



# **A Contract Guidance Tool for Private Military and Security Services:**

**Promoting Accountability  
and Respect for Human Rights  
and International Humanitarian Law**



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Federal Department of Foreign Affairs FDFA



**DCAF**

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development and  
the rule of law



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This Guidance Tool does not provide legal advice and is not a legal document. The purpose of this document is to offer states, international organisations, humanitarian non-governmental organisations, and other actors as clients of PMSCs with practical guidance on how to structure contracts and contracting procedures in for PMSC services. In keeping with its intent of providing practical guidance, this document is not a legal manual. The responsibility to obtain appropriate legal advice when developing contracts with PMSCs rests with the parties to the contract.



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# INTRODUCTION

## Objectives of the Tool

The use of private military and security companies (PMSCs) worldwide is increasing, and a growing number of states, international organisations (IOs), and humanitarian non-governmental organisations (NGOs) are contracting private military and security services to support their operations. PMSCs are contracted to perform a wide range of services such as providing security to personnel, premises, and operations, as well as providing military operational support and risk analysis in very different contexts, including situations of armed conflict or post-conflict environments, both internationally and in domestic settings.

Some PMSCs have attracted increasing international attention due to allegations of misconduct or international human rights law (IHRL) abuses and violations of international humanitarian law (IHL) by companies or their personnel. International law obligations rest primarily with states. States have the obligation to protect human rights – including to protect individuals – against misconduct by businesses, which comprise PMSCs. The personnel of PMSCs – to the extent they exercise governmental authority – have to comply with states' obligations under international human rights law. In situations of armed conflict, IHL obligations apply not only to states but also to PMSC personnel, regulating their conduct where applicable. As private legal entities, however, PMSCs do not have obligations under IHL, unless they are parties to an armed conflict. This being said, states have the obligation, within their power, to ensure respect for IHL by PMSCs they contract (as well as by those operating on their territory and by PMSCs of their nationality).

Finally, PMSCs are obliged to comply with IHL and IHRL imposed upon them by applicable national law. Despite these international legal frameworks and standards regulating the private military and security industry,<sup>1</sup> many states lack adequate national legal frameworks to address such issues. However, on a practical level, including these human rights and IHL considerations as part of contracting procedures can assist in filling some of these regulatory gaps. State and non-state actors such as IOs, NGOs and business actors are encouraged to use contract procedures as a platform to better ensure respect for human rights and IHL by private security providers.

As a result, there is a need for practical and unified contract guidance in order to better promote an internal human rights and IHL culture amongst PMSCs. This Contract Guidance Tool supports actors in incorporating IHRL and IHL into contracting practices related to the procurement of private military and/or security services.

The main aims of this Tool are:

- To provide **simple, concise and practical guidance** for states, IOs, humanitarian organisations and NGOs on structuring their contracts and contracting procedures for private military and/or security services, drawing on international norms and standards.
- To **raise awareness** on the key role of effective contracting processes which integrate respect for IHRL and IHL, based on **lessons and good practices** from existing contracting procedures.

## Background

States, IOs, humanitarian organisations and NGOs are increasingly hiring PMSCs to support their security, especially in situations of armed conflict or post-conflict environments. The role of clients is fundamental, as commercial incentives and restrictions imposed in the contract can further compel private military and/or security providers to adhere to relevant human rights regulations and IHL obligations. Contracts can be a powerful tool to reinforce high standards yet there is little shared information and experience to support formulating contracts that ensure respect with these principles and rules. On this basis, guidance on best practices in contracting of PMSCs is required.

Furthermore, very often the selection of a potential contractor is exclusively based on the ‘lowest price’ criteria. However, relying solely on the lowest price can also be harmful to a client’s reputation and can lead to lower standards in the industry in general. Once a PMSC is hired, the behaviour and profile of the company and its personnel may also be associated with the client’s image. Reputational risks can also be mitigated with a contracting process which includes effective screening and vetting procedures.

The Contract Guidance Tool draws on leading international norms and standards to reflect the principles of responsible procurement and contracting practices, and provides clear and practical guidelines for actors with roles in these processes. By translating knowledge and research into a practical and easy-to-use format, the Contract Guidance Tool will provide implementation support for those actors drafting, implementing, and monitoring contracts with PMSCs.

## Who is the audience of this Guidance Tool?

This Tool is intended to support states, IOs, humanitarian organisations, and NGOs in their processes of contracting PMSCs. This Tool may also be instructive for private clients of PMSCs; however, the details of this relationship will not be explored in this document.<sup>2</sup>

More specifically, this Tool is aimed at the individual actors working within these institutions: the security officers, the administrators, or other individuals responsible for the contracting of private military and/or security services. These contracting officers work within a government or an organisation’s **responsible authority** or agency (see definition) with the mandate and capacity for developing tenders, selecting and assessing contractors, and implementing and overseeing contracts with PMSCs.



## How to use this Guidance Tool

This Guidance Tool is composed of two distinct sections. Each section has an explanatory note, followed by a practical Guidance Tool (checklist/template) to assist in the stage of contracting.

– **PART 1** covers the **bidding and selection** process: including the development and publication of the request for proposals (RfP) and the selection of potential contractors. Part 1 is complemented by a **checklist** that the user can consult when undertaking a bidding and selection process of potential PSMC contractors.

– **PART 2** offers guidance on the drafting of the contract itself. This section contains an explanatory note and a **model contract** that reflects internationally recognised good practices, which can be adapted by the client as appropriate to context and needs.

Not all sections might be relevant to all actors or to all situations; it will be up to the client to assess the concrete applicability of the different elements of the Tool. Some sections also refer to states' obligations under IHRL and IHL, which might not be compulsory for other types of clients of PMSCs. This Tool nevertheless represents recommended good practices reflecting international standards.



