**(1) FSC International Center gGmbH**

**- and -**

**(2)** **Consultant**

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**Service Agreement**

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This Agreement shall become effective upon the last signature of the Agreement

By and between

1. FSC International Center gGmbH

Adenauerallee 134, 53113 Bonn, Germany

represented by the Managing Directors Ms. Dr. Subhra Bhattacharjee and Ms. Marion Barriskell

**-hereinafter ‘FSC IC’-**

and

1. add full legal name (add Mr./Mrs./Ms. to person)

full registered address, including city, ZIP code and country

represented by name of legal representative, if any, including position (for individuals, please delete)

**-hereinafter ‘Consultant’-**

Preamble

**Whereas,** the Forest Stewardship Council A.C. (hereinafter ‘**FSC AC’**), with its registered office in Calle Margarita Maza de Juárez # 436, Col. Centro, 68000 Oaxaca, Mexico, is an international not-for-profit membership organization established to promote environmentally appropriate, socially beneficial, economically viable and overall sustainable management of the world’s forests. FSC AC has developed the FSC Certification Scheme which supports the preservation of worldwide forest resources.

**Whereas,** the FSC Global Development GmbH (hereinafter **‘FSC GD’**), with registered office at Adenauerallee 134, 53113 Bonn, Germany, is a company with limited liability wholly owned by FSC AC and constituted according to German law. Its principal corporate purpose is to conduct the licensing business related to the FSC trademarks, to protect the FSC trademarks worldwide and to ensure their universal recognition. Furthermore, FSC GD is responsible for strengthening the FSC Certification Scheme and all associated values, objectives and tasks on a worldwide basis. Moreover, FSC GD’s missions is to strengthen the global FSC Network and contribute to biodiversity and responsible forest management worldwide. In this regard, its particular purpose is to increase the number of certificate holders and to enable equal access to the benefits of the FSC systems for Third Parties.

**Whereas,** FSC IC is a not-for-profit company with limited liability wholly owned by FSC AC and constituted according to German law. It develops principles and standards for the FSC certification scheme and fulfills its charitable functions within the meaning of the German Fiscal Code through the promotion of ecology and the environment, in particular with regards to the world’s forests in furtherance of the common good. This includes the lead in and development of the FSC policy and standards program. Furthermore, FSC IC is furthering the implementation of educational and other professional training programs that support the conservation of forest resources. In addition, FSC IC performs fundraising activities relating to its charitable purpose.

**Whereas,** theASI - Assurance Services International GmbH (hereinafter **‘ASI’**), with registered office at Friedrich-Ebert-Allee 69, 53113 Bonn, Germany, is a company with limited liability wholly owned by FSC AC and constituted according to German law. ASI performs conformity assessment services for independent companies in relation to the FSC Certification Scheme and also further schemes from other certification programs.

**Whereas,** the Consultant states that he/she has the necessary availability, ability and experience to carry out an efficient service in the areas that are the objective of this Agreement and expressly recognizes the legal personality of FSC IC, FSC ACand its subsidiaries.

**Now therefore**, in view of the Preamble, the Parties a g r e e a s f o l l o w s:

# Definitions and Interpretations

Throughout this Agreement, the terms set forth below shall have the meaning specified in this Section 1.

## Definitions

### **‘Agreement’** means this particular Agreement with all appendixes;

### **‘Effective Date’** means the date when this Agreement comes into force;

### **‘FSC Certification Scheme’** is developed to enable independent certification of environmentally responsible, socially beneficial and economically viable forest management as a market mechanism, allowing producers and consumers to identify and purchase timber and non-timber forest products from responsibly managed forests according to FSC’s principles and criteria. This scheme contains several programs, such as but not limited to the ‘FSC Accreditation Program’, the ‘FSC Licensing Program’, the ‘FSC Membership Program’ and the ‘FSC Policy and Standards Program’;

### **‘FSC’** or **‘FSC Group’** refers to FSC AC, FSC GD, FSC IC and ASI;

### **‘FSC Network’** refers to the global network supporting FSC Group’s mission consisting of the FSC Group itself, the FSC Indigenous Foundation, the FSC Investments and Partnerships Inc. and other regional and national partner organizations as listed at [fsc.org/en/page/locations](https://www.fsc.org/en/page/locations).

### **‘Legal Requirements’** means any present or future law, regulation, directive, instruction, direction or rule of any competent authority including any amendment, extension or replacement thereof which is from time to time in force.

### **‘Payment’** means any fees and expenses payable under this Agreement as set out in Section 3 and in the individual assignment (‘Terms of References’ or ‘ToR’).

### **‘Product’** or **‘Work Product’** means each deliverable or outcome resulting from a work activity performed by Consultant, including all writings and other works, copyrightable or not, that Consultant conceives, discovers, develops, makes or produces, alone or together with others, during the assignment, but only to the extent that they were performed in connection with services based on this Agreement.

