

# CONTRACT FOR CONSULTANCY SERVICES

[INSERT TITLE OF WORKS]

PO No. [INSERT PROJECT PO NUMBER]  
[INSERT MONTH AND YEAR]



ICRC

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## **SCHEDULE PREPARATION GUIDANCE NOTES:**

**PLEASE DELETE THESE NOTES BEFORE ISSUING THE CONTRACT TO TENDERERS**

Throughout the Schedules there are guidance notes which are shown in brackets and are highlighted in various colours.

### **1. Drafting notes and examples**

Square brackets around italic text **highlighted grey** (including this text) indicate "drafting notes" or "examples". This text must be deleted prior to finalising the Contract Conditions and before the Contract for Consultancy Services is issued to tenderers.

### **2. Fields to be populated before the Contract is issued to tenderers**

Square brackets around text which is **highlighted yellow**, for example "[insert]", indicate that you are required to either:

- (a) insert new text; or
- (b) choose between the alternatives offered within the square brackets, or
- (c) delete the text.

Any yellow highlighted text fields must be completed and the square brackets, italic and yellow highlight removed prior to finalising the schedules ready to be issued to tenderers.

### **3. Fields to be populated during negotiations and prior to signing the execution version of the Contract.**

Square brackets around text which is **highlighted blue**, for example "[insert]", indicate information which will be finalised, agreed and completed by ICRC in conjunction with the preferred tenderer during negotiations.

Any blue highlighted text fields must be completed and the square brackets, italic and blue highlight removed prior to finalising the execution version of the Contract for Consultancy Services ready to be issued to the ICRC HQ for approval and before the final Contract is signed.

### **4. Other general notes**

As a standard rule the General Conditions are fixed and are only to be amended through the use of Particular Conditions and are to be approved by DIR\_GEN General Counsel and/or LOG\_PURCH and OP\_ASSIST\_EH as appropriate.

If there is too much information to be physically included in the Schedules, appropriate documents, for example general/particular/technical specifications and ICRC' internal guidelines and procedures manuals, can be incorporated by reference within the Schedules and annexed to the Contract for Consultancy Services. Where this is done, the Schedule must clearly identify the documents by author, title, date and revision number. The Schedule must also clearly identify the annexure number.

Care must be taken when using information and/or old schedules which have been prepared for a previous Contract for Consultancy Services, as they may not be appropriate or contain sufficient detail for a different works package.

## INTERNAL VALIDATION SHEET

### CONTRACT FOR CONSULTANCY SERVICES

[Please remove this page before issuing the Contract to tenderers]

[This sheet shall be signed prior to the Consultant's signature of the Contract and kept in the project file]

Contract title:				
Consultant's name:				
PO No.	[XXXX]	Contract Price:	CHF	[XXXX]
RO No.	[XXXX]		[XXX]	[local currency]
AoE No.	[XXXX]	Date of issuance:		[XXXX]
WPA No.	[XXXX]			

Cost Centre Responsible: *[Insert name and title]*

Contract seen and approved by:		
Title	Name	Signature
[Wathab Co: ]	[XXXX]	
[Internal Client Co: ]	[XXXX]	
[Admin Co: ]	[XXXX]	
[Log Co: ]	[XXXX]	
[Head of Delegation: ]	[XXXX]	

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[List any annexures which are referred to in the Schedules and are used to incorporate documents (general/particular/technical specifications and ICRC' internal guidelines and procedures manuals) by reference which are too large to be directly inserted in the Schedules. Reference to each annexure should include the corresponding annexure numbers and titles as shown in the Schedules.]

[For example:

Annexure A – General and Particular Specifications

Annexure B – Drawings

Annexure C – Employer's Health and Safety Procedures and Guidelines

Annexure D – Employer's Environmental Procedures and Guidelines

...

If no annexures are used in the Schedules then delete the text fields above which are in brackets and replace with Not Applicable.]

## INSTRUMENT OF AGREEMENT

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THIS CONTRACT is made on the: [insert date]

between

**International Committee of the Red Cross (ICRC)**

[insert address, city, Country]

hereinafter referred as the "Employer" or "ICRC"

and

[insert name]

[insert address, city, Country]

hereinafter referred as the "Consultant"

### BACKGROUND

- (a) The International Committee of the Red Cross (ICRC), is an independent, neutral humanitarian organization providing protection and assistance to victims of war and other situations of violence.
- (b) Within the framework of its assistance program in [name of Country/state/town], the ICRC provides support to [name of the beneficiary/Authority], therefore:
- (c) The Employer intends to undertake the project of the [insert title of the Works here], located [insert location of the Works here]. Consulting Services are required for the implementation of the Works.
- (d) In reliance on the Consultant's representations, the Employer wishes to enter into the Contract.
- (e) The Contract sets out the terms and conditions upon which the Consultant will perform the Services.

### Therefore, the Parties agree as follows:

1. The Consultant represents to the Employer that it has the appropriate experience, expertise, licences and resources to undertake the Services and agrees to undertake the Services in accordance with the Contract.
2. The Contract Price is: [insert Contract Price in figures and letters], as specified in Schedule 2 [Contract Price and Payment].

The Employer agrees to pay the Consultant the Contract Price, at the times and in the manner prescribed by the Contract, in consideration for the Consultant executing and completing the Services and otherwise performing all of its obligations in accordance with the Contract.

3. Unless otherwise expressly set forth in the Contract, the definitions provided in the the General Conditions will apply to all documents being part of the Contract (as listed in Article 4 below).
4. The documents forming the Contract (as listed hereafter) are to be taken as mutually explanatory of one another and shall be read as a whole. The following documents, listed in the order of priority, are deemed to form, and be read and construed as, integral part of the Contract:
  - a) this Instrument of Agreement;
  - b) the Particular Conditions;
  - c) the Schedule of Details (Schedule 1);
  - d) the Schedule of Contract Price and Payment (Schedule 2);
  - e) the Schedule of Request for Proposal (Schedule 3);
  - f) the General Conditions [and;]
  - g) Annexures.

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be signed and executed by and on behalf of their respective duly authorised representatives as of the date first written above:

For the Consultant,

[insert name of the Consultant]

For the Employer,

the ICRC

\_\_\_\_\_  
[insert name of authorized signatory]

[insert title]

\_\_\_\_\_  
[insert name]

[WatHab Engineer/Construction Project Manager]

IN PRESENCE OF:

\_\_\_\_\_  
[Insert name]

[Head of Delegation]

\_\_\_\_\_  
[Insert name]

[Logistic Coordinator]

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[Insert name]

[LOG\_PURCH\_FD]

[Note: The WatHab Engineer/Construction Project manager and the Consultant's Representative must sign every single page of the Contract for Consultancy Services and its annexures, whereas the witnesses (Log Co, Log\_Purch, and HoD) sign this page only.]