### PART 1

#### BIDDING PROCESS AND SELECTION OF POTENTIAL CONTRACTORS

##### EXPLANATORY NOTES

##### GUIDANCE TOOL

- ✓ Development of a request for proposal;
- ✓ Evaluation, screening process, and selection of potential contractors;
- ✓ Award of the contract.






### PART 2

#### CONTRACT

##### EXPLANATORY NOTES

##### GUIDANCE TOOL

##### Drafting and implementation of the contract:

-  Roles and responsibilities;
-  Monitoring;
-  Options in case of non-compliance.

# KEY CONCEPTS AND DEFINITIONS

To assist the user, below are definitions of select key concepts that appear in the Contract Guidance Tool.

## Private Military and Security Companies (PMSCs)

PMSCs encompass all private business entities that provide either military or security services or both, irrespective of how they describe themselves. PMSCs offer a wide range of services, as well as material and technical expertise and experience. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel. As military and security services are not easily categorised and often overlap, the term 'PMSC' is used throughout this Guidance Tool in order to avoid a strict delimitation between private military and private security companies. The term is also recommended to apply across the security industry spectrum, equally regulating contracts with various types of companies, including large international companies as well as small domestic companies.<sup>3</sup>

## Use of force

Use of force is generally understood as any physical constraint, ranging from physical restraint by hand or with a restraining device, to the use of small arms and light weapons (SALW).<sup>4</sup> The use of force is considered the prerogative of public forces (police or military), both at the domestic and at the international levels. In this Guidance Tool, less lethal force shall mean the use of less lethal weapons (see definition). As these weapons nevertheless often carry risk of death, the deployment of all weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled. Though specifically intended for law enforcement officials, some existing guidance documents may be instructive under certain circumstances and so long as PMSC personnel are authorised to assist in the exercise of a state's law enforcement authority. On this basis, the UN Code of Conduct for Law Enforcement Officials (CCLEO) of 1979 and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) of 1990 may provide guidance in authorised circumstances regarding rules on the use of force. In particular, use of force by PMSC personnel should never go beyond what these documents allow – while states may impose additional constraints or restrictions. See also Montreux Document Good Practices 18, 43.

## Less lethal weapons

There is no universally accepted definition of less lethal weapons. This Tool will define them as weapons which are explicitly designed and developed to incapacitate or repel people, with a low probability of fatality or permanent injury, or to disable equipment, with minimal undesired damage or impact on the environment. In this Tool, less lethal weapons are understood to be distinct from SALW, and are therefore not considered to include firearms.

## Responsible authority

The office, agency, or authority within the state or organisation's department responsible for contracting, procurement, or field security is referred to as the 'responsible authority.' This authority is tasked with implementing and monitoring each stage of the contracting process. Before beginning the contracting of PMSCs, the responsible authority or office should be identified. See also: Chapter 3 of the Legislative Guidance Tool for States to Regulate PMSCs; Montreux Document Good Practices 2-4.

## The Montreux Document on pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflict

The Montreux Document was adopted by 17 states in 2008 and is the result of a joint initiative launched by Switzerland and the International Committee of the Red Cross (ICRC). It is the first document of international significance to reaffirm the existing obligations of states under international law, in particular, IHL and international human rights law, relating to the activities of PMSCs. The Montreux Document recalls existing international legal obligations and offers a set of good practices to guide states to take national measures to implement their obligations. The Montreux Document is addressed to states and thus covers situations where a state is the client of private military and/or security services; its good practices are relevant to supporting national actors in this situation. In addition, as mentioned in the Montreux Document's preface, its 'good practices may be of value for other entities such as international organisations, NGOs and companies that contract PMSCs, as well as for PMSCs themselves'. See Montreux Document Preface, para. 8; Good Practices for Contracting States 1-23; and [www.mdforum.ch/resources](http://www.mdforum.ch/resources).

## International Code of Conduct for Private Security Service Providers (ICoC)

Drawing on the provisions of the Montreux Document, the ICoC, which is the result of a multi-stakeholder initiative launched by Switzerland, addresses private security companies directly. It requires its signatory companies to 'commit to the responsible provision of security services so as to support the rule of law, respect the human rights of all persons, and protect the interests of their clients'. The ICoC applies primarily to security services delivered in 'complex environments', however, the standards and recommendations are relevant in non-complex-environments. Its governing body, the ICoC Association (ICoCA), is a multi-stakeholder initiative with three equal pillars representing states, private security service providers, and civil society organisations. The ICoCA is mandated to promote, govern and oversee the implementation of the ICoC.

## UN Guiding Principles on Business and Human Rights

The importance of effective procurement and contracting policies has a strong international basis in the UN Guiding Principles on Business and Human Rights (UNGPs). UNGP 6 requires states to promote respect for human rights by businesses with which they conduct commercial transactions. UNGP 7 recalls states' obligations under IHL in situations of armed conflict, and under international criminal law. UNGP 13 sets out the responsibility of business enterprises to respect human rights by:

- a.** Avoiding causing or contributing to adverse human rights impacts through their own activities, and addressing such impacts when they occur;

- b.** Seeing to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services, by their business relationships even if they have not contributed to those impacts.<sup>5</sup>

## Voluntary Principles on Security and Human Rights (VPs)

The VPs are a set of human rights guidelines designed to support companies, especially within the extractive sector, in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights. Participants in the Voluntary Principles Initiative – including governments, companies, and NGOs – agree to proactively implement or assist in the implementation of the Voluntary Principles. For contexts where companies rely on private security, the VPs set out voluntary principles to guide private security conduct.<sup>6</sup>

## International Humanitarian Law (IHL)

IHL is a branch of international law, which prescribes rules seeking to limit the effects of armed conflict and to protect people who are not or are no longer participating in hostilities. IHL restricts the means and methods of warfare. IHL applies in situations of armed conflict, whether international or non-international, as defined in IHL.<sup>7</sup> IHL is contained in several treaties, including the four Geneva Conventions of 1949 and their Additional Protocols as well as in customary international law.<sup>8</sup>

## International Human Rights Law (IHRL)

IHRL lays down obligations for states to respect, to protect and to fulfil human rights. IHRL is a set of international rules established by treaty or custom on the basis of which individuals and groups can expect and/or claim certain behaviour or benefits from governments. A series of international human right treaties and other instruments give legal form to human rights.<sup>9</sup>

## Small arms and light weapons (SALW)

There is no universally accepted definition of SALW. Widely adopted definitions consider portability as a defining characteristic, including both civilian, private, and military weapons that fire a projectile. The UN International Tracing Instrument defines SALW as :

- a. 'Small arms'** that are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;
- b. 'Light weapons'** that are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.

