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (e) the ability to restore the availability and access to Client personal data in a timely manner in the event of a physical or technical incident; and
 - (f) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
 - (g) ensure and procure that that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
 - (h) promptly assist the Client in responding to any request from a data subject and in ensuring compliance with the Client's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, the Consultant shall promptly notify the Client if it receives any complaint, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of Client personal data;
 - (i) notify the Client without undue delay (and no later than 24 hours) after becoming aware of a personal data breach;
 - (j) at the written direction of the Client, delete or return to the Client all Client personal data on termination or expiry of the Contract, and certify to the Client in writing it has done so, unless the Consultant is required by Applicable Law to continue to process that Client personal data, in which case the Consultant shall promptly notify the Client in writing of what that Applicable Law is and shall only be permitted to process that Client personal data for the specific purpose so-notified, and all other requirements set out in this Clause 27 shall

continue to apply to such Client personal data notwithstanding the termination or expiry of this Contract for as long as such Client personal data is processed by the Consultant. For the purposes of this Clause 27.5(f)27.5(i) the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and

- (k) maintain adequate records, and, on the Client's request, make available such information as the Client may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Client or the Client's designated auditor, to demonstrate its compliance with the Data Protection Legislation and this Clause 27.

27.6 The Consultant shall not, without the prior written consent of the Client (and in any event subject to the Consultant providing the Client with reasonable evidence that such activity is being undertaken in full compliance with the Data Protection Legislation):

- (a) appoint or replace (or change the terms of the appointment of) any other processor in relation to Client personal data or transfer any Client personal data to the same; or
- (b) carry out, via itself or via any other processor, any processing of Client personal data, or transfer any Client personal data, outside of the United Kingdom, including processing Client personal data on equipment situated outside of the United Kingdom.

27.7 Either Party may, at any time on not less than 30 days' notice, revise Clause 27 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

27.8 The Consultant shall indemnify and keep the Client indemnified from and against any and all costs, damages and expenses of any kind arising from any claim or demand brought by any person, data subject, Commissioner or supervisory authority as a result of any breach or alleged breach by the Consultant of any Data Protection Legislation or its obligations under liability for losses arising from breaches of this Clause 27.

28. Limit of Liability

28.1 Save for payments due for the performance of the Services and reimbursable expenses in accordance with this Contract, the parties agree that the Client shall be excluded from all liability howsoever arising except for liability:

- (a) arising from death or personal injury caused by negligence of the Client;
- (b) arising from dishonesty or fraud;
- (c) that cannot be limited or excluded by law; and
- (d) breach of any obligation as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

29. Survival

29.1 Clauses 6, 7, 8, 9, 13, 25, 28, 29, 30 and 31 of this Section 2 and any relevant clauses listed under Section 4 shall continue in force following the termination of this Contract.

30. Notices

30.1 All notices or other communications to be given under this Contract shall be made in writing and by letter or email (save as otherwise stated) and shall be deemed to be duly given or made when delivered (in the case of personal delivery), when despatched (in the case of email, unless the sender receives notification that the email has not been delivered), or ten days after being despatched in the post, postage prepaid, by the quickest mail available and by registered mail if available (in the case of a letter) to such Party at its address or email address specified in Clause 29.2, or at such other address or email address as such Party may hereafter specify for such purpose to the others by notice in writing.

30.2 The addresses referred to in Clause 30.1 are:

- (a) The Private Infrastructure Development Group Ltd
6 Bevis Marks
London,
EC3A 7BA
United Kingdom

Tel: [insert]
Email: [insert]
FAO: [insert]

- (b) [insert]

Tel: [insert]
Email: [insert]
FAO: [insert]

31. Amicable Settlement

31.1 Any dispute, controversy or claim arising out of or relating to this Contract, including any question regarding its breach, existence, validity or termination or the legal relationships established by this Contract or any non-contractual claims (whether in tort or otherwise), shall be referred to and finally determined by arbitration.

31.2 It is agreed that:

- (a) the tribunal shall consist of one arbitrator who is to be appointed by the Parties or, failing agreement by the Parties within 30 days of service of written notice by either Party to the other Party requesting agreement to the appointment of an arbitrator, the appointing authority shall be the London Court of International Arbitration (“LCIA”);
- (b) if the Parties cannot agree on the arbitrator to be appointed, the appointing authority shall be the LCIA;
- (c) the seat of the arbitration shall be London;

- (d) the law governing this arbitration agreement shall be English law; and
- (e) the language of the arbitration shall be English.