[Redacted signature area]

## PARTICULAR CONDITIONS

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[Note: Particular Conditions must be approved by DIR\_GEN General Counsel and/or LOG\_PURCH and OP\_ASSIST\_EH as deemed appropriate.]

They should be incorporated in certain circumstances where additions or modifications are required to the General Conditions for a specific works package, either prior to issuing the Contract to tenderers, or following negotiations with the selected Consultant.]

### Amended Clauses

The General Conditions are amended in accordance with the table below. :

If nothing is stated, then no additional conditions apply.

Clause	Amended General Condition

### Additional Clauses

The General Conditions are amended by the inclusion of the following additional clauses:

If nothing is stated, then no additional conditions apply.

Clause	Additional General Condition

## SCHEDULE 1 –SCHEDULE OF DETAILS

Project	[insert the project title and a brief description of the services to be performed by the Consultant form part].
Communication addresses	<p><b>Employer</b></p> <p>Attention: [insert]</p> <p>Position title: [insert]</p> <p>Address: [insert]</p> <p>Email Address: [insert]</p> <p><b>Consultant</b></p> <p>Attention: [to be inserted]</p> <p>Position title: [to be inserted]</p> <p>Address: [to be inserted]</p> <p>Email Address: [to be inserted]</p>
Employer's Representative (Sub-Clause 2.1)	[insert WatHab Engineer/Construction Project Manager name, position title and contact details].
Consultant's Representative (Sub-Clause 3.3)	[name, position title and contact details to be inserted].
Commencement Date	<p>[insert the date for commencement of the Services]</p> <p>[Note: Commencement Date can be either the date of signature of the Contract or any date agreed with the Consultant after the signature of the Contract. It is advisable, if needed, to set a Commencement Date a few days after the signature of the Contract allowing the Consultant some time for necessary preparation/ coordination,]</p>
Time for Completion	<p>[insert No.] [months or weeks or days: select one] from the Commencement Date.</p> <p>The Works are therefore to reach the stage of Substantial Completion by [insert date].</p>

Works	The term “Works” refer to [describe the works in relation to which the Consultancy Services are required].
Currencies of payment	<p>Payments will be made in [insert currency].</p> <p>[Note: Check at RFT time with the Administrative Coordinator whether payment in a currency different from the local currency is possible.]</p>
Delays and Late Completion (Sub-Clause 4.2.b)	<p>[insert amount, or % of the Contract Price] per day to a maximum cumulative amount of [insert amount or % of the Contract Price].</p> <p>[Note: Delays and Late Completion must be decided based on realistic incentive for the Consultant to deliver on time. Recommended Delay compensation per day could be 1/1000 of the Contract Price, up to a maximum cumulative amount of 10% of the Contract Price.]</p> <p>[Note: A prudent WatHab Engineer/Construction Project Manager would allow for some delay in project planning so as not to be fully reliant on Delay Damages for Late Completion.]</p>
Liability Period (Clause 6)	<p>The Liability Period shall no lesser than [TBD on a case by case basis] or as provided by Law.</p> <p>[Note: As a rule, the Liability Period should be at least as long as the term insurance as set out in the Returnable Proposal Schedule 9 [Insurances].]</p>

## SCHEDULE 2 – CONTRACT PRICE AND PAYMENT

- 1.1. In full consideration for the complete and satisfactory performance of the Services under this Contract, ICRC shall pay the Consultant a fixed contract price of [insert currency taxes included/ excluded and amount in figures and words], as per payment schedule below.
- 1.2. The price of this Contract is not subject to any adjustment or revision because of price or currency fluctuations or the actual costs incurred by the Consultant in the performance of the Contract.
- 1.3. Payments effected by the Employer to the Consultant shall be deemed neither to relieve the Consultant of its obligations under this Contract nor as acceptance by the Employer of the Consultant's performance of the Services.
- 1.4. The Employer shall effect payments to the Consultant after acceptance by the Employer of the invoices submitted by the Consultant to the address specified, upon achievement of the corresponding milestones and for the amounts stated in the payment schedule set forth in section 1.6 below.
- 1.5. All payments shall be made by the Employer to the following Bank account of the Consultant:
- [Name of the bank]  
[Account number]  
[Address of the bank]
- 1.6. The payment schedule shall be as follows:

[The following is an **example** – Site Supervision is not included]

Milestone	Amount	Target date
Inception report	10% contract price	1 month after contract signing/ Specify Date
Preliminary Engineering design Report and drawings (submit for review)	15% of contract price	2months after of contract signing/ Specify Date
Detailed engineering design, Drawings (final), Bills of Materials, Specifications, Quality control & assurance plan, Operational & maintenance manual (Draft submitted for review)	30% of contract price	3 months after contract signing/ Specify Date
Final detailed engineering design (All deliverables accepted and approved) (Final)	20% contract price	4 months after contract signing/ Specify Date
Design Approval/ Tender Package	15% contract price	After the design has been approved by the Employer/ Specify Date
First Half of Retention Amount	1 <sup>st</sup> half (5%) contract price	when a contractor is awarded the contract
Second Half of Retention Amount	2 <sup>nd</sup> half (5%) contract price	when works is substantially complete

## SCHEDULE 3 – REQUEST FOR PROPOSAL

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[Insert the Returnable Proposal Schedules 1 to 16 submitted by the Consultant to ICRC during the bid process (plus any alternative proposal relating to submitted Returnable Proposal Schedule(s) that have been accepted by ICRC, if applicable).]

## GENERAL CONDITIONS

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### 1. GENERAL PROVISIONS

#### 1.1 Definitions

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In the Contract as defined below, the words and expressions defined have the following meanings assigned to them, except where the context requires otherwise:

"**Affiliate**" means:

- (i) the Consultant's ultimate parent company (if applicable); or
- (ii) any company controlled by that ultimate holding company; or
- (iii) any company controlling the Consultant; or
- (iv) any company controlled by the Consultant.

For the purpose of this definition, "control" means any direct or indirect interest corresponding to at least 50% of the voting rights.

"**Agreed Compensation**" means the sums as defined in Schedule 2 [*Contract Price and Payment*] which are payable to the Consultant under the Contract.

"**Amendment**" means the supporting document which notifies the terms of a Variation(s) or any amendment to the Contract.

"**Authority(ies)**" means all local, regional, territorial, free zone, municipal government, ministry, governmental department, commission, board, instrumentality, executive, judicial or administrative body, internationally recognised and having jurisdiction over the Works.

"**Commencement Date**" means the date when the Consultant must begin the execution of the Services on the Site, which is stated in the Schedule 1 [*Schedule of Details*].