## PART 1

# Bidding Process and Selection of Potential Contractors

# EXPLANATORY NOTES

## **What does the bidding process and selection of potential contractors entail?**

As part of human rights due diligence, prospective clients of private military and security companies (PMSC) should first determine the responsible authority within their institutions which will monitor and oversee the contracting process. Clients should also conduct a needs assessment to identify the types and likelihood of security risks as well as potential violations of national law, international humanitarian law (IHL), in situations of armed conflict, and abuses of international human rights law (IHRL). The needs assessment will determine the type of services necessary. The bidding process can then begin with the publication of a request for proposal (RfP). The RfP will in many aspects reflect the eventual final contract: an adequate RfP will simplify the drafting of the contract.

The selection of potential private military and/or security contractors should not only be based on competitive pricing. The respect for IHRL and IHL are paramount considerations for the assessment and selection of contractors, and those with poor records must be screened out. In this stage, potential contractors are evaluated against the criteria initially determined and announced in the RfP. This allows the client to select a contractor who has the capacity to carry out the mandate, to comply with national law, IHRL and IHL obligations, as applicable, and to uphold adequate ethical standards of conduct.



## Why are the bidding process and evaluation of potential contractors important?

- ➔ The bidding process ensures effective control and expertise over the whole process; it defines the overall security situation, clarifies the real needs, and sets the responsibility or line of accountability for the process.
- ➔ The systematic, open and public bidding process and selection of potential contractors will ensure transparency, equal opportunity, and equal treatment, as a safeguard against corruption.
- ➔ Including specific criteria related to compliance allows the client to convey their ethical standards directly to the companies and to ensure the selected company will be able to respect national law, human rights standards and IHL, as applicable. See Montreux Document Good Practices 3-13.
- ➔ Fair and equal treatment is guaranteed by a clear and transparent award and notification process. Transparency in the process is important to ensure that the company contracted fulfils the necessary requirements in the contract.
- ➔ Although not covered by this Guidance Tool, it is imperative that states, IOs and NGOs conduct an analysis taking into consideration both needs, risks, and potential impacts prior to launching the bidding process. The in-field security needs assessment will allow for determining the appropriate security measure and the level of PMSC engagement (for instance: type of equipment, level of staff). Inadequate or inappropriate measures can be a source of insecurity and human rights and IHL risks for the client as well as the communities living in the area of operations. See also Montreux Document Good Practice 1, 24 and 53 for taking into account factors that could cause PMSC personnel to become involved in direct participation in hostilities.

## Structure of the bidding process and selection of potential contractors

The following intends to give an overview of a model bidding process, based on international good practice as well as the guidance provided by the Montreux Document and a number of international rules and instruments. It is important to note that applicable national and international law (notably procurement law) will have a bearing on this process. Interested practitioners may also wish to refer to the World Trade Organisation's Agreement on Government Procurement (GPA) as well as the 2014 United Nations Commission on International Trade Law *Model Law on Public Procurement*.

## 1



## REQUEST FOR PROPOSAL AND SELECTION OF POTENTIAL CONTRACTORS

✓	1.1. Definition of the mandate and contractor responsibilities	The content in an RfP should include a detailed description of the mandate and the contractor's responsibilities.
✓	1.2. Exclusion criteria	Exclusion criteria should define characteristics that automatically disqualify candidates. A standard exclusion criterion would, for example, be the evidence of human rights abuses and IHL violations linked to a candidate.
✓	1.3. Award criteria: company	Selection criteria for the company should ensure the candidate will be able to carry out its mandate in compliance with IHL and IHL, where applicable.
✓	1.4. Award criteria: personnel	The screening process for the personnel should ensure minimum standards for PMSC personnel in terms of capacities, training, as well as background and past conduct.
✓	1.5. Award criteria: SALW, less lethal weapons & other equipment	If the contract allows for use of SALW, less lethal weapons, and other equipment, selection criteria should address the acquisition, possession, storage, license, and adequate training.
✓	1.6. Publication of the request for proposal	The publication of the RfP should be public, in order to ensure equal access of information to potential candidates. This would also ensure transparency of the criteria to award a contract.

## 2



## AWARD OF THE CONTRACT

✓	2.1. Evaluation of criteria	As not all factors are of the same importance, criteria should be evaluated to determine their respective importance and priority. Respect of IHL and IHL should have the highest priority; other standard criteria, such as price, are also taken into consideration at this stage.
✓	2.2. Notification of award	Once the contract is awarded, all applicants should be notified. When possible, the award of PMSC contracts should be made public.

# GUIDANCE TOOL

## How to use this Tool

This Tool offers a checklist that can be used by the person or agency tasked with the development and publication of the Request for Proposal (RfP), and the evaluation and selection of potential PMSC contractors.

## Legend

- ➔ Instructions written in **green** are intended as explanations for the user.
- ➔ Sections written in **black** represent the content to include in the final checklist.

