Place, date

Between

**Name of the service provider company**, full address, Tel. +

Represented by: full name of the person representing the FSP, hereinafter referred to as the “**Financial Service Provider (FSP)”**

and

**The International Committee of the Red Cross**,

Represented by: full name and title of the person representing the ICRC, hereinafter referred to as the “**ICRC”**.

The ICRC and the FSP hereinafter will also be referred to as **“Parties”** collectively.

For the purpose of this Agreement, each party shall appoint a Contact person.

The Contact person for the ICRC is:

Name:

Function:

Phone number:

E-mail address:

The Contact person for the FSP is:

Name:

Function:

Phone number:

E-mail address:

The parties shall promptly notify each other of any change in the name or details of the Contact person. All necessary information regarding the cash transfer program shall be done in writing, validated and endorsed by Contact persons.

**PREAMBLE**

**WHEREAS:**

(i) The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavors to prevent suffering by promoting and strengthening International Humanitarian Law (IHL) and universal humanitarian principles.

(ii) The mandate of the ICRC is based on the 1949 Geneva Conventions, their 1977 Additional Protocols, the Statutes the International Red Cross and Red Crescent Movement, and the resolutions of the International Conferences of the Red Cross and Red Crescent.

(iii) Where it operates - in situations of armed conflicts and other situations affected by of violence falling outside an armed conflict - the ICRC strives to ensure that people are protected from any threat to their lives, physical integrity or dignity, and to provide assistance to those in need.

(iv) The ICRC enjoys privileges and immunities in Country on the basis of the 1949 Geneva Conventions, their 1977 Additional Protocols, the 1961 Vienna Convention on Diplomatic Relations, as well as Title of the HQ Agreement / MoU, including immunity from legal process and execution, as well as inviolability of all documents and data in its possession or belonging to it.

(v) The ICRC activities are governed by its own rules on personal data protection, as set forth in the *ICRC Rules on Personal Data Protection* adopted on 24 February 2015 (“**ICRC RPDP**”).

(vi) The Preamble to this Agreement and the Annexes thereto are an integral part of this Agreement.

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**ARTICLES**

**THE PARTIES AGREE AS FOLLOWS:**

# **OBJECT AND PURPOSE**

* 1. Within the framework of its assistance program in Country, the ICRC intends to commission the FSP for providing cash transfer in [here specify the areas of intervention, e.g. in different areas of Kismayo district], using [here specify the services used for cash transfer (e.g. SIM cards, bank cards, postal transfers, depending from the response option)] (**“the Service”**)**.** This contract covers payments from [here specify the min amount per beneficiary and number of transfers (e.g. 4 transfers of 80 USD)] to up to [here specify the max number of beneficiaries, (e.g. 9'000 beneficiaries)], during [here specify the period of the program – between date and date].
  2. The maximum amount to be transferred under this contract is:

Amount per beneficiary x max number of beneficiaries x number of instalments

(e.g. 80 USD x 9'000 (max) beneficiary x 4 months = 2'880'000 USD)

The number of transfers and their amount to be organized for the final completion of the contract remains at the discretion of the ICRC.

* 1. This agreement shall commence on (insert the date) and shall expire (insert the date), unless terminated sooner under the terms of this Agreement.
  2. The present Agreement is aimed at fulfilling exclusively humanitarian purposes, and, more specifically, at assisting victims of armed conflicts and other situations of violence. Therefore, any right, duty and obligation shall be construed and interpreted to serve exclusively humanitarian purposes.

# **OBLIGATIONS OF THE ICRC**

The obligations of the ICRC are the following:

* 1. For each transfer order, depending on the proposed solution, define what ICRC should do in order to initiate the transfer order (e.g. the ICRC will realise a payment order (PO)).

Here specify what details the document that precedes the transfer order should contain (e.g. The PO will bear ICRC PO number for proper follow up and will be accompanied by a list of beneficiaries with the amount to be transferred to each of them. The list will include all relevant details to perform the transfer: Names of beneficiaries, account number, amount and ICRC PO number, required payment date, phone number, as per annex 1). Payment instructions can be attached as an annex to the contract.