### **‘Related Proprietary Rights’** means any and all trade secret, copyright, mask, work, patent, trademark, service mark, certification mark, trade dress or other proprietary rights in all countries relating to the Work Product, any extensions or renewals of the foregoing, any registrations, patents or applications with respect to the foregoing, and any causes of action arising out of or related to any infringement or misappropriation of any of the foregoing.

### **‘Services’** means the services as set out in Section 2 of this Agreement and in any further connected ‘Terms of References’.

###  **‘Term’** means the period of time this Agreement remains in force.

### **‘Third Parties’** refers to parties (i.e. individuals, organizations, corporations or groups of individuals) which are not party to this Agreement.

## Interpretations

### In the event and to the extent only of any conflict between the clauses in this Agreement and its Annexes, the Agreement shall prevail.

### FSC ICand Consultant hereinafter each individually referred to as ‘Party’ and collectively as ‘Parties’.

### The paragraph headings are for convenience only and shall be of no effect for the purpose of interpreting the terms and provisions of this Agreement.

### Except where the context requires otherwise the singular includes the plural and vice versa. A reference to one gender includes all genders and words denoting persons include associations, organization, firms and corporations and vice versa.

### Considering the international nature of the FSC Certification Scheme, the mission of the FSC Group and the purpose and scope of this assignment, both Parties have chosen the English language for all terms and conditions of this Agreement. Notwithstanding the foresaid and in light of Section 15 below, in the case that technical or legal terms in German language are used the Parties agree that these shall have the meaning under and shall be interpreted exclusively in accordance with German law and language; the English translation of terms shall be for ease of reference only.

# Purpose of the Agreement

## Project name/ general description of work area (e.g. Consultant shall provide communication services)

## FSC Accounting Code: please add

## The activities, the binding time schedule of each Service and connected Work Products are in detail subject to the description in the **‘Terms of Reference’** as set out in **Annex 2**.

# Fees and Payment

## FSC IC agrees to pay Consultant a total sum in words (number) US Dollar net and investment time of (working days) to cover the work enumerated under Section 2 and Annex 2. The fees shall be paid by FSC IC in (number) instalment(s).

### The first instalment of (number) US Dollar upon satisfactory completion of deliverables 2.1: Submission of reviewed draft/report and 2.2: Submission of 1st Revised draft of risk assessment.

### The second instalment of (number) US Dollar upon satisfactory completion of deliverables 2.3: Submission of consultation/engagement report and 2.4: Submission of 2nd revised draft of risk assessment.

### The third instalment of (number) US Dollar upon satisfactory completion of deliverable 2.5: Submission of the final revised risk assessment and 2.6: Addressed closing conditions, as per decision-making body, if applicable.

## The fees shall not exceed the total maximum amount described above and shall only be paid after the successful and timely submission to FSC IC of all the deliverables as described in Annex 2. Payments shall be made exclusively in accordance with the subsections below. All fees shall be specified in individual invoices according to German tax requirements and the **‘FSC IC** **Invoice Requirements’** as set out in **Annex 3** hereto.

## Payments will be made by FSC IC within thirty (30) days after receipt of an appropriate invoice as described in subsections 3.1 and 3.2 above.

## All payments by FSC IC hereunder shall be made in US Dollar currency and shall be effected by electronic transfer to a bank account to be specified by Consultant in all invoices. If this data changes during the period of validity of this Agreement, Consultant shall immediately inform FSC IC thereof. Each party shall bear its own costs of the money transfer.

## All Invoices have to satisfy the requirements of §§ 14, 14a of the German VAT Act described in Annex 3 of this Agreement.

## Consultant shall notify FSC IC of his/her/its VAT registration status and number at the commencement of this Agreement or as soon as possible thereafter and undertakes to inform FSC IC of any changes to his/her/its VAT status during the term of this Agreement as soon as such changes occur.

## The VAT reverse-charge regime applies.

## In case Consultant fails to meet the satisfactory submission of any of the deliverables related to the Annex 2 of the Agreement within the agreed time schedule according to Annex 2 of this Agreement, the following terms shall apply:

### If the Consultant fails to meet the satisfactory submission of any of deliverables 2.1-2.5 by the agreed deadline of deliverable 2.5, including potential extensions of the deadline as outlined in the Note of Annex 2:

#### A reduction of ten percent (10%) of the outstanding payable amount still due at the time of the delay will apply for a delay of up to one day beyond the deadline of deliverable 2.5.

#### A reduction of twenty-five percent (25%) of the outstanding payable amount still due at the time of the delay will apply for a delay of between two days and two weeks beyond the deadline of deliverable 2.5.

#### A reduction of fifty percent (50%) of the outstanding payable amount still due at the time of the delay will apply for a delay of between two weeks and four weeks beyond the deadline of deliverable 2.5.

#### If the delay exceeds four weeks beyond the deadline of deliverable 2.5, the entire outstanding payable amount still due at the time of the delay shall be annulled.

### If the Approval Committee gives conditions for the amendment of the Risk Assessment and if the Consultant fails to meet the satisfactory submission of deliverable 2.6 by its respective deadline, including potential extensions of the deadline as outlined in the Note of Annex 2:

#### A reduction of ten percent (10%) of the outstanding payable amount still due at the time of the delay will apply for a delay of up to one day beyond the deadline of deliverable 2.6.

