

# **REQUEST FOR PROPOSAL**

**Development of an Environmental and Social Management System  
for Mixta Nigeria**

**12 January 2018**

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## ***Development of an Environmental and Social Management System – REQUEST FOR PROPOSALS***

### **1 Context**

Nigeria has experienced robust economic growth over the past decade to become Africa's largest economy in 2014. However, this robust growth cannot be sustained without focused programs to reduce poverty through the empowerment of low-income households. This includes the provisions of affordable housing to low and middle-income households.

With the largest population in Africa and significant income disparities throughout the country, the low-income population is at a disadvantage to benefit from existing credit schemes operated by the Government and formal financial institutions. This provides headroom for opportunities and growth for pro-poor micro-finance institutions committed to the empowerment of the low-income people in Nigeria with clear development plans.

### **2 Stakeholders/ Sponsors**

**2.1 Mixta Nigeria** is a real estate development and portfolio company. The company began in 2006 as a real estate investment fund promoted by Asset & Resource Management (ARM) Company Ltd. and converted to a property development company in 2007. Initially leveraging off ARM's technical expertise, Mixta has since evolved to become a leading development company that has worked on over thirteen projects; with most located in Lagos State. To date, the company has delivered 3,000 real estate assets with a value of NGN 55 billion (USD 174 million). Its portfolio is composed of mixed use developments, residential real estate developments, and mid-tier commercial and retail developments.

Historically the company has focused on the development of mid- to upper-mid tier real estate projects. More recently the company's focus has been shifting to large scale developments in the affordable- and mid-market segments, leveraging the expertise of its largest shareholder, Mixta Africa, in developing affordable housing. Management has indicated that these segments will account for at least 70% of Mixta Nigeria's portfolio in the medium term. The company currently has two affordable housing projects on-going, one of which will be a beneficiary of the proposed refinancing.

**2.2 The African Local Currency Bond Fund (ALCB Fund)** has been established by the German Government under the sponsorship of KfW to promote the development of African capital markets. The ALCB Fund acts as an anchor investor in local currency bonds where the proceeds are allocated for developmental purposes such as financial inclusion, clean energy, agriculture and housing. It also provides targeted technical assistance to promote activities that contribute towards this aim.

- 2.3 GuarantCo** ([www.guarantco.com](http://www.guarantco.com)) is a provider of local currency credit enhancement solutions in emerging and frontier markets and is sponsored by the governments of the UK, Australia, Switzerland, Sweden and the Netherlands. GuarantCo is a member of the Private Infrastructure Development Group (PIDG) ([www.pidg.org](http://www.pidg.org)), a multi-donor international organisation established to promote private participation in infrastructure in the world's developing countries.

### 3 Introduction and Background to the Services

It is important for real estate development companies to have a comprehensive environmental and Social Management System in order to manage environmental and social challenges that affect such businesses. For this reason, Mixta Africa is looking to develop and implement an E&S management system to manage risks associated with the aforementioned challenges.

The ALCB Fund's and PIDG's respective Technical Assistance Facilities (TAF) have approved supporting Mixta Nigeria (or its Parent, Mixta Africa) in the development of the Environmental and Social Management System.

ALCB TAF (the "Employer") co-funded by GuarantCo (PIDG TAF), and Mixta Africa (the "Benefactor") are now looking to appoint a Consultant to develop the Environmental and Social Management System for Mixta Africa.

Terms of reference including description of the scope of the commission is detailed in Section 6 and 7 below. The Services are expected to commence on 21<sup>st</sup> February 2018, and be completed by 31<sup>st</sup> May 2018.

This is a formal REQUEST FOR PROPOSAL (RFP) subject to the terms and conditions set out below. The purpose of this RFP and supporting documents is to explain in further detail the requirements for the Services and the

