

**Terms of Reference (“ToR”)
Geothermal Resource Risk Mitigation (GREM) Project**

PT Sarana Multi Infrastruktur (PT SMI)

Position: Legal Consultant for Financing Transaction Process of Geothermal Exploration

1. Background and Context

The World Bank (WB) is assisting the Government of Indonesia in establishing a Geothermal Resource Risk Mitigation (GREM) Facility (“**the Facility**”) to support exploration drilling by state-owned and private sector developers. The main objective is to scale up investment in geothermal energy development in Indonesia. This will be achieved through providing about US\$ 375 million for upstream resource development (i.e., exploration and delineation drilling) – the riskiest phase of geothermal development. Under the Facility, two windows are created: (i) Public Sector Window (the Facility provided for State Owned Enterprises) and (ii) Private Sector Window (the Facility provided for private entities). The Facility will be managed by PT SMI as the financial intermediary.

PT SMI through the Facility will provide geothermal developers with a debt package for exploration drilling, with the possibility of another package for delineation drilling. The financing support will confirm whether there is sufficient productive steam resource for power generation. After the resource is largely confirmed, the developer can use project finance for exploitation drilling and power plant development.

In the public sector window, there will be a de-risking component using funding from the Government of Indonesia in the event that the resources are not confirmed as stipulated in Article 18 – Article 23 of Minister of Finance Regulation No. 62 of 2017 regarding Funds Management of Infrastructure Financing for Geothermal Sector in PT SMI (“**MoF Regulation 62/2017**”).

In the private sector window, the debt package will be evenly split between a loan financed by the World Bank (WB) and a financial instrument funded by the Global Climate Fund (GCF) and/or the Clean Technology Fund (CTF). The financial instrument will be based on the market price of the Special Purpose Vehicle at the time the Sponsor chooses to buy back the financial instrument, thus creating a risk-sharing mechanism. For a clearer information, an explanatory document on GREM Facility is attached to this ToR.

PT SMI and the WB have developed the overall structure of the Facility and associated products, including the development of (i) GREM Facility Operations Manual (OM); (ii) Legal Due Diligence Report for the World Bank in Relation to Geothermal Resource Risk Mitigation (GREM) Facility prepared in 2018 (“**2018 Legal Due Diligence Report**”¹); (iii) Term Sheets for the public and private windows (“**Term Sheets**”); and (iv) Loan forgiveness financial model and template financing documentation for the private sector window (“**Template Financing Documents**”). PT SMI now seeks support on the further implementation of the Facility.

To date, PT SMI has identified several potential geothermal exploration projects in the GREM projects pipeline. Currently, there are three (3) potential borrowers for geothermal exploration project which are divided into private sector window and public sector window. The potential

¹ 2018 Legal Due Diligence Report prepared an Indonesia law firm appointed by the World Bank, which covers various issues related to GREM Facility, including: regulatory framework, private window and public structure, enforcement of share pledge in Indonesia.

developers that will apply for the Facility are PT Supreme Energy Rajabasa, PT PLN (Persero), and PT Geo Dipa Energi (Persero) (“**Potential Borrowers**”).

To evaluate the project proposals (GREM-Projects), PT SMI will carry out a comprehensive due diligence and related transaction process activities wherein legal aspect is an important issue. PT SMI will hire a legal consultant firm to support legal due diligence and other relevant activities in the course of financing transaction process for GREM –Projects.

2. Consultancy Services

PT Sarana Multi Infrastruktur (Persero) (“**PT SMI**”), with funding support from the WB will hire a Legal Consultant Firm (“**Consultant**”) to support due diligence and financing transaction process for all GREM Projects. PT SMI will procure the needed specialized skills to assist all legal related assessments of the Project and Facility, which includes:

- (i) the refinement of the financial products, including the updating of the 2018 Legal Due Diligence Report based on the final product structure;
- (ii) assisting PT SMI in meeting with the Potential Borrowers concerning legal aspects of GREM Facility. Coordinate with GREM Transaction Advisor as appropriate, and
- (iii) drafting, negotiating, reviewing and finalizing the legal documentation with regard to the GREM Facility extended to the Potential Borrowers

The Consultant shall also elaborate on related legal aspects in the formulation of the Infrastructure Financing for Geothermal Sector (“**PISP**”) Fund de-risking mechanism on the GREM Public Window based on MoF Regulation 62/2017 and its amendments in the near future.

The Consultant will work under supervision Legal and Compliance Specialist in SMI Geothermal Team with closed coordination with PT SMI Legal Division. The advice should be based on relevant international best practice and Indonesia context.