#### A reduction of twenty five percent (25%) of the outstanding payable amount still due at the time of the delay will apply for a delay of between two days and two weeks beyond the deadline of deliverable 2.6.

#### A reduction of fifty percent (50%) of the outstanding payable amount still due at the time of the delay will apply for a delay of between two weeks and four weeks beyond the deadline of deliverable 2.6.

#### If the delay exceeds four weeks beyond the deadline of deliverable 2.6, the entire outstanding payable amount still due at the time of the delay shall be annulled.

### Instalments already paid for successfully delivered and accepted deliverables will not be affected by any reduction of the payable fee in the event of a delay. The reduction will only apply to the remaining amount still due at the time of the delay.

### This shall not apply if the delay is justified. A delay shall be deemed justified if the Consultant informs FSC IC promptly and in a timely manner in text form upon becoming aware of the reasonable circumstances causing the delay, and a new deadline is approved by FSC IC in text form. FSC IC shall not unreasonably withhold approval for such a justified delay.

## This provision shall also not apply in circumstances where a delay solely caused by FSC IC, as specified in the Principal Note of Annex 2, results in an extension that exceeds either of the two applicable deadlines set forth in Sections 3.8.1 and 3.8.2.

# Obligations of the Parties

The Parties shall collaborate in good faith and in accordance with the terms and conditions of the Agreement. In particular and without limitation to the generality of the foregoing, the Parties shall:

## inform each other without delay of any bankruptcy proceedings or appointment of a receiver of his/her/its assets or his/her/its liquidation or it being subject to any similar proceedings;

## comply with all legal requirements and obtain all consents and authorities necessary to fully effect the terms and provisions of this Agreement.

# Principal Obligations of Consultant

Consultant shall perform the Services in good faith and in accordance with the terms and provisions of this Agreement. In particular and without limitation to the generality of the foregoing, Consultant shall:

## apply all provisions of this Agreement in a responsible and efficient manner;

## conduct all responsibilities, duties and activities in a manner suitable to further FSC’s mission and goals according to FSC Principles and Criteria for Forest Stewardship (FSC-STD-01-001)[[1]](#footnote-1), FSC’s organization, systems, business and services as well as conduct independent of his/her/its personal opinions, beliefs and/or values in alignment with FSC’s Code of Conduct[[2]](#footnote-2);

## make all reasonable provisions to ensure health and safety for the employees of FSC IC, FSC AC or its further subsidiaries and their respective subcontractors whilst undertaking any activity related to this Agreement;

## not initiate, promote, act or be otherwise party to or publish any public statement or otherwise take any public position which is in conflict with this Agreement;

## not directly or indirectly, intentionally or through negligence discredit or damage the reputation or integrity of the FSC Certification Scheme and/or the FSC Network;

## not engage with any Third Party which had directly or indirectly discredited or damaged or permitted discrediting or damaging the reputation of FSC Group, its affiliates, its members or its partners or that is public knowledge or otherwise known by Consultant that it may directly or indirectly discredit or damage or permit discrediting or damaging of the reputation of FSC Group, its affiliates, its members or its partners;

## for the proper conduct of business inform without delay about any change in his/her/its name or address and for juridical entities (*“juristische Person”*) also the legal status.

# Data Secrecy and Data Sharing

## Consultant explicitly agrees not to collect, process and/or use personal data obtained from FSC IC or belonging into FSC IC’s area of responsibility without concrete authorization by FSC IC and without sufficient legal grounds for the data processing, in particular as provided by Articles 6 and 9 EU General Data Protection Regulation (hereinafter: ‘GDPR’). This obligation shall continue after the end of the collaborative work with FSC IC and shall also survive the termination of any other contractual relationship between Consultant and FSC IC.

## In case Consultant collects, processes or uses personal data on behalf of FSC IC in the meaning of Article 28 GDPR, the Parties shall enter into a separate written data processing agreement, as required by mandatory law.

## Should Consultant engage any of his/her/its employees in the Services under this Agreement or related agreements between the Parties, such employees shall be obligated to maintain the same confidentiality when taking up their duties. Consultant will oblige all persons conducting work under this Agreement including his/her/its employees and freelancers, to data secrecy (‘Data secrecy’, German: ‘*Datengeheimnis*’, Article 5 GDPR).

## Consultant shall use and process all personal data including other business data transferred by or collected from FSC IC exclusively for the purpose of providing support to FSC IC as agreed in this Agreement. Personal data shall not be used by Consultant for other purposes and shall particularly not be transferred to Third Parties.

## Any use of personal data and any data processing shall take place exclusively on data systems that in technical and organizational terms meet all requirements for protecting the data. In this regard, Consultant shall ensure that he/she/it will take all adequate measures required to ensure data security. This covers in particular, but without limitation, the availability, confidentiality and integrity of the data transferred by or collected from FSC IC.