# 1

## REQUEST FOR PROPOSAL AND SELECTION OF POTENTIAL CONTRACTORS

### ✓ 1.1. Definition of the mandate and contractor responsibilities

The RfP should be developed on the basis of a previously performed in-field needs assessment, taking into consideration particularly the needs and impacts of contracting the services of PMSC's.<sup>10</sup> The needs assessment should also proactively evaluate the most significant risks, in order to determine the appropriate security measure while avoiding unnecessary action. Furthermore, the process should be managed by a responsible authority or office, with adequate resources and trained personnel to handle contracting effectively. It should be noted that the proposed criteria for inclusion in the RfP mentioned in this tool represent minimum criteria to consider and do not aim to be exhaustive.<sup>11</sup>

The RfP should include a detailed description of the mandate and the contractor's responsibilities:

Definition of the mandate:

- ☐ The background information, including the type of services required, whether armed or unarmed, number of personnel posts to be covered and percentage of local staff required, if relevant;
- ☐ The terms of contract, including effective date and duration;
- ☐ The working environment, context, and operational tasks required of the contractor;
- ☐ Minimum age, training and experience levels required, language skills, and other required skills/expertise of its personnel; and
- ☐ Equipment requirements.

## ✓ 1.2. Exclusion criteria

Add any other criteria that automatically disqualifies a potential contractor regardless of other criteria. Exclusion criteria should at least entail:

- ☐ National criminal records or other evidence indicating violations of IHL or abuses of IHRL linked to a potential contractor or personnel; records should indicate if personnel have been convicted of any national criminal offence or found by national or international bodies to have breached international criminal law or committed abuses of international human rights law or violations of IHL in any jurisdiction;
- ☐ Evidence of grave professional misconduct by the company or one of its personnel; conviction of personnel or finding that the company is responsible for an offence concerning professional conduct;
- ☐ Failure to provide the requested documentation and information or submission of false and/or misleading information;
- ☐ Inability to fulfill a key requirement of the RfP; and
- ☐ Evidence of bribery, corruption or other conflict of interest.

## ✓ 1.3. Award criteria: company

The RfP should require the potential contractor to provide sufficient evidence concerning the following criteria, which will also be included in the contract:

- ☐ Knowledge of and ability to perform the services in compliance with IHRL and, in situations of armed conflict, IHL, as well as all applicable national and international laws and standards - including the Voluntary Principles on Security and Human Rights (VPs);
- ☐ Possession of all necessary business licenses, registrations, permits, authorisations, or approvals required under applicable international and national law of Home and/or Territorial states;
- ☐ Possession of all necessary licenses, registrations, permits, authorisations or approvals required under the laws of states of nationality of PMSC personnel;
- ☐ Qualified and experienced personnel, adequate equipment, facilities, resources and infrastructure for the timely and competent performance of the mandate;
- ☐ Sufficient evidence of its good reputation and irreproachable business conduct;
- ☐ Fair remuneration and working conditions for its personnel, as well as minimum age of [SPECIFY AGE] to carry out security services, in accordance with international and national law. Proof of providing personnel with social benefits that are reasonable and in keeping with the applicable national statutory provisions (in particular in cases of accident, illness, disability or death). Social benefits and remuneration should be in line with national laws and international labor laws and standards;
- ☐ Adequate internal control system capable of ensuring that its personnel comply with established ethical conduct and that disciplinary measures are taken where misconduct occurs. In cases of criminal misconduct, an adequate internal control system should refer these cases to the relevant national criminal justice system. The internal control system should provide proof that legal provisions and regulations are implemented and that company principles and rules are complied with;
- ☐ Sufficient financial and economic stability;
- ☐ Appropriate costing and value for money;
- ☐ Governance and oversight: code of conduct, rulebooks, ethics committee, employee tribunals,

membership of trade association; and

- ☐ Insurance to cover risks and associated liabilities arising from the contractors' operations and activities, including insurance for its personnel.

The RfP should also require that bids include the following information:

- ☐ Company risk mitigation strategy including strategies to mitigate the risk of misconduct by employees and, where relevant, subcontractors;<sup>12</sup>
- ☐ Use of force policy (see Section 1.5 below);<sup>13</sup>
- ☐ SALW manual, where relevant;
- ☐ Information related to planned subcontracting, where relevant; and
- ☐ Company mechanism for complaints process and grievance resolution.

The client might also wish to consider following elements for the evaluation of the potential contractors:

- ☐ Company membership in good standing in the International Code of Conduct for Private Security Providers' Association (ICoCA) and/or the company is in good standing in national industry regulatory bodies, other trade associations and/or stakeholder initiatives;
- ☐ Company profile, including a brief history of the potential contractors, with personnel and property records, list of clients in the past [INSERT AMOUNT] years, name changes or affiliated companies;
- ☐ Internal company policy implementing international and national standards and company code of conduct;
- ☐ Relationship of the potential contractor with public security, political parties and other organisations/states;
- ☐ Human resource management and organisational capacity: number of employees staffed to contract, staff turnover, performance reviews, management structure, back-up capacities; and
- ☐ Understanding of social context and work experience in the area of contract operations, including knowledge of socio-economic conditions, cultural awareness, knowledge of other situations of violence or current and past armed conflicts and locally appropriate protocols for action in case of violence or trespassing in the area of contract operations.



## 1.4. Award criteria: personnel

- ☐ **Record of past conduct:**
  - Personnel have not been convicted of any national criminal offence or found by a national or international body to have breached international criminal law or committed violations of IHL or abuses of IHRL in any jurisdiction;
  - Personnel are not subject to any ongoing judicial proceedings;
  - Personnel have undergone and passed a criminal background check; and
  - The contractor has verified its personnel's place of employment for the past five years including, where relevant, a background check with all military or law enforcement employers.
- ☐ Personnel are not currently in the employ of a governmental body, nor are members of the armed or public security forces;
- ☐ **Training:**<sup>14</sup> the contractor ensures and can provide evidence that its personnel has received adequate training. The contractor submits a copy of the training curriculum used to train personnel. Adequate training must comprise at least the following issues: IHRL, IHL (in situations of armed conflict),

international standards (such as the Voluntary Principles on Security and Human Rights, the UN Guiding Principles on Business and Human Rights, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the ICoC, first aid, use of force, and procedures in case of armed conflict or other situations of violence.

