**UNHCR Sample Drilling Contract and Specification**

**CONTRACT #**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DATE**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CONTRACT DOCUMENT**

**PREAMBLE**

Whereas the **[INSERT ORGANISATION NAME]** is engaged in **[INSERT LOCATION]** in activities such as care for refugees and displaced people;

Whereas **[INSERT ORGANISATION NAME]** is planning to have **[INSERT NUMBER OF BOREHOLES TO BE DRILLED]** borehole(s) drilled with all the required labour and materials for the completion of the works including test pumping, hereinafter referred as the “WORKS” as described in this Contract, the SPECIFICATION and the BILLS OF QUANTITIES. This contract is based upon the unit prices presented in the bid document presented by **[INSERT CONTRACTOR’S NAME]**.

Whereas **[INSERT CONTRACTOR’S NAME]** has shown interest to bid for the drilling of the well and has subsequently won and is awarded the tender based on its capacity and capability to do the job.

Now therefore,

**[INSERT ORGANISATION NAME]**

Hereinafter referred to as “**EMPLOYER**”

Represented by the Director for COUNTRY PROGRAM

And

**[INSERT CONTRACTOR’S ORGANISATION]**

Hereinafter referred to as “**CONTRACTOR**”

REPRESENTED BY **[INSERT CONTRACTOR’S FULL NAME]**

have entered into an agreement on [ENTER DATE] on the following terms and conditions.

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## OBJECT OF THE CONTRACT

##

Based on the Hydrogeological and Geophysical survey already conducted and the drilling permit(s) obtained for the drilling of **[ENTER NUMBER OF BOREHOLES]** in **[ENTER LOCATION]**, the EMPLOYER awards and the CONTRACTOR accepts and undertakes to perform for the account of **[INSERT ORGANISATION NAME]** all the works in all respects according to the rules of the profession, CONTRACTOR’s accepted PRICED BILL OF QUANTITIES, and all documents stipulated in the sub-articles of the technical specification making an integral part hereof.

## VALUE OF THE WORKS

The total contract value of the works to be performed hereunder is **[ENTER AMOUNT].** This amount is determined on the basis of mutually reconciled required quantities unit rates and lump sum prices which include also labour from the CONTRACTOR as indicated in the CONTRACTOR’s PRICED BILL OF QUANTITIES. Value Added Tax (VAT) is not included in the above referred total contract value.

The EMPLOYER will, if possible and legally justified, send to the CONTRACTOR written statements on VAT exemption from authorized Government authorities. If the EMPLOYER could not produce such official exemption document, it has to pay to the CONTRACTOR **X**% (**X** percent) VAT on the total actual amount paid for the works.

All other taxes, duties and levies of any kind related to this project shall be borne by the CONTRACTOR.

The total contract value stated in sub-article 2.1 of this contract includes also complete transportation of material and labour to the works execution site, the acceptance and keeping material until installation, that is, provisional acceptance of the facility being constructed /repaired.

The CONTRACTOR accepts that the EMPLOYER can reduce the execution of certain types of contracted works, whereas the contracted unit rates of the other works remain unchanged. However, if the decrease of the works exceeds 20% (twenty percent) of the total contract value, such variation shall be subject to the EMPLOYER and the CONTRACTOR making a written agreement without an adjustment of unit costs. However, the CONTRACTOR shall have the right for time extension proportional to the extra works.

The EMPLOYER will not pay for any works that have not been executed in accordance with the description of the works from the accepted offer, regardless of the degree of their completion.

## MODE OF PAYMENT

The payment under this contract will be made according to the following conditions:

The CONTRACTOR will submit to the EMPLOYER a bank guarantee or insurance bond equal to 20% of the total contracted amount stipulated under sub-article 2.1 within **XY** (**XY**) days after the date of the signing of the contract.

The EMPLOYER will make advance payment in favour of the CONTRACTOR’s account in the amount of 20% of the total contracted amount stipulated under sub-article 2.1 which makes **[ENTER AMOUNT]** within **XY** (**XY**) days after the CONTRACTOR produces a bank guarantee or insurance bond for the same amount.

If the time-frame of works exceeds one month, the CONTRACTOR shall submit interim payment certificates to the EMPLOYER, after the end of each month showing the actual contract value of the works executed up to the end of the month. The EMPLOYER will pay the amount indicated in the payment certificate less the 20% advance, less previous payments and less 10% for retention.

The quantities set out in the BILL OF QUANTITIES are estimated quantities of the works, and should not be taken as actual and final quantities of the works to be executed by the CONTRACTOR in fulfilment of his obligation under the contract. Each interim payment shall, therefore, be effected as per the actual works executed and measured on the basis of unit and lump sum prices agreed upon in the Priced BILL OF QUANTITIES.