# Intellectual Property Rights

## Consultant agrees to disclose promptly (“*unverzüglich*” in the sense of § 121 BGB [German Civil Code]) to FSC IC all Work Product. To the extent legally permitted, FSC IC shall be the sole and original owner of, and shall have sole and exclusive right, title and interest in and to the Work Product and Related Proprietary Rights.

## In addition, Consultant hereby assigns, and agrees to assign, to FSC IC at any time and without additional compensation, irrevocably, exclusively and in perpetuity, any and all right, title and interest, whether now existing or hereafter arising, that Consultant may have in or to the Work Product or any Related Proprietary Rights. Consultant herewith irrevocably and in perpetuity grants FSC IC a royalty free and exclusive right to use, copy, publish, alter, sublicense and distribute the Work Product worldwide. FSC IC shall be authorized but not obliged to use the granted rights and shall have the right to use the granted rights in any whatsoever form including new innovative forms of use (e.g. templates, business cards, advertising Products, websites etc.) and to register the Work Product as trademarks. The exclusive license of the intellectual property rights shall have the maximum possible duration according to any applicable law.

## Consultant warrants that the Work Product is not subject to the rights of Third Parties, in particular that it does not infringe copyrights or other intellectual property rights.

## Consultant agrees, without any additional compensation, to sign and deliver any and all instruments which FSC IC may deem necessary or convenient, and take such other lawful actions at FSC IC’s expense as FSC IC may reasonably request, to vest, effect, extend, maintain, protect, exploit or evidence FSC IC’s right, title and interest in and to the Work Product and the Related Proprietary Rights.

## All rights in any materials which might be provided by or anyhow obtained from FSC IC, FSC AC or its further subsidiaries or affiliates are and belong exclusively to their respective owner and no right, title or interest in or to any of the same is granted, transferred or assigned to Consultant. For the avoidance of doubt, all FSC logos, trademarks, trade names and copyright works, and other data used in or in conjunction with or otherwise relating to the materials shall remain FSC’s sole property.

## At the end of the Term (by expiry of the Term or after termination) and at other times upon FSC IC’s reasonable request, Consultant shall promptly deliver to FSC IC all property of FSC IC, FSC AC and its further subsidiaries in his/her/its possession. This includes all files and other documents (such as, without limitation, all designs, customer and price lists, printed material, brochures, sketches, notes, drafts and similar documents) concerning the business of FSC IC, FSC AC and its further subsidiaries in his/her/its possession as well as copies thereof, whether in written, electronic or any other form, and regardless of whether they were prepared by Consultant or provided by FSC IC, FSC AC and/or its further subsidiaries. In addition, if instructed to do so by FSC IC, Consultant shall destroy any such files and documents as mentioned above and expunge all such files and documents from any computer, word processor or similar device into which it was programmed by Consultant or FSC IC or any of its affiliates, directors, officers, employees or advisers. Consultant hereby waives any right of retention in this respect, except for such out of undisputed or legally established counterclaims.

# Insurance, Limitation of Liabilities, Indemnification

## Consultant shall effect and maintain in force a policy of insurance against his/her/its potential liabilities under this Agreement with an insurance company, covering any and all claims for damages, liabilities, claims and costs arising from any incident, or series of incidences. Upon FSC IC’s request, Consultant shall provide FSC IC with a copy of the insurance certificate which shall indicate sum insured and cases covered within ten (10) working days of such request.

## FSC IC, FSC AC and its further subsidiaries or subcontractors shall only be liable for damages and/or disadvantages, property damages or financial losses arising out of acts or omissions of its directors, officers, employees or subcontracting parties which are caused by intend or gross negligence. This shall neither apply in tort for death and/or personal injuries nor for any infringement of cardinal obligations.

## Consultant agrees to indemnify and hold harmless FSC IC, FSC AC and/or its further subsidiaries and its directors, officers, employees or subcontracting parties’ for any financial losses, claims, property damage, personal injuries and expenses, including attorney fees, made against or incurred by Third Parties arising out of activities performed by Consultant, of his/her/its employees or of his/her/its subcontractors hereunder, or arising out of any act or omission of Consultant, of his/her/its employees or subcontractors.

# Term, Termination of the Agreement & Consequences of Termination

## **Term**

Starting with the Effective Date, this Agreement shall have a target completion date as of DD Month 20XX unless extended by mutual written agreement or terminated in accordance with Subsection 9.2. below.

## **Termination**

### This Agreement may be terminated by FSC IC by giving due notice two (2) weeks in advance of the date of termination.

### This Agreement may be terminated at any time by written mutual agreement.

### Either Party may terminate this Agreement with immediate effect for important reason by providing written notice. An important reason may especially be assumed if the other Party enters into bankruptcy proceedings or has a receiver appointed of its assets or is being liquidated or is subject to any similar proceedings, except for the purpose of bona fide reconstruction or amalgamation.

### An important reason for FSC IC may especially be assumed:

#### if it is deemed necessary to maintain the credibility, reputation, good name or any other important asset of the FSC Group and/or the FSC Network;

#### if Consultant is incompetent, guilty of gross misconduct and for persistent negligence or dishonest in the provision of the obligations of this Agreement;

#### if Consultant, as far as reasonably aware, engages with any Third Party which may directly or indirectly discredit or damage or permit discrediting or damaging the reputation of the FSC Group and/or the FSC Network.

