Attachment 3 Contract Template

Project Number	
Award Number	

DRAFT

IMPLEMENTING AGREEMENT

(the “Agreement”)

between

IUCN, INTERNATIONAL UNION FOR CONSERVATION OF NATURE AND NATURAL RESOURCES, an international association established and existing under the laws of Switzerland, with World Headquarters located at Rue Mauverney 28, 1196 Gland, Switzerland (hereinafter "IUCN")

and

[INSERT FULL LEGAL CORPORATE NAME OF THE OTHER PARTY] established and existing under the laws of [name of country], with [headquarters/offices] located at [full office address] (hereinafter the "Contractor")

IUCN and the Contractor shall be referred to herein each as a "Party" and together as the "Parties".

PREAMBLE

Whereas the mission of IUCN is to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable;

Whereas IUCN has received a donation from [insert name of donor] (hereafter the “Donor”) for the implementation of [name of project];

Whereas IUCN has selected the Contractor for [please set out reasons leading IUCN to select this Contractor];

And Whereas the Contractor is willing to accept the obligations set forth hereunder and acknowledges that any continuation of this Agreement and any payment are subject to the availability of Donor funds;

DRAFT

Now therefore the Parties agree as follows:

1. PURPOSE

1.1 The purpose of this Agreement is the implementation by the Contractor of the [name of the project] (the “Project”) which is described in more detail in the Project Document attached to this Agreement as **Annex 1**.

1.2 The performance of this Agreement shall be carried out by [name of specific person(s) employed by the Contractor] (the “Key Personnel”), it being understood that selection and substitution of any Key Personnel shall be approved in advance by IUCN in writing.

2. TERM

This Agreement shall come into effect [on the date of signature by both Parties] [or] [as of DDMMYYYY] (the “Effective Date”) and shall remain in full force and effect until [specify the date on which the Agreement will expire] (the "Expiration Date"), unless terminated or extended in accordance with articles 16 and 19.5 below, respectively.

3. TASKS AND DELIVERABLES

Tasks to be performed and/or deliverables to be delivered by the Contractor (hereafter the “Tasks” and “Deliverables”), together with the relevant schedule for their completion and delivery, are set out in [name of Annex] attached to this Agreement as **Annex [insert annex number]**.

4. PAYMENT TERMS AND CONDITIONS

4.1 The budget for this Agreement is set forth in the [name of document] attached as **Annex** [**insert annex number**] to this Agreement (the "Budget"). The Budget Funds (as defined under article 4.2 below) shall only be used to cover the expenditures which are necessary to achieve the objectives of the Project.

4.2 Subject to the receipt of funding by the Donor, IUCN shall pay to the Contractor a maximum total amount of [**currency+amount** in numbers followed by the amount written out in words] (the “Budget Funds”) for expenditures in accordance with the Budget and incurred on or prior to the Expiration Date.

4.3 Any expenditure over and above the Budget Funds shall not be reimbursed or otherwise covered by IUCN. If resources additional to the Budget Funds are made available to the Contractor for the same purpose from any other source, the Contractor shall immediately inform IUCN in writing.

4.4 IUCN shall make the following payments:

4.4.1 Initial Instalment

An Initial Instalment of [currency+amount in numbers] [(amount written out in words)] upon signature of this Agreement by both Parties and submission of an advance payment request. The amount of the Initial Instalment should be sufficient to cover the first reporting quarter in accordance with article 7.3.2.i.

4.4.2 Quarterly Payments

Quarterly payments thereafter on the basis of an acceptable cash flow projection indicating cash on hand and anticipated expenses for the upcoming quarter, subject to article 4.4.3. Cash flow projections shall be submitted along with Financial Progress Reports as specified by article 7.3.2.i.

4.4.3 Final Instalment

A Final Instalment equal to no less than ten percent (10%) of the Budget shall be withheld until the Contractor's delivery and IUCN's written acceptance of the Final Financial Report (7.3.2.ii) and the Final Technical Report (7.3.1.iii)

4.5 IUCN shall make payments to the Contractor's bank account as follows:

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

[if there is an international correspondent bank, the same information must be provided for that bank as well].