The EMPLOYER will check the payment certificate for completed works, verify and pay for the indisputable value of the works within **XY** (**XY**) calendar days upon receiving the CONTRACTOR’s payment certificate. In case of delayed payment, the EMPLOYER shall pay bank interest, at the prevailing rate, on the defaulted amount.

## PERFORMANCE SECURITY

Within **XY** (**XY**) days after the signature of this contract, the CONTRACTOR shall furnish to the EMPLOYER a performance security in the form of Bank guarantee or Insurance bond in the amount of 10% (ten percent) of the total contract price.

The performance security to be provided by the CONTRACTOR shall be issued by a recognized local Bank or Insurance company.

After the completion of the whole of the works and issuance of provisional acceptance certificate by the EMPLOYER, the CONTRACTOR shall extend the performance security until the expiry of the defects liability period in order to get repaid the retention money as stipulated in sub-article 8.4 of this contract.

## COMMENCEMENT DELAYS AND LIQUIDATED DAMAGE

The CONTRACTOR shall start execution of the works within **XY calendar days** from the date of signing of the contract and shall complete and hand over the same to the EMPLOYER on or before the last day of a period of **XY days**, such period to be counted from the date of actual commencement of the works. In the case the CONTRACTOR is late in starting the execution of the works the EMPLOYER has the right to cancel the contract.

In the case the CONTRACTOR has not completed all the works within the term specified hereunder due to unjustified reasons, for each working day delay in the completion of the works, the CONTRACTOR shall pay to the EMPLOYER a sum equal to 0.1% of the total contract price per day as liquidated damages. However, the maximum amount of the liquidated damage shall not exceed 10% (ten percent) of the total contract price.

The CONTRACTOR shall not be responsible for delays caused by Force Majeure, or occurring due to causes acceptable to the EMPLOYER. In such cases, the CONTRACTOR shall be entitled to extension of time equal to the period lost due to such event.

In case the CONTRACTOR, is unable to complete the works, due to his fault or negligence, within the specified time indicated in article 5.1 of this contract, or if the works are in delay by more than XY (XY) days from the completion time stated in sub-article 5.1, the EMPLOYER is entitled to engage another contractor until the completion of the works. The actual and borne costs related to the introduction of another contractor for the execution of the works shall be borne by the CONTRACTOR. In that case the EMPLOYER will not compensate to the CONTRACTOR any costs that might arise there from. The payment will be made only for those items of the works that have been fully completed. Any issues concerning the quantity of performed works and payments shall be settled upon mutual written agreement and the agreement will make an integral part of this contract.

If the CONTRACTOR suffers delays or incurs costs due to failure on the part of the EMPLOYER in handing over the works site, due to inaccessibility of any site and due to lack of timely decision during the work progress, the CONTRACTOR is entitled to an extension of time proportional to the time lost for the completion of the works, and is at liberty to claim from the EMPLOYER the costs incurred.

The CONTRACTOR shall not be held responsible for damages caused on the works due to delays stipulated in sub-article 5.5 of this contract. If such damages occur on the works, the CONTRACTOR is at liberty to claim from the EMPLOYER the costs he incurred to recover the damage.

## VARIATION ORDERS

The EMPLOYER or EMPLOYER’s representative, may at any time or from time to time, give variation orders in writing related to addition, deletions or revisions in the works. The extra works will be measured on the basis of quantities from the measurement book, unit and lump sum prices from the CONTRACTOR’s Priced Bill of Quantities, which the EMPLOYER must approve in writing before they are performed, whereon the CONTRACTOR’s and the EMPLOYER’s written agreement on the variation order will be part of this contract.

The EMPLOYER will not pay any extra works that have not been approved in writing by the EMPLOYER’s authorized person. This does not apply to the case of emergency, unforeseen works that must be undertaken to avoid damaging consequences to the works or to avoid the effect/consequences of Force Majeure, in which case apply the legal provisions that stipulate the obligation of just compensation for performed necessary emergency and unforeseen contingencies by the CONTRACTOR in favour of the EMPLOYER.

If the variation order results in an increase or a decrease exceeding 20% (twenty percent) of the total contract value, such variation shall be subject to the EMPLOYER and the CONTRACTOR making a written agreement without an adjustment of unit costs. However, the CONTRACTOR shall have the right for time extension proportional to the extra works.