3. Scope of Work

The objective of consultancy service is to support PT SMI in related legal issues at pre-transaction phase and transaction phase, which includes:

- a. Pre-transaction phase: ensure a successful product development of GREM Facility particularly related to the legal aspects including updating the 2018 Legal Due Diligence Report on legal implications of the final products and provide any other legal advice relating to the structure or implementation of the GREM Facility
- b. Transaction phase: conduct legal due diligence to the Potential Borrowers and their shareholder(s) and/or guarantor(s), support in the preparation (including negotiation) of legal documents with regard to the GREM Facility extended to the Potential Borrowers

Required support outlined above should be performed in compliance with the GREM Facility Operation Manual, PT SMI internal guidelines and relevant Government of Indonesia (“GoI”) regulations.

The scope of work under this assignment has the following three (3) tasks:

Task 1: Support PT SMI in pre-transaction phase of GREM Private Sector Window and Public Sector Window, on the structuring, finalization and promotion of the relevant products.

This task includes, but not limited to:

- 1) Provide legal memorandum/analysis in the determination of the overall structure of the Financial Instrument.
- 2) Provide legal due diligence relating to the structure and implementation of GREM Facility in private sector window and public sector window, including updating the 2018 Legal Due Diligence Report.
- 3) Assist PT SMI to ensure the compliance of the Financial Instrument with relevant Indonesian law regulations, including but not limited to: the State Attorney (Jamdatun) product classification requirement, POJK 30 / 2019 on Private Placement Debt Securities and/or Sukuk Issuance.
- 4) Assist PT SMI in formulating the PISP Fund de-risking mechanism on GREM Public Window based on MoF Regulation 62/2017 and its amendments.

Task 2: Support PT SMI in the transaction phase related to the financing proposals submitted by the Potential Borrowers (PT Supreme Energy Rajabasa, PT PLN (Persero), and PT Geo Dipa Energi (Persero))

- 1) Conduct limited legal due diligence process and issuing legal due diligence report which includes red flag issues, executive summary and corporate summary for 3 GREM Project proposals.
- 2) Facilitate all stages of financing transaction process at legal aspects which includes organizing related meetings and building communication between each Borrower and relevant Divisions in PT SMI.
- 3) Drafting and finalizing related legal transaction documents based on the Term Sheet and the Template Financing Documents for 3 GREM Project proposals, such legal transaction documents, including but not limited to:
 - Corporate approvals from the Borrower and the Obligor (as relevant);
 - Term sheet
 - Financing documents of the transaction including security documents (pursuant to standardized financing documents in PT SMI);
 - Conditions Precedent/Subsequent Checklist & Conditions Precedents/Subsequent Confirmation Letter (as relevant);
 - Legal Opinion related to the transaction.

4. Details on Scope of Work and Estimated Fees

No	Scope of Work	Estimated Fees (exclusive of tax and disbursements)
Pre Transaction Phase (Task 1)		
	<ul style="list-style-type: none"> • Provide legal analysis in the determination of the overall structure of the Financial Instrument, including updating the 2018 Legal Due Diligence Report. • Provide legal advices relating to the structure and implementation of GREM Facility in private sector window and public sector window. • Assist PT SMI to ensure the compliance of the Financial Instrument with GoI regulations, including the State Attorney (Jamdatun) product classification requirement, POJK 30 / 	USD 30,000

	<p>Year 2019 issued by the Indonesia Financial Services Authority ("OJK").</p> <ul style="list-style-type: none"> Assist PT SMI in formulating the PISP Fund de-risking mechanism on GREM Public Window. 	
Transaction Phase (Task 2) : for each Borrower		
1.	<p>Legal Due Diligence:</p> <p>(i) Conducting due diligence upon GREM Facility, including for the Obligor(s) of each borrower (domestic/foreign)</p>	<p>Up to USD 120,000 (Up to USD 40,000 for each Project)</p>
2.	<p>Transaction documents:</p> <ol style="list-style-type: none"> providing any relevant legal advice related to the Transaction; draft the required corporate approvals, spousal consent, corporate certificates & personal statement; provide legal advice on matters related to the Transaction; review and draft the relevant term sheet of the Transaction draft and finalize the Facility Agreement; draft, review, and finalize the Escrow Agreement; draft and finalize the security documents ("Security Documents") <ol style="list-style-type: none"> Fiduciary over machinery/equipment; Fiduciary over receivables; Fiduciary over insurance claim; Pledges of shares as well together with relevant power of attorney to sell shares to be granted by the shareholders*; Pledge over escrow accounts together with relevant power of attorney to withdraw funds; Corporate Guarantee of PT ABC & XYZ*; Personal Guarantee of Mr. XXX; Assignment of material contracts; and Letter of undertakings from Sponsors*; assist in negotiating draft of Transaction documents and monitoring the execution of Transaction documents; assist and monitoring the perfection of Security Documents. <p>9. Other/ Closing Phase (for each Project):</p> <ul style="list-style-type: none"> assist in reviewing signatory requirements, the effectiveness, issue 	<p>Up to USD 150,000 (Up to USD 50,000 for each Project)</p>