## **Consequences of Termination**

### The termination of this Agreement, however caused, shall not affect the rights, obligations or liabilities of the Parties that have accrued prior to the date of termination. Payments, which have already been made by FSC IC, have to be refunded on a pro rata basis. All fees and expenses paid by FSC IC have to be refunded immediately in case the Agreement was terminated by FSC IC because of a breach of contract by Consultant.

# Representation, Assignment & Subcontracting

## Both Parties are independent contractors. Consultant has no authority to represent, bind or commit the FSC IC, FSC AC or its further subsidiaries in any way except as agreed in writing by the respective legal representative in charge in advance.

## The Parties agree that FSC IC shall be authorized at any time to assign its rights and obligations partially or entirely to FSC AC or a wholly owned subsidiary of FSC AC, which are named in the Preamble above, by informing Consultant.

## Consultant shall not be authorized to assign, subcontract or delegate its rights and obligations according to this Agreement to Third Parties, unless agreed by FSC IC in text form in advance.

## Notwithstanding the above, FSC IC agrees that the Consultant will collaborate with (full name) to provide the services under this Agreement. FSC IC thus authorizes the Consultant to subcontract some of the services referred to under this Agreement to (full name). The Consultant is responsible for ensuring full compliance of (full name) with the stipulations and obligations arising out of this Agreement, especially concerning confidentiality, data processing and data protection*. (if applicable – if there are subcontractor(s))*

# FSC-furnished Items, etc.

In the event that FSC furnishes or has a Third Party furnish any items to Consultant for the purpose of the Services, such items shall remain the property of the respective FSC entity or its designees. Consultant shall keep such items with the care of a good custodian and use such items solely for the performance of the Services for which such items are furnished. FSC IC shall pay any duty or tax levied for such items if it is applicable. Consultant shall return such items to FSC IC or its designees, upon FSC IC’s request within ten (10) working days in the same condition as furnished to Consultant, reasonable wear and tear excepted.

# Severability

## Should any provision of this Agreement or any provision incorporated into or amending this Agreement in the future be or become invalid or unenforceable or should this Agreement or any provisions incorporated into or amending this Agreement in the future contain an omission, then the legal effect of the other provisions shall not be affected thereby.

## The invalid or unenforceable provision shall be deemed to be substituted by a suitable and equitable provisions which, to the extent legally permissible, comes as close as possible to the economic intent and purpose of the invalid or unenforceable provision. In case of an omission, a suitable and equitable provision shall be deemed to have been agreed upon which reflects what the Parties, in the light of the economic intent and purpose of this Agreement, would have agreed upon, if they had considered the matter.

# Waiver

The failure by either Party, at any time, to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this Agreement. The waiver of default by either Party shall not be deemed a continuing waiver or a waiver in general, but shall apply solely to the instance and/or the provision on this Agreement to which such waiver is directed.

# Force Majeure

## For the purpose of this section ‘Force Majeure’ means any circumstances not reasonably anticipated at the date of this Agreement and not within the reasonable control of the Parties individually or collectively including, without prejudice to the generality of the foregoing, strikes, lockouts, shortages of labor or raw materials, terrorist attacks, civil commotion, riot sabotage, acts of public enemy, governmental action, revolution, invasion, war, threat of or preparation for war, political unrest, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster.

## If, at any time, during the validity of this Agreement, the performance by either Party individually (or collectively), in whole or part of any obligation under this Agreement is prevented or delayed by Force Majeure, the so affected Party shall be exempt from any liability for failure to perform or for delay in performance towards the other Party, provided that:

### the so delayed Party promptly notifies the other Party thereof, specifying the matters constituting Force Majeure, and

### provides evidence, as reasonably possible, of such circumstances in verification thereof, and

### specifies the period for which it is estimated that the prevention or delay will continue.

## For the avoidance of doubt, the non-compliance with the obligations stated in Section 14.2., disentitles the non-compliant Party to invoke this Section.

## The Party affected by the Force Majeure shall nevertheless use its best efforts to resume full performance of its obligations under this Agreement at the earliest possibility. If the Force Majeure continues for a period of two (2) months or more following notification, the Party not affected by the Force Majeure may terminate this Agreement by giving not less than thirty (30) days prior notice to the other Party. In such case, and in accordance with Section 9.3., payments, which have already been made by FSC IC, shall be refunded on a pro rata basis.

## The notice of termination shall be of no effect if the Party affected by the Force Majeure resumes full performance of its obligations before the termination becomes effective.

# Jurisdiction & Law, ADR

## This Agreement is construed in accordance with and shall be governed and interpreted by the laws of Germany.

## The Parties shall settle amicably through direct negotiations any dispute, controversy or claim arising out of or relating to the present Agreement, including breach and termination of the Agreement.