## 4 Tender Conditions and Contractual Requirements

- 4.1 This section of this RFP sets out the Employer's contracting requirements, policy requirements and the general tender conditions relating to this procurement process (Procurement Process).
- 4.2 The appointed supplier will be expected to deliver the Services in Nigeria.
- 4.3 The Employer's contracting and commercial approach in respect of the required services is set out in Appendix B (Terms and Conditions of contract) (the Contract). By submitting a tender response, you are agreeing to be bound by the terms of this RFP and the Contract without further negotiation or amendment.
- 4.4 In the event that you have any concerns or queries in relation to the Contract, you should submit a clarification request in accordance with the provisions of this RFP by the Clarification Deadline (as defined below in the Timescales section of this RFP). Following such clarification requests, the Employer may issue a clarification change to the Contract that will apply to all potential suppliers submitting a tender response.
- 4.5 The Employer is under no obligation to consider any clarifications / amendments to the Contract proposed following the Clarification Deadline, but before the Response Deadline (as defined below in the Timescales section of this RFP). Any proposed amendments received from a potential supplier as part its tender response shall entitle the Employer to reject that tender response and to disqualify that potential supplier from this Procurement Process.
- 4.6 Any information supplied to potential suppliers as part of this Procurement Process is supplied in good faith. The information contained in this RFP and the supporting documents and in any written or oral communication is believed to be correct at the time of issue but the Employer will not accept any liability for its accuracy, adequacy or completeness and no warranty is given as such. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Employer.
- 4.7 You are responsible for analyzing and reviewing all information provided to you as part of this Procurement Process and for forming your own opinions and seeking advice as you consider appropriate. You should notify the Employer promptly of any perceived ambiguity, inconsistency or omission in the information provided to you as part of this Procurement Process.
- 4.8 At any time prior to the Response Deadline, the Employer may amend this RFP. Any such amendment shall be issued to all potential suppliers, and if appropriate to ensure potential suppliers have reasonable time in which to take such amendment into account, the Response Deadline shall, at the discretion of the Employer, be extended.
- 4.9 Each potential supplier is responsible for obtaining all information necessary for preparation of a tender response and for all costs and expenses incurred in preparation of the tender response. You will not be entitled to claim from the Employer any costs, expenses or liabilities that you may incur in tendering for this procurement irrespective of whether or not your tender response is successful.
- 4.10 The Employer reserves the right to disclose all documents relating to this Procurement Process, including without limitation your tender response, to any provider of management services to the Employer, advisers or other third parties involved in the procurement or support of the Services.

**4.11** Your tender response must remain open for acceptance by the Employer for a period of sixty days from the Response Deadline. A tender response not valid for this period may be rejected by the Employer.

## **5 General Policy requirements**

By submitting a tender response in connection with this Procurement Process, you confirm that you will, and will ensure that any consortium members and/or subcontractors will, comply with all applicable laws, codes of practice, statutory guidance and applicable GuarantCo policies and procedures which can be found on GuarantCo's website (<http://www.guarantco.com/policies-procedures/policies>). The list of relevant policies includes (but is not limited to): Anti-corruption and Integrity Policy and Procedures, Disclosure Policy and Procedures and Travel and Expense Reimbursement Policy and Procedures.

## **6 Scope of Work**

This is expected to include the development of an Environmental and Social policy, Environmental and Social Risk identification and management tools, implementation plan and monitoring system that is commensurate to the company's level of Environmental and Social Risk. The Environmental and Social Policy and Environmental and Social Management System will be aligned to the IFC Environmental and Social Performance Standards.

The assignment will include working with the firm to ensure appropriate buy-in and 'ownership' of any outputs developed over the course of the assignment. This may include the training of relevant employees, technical staff and relevant contractors and consultants where possible, as well as supporting/advising on the appointment of Environmental and Social coordinators.

The consultant is expected to carry out one visit to Mixta's Lagos office at the beginning of the assignment to facilitate a diagnostic assessment of the current situation. The consultant is expected to conduct teleconference calls with Mixta as part of the ongoing review process as policies and procedures are developed. The consultant would be expected to make at least one additional visit towards the end of the assignment to assure the practicality of implementing the Environmental and Social Management System and associated policies and procedures and to modify/update as necessary.

The consultant is expected to carry out a further verification visit to Mixta, 3 months after the implementation of the Environmental and Social Management system to assure effective implementation and to fine tune policies and procedures with the aim of ensuring continued effective operation of the Environmental and Social Management system.

## **7 Deliverables**

It should be noted that, when referring to Mixta, this includes any subsidiaries of Mixta, or joint ventures or special purpose vehicles set up for specific projects.

The detailed deliverables below should be seen as the minimum requirement. Core deliverables include:

- Environmental and Social Policy statement including the compliance IFC Environmental and Social Performance Standards as well as International, National, Federal, Regional or Local legislative requirements and standards. The policy should outline how this applies to contractors, sub-contractors and suppliers of Mixta.
- Environmental and Social Management System setting out the Environmental and Social requirements with which Mixta, its employees, contractors, sub-contractors and suppliers shall comply.