This document will be transmitted minimum xy working days prior the scheduled date of transfer to the beneficiaries.  
The ICRC shall pay commission of [xy] % per transfer or per total transferred amount of cash, in case it is agreed like that for transfers to the beneficiaries for the authorized payment provided by the FSP in here specify the payment terms of the transfer fees.

* 1. The ICRC shall transfer the necessary funds to the FSP dedicated account detailed as point 2.7 by the latest xy working days prior the scheduled transfer to the beneficiaries. Transfers shall be made in xy currency. The FSP will acknowledge the receipt of payment by issuing an official receipt to that effect as required by the ICRC.
  2. The funds, or total amount of money covered by this contract to be transferred by the ICRC to the FSP cannot exceed xy amount of money (write the amount and currency by letters). This amount will be transferred under the conditions set in 2.2.
  3. The ICRC shall identify and select beneficiaries and provide necessary information to the FSP. The ICRC is responsible for the accuracy and completeness of the information provided to the FSP, including any information regarding the beneficiaries (such as names, numbers, etc.).
  4. The ICRC will instruct the FSP on the type of documents that the FSP shall rely on for beneficiary identification and use of the cash transfer services (e.g. beneficiary need to provide valid, national ID for collecting the cash over the counter).
  5. The ICRC will inform the FSP in case of problems during the use of provided services (e.g. card / PIN replacement, account closure).
  6. FSP dedicated account is [here list all details related to dedicated account where all fees / funds will be transferred to FSP]

Account details:

ACCOUNT NAME:   
BANK NAME:   
ACCOUNT NUMBER  
BANK ADDRESS:   
SWIFT CODE:

* 1. The ICRC will not reimburse any unauthorized expenditures.
  2. The ICRC will stay fully informed on the progress of the project, and the visit project sites during the duration of the project.
  3. If the cash transfers required by this contract have to be made in Regions / Districts that are not covered by this contract a written request should be submitted to the FSP at least xy working days in advance. A written agreement so as to additional cost if any, should be communicated to the ICRC within xy working days after the reception of the request.

# **OBLIGATIONS OF THE FSP**

The obligations of the FSP are the following:

* 1. Acknowledge receipt of the ICRC transfer order and of the funds transferred by the ICRC in writing and present its comments if any within 1 working day.
  2. Upon receiving the necessary information about beneficiaries in most of the cases that will be list of beneficiaries, and required form of it can be attached to the contract from the ICRC, the FSP will make all necessary steps in order to [register beneficiaries / open accounts / activate accounts within xy working days (e.g. open EVC account for each of the beneficiaries who do not already have such an account].
  3. Produce and deliver the [here specify what is the output of the provided cash transfer service, either card, sim card, account] to [either ICRC or beneficiaries, depending on the chosen solution] within [xy working days from the moment of beneficiaries’ registration / accounts opening / activating accounts]. Characteristics of the card, sim card, bank account that will be delivered to beneficiaries (e.g. in a form of leaflet) shall be attached to the contract.
  4. Transfer the cash amount to intended beneficiaries [here specify in what way the cash transfer should be done, using the chosen cash transfer mechanism, beneficiary list and the payment instruction together with the required date of transferring money from FSP to the beneficiaries, (e.g. using the mobile cash transfer services (EVC Plus) as per beneficiary list provided by the ICRC when and where required, as per payment instruction and requested payment date)]. Currency for the transfer shall be [specify currency].
  5. Provide fully trained staff [here specify the trained staff for beneficiaries or for the ICRC staff or for the both, (e.g. trained staff that have EVCplus service experience for the purpose of training new users including ICRC employees)] and provide training adapted to the payment method. The training will be provided before the transfer of the funds.

You can define what are content, form and outputs of the training, (e.g. by the end of a training session the participants will know how to Withdraw / Deposit money, Transfer money, Pay bills, Mobile Recharge Self & Other, Merchant Payments (M-Shop), View Mini Statement, View Bills, Balance Enquiry, Change Language and Change PIN).

The FSP will conduct the training [here define the frequency, capacity and place of the training (e.g. batches of 200 clients per training a day in premises of FSP)].

