



## TEMPLATE CONSULTANCY AGREEMENT (for COMPANIES)

### CONSULTANCY AGREEMENT Nr. \_\_\_\_\_ (the "Agreement")

between

**The Secretariat of the Convention on Wetlands** hosted by IUCN, International Union for Conservation of Nature and Natural Resources ("IUCN"), Rue Mauverney 28, 1196 Gland, Switzerland (hereinafter referred to as "Secretariat")

and

**[full legal name of other party]**, established under the laws of **[name of country]**, with headquarters located at **[address]**, **[country]** (hereafter "Consultant")

Secretariat and the Consultant shall be referred to herein individually as a "Party" and together as the "Parties".

#### PREAMBLE

**Whereas** the mission of the Convention on Wetlands is "the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world";

[OPTION 1] **Whereas** Secretariat has received a donation from **[name of the Donor]** (hereafter the "Donor") to implement the Project **[insert the name]** (the "Project") and wishes to benefit from certain skills and abilities of the Consultant with the aim of providing Secretariat with assistance and support in **[describe the activities for which support is expected from Consultant]**.

[OPTION 2] **Whereas** Secretariat wishes to obtain advisory and consulting services from the Consultant **[for XXX or in the area of XXX]** and the Consultant agrees to assist Secretariat with such services under the terms and the conditions set forth in this Agreement.

**Whereas** the Consultant has assured the Secretariat that it has the required expertise and experience;

**Now therefore** the Parties agree as follows:

## **1. SERVICES**

1.1 The Consultant will [short description of the services], perform the tasks and deliver the deliverables no later than the agreed deadline(s) as set out in the terms of reference attached as Annex I (the "Services").

1.2 The Consultant will assign [name of the person(s) and title(s)] (the "Key Personnel") to the performance of the Services on behalf of Consultant. The replacement of any Key Personnel must be approved in advance by Secretariat in writing.

1.3 Secretariat reserves the right to request any reports (progress, financial or otherwise additional to those required under the Agreement), which could be considered to be reasonably required to evidence satisfactory performance under the Agreement. All financial records and other relevant documents relevant to or pertaining to this Agreement may be subject to inspection and/or audit at the discretion of Secretariat or of the Donor. The Consultant agrees to allow Secretariat or Donor's auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. In the event of inspection or audit, Secretariat or Donor shall provide the Consultant reasonable prior written notice.

1.4 The Consultant shall not subcontract the Services to third parties without the prior written consent of Secretariat. However the Consultant may under its own responsibility use the services of others provided such services are of an auxiliary or clerical nature.

## **2. TERM**

This Agreement comes into effect on [date] [and/or] [upon its signature by both Parties] (the "Effective Date") and will expire on [date] (the "Expiration Date").

## **3. INDEPENDENT STATUS**

3.1 The employees, directors or shareholders of the Consultant shall not be entitled to any pension, bonus or other fringe benefits from Secretariat.

3.2 The Consultant shall have no authority to enter into contracts or to incur any other legally binding commitment on behalf of Secretariat.

3.3 No employee, director or other representative of the Consultant shall hold him or herself out or permit itself to be held out as having authority to do or say anything on behalf of or in the name of Secretariat.

3.4 The Consultant shall be solely and exclusively liable for any and all taxes, levies or dues required to be paid in any of the countries where this Agreement applies, on any amounts paid to the Consultant by Secretariat and has sole responsibility for declaring such amounts to the relevant tax authorities.

## **4. OBLIGATIONS**

1.1 The Consultant shall carry out its duties in an expert and diligent manner and to the best of its ability and shall promptly and faithfully comply with all lawful and reasonable requests which may be made by the Secretariat Contact Person.

1.2 The Consultant shall give written or oral advice or information regarding the execution of the Services as and when required by Secretariat.

1.3 In the case of illness or accident or a case of Force Majeure as described under clause 15.3 preventing the Key Personnel from performing the Services, the Consultant shall promptly notify Secretariat in writing of impediment.