	<p>CP checklist & CP confirmation letter; and</p> <ul style="list-style-type: none"> • issue a legal opinion on the capacity, validity, and enforceability of the Indonesian law governed Transaction Documents. • issue a legal opinion on the capacity, validity, and enforceability of the foreign law governed Transaction Documents. <p><i>***Please note some foreign obligors may be involved in connection to the pledge of shares, corporate guarantee, and letter of undertaking. In this case, the foreign law legal opinion will be required for each related jurisdiction</i></p>	
Total		USD 300,000

5. Outputs and Milestones

The Consultant is expected to provide the following deliverables:

- 1) A legal due diligence report covers overall product and structure of the GREM Facility including private sector window and public sector window, based on an update of the 2018 Legal Due Diligence Report including:
 - a. Legal analysis on compliance of GREM Facility with applicable/relevant GoI and PT SMI's internal regulations;
 - b. Legal input of final term sheet and financial-commercial structures and aspects assessment result of the GREM Facility
- 2) Legal transaction documents of each GREM Project proposed by each Potential Borrower

Milestones of the assignment are described in the following table:

No	Outputs	Indicative Timetable
1	Legal Due Diligence Report covers overall product and structure of the GREM private sector windows	1 Month since contract signing

2	Legal Due Diligence Report covers overall product and structure of the GREM public sector window	1 month since contract signing or since the issuance of PMK 62/2017 revision (whichever is later) ²
3	Legal transaction documents, Legal Opinion(s), CP checklist and CP confirmation letter of each GREM –Project	4 months since kick-off meeting regarding each GREM –Project

6. Qualification Requirements, Staffing and Work Arrangements

The Consultant team is expected to have a proven track record in providing similar advice, with the Lead Consultant having at least ten (10) years of relevant experience. The Consultant team should be familiar with Indonesia and global contexts on geothermal and power projects and at least have the following qualifications.

- a. Well basic understanding and previous relevant works on the power and geothermal sector, project development process, project financing, and transaction;
- b. Advanced knowledge's on legal, risk, and commercial-related aspects;
- c. Advanced capital market and structured finance knowledge;
- d. Have a good networking with relevant stakeholders and potential sub-borrowers which possibly required in order to conduct the consultancy and scopes of work;
- e. Experiences on conducting research and analytical report;
- f. Have an affiliations of international law firm in other countries (as relevant).
- g. High-level written and oral presentation skills in Bahasa and English. Additionally, Bahasa Indonesia language skills are preferred; and
- h. The Consultant should also have experience in working with International Financing Institutions and in working with private and public sector companies.

7. Conflict of Interest (COI) Provision

Consultants are reminded of the provisions related to Conflicts of Interest (COI) and competitive advantage in the Bank Procurement Regulations for IPF Borrowers, concerning their potential participation in any future downstream work that may potentially receive support from the World Bank.

8. Other terms and conditions

The assignment is estimated to last about twelve (12) months. It should be noted that the advisory process is “open” by nature and that is the responsibility of the Consultant team to be proactive in identifying and executing any additional tasks that would be required in order to ensure the objectives detailed in Section 3 are met. The Consultant team must therefore be able to respond positively to the need for complementary analysis that may be needed in order to complete its mandate. The Consultant team will also be responsible for identifying the information necessary to successfully complete the work and providing a comprehensive analysis of the various issues and possible solutions. The work product (“Work Product”) produced by Consultant under this Terms of Reference and all proprietary rights therein shall be and are the property of PT SMI.

9. Available Documentation and Resources

- a. Relevant parts of the World Bank Project Concept Appraisal Document;
- b. Operations Manual and Developer Manual prepared by PT SMI;
- c. PT SMI’s internal guidelines on financing process

² To note that at the time of writing this Terms of Reference (TOR), the amendment or adjustment of MoF Regulation No. 62/2017 is still under discussion

- d. PT SMI's Articles of Association
- e. Draft DFMV financial model
- f. Term sheet and template facility documentation for the private and public sector window;
- g. 2018 Legal Due Diligence Report
- h. Access to the WB/GIF and PT SMI team with reasonable notice; and
- i. Any other relevant documents which are reasonably requested and available.