* 1. After the cash transfer to beneficiaries’ accounts the FSP shall notify beneficiaries - recipients of the cash by SMS, according to the ICRC instructions. In such a case, make sure that beneficiary list contains the phone numbers.
  2. After processing transfer order(s), the FSP shall provide to the ICRC a detailed transaction report in soft and hard copies with complete details including: [here specify all necessary details you would need in the provided report for the program monitoring (e.g. beneficiaries account number and name, transferred amount, reference number (ICRC PO number) and payment status.)] This report shall be provided within [xy hours or working days] after the requested deadline for completing the transaction.
  3. If funds cannot be transferred to some beneficiaries as per 2.4, [here specify what FSP shall do, depending on the used solution e.g. the FSP shall try again up to x times]. Each transfer order shall be completed within [xy working days] from [starting date]. Any funds not transferred pursuant to 2.4 after this period shall be returned to the ICRC immediately. The FSP shall inform the ICRC of the reason why the money could not be transferred [here specify information that can be important, e.g. the beneficiary that could not be reached, as well as the number of failed attempts].
  4. Rectify any transfer errors within [xy hours, here specify the shortest possible period, depending on the used solution] from the time of notification by the ICRC.
  5. Replacement of [here specify card, PIN code], in case they are lost or expired is done on demand by the [ICRC / beneficiary, depending on the solution] in [xy] working days.
  6. Provide the ICRC with software to facilitate the follow up of the cash disbursement, or provide an alternative facility / system that will allow the tracking of disbursements, in case this is possible and there is a need for it. In case the program requires to have information about cash withdrawal from beneficiaries the same system should allow it.
  7. Provide an operative, accessible and sufficient number of points of cash distribution (e.g. ATMs, POSs, branches) in program areas of intervention and inform the FSP staff within the project zone about the required cash liquidity at the time of the cash distribution and ensure that such cash liquidity is available.
  8. Provide a customer service support that will provide technical help to beneficiaries during and after cash transfer and act in case of service failure.
  9. Provide a Complaint and Respond mechanism that will collect feedback from beneficiaries.
  10. The FSP is in charge of taking all security measures pertaining to the cash transfer [depending on the cash transfer mechanism, here you can list the security requirements related to particular program, e.g. secure SMS transactions in the case of mobile money, security of ATMs, not practicing cash withdrawal in the late hours].
  11. The FSP shall ensure enough capacity for crowd management in case it is relevant for the program.
  12. Responsibility of the funds transferred: As soon as the funds have been transferred by the ICRC to the FSP and the FSP has acknowledged their receipt in accordance with Articles 2.1 and 3.2, the FSP is solely responsible for the funds. The funds shall remain the property of the ICRC until they have been received by the beneficiaries in accordance with the present agreement. Should any amount not be transferred to the beneficiaries in accordance to the present agreement, the FSP shall refund the ICRC immediately as provided for in Article 2.8.
  13. The FSP shall compensate the ICRC for any cash loss occurring after funds have been received by the FSP and before they have been received by beneficiaries.
  14. The FSP shall ensure that payment lists of beneficiaries and payment instructions from the ICRC are adhered to, and that no payment is made to any other person than those nominated in the list without prior written amendment and authorization from the ICRC.
  15. Employees engaged by the FSP for the implementation of the project will be under the sole responsibility of the FSP without any employment relationship whatsoever with the ICRC.

The FSP shall release the ICRC from any liability and shall indemnify and hold harmless the ICRC from any damages and costs resulting from claims by third parties in connection with the performance of this contract, except in case such liability or claim results from an intentional act or gross negligence on the part of the ICRC or its staff.

1. **CONFIDENTIALITY**
   1. For the purposes of this Agreement, “Confidential Information” means any information that is identified as Confidential by either Party, as well as all trade secrets and business or technical information of the disclosing Party including, but not limited to, methods, techniques, processes, software, documentation, devices, or compilations of information, samples, and documentation.
   2. In any case and under all circumstances, the Parties undertake to preserve the confidentiality of Confidential Information contained in reports, letters and other communications between them, as well as of any other document classified as “Confidential” which may be in their possession or may come to their knowledge in relation to the Service provided. This includes neither divulging the content of the aforementioned documents to any third party (or any portion of it), nor permitting their disclosure or use in judicial or administrative proceedings, without the disclosing Party’s prior written consent. The Parties commit to take whatever precaution is necessary to ensure this and to avoid any act that could affect the disclosing Party’s prerogatives. Unless the documents in question are covered by the ICRC Privilege of Non-Disclosure provided for in Clause [ARTICLE OF THE HQ AGREEMENT / MoU ON ICRC PRIVILEGE OF NON-DISCLOSURE], these confidentiality provisions may be qualified by laws providing for confidentiality to be lifted under certain circumstances, such as freedom of information acts/similar legislation, where such laws are applicable.
   3. The recipient Party agrees to allow access to the Confidential Information received from the disclosing Party exclusively to its principals and employees who must necessarily know about it in order to fulfil the purpose set forth in this Agreement.