- ☐ **Where relevant:** proof of training on SALW, less lethal weapons and other equipment.

## ✓ 1.5. Award criteria: SALW, less lethal weapons and other equipment

If the RfP stipulates services where SALW will be used (for example armed guarding) or services where less lethal weapons or other equipment will be used, the client should include the following selection criteria regarding SALW, less lethal weapons and other equipment:<sup>15</sup>

- ☐ Possession of all necessary permits, authorisations, and approvals to obtain and/or import and export and carry relevant SALW, less lethal weapons and other equipment under the applicable international and national law of the Home and/or Territorial states;
- ☐ Personnel have sufficient training regarding the use of their SALW, their less lethal weapons and their other equipment;
- ☐ Documentation of the lawful acquisition, use and storage of SALW, of less lethal weapons and other equipment;
- ☐ The contractor provides evidence of adequate maintenance and regular inspection of the SALW, less lethal weapons and other equipment of its personnel;
- ☐ The contractor provides evidence of compliance with the weapons laws applicable in the place of performance of the contract and provides evidence that personnel are in possession of all authorisations needed. It implements SALW, less lethal weapons and other equipment management procedures, which are to be annexed to the contract;
- ☐ The SALW, less lethal weapons and other equipment may only be employed in situations of self-defence or when otherwise strictly necessary, and in accordance with the use of force policy.

The circumstances under which the personnel of the contractor may use force will be defined by the applicable national law. However, the fundamental principles for the use of force are defined by international human rights law, which applicable national law must respect. The contractor must develop and implement a use of force policy for its personnel reflecting these fundamental principles, namely:

- ☐ The personnel deployed by the contractor are authorised to use force, including the use of SALW, to defend him/herself or others against imminent threat of death or serious bodily injury.

or

- ☐ The personnel deployed by the contractor are authorised to employ less lethal force by less lethal weapons or other equipment (as set out by applicable national and international law and excluding SALW) under the following circumstances:<sup>16</sup>
  - To defend him/herself or others against imminent threat of bodily injury;
  - To maintain order and security and prevent damage to client's premises or property; or
  - To detain or prevent the escape of a person who constitutes an imminent threat of bodily injury to himself/herself or others;
  - SALW should not be authorised for the above circumstances.

The use of force policy developed and implemented by the contractor must also conform to the following:



- At all times, any use of force must abide by the following principles:
  - The force is reasonable and strictly proportionate to the threat faced or the seriousness of the offences, and the legitimate objective to be achieved; and
  - The force used is necessary under the circumstances, in particular it is the lowest amount of force necessary to negate the threat or otherwise achieve the objective sought; and there is no other reasonable alternative available.

## ✓ 1.6. Publication of the request for proposal

Publication of the RfP should ensure that potential contractors have access to the same information and will be evaluated against the same criteria, which facilitates transparency, fair competition, and equal opportunities in public procurement processes.<sup>17</sup> Exceptionally, it may be appropriate for RfPs to be extended only to invited applicants, instead of through an open public process. Bidding by invitation may have the advantage that only pre-screened contractors are invited to bid; however, this solution can have negative impacts on the oversight and accountability of the bidding process. Bidding by invitation should therefore be considered only when necessary, and bound to specific exceptions, such as an urgent need or contracting in environments with a lack of suitable suppliers. In particular where the state is the client and/or payment for contractors comes from public funds, the process for bids should be open and transparent, while taking into consideration national security, privacy and commercial confidentiality requirements.

- The RfP should be published in a transparent manner, either through an open public bidding process or through invitations; and
- The RfP should be accompanied by an implementation plan for the eventual contract, including number of employees dedicated to carrying out the contract as well as the staffing structure.

# 2

## AWARD OF THE CONTRACT

### ✓ 2.1. Evaluation of criteria

Although the burden to prove compliance with the criteria defined in the RfP is usually with the potential contractor, the client must ensure the criteria can be objectively assessed. A responsible authority or office should accept and assess proposals; this office should have adequate staff and proper training in order to assess proposals.

To ensure a fair selection process, the client must define a way to assess and weigh all of the criteria defined in the RfP, for example by defining certain amount of points per criteria. The weight attributed to each criterion should also be displayed to the potential contractor and made publically available.

Example:

Criteria	Weight of the criteria	Company X	Company Y
Company	30 points	15/30	21/30
Personnel	30 points	20/30	25/30
SALW, less lethal weapons, other equipment & use of force	30 points	10/30	25/30
Costing & value for money	10 points	10/10	3/10
...			
<b>Total points:</b>	<b>100 points</b>	<b>55/100</b>	<b>74/100</b>

## ✓ 2.2. Notification of award

When the client is a state, the contract award should be publically announced for transparency and accountability reasons. If the client is a non-governmental organisation, public display can be considered as an added transparency measure.

- ☐ When not constrained by other considerations, publicly announce the award decision.

The following applies to both states and non-governmental organisations:

- ☐ Notify all declined applicants of the decision and provide them with written justification of the decision.

## PART 2

# Contract

# EXPLANATORY NOTES

## What does the contract entail?

Effective contracts with PMSCs should embed obligations for respect of IHRL and IHL, as applicable, as well as with applicable national laws. Specific contractual clauses should be included requiring PMSCs and their personnel to comply with these obligations. This will allow for a clearer understanding of roles and responsibilities, as well as provide the potential to hold companies accountable and impose sanctions in case they do not comply with contracts.

Where the bidding process and the evaluation and selection of potential contractors have been carried out effectively (see Part 1 of this Tool), drafting the contract is significantly more straightforward. The request for proposal can therefore be a valuable foundation for the contract itself.

Following the signing of a contract, there are a number of post-contract obligations related to the implementation and monitoring of the provisions in the final contract. Although a monitoring system is required by the model contract template in this Tool, this Tool will not provide specific guidance related to the process of implementation and monitoring of the contract.