## QUALITY CIONTROL OF THE WORKS

The EMPLOYER has the right and the obligation to supervise the CONTRACTOR’s work as well as determine whether the CONTRACTOR observes the technical regulations and constraints throughout the performance of the works. The EMPLOYER is entitled to demand from the CONTRACTOR during the progress of the works to remedy within the shortest time possible and at his own cost and eliminate any observed irregularities and consequences of poor quality work, which cannot have any impact on the extension of time of completion of the works. In that case the EMPLOYER can halt any due payments until the CONTRACTOR eliminates all the above-mentioned irregularities or deficiencies.

During the progress of the work, the EMPLOYER is entitled to demand the CONTRACTOR or independently conduct an additional check on the quality of executed works, material or equipment.

The EMPLOYER has the right, during the progress of the work, to give to the CONTRACTOR any additional drawings or plans required for the proper execution of the works. In case the CONTRACTOR requires additional drawings and plans from the EMPLOYER, the EMPLOYER must be accordingly notified in writing.

## ACCEPTANCE OF WORKS

When the whole of the works have been completed, the CONTRACTOR shall give a written notice to that effect to the EMPLOYER. The EMPLOYER shall, within XY (XY) calendar days of the date of delivery of such notice and documentation, either issue to the CONTRACTOR a provisional acceptance certificate or give instruction in writing to the CONTRACTOR specifying all the works which are required to be done or corrected before the issuing of such certificate. If instructed by the EMPLOYER, to complete any remaining works or eliminate any deficiencies, the CONTRACTOR has the obligation to complete the remaining works or remedy any defects thereof. In such cases the CONTRACTOR is not entitled for extension of time and all the remaining works and remedying defects must be completed within the agreed completion time.

Within XY (XY) calendar days after the CONTARCTOR completed the remaining works or elimination of any defects, as instructed, the EMPLOYER must certify and issue provisional acceptance certificate for the works under request.

Unless specifically agreed in writing, the EMPLOYER shall not use any part of the completed works before a written certificate of provisional acceptance is issued to the CONTRACTOR. The EMPLOYER shall be liable for any damage that may follow as a result of putting to use the works before issuing the provisional acceptance certificate.

The EMPLOYER, immediately after issuing provisional acceptance certificate to the CONTRACTOR, shall repay the CONTRACTOR the 10% retained amount. However, the CONTRACTOR shall extend the performance security until the expiry of the defects liability period, stipulated in sub-article 10.1 of this contract, and submit the same to the EMPLOYER to get the 10% (ten percent) retained amount repaid.

The EMPLOYER shall issue final acceptance certificate to the CONTRACTOR within XY (XY) calendar days after the expiry of the defects liability period and release the performance bond, unless a written notice relating to any unfinished or defective work is given by the EMPLOYER to the CONTRACTOR before the expiry of the defects liability period. After the EMPLOYER issued to the CONTRACTOR final acceptance certificate, the CONTRACTOR is relieved from his obligation under this contract.

If the EMPLOYER fails to issue final acceptance certificate or to give notice on any defective works, within the time stipulated in sub-article 8.5 of this contract, it shall be presumed that the EMPLOYER has accepted the works and that the CONTRACTOR is relieved from any obligation under this contract.

## RETENTION

The EMPLOYER shall retain from each interim payment due to the CONTACTOR, 10% (ten percent), until the completion of the whole of works.

On completion of the whole of the works and immediately after provisional acceptance certificate is issued by the EMPLOYER as stipulated in sub-article 8.1 and sub-article 8.2 of this contract, 10% (ten percent) of the retained amount shall be repaid to the CONTACTOR as stipulated in sub-article 8.4 of this contract.

## DEFECTS LIABILITY PERIOD

The defects liability period is 365 days. The defects liability is for the whole of the works and is counted from the date of issuance of provisional acceptance certificate by the EMPLOYER.

## TERMINATION OF CONTRACT

Final termination of this contract will be after the expiry of the defects liability period, satisfactory completion of the works and issuance of final acceptance certificate by the EMPLOYER as stipulated in sub-article 8.5 of this contract.

This contract may prematurely be terminated, among other legally prescribed reasons, and in the following cases:

1. If the CONTRACTOR and the EMPLOYER are unable to perform their obligation under this contract,
2. If there appear unforeseeable situations or force majeure that might interrupt or hinder the achievement of the project objective or its execution,
3. If the EMPLOYER becomes bankrupt or goes into liquidation,
4. If the CONTRACTOR becomes bankrupt or goes into liquidation,
5. If it is clearly identified and proved by the EMPLOYER that the CONTRACTOR could not perform according to the terms and conditions under this contract.