"**Confidential Information**" means any information disclosed by either Party (the "disclosing Party") to the other (the "receiving Party"), either directly or indirectly, in writing, orally, or by inspection of tangible objects that is designated as "Confidential", "Proprietary", or some similar designation. Notwithstanding the foregoing, Confidential Information includes the Contract, all information about ICRC activities and functioning and more generally all non public data relating to or owned or controlled by ICRC of which the Consultant will acquire knowledge in the performance of the Services. Confidential Information will not, however, include any information which:

- (i) was made public without restriction prior to the time of disclosure by the disclosing Party;
- (ii) becomes publicly known without restriction after disclosure by the disclosing Party through no action or inaction of the receiving Party;
- (iii) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party as shown by the receiving Party's files, records, and/or other competent evidence immediately prior to the time of disclosure;
- (iv) is obtained by the receiving Party from a third party without a breach of such third party's obligations of confidentiality; or
- (v) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information, as shown by documents and other competent evidence in the receiving Party's possession.

**"Consultant"** means the company named in the Instrument of Agreement, who is employed by the Employer to perform the Services, and legal successors in title and assigns to this entity.

**"Consultant's Representative"** means the person named as such in the Schedule 1 [*Schedule of Details*] or designated from time to time by the Consultant in accordance with Sub-Clause 3.3.

**"Contract"** means the Instrument of Agreement, these General and Particular Conditions, the Schedules and the further documents (if any) which are listed in the Instrument of Agreement.

**"Country"** means the country where the Works are to be implemented, and where no country is mentioned, the country where the project site, or the main project site is located.

**"Date of the Contract"** means the date of execution of the Contract, as stated in the Instrument of Agreement.

**"Day"** means a calendar day, unless provided otherwise, and "year" means 365 days.

**"Delay Damages"** means the compensation due to the Employer as set out in Schedule 1 [*Schedule of Details*].

**"Deliverable"** means a document to be prepared by the Consultant under the Contract and includes any documents identified in the Terms of Reference of the Schedule 3 [*Request for Proposal*]

**"Dispute"** means all disputes or disagreements arising out of or in connection with the formation, performance, interpretation, nullification, termination or invalidation of the Contract or the Services, or any other related dispute or disagreement.

**"Document"** means each Deliverable and any other document, plan, design, specification, report, or other document required to be prepared by the Consultant as part of the Services.

**"Employer"** means the Party named in the Instrument of Agreement, who employs the Consultant.

**"Employer's Representative"** means the person named as such in the Schedule 1 [*Schedule of Details*] or as otherwise notified by the Employer to the Consultant, who acts on behalf of the Employer in accordance with Sub-Clause 2.1.

**"Final Completion of the Services"** means when the Works have reached Final Completion and all the Services have been provided by the Consultant and accepted by the Employer, unless the Contract has been otherwise terminated in accordance therewith.

**"ICRC Global Compliance Office"** means the office within the ICRC responsible for compliance with the ICRC Code of Conduct, related Policies and internal rules and regulations.

**"ICRC Property"** means, collectively, any and all Employer's Confidential Information, Employer's data, Employer's trademark(s), logo(s), emblem(s), service mark(s), trade name(s), and/or legal notice(s), and all property, equipment, and proprietary information and materials provided by the Employer to, or otherwise obtained by, the Consultant or its Subcontractors/Subconsultants, or existing at any Site(s), as well as all derivatives of the foregoing.

**"IPR"** means all intellectual property rights conferred by Law or equity and subsisting anywhere in the world, including:

- (a) copyright; (b) inventions (including patents, innovation patents and utility models);
- (c) confidential information, trade secrets, technical data and know-how, whether or not confidential and in whatever form held, including formulae, design specifications, drawings, data, manuals and instructions; (d) designs; (e) trademarks and service marks; and (f) circuit layout designs, topography rights and rights in databases, whether or not any of these is registered, registrable or patentable;

any similar rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist now or in the future;

any applications and the right to apply for registration of any of the above; and

any information or advice that is subject to legal professional privilege.

"**Law(s)**" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public Authority.

"**Liability**" means any liability or obligation (whether actual, contingent or prospective) including for any loss irrespective of when the acts, events or things giving rise to the liability or obligation occurred.

"**Local Currency**" means the currency stated in Schedule 1 [*Schedule of Details*] and "**Foreign Currency**" means any other currency.

"**Party**" and "**Parties**" mean the Employer or/and the Consultant and "**third party**" means any other person or entity as the context requires.

"**Personal Data**" means any information that: (i) can be used to identify, contact or locate a specific individual or entity, (ii) can be used in conjunction with other personal or identifying information to identify or locate a specific individual or entity, or (iii) is defined as "personal data" by applicable Laws relating to the collection, use, storage and/or disclosure of information about an identifiable individual.

"**Personnel**" means all workers employed, contracted, or used by a Party in connection with the Contract, including employees, agents, independent contractors, temporary personnel, day laborers, and other individuals/entities.

"**Programme**" means the Programme of the Works described in Schedule 3 [*Request for Proposal*] under the Returnable Proposal Schedule 5 [*Outline statement of Proposed Methods and Quality Management System Proposals*] also referred to as Gant Chart or timetable of the Services.

"**Project**" means the project described in Schedule 1 [*Schedule of Details*].

"**Site**" means the location where the Works in relation to which the Services are required are to be implemented.

"**Services**" means the services defined in Schedule 3 [*Request for Proposal*] under the Returnable Proposal Schedule 1 [*Terms of Reference*] to be performed by the Consultant in accordance with the Contract.

"**Subcontractor**" or "**Subconsultant**" means any subcontractor or subconsultant engaged by the Consultant to perform a part or parts of the Services.

"**Time for Completion**" means the time for completing the Works as stated in Schedule 1 [*Schedule of Details*] (or as extended under Clause 4), calculated from the Commencement Date.

"**Variation**" means a change, alteration, addition or omission to the Services which is instructed by the Employer under Sub-Clause 4.3.

"**Work Product**" means all work products resulting from the performance of the Services.

"**Works**" means the works in relation to which the Services are required, as described in Schedule 1 [*Schedule of Details*].

"**written**" or "**in-writing**" mean hand-written, type-written, printed or electronically made and resulting in a permanent un-editable record.

## 1.2 Interpretation

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- (a) The marginal words and other headings in the Contract shall not be taken into consideration in the interpretation of the Contract.
- (b) The singular includes the plural and vice-versa where the context requires.
- (c) Words indicating one gender include all genders.
- (d) Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing, and signed by both Parties.