31.3 The tribunal's award shall be final and binding. The Parties hereby agree to exclude all rights to seek a determination by the court of a preliminary point of law under section 45 of the Arbitration Act 1996 and all rights of appeal on a point of law from any arbitration award under section 69 of the Arbitration Act 1996.

31.4 The Parties also agree to take all reasonable steps necessary to minimise the environmental impact of an arbitration initiated under this agreement. The Parties will raise this with the arbitrator and tribunal at the earliest opportunity and agree appropriate measures to be included in the first procedural order or equivalent step in the arbitration. When considering with the arbitrator and tribunal what measures should be adopted, the Parties will seek to ensure that the arbitration is carried out in accordance with, and that the tribunal has regard to, the principles and measures set out in The Green Protocol for Arbitral Proceedings adopted by the Campaign for Greener Arbitrations (<https://www.greenerarbitrations.com/green-protocols/arbitral-proceedings>).

Section 3
THE SERVICES

[insert the Services, the Deliverables and the timetable for delivery of the Deliverables from the terms of reference]

Section 4

SPECIAL CONDITIONS

1. Data Processing by the Consultant

- 1.1 **Scope - The** Consultant is likely to process Personal Data in the performance of the Services and in the gathering of information in order to complete the Services.
- 1.2 **Nature** - The Consultant will send and receive Personal Data in the performance of the Services.
- 1.3 **Purpose of Processing - To** enable the Consultant to provide the Services to the Client.
- 1.4 **Duration of Processing** - The duration of the Contract.
- 1.5 **Types of Personal Data** - The types of Personal Data that the Consultant will process for the purposes of providing the Services may include personal contact details such as name, title, addresses, telephone numbers and personal e-mail addresses.
- 1.6 **Categories of Data Subject** - Employees, advisors and consultants of the Client and the PIDG Group.

2. Location of Services

- 2.1 The Consultant will perform the Services at the office of [the Consultant] [OR the Client] or at such other location as may be agreed with the Client.

3. Change to Services

- 3.1 Either Party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until both Parties have agreed in writing to the proposed changes and the effect those changes will have on the Services, the Financial Limit, the timetable for delivery of the Services and any other terms of this Contract.

Section 5
SCHEDULE OF PRICES

1. Financial Limit

The Financial Limit is set out in section 1.

(a) The breakdown of the Financial Limit is as follows:

[insert from proposal]

ANNEXURE 3 – PAYMENT SCHEDULE FORMAT

No	Deliverable	Payment Amount
1	Inception report	10%
2	Completion of Feasibility Study Phase Deliverables including ESIA report	30%
3	Completion of RFQ and PIM Completion of ALL Bidding documentation in the RFP deliverables phase	10%
4	Completion of Tender Evaluation phase deliverables	10%
5	Commercial close	15%
6	Financial Close, approval of project closeout report and case study	25%

ANNEXURE 4 – SCHEDULE OF RATES

Schedule of Rates

1. Remuneration of Resources

Name	Position	Rate Type (Home/Site)	Currency	Rates per Hour	Rates per Day	Comments
i.e. Jane	Project	Home	USD	\$XXXX	\$XX,XXXX	

Note:

- The above table indicates the minimum requirement to be included in the proposal.
- Bidder may include additional information to aid in the tender evaluation process.

ANNEXURE 5 – STANDARD FORM OF CVS

Curriculum Vitae (CV) for Proposed International or National Experts

1. **Proposed Position** [*only one candidate shall be nominated for each position*]:

2. **Name of Firm** [*Insert name of firm proposing the expert*]:

3. **Name of Expert** [*Insert full name*]:

4. **Date of Birth** **Citizenship**

5. Complete personal contact details [*Include complete address and telephone number/ email address*]:

6. **Education** [*Indicate college/university and other specialized education of expert, giving names of institutions, degrees obtained, and dates of obtainment*]:

7. Membership in Professional Associations

8. **Other Training** [*Indicate significant training since degrees under 6 - Education were obtained*]:

9. **Countries of Work Experience:** [*List countries where expert has worked in the last ten years*]:

10. **Languages** [*For each language indicate proficiency*]:

Language	Level of Proficiency (Mother tongue, Excellent, Good, Fair, Poor)		
	Speaking	Reading	Writing