Additionally, there are a number of administrative requirements related to applicable law and place, jurisdiction or arbitration rules, and accounting and billing procedures. These issues will largely not be covered by this Tool; however practitioners should consider these elements in the execution of the contract.

## Why is the contract important?



- ➔ Contractual provisions inducing compliance or incentivising the respect for IHRL and IHL give the client increased ability to leverage ethical behaviour by contractors. See Montreux Document Good Practices 14-18.
- ➔ Where national legislation is insufficient, contracts can offer a practical solution to fill regulatory gaps and to promote higher standards in terms of respect for IHRL and IHL.
- ➔ Where adequate monitoring of contractual obligations is in place, the contract is also a powerful tool to hold companies accountable for violations and to provide for adequate grievance mechanisms. See Montreux Document Good Practices 19-23.

## Structure of the contract

The following intends to give an overview of a model contract, based on international good practice as well as the guidance provided by the Montreux Document and a number of good practice documents, international rules and instruments. It is important to note that applicable national procurement law and international law will have a bearing on this process.






## 1

GENERAL  
CLAUSES

	<b>1.1. Background information &amp; terms of contract</b>	This section should specify the need to respect IHL, IHRL and international standards as well as relevant national laws.
	<b>1.2. Definitions</b>	Terminology should be clearly defined and definitions should be adopted based on national and/or international law.

## 2

CONTRACTOR'S  
ROLES &  
RESPONSIBILITIES

	<b>2.1. Mandate &amp; contractor duties</b>	The specific services, tasks and duties should be clearly stated as agreed between the parties.
	<b>2.2. Company &amp; personnel</b>	This will mirror and expand on the selection criteria against which the contractor was evaluated in Stage 2.
	<b>2.3. Rules on ethical conduct</b>	The expected behavior and ethical standards of the company and its personnel should be agreed on.
	<b>2.4. SALW, less lethal weapons, other equipment &amp; use of force</b>	Where relevant, the type of permitted SALW, less lethal weapons and other equipment should be detailed as well as the required training, storage, and handling set out in Stage 2.
	<b>2.5. Subcontracting, liability &amp; insurance</b>	Where relevant, the contract should define rules for subcontracting, and define the mandatory insurance PMSCs must subscribe to.

## 3

CLIENT'S ROLES &  
RESPONSIBILITIES

	<b>3. Client's roles &amp; responsibilities</b>	Client's role and responsibilities should also be defined, including for example payment obligations.
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## 4

## MONITORING

	<b>4. Monitoring</b>	Mechanisms for the monitoring of the contractor should be defined, including for example the right to inspection or contractor self-reporting.
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## 5

OPTIONS IN CASE  
OF NON-COMPLIANCE

	<b>5. Options in case of non-compliance</b>	Graduated sanctions in case of non-compliance with contractual terms should be clearly defined, with adequate enforcement mechanisms as well as a process for the resolution of disputes and grievances.
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# GUIDANCE TOOL

## How to use this Tool

This tool offers guidance for a model contract for the procurement of PMSC services, in line with IHRL and IHL. This model contract reflects internationally recognised good practices; however, contracts will have differing terms, conditions and circumstances and each contract will therefore need to be adapted to the specific context.

## Legend

- ➔ Instructions written in **red** are intended as explanations for the user.
- ➔ Sections written in **black** represent the content to include in the final contract.
- ➔ Sections written in **grey** represent examples or proposals that may vary according to the specific contract

**CONTRACT N° [INSERT REFERENCE]**

between

**[INSERT CLIENT's NAME]**, hereafter 'The client'

and

**[INSERT FULL CONTRACTOR's COMPANY NAME]**, hereafter 'The contractor'

# 1

## GENERAL CLAUSES



### 1.1.i. Background information

This section should be adapted by the client and contractor to reflect the relevant specificities of the contract. Insert any other relevant background information, including details regarding the operational context. In particular, mention should be made of elements that complicate the operational environment, such as current or recent armed conflict, other situations of violence, tensions with the community, environmental or humanitarian emergencies.

The following criteria for inclusion in contracts represent minimum criteria and does not aim to be exhaustive.<sup>18</sup>

- 1.1.1.** The client requires the provision of armed and/or unarmed military and/or security services to
- a. protect the client's property and personnel and
  - b. provide mobile protection for the client's property and personnel and the client wishes to engage the contractor to provide such services in accordance with the terms and conditions set forth in this contract.



- 1.1.2.** This contract and the mandate defined within must be interpreted and carried out in a manner consistent with IHL, in situations of armed conflict, as well as international human rights laws, international standards and relevant national laws, as applicable.



### **1.1.ii. Terms of contract**

- 1.1.3.** This contract comes into effect on the following effective date: [INSERT DATE].
- 1.1.4.** The contract remains in effect for a term of [INSERT NUMBER OF MONTHS] from the effective date, unless the contract is terminated earlier in accordance with Section 5 of this contract. The parties may extend the term of the contract.
- 1.1.5.** Each party designates a party representative to be the primary operational contact point between parties.
- 1.1.6.** The contractor acknowledges and agrees that:
- The contractor is satisfied with the correctness and sufficiency of the background information provided by the client with respect to the context and services to be performed;
  - The contractor is able to perform the services under the terms and conditions of this contract;
  - The client is not liable to the contractor for any direct, indirect, or consequential losses, including but not limited to lost profits or other losses resulting from the reliance on the data and information provided by the client.
- 1.1.7.** The contractor represents and ensures that:
- All of the information it has provided during the bidding process concerning the services to be performed pursuant to this contract, including all information concerning any personnel or equipment to be used in the performance of the services is true, correct, accurate, and not misleading;
  - It is financially solvent, and is experienced and qualified to perform the services and that it possesses all the necessary qualified and experienced personnel, equipment, facilities, resources and infrastructure for the timely and competent performance of its obligations under this contract;
  - The contractor company and its personnel are knowledgeable of all applicable international and national laws;
  - It has all necessary business licenses, registrations, permits, authorisations, or approvals required under applicable international law and national laws of the Home and/or Territorial states. It has necessary permits authorisation and approvals to obtain and/or import and export and carry relevant SALW, less lethal weapons and other equipment under applicable international law and national laws of the Home and/or Territorial states.