## 1.3 Communications

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- (a) Whenever the Contract provides for the giving or issue of any notice, instruction or other communication by any person, unless otherwise specified such communication shall be:
  - (i) in writing; and
  - (ii) marked to the attention of the relevant representative of the Parties as set out in Schedule 1 [*Schedule of Details*]; and
  - (iii) either:
    - delivered at the address set out in Schedule 1 [*Schedule of Details*]; or
    - sent by facsimile to the facsimile number of the addressee set out in Schedule 1 [*Schedule of Details*]; or
    - sent as a document, signed, scanned and attached in an email to the email address set out in Schedule 1 [*Schedule of Details*].
- (b) A notice, approval, consent or other communication takes effect from the time it is received unless another time is specified in it.
- (c) A delivery, letter, document attached to an email or facsimile is deemed to be received:
  - (i) in the case of a delivery to the relevant address when delivered to the relevant address (against a written receipt);
  - (ii) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
  - (iii) in the case of a document attached to an email, upon receipt of the email in the inbox of the recipient’s address.
- (d) For the avoidance of doubt, any notice or other communication will not be deemed to have been given or made under the Contract if it is in the form of email (other than as an attached document in accordance with Sub-Clause 1.3(c)) or minutes of any meetings.
- (e) Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party.

- (f) When a notice is issued to a Party, such Party shall send a copy of the notice to the other Party, as the case may be.

#### 1.4 Language

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The language for communications is English. If this Contract or any document in relation to this Contract is translated into another language, the English version will prevail.

#### 1.5 Change in Laws

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In the event of a change in Laws, the Agreed Compensation shall be adjusted accordingly when applicable.

#### 1.6 Assignments and Sub-Contracts

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- (a) The Consultant shall not assign transfer or otherwise dispose of the rights or benefits under the Contract, without the prior written consent of the Employer.
- (b) The Employer may assign, transfer or otherwise dispose of its rights under the Contract without the written consent of the Consultant.
- (c) The Consultant shall not initiate or terminate any sub-contract for the performance of all or part of the Services without the prior written consent of the Employer.

#### 1.7 Ownership and Intellectual Property

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- (a) *Work Product and deliverables:* ICRC shall be the sole and exclusive owner of all Work Products and deliverables resulting from the performance of the Services, at no additional cost for ICRC, including all IPR therein, regardless of whether such Work Product is specified in Schedule 3 [*Request for Proposal*] under the Returnable Proposal Schedule 1 [*Terms of Reference*] among the deliverables, or whether is or is not yet completed and/or accepted. To the extent that title to any of the Work Product does not vest in ICRC as the author or that such Work Product may not be considered “works made for hire”, all rights, title and interest therein, including all IPR, are hereby irrevocably assigned and transferred to ICRC by the Consultant as of the creation or production of such Work Product, and the Consultant hereby irrevocably and unconditionally waives all enforcement of such rights to the extent they may not be assigned and transferred to ICRC due to mandatory provisions of applicable Law.
- (b) *Personnel and Subcontractors/Subconsultants:* The Consultant will require and cause its Personnel and Subcontractors/Subconsultants to assign to the Consultant all materials prepared and/or developed by such Personnel and/or Subcontractors in accordance with the above Sub-Clause 1.7.a, including all IPR therein, and to irrevocably and unconditionally waive all enforcement of such rights to the extent they may not be assigned and transferred due to mandatory provisions of applicable Law.
- (c) *Perfection of Rights:* The Consultant agrees to give and cause its Personnel and Subcontractors/Subconsultants to give ICRC and any person designated by ICRC, reasonable assistance, at ICRC’s expense, required to perfect the rights granted pursuant to the Contract. If ICRC is unable to secure the Consultant’s signature for the purpose of applying for or pursuing any IPR assigned to ICRC herein, the Consultant hereby irrevocably designates and appoints ICRC and its duly authorized officers and agents as the Consultant’s agent and attorney-in-fact, to act for and on the Consultant’s behalf to execute and file for such IPR and to do all other lawfully permitted acts to further the prosecution of such IPR with

the same legal force and effect as if executed by the Consultant. Upon the earlier of the completion of the Services or the termination of the Contract, the Consultant will immediately turn over to ICRC all deliverables.

- (d) *Rights in Bankruptcy*: Upon Consultant's filing of a bankruptcy petition (or an involuntary filing), ICRC will be entitled to a complete duplicate of (or complete access to, as appropriate) any such IPR concerning the Work Products and deliverables, and such Work Product/deliverable, if not already in ICRC's possession, will be promptly delivered to ICRC.
- (e) *Acknowledgement of Rights*: ICRC retains exclusive ownership of all right, title and interest in and to the ICRC Property. The Consultant agrees that it shall not acquire any rights in the ICRC Property whether under the Contract or otherwise and shall not use or disclose the ICRC Property other than for the sole and exclusive purpose of the performance of its obligations under or in connection with the Contract. The Consultant will not, at any time during or after the Term of the Contract, dispute or contest, directly or indirectly, ICRC's exclusive rights and title in the ICRC Property. The Consultant shall return the ICRC Property to the Employer upon Completion of the Services.
- (f) *Third party's claims*: The Consultant warrants that use of the Consultant's documents (including documents, maps, plans, photographs, reports, computer software and databases prepared by or on behalf of the Consultant) by the Employer in connection with the project and the Works or otherwise will not infringe any rights, including the IPR, of a third party and agrees to defend, hold harmless and indemnify ICRC against all claims, damage, losses, proceedings and liabilities arising out of or in connection with a breach of this warranty. In defending ICRC, the Consultant shall not enter into a settlement agreement without the prior written approval of ICRC.

## 1.8 Confidentiality

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- (a) Confidential Information means ICRC Confidential Information and/or the Consultant's Confidential Information in context as applicable to the receiving or disclosing Party.
- (b) The Party receiving Confidential Information will not at any time:
  - (i) disclose, sell, license, transfer, or otherwise make available to any person or entity any Confidential Information of the disclosing Party (except to disclose or make available, in the Consultant's case to its Personnel and/or Subcontractors/Subconsultants, who have a legitimate need to know such Confidential Information, and in ICRC's case, the ICRC partners or its Personnel); or
  - (ii) use, reproduce, or copy any Confidential Information of the disclosing Party, except as necessary in connection with or as set forth in the Contract.
- (c) All Confidential Information will remain the disclosing Party's property and all documents, electronic media, and other tangible items or portions thereof, which contain Confidential Information of the disclosing Party will be delivered to the disclosing Party promptly upon the disclosing Party's written request.
- (d) Notwithstanding the foregoing, the Employer will not be required to remove copies of the Consultant's Confidential Information from any backup media or servers.

- (e) Should a Party be requested to disclose Confidential Information in the framework of legal proceedings, it shall inform the other Party of such request prior to any disclosure. Should that other Party not consent to the information in question being disclosed, the Parties shall cooperate in view of seeking the best protections available to avoid disclosure.
- (f) Neither Party will issue or make, directly or indirectly, any press releases or other public announcements relating to the Contract or the underlying Project between the Parties without the prior written approval of the other Party.
- (g) This Sub-Clause 1.8 shall survive the expiration or termination of the Contract.