- Environmental and Social Risk Management Policy and Practice – This would include the tools and techniques for risk identification, assessment, mitigation and monitoring. It would include the use of risk registers, the concept of risk owners, would establish the concept that risks are dynamic in nature and would establish the concept of emergent risks.
- Environmental and Social risk assessment procedure and templates to facilitate the identification, in detail, of Environmental and Social matters with respect to:
  - Environmental effects of the proposed development
  - Resource optimisation of the proposed development in construction and beyond
  - Community health and safety during construction and beyond
  - Effect on local eco-systems and bio-diversity
  - Resettlement including economic resettlement
  - Indigenous peoples
  - Cultural heritage
- Communication and stakeholder management policy and procedure to include:
  - Community and stakeholder requirements during outline planning, planning, approval, pre-construction, during construction and post-construction
  - Formal notifications
  - Community engagement including affected communities
  - Stakeholder engagement plans
  - Forced resettlement, voluntary resettlement and economic resettlement (including compensation)
  - Grievance process for the above
- Occupational Health and Safety Management Policy and Practice – This would include tools and procedures for managing the generic risks associated with construction of residential housing. This would include:
  - Standard site rules for occupational health and safety with flexibility to add requirements where the specific project presents additional occupational health and safety risks
  - Compliance with all National, Regional and Local building regulations and codes
  - Provision of and use of personal protective equipment by employees, contractors, sub-contractors, visitors and suppliers (including deliveries)
  - Induction training requirements
  - Job specific safety training requirements
  - Certified employees/ contractors/ sub-contractors for high risk activities such as scaffolding, lifting equipment, welding, excavation, electrical works etc.
  - Requirements for working at height, confined space (including excavation), hot work etc.
  - Storage of hazardous substances and minimisation of exposure to hazardous substances (including dusts)
  - Protection from extreme weather, including provision of drinking water etc.
  - Occupational health and safety reporting to cover the whole workforce (employees, contractors, sub-contractors, visitors, suppliers)
  - Occupational health and safety incident reporting and investigation

- Community health and safety incident reporting and investigation
- Grievance policy and procedure to include provision for:
  - Any member of the workforce to raise a grievance and for this to remain anonymous if requested
  - Any stakeholder to raise a grievance and for this to remain anonymous if requested
  - Non-retaliation against any party raising a grievance
  - Investigation and Management of grievances in a confidential manner by a person or team that is independent
- Labour policy and procedure covering the workforce including provisions for:
  - Workers' rights including equal opportunities and non-discrimination
  - Workers' organisations
  - Use of child labour
  - Use of migrant labour
  - Use of forced or trafficked labour
  - Retrenchment and compensation for retrenchment
  - Use of security personnel
- Environmental and Social Reporting Policy and Procedure to include:
  - Periodic reporting of a set of defined Environmental and Social metrics and indicators
  - Reporting of progress against Environmental and Social actions plans and their effectiveness
  - Periodic reporting of Environmental and Social risk including assessment of emerging risk
  - Environmental and Social incident reporting and investigation
  - Intervention processes with respect to employees, contractors, sub-contractors and suppliers in the event of Environmental and Social non-performance or incidents
  - Organisational learning and continuous improvement based on Environmental and Social Performance and Incidents
- Fully resourced and time-bounded implementation plan for the above, including capability, competency and capacity building requirements
- Self-verification, assurance and external audit policy and procedures for the above policies and procedures. The policy and procedure to include:
  - Proposal of funding of external audits
  - Actions and intervention in the event of findings from Self-verification, assurance and external audits

## 8 Timetable

Subject to any potential changes notified by the Employer in accordance with this RFP, the following timescales shall apply to the Procurement Process:

Activity	Date / time
RFP Issued	12 January 2018
Deadline for clarification questions ( <b>Clarification Deadline</b> )	19 January 2018
The Employer to respond to clarification questions	26 January 2018
Deadline for submission of RFP responses by potential suppliers ( <b>Response Deadline</b> )	Midnight London time, 02 February 2018
Final Decision	16 February 2018
Contract concluded with winning supplier	20 February 2018
Contract start date	21 February 2018

## 9 Proposals

Proposals should be submitted by email to the ALCB Fund’s TAF Manager and include technical and financial components. Consultants can submit joint proposals. Where consultants choose to submit joint proposals, the proposal should clearly outline the roles of each party in the execution of the TORs.