## 5. REMUNERATION

5.1 As full remuneration for the Services performed under the terms of this Agreement, Secretariat shall pay the Consultant a fixed and firm lump sum of [currency/amount in numbers (amount spelled out in letters)] ("the Remuneration") based on [number of days] days of work at a daily rate of [daily rate] as follows:

5.1.1 A first instalment of [currency/amount in numbers (amount spelled out in letters)] corresponding to 30% of the Remuneration upon receipt of a signed copy of this Agreement together with a first invoice;

5.1.2 A second instalment of [currency/amount in numbers (amount spelled out in letters)] corresponding to 30% of the Remuneration upon submission of ... [please indicate what task(s)/deliverable(s) will trigger payment] and the second invoice; and

5.1.3 A third and last instalment of [currency/amount in numbers (amount spelled out in letters)] corresponding to remaining 40% of the Remuneration upon satisfactory and timely completion and Secretariat written acceptance of all Services as specified in Annex I and the third and final invoice. The final invoice must be submitted no later than [insert the no. of days e.g. 30 days] after Secretariat's written acceptance of all Services or after the Agreement end date whichever is later

5.2 The Consultant must submit a valid invoice quoting the Contract Reference Number and number of the instalment for each payment to be made.

5.3 If the tasks defined in the Agreement are not fulfilled to the satisfaction of Secretariat within the requested time limit, Secretariat reserves the right to withhold any further payments and recuperate any funds already paid.

5.4 Secretariat shall make payments to the Consultant's bank account (to be opened in the name of the Consultant in the place where Consultant is established or where the Services are provided) as follows:

Complete Account name: [xxx]  
Account type and currency: [xxx]  
Bank name: [xxx]  
Bank address: [xxx]  
Account No.: [xxx]  
IBAN No: [xxx]  
SWIFT Code\*: [xxx]  
*\*or other bank routing code*

5.5 Funds that remain unused at the Expiration Date or termination date of this Agreement must be returned to Secretariat within sixty (60) days following either of such dates, as applicable.

5.6 All invoices in connection with this Agreement shall be directed to:

IUCN  
Convention on Wetlands  
Rue Mauverney, 28  
1196 Gland  
Switzerland

## **6. TRAVEL EXPENSES**

6.1 Travel expenses in connection with this Agreement shall not exceed [currency/amount in numbers] [(currency and amount in words)]. All travel has to be approved by the Secretariat Contact Person before any reservation is made.

6.2 The IUCN Travel Policy (April 2019) shall apply to all travel expenses and is available at <https://www.iucn.org/corporate/finance/procurement/iucn-travel-policy>.

6.3 A financial report with receipts (e.g. transportation, accommodation, meals and incidentals) must be submitted in the currency of the Agreement to the Secretariat Contact Person in order for reimbursement to be made.

## **7. CONSULTANT'S WARRANTIES AND UNDERTAKINGS**

7.1 The Consultant warrants that its performance of the Services under the terms of this Agreement will not infringe on the rights of any third party or cause the Consultant to be in breach of any obligation towards a third party.

7.2 The Consultant warrants that it has obtained the assignment of all Results and Intellectual Property rights pertaining to the Results from his employees (including without limitation the Key Personnel).

7.3 The Consultant shall maintain at its sole expense liability and any other relevant insurance covering the performance of this Agreement. Secretariat may require the Consultant to provide to a certificate of insurance evidencing such coverage.

7.4 The Consultant represents and warrants that no part of the Remuneration shall be provided to, or used to support, individuals and organizations associated with terrorism as identified on any sanction list published by the European Union, the United States Government, the United Nations Security Council or other relevant agency or body.

## **8. CONFIDENTIALITY**

8.1 The Consultant will not disclose or use, at any time during or subsequent to this Agreement, any confidential information of Secretariat or any other non-public information relating to the business, financial, technical or other affairs of Secretariat except as required by Secretariat in connection with the Consultant's performance of this Agreement or as required by law. In particular, but without prejudice to the generality of the foregoing, the Consultant shall keep confidential all Intellectual Property and know-how disclosed to him/her by Secretariat, which becomes known to it during the period of this Agreement or which it develops or helps to develop in providing the Services to Secretariat.

8.2 The Consultant may communicate confidential information only to those of its employees who are directly and necessarily involved in the performance of this Agreement or who are bound to the Consultant by obligations no less stringent as the ones mentioned in this Agreement.

8.3 The Consultant shall:

8.3.1 not disclose to third parties without express prior written consent of Secretariat the results of work performed as part of the provision of the Services;

8.3.2 disclose know-how and other confidential information of Secretariat which is provided by Secretariat to the Consultant for the purpose of carrying out the Services only to those persons necessary to accomplish the Services and only to the extent necessary for the proper performances of the Services.