## Should such negotiations fail, any disputes shall be finally settled according to the Arbitration Rules and the Supplementary Rules for Expedited Proceedings of the German Institution of Arbitration e.V. (www.dis-arb.de) without recourse to the ordinary courts of law. § 1059 ZPO (German Civil Law Procedure) will remain unaffected, which means that an arbitral award may only be challenged by application for judicial annulment within three (3) months, justified with the reasons mentioned in § 1059 ZPO.

## The place of arbitration shall be Cologne, Germany. The arbitration tribunal shall consist of three (3) arbitrators. The substantive law of Germany shall be applicable to the dispute. The language of the arbitration proceedings shall be English.

# Miscellaneous

## This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof. This Agreement supersedes and replaces all previous negotiations, representations or understandings between the Parties relating to the subject matter hereof. Insofar as the additional conclusion of the Data Processing Agreement or Joint Controller Agreement is necessary, it shall become part of this Agreement. Amendments, alterations and/or other adjustments to this Agreement, also changes to this subsection, must be confirmed in writing in order to be legally valid. § 305b BGB (German Civil Code), that states that individual contractual agreements have priority over general terms and conditions, remains unaffected. The burden of proof shall be borne by the Party referring to an oral agreement superseding this Agreement.

## It is agreed that all terms and conditions of this Agreement shall apply exclusively and that the Parties will not be bound to any potentially existing and contradicting general terms and conditions in use by Consultant. The terms and conditions of this Agreement shall in any case prevail.

## Either Party shall in all respects comply with any and all applicable laws, regulations and orders of governmental authorities and other countries having jurisdiction.

## Consultant agrees to treat any and all information provided in or through this Agreement as confidential information and to enter into a **‘Confidentiality and Non-Disclosure Agreement’** as set out in **Annex 1**. Consultant agrees irrevocably that FSC IC is authorized to disclose to any Third Party upon request exclusive of other parts of the Agreement the signed and agreed Confidentiality and Non-Disclosure Agreement.

## This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

## The Parties agree that this Agreement and any following amendment in connection herewith shall be electronically signed via DocuSign, and that DocuSign signatures appearing on this Agreement are legally the same binding as handwritten signatures for the purposes of validity, enforceability, and admissibility.

# Signatures

/fscplacesigned2/ /fscdatesigned2/ /fscplacesigned1/ /fscdatesigned1/

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place, Date Place, Date

/fscsignature2/ /fscsignature1/

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of FSC IC For and on behalf of Consultant

Annex 1: Confidentiality & Non-Disclosure Agreement

By and between

1. FSC International Center gGmbH,

Adenauerallee 134, 53113 Bonn, Germany,

represented by the Managing Directors Ms. Dr. Subhra Bhattacharjee and Ms. Marion Barriskell,

**-hereinafter ‘FSC IC’-**

and

1. add full legal name (add Mr./Mrs./Ms. to person)

full registered address, including city, ZIP code and country

represented by name of legal representative, if any, including position (for individuals, please
delete)

**-hereinafter ‘Consultant’-**

1. Confidential and Non-Disclosure

1.1. Consultant acknowledges that all Confidential Information (as defined below) constitutes a valuable, proprietary and confidential asset.

1.2. For purposes hereof, ‘Confidential Information’ refers to information related to the business, including personal data, of and/or belonging or pertaining to.

1.2.1. FSC IC, FSC AC and its subsidiaries;

1.2.2 the full FSC certification scheme including but not limited to the FSC accreditation program, FSC certification system, FSC licensing program, FSC membership program and the FSC policy and standards program,

1.2.3. associated organizations of the FSC IC, FSC AC and its subsidiaries including all applicants for accreditation or FSC and/or ASI accredited certification bodies;

1.2.4. donors and stakeholders of FSC IC, FSC AC and its further subsidiaries or its associated organizations;

1.2.5. members of the FSC AC and its further subsidiaries and/or its staff and subcontractors;

and that Consultant obtains in connection with his/her/its current contractual relation FSC IC, FSC AC and its further subsidiaries.

1.3. Confidential Information may be in tangible form (such as written materials, audio, video or other data carrier) or may be learned through conversations to which Consultant is a party or which Consultant overhears. All such records, documents, material and information obtained or ascertained by Consultant shall be deemed and considered confidential information, even if not marked as such but objectively recognisable as confidential.

1.4. Consultant, except as authorized in writing by the Managing Director of FSC IC, shall not at any time make any commercial use of, or disclose to any Third Party, any such confidential information as described above.

1.5. Consultant ensures to restrict disclosure of the Confidential Information solely to his/her/its employees, contractors, representatives and/or agents on a need-to-know basis and advise those persons of their obligations hereunder with respect to such Confidential Information.

1.6. Consultant agrees to indemnify and hold harmless the FSC IC, FSC AC and its further subsidiaries from any damage, loss, cost or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any Third Party claims of any unauthorized use or disclosure of the Confidential Information.