## **1.9 ICRC Name and Logo**

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The Consultant is not authorized to use and agrees it will not use ICRC trademark(s), logo(s), emblem(s), service mark(s), trade name(s), and/or legal notice(s) without the Employer's prior written consent.

## **1.10 Anti-Corruption Compliance**

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The Consultant represents and warrants that the Consultant has not and will not make or offer any payments to, or confer or offer any benefit upon any third party, including any person/ firm employed by or on behalf of any government official/employee, political party, employee of any political party, or political candidate with the intent to influence the conduct such third party in any manner relating to the subject of the Contract.

## **1.11 Reporting Obligations**

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- (a) The Consultant shall report immediately any credible allegations of fraudulent activity or misconduct in relation to the Contract by using the ICRC Integrity Line (code\_of\_conduct@icrc.org).
- (b) The Consultant shall inform the Employer of any material changes in its legal structure.

## **1.12 Independent Contractors**

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The Consultant shall be an independent consultant performing the Contract and is not and shall not be considered to be an employee or agent of the Employer. The Contract does not create any partnership, joint venture or other joint relationship between the Employer on the one hand and the Consultant on the other hand.

## **1.13 No Conflicts of Interests**

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- (a) The Consultant shall provide the Services free from any and all conflicts of interest. Therefore, the Consultant shall, in particular, ensure that itself, its Personnel and Subcontractor(s)' personnel do not have any business, professional, personal, or other interest, including, the representation of other clients, that would conflict in any manner or degree with the provision of the Services in accordance with the Contract.
- (b) If any such actual or potential conflict of interest exists prior to the entering into the Contract or arises thereafter, the Consultant shall immediately inform the Employer in writing of such conflict, providing reasonable detail on the nature and extent of such actual or potential conflict of interest.

### **1.14 No Engagement in Manufacture or Sale of Mines or other Weapons**

---

The Consultant represents and warrants that neither it, its Affiliates (if any) is engaged in the sale or manufacture of anti-personnel mines and/or other weapons or components utilized in the manufacture of anti-personnel mines and/or other weapons.

### **1.15 No Debarment**

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The Consultant represents and warrants that neither it nor any of its Affiliates, or Personnel or directors, is subject to any sanction or temporary suspension imposed by any United Nations System organisation or other international inter-governmental organisation. The Consultant will immediately disclose to the the Employer if this representation is no longer true during the term of the Contract.

### **1.16 Environmental Protection**

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- (a) The Consultant shall commit to reduce environmental impacts. Environmental protection shall be taken into consideration by the Consultant for the performance of the Services.
- (b) The Consultant shall, and shall cause its Subcontractors to, comply, with internationally recognized environmental norms and with environmental norms applicable in the country where the Services are provided.

### **1.17 Compliance with the Law**

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The Consultant shall comply with all applicable Laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract.

### **1.18 Alcoholic Liquor or Drugs**

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The Consultant shall not bring, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs onto the Site, or permit or suffer any such importation, sale, gift, barter or disposal by its employee, agents, staff, labour, Subcontractors, or Subconsultants.

### **1.19 Arms, Ammunition and Explosives**

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Unless instructed or permitted by the Employer in writing, the Consultant shall not bring onto or store on the Site, give, barter or otherwise dispose of to any person or persons, any arms, ammunition or explosives of any kind or permit or suffer the same.

### **1.20 Festival and Religious Customs**

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The Consultant shall in all dealings with its Personnel have due regard to all recognised festivals, days of rest and religious or other customs.

### **1.21 Epidemics**

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In the event of any outbreak of illness of an epidemic nature in the Country, the Consultant shall comply with and carry out such regulations, orders and requirements as may be made by the Authorities or local medical or sanitary Authorities for the purpose of dealing with or overcoming the epidemic.

## 1.22 No Child Labor

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The Consultant represents and warrants that neither it nor its Affiliates (if any) is engaged in any practice inconsistent with the rights set forth in the United Nations Convention of the Rights of the Child.

## 1.23 No Sexual Exploitation

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Sexual exploitation and sexual violence/abuse are strictly prohibited. Each Party shall take all necessary measures to prevent and address all forms of sexual exploitation and sexual violence/abuse. The ICRC Global Compliance Office must be notified of any ongoing investigation with respect to sexual exploitation and sexual violence/abuse. Failure by the Consultant to take all necessary measures or to investigate allegations of sexual exploitation and sexual violence/abuse or to take corrective action, if such allegations are substantiated, shall constitute cause for termination of the Contract by the Employer.

## 1.24 Unexploded Ordinances

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If at any time during the carrying out of the Services the Consultant discovers an unexploded ordinance or land mine, the Consultant must immediately stop work, notify the Employer's Representative, take all necessary steps to ensure the safety of all persons and property and secure the Site. The Consultant must immediately resume performing the Services when instructed by the Employer's Representative that it is safe to do so.

## 1.25 Fossils and Antiquities

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- (a) All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed by the Consultant under the care and authority of the Employer. The Consultant shall take reasonable precautions to prevent the Consultant's Personnel or other persons from removing or damaging any of these findings. The Consultant shall, upon discovery of any such finding, promptly give notice to the Employer's Representative, who shall issue instructions for dealing with it.
- (b) If the Consultant suffers delay and/or incurs costs from complying with the instructions, the Consultant shall give a claim notice to the Employer's Representative and shall be entitled subject to Sub-Clause 8.2 [*Claims*] to an extension of time for any such delay.

## 1.26 Export Laws and Regulations

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- (a) The Consultant shall cooperate with ICRC to the fullest extent and at its own cost and expense, in view of obtaining any official license, authorization or exemption in connection with applicable export control laws and regulations.
- (b) The Consultant shall inform ICRC of any potential re-export restrictions for the supplied goods and/or Services, whatever the country of destination. Such potential re-export restrictions for the concerned goods and/or Services must be clearly identified in advance in every offer to tenders or quotes.

## 1.27 Entire Agreement and Amendments

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- (a) The Contract, constitutes the entire agreement between the Employer and the Consultant and supersedes any and all other agreements and understandings between the Employer and the Consultant, whether oral or written, with respect to its subject matter.

- (b) The terms and conditions on the Consultant's invoice, quotation or other document will not be binding and will not supersede, supplement, or modify the Contract.
- (c) Subject to the rules applicable to Variations set forth in Sub-Clause 4.3, any Amendment to the Contract requires a written instrument signed by each Party.

### **1.28 Severability**

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If any of the provisions of the Contract are found to be null and void, the remaining provisions of the Contract shall remain valid and shall continue to bind the Parties.