The Parties further agree:

* to notify each principal or employee who is provided with access to the Confidential Information of its confidential nature and of their obligation to maintain such confidentiality;
* to obtain and maintain written confidentiality contracts from said principals and employees;
* to take reasonable measures to restrain said principals and employees from unauthorized use or disclosure of any Confidential Information.
  1. The obligations of the Parties with respect to Confidential Information shall not apply to information:
* that was already in possession of the other Party before its disclosure by the disclosing Party, as evidenced by pre-existing documentation;
* that was independently developed by one Party without using or consulting the Confidential Information of the other Party;
* that is public knowledge without any action by, or involvement of, the Parties;
* of which disclosure, access, or use is required to perform the Parties’ obligations or to exercise their rights granted under this Agreement.

1. **DATA PROTECTION**
   1. With regard to the protection of Personal Data related to the present Agreement, the Parties undertake to comply with ICRC RPDP and the provisions contained in the Data Processing Agreement (the **“DPA”** - Annex 1), which form an integral part of the present Agreement.
2. **SERVICE FEES** 
   1. The transfer to beneficiary accounts is undertaken by the FSP with the fee of [here specify the fee for it / price for the transfer (e.g. xy % from the total transferred amount or xy % per every transfer or free of charge, depending from the agreement)]. The fee for cash transfer is borne by [here specify by which party]. The total number of transfers to be done in the framework of this project shall not raise any additional charge.
   2. Here specify fees for beneficiaries’ registration / account opening / account activation / and who is paying it.
   3. Here specify other (than above mentioned) possible fees related to the cash transfer and who is responsible for paying them (that can be fee for handling the accounts, closing the accounts, withdrawal the money on the ATM, withdrawal the money on the POS, producing the ICRC emblem on the card, replacement of the lost / expired card / PIN).
3. **PAYMENT** 
   1. Payment terms: [here define what are the agreed terms and deadlines of payment the FSP services from ICRC side (e.g. payments for FSP services, will be done by bank transfer within xy banking days after reception and acceptation of the invoice from ICRC).
   2. The account to be used for the payment and for the transfer of the funds [either list all details or refer to the article in the contract, if it is mentioned, e.g. as per details in the point 3.7].
4. **GENERAL CONDITIONS**
   1. All conditions not mentioned herein shall be governed by the ICRC General conditions on work that the FSP acknowledges to have been acquainted with.
   2. All notices under this contract will be given in writing and will be deemed to have been properly submitted when received and acknowledged by the Contact person.
   3. For the purpose of this contract, English shall be considered the applicable language.
5. **APPLICABLE LAW**
   1. This contract is governed by Swiss law, without regards to conflicts of law principles.
6. **DISPUTES AND ARBITRATION**
   1. Any dispute or claim arising out of or relating to this contract, including the breach, termination or invalidity thereof, shall be finally and exclusively settled by arbitration in accordance with the UNCITRAL (United Nations Commission on International Trade Law) arbitration rules in force on the date when the Notice of arbitration is submitted in accordance with these Rules. The arbitration award shall be final and not subject to appeal before the Swiss Supreme Court. The appointing authority shall be the Chamber of Commerce and Industry of Geneva, Switzerland. The number of arbitrators shall be one, the seat of arbitration shall be Geneva, Switzerland and the language shall be English.
   2. Nothing in this contract shall be interpreted as an express or implied waiver by the ICRC of its privileges and immunities as recognized under national and international law.
7. **FORCE MAJEURE**
   1. The Parties shall be released from responsibility for full or partial failure to perform any of the provisions hereof if this failure resulted from force majeure, which is beyond the control of a Party which failed to perform its obligations. Force majeure shall include but shall not be limited to natural calamities, extreme weather conditions, fires, wars, strikes, military actions, mass disorders, adoption of respective acts of state and government authorities (hereinafter referred to as “**Force Majeure”**).
