Agreement for Services

THIS AGREEMENT (“Agreement”) is made and entered into as of this 15th day of July, 2018 (the “Effective Date”) by and between Fondo Mexicano para la Conservación de la Naturaleza, A.C. (“FMCN”), represented in this act by the Executive Director, Lorenzo José de Rosenzweig Pasquel and by the Director for the\_\_\_\_\_\_\_\_\_ Program (Name of the Program Director) (“Client”) and Name of the Contractor , represented in this act by (Name of the Contractor’s representative) (“Contractor”).

WHEREAS:

1. Client is a nonprofit organization duly incorporated, organized and authorized to receive deductible donations in terms of the laws of Mexico, engaged in activities related with the scientific research in environmental matters and to promote the protection of the environment, and having an address at calle Damas No. 49, Colonia San José Insurgentes, Código Postal No. 03900, Ciudad de México.
2. (Name of the contractor) is a (profit or non-profit) organization, located at (Contractor’s address). Contractor’s Federal Tax I.D. number is (Tax ID number). Contractor has an address at 257 Park Avenue South, New York, NY 10010, USA.
3. Client participates in the (name of the project or region), and desire to hire the Contractor in terms of this Agreement, as further described in Exhibit A.
4. Client and Contractor desire to enter into this Agreement with one another to set forth the terms upon which Contractor has agreed to provide the services to Client described herein.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Duties of Contractor**
   1. **Direction**. This contract is non-assignable and non-transferable. The services under this contract will be lead by (name of the director or contractor’s representative) and other staff members of Contractor.
   2. **Services.** Contractor shall provide to Client the services and perform the duties set forth on Exhibit A here to (the “Services”) under its own direction and responsibility. Contractor agrees that time is of the essence regarding performance of the Services. Contractor shall deliver written reports from time to time to (Program Director) (the “Authorized Personnel”), as required by the Authorized Personnel. Contractor shall respond fully and promptly to all inquiries of Client as to the status of the Services performed by Contractor hereunder. Contractor shall perform the Services specified in a timely and professional manner and Contractor's work shall be of the highest quality.
   3. **Subcontractors**. Contractor may engage other persons to perform the Services. Any persons engaged under this paragraph shall be subject to the terms of this Agreement. Contractor shall supervise and coordinate the services of subcontractors, suppliers and/or service providers that it requires to contract to fulfill the purpose hereof, assuming full responsibility in connection with such services.
   4. **Access.** Client shall permit Contractor reasonable access to staff, documents and officers of Client as necessary for Contractor to carry out Contractor's obligations under this Agreement. Similarly, Contractor shall permit Client reasonable access to staff, documents and officers of Contractor as necessary for Client to evaluate Contractor's performance of its duties under this Agreement.
   5. **Report.** Contractor shall report directly to (Program Director) and to the Authorized Personnel for all purposes of this Agreement.
   6. **Media Relations.** Contractor shall refer any and all media requests for information from reporters to the Authorized Personnel, Client, except as otherwise instructed by the Executive Director of Client.
   7. **Independent Contractor Status.** Notwithstanding anything herein to the contrary, Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Except as specifically provided herein, neither party has any authority to bind the other party to any third party or otherwise to act as the agent or representative of such other party. Contractor shall not use, and shall not permit any employee or subcontractor to use any title or reference to Client which states or suggests such person is an officer or employee of Client. Contractor shall pay all federal, state and other income and employment taxes due and properly file appropriate tax returns with respect to all individuals providing the services required under the Agreement. Nothing contained herein shall be deemed to create a partnership. Under no circumstances shall Contractor look to Client as Contractor’s employer and Contractor will not participate in any employee benefits of Client. Due to the nature of the Services, there will be no subordination between the parties and, therefore, no employment or labor relationship will, as a consequence of this Agreement, arise between the parties or between the Client and the personnel employed by the Contractor at its own cost for the compliance of its obligations under this Agreement. Consequently, the Contractor shall be solely responsible for the obligations arising from the legal provisions and other provisions related to labor and social security matters. The Contractor agrees to respond to the claims brought against it or against the Client by its employees or the employees of its subcontractors or suppliers in connection with the subject matter of this Agreement. The Contractor agrees to save and hold harmless the Client from any judicial or extra judicial claim or demand brought against the Client by the Contractor’s employees and from any other orders or petitions made by the labor or social security authorities in connection with such employees, as well as to pay to the Client any costs or expenditures in which it may incur as a consequence thereof. The Client shall have the right to defend itself against any claims brought against it and shall have the obligation to inform the Contractor of any contingency that may arise in connection therewith.
   8. **Representations of Contractor.** Contractor hereby covenants, represents and warrants to Client that (i) Contractor has the technical expertise and general skills necessary to perform competently and professionally the Services in accordance with this Agreement, (ii) Contractor is not a party to or bound by any agreement, obligation, or understanding which restricts or limits in any way Contractor's right to enter into this Agreement or Contractor's right or ability to perform Contractor's obligations under this Agreement, (iii) Contractor shall not use the trade secrets, intellectual property rights, copyrights, or other proprietary rights of any third party in the performance of Contractor's obligations under this Agreement, (iv) Contractor has the necessary equipment, facilities and workers to perform Contractor's obligations under this Agreement, and (v) no services provided by Contractor pursuant to this Agreement will endorse or promote a candidate or slate of candidates for public office.