4.6 The Contractor shall bear any bank charges associated with any transfer of funds that IUCN may make hereunder.

4.7 Funds (including any interests thereon) that remain unused at the Expiration Date or termination date of this Agreement must be returned to IUCN within sixty (60) days following either of such dates, as applicable and Contractor shall reimburse IUCN for any disallowed expenditures.

4.8 All expenditures shall be reported in accordance with the Budget as provided for under this Agreement.

4.9 Any re-allocation of funds between/amongst Budget lines will be permitted only upon IUCN's prior written approval, to be given in each instance at IUCN's sole discretion

4.10 Upon expiration or termination of this Agreement, the Contractor shall maintain all financial records pertaining to this Agreement for a period of ten (10) years.

4.11 The Contractor is responsible for the payment of all taxes, as required by law, which may arise from or in connection with this Agreement. Only taxes incurred for the performance of this Agreement that cannot be reclaimed by the Contractor will be accepted as eligible costs.

4.12 The Contractor shall ensure that the financial reports as defined under article 7.3.2 are easily reconciled to the accounting and bookkeeping systems and to the underlying accounting and other relevant records. For this purpose the Contractor shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification. These reconciliations should be updated at minimum on a quarterly basis.

4.13 All Budget Funds provided under this Grant in [currency] that are exchanged to local currency must be exchanged at the best available rate through the channels authorized by applicable laws and regulations. Transactions must be verified through bank receipts or other documents or publications sufficient to demonstrate the legality of such transactions.

5. PROCUREMENT, TRAVEL AND SUBCONTRACTING

5.1 All procurement of goods, materials and equipment, if any, under this Agreement shall be made in accordance with IUCN's Procurement Policy and Procedure for Grant Recipients attached to this Agreement as **Annex [XX]**.

5.2 Selection and engagement of sub-contractors to work under this Agreement shall be done by the Contractor up to a limit of fifty thousand Swiss francs (CHF 50,000) (or equivalent in any other currency). Purchases of goods and services with a cost in excess of fifty thousand Swiss francs (CHF 50,000) are only allowed with separate written authorisation from the relevant IUCN Project manager, as detailed in section 3.d of IUCN's Procurement Policy and Procedure for Grant Recipients.

5.3 Travel shall only be undertaken when necessary, further IUCN's prior written approval and by the most cost effective means. Air travel must be by economy class. Reasonably priced, mid-range hotels, in a safe location, should be used where possible.

5.4 Contractor shall ensure that its subcontractors will comply with all terms of this Agreement.

6. OWNERSHIP OF EQUIPMENT AND MATERIALS

Any and all equipment and materials purchased with the Budget Funds provided under this Agreement shall remain IUCN's property at any time and shall be retained, returned or disposed of as decided and advised in writing by IUCN at the expiration or termination of the Agreement. The Contractor shall maintain an inventory of all such equipment and materials with an individual cost of five hundred Swiss francs (CHF 500) or over and submit a signed copy of the inventory to IUCN with the final financial report, or promptly at any time upon IUCN's request, or upon expiration or termination of the Agreement.

7. COMMUNICATION, REPORTING AND AUDIT

7.1 All correspondence in connection with the implementation of this Agreement (excluding notices as per article 17 below) must be directed as follows:

Name	Name
Title	Title
[Name of IUCN programme/office]	[Name of counterpart]
Address	Address
Address	Address
Phone	Phone
Fax	Fax
Email	Email

7.2 The Contractor shall promptly inform IUCN of any event or matter of which it becomes aware that, in its opinion, is likely to materially affect or interfere with or seriously hinder or impair its ability to perform any of its obligations under this Agreement.

7.3 Reporting requirements of the Contractor are as follows and should be consistent with the reporting format specified by IUCN:

7.3.1 Technical Reporting

i. First Technical Report
The Contractor shall provide to IUCN the First Technical Report which shall consist of [please include requirements] at the latest on [date].

ii. Second Technical Report
The Contractor shall provide to IUCN the Second Technical Report which shall consist of [please include requirements] at the latest on [date].

iii. Third and Final Technical Report
The Contractor shall provide to IUCN the Third and Final Technical Report which shall consist of [please include requirements] at the latest on [date].

7.3.2 Financial Reporting

i. Financial Progress Reports. The Contractor shall submit Financial Progress Reports within thirty (30) days following the end of each calendar quarter in the format specified by IUCN.

ii. Final Financial Report. The Contractor shall submit a Final Financial Report within sixty (60) days following the expiration or termination of this Agreement. This report shall be submitted in the format specified by IUCN.