   2. The period of release from responsibility shall commence at the moment of notifying by the Party which fails to perform its obligations about Force Majeure and shall end at the moment of termination of Force Majeure (elimination of its consequences).
   3. Force Majeure shall lead to automatic prolongation of the term for performance of the obligations for the entire period of its validity and elimination of its consequences. The Parties shall immediately notify one another in writing about the emergence of Force Majeure and shall further provide documents specified in Clause 11.4. hereof.
   4. The facts of existence and duration of Force Majeure shall be certified by documents issued by competent authorities of the country which are authorised to certify Force Majeure, according to the current laws of (specify the country).
8. **HIERARCHY OF THE CONTRACTUAL DOCUMENTATION**
   1. In the event of any inconsistency between the terms of this Agreement and any other document executed in connection herewith, the Agreement (i.e., the Preamble, the Articles that follow the Preamble and the Annexes thereto) will prevail, in compliance with the principle that special provisions derogate from general provisions (*specialia derogant generalibus*).
9. **CONTRACT AMENDMENTS**
   1. No change in, modification of, or addition to the terms and conditions contained in this Contract shall be valid unless set forth in a written document signed by both parties, which specifically states that it constitutes an amendment thereto.
10. **TERMINATION**
    1. This contract can be terminated by either party with a written pre notice of [1 month (in case cash transfer program is lasting for few months, 2-3, please adjust the pre notice period accordingly]. The FSP shall return immediately to the ICRC any funds received in advance and not transferred to beneficiaries or used for covering fees. A settlement of account specifying all transfers done under this contract shall be provided with the unused fund.
    2. Notwithstanding the above, either Party reserves the right to immediately terminate the Agreement with a simple written communication sent by registered letter/fax to the other Party, in the event of non-compliance by the latter with the obligations under the present Agreement.
11. **FINAL PROVISIONS**
    1. The present Agreement constitutes the entire covenant between the Parties regarding the subject matter hereof and supersedes any and all prior understandings and commitments.
    2. The failure, on the part of the Parties, of any right or power or remedy conferred upon them under this Agreement, or tolerance of any breach of obligations by the Parties, will not be deemed a waiver of the Parties to those rights or powers or remedies or other provisions in any other time or circumstance.
    3. Any ineffectiveness and/or invalidity, total or partial, of any provision of this Agreement will not result in the invalidity of the other provisions, which shall be considered valid and effective.
12. **SIGNATURES**

The Contract shall come into force from the day of its signing (xx.yy.zzzz.) and shall continue in full force until (xx.yy.zzzz,) unless terminated earlier in accordance with Article 14. If there is a special clause related to the contract duration, you can mention it.

**For the ICRC: For the FSP:**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For ICRC internal use only:

|  |  |  |
| --- | --- | --- |
| Name | Position | Signature |
|  |  |  |
|  |  |  |

**Annex n°1**

**Data Processing Agreement**

This Data Processing Agreement (“**DPA**”) forms integral part of the Agreement between the International Committee of the Red Cross (hereinafter referred to as “**the ICRC”**), in its role of Data Controller, and name of the external provider company” (hereinafter referred to as “**the FSP”**), in its role of Data Processor, to reflect the Parties’ agreement with regard to the Processing of Personal Data, in accordance with the requirements of the “*ICRC Rules on Personal Data Protection”* – adopted by the Directorate of the ICRC on 24 February 2015, updated on 10 November 2015, and available at: <https://www.icrc.org/en/publication/4261-icrc-rules-on-personal-data-protection> (“**the ICRC RPDP**”). Defined terms are defined in Section 1 “Definitions” below;

(A) Whereas the FSP provides the agreed Service (i.e. cash transfers) to the ICRC as per the Agreement entered into by the Parties, and in order to provide the Service, it processes and manages the Personal Data Collected by the ICRC;