### **1.2. Definitions**

- 1.2.1.** For the purposes of this contract, the expressions below have the following meaning:

Add in this section any term that needs to be clarified for the purpose of this contract. In some cases, reference to specific national or international law might be appropriate. If the contract allows for armed military and/or security services, the specific SALW, less lethal weapons or other equipment allowed should be defined, as well as rules on the use of force.

The following proposed definitions are used in good practice:

- **Area of operations** means the areas and regions in which the contract is implemented and where the contractor is to provide services [INSERT GEOGRAPHIC TERRITORY DETAILS].
- **Applicable international law** means all international treaties, conventions and rules of customary international law, including but not limited to: (i) international humanitarian law in situations of

- armed conflict; (ii) international human rights law; and (iii) international criminal law;
- **Applicable national law** means all national statutes, laws, ordinances, decrees, rules, regulations and by-laws which are applicable to the performance of the services, including but not limited to: national tax, employment, environmental and criminal laws of Territorial and/or Home states.
- **Contract** means this document, together with its annexes.
- **Governmental body** means all state organs, regardless of their function (legislative, executive, judicial), including ministries, regulatory bodies, courts, central bank or other entities empowered to exercise governmental authority.
- **Parties or Party** refers to either or both the contractor and the client, as defined in the first paragraph of the contract.
- **Performance guarantee** means the deposit to guarantee performance as set out in Section 2.5.2 of this contract.
- **Personnel** means all contractor's officials, employees, servants, agents and representatives performing services under this contract.
- **Screening process** means the process set out in Section 2.2.1.b of this contract.

The following Annexes should be included in the contract:

- **Company and Personnel Code of Conduct:** See section 2.3 and, for example the general guidance of the ICoC, and other international and national standards, such as the Voluntary Principles on Security and Human Rights and the UN Guiding Principles on Business and Human Rights.
- **List of Personnel:** The list should include all personnel performing services under the contract. The list should be kept up to date.
- **Use of Force Policy:** The contractor should establish its own use of force policy, respecting applicable international and national law and standards. For general guidance for law enforcement type contexts, see for example the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- **Training curriculum:** The contractor should submit a copy of the training curriculum used for training of personnel.

In cases where the contract allows for armed military and/or security services:

- **Weapons Manual:** The manual will contain detailed instructions regarding SALW including their use, possession, maintenance, storage, acquisition and circulation. See ICoC, paragraphs 56-59 and also the ICRC “Arms Transfer Decisions: Applying IHL and IHRL Criteria, A Practical Guide.” Where the contract allows for less lethal weapons and other equipment, the contractor should submit a relevant manual.

## 2

### CONTRACTOR'S ROLES & RESPONSIBILITIES



#### 2.1. Mandate and contractor duties

Provide in this section a detailed description of the agreed services to be delivered by the contractor (mandate) as well as its duties.

**2.1.1. Services:** the contractor owes to the client performance of the following services:

- Property protection: [INSERT PRECISE DESCRIPTION]
- Personal protection: [INSERT PRECISE DESCRIPTION]
- Mobile/Convoy protection: [INSERT PRECISE DESCRIPTION]

**2.1.2.** The contractor provides all personnel, materials, equipment, supplies, facilities, transportation, training and related services to perform the provision of the above mentioned services.

**2.1.3.** The contractor is responsible for obtaining at its sole cost and expense all licenses, registration, permits, authorisations, and approvals from government bodies and other relevant authorities necessary for the performance of the services, including for the importation and exportation of relevant materials, supplies, and equipment into and out of the area of operations and it maintains such licenses, permits authorisations and approvals. The contractor is also responsible for obtaining at its sole cost and expense, all entry and exit visas and work permits for personnel, as well as customs clearances for materials, supplies, and equipment provided by or used by the contractor for the performance of the services and for providing all relevant notices in accordance with applicable international and national laws. The contractor provides a copy of all such documentation to the client.



## 2.2. Company and Personnel

The requirements for the company and its personnel should at a minimum include the requirements and criteria against which the company was evaluated in the 'evaluation and selection of potential candidates' (Stage 2).

**2.2.1.** The contractor must satisfy the following requirements:

**a. Screening process:** the contractor provides sufficient guarantees concerning its personnel, including the following criteria:

- i. Record of past conduct: personnel have not been convicted of any national criminal offence or found by national or international bodies to have breached international criminal law or committed violations of IHL or abuses of IHRL in any jurisdiction;
- ii. Personnel are not subject to any ongoing judicial proceedings;
- iii. Personnel have undergone and passed a criminal background check;
- iv. The contractor has verified its personnel's place of employment for the past five years including, where relevant, a background check with all military or law enforcement employers;
- v. Personnel are not currently in the employ of a governmental body, the armed or public security forces;
- vi. Training: the contractor ensures its personnel has received adequate training, at least with regard to human rights, in situations of armed conflict IHL, relevant international standards (VPs, UNGPs, and ICoC), use of force, SALW;

**b.** It provides fair remuneration and working conditions according to national and international labour law for its personnel, as well as minimum age of [SPECIFY AGE] to carry out services. It also provides its personnel with social benefits that are reasonable and in keeping with the applicable national statutory provisions (in particular in cases of accident, illness, disability or death).

**c.** The contractor maintains a register of on-duty personnel, which will be signed by each of the personnel;

**d.** It provides sufficient evidence of its good/ethical reputation and irreproachable business conduct;

**e.** It possesses an adequate internal control system, capable of ensuring that its personnel and, where relevant, subcontractors comply with established ethical conduct and that disciplinary measures are taken where misconduct occurs. The internal control system guarantees that legal provisions and regulations are implemented and that company principles and rules are complied with.