### 9.1 Technical Submission

The key areas to be covered in submissions are:

- (i) Relevant Experience
  - a. Track record in developing and implementing right-sized, bespoke, fit-for-purpose Environmental and Social Management Systems for corporates
  - b. Experience in designing Environmental and Social Risk identification, assessment and management systems
  - c. Experience in the design of Environmental and Social reporting systems
  - d. Experience in property development and construction space
  - e. Experience in West Africa
- (ii) Proposed Approach (maximum two pages)
  - a. Understanding of requirements
  - b. Applicable methodology
  - c. Timetable and work plan

### 9.2 Financial Proposal

Proposed budget and out-of-pocket expenses, including applicable taxes.

## 10 Evaluation Criteria

10.1 Upon receipt of your tender response meeting the requirements of this RFP, the Employer will assess each response based on the following scoring:

	Item	Points
(a)	Specific experience related to assignment	(10)
(b)	Adequacy of the proposed work plan and methodology in responding to Terms of reference/Scope of work and project context.	(40)
(c)	Qualification and competency of dedicated key staff for the Assignment	(40)
(d)	Financial proposal	(10)
<b>TOTAL</b>		<b>100</b>

10.2 Responses from suppliers will be assessed to determine the most economically advantageous tender using the criteria and scoring above.

10.3 The winning tender shall be the tender response scoring the highest score out of 100. The Employer may reject your tender response in full and disqualify you from the Procurement Process if your tender response does not meet the requirements of this RFP or if there is any attempt to inappropriately influence the Procurement Process.

## 11 Submission Details

- 11.1** Interested parties should submit their proposal by 2<sup>nd</sup> February, 2018, at midnight GMT via email to [info@alcbfund.com](mailto:info@alcbfund.com), Winnie Karanja ([winnie.karanja@lhgp.com](mailto:winnie.karanja@lhgp.com)) and Brock Hoback ([Brock.hoback@lhgp.com](mailto:Brock.hoback@lhgp.com)). If you have any outstanding questions or comments, please contact Winnie Karanja or Brock Hoback.
- 11.2** All clarification requests should be submitted to [info@alcbfund.com](mailto:info@alcbfund.com) by the Clarification Deadline, as set out in 11.1 above. The Employer is under no obligation to respond to clarifications requests received after the Clarification Deadline.
- 11.3** The Employer reserves the right to issue any clarification request made by you, and the response, to all potential suppliers unless you expressly require it to be kept confidential at the time the request is made. If the Employer considers the contents of the request not to be confidential, it will inform you and you will have the opportunity to withdraw the clarification query prior to the Employer responding to all potential suppliers.

**Appendix A: FEE PROPOSAL SUBMISSION (please note that fee Quotes are to be in USD)**

The fee proposal includes the proposed budget and out-of-pocket expenses, including applicable taxes. It is anticipated that the Services will cost between USD [ ] and USD [ ] including any applicable taxes.

**CONSULTANT/CONSORTIUM/SUPPLIER**

**NAME:**

	<b>Service</b>	<b>Amount (US\$)</b>
	A. Submission of ESMS Policy	
	B. Submission of Environmental and Social risk assessment procedure and templates	
	C. Submission of Occupational Health and Safety Management Policy and Practice, grievance policy and procedure and Labour policy and procedure	
	D. Submission of Environmental and Social Reporting Policy and Procedure	
	<b>TOTAL</b>	

Proposed Payment Terms

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**Completed By:** \_\_\_\_\_

*On Behalf of:* \_\_\_\_\_

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**Appendix B: DRAFT FORM OF CONTRACT**

**CONTRACT**

for Consulting Services

dated

20 December 2017

between

[.]

(the “Consultant”)

and

**ALCB FUND Technical Assistance Facility (“ALCB FUND TAF”)**

**represented by**

**Lion’s Head Global Partners**

(the “Employer”)

and

**Mixta Africa Limited**

(the “Issuer”)

for

**DEVELOPMENT OF AN ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEM**

hereinafter referred to as the “Project”

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## Preamble

Lion's Head has been appointed as TA Manager of the ALCB FUND Technical Assistance Facility according to a Fiduciary Agreement dated 11th May 2015, entered into between the ALCB FUND and Lion's Head. According to that fiduciary agreement, Lion's Head is duly authorised to represent ALCB FUND Technical Assistance Facility as the Employer and acts exclusively on behalf of ALCB FUND Technical Assistance Facility for the purpose of this Contract.