(B) Whereas the ICRC intends to use the Service provided by the FSP and the ICRC benefits from immunity from jurisdiction and is not subject to domestic jurisdiction/national data protection laws, hence the ICRC applies its own rules on personal data protection set forth in the ICRC RPDP;

(C) Whereas the ICRC RPDP provides for certain requirements with respect to the Processing, storage, transfer or other management of any Personal Information controlled by the ICRC;

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

**1. DEFINITIONS**

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

**1.2** “**Data Processor**” means a person, public authority, agency or other body which processes Personal Data on behalf of the Controller;

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

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

**1.5** **“Personal Data Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Personal Data transmitted, stored or otherwise processed.

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

**1.7 “Security Measures”** means those **technical and organisational** measures aimed at protecting Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the Processing involves the transmission of data over a network, and against all other unlawful forms of Processing.

**2. ALLOCATION OF ROLES**

**2.1** The Parties acknowledge and agree that, with regard to the Processing of Personal Information in the context of the Agreement, the ICRC is the Data Controller and the FSP is a Data Processor, and that the FSP shall not engage Sub-processors in providing the Service defined in the Agreement, unless prior and specific approval in writing has been obtained from the ICRC.

**3. TYPE OF PERSONAL DATA AND PURPOSE OF THE PROCESSING**

**3.1** The FSP will provide the Service as agreed in the Agreement and will process the Personal Data provided by the Data Controller exclusively for the humanitarian purposes of providing assistance to victims of armed conflicts and other situations of violence, necessary for the fulfilment of the said Service.

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

**4. THE DATA PROCESSOR’S OBLIGATIONS**

**4.1** The FSP commits itself to process Personal Information only on behalf of the ICRC and pursuant to its instructions as well as the ICRC RPDP – which the FSP acknowledges to have read and understood – as well as in Clause 6 of the present DPA regarding Security Measures. In particular, the FSP will process Personal Data in such a way as to minimise, by means of suitable preventive Security Measures, the risk of accidental or unlawful destruction, loss, alteration unauthorised disclosure or access, or Processing operations that are either unlawful or inconsistent with the purposes for which the data have been collected.

**4. 2** The FSP shall notify the Data Controller within 24 hours after becoming aware of a Personal Data Breach.

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

**4.4** The FSP must promptly inform the ICRC about every inquiry, action, investigation, inspection by judicial/administrative authorities affecting directly or indirectly the Personal Data the FSP processes on behalf of the ICRC. Should such notification be prohibited, the FSP shall notify the relevant authorities of the fact that the investigation affects information covered by the Privileges and Immunities of an International Organisation [and that, to the extent that the FSP is processing Personal Data on behalf of an International Organisation, the FSP’s employees in charge of the Processing are agents of the International Organisation and therefore, are covered by immunity. On this basis, the FSP must notify the ICRC nonetheless].

**4.5** Should judicial/administrative authorities ask, whether informally or by legal process, the FSP to disclose the Personal Data entrusted by the ICRC to the FSP, the FSP shall oppose such disclosure on the basis of ICRC’s privileges and immunities that cover all the FSP’s assets, documents, Personal Data and possessions, regardless of the fact that they are held by a third party. More precisely, in conformity with the[TITLE OF THE APPLICABLE HQ AGREEMENT] the Personal Data deposited by the ICRC shall be immune from search, requisition, confiscation, expropriation or any other form of interference, whether by executive, judicial, administrative or legislative action. Should the relevant authorities request disclosure of the data nonetheless, the FSP shall notify the relevant authorities of the fact that the investigation affects information covered by the Privileges and Immunities of an International Organisation and that, to the extent that the FSP is processing Personal Data on behalf of an International Organisation, the FSP’s employees in charge of the Processing are agents of the International Organisation and therefore, are covered by immunity. On this basis, the FSP must refuse to provide the Personal Data.

[**4.6** Should the FSP decide to fulfil the orders of the judicial or administrative authorities, the FSP will report in writing to the Controller the reasons of such decision.]

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

**4.8** The FSP will grant the ICRC free access to all Personal Data as well as to the infrastructures related to the Service upon reasonable notice, in order to carry out periodical, unlimited and independent inspections on the adequacy of the Security Measures implemented and on the adherence of such Security Measures to the ICRC RPDP.