   9. **Indemnity.** Except as otherwise provided in this Section, each party to this Agreement (each, an “Indemnitor”) shall indemnify, hold harmless and defend the other party, its directors, officers and agents, claiming under the other party (collectively, the “Indemnified Party”) from and against any claim, action, loss, liability, expense, damages, judgment, or amounts paid in settlement, including costs, attorneys' fees and witness fees (a “Claim”), which arises (i) as a result of the breach of any representation, warranty, covenant, or agreement of the Indemnitor set forth in this Agreement or (ii) out of the performance of the activities of the Indemnitor under the scope of the Agreement after the Effective Date hereof. Notwithstanding the foregoing, the obligation of Indemnitor to indemnify the Indemnified Party shall not exceed the amount paid by Client to Contractor pursuant to this Agreement.
   10. An Indemnitor shall not indemnify any Indemnified Party for any such claim (i) made on account of any act or omission of the Indemnified Party which was knowingly fraudulent or deliberately dishonest or that constituted willful misconduct, (ii) on account of the Indemnified Party's acts or omissions that the Indemnified Party knew or should have known to be contrary to the best interests of either Party, or which involves the absence of good faith on the part of the Indemnified Party, nor (iii) to the extent that such Claim is satisfied by a payment actually made to the Indemnified Party under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, bylaw or agreement with another party.
   11. An Indemnitor shall not be required to indemnify any Indemnified Party unless the provisions of this Subsection 1.9.3 are complied with. The Indemnified Party shall notify the Indemnitor in writing of any potential Claim within five days of the date the Indemnified Party has actual knowledge of the existence of such potential Claim. The Indemnified Party shall permit the Indemnitor to participate in the defense of any such potential Claim, provided, however, that the Indemnitor shall pay all costs of its participation in such defense. The Indemnified Party shall not settle any Claim without the advance written approval of the Indemnitor, which approval shall not be unreasonably withheld.
   12. Neither Contractor nor Client shall cause or permit its Articles or Bylaws to limit its ability to indemnify the Indemnified Party hereunder. The obligation of each Party to indemnify the Indemnified Party shall survive termination or expiration of this Agreement.
   13. Contractor is solely responsible to obtain and maintain any health, life, accident, disability, travel, and/or personal property insurance as the Contractor may desire or deem necessary for the performance of its duties and obligations under this Agreement. Contractor understands and acknowledges that in no event shall Client be liable to Contractor or to Contractor’s successors, assigns, or heirs for any indirect, incidental, consequential, special, or exemplary damages arising out of or related to Contractor’s failure to obtain any insurance.
   14. Contractor shall comply with all applicable laws, regulations and provisions during the development of the Services, including furnishing the Client with any information and documentation that may be relevant for tax purposes, such as the certificate issued by the County of San Francisco, in the State of California, USA, referred in the Whereas section and attached as Exhibit D (Update as needed).
2. **Intellectual Property**
   1. Contractor agrees that all original materials created in connection with the Services provided hereunder (“Work Product”), in whatever phase, stage of creation or completion, shall be “works made for hire” for Client within the meaning of the United States Copyright Act of 1976 and for all other purposes and as such, the sole and exclusive property of Client. In the event that any Work Product is deemed not to be a work made for hire, Contractor hereby assigns, and agrees to assign at the time of the creation of such Work Product, exclusively to Client in perpetuity, all right, title and interest of any kind whatsoever, in and to the Work Product, including without limitation any and all copyrights thereto (and the exclusive right to register copyrights). Contractor represents and warrants that Contractor has not previously assigned such rights or any portion thereof to any third party. Accordingly, all rights in and to the Work Product, including any materials derived therefrom or based thereon and regardless of whether any such Work Product is actually used by Client, shall from its creation be owned exclusively by Client and Contractor will not have or claim to have any rights of any kind whatsoever in such Work Product. Contractor agrees to assign and execute such further documents and to do such further acts as may be necessary to perfect, register, or enforce Client’s ownership of such rights, in whole or in part. If Contractor fails or refuses to execute any such documents, Contractor hereby appoints Client as Contractor’s attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on Contractor’s behalf and to execute such documents. Without limiting the generality of the foregoing, Contractor will not make any use of any of the Work Product in any manner whatsoever without Client's prior written consent.
   2. All work products produced specifically in fulfillment of this contract shall be the joint property of Environmental Defense Fund, and the Client.
3. **Compensation**
   1. Fee. Client agrees to pay to Contractor a fee during the term of this Agreement in the amount and at the times as specified in Exhibit B attached hereto. Such payment shall be made as long as the Services have been provided to the entire satisfaction of the Client and after issuance of the respective invoice by the Contractor, which shall include the following information: (i) the Contractor's corporate name, EIN number and its tax domicile; (ii) the place and date of issuance; (iii) the Client's Federal Taxpayers Identification Number, which is FMC940128TC0; (iv) a brief description of the Services, and (v) the amount of the consideration.
   2. Reimbursement of Expenses. Client agrees to pay Contractor’s travel expenses related to Services provided as payments in advance , considering that fiscal regulations prevent Client to make any reminbursement for expenses made by any third party in FMCN’s name. In the event unexpected expenses need to be incurred, Contractor may also seek permission from Client for a payment in advance. Contractor shall submit an itemized statement showing actual expenses incurred and original receipts in compliance with the requirements stated in Mexican Laws, therefore.
   3. Records; Disputed Invoices. Contractor shall maintain accurate records of all amounts billable to and payments made by Client hereunder and all other matters which relate to Contractor's obligations hereunder. In the event that Client disputes any invoice rendered or amount paid, Client will so notify Contractor, and the parties agree to use their best efforts to resolve such dispute expeditiously. Contractor agrees to provide to Client full supporting documentation (including, if requested, evidence of the reasonableness thereof) concerning any disputed invoice rendered or amounts paid within thirty (30) days after Client provides written notification of the dispute to Contractor. The due date for paying any disputed amount shall be extended until the resolution of such dispute.
4. **Termination, Survival of Provisions**

