Annex 3: EXAMPLE OF A DATA PROCESSING FRAME AGREEMENT

This Data Processing Frame Agreement ("**DPA**") forms an integral part of the Frame Agreement between the ICRC (ICRC), in its role of Data Controller, and the Bidder (Bidder Technology, Lorton, US), in its role of Data Processor, to reflect the Parties' Frame Agreement with regard to the Processing of Personal Data in accordance with the requirements of the "*ICRC Rules on Personal Data Protection"* – adopted by the Directorate of the ICRC on 24 February 2015, Updated and adopted by the ICRC Assembly on 19 December 2019, and available at: https://www.icrc.org/en/document/data-protection ("**the ICRC RPDP**"). Defined terms are defined in Section 1 "Definitions", below;

A. Whereas Bidder Technology, Lorton, US, provides the genetic profiling and reporting of all biological samples provided by the ICRC ("**the Service**") to the ICRC as defined in the Frame Agreement, and, in order to provide the Service, it processes and manages the Personal Data under the control of the ICRC;

B. Whereas the ICRC benefits from immunity from jurisdiction and execution, and does not apply national data protection laws, hence the ICRC applies its own rules on personal data protection, set forth in the ICRC RPDP;

C. Whereas the ICRC RPDP provide for certain requirements with respect to the processing, storage, transfer or other management of any Personal Data controlled by the ICRC;

D. The Parties have agreed on the following DPA in order to set the terms under which the Data Processor processes Personal Data on behalf of the Data Controller and adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals in the course of the provision of the Service.

1. DEFINITIONS

1.1 "**Data Controller**" means the ICRC, headquartered in Geneva, Switzerland, represented by one of its Delegations, which alone or jointly determines the purposes and means of the Processing of Personal Data; such determination is made under this Frame Agreement and through the guidelines, policies, and individual validation decisions made by the relevant Division and/or Operations Region, where applicable, in coordination with the ICRC Data Protection Office;

1.2 "**Data Processor**" means a person, public authority, agency or other body which processes personal data on behalf of the Data Controller;

1.3 "**Data Subject**" means a natural person (i.e., an individual) who can be identified, directly or indirectly, in particular by reference to Personal Data;

1.4 "**Genetic Data**" means Personal Data relating to the genetic characteristics of an individual that have been inherited or acquired, resulting from the profiling of a biological sample from the individual in question or its human remains, in particular by chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis or analysis of any other element enabling equivalent information to be obtained;

1.5 "**Personal Data**" means any information relating to an identified or identifiable natural person. This may include an identifier such as a name, audio-visual material, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of a Data Subject. This also includes data identifying or capable of identifying human remains;

1.6 "Personal Data Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to Personal Data transmitted, stored or otherwise processed.

1.7 "**Processing**" means any operation or set of operations which is performed upon Personal Data or sets of Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

1.8 "Security Measures" means those technical and organizational measures aimed at protecting Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access, in particular but not limited to situations where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

2. ALLOCATION OF ROLES

2.1 The Parties acknowledge and agree that, with regard to the Processing of Personal Data in the context of the Frame Agreement, the ICRC is the Data Controller and Bidder Technology, Lorton, US, is the Data Processor, and that Bidder Technology, Lorton, US, shall not engage Sub-processors in providing the Services defined in the Frame Agreement, unless prior and specific approval in writing has been granted by the Data Controller.

3. TYPE OF PERSONAL DATA AND PURPOSE OF THE PROCESSING

3.1 The Data Processor will provide the Services as agreed in the Frame Agreement and will process the Personal Data provided by the Data Controller exclusively for the purposes strictly necessary for the fulfilment of the said Services.

3.2 Any Processing activities on the Personal Data, other than those explicitly set forth in the present Frame Agreement, carried out by the Data Processor, will constitute a breach of the present Frame Agreement. This includes, but is not limited to, processing activities for marketing, commercial and/or statistical purposes.

4. DATA PROCESSOR'S OBLIGATIONS

4.1 The Data Processor shall process the Personal Data under this Frame Agreement only on behalf of the Data Controller and in compliance with its instructions and the present DPA; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the Data Controller of its inability to comply, in which case, the ICRC is entitled to suspend the transfer of Personal Data and/or terminate the Frame Agreement and request deletion of all the Personal Data, in accordance with clause 8.2 of the present DPA;

4.2 The Data Processor commits to process Personal Data pursuant to the provisions set forth in the ICRC RPDP regarding Security Measures – which Bidder Technology, Lorton, US, acknowledges to have read and understood – as well as in clause 6 of the present DPA. In particular, the Data Processor will process Personal Data in such a way as to minimize, by means of suitable preventive Security Measures, the risk of accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access, or processing operations that are either unlawful or inconsistent with the purposes for which the Personal Data are processed under this Frame Agreement.