## **2. THE EMPLOYER**

### **2.1 Employer's Representative**

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- (a) The Employer's Representative shall be the person designated by the Employer in Schedule 1 [*Schedule of Details*] to be its representative for the administration of the Contract.
- (b) Except as otherwise specified in the Contract, no comment, review, representation, inspection, testing, certificate, consent, examination, approval, instruction, notice, proposal, request or similar act (including absence of disapproval) by or on behalf of the Employer or the Employer's Representative shall relieve, reduce or otherwise affect the Consultant's undertakings, warranties, obligations or liabilities, including responsibility for errors, omission, discrepancies and non-compliances.

### **2.2 Information**

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In order not to delay the Consultant in the performance of the Services, the Employer shall within a reasonable time give to the Consultant free of cost all information which may pertain to the Services which the Employer is reasonably able to obtain.

### **2.3 Decisions**

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On all matters referred to it in writing in accordance with the Contract by the Consultant the Employer shall give its decision in writing so as not to delay the Services.

### **2.4 Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer**

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The Employer shall arrange at its cost the provision of Personnel and Services of others. The Consultant shall co-operate with such Personnel and the suppliers of such services, but shall not be responsible for them or their performance.

### **2.5 Payment of Services**

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The Employer shall pay the Consultant for the Services in accordance with Clause 5 of the Contract and Schedule 2 [*Contract Price and Payment*].

### 3. THE CONSULTANT

#### 3.1 Liability for Faithful Performance

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- (a) The Consultant shall provide the Services as stated in Schedule 3 [*Request for Proposal*] under the Returnable Proposal Schedule 1 [*Terms of Reference*], including the obligation for the Consultant to rectify, at its own cost, any defects in the Services that may occur during the implementation of the Works and thereafter.
- (b) In providing the Services, the Consultant shall exercise the best of its ability using all reasonable skill, care and diligence, and comply with any applicable Law and relevant standards as specified in Schedule 3 [*Request for Proposal*] under the Returnable Proposal Schedule 1 [*Terms of Reference*].
- (c) The Consultant shall, at its own cost, at all times during the performance of the Services, be, and ensure that any person who carries out any part of the Services is, registered and/or licensed as required by any Law or Authority to perform the Services.

#### 3.2 Employer's Property

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Anything supplied by or paid for by the Employer for the use by the Consultant and/or its Subcontractors/Subconsultants shall be and remain the property of the Employer.

#### 3.3 Consultant's Representative

---

- (a) The Consultant's Representative shall be the person designated by the Consultant in Schedule 1 [*Schedule of Details*] to be its representative for the administration of the Contract.
- (b) If required by the Employer, the Consultant shall designate an individual to liaise with the Employer's Representative in the Country.

#### 3.4 Consultant's Key personnel

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- (a) The Key Personnel who are proposed by the Consultant to provide the Services shall be subject to acceptance by the Employer with regard to their qualifications and experience and shall be listed in the Returnable Proposal Schedule 7 [*Key Personnel*] of Schedule 3 [*Request for Proposal*]. Changes in Personnel
- (b) If it is necessary to replace any of the Personnel provided by the Consultant, the Consultant shall arrange for such replacement by a person of comparable competence as soon as reasonably possible.
- (c) The cost of such replacement shall be borne by the Consultant.

#### 3.5 Subcontractors/Subconsultants

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- (a) The Consultant shall not subcontract the whole or any part of the performance of the Services without the Employer's prior written consent, which consent shall not be unreasonably withheld. Any consent given by the Employer may be on reasonable conditions determined by the Employer.
- (b) The Consultant shall ensure that any Services performed by a Subcontractor/Subconsultant are in accordance with the Contract.

- (c) The Consultant's obligations under the Contract are not lessened, waived or otherwise affected by entering into any contract with a Subcontractor or Subconsultant. The Consultant is solely responsible for its Subcontractor/Subconsultant and any act or omission of any Subcontractor/Subconsultant or those for whom the Subcontractor/Subconsultant is responsible. In addition, the Consultant is solely responsible for the payment of any compensation due or allegedly due to Subcontractors/Subconsultants, and they may not seek payment (either directly or indirectly) from the Employer.

### **3.6 Audits and Investigations**

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From time to time, the Employer or any other person designated by the Employer, may conduct audits or investigations relating to any aspect of the Contract. The Consultant will provide its full and timely cooperation with any such audits or investigations. The Consultant will procure its Subcontractors/Subconsultants to provide reasonable cooperation with any such audits or inspections carried out by the Employer.

### **3.7 Processing of Personal Data**

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- (a) The Consultant represents, warrants and covenants that: (i) it will not collect, use, disclose or process in any other manner, in connection with the Contract any Personal Data without the Employer's prior express written consent or as strictly required to perform the Services and always in strict compliance with all applicable Laws and with ICRC applicable policies; (ii) any processing of Personal Data will comply with the Contract and all applicable Laws and regulations; and (iii) any processing of Personal Data, expressly authorized under the Contract, will be made solely for and/or on behalf of the Employer and not for or on behalf of the Consultant (or any third parties), and solely to the extent necessary for the purpose of carrying out its duties as specified in the Contract.
- (b) The Consultant undertakes to implement, prior to any processing of Personal Data, appropriate measures to protect Personal Data processed by it under the the Contract and, in particular, any measures as may be specifically required by the Employer, in order to protect such Personal Data from unauthorized processing, including any processing not expressly authorized under the Contract and including accidental disclosure, loss or destruction of, or damage to, such Personal Data. Therefore, the Consultant shall fully cooperate with the Employer, respectively its staff in charge of data protection matters related to the Services under ICRC internal regulations, in order to ensure compliance with applicable data protection rules, and provide any information reasonably required and follow any instructions reasonably given by the Employer in this regard. Furthermore, provided that the Employer permits the transfer of such Personal Data to any third party, including Subcontractors/Subconsultants, if the Consultant transfers Personal Data to any third parties, it shall ensure that such third party is subject to and fully complies at least with the same data security and data protection obligations as imposed on the Consultant pursuant to the Contract.
- (c) If the Consultant receives any inquiry or complaint relating to Personal Data, the Consultant shall immediately notify the Employer in such form and manner, and with such particulars, as the Employer may require. If the Employer notifies the Consultant that it requires assistance in investigating or responding to the inquiry or complaint, the Consultant shall fully co-operate with the Employer by providing it with complete information concerning its collection, use and disclosure of the Personal Data, including responding, if requested to do so, to

any inquiry by a regulatory Authority and/or to any complaint. If any inquiry or complaint gives rise to regulatory or court proceedings, the Consultant will fully co-operate in the conduct of such proceedings, including attending hearings and assisting in securing and giving evidence.

## 4. DURATION, VARIATION, SUSPENSION AND TERMINATION

### 4.1 Commencement Date and Time Schedule for the Provision of the Services

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- (a) The Services shall commence on the Commencement Date, as indicated in Schedule 1 [*Schedule of Details*].
- (b) The Services shall be provided in accordance with the time schedule as set out in Schedule 3 [*Request for Proposal*] under the Returnable Proposal Schedule 5 [*Outline statement of proposed methods and Quality Management System Proposal*].