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* 1. Initial Term. Unless earlier terminated as provided for in this Section 4 the initial term of this Agreement shall begin on the Effective Date and shall end 15 months after signing the contract (the “Initial Term”).
  2. Renewal Terms. The Initial Term shall not be extended, unless agreed upon by the parties in writing.
  3. Termination for Breach; Cure. This Agreement shall terminate effective on the date either party gives written notice of a non-curable material breach of any representation, warranty, covenant, or agreement by the other party. Furthermore, this Agreement shall terminate on the last date of the cure period applicable to a curable, material breach of any representation, warranty, covenant, or agreement by either party, unless such breach is cured as provided for herein.
  4. Cure Period. The non-breaching party shall provide written notice describing the nature of the default or breach and the steps, if any, which can be taken to correct such breach, and the breaching party shall effect the cure within thirty (30) days of the notice, unless the parties agree to a longer period.
  5. Arbitration. If the parties dispute the existence of a breach and/or whether the breach has been cured effectively, the matter shall be submitted to binding arbitration as provided for in Section 5.7.
  6. Survival of Certain Terms; Return of Records. The provisions of Section 4 shall survive expiration or termination of this Agreement for any reason. Upon termination of this Agreement, Contractor shall promptly deliver to Client all books, records, materials and donor and member information developed by Contractor in the performance of the Services under this Agreement and prior agreements, if any. In addition, Contractor shall promptly return to Client all information furnished to Contractor by Client in connection with the performance of the Services under this Agreement and prior agreements. Any information which must be returned pursuant to this paragraph and which is stored electronically shall be delivered on electronic devices. The reasonable costs of return of all Client books and records shall be paid by Client. Contractor shall, at its own expense, keep copies of any Client books or records as reasonably needed by Contractor.
  7. Termination for Convenience. Either party may terminate this Agreement without cause by providing the other party hereto with 30 days’ written notice. If Client terminates this Agreement pursuant to this paragraph, Client shall pay Contractor for the Services performed to the termination date.