11. **Employment Record** [*Starting with present position, list in reverse order every employment held by expert since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.*]:

From [Year]: _____ To [Year]: _____

Employer: _____

Positions held: _____

12. Detailed Tasks Assigned	13. Work Undertaken that Best Illustrates
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<p><i>[List all tasks to be performed under this assignment]</i></p> <p>6.2</p>	<p style="text-align: center;">Capability to Handle the Tasks Assigned</p> <p><i>[Among assignments involving the expert, indicate the following information for those that best illustrate the expert's capability to handle the tasks listed in line 12.]</i></p> <p><i>Name of assignment or project: Year:</i></p> <p><i>Location: and Client:</i></p> <p><i>Main project features:</i></p> <p><i>Positions held:</i></p> <p><i>Activities performed:</i></p>
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14. Certification:

I, the undersigned, certify to the best of my knowledge and belief-

Yes No

- | | | |
|--|--------------------------|--------------------------|
| (i) this CV correctly describes my qualifications and my experience. | <input type="checkbox"/> | <input type="checkbox"/> |
| (ii) I am employed by the Executing or the Implementing Agency. | <input type="checkbox"/> | <input type="checkbox"/> |
| (iii) I was part of the team who wrote the terms of reference for this consulting services assignment. | <input type="checkbox"/> | <input type="checkbox"/> |
| (iv) I am sanctioned (ineligible for any IFI engagement, i.e. WB, ADB). | <input type="checkbox"/> | <input type="checkbox"/> |

[If CV is signed by the individual]

I certify that I have been informed by the firm that it is including my CV in the proposal for the [name of project]. I confirm that that I will be available to carry out the assignment for which my CV has been submitted, in accordance with the implementation arrangements and schedule set out in the proposal.

[If CV is signed by the firm's authorized representative and the written agreement attached]

I, as the authorized representative of the firm submitting this proposal for the [name of the project] certify that I have obtained the consent of the named expert to submit his/her CV, and that I have obtained a written representation from the expert that s/he will be available to carry out the assignment in accordance with the implementation arrangements and schedule set out in the proposal.

I understand that any willful misstatement may lead to disqualification or dismissal, and any other disciplinary action.

Date: _____

Signature of expert or authorized representative of the firm]

ANNEXURE 6 – STANDARD FORM FOR CREDENTIALS

Assignment name:	Country: Location within country:
Name of Client:	Duration of assignment (months):
Start date (month/year): Completion date (month/year):	
Name of associated firm, Joint venture partner or Sub-Consultant, if any:	Name of senior regular full-time employees of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Narrative description of Project:	
Description of actual services provided in the assignment, including the role of each party/ sub-contractor:	

ANNEXURE 7 – STANDARD FORM FOR TEAM COMPOSITION AND TASK ASSIGNMENTS



<ul style="list-style-type: none"> Professional Staff 				
Name of Staff	Firm	Area of Expertise	Position Assigned	Task Assigned

ANNEXURE 8 – STANDARD FORM FOR STAFFING SCHEDULE

N ^o	Name of Staff	Staff input (in the form of a bar chart) ²													Total staff-month input			
		1	2	3	4	5	6	7	8	9	10	11	12	n	Home	Field ³	Total	
Foreign																		
1		[Home]																
		[Field]																
2		[Home]																
		[Field]																
3		[Home]																
		[Field]																
n		[Home]																
		[Field]																
													Subtotal					
Local																		
1		[Home]																
		[Field]																
2		[Home]																
		[Field]																

n																		
											Subtotal							
											Total							

- 1 For Professional Staff the input should be indicated individually; for Support Staff it should be indicated by category (e.g.: draftsmen, clerical staff, etc.).
- 2 Months are counted from the start of the assignment. For each staff indicate separately staff input for home and field work.
- 3 Field work means work carried out at a place other than the Consultant's home office.

 Full time input
 Part time input

ANNEXURE 9 – STANDARD FORM FOR WORK SCHEDULE

N o	Activity ¹	Months ²												
		1	2	3	4	5	6	7	8	9	10	11	12	n
1														
2														
3														
4														
5														
n														

- 1 Indicate all main activities of the assignment, including delivery of reports (e.g.: inception, interim, and final reports), and other benchmarks such as PIDG and Client approvals. For phased assignments indicate activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in the form of a Gantt chart.