The Employer and the Issuer desire that the consulting services described in more detail in the Special Conditions and Annex 2 [Terms of Reference] (the "Services") be rendered. The Consultant has submitted a bid for these Services.

Now therefore, the Employer, the Issuer and the Consultant (the "**Parties**") hereby agree on the following:

## GENERAL CONDITIONS

### § 1 General Provisions

#### 11.4 1.1 APPLICABLE REGULATIONS

1.1.1 The following regulations are considered to have been agreed between the Parties unless otherwise agreed in the Special Conditions. The applicable contractual regulations between the Parties (the “**Contract**”) consist of the conditions of this consulting Contract (General Conditions and Special Conditions) along with the following contractual annexes:

1. Annex 1 [Terms of Reference];
2. Annex 2 [Declaration of Undertaking];
3. Annex 3 [Project-specific Provisions].

#### 11.5 1.2 PARTIES

1.2.1 The addresses and authorised representatives of the contractual Parties to whom all communications are to be served are listed under the Special Conditions. The Consultant shall nominate to the Employer and Issuer an individual at the Consultant's place of business who may be reached at any time in cases of emergency or crisis and shall immediately inform the Employer and Issuer of any change in this regard

#### 11.6 1.3 WRITTEN FORM AND LANGUAGE

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

#### 1.4 APPLICABLE LAW

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

#### 1.5 ASSIGNMENT AND SUB-CONTRACTS

1.5.1 The Consultant shall not have the right to assign or transfer all or any of its rights under this Contract without the prior written consent of the Employer and Issuer.

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

#### 1.6 CONFIDENTIALITY AND PUBLICATION

1.6.1 The Consultant shall provide such information in relation to the provision of its legal services as requested by the Employer and Issuer in connection with this Contract, and shall make available at nominal costs all requested documents and information prepared in connection with this Contract. This obligation shall remain effective after termination of the Contract for a period of 24 months.

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

## 1.7 CORRUPTION AND FRAUD

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

1.7.2 The Consultant warrants with its signature that the declarations named in Annex 2 [Declaration of Undertaking] are true and correct and undertakes that it will fulfil the obligations and rules of conduct set out therein in connection with the implementation of this Contract.

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

- a) any official or employee of a public authority or an enterprise under the ownership or control of a government;
- b) any person who performs a public function;
- c) any official or staff member of a public international organisation;
- d) any candidate for a political office; or
- e) any political party or official of a political party.

## 1.8 PARTIAL INVALIDITY

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

## § 2 The Employer

### 2.1 DUTY OF COOPERATION

2.1.1 The Employer is obliged to perform the duties of cooperation to which it is subject free of charge and without delay. During the term of this Contract, the Employer shall, free of charge, in particular place at the disposal of the Consultant all data, documentation and information

concerning the contractual Services that are available to it and shall support the Consultant as far as reasonably possible.

## 2.2 REMUNERATION

2.2.1 The remuneration obligations of the Employer are defined in Section 6 [Remuneration].

## **§ 3 The Issuer**

### 3.1 DUTY OF COOPERATION

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

### 3.2 REMUNERATION

3.2.1 The remuneration obligations of the Issuer are defined in Section 6 [Remuneration].

## **§ 4 The Consultant**

### 4.1 SCOPE OF SERVICES

4.1.1 The Consultant shall render the Services assumed by it as described in detail in the Special Conditions and Annex 1 [Terms of Reference] in full and on time with the required due care and under the laws of Kenya.

4.1.2 Changes to the Services described in Clause 4.1.1 or the remuneration according to Section 5 may only be agreed on between the Parties by amendment of this Contract as per Clause 1.3.

### 4.2 REPORTING

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

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

### 4.3 DEPLOYMENT OF STAFF

4.3.1 Insofar as the Parties agree the deployment of key staff, these persons shall be named in Annex 3 [Project-specific Provisions]. The following provisions 4.3.2 and 4.3.3 shall then apply.

- 4.3.2 If key staff employed by the Consultant need to be replaced, the Consultant shall ensure that the staff member in question is replaced promptly, by an individual with at least equivalent qualifications.
- 4.3.3 The costs for the withdrawal or replacement of staff during the Contract period shall be borne by the Consultant, unless this occurred on request of the Employer or Issuer. In this case, the Employer or Issuer that carried out the request shall bear the costs for the replacement of the staff member, unless the staff member in question does not meet the requirements necessary for fulfilment of the Contract or has interfered in the internal affairs of the project country

#### 4.4 PROJECT-SPECIFIC PROVISIONS

- 4.4.1 Annex 3 [Project-specific Provisions] contains the specific project-related features of the project and the Services affecting the Consultant if such arrangements are made by the Parties.