1. Exemptions

The restrictions on use and disclosure set out in this Agreement will not apply to any information which:

2.1. at the date of this Agreement is already known to Consultant (as evidenced by written records) and was not acquired directly or indirectly from FSC IC, FSC AC and its subsidiaries and was not subject to any prior duty of confidentiality or secrecy;

2.2. at the date of its disclosure to Consultant is public knowledge or which subsequently becomes public knowledge other than as a result of a breach of confidentiality;

2.3. at any time after the date of this Agreement is disclosed to Consultant by any Third Party who did not acquire such information directly or indirectly from FSC IC, FSC AC and its subsidiaries and who is not under any duty of confidentiality or secrecy in relation thereto;

2.4. is required to be disclosed by law or order of a court of competent jurisdiction or recognized stock exchange or government department or agency provided that prior to such disclosure Consultant consults with the Managing Director of FSC IC as to the proposed form nature and purpose of the disclosure.

1. Duration

The restrictions in this Confidentiality and Non-Disclosure Agreement shall survive the termination of the entire Agreement between the Parties and shall be in addition to any restrictions imposed on Consultant by any contract, statutes, guidelines or standards and policies.

1. Signatures

/fscplacesigned2/ /fscdatesigned2/ /fscplacesigned1/ /fscdatesigned1/

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place, Date Place, Date

/fscsignature2/ /fscsignature1/

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of FSC IC For and on behalf of Consultant

Annex 2: Terms of Reference

Title: **Consultant to FSC IC**

Reports To: **Programme Manager Country Requirements General Functions**

1. **Specific tasks**
	1. Registration of the centralized process with PSU.
	2. Attend the kick-off meeting/training.
	3. Identify relevant information sources required to perform the risk analysis. The sources included in the existing risk assessment for a given country shall be reviewed and new ones may be added depending on recent updates and relevance. The list of sources shall at minimum consider general sources of information provided by key topics in the risk assessment template.
	4. Prepare a brief review report (up to 7 pages) summarizing the analysis of existing risk assessment against the requirements of the revised <FSC-PRO-60-006b Risk Assessment Framework>. (applicable only for revisions of Risk Assessments)
	5. Perform independent research on risks related to the assigned indicators in the agreed areas.
	6. Prepare 1st draft of revised risk assessment, including the analysis of risks per each indicator and mitigation measures using the risk assessment template (to be provided by FSC IC), and submit to FSC IC for review.
	7. Improve 1st draft of revised risk assessment based on the FSC IC review before consultation.
	8. Identify stakeholders following at minimum Annex 1 of <FSC-PRO-60-006b Risk Assessment Framework> and invite them to comment on the draft risk assessment.
	9. Consult FSC Staff (FSC International, Network Partners (NP) or National Representatives (NR)), as well as the Standard Development Group (SDG) in cases where it exists, as part of the focused consultation.

1.10. Conduct one 30-day focused consultation on the draft risk assessment.

1.11. Collect, review and address all comments provided by stakeholders.

1.12. Prepare a consultation report, including responses to the comments and an indication as to how the issues raised were addressed.

1.13. Attend and contribute in calibration workshop with other consultants developing FSC Risk Assessments.

1.14. Provide maps (i.e., shapefiles) of areas at indicator level for negligible and non-negligible risk designation.

1.15. Prepare second draft of revised risk assessment, addressing stakeholder feedback received during consultation, and submit to FSC IC for review.

1.16. Improve second draft of revised risk assessment based on the FSC IC review and submit to FSC IC as a final draft.

1.17. When applicable, address closing conditions in the risk assessment.

1.18. Translate the approved risk assessment to (language). (if applicable)

1. **Deliverables / Time Schedule**
	1. Reviewed draft/report (includes tasks no 1.1 to 1.4) - Existing risk assessment has been reviewed against the revised Risk assessment framework. Gaps have been identified, sources reviewed, relevant sources retained and transferred to the new template, and a review report has been prepared in English, summarizing this analysis, and submitted to FSC IC, by (date).
	2. First revised draft (includes tasks no 1.5 to 1.6) - Draft containing independent research content, prepared in English, and submitted to FSC IC by (date) (Note: After the consultant submits a content-complete draft, FSC IC will perform a complete assessment of the draft, providing comments and questions. This interim draft will be sent back to the consultant for changes and explanations. FSC IC aims to do this process not more than once for the 1st draft. The need for any additional substantial reviews by FSC IC will lead to consideration of the task as not delivered).
	3. Consultation/engagement report (includes tasks no 1.7 to 1.12)- Report containing the results of consultation and engagement activities by (date) (Note: It is recommended to organize the consultation in the local language and keep a record of original comments. Additionally, the documents submitted to FSC IC shall be in English).
	4. Second Revised draft (includes tasks no 1.13 to 1.15) - 2nd Revised draft addressing the feedback from FSC IC, and consultation results (and follow-up research) prepared in English and submitted to FSC IC for assessment. This includes, in addition: a) Consultation report; b) Assessment report; c)Map presenting risks, by (date). (Note: After the consultant submits a content-complete draft, FSC IC will perform a complete assessment of the draft, providing comments and questions. This interim draft will be sent back to the consultant for changes and explanations. In case the quality level of the corrected draft is still not sufficient, FSC IC will send it back to the consultant for additional changes and explanations. FSC IC reserves the right to do this process not more than 3 times for the final draft. The need for any additional substantial reviews by FSC IC will lead to consideration of the task as not delivered).
	5. Final draft (includes task no 1.16) - The draft addressing all FSC IC comments and agreed with FSC IC, by (date).
	6. Closing conditions addressed (includes task no 1.17 and 1.18) - If the Approval Committee gives conditions for the amendment of the Risk Assessment, the Consultant will address those conditions, revise the final draft accordingly, submit it for FSC IC feedback and make improvements based on the FSC IC feedback, translate the approved risk assessment to (language) (if applicable) by (date).