7.4 The Contractor shall maintain financial records, supporting documents, statistical records and all other records relevant to the Project in accordance with generally accepted accounting principles to sufficiently substantiate all direct and indirect costs of whatever nature involving transactions related to the Budget Funds provided by IUCN under this Agreement.

7.5 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 IUCN or of the Donor. The Contractor agrees to allow IUCN 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, IUCN or Donor shall provide the Contractor reasonable prior written notice. Further, the Contractor agrees to include a similar right of IUCN or the Donor to audit records and interview staff in any subcontract related to performance of this Agreement.

7.6 If any audit, by IUCN or the Donor reveals that expenditures incurred by the Contractor are not consistent with the terms of this Agreement, IUCN shall be entitled to recover all such expenditures.

8. PROPERTY OF RESULTS, INTELLECTUAL PROPERTY RIGHTS AND ACKNOWLEDGEMENTS

8.1 Property of results

8.1.1 All notes, computer disks and tapes, memoranda, correspondence, records, documents, data, datasets, graphic, audio and visual materials and other tangible items made, used or held by the Contractor in the course of implementation of this Agreement (the “Results”) will be and remain at all times the property of IUCN. At any time, even after the expiration or termination of this Agreement, the Contractor shall, upon request, promptly deliver to IUCN all such tangible items which are in his possession or under his control and relate to IUCN and he may not make or retain copies.

8.1.2 The Contractor shall, when providing the Tasks and/or Deliverables relating to Intellectual Property, keep appropriate and sufficient invention records in a form agreed with IUCN.

8.2 Intellectual Property rights

8.2.1 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.

8.2.2 All Intellectual Property rights conceived or made by the Contractor in the course of providing the Tasks and/or Deliverables will belong to IUCN and the Contractor hereby assigns and agrees to assign to IUCN, with full title guarantee, all rights in and to any Intellectual Property resulting from the implementation of this Agreement for the full duration of such rights, wherever in the world enforceable.

8.2.3 To the full extent permitted by law, the Contractor waives moral rights arising from and as a result of the implementation of this Agreement.

8.3 Acknowledgements

8.3.1 The Contractor represents and warrants that it has all the necessary rights, licenses or authorisations enabling him to perform this Agreement including but not limited to the right to provide the Work to IUCN for all the purposes provided for under the Agreement.

8.3.2 In addition to the Results and Deliverables, all other events and outputs in connection with this Agreement shall acknowledge the support from IUCN [and the Donor]

8.4 Notwithstanding article 8.3.2 above, use of IUCN's name and logo for any purpose in connection with this Agreement requires prior written approval from IUCN in each instance of use and shall always conform to IUCN's Brand Book to be provided by IUCN to the Contractor further signature of this Agreement by both Parties.

8.5 The Contractor shall indemnify IUCN from and against any and all claims, suits, liabilities, damages or expenses (including reasonable legal fees) arising out of the Contractor's infringement or violation, or allegations thereof, of any third party's intellectual property rights in connection with this Agreement.

9. DISCLOSURE OF INFORMATION

9.1 "Confidential Information" means any and all tangible or intangible information, privileged or proprietary information or trade secrets given to one Party by or on behalf of the other Party and explicitly designated, either orally or in writing, as confidential, either at the time of disclosure or, if disclosed orally, confirmed in writing within thirty (30) days following the original disclosure, including, without limitation:

9.1.1 Customer lists, services, products, manuals, business methods and practices;

9.1.2 Proprietary software, hardware, firmware and documentation owned by either Party, or owned by third parties but developed, produced or distributed by either Party subject to relevant licenses;

9.1.3 Processes, prices, profits, contract terms and operating procedures, and compilations of data or information.

9.2 Either Party shall keep confidential and not disclose to any third party any Confidential Information of the other Party.

9.3 The Confidential Information shall remain the property of the disclosing Party, and the receiving Party agrees to use it only for the purpose of performing its obligations under this Agreement.