1. **Miscellaneous**

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* 1. Notices. Except as otherwise provided in this Agreement, any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally, (ii) the first business day after transmission by facsimile or electronic transmission, or (iii) three days after mailing if mailed, by first class mail, certified or registered with return receipt requested, postage prepaid, to the address provided by each party to the other from time to time.
  2. Nondisclosure of Confidential Information. Contractor agrees that it will not, without first receiving written authorization signed by an officer or director of Client, during the term of this Agreement or at any time after the termination of this Agreement, remove from Client’s premises or otherwise divulge to any other person or entity the contents of any records or any other information of any kind relating to the business of Client, including but not limited to (i) Work Product as defined in Section 2.1; (ii) donor and customer lists, telephone numbers and other information pertaining to donors and customers; (iii) finances, plans, or other information relating to the operation of Client generally or the Services, specifically; and (iv) other private and confidential information which is a unique asset of Client or information which, if known to competitors or others outside of Client, would be harmful to Client.
  3. Breach of Confidentiality. Contractor acknowledges that a breach of Section 5.2 may result in irreparable and continuing damage to Client for which there will be no adequate remedy at law and agrees that, in the event of any breach or threatened breach of Section 5.2, Client shall have the right to seek injunctive relief from a court of competent jurisdiction to prevent a continuing or threatened breach of this Agreement and such other and further relief as may be proper. In addition to other damages awarded, Client shall be entitled to a judgment for court costs and reasonable attorneys’ fees.
  4. Headings. The headings appearing at the beginning of the several paragraphs contained herein have been inserted for identification and reference purposes and shall not by themselves determine the construction or interpretation of this Agreement.
  5. Assignment. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors, legal representatives and assigns of the parties, provided, however, that because Contractor has been retained by Client due to Contractor's particular skill and expertise, Contractor may not assign, delegate or subcontract any of Contractor's rights or obligations hereunder, except as expressly provided herein.
  6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States of Mexico.
  7. Arbitration. In the event of any dispute under this Agreement, the parties shall attempt to resolve the matter themselves in an amicable manner. Failing such resolution, the parties submit to the jurisdiction of competent courts in Mexico City, expressly waiving any other jurisdiction to which they may be entitled by reason of their domiciles, present or future, or by any other reason.
  8. Attorneys' Fees. If any action (whether legal or equitable and whether litigation or arbitration or some other proceeding), including an action for declaratory relief, is brought under this Agreement, the substantially prevailing party (as shall be determined by the court or other adjudicator) shall be entitled to recover its reasonable attorneys' fees and costs of suit from the other party in addition to such other relief as may be granted.
  9. Miscellaneous. This Agreement constitutes the entire agreement between the parties and supersedes any prior agreements between the parties. This Agreement may not be modified, and no provision waived, without the prior written consent of the party against whom enforcement of the amendment or waiver is sought. No delay in exercising any right shall constitute a waiver of that right, but time is of the essence with respect to the covenants contained herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