Annex 3: FSC IC Invoice Requirements for suppliers/service providers & consultants

**Invoices must contain the following details:**

1. full name and full address of the service provider;
2. full name and full address of the service recipient;
3. the date of issue (invoice date):

Note: the invoice date shall reflect the payment terms and conditions as set out in the agreement and shall not be earlier than the date when the services were fully rendered, or exceptionally if advanced or fixed installments are agreed on;

1. a serial invoice number for identification purposes (to be issued only once by the service provider for the individual invoice)
2. the specified period of the service provided;
3. the net amount in USD or EUR, the applicable tax rate in %, the tax amount in USD or EUR due for the net amount, the gross amount (net amount plus tax amount) or the indication of tax exemption.
4. full bank details (beneficiary name and address, bank name, account number, SWIFT/BIC code) for payment through wire transfer.
5. in case of advance payments, the date of the receipt of the value - this date is fixed and is not identical with the date of issue of the invoice (this does not count for partial performance);

**Additional requirements for suppliers, service providers & consultants domiciled in the European Union:**

1. tax number or the European VAT-Id Number of the service provider assigned by the respective tax office.
2. IBAN code of the beneficiary’s account for payment through wire transfer.

|  |
| --- |
| **In case of uncertainty, please contact your local tax advisor** |

**Mr. Smith/ Smith Enterprises Inc.**

1

**Street,**

**City, Country**

9

**VAT-Id .**XXXXXXXX *if applicable*

2

**FSC International Center gGmbH,**

Adenauerallee 134, 53113 Bonn, Germany

 Invoice date/ Rechnungsdatum

3

 XX.XX.XXXX

**Invoice / Rechnung**

5

|  |  |  |  |
| --- | --- | --- | --- |
| Invoice-No.4 | *(Example:09 /2019)* | Invoice Period /Rechnungszeitraum | *(Example: 01.01.2019 - 31.05.2019)* |
|  |
| No. | Description | Amountcurrency | VAT(XX %) |
| 1 | (Synopsis of fees and expenses, example: *“On-site audit of a certificate holder, located in London/ England“*, “*Travel expenses Working Group Meeting London 05 – 06 March 2019”)* (The details should be listed in an enclosed overview - please either use the attached invoice template below or any other similar sheet with the following information:Consecutive number of receipt, description, currency, amount in original currency, exchange rate, mileage with navigation information, amount converted in either EUR or USD)  |  350,00 EUR6 | 0,00 |
|  |
|  | Amount net | VAT | Gross |
| Total amount including VAT | **350.00 EUR**  | **0,00 EUR**  | **350.00 EUR**  |

* Payable within xx days

Due date according to contract conditions

* Please mention the invoice number stated above with the payment transaction
* Please wire transfer in the agreed currency to the account stated below:

 XYZ Bank, City, Country

7

 Acct. No.: (example: 123456789)

10

 IBAN: (example: DE10 3708 0040 0769 5389 00) *if applicable*

 Swift-/BIC Code (example: COBADEFF370)

**Reverse-charge-regime: The person liable to pay the tax is the service recipient**

**Mr. Smith/ Smith Enterprises Inc.,**

Address

European VAT-ID number (if service provider is domiciled in a Member State) or other tax number

(if service provider is domiciled in a country that is not a Member State)

**FSC International Center gGmbH,**

Adenauerallee 134, 53113 Bonn, Germany

 Invoice date/ Rechnungsdatum

 XX.XX.XXXX

**Invoice / Rechnung**

|  |  |  |  |
| --- | --- | --- | --- |
| Invoice-No. |  | Invoice Period /Rechnungszeitraum |  |
|  |
| No. | Description | Amountcurrency | VAT(XX %) |
|  |   |  |  |
|  |
|  | Amount net | VAT | Gross |
| Total amount including VAT | currency | currency | currency |

* Payable within xx days
* Please mention the invoice number stated above with the payment transaction
* Please wire transfer in the agreed currency to the account stated below:

 Bank name:

 Acct. No.:

 IBAN:

 Swift-/BIC Code:

**Reverse-charge-regime: The person liable to pay the tax is the service recipient**

1. Most recent version to be found here: <https://fsc.org/en/document-centre/documents/resource/392> [↑](#footnote-ref-1)
2. To be found here: <https://fsc.org/en/media/fsc-code-of-conduct> [↑](#footnote-ref-2)