9.4 Confidential Information as defined in this article 9 shall not include information which:

9.4.1 Was in the public domain at the time of its receipt by the receiving Party;

9.4.2 Was at the time of its receipt already in the receiving Party's possession or known to the receiving Party and not qualified as Confidential Information;

9.4.3 Becomes part of the public domain after its receipt by the receiving Party, but not through a breach of this Agreement by the receiving Party or the receiving Party's employees; or

9.4.4 Is rightfully given to the receiving Party by a third party on a non-confidential basis.

9.5 The receiving Party shall disclose the other Party's Confidential Information only to those of its employees or independent contractors who are directly and necessarily involved in the performance of this Agreement and who are bound to the receiving Party by obligations no less stringent as the ones mentioned in this Agreement. The receiving Party is responsible for ensuring that there is no breach of such confidentiality obligations by any such employees or independent contractors.

10. INDEMNIFICATION

The Contractor shall indemnify and hold harmless IUCN, and its employees, agents or subcontractors, from all suits, claims, demands, prosecution, liability of any nature or kind whether in contract, tort or otherwise, and costs and expenses (including legal fees), arising out of or in connection with the Contractor's actions or omissions or those of its employees, agents, officers, directors or subcontractors, in the performance of this Agreement. Such indemnity shall not lapse on expiration or termination of this Agreement.

11. INSURANCE

11.1 The Contractor shall procure and maintain, until all of its obligations under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The insurance shall cover at least general commercial liability, business automobile liability, workers' compensation and employer liability. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. IUCN in no way warrants that such insurance is sufficient to protect the Contractor from liabilities that might arise out of the performance of this Agreement by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

11.2 Written proof, satisfactory to IUCN, of the Contractor's compliance with requirements of article 11.1, shall be promptly furnished to IUCN upon IUCN's request.

12. ENVIRONMENT AND SOCIAL MANAGEMENT SYSTEM

12.1 IUCN has developed and applies an environment and social management system ("ESMS") which guides all projects implemented and supported by IUCN. The purpose of the ESMS is to systematically screen projects on potential environmental and social risks and identify ways to avoid, minimize or mitigate them while enhancing positive impacts.

12.2 In the context of implementation of the Project, the Contractor shall abide by the ESMS Standards and Principles available at https://www.iucn.org/resources/project-management-tools/environmental-and-social-management-system which by signing this Agreement, the Contractor confirms it has reviewed and accepted and shall comply with any specific requirements resulting from ESMS screening and assessments.

13. NON-DISCRIMINATION

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

14. FRAUD, CORRUPTION AND ETHICS

14.1 The Contractor shall comply with the terms of the Code of Conduct and Professional Ethics for the Secretariat, available at http://cmsdata.iucn.org/downloads/code_of_conduct_and_professional_ethics.pdf, which by signing this Agreement, the Contractor confirms it has reviewed and accepted.

14.2 The Contractor shall comply with the standards of conduct set forth in IUCN's Anti-fraud Policy, available at http://cmsdata.iucn.org/downloads/anti_fraud_policy.pdf, which by signing this Agreement, the Contractor confirms it has reviewed and accepted.

15. REPRESENTATION AND WARRANTIES

15.1 The Contractor represents and warrants compliance at any time with any laws that apply in the jurisdiction in which Contractor is operating or carrying out this Agreement, including, but not limited to, anti-bribery laws, employment and social security laws and tax laws.

15.2 The Contractor represents and warrants that it is legally registered, authorised to do business and/or has procured any necessary permits or licenses required to carry out this Agreement in the jurisdiction of Project implementation and to grant IUCN the rights described in article 8 (Property of Results, Intellectual Property Rights and Acknowledgement).

15.3 The Contractor represents and warrants that no part of the Budget Funds 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.

16. TERMINATION AND EFFECTS OF TERMINATION

16.1 Termination for cause

16.1.1 IUCN reserves the right to terminate this Agreement in whole or in part, upon written notice with immediate effect in the event that the Contractor:

i. has falsified or provided inaccurate, incomplete or misleading information in any documentation provided to IUCN, including in any proposal or any due diligence documents IUCN requested;

ii. defaults in carrying out any of its obligations under this Agreement including but not limited to the delivery of Tasks and Deliverables in accordance with article 3;

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

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

16.2 Termination for lack of Donor funds

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

16.3 Termination for force majeure

The performance of this Agreement by either Party is subject to acts of God, war, government regulations, 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. 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.