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

#### 5.1 COMMENCEMENT AND COMPLETION

- 5.1.1 The Special Conditions contain the date of commencement as well as the agreed completion date, which are binding for the Consultant subject to any amendments by the Parties. A detailed time schedule, where required, is appended in Annex 4 [Project-specific Provisions].
- 5.1.2 Insofar as this Contract provides for optional services, the Consultant shall commence delivery of the optional services not earlier than upon receipt of written notification from the Employer and Issuer.

#### 5.2 PENALTIES FOR DELAY

- 5.2.1 Subject to Force Majeure, if the Consultant fails to perform any of the Services under this Contract within the requisite time due to the Consultant default the Employer and Issuer shall, be authorised to deduct from the Order Value (as defined in the Special Conditions) a sum equivalent to 0.5% of the Order Value for every week of delay, subject to a maximum reduction cap of 8% of the Order Value. Beyond such penalty, the Employer or Issuer may not bring any further claims arising from the delay in the performance of the Services. The right of termination shall remain unaffected.

#### 5.3 FORCE MAJEURE

- 5.3.1 In the event of Force Majeure, the contractual obligations, insofar as affected by such event, shall be suspended for as long as performance remains impossible due to the Force Majeure. Force Majeure means if any event whereby one party to the Contract is prevented from performing the Services due to matters not in the reasonable control of the party affected or other unavoidable, unforeseeable circumstances, such as natural disasters, hostage-taking, war, crises, revolution, riots, terrorism and sabotage, that cannot be avoided or rendered harmless and must not be accepted because of its frequency ("Force Majeure").
- 5.3.2 In the event of Force Majeure, the Consultant shall be entitled to an extension of the Contract equal to the delay caused by such Force Majeure.
- 5.3.3 If the performance of the Services is rendered permanently impossible by the Force Majeure, or if the Force Majeure lasts for longer than 180 days, any of the Parties shall be entitled to

terminate the Contract. In this case, the Services performed up to the time of the Force Majeure and all documented necessary expenditure of the Consultant arising from the discontinuation of the Services shall be invoiced on the basis of contractual prices. Neither party shall make any further claim.

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

#### 5.4 TERMINATION

- 5.4.1 The Employer is entitled to terminate this Contract if the Consultant culpably fails to meet its contractual obligations, the performance of its Services is materially not in compliance with the Contract, or the Services are not performed in a timely fashion unless such reasons are beyond their control. In this case, the Consultant is solely entitled to demand the agreed remuneration for the Services performed until the date of termination but not yet remunerated. The Employer shall be entitled to demand compensation for the direct damage caused by this default provided that such compensation shall not exceed the Order Value and adequate proof is provided of the direct damage.

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

- 5.4.3 Before a notice of termination is served according to Clauses 5.4.1 and 5.4.2., the respective other Party is to be served notice of breach of its contractual obligations and to be granted a grace period of at least 30 days to remedy this.

- 5.4.4 The Employer may suspend or terminate this Contract after serving written notice of at least 30 days. In the case of suspension, the Employer shall reimburse the Consultant for the resulting, unavoidable costs and provide a clear reason for the cancellation which may or may not be the fault of the service provider. In the case of termination, the legal consequences of Clause 5.4.2 shall apply accordingly.

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

#### 5.5 CORRUPTION AND FRAUD

- 5.5.1 If it is proven that the Consultant has breached Clause 1.7 [Corruption and Fraud] or that the Declaration of Undertaking in Annex 2 is untrue or will become so, the Employer may – notwithstanding the various punishments or other sanctions to which the Consultant is subject according to the laws of England terminate this Contract in writing without observing a period of notice.

### § 6 Remuneration

## 6.1 REMUNERATION OF THE CONSULTANT

6.1.1 The Consultant shall receive the remuneration agreed in the Special Conditions for performing the Services owed under this Contract, subject to the conditions listed therein and the conditions below.