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| **Client:** | **Contractor:** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By AUTHORIZED SIGNER  Lorenzo José de Rosenzweig Pasquel  Executive Director,  Fondo Mexicano para la Conservación de la Naturaleza AC  Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: AUTHORIZED SIGNER  Contractor’s representative  Contractor  Date: |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Legal Representative:  María Eugenia Arreola Aguirre |  |

**LIST OF EXHIBITS**

A - Services Description and Specifications

B - Fee and Expenses

C - Consultant Biography and Team Leaders

D Wire Transfer Instructions

**EXHIBIT A**

Contractor shall provide the services and perform the duties set forth below and such other related duties and services as Client may request from time to time.

**Exhibit A: Scope of Work:**

**EXHIBIT B**

* + - 1. FEE FOR SERVICES

The fee shall be an amount of US$ \_\_\_\_\_\_\_\_\_\_ in consideration of performance of the Services enumerated in Exhibit A. This fee covers payment for all Contractor personnel, equipment, and overhead. Contractor will be reimbursed for travel expenses related to Services provided.

* + - * 1. Payment(s) will be issued upon receipt of invoices and expense reports from Contractor according to the schedule below. The final invoice will be submitted with the final project report. Payments will be made by wire transfer [see Exhibit D] according to the following schedule: (update as needed)
* 50% when this contact is signed
* 25% after completion of the the two-week workshop and the Client has received interim report
* 25% after completion of the metoring componente and the Client has received and accepted the final report
  + - * 1. This is fixed fee contract. Except as otherwise provided in this Agreement, the fee charged by Contractor is inclusive of all services contracted for and is not divisible.
      1. EXPENSES

Expenses

. Customary expenses incurred by Contractor in performing its services are included in the fee. However, in addition to its fee, Contractor may ask Client for payments in advance for other unusual costs approved in writing by Client for goods or services ultimately benefiting or accruing to Client, considering that fiscal regulations prevent Client to make any reminbursement for expenses made by any third party in FMCN’s name. Onsite food and accommodations are to be covered by the Client. Contractor will ask for payments in advance for all travel costs, such as flights, travel insurance, meals, ground transportation and other incidentals. EDF shall submit to FMCN all receipts for these expenses in compliance with the requiremts stated in Mexican Laws.

Advance Approval. Client reserves the right to require advance approval for any or all the expenses referred to in this Exhibit B. Approval mechanisms will be worked out by the parties as necessary. At the request of Client, Contractor shall use all reasonable means to reduce expenditures and economize where possible in order to keep reimbursable expenses within the budget adopted by the Client.

3. Timing. Client shall pay to Contractor any difference in Contractor’s favor not later than thirty days after Client receives the receipts. Contractor shall pay to Client any difference in Client´s favor not later than thirty days after Client notifies the amount to Contractor. However, in the event of a disputed expense, Client shall promptly pay all non-disputed expenses, and the disputed amounts shall be resolved in accordance with this Agreement. Expense invoices shall be submitted by Contractor not less than once nor more than twice in any thirty-day period. No invoice may be submitted to Client more than thirty days after such expense was incurred.

**EXHIBIT C**

Biography of the Contractor’s staff and team leaders