8.4 The Consultant agrees to immediately notify Secretariat in writing if it becomes aware of any disclosure in breach of the obligations of this clause 8. It shall be responsible for any breach of these obligations by its employees or subcontractors. The Consultant will take all steps necessary to prevent further disclosure.

## **9. PROPERTY OF RESULTS**

All notes, memoranda, correspondence, records, documents and other tangible items made, by the Consultant in the course of providing the Services will be and remain at all times the property of Secretariat. At any time, even after the termination of this Agreement, the Consultant shall, upon request, promptly deliver to Secretariat all such tangible items which are in its possession or under its control and relate to Secretariat, its business affairs and clients and/or the Services.

## **10. INTELLECTUAL PROPERTY**

10.1 Intellectual Property rights are any and all rights and prerogatives, registered or not, arising from the Swiss and international legislation on the protection of notably patents, design, trademark, as well as know-how and trade secrets.

10.2 Pre-existing Intellectual Property (Pre-existing Rights") of a Party means any rights, title and interests in, to and under any and Intellectual Property that have been conceived or developed by such Party prior to the Effective Date or that is conceived or developed by such a Party at any time wholly independently of the provision of Services under this Agreement. Subject to the rights and licenses expressly granted under this Agreement, each Party shall retain ownership of its Pre-existing Rights. The Consultant hereby grants to Secretariat a non-exclusive, worldwide, perpetual, royalty free, sub-licensable license to use Pre-existing Rights incorporated in the Services. The Consultant shall ensure that it has obtained all the rights to use any Pre-existing Rights belonging to third parties that are necessary to provision of the Services under this Agreement.

10.3 All Intellectual Property rights, including copyright, in the Services produced under this Agreement are vested in Secretariat and the Consultant hereby agrees to assign to Secretariat, or its nominee, with full title guarantee, all rights in and to any Intellectual Property resulting from the provision of the Services for the full duration of such rights, including, without any limitations, the right to use, publish, license, translate, sell or distribute, privately or publicly, any item of part thereof wherever in the world enforceable.

10.4 The Consultant confirms that Secretariat shall have all rights of development, manufacture, promotion, distribution and exploitation in relation to the projects undertaken and products

developed in the course of the provisions of the Services and the Intellectual Property created or arising from the provision of the Services.

10.5 Neither Party shall have the right to use the other Party's name, logo and/or other trademarks in any medium and for whatever purpose without the other Party's prior written consent in each instance of use.

## 11. LIABILITY AND INDEMNITY

11.1 Secretariat shall not be held liable for any damage caused or sustained by the Consultant, including any damage caused to its employees and / or third parties as a consequence of or during the provision of the Services of this Agreement.

11.2 The Consultant agrees to indemnify and hold Secretariat harmless from any and all losses and damages that Secretariat may incur as a result of Consultant's actions or omissions in rendering the Services or the breach of any of the Consultant's obligations contained in this Agreement.

## 12. COMMUNICATION AND NOTICES

12.1 All correspondence and notices in connection with the implementation of this Agreement must be directed as follows:

Secretariat Contact Person	Consultant Contact Person
[name] [title] [address] [phone] [email]	[name] [title] [address] [phone] [email]

12.2 In case the Contact Person is being changed, the authorized representative of each Party shall notify the other Party in writing (email accepted).

## 13. ETHICS, FRAUD AND CORRUPTION

13.1 The Consultant shall comply with the principles and expected standards of conduct equivalent to those stipulated in Section 4 of the Code of Conduct and Professional Ethics for the Secretariat, available at [https://www.iucn.org/downloads/code\\_of\\_conduct\\_and\\_professional\\_ethics.pdf](https://www.iucn.org/downloads/code_of_conduct_and_professional_ethics.pdf), which by signing this Agreement, the Consultant confirms it has reviewed and accepted.

13.2 The Consultant shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Agreement is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.