## 6.2 TERMS OF PAYMENT

6.2.1 The Employer and Issuer shall pay the Consultant's remuneration to the account named in the Special Conditions according to the following schedule:

- a) Advance payment, due within 30 days of entry into force of this Contract.
- b) Instalments, if applicable, shall be paid upon presentation of corresponding invoices with a maximum of one payment per quarter. The Employer and the Issuer shall have the right to suspend payment of instalments at any stage in the event of substantial deviations from the time schedule and significant non-performance on the part of the Consultant
- c) The final payment shall be made against presentation of a corresponding invoice after the Services have been properly performed in full, they have been accepted (if applicable) and approval of the final report by the Employer and the Issuer.

6.2.2 Unless otherwise agreed, payments shall be made within a period of 30 calendar days after receipt of the invoice by the Employer and Issuer.

6.2.3 Optional services as per Clause 5.1.2 will be settled in connection with the final invoice.

## 6.3 AUDITING

6.3.1 For services or partial services that are not remunerated on a lump-sum basis, the Consultant shall be obliged to maintain up-to-date records that meet professional standards and that clearly and systematically indicate the services provided and the time and expense involved. The Consultant shall retain all settlement-related documents for five years and authorises the Employer and Issuer to audit these at any time.

## **§ 7 Liability**

### 7.1 LIABILITY OF THE CONSULTANT

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

### 7.2 LIABILITY OF THE EMPLOYER

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

7.3 INSURANCE

7.3.1 On request by the Employer or Issuer, the Consultant shall present proof of the Consultant's Professional Indemnity Cover.

**§ 8 Disputes and Arbitration Procedure**

8.1 ARBITRATION PROCEDURES

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

8.2 The governing law shall be English law.

## **SPECIAL CONDITIONS**

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

### **PREAMBLE**

The ALCB Fund aims to promote long-term financial inclusion through local bond market financing.

**Project: DEVELOPING AN ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEM**

#### **Ad 1.1 APPLICABLE REGULATIONS**

Annex 1 [Remuneration and Invoicing] omitted.

#### **Ad 1.2 CONTRACTUAL PARTIES AND CONTACTS**

Employer is **ALCB FUND Technical Assistance Facility (“ALCB FUND TAF”)**

The Employer's contact person is:

**James Doree** ([james.doree@lhgp.com](mailto:james.doree@lhgp.com)) for ALCB Fund TAF; and

#### **Address of Employer:**

Postal address            **Lion’s Head Global Partners, 154 Buckingham Palace Road, London SW1W 9TR,  
United Kingdom (not the invoicing address)**

Email:                      **alcbfund@lhgp.com**

Phone:                      **+442073400412**

Issuer is **Mixta Africa Limited**

The Issuer’s contact person is **Daniel Font**

Email: [d.font@mixtafrica.com](mailto:d.font@mixtafrica.com)

#### **Address of Issuer:**



The date on which execution of this Contract shall be commenced is the February 21 2018.

Completion date:

Completion time is the period **ending 3 months after the commencement date.**

Annex 4 [Project-specific Provisions] contains a detailed schedule.

**Ad 5.1 REMUNERATION**

For the Services to be rendered by the Consultant under this Contract, ALCB TAF shall pay as to 80% (the Employer) and the Issuer shall pay as to 20% of the sum of USD [ . ] inclusive of VAT (“Order Value”), comprising of –

- (i) Professional Fees, in the Total Sum of [USD. ] (including VAT); and
- (ii) in addition to Professional Fees, expenses incurred by the Consultant which will not exceed 10% of the Professional Fees and will be charged in accordance with the conditions in the Consultant’s Terms and Conditions. Expenses will include communications and any travel for workshops.

Annex 1 [Remuneration and Invoicing] contains the required format for invoicing

**Ad 5.2 TERMS OF PAYMENT**

The Consultant's remuneration shall be paid in arrears on the basis of achievement of milestones, as laid out below and signed off by the Employer within 5 working days of delivery by the Consultant.

The Order Value is composed as follows, in line with the Terms of Reference in Annex 2, including VAT which should be clearly set out in each invoice:

Payment of the Order Value shall be made as follows:

- An advance payment of USD [--] shall be paid as to 80% by the Employer in the proportions stated in section 5.1 of the Agreement, and 20% by the Issuer in accordance with **Error! Reference source not found.** of the Agreement;
- Instalments (equal to the percentages set out below) in respect of the remaining balance of USD [--] shall by paid as to 80% by the Employer in the proportions stated in section 5.1 of the Contract and 20% by the Issuer upon delivery of the following milestones -

Milestone/deliverable	Payment
Submission of ESMS Policy	25%
Submission of Environmental and Social risk assessment procedure and templates	25%