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

**4.10** Upon termination of the Service, the FSP will not retain any copy of the Personal Information processed in the performance of the Service.

**4.11** The Data Processor commits to provide the Data Controller with a list of Personal Information to be collected to allow the Data Processor to comply with its Know-your-customer / reporting obligations. This list must be limited to what is strictly necessary for this purpose and must be kept up-to-date. The Data Controller will collect the Personal Information and documents identified on this list and pass them on to the Data Processor.

**4.12** The Processor undertakes not to make a copy of the data covered by this Agreement, unless it is necessary for the performance of this Agreement.

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

**5. THE DATA CONTROLLER’S OBLIGATIONS**

* 1. The ICRC is the only subject entitled to use, and to authorise the use of the Personal Data processed through the Service
  2. The ICRC warrants that the Processing of Personal Information has been and will continue to be carried out in accordance with the relevant provisions of the ICRC RPDP.
  3. The ICRC shall have sole responsibility for the legality of Personal Information and the means by which it acquired the Personal Information.
  4. The ICRC will handle and answer any third party request regarding Personal Data notified to the ICRC by the FSP, in compliance with the relevant provisions of the ICRC RPDP.
  5. The ICRC undertakes to enforce the relevant provisions of the ICRC RPDP in the event of a data breach involving the Personal Information processed by the FSP.

**6. SECURITY MEASURES**

**6.1** Having regard to the state of technological development and the cost of implementing any such measures, the FSP shall take appropriate technical and organisational measures against misuse, accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to Personal Information or unlawful Processing.

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

* to encrypt at all times the Personal Data subject to the Processing operation, using encryption keys solely held by the Data Controller;
* to only access the system without having access to clear (unencrypted) data in situation in which it is necessary to manage the Service, run updates, fix bugs and support users;
* to provide secured and standardized logs related to users as well as system, networks and applications activities, with the possibility to export them for outside processing;
* to ensure an adequate physical and environmental protection for the Personal Information, in particular by using servers in dedicated and secured premises only accessible with the authorisation of the Data Controller;
* to keep separated the Personal Data from other items already processed by the Data Processor, in particular by using dedicated and segregated storage location clearly identified with the ICRC logo and the indication “Legally Privileged Information”;
* to identify the persons in charge of the Processing operations on the Personal Data entrusted by the Data Controller to the Data Processor and to regulate the access to such Personal Data by way of a strict authorization system and identity management rules;
* to inform the persons in charge of the Processing operation of the privileged status of the Personal Data, and to train them on the procedure to follow in case of requests for access by third parties.

**7. LIABILITY**

**7.1** The ICRC will indemnify the FSP for any loss, damage or sanction incurred by FSP for a breach of any of the ICRC’s legal obligations under the ICRC RPDP as referred to in this DPA.

**7.2** The FSP will indemnify the ICRC for any loss, damage or sanction incurred by the ICRC for a breach of any of the FSP’s obligations set forth in this DPA

**8. TERM AND TERMINATION**

**8.1** The service provider will store the Personal Data provided by the Data Controller, as well as any Personal Information obtained in relation to the service for a maximum period of XX years, or until termination of the present Agreement. After this period, all Personal Data must be deleted.

**8.2** Upon termination of the DPA, the FSP undertakes to transfer all Personal Information processed on behalf of the ICRC to the same without delay. The Data Processor will issue the Data Controller a written declaration attesting that the Data Processor holds no copies of Personal Data or information processed on behalf of the Data Controller.

**8.3** In case the legislation imposed upon the FSP prevents it from returning or destroying all or part of the Personal Data transferred or obtained in relation to the Service, the FSP warrants that it will guarantee the confidentiality of this Personal Information and will not actively process the Personal Data anymore. In any case, the Personal Data cannot be raitened for a period exceeding XX years after termination of the Agreement.

**8.4** The audit provisions in this Agreement (clause 4.8 above) apply also to this section.

**9. MISCELLANEOUS**

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

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

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

**10. MANDATE**

**10.1** With the signature of the Agreement, the ICRC explicitly mandates the FSP to carry out, in its name and on its behalf, all the activities described herein.

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