13.3 The Consultant represents and warrants that there are no potential or actual conflicts of interests in relation to the implementation of this Agreement. If, during the course of this Agreement, the Consultant becomes aware of facts which constitute or may give rise to a conflict of interest,

the Consultant shall promptly inform the Secretariat's Contact Person in clause 12.1 in writing, without delay. The Consultant shall immediately take all the necessary steps to rectify this situation. Secretariat reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

13.4 The Consultant shall take all necessary precautions to avoid fraud and corrupt practices in implementing this Agreement. The Consultant shall comply with the standards of conduct equivalent to those stipulated in IUCN's Anti-fraud Policy, available at [https://www.iucn.org/downloads/anti\\_fraud\\_policy.pdf](https://www.iucn.org/downloads/anti_fraud_policy.pdf), which by signing this Agreement, the Consultant confirms it has reviewed and accepted.

13.5 The Consultant shall cooperate fully in any investigations linked to events under this clause which may be carried out by Secretariat and/or the Donor and shall give access to all records (and to its staff if applicable) in the event that this is needed to support investigations of complaints of unethical behavior, fraud or corruption. Secretariat reserves the right to take necessary legal action and/or terminate the Agreement in accordance with clause 16 if it determines that any fraud, corruption and/or unethical behaviour has occurred. Any repayment claim may also include interest, investment income or any other financial gain obtained as a result of the fraud.

#### **14. NON-DISCRIMINATION AND POLICY ON THE PROTECTION FROM SEXUAL EXPLOITATION, SEXUAL ABUSE, AND SEXUAL HARASSMENT (SEAH POLICY)**

14.1 Secretariat recommends the Consultant to apply non-discriminatory practices in terms of benefits and remuneration for both men and women employees in the performance of this Agreement.

14.2 The Consultant will comply with the principles and standards of protection equivalent to those stipulated in the SEAH Policy available at [https://www.iucn.org/sites/dev/files/seah\\_revised\\_version\\_2020apr27.pdf](https://www.iucn.org/sites/dev/files/seah_revised_version_2020apr27.pdf)

#### **15. TERMINATION**

##### **15.1 Termination for cause**

15.1.1 Secretariat reserves the right to terminate this Agreement in whole or in part, upon written notice with immediate effect in the event that the Consultant:

- i. has falsified or provided inaccurate, incomplete or misleading information in any documentation provided to Secretariat;
- ii. defaults in carrying out any of its obligations under this Agreement;
- iii. has engaged in illegal acts, including, without limitation fraudulent or corrupt actions as defined in Code of Conduct and Professional Ethics for the Secretariat and IUCN's Anti-fraud Policy (hereafter referred to as a "Fraud");
- iv. enters into liquidation or dissolution other than for the purpose of an amalgamation or reconstruction; or
- v. ceases to carry on business, has a receiver or administrator appointed over all or any part of its assets or undertaking, enters into any composition or arrangement with its creditors or takes or

suffers any similar action in consequence of a debt or other liability, or undergoes any process analogous to the foregoing in any jurisdiction throughout the world

15.1.2 If it is determined that the Consultant has committed Fraud in competing for or in the performance of this Agreement, all expenditures incurred under this Agreement shall be undue and the Consultant shall promptly reimburse Secretariat for all expenditures incurred in the performance of this Agreement.

#### 15.2 Termination for lack of Donor funds

Secretariat shall have the right to terminate this Agreement with immediate effect and without any liability for damages to the Consultant in case the agreement between Secretariat and the Donor is terminated and/or the Remuneration funds become unavailable to Secretariat.

#### 15.3 Termination for force majeure

15.3.1 The performance of this Agreement by either Party is subject to acts of God, war, government regulations, epidemics, pandemics, disaster, strikes (excluding strikes of respective Parties' personnel), civil disorders, curtailment of transportation facilities, or other emergencies making it illegal or impossible for either Party to perform its obligations ("Force Majeure Event"). The Party subject to a Force Majeure Event shall promptly notify the other Party of the occurrence and particulars of such Force Majeure Event, including how it impacts the performance of its obligations under this Agreement. The Party so affected shall use diligent efforts to avoid or remove such causes of non or delayed performance as soon as is reasonably practicable.

15.3.2 This Agreement may be terminated unilaterally without compensation for any one or more of the foregoing reasons by written notice from one Party to the other.

15.3.3 Notwithstanding the above, the Parties may agree to a suspension or an extension of the Agreement as deemed appropriate. Upon termination of the Force Majeure Event, the performance of the suspended Services shall without delay recommence.