Submission of Occupational Health and Safety Management Policy and Practice, grievance policy and procedure and Labour policy and procedure	25%
Submission of Environmental and Social Reporting Policy and Procedure	25%

All payments in respect of the Consultant's remuneration shall be paid by way of electronic funds transfer into the following account:

The Employer and Issuer will pay the Consultant's remuneration to the following account:

ACCOUNT NAME: [complete]  
BANK NAME: [complete]  
BRANCH: [complete]  
BANK A/C NO: [complete]  
POSTAL ADDRESS: [complete]  
TELEPHONE NO: [complete]  
FAX NO: [complete]  
BANK CODE: [complete]  
SWIFT ADDRESS: [complete]:

The original invoices are to be submitted to the Employer.

**Ad 8.1: ARBITRATION PROCEDURE**

The place of arbitration shall be London, United Kingdom.

The language of arbitration shall be English.

London, [.] February 2018

ALCB FUND TAF, represented by LHGP Asset Management, the Employer

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Winnie Karanja, TAF Manager

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James Doree, Fund Manager

**Mixta Africa**, the Issuer

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Daniel Font, Chief Operating Officer

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[Name, Title]

[ ], the Consultant

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[Name, Title]

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[Name, Title]

**INVOICE**

**Annex 1**

**ALCB FUND TAF Project No. 2018-001**

**PROGRAM / PROJECT DEVELOPING AN ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEM FOR MIXTA AFRICA**

**Schedule of Consulting Services / Period**

**Invoice No.**

as contractually agreed						invoicing			
Item <sup>1</sup>	Description <sup>2</sup>	Unit <sup>3</sup>	Quantity <sup>4</sup>	Unit Rate <sup>5</sup> USD	Contract Sum <sup>6</sup> USD	Previous Cumulative Expenses <sup>7</sup> USD	This Invoice <sup>8</sup> No. (x) USD	Current Cumulative Expenses <sup>9</sup> USD	Remaining Budget <sup>10</sup> USD
1	[Insert description]								
Total costs at actual - Contract Sum									
Advance Payment									
<b>Invoiced Amount</b>									

**Abbreviations and explanations:**

- <sup>1</sup> Reference according to cost sheet
- <sup>2</sup> E.g. field personnel, travel costs
- <sup>3</sup> E.g. hours, days, month, flights, item
- <sup>4</sup> Numerical unit
- <sup>5</sup> Cost per unit
- <sup>6</sup> Contractually agreed price in total (quantity multiplied by unit rate)
- <sup>7</sup> Already invoiced/disbursed
- <sup>8</sup> Accounting / billing period
- <sup>9</sup> Previous cumulative expenses plus this invoice
- <sup>10</sup> Contract Sum minus Current Cumulative Expenses
- <sup>11</sup> Advance Payment Amount (if applicable)
- <sup>12</sup> Previous recovery
- <sup>13</sup> Current recovery
- <sup>14</sup> Total recovery (previous recovery plus current recovery)
- <sup>15</sup> To be recovered (Advance Payment minus total recovery)



**DECLARATION OF UNDERTAKING**

**Annex 3**

We underscore the importance of a free, fair and competitive contracting procedure that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible incentives to any public servant or other person nor accepted such incentives in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present tendering process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists of the kind described in the corresponding KfW Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries (<https://www.kfw-entwicklungsbank.de/Download-Center/PDF-Dokumente-Richtlinien/Consulting-E.pdf>).

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

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

We also declare that we have not been included in the list of sanctions of the United Nations, nor of the EU, nor in any other list of sanctions and affirm that we will immediately inform the Employer if this situation occurs at a later stage.

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

.....  
(place)                      (date)

.....  
(name of company)

.....  
(signature(s))

**Key staff**

<b>Deliverable</b>	<b>Timing</b>

**Timing**

<b>Deliverable</b>	<b>Timing</b>
Kick-off	
Submission of ESMS Policy	
Submission of Environmental and Social risk assessment procedure and templates	
Submission of Occupational Health and Safety Management Policy and Practice, grievance policy and procedure and Labour policy and procedure	
Submission of Environmental and Social Reporting Policy and Procedure	

**Workplan**

The services will be completed within 14 weeks of the contract start date.

**Disclosure**

All parties recognise that the ALCB TAF and ALCB Fund are separate legal entities with separate missions and internal procedures and policies in place. The provision of TAF Assistance under this Contract does not indicate or guarantee investment by the ALCB Fund.