### 4.2 Delays and Late Completion

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- (a) If the Consultant believes it is entitled to an extension of time and associated costs as a result of an act or omission of the Employer, its Personnel or contractors, the Consultant shall submit a claim to the Employer in accordance with Sub-Clause 8.2 [*Claims*].
- (b) If the Services are impeded or delayed for a reason attributed to the Consultant or its Subcontractors/Subconsultants, the Employer shall be entitled to receive Delay Damages for such failure in the amount stated in Schedule 1 [*Schedule of Details*] for each day for which the Consultant fails to perform the Services. The Consultant shall also reimburse the Employer for any additional costs incurred by the Employer which are payable as a result of the delayed performance by the Consultant or any of its Subcontractors/Subconsultants.

### 4.3 Force Majeure

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- (a) If the Services are delayed or suspended as a result of a Force Majeure event, the Consultant may be entitled to additional time and/or compensation. In this case, the Consultant shall inform the Employer in accordance with Sub-Clause 8.2 [*Claims*].
- (b) Force Majeure shall be understood as an exceptional event or circumstance:
  - (i) which is beyond the Consultant's control;
  - (ii) which the Consultant could not reasonably have provided against before entering into the Contract;
  - (iii) which, having arisen, the Consultant could not reasonably have avoided or overcome; and
  - (iv) which is not substantially attributable to the Employer.

- (c) Force Majeure shall be constituted upon the occurrence of the following events or circumstances, so long as the above conditions are satisfied:
- (i) war, (whether war be declared or not), invasion, act of foreign enemies within the Country;
  - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country;
  - (iii) munitions of war, ionising radiation or contamination by radio-activity within the Country, except as may be attributable to the Consultant's use of such munitions, explosives, radiation or radio-activity; or
  - (iv) earthquake, hurricane, typhoon, tsunami, fire, flooding or other natural disaster that are outside the normal range for that place at that time of year.

#### 4.4 Variations

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- (a) At any time prior to the Final Completion of the Services, the Employer may instruct the Consultant to vary the Services. Such instruction shall be in writing.
- (b) Within 14 days of receiving such written instruction, or another time frame agreed upon with the Employer, the Consultant shall provide the Employer with a written proposal to implement the requested variation. Such proposal shall include additional time or/and costs necessary for such implementation. If any are available and relevant, the costs of a variation shall be based on the rates included in [Schedule 2 [Contract Price and Payment] and/ or bill of quantities from the bidding documents provided by the Consultant].
- (c) As soon as practicable after having received such proposal, the Employer shall request further information from the Consultant or, when the Employer is satisfied with the proposal, provide a written notice to the Consultant, confirming the terms and conditions of the variation.
- (d) If the circumstances so require, the Consultant may propose the Employer in writing to vary the Services. The Consultant's written proposal shall include additional time or/and costs necessary for such implementation. If any are available and relevant, the costs of a variation shall be based on the rates included in [Schedule2 [Contract Price and Payment] and/or bill of quantities from the bidding documents provided by the Consultant]. At its discretion, the Employer may request further information from the Consultant, agree with or reject the proposal. If the Employer agrees with the proposal, it shall provide a written notice to the Consultant, confirming the terms and conditions of the variation.
- (e) If the Services are varied (whether upon the Employer's instruction or upon the Consultant's proposal), the Consultant shall be entitled to an extension of time and/or additional compensation, as applicable.

#### 4.5 Suspension of the Services and Termination of the Contract

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- (a) The Employer may suspend all or part of the Services for any reasons by giving a 14-days written notice to the Consultant. Upon receiving such notice the Consultant shall immediately make arrangements to stop the Services and minimise expenditure.

- (b) In case of a suspension of the Service by the Employer, the Consultant may be entitled to additional time and/or compensation. In this case, the Consultant shall inform the Employer in accordance with Sub-clause 8.2 [*Claims*].
- (c) If the Consultant is not discharging its obligations, the Employer may terminate the Contract by providing a further 14 days written notice to the Consultant.
- (d) The Employer may terminate the Contract for cause by providing a 14-day written notice to the Consultant. Non-compliance with the applicable Laws or any material omission or misrepresentation of information provided by the Consultant shall, without limitation, constitute cause within the meaning of this paragraph.
- (e) The Employer may terminate the Contract for convenience (*i.e.*, termination without cause) by providing a 28-day written notice to the Consultant.
- (f) Upon termination of the Contract by the Employer, the Consultant shall stop the provision of the Services promptly and take all actions necessary or as may be directed by the Employer to return ICRC Property to the Employer, and as applicable, transfer to the Employer any documents (including without limitation drawings and sketches, maps, plans, photographs, specifications, calculations, reports, computer software, databases, technical documents and any other documents owned by or licensed to the Employer), IPR and equipment to the Employer.
- (g) Upon termination of the Contract, the Consultant shall be entitled to any outstanding payment for the Services provided up to the termination of the Contract, and to cover the costs reasonably incurred by the Consultant to bring the Services to an end.
- (h) The Consultant may, by providing a 28-day written notice to the Employer, terminate the Contract, or at its discretion, without prejudice to the right to terminate, suspend the provision of the whole or part of the Services:
  - (i) when 28 days after the due date for payment of an invoice the Consultant has not received payment of that part of it which has not by that time been contested in writing; or
  - (ii) when Services have been suspended for a period exceeding 182 days.

#### **4.6 Accrued Rights, Claims and Liabilities of Parties**

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Termination of the Contract shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

## **5. PAYMENT**

### **5.1 Payment to the Consultant**

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The Employer shall pay the Consultant for the Services subject to Sub-Clause 5.5 [*Set-Off*] in accordance with the Contract, including for variations approved by the Employer in accordance with Sub-Clause 4.3 [*Variations*], in particular in accordance with this Clause 5 and Schedule 2 [*Contract Price and Payment*].

### **5.2 Time for Payment**

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Unless the Employer objects in writing to the invoices of the Consultant in accordance with Sub-Clause 5.4, payments to the Consultant shall be made within 28 days upon receipt by the Employer of such invoices, unless otherwise stated in Schedule 2 [*Contract Price and Payment*].

### 5.3 Currency of Payment

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Payments shall be made in the currency stated in Schedule 2 [*Contract Price and Payment*].

### 5.4 Disputed Invoices

---

If any item or part of an item in an invoice submitted by the Consultant is contested by the Employer, the Employer shall give a written notice of its intention to withhold payment with reasons and shall not delay payment of the remainder of the invoice.

### 5.5 Set-Off

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The Employer, without prejudice to any other right it may have, may set-off any amount that may be due by the Consultant to the Employer under the Contract with any amount that may be due by the Employer to the Consultant under the Contract.