4.3 The Data Processor shall promptly investigate any reasonable suspicion of Personal Data Breach and establish with a reasonable degree of certainty whether a breach has taken place or not. Should the Data Processor's investigation confirm within a reasonable degree of certainty that a data breach

has occurred the Data Processor shall notify the Data Controller within 24 hours after such a confirmation of a Personal Data Breach.

4.4 The Data Processor shall cooperate with the Data Controller to enable the latter to guarantee to every Data Subject or his/her delegates the possibility to exercise the rights granted to him/her by the ICRC RPDP. The Data Processor acknowledges that Data Subject rights shall be exercised only through the ICRC. Therefore, the Data Processor undertakes to immediately notify the ICRC of any request that Data Subjects, or their delegates, address directly to the Data Processor, and will not respond to any such request or take any other related action.

4.5 The Processor shall promptly inform the ICRC about every inquiry, action, investigation, inspection by judicial/administrative authorities affecting directly or indirectly the Personal Data processed under this Frame Agreement. Should such notification be prohibited, the Data Processor shall notify the relevant authorities of the fact that the investigation affects information covered by the Privileges and Immunities of an International Organization.

4.6 Should judicial/administrative authorities ask, whether informally or by legal process, the Data Processor to disclose the Personal Data processed under this Frame Agreement, the Data Processor shall oppose such disclosure on the basis of the Data Controller's privileges and immunities that cover all the Data Controller's assets, documents, Personal Data and possessions, regardless of the fact that they are held by a third party. More precisely, the Personal Data processed under this Frame Agreement shall be immune from search, requisition, confiscation, expropriation or any other form of interference, whether by executive, judicial, administrative or legislative action. Should the relevant authorities request disclosure of the data nonetheless, the Processor shall notify the relevant authorities of the fact that the investigation affects information covered by the Privileges and Immunities of an International Organization.

4.7 Should the Data Processor decide to follow the orders of the judicial or administrative authorities, the Data Processor will report in writing to the Data Controller the reasons of such decision.

4.8 The Data Processor shall ensure and inform the Data Controller if any of its obligation under this DPA is contradicted, limited by or otherwise incompatible with any legislation applicable to the Data Processor, as a result of which the Data Processor would be prevented from fulfilling the instructions received from the Data Controller and its obligations under the Frame Agreement. In such case, the ICRC is entitled to suspend the transfer of Personal Data and/or terminate the Frame Agreement and request deletion of all the Personal Data, in accordance with clause 8.2 of the present DPA;

4.9 The Data Processor shall promptly inform the Data Controller in the event of a change in the legislation applicable to the Data Processor which is likely to have a substantial adverse effect on the warranties and obligations set out in this Frame Agreement. In particular, the Data Processor must inform the Data Controller should a legislation come into force that would require it to grant access, disclose or share the Personal Data processed under this Frame Agreement to or with third parties. This includes any provisions that may involve reporting obligations. In such case, the ICRC is entitled to suspend the transfer of data and/or terminate the Frame Agreement and request deletion of all the Personal Data, in accordance with clause 8.2 of the present DPA;

4.10 The Data Processor will grant the Data Controller access to all Personal Data and to the infrastructures related to the Services upon reasonable notice, in order to carry out independent inspections on the adequacy of the Security Measures implemented and on the adherence of such Security Measures to the ICRC RPDP.

4.11 The Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction from the staff in charge infringes any provision on the Processing of Personal Data under the present Frame Agreement.

4.12 The Data Processor shall not transfer the Personal Data to third parties or sub-contract the Services or portion of it after the conclusion of this Frame Agreement, unless prior and specific approval in writing has been obtained from the ICRC. In case of sub-contracting of the Services or portion of it on the basis of the prior and specific approval in writing by the ICRC, the Data Processor shall (i) choose a sub-Bidder which meets the highest professional standards with respect to the provision of the Services, or portion of it, and related processing activities, and regularly verify that such standards are complied with; (ii) enter into a written Frame Agreement with the sub-Bidder, that imposes the same relevant obligations on the sub-Bidder as are imposed on the Processor; (iii) remain fully liable towards the ICRC and any other relevant third parties where the sub-Bidder fails to fulfil its obligations under such written Frame Agreement.

4.13 Upon completion of Services, the Data Processor will retain the Personal Data processed in the performance of the for 5 years, as per accreditation standards and obligations under national law.

4.14 The Data Processor undertakes not to make a copy of the Personal Data processed under this Frame Agreement, unless it is necessary for the performance of this Frame Agreement, such as for back-up purposes. The retention period mentioned under clause 4.13 of the present DPA also applies to these copies.

4.15 The Data Processor ensures, on account of its experience, that it possesses the capabilities and reliability necessary to perform the tasks committed to it, also with respect to security matters.

5. DATA CONTROLLER'S OBLIGATIONS

5.1 The Data Controller is the only subject entitled to use, and to authorize the use of the Personal Data processed as part of the Service.

5.2 The Data Controller warrants that the processing of Personal Data has been and will continue to be carried out in accordance with the relevant provisions of the ICRC RPDP.