In case of premature termination of the contract, as stipulated in sub-article 11.a, 11.b and 11.c above, the CONTRACTOR and the EMPLOYER will make agreement on mutually undertaken and unfulfilled liabilities of both parties. In case the CONTRACTOR has executed more works than the EMPLOYER paid for, the EMPLOYER is obliged to pay the balance of assets to the CONTRACTOR’s bank account within **XY** (**XY**) days from the date of termination of the contract, that is, rendering of the final account by the CONTRACTOR.

In the case the EMPLOYER has paid for more works than have been executed by the CONTRACTOR, the CONTRACTOR is required to pay the balance of assets to the EMPLOYER’s bank account within 15 (fifteen) days from the date of termination of the contract.

In case of premature termination as stipulated in sub-article 11.d, 11.e above, the CONTRACTOR shall indemnify the EMPLOYER against all damages sustained and costs or expenses incurred by him as a result of such termination.

## FORCE MAJEUR

Neither party to this contract shall be liable for any loss or damage of any nature whatsoever incurred or suffered by the other party due to delays or defaults in the performance under this contract caused by force majeure.

## LOST BOREHOLES

Should any accident to the plant, jamming of the tools or casing, collapse of the borehole, or any other causes due to the CONTRACTOR’s negligence, prevent the satisfactory completion of the works, the borehole shall be deemed to be lost and no payment shall be made for that borehole or for any material not recovered there from, nor for any time spent during operations or while attempting to overcome the problems.

The option of declaring such lost well shall rest with the CONTRACTOR. In the event of a well potentially being deemed lost, the EMPLOYER may, where possible, redesign the well so that it is of use to the EMPLOYER and payment will be made in accordance with quantities and rates written in the Contract document. Should it not be possible to do this, then the well shall be declared 'lost'.

A well may also be declared lost by the EMPLOYER if it is not completed as required due to uncontrolled caving, lost tools down-hole which cannot be recovered, lost circulation zones, unsuccessful cementing or any other reason which leads to failure of completion and which renders the well useless or of little value to the EMPLOYER.

A lost hole should be neutralised by a full cementation at the satisfaction of the EMPLOYER.

No payment shall be made for a lost well and its neutralisation. In the event of lost well the CONTRACTOR shall drill a new well at a site indicated by the EMPLOYER.

## ABANDONMENT

The EMPLOYER shall have the right at any time during the progress of the work to order the abandonment of a borehole.

The CONTRACTOR thereupon shall withdraw the casing from the borehole, if applicable, and salvage or attempt to salvage all such materials as the EMPLOYER shall direct and/or up until the EMPLOYER revokes such direction and shall fill in or leave the borehole to the satisfaction of the EMPLOYER. Payment shall be made for such abandoned boreholes at the rates and tariffs shown in the Bill of Quantities.

## CONTRACT DOCUMENTS AND INTERPRETATION

The following documents shall be an integral part of the contract.

1. This Contract,
2. The Specification
3. Work schedule submitted by the CONTRACTOR,
4. Revised and accepted Priced Bill of Quantities of the CONTRACTOR for the total contracted quantity of the works,
5. All annexes under the provision of this contract,
6. Any written notices and written agreements under the provision of this contract,
7. Any other written documents required under the provision of this contract.

Except otherwise provided by the contract, the provisions of this contract shall prevail over those of any other documents. But in case of ambiguities or discrepancies, the same shall be explained and adjusted by mutual consent of the EMPLOYER and the CONTRACTOR.

## LANGUAGE AND GOVERNING LAW

The language of the contract is English and all correspondences under this contract shall be made in English language.

This contract shall be construed and enforced in accordance with Standard Conditions of Contract for … by the Ministry of **…** in accordance with the national law of **…[country]**

## SETTLEMENT OF DISPUTES

Any dispute that may arise between the EMPLOYER and the CONTRACTOR regarding the performance or non-performance of this contract whether during the progress of the work or after completion and whether before or after termination, shall be settled amicably by both parties. If the dispute cannot be amicably settled by the parties, it shall be submitted to the arbitration panel of three. Each party shall appoint one member for the arbitration panel and the two arbitrators shall appoint an umpire. The proceedings of the panel shall be conducted in accordance of the dictates of the national law. The decision of the arbitration panel shall be final and not subject to appeal.

## EFFECTIVE DATE

This contract will come into force on the date of signature by both parties as sign of expression of will of the contractual parties. This contract is executed in 2 (two) copies. The CONTRACTOR and the EMPLOYER each retain one copy.

**In witness whereof** the undersigned being duly authorized have signed this agreement, on behalf of the parties hereto, at the place, on the day and year below written.

**FOR THE EMPLOYER**  **FOR THE CONTRACTOR**

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

Place:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**WITNESSES**

 **NAME**  **SIGNATURE**

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_