## 6. LIABILITY

### 6.1 Principles

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- (a) Each Party shall be liable for any damage accruing to the other Party arising from the faulty performance of their obligations under the Contract.
- (b) The Employer's liability for any damages related to the Contract shall be limited to cases of gross negligence and willful misconduct.
- (c) Final Completion of the Services or termination of the Contract for any reason shall not relieve the Consultant of its obligation to rectify at its own cost any defect in the Services that may occur during and until the expiry of the Liability Period as set out in Schedule 1 [*Schedule of Details*].

### 6.2 Joint Liability

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In case the Consultant is a joint-venture, association or consortium, each party of such joint-venture, association or consortium shall be jointly liable to the Employer for any and all of the obligations of the Consultant under the Contract.

### 6.3 Liability Claim

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Notwithstanding anything else in the Contract or any legal requirement of the Country or any other jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), the Consultant shall not be liable to the Employer for any loss or damage resulting from any occurrence unless a claim is formally made against it before the expiry of the Liability Period as set out in Schedule 1 [*Schedule of Details*].

### 6.4 Limit of Compensation

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The maximum compensation which the Consultant may have to pay to the Employer in respect of liability under Clause 6 shall in no event exceed the total amount of all fees and expenses paid by the Employer to the Consultant during the twelve (12) months' period preceding the event giving rise to the Employer's damages.

### 6.5 Indemnification

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The Consultant will indemnify, defend and hold harmless the Employer from all costs and claims that arise out of or in connection with the Services, including personal injury, death, or

property damage theft, and payments to any personnel and/or subcontractor(s) as a result of the Consultant's, its Personnel's or its Subcontractors' negligent or intentional misconduct or breach of the Contract (collectively the "Claim(s)"). The Employer will (at the Consultant's sole expense) reasonably cooperate to facilitate the settlement or defence of such Claim(s). The Consultant is solely responsible for defending any Claim against the Employer, subject to the Employer's right to participate with counsel of its own choosing at its own expense, and for payment of all judgments, settlements, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, resulting from all Claims against the Employer; provided however, that the Consultant will not agree to any settlement that imposes any obligation or liability on the Employer, without its prior express written consent.

## 6.6 Exceptions

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Sub-Clause 6.4 [*Limit of Compensation*] does not apply to claims arising:

- (i) from the Consultant's deliberate default, fraud, fraudulent misrepresentation or reckless misconduct;
- (ii) otherwise than in connection with the performance of obligations under the Contract;
- (iii) from delays or late completion by the Consultant or its Subcontractors/Subconsultants, which shall give rise to Delay Damages; or
- (iv) from the Consultant's indemnification obligations as stated in Sub-Clause 6.5.

## 6.7 Exclusion of Liability

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Except for a Party's breach of its Confidentiality and data protection obligations and the Consultant's indemnification obligations in Sub-Clause 6.5, in no event will the Consultant and/or the Employer be liable for any indirect, special, incidental, consequential, punitive or exemplary damages arising out of or in connection with the Contract.

# 7. INSURANCE

## 7.1 Coverage

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Where applicable in accordance with the Returnable Proposal Schedule 9 [*Insurances*] of Schedule 3 [*Request for Proposal*], the Consultant shall obtain and keep in effect, at the Consultant's expense, insurance coverage as follows: comprehensive and appropriate general liability insurance, covering operations by or on behalf of the Consultant, including coverage for professional liability insurance.

## 7.2 Continuation of Insurance

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- (a) The Consultant shall keep all liability insurance coverage required according to Sub-Clause 7.1 in effect for at least **[one (1) year]** after the expiration or termination of the Contract. All policies, if any, providing insurance on a "claims made" basis will provide coverage applicable to loss or damage arising out of acts or injuries that occur at any time that liability insurance is required to be maintained by the Contract.

- (b) In no event will the insurance coverage, deductible, self-insured retention or limits of any insurance maintained by the Consultant under the Contract, or the lack or unavailability of any other insurance, limit or diminish in any way the Consultant's obligations or liability to ICRC under the Contract.

## 8. GOVERNING LAW; CLAIMS AND DISPUTE RESOLUTION

### 8.1 Governing Law

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The Contract and any dispute relating thereto will be governed by the laws of Switzerland, without regard to conflict/choice of law principles.

### 8.2 Claims

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- (a) If the Consultant believes to be entitled to additional time or costs under the Contract, it shall inform the Employer and provide details regarding the claim within 14 days of the circumstances giving rise to such claim.
- (b) Within 28 days of receiving such claim, the Employer shall respond to the Consultant, asking for more information, granting or denying the claim.

### 8.3 Amicable Resolution

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- (a) In the event of a Dispute, written notice of such Dispute shall be given to the other Party's Representative. That notice shall:
- (i) set out the legal basis of the claim;
  - (ii) set out the facts upon which the claim is based;
  - (iii) have annexed copies of correspondence and any relevant background material; and
  - (iv) contain detailed particulars of the quantification of the claim.
- (b) Upon receipt of such notice by the other Party, the Employer's Representative and the Consultant's Representative shall attempt to resolve this matter amicably. If the Employer's Representative and the Consultant's Representative are unable to resolve the Dispute amicably within 28 days from receipt of the notification, the Dispute shall be referred by either Party to Senior Representatives of the Parties to be designated in writing by the Parties at that time.
- (c) If the Senior Representatives of the Parties are unable to resolve the Dispute amicably within 28 days from the date of referral, the Dispute shall be finally resolved, at the request of either Party, through arbitration in accordance with the provisions of Sub-Clause 8.4 [*Arbitration*].

### 8.4 Arbitration

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- (a) If the Parties are unable to resolve the Dispute in accordance with Sub-Clause 8.3 [*Amicable Resolution*], the Dispute must, if requested by either Party, be referred to and finally resolved by arbitration in accordance with the UNCITRAL Arbitration Rules in force when the arbitration request is made ("Arbitration Rules") then in effect provided that:

- (i) the arbitral proceedings must be conducted in English;
  - (ii) the appointing Authority shall be the Geneva Chamber of Commerce, Industry and Services (CCIG), in Switzerland; and
  - (iii) the seat of the arbitration shall be Geneva (Switzerland).
- (b) The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.
  - (c) The arbitral proceedings and any information and documents relating to these proceedings must be regarded as confidential.

### **8.5 Dispute Resolution not to Delay Performance of the Services**

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Despite any activation of the Dispute resolution procedure under Sub-Clauses 8.3 and 8.4, the Consultant must, unless otherwise agreed, continue to perform the Services and its other obligations under or in connection with the Contract.

### **8.6 Survival**

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This Clause 8 survives the completion, expiry or termination of the Contract.

## **9. PRIVILEGES AND IMMUNITIES**

Nothing in, or related to, the Contract shall be interpreted as an express or implied waiver on the part of the Employer of its privileges and immunities as an international organization.