5.3 The Data Controller shall have sole responsibility for the legality of Personal Data and the means by which it acquired the Personal Data.

5.4 The Data Controller will handle and answer any third-party request regarding Personal Data notified to the ICRC by the Data Processor, in compliance with the relevant provisions of the ICRC RPDP.

5.5 The Data Controller undertakes to enforce the relevant provisions of the ICRC RPDP in the event of a data breach involving the Personal Data processed under this Frame Agreement.

6. SECURITY MEASURES

6.1 Having regard to the state of technological development and the cost of implementing any such measures, the Data Processor shall take appropriate technical and organizational measures against misuse, accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access to Personal Data or unlawful Processing.

6.2 The Data Processor undertakes to implement technical and organizational Security Measures in compliance with the ICRC RPDP. In particular, the Data Processor undertakes:

- to ensure an adequate physical and environmental protection for the Personal Data, in particular by using servers in dedicated and secured premises only accessible to specific staff;

- to identify the persons in charge of the Processing operations on the Personal Data entrusted by the Data Controller to the Data Processor and to regulate the access to such Personal Data by way of a strict authorization system and identity management rules;

- to inform the persons in charge of the Processing operation of the privileged status of the Personal Data, and to train them on the procedure to follow in case of requests for access by third parties.

7. LIABILITY

7.1 The Data Controller will indemnify the Data Processor for any loss, damage or sanction incurred by the Data Processor as a result of a breach by the Data Controller of any of its obligations under the ICRC RPDP, as referred to in this DPA.

7.2 The Data Processor will indemnify the Data Controller for any loss, damage or sanction incurred by the Data Controller as a result of a breach by the Data Processor of any of its obligations set forth in this DPA.

8. TERM AND TERMINATION

8.1 The Data Processor will store the Personal Data processed under this Frame Agreement, as well as any Personal Data obtained in relation to the Services, until the termination of the Frame Agreement, and 5 years in accordance with clause 4.13. of the present DPA. After this period, all Personal Data must be deleted, destroyed or returned to the ICRC/Data Controller. This provision is without prejudice to any other obligations under the present DPA, including but not limited to the obligation of the Data Processor to Process the Personal Data under this Frame Agreement under the Data Controller's instructions (Article 4.1 above), and the obligation to cooperate with the Data Controller in ensuring compliance with any requirement arising from the exercise of the rights of Data Subjects, such as deletion or rectification (Article 4.4 above).

8.2 Upon completion of the retention period mentioned under clause 8.1, the Data Processor undertakes to transfer all Personal Data processed on behalf of the Data Controller to the same without delay. The Data Processor will issue the Data Controller a written declaration attesting that the Data Processor holds no copies of Personal Data or information processed on behalf of the Data Controller.

8.3 In case the legislation imposed upon the Data Processor prevents it from returning or destroying all or part of the Personal Data transferred or obtained in relation to the Service in accordance with Articles 8.1 and 8.2 above, the Data Processor warrants that it will guarantee the confidentiality of this Personal Data in accordance with Article 4 of the Frame Agreement for as long as it holds them and will no longer actively process the Personal Data.

8.4 The audit provisions mentioned in Article 4.10 above apply also to this section**.**

9. MISCELLANEOUS

9.1 If any provision in this DPA is ineffective or void, this shall not affect the remaining provisions. The Parties hereto shall replace the ineffective or void provision with a lawful provision that reflects the purpose of the ineffective or void provision. The Parties shall similarly add a necessary appropriate provision where such a provision is missing.

9.2 This DPA may be modified only by a written amendment signed by both Parties. This DPA prevails over any additional, conflicting, or inconsistent terms and conditions appearing in any document submitted by either Party regarding the object of this DPA.

9.3 In the event that either Party is prevented from performing any of its obligations under the present Frame Agreement due to any cause beyond the Party's reasonable control and not due to the Party's negligence (a "**Force Majeure Event**"), the time for such Party's performance shall be extended for the period of delay or inability to perform due to such Force Majeure Event; provided, however, that the Party prevented from performing shall use all reasonable efforts to resume its performance as soon as possible. Should the inability to perform due to the Force Majeure Event last more than six months, either Party will be entitled to terminate this Frame Agreement with a one month prior notice. The Party affected by the Force Majeure Event shall inform the other Party of the situation as soon as possible.

10. MANDATE

10.1 With the signature of the Frame Agreement, the Data Controller explicitly mandates the Data Processor to carry out, in its name and on its behalf, all the activities described herein.

10.2 With the signature of the Frame Agreement, the Data Processor accepts the mandate, and legally signifies that the Data Processor has read and understood the instructions assigned to it.

10.3 Any other issues not covered in the present DPA, including but not limited to governing law and dispute resolution, are governed by the main Service Agreement

On behalf of the data controller:

For the ICRC Name: ....

Date: ....

Stamp: ....

Signature: ....

On behalf of the data processor:

For the Bidder

Name: ....

Date: ....

Stamp: ....

Signature: ....