16.4 Effects of Termination

In the event of termination under article 16, the Contractor shall within thirty (30) days of termination, and at IUCN's request:

16.4.1 to the extent possible, complete the Tasks and deliver the Deliverables subject to the Budget Funds made available until the date of termination and stop all ongoing activities under the Project;

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

16.4.3 reimburse IUCN for any expenditures made in breach of the terms of this Agreement and

16.4.4 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.

16.5 In the event that IUCN elects to transfer part or all of the responsibilities of the Contractor for the management of the Project to another institution, the Contractor shall cooperate with IUCN and the other institution in the orderly transfer of such responsibilities and equipment procured using Budget Funds.

16.6

17. NOTICES

All notices under this Agreement shall be sent to the following representatives of the Parties:

Name	Name
Title	Title
[Name of IUCN programme/office]	[Name of counterpart]
Address	Address
Address	Address
Phone	Phone
Fax	Fax
Email	Email

18. APPLICABLE LAW AND DISPUTE RESOLUTION

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

18.2 The Parties to this Agreement shall make every effort to resolve through dialogue any disputes arising from the execution, interpretation and implementation of this Agreement.

18.3 Any dispute, controversy or claim arising out of or in relation to this Agreement, including the validity, invalidity, breach or termination thereof which cannot be settled amicably by the Parties, shall be submitted to mediation in accordance with the Swiss Rules of Commercial Mediation of the Swiss Chambers' Arbitration Institution in force on the date when the request for mediation was submitted in accordance with these Rules.

The seat of the mediation shall be Gland, although the meetings may be held in IUCN Headquarters.

The mediation proceedings shall be conducted in English.

18.4 [OPTION 1]

Any dispute, controversy or claim arising out of, or in relation to, this Agreement, including the validity, invalidity, breach, or termination thereof, that cannot be settled by way of mediation by the Parties within three months from the date on which one party notifies the other of the existence of the dispute, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be one;
The seat of the arbitration shall be Lausanne;
The arbitral proceedings shall be conducted in English.

[OPTION 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.

19. GENERAL PROVISIONS

19.1 This Agreement is the complete understanding between IUCN and the Contractor and replaces all other agreements and understandings in reference to the subject matter of this Agreement.

19.2 All notices between IUCN and the Contractor that are permitted or required by this Agreement shall be in writing, in the English language and may be sent by email with the signed original sent by prepaid priority post to the designated representative indicated in article 17. Any notice or other communication sent by email shall be deemed received on the next business day in the jurisdiction of the recipient following the day of its transmission.

19.3 The legal relationship of IUCN and the Contractor to each other under this Agreement shall be that of independent contractors and nothing in this Agreement shall be deemed in any way to create a partnership, an employee-employer relationship, an agency or joint venture between IUCN and the Contractor. Neither Party shall have any power or authority to bind or commit the other.

19.4 The headings of articles are for convenience only, and neither shall they be used to interpret nor shall they otherwise affect the provisions of this Agreement.

19.5 This Agreement shall only be amended by a written agreement signed by the authorized representatives of both Parties.

19.6 This Agreement and the Contractor’s rights and obligations hereunder shall not be assigned and transferred by the Contractor without prior written consent of IUCN.

19.7 IUCN shall have the right to assign and transfer any of its rights and obligations under this Agreement without seeking the Contractor’s prior written consent.

19.8 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.

19.9 A Party's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

19.10 This Agreement shall be constituted of this agreement proper and all its annexes.

19.11 The following provisions shall survive the expiration or termination of this Agreement: 8, 9, 10, 11, 16, 18, 19.

19.12 In the event that any provision of this Agreement, or any portion thereof, shall be held invalid, illegal or unenforceable under applicable law, the remainder of this Agreement shall remain valid and enforceable.

19.13 In case of conflict between this Agreement proper and any of its Annexes, the Agreement proper and the Annexes shall be interpreted and applied in the following order:

1. This agreement proper
2. Annex 1:
3. Annex 2:
4. Annex 3:

In witness whereof, the undersigned, being duly authorized to do so, have executed this Agreement in the English language in two (2) originals.

IUCN, International Union for Conservation of Nature and Natural Resources	**[Contractor]**
Date:	Date:
[name of representative] [position of representative]	[name of representative] [position of representative]

Annexes