15.3.4 The Party subject to the Force Majeure Event shall not be liable to the other Party for any damages arising out of or relating to the suspension or termination of Services by reason of the occurrence of a Force Majeure Event, provided such Party complies with all the requirements under this article 15.3.

#### 15.4 Effects of Termination

In the event of termination under this article, Secretariat shall pay the Consultant any outstanding Remuneration in respect of Services performed by the Consultant up until the effective date of termination, it being understood that the total amount payable by Secretariat to the Consultant shall not exceed the Remuneration stated in clause 5 of the Agreement. The Consultant shall within thirty (30) days of termination, and at Secretariat's request:

15.4.1 to the extent possible, complete the Services subject to the Remuneration made available until the date of termination and stop all ongoing activities;

15.4.2 refund to Secretariat any advance payments received in excess of the total expenditure incurred as evidenced in the invoices submitted to Secretariat,

15.4.3 reimburse Secretariat for any expenditures made in breach of the terms of this Agreement and

15.4.4 submit final technical and financial reports and any other materials, deliverables, works or other outputs created as at the date of termination under this Agreement.



## **16. PROCESSING OF PERSONAL DATA**

16.1 Personal Data is any information relating to an identified or identifiable individual, unless otherwise defined under applicable law. The Parties commit themselves to respect applicable data protection laws and regulations and process Personal Data in accordance with the terms of this Agreement.

16.2 Secretariat may in the course of performance of this Agreement provide the Consultant with Personal Data. Personal Data is any information relating to an identified or identifiable individual, unless otherwise defined under applicable law.

16.3 Any processing of Personal Data shall be done in accordance with the terms of the Agreement and the applicable law. In particular, it shall be processed in a manner that ensures the security of the Personal Data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures.

16.4 Where the Consultant engages another processor for carrying out specific processing activities on behalf of Secretariat, the same data protection obligations as set out in this Agreement and the applicable law shall be imposed on that other processor by way of an agreement. Where that other processor fails to fulfil its data protection obligations, the Consultant shall remain fully liable to Secretariat for the performance of that other processor's obligations.

16.5 Where Secretariat's Personal Data is transferred to a country that has not been deemed to provide an adequate level of protection for Personal Data within the meaning of Regulation (EU) 2016/679, the Consultant shall ensure that appropriate safeguards in accordance with applicable law are provided.

16.6 The Consultant shall promptly, and in any case within forty-eight (48) hours inform Secretariat through the online form located at (<https://portals.iucn.org/dataprotection/requestform>), if it determines and/or discloses to a competent public authority and/or affected data subjects that a Personal Data breach has occurred.

## **17. APPLICABLE LAW AND DISPUTE RESOLUTION**

17.1 The performance and interpretation of this Agreement will be subject exclusively to the laws of Switzerland, excluding its conflict of laws principles.

17.2 Any dispute arising out of or in relation with this Agreement that cannot be resolved amicably by the Parties or by way of mediation shall be submitted to the competent courts of Lausanne, Switzerland.

## **18. GENERAL PROVISIONS**

18.1 This Agreement is the complete understanding between Secretariat and the Consultant and replaces all other agreements and understandings in reference to the subject matter of this Agreement.

18.2 Any modification or amendment of this Agreement shall be in writing and shall become effective if and when signed by both Parties.

18.3 This Consultancy Agreement is non-exclusive. Secretariat is free to consult other experts in the Consultant's field of specialization.

18.4 This Agreement is personal to Secretariat and the Consultant, and neither Party may sell, assign or transfer any duties, rights or interests created under this Agreement without the prior written consent of the other.

18.5 Either Party waives all and any rights of set-off against any payments due hereunder and agrees to pay all sums due hereunder regardless of any set-off or cross claim.

18.6 All provisions that logically ought to survive termination of this Agreement shall survive.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. The Parties agree that the signed counterparts may be delivered by e-mail in a ".pdf" format data file or electronic signature (e.g., DocuSign or similar electronic signature technology) and thereafter maintained in electronic form, and that in this case such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such ".pdf" or electronic signature page were an original thereof.

**Secretariat of the Convention on Wetlands** [full name of OTHER PARTY]

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Dr. Musonda Mumba** [Name of representative]  
**Secretary General** [Position of representative]

**ANNEXES**

[please list all annexes named in the agreement]