**f.** It possesses and can demonstrate a risk mitigation strategy (such as risks related to the

operational environment) and including mitigation of the risk of misconduct by personnel and, where relevant, subcontractors.

**g.** It possesses liability insurance with adequate coverage as per Article 2.6.

**h.** It documents sufficient financial and economic stability.

**i.** It provides documentation on the lawful acquisition, storage and use of equipment, including SALW, as well as information on the company and its personnel.

### **2.2.2. The requirements for the company should also include the following:**

- The company is a member in good standing of the International Code of Conduct for Private Security Providers' Association (ICoCA); and/or
- The company is in good standing in national industry regulatory bodies, other trade associations and/or multistakeholder initiatives.



## **2.3. Rules on ethical conduct**

**2.3.1.** The contractor implements a company and personnel code of conduct and annexes it to this contract.

**2.3.2.** The contractor and personnel performs services in compliance with all applicable international and national law and liaise regularly with the governmental bodies to ensure harmonious relationship with the host country.

**2.3.3.** The contractor and personnel perform the services in compliance with international human rights and, in situations of armed conflict, IHL, and international standards - including the Voluntary Principles on Security and Human Rights (VPs) and the ICoC.

**2.3.4.** The contractor implements ongoing/refresher training for personnel on human rights, IHL (in situations of armed conflict), international standards (e.g. ICoC), use of force, SALW. The contractor also provides to the client the ongoing/refresher training schedule.

**2.3.5.** The contractor provides the client with the list of personnel, including confirmation that the personnel engaged to provide the services under the contract satisfy the criteria from the screening process (Section 2.2.1.b of this contract).

**2.3.6.** The contractor prohibits bribery and takes measures to prevent corruption. Personnel must not accept or offer promises or gifts or other advantages (directly or indirectly) that are or are capable of being considered as constituting wrongful conduct or bribery.

**2.3.7.** The contractor carries out regular testing to evaluate physical and psychological fitness of personnel to perform their contracted duties and to prevent substance abuse.

**2.3.8.** The contractor provides uniforms and identification for personnel to ensure they are identifiable and not mistaken for the armed or public security forces.

**2.3.9.** The contractor develops a security plan in consultation with the client to cover the safety and security of personnel, including their evacuation, the safeguarding of equipment, materials, and supplies in the custody of the contractor or personnel, including any client provided equipment, materials and supplies.

**2.3.10.** The contractor and its personnel maintain confidentiality of information gathered in the course of duties.



## **2.4. SALW, less lethal weapons, other equipment & use of force**

**Parties should choose from the following options regarding SALW, less lethal weapons & other equipment:**

**2.4.1.** The personnel deployed by the contractor are not authorised to carry or use SALW for the performance of the agreed services under this contract. Personnel may be authorised to carry and use less lethal weapons and other equipment, as set out by applicable national and international law.

or

**2.4.2.** The personnel deployed by the contractor are armed for the performance of the agreed services under this contract.

The authorised SALW and amunitions permitted under this clause should be specified here, in accordance to what has been defined in the terms of contract (Section 1.2 of this contract) as well as in accordance with applicable international and national law. Any additional less lethal weapons and other equipment such as for example the use of security dogs, and their relevant considerations should be detailed here.

**2.4.3.** The contractor is responsible for the adequate maintenance and regular inspection of the SALW, less lethal weapons, other equipment, and of its personnel, where relevant.

**2.4.4.** The contractor must ensure compliance with laws relevant to SALW, less lethal weapons and other equipment applicable in the Territorial state, and is responsible to ensure its personnel are in possession of all authorisations needed. It implements SALW, less lethal weapons and other equipment management procedures, which are to be annexed to the contract.

The SALW, less lethal weapons and other equipment may only be employed in accordance with the use of force policy (Section 2.4.5-9 of this contract). The contractor must ensure any armed personnel have received adequate training regarding the use of SALW, less lethal weapons and other equipment.

The contractor must demonstrate that personnel have a sufficient understanding of the principles of necessity and proportionality with respect to the use of force and the use of SALW, less lethal weapons and other equipment. This understanding must be commensurate to the level of force the personnel is authorised to use. In particular, the contractor must demonstrate that personnel are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions, receive continuous and thorough professional training and are tested in accordance with appropriate proficiency standards in the use of force. Their continued fitness to perform these functions should be subject to periodic review.

Although the circumstances under which the personnel of the contractor may use force will be defined by the applicable national law, and the fundamental principles for the use of force are defined by human rights laws, parties should choose from the following two options regarding the use of force: <sup>19</sup>

**2.4.5.** The personnel deployed by the contractor are authorised to use force, including the use of SALW, to defend him/herself or others against imminent threat of death or serious bodily injury.

or

**2.4.6.** The personnel deployed by the contractor are authorised to employ less lethal force by less lethal weapons or other equipment (as set out by applicable national and international law and excluding firearms) under the following circumstances:<sup>20</sup>

- To defend him/herself or others against imminent threat of bodily injury;  
To maintain order and security and prevent damage to client's premises or property; or
- To detain or prevent the escape of a person who constitutes an imminent threat of bodily injury to himself/herself or others;
- SALW should not be authorised for the above circumstances (2.4.6).

Regardless of the options chosen regarding SALW, less lethal weapons and other equipment, as well as regarding the use of force, the contractor must develop and implement a use of force policy for its personnel reflecting human rights laws and fundamental principles, namely:

**2.4.7.** At all times, any use of force must abide by the following principles:

- The force is reasonable and strictly proportionate to the threat faced or the seriousness of the offences, and the legitimate objective to be achieved;
- The force used is necessary under the circumstances, in particular it is the lowest amount of force necessary to negate the threat or otherwise achieve the objective sought; and there is no other reasonable alternative available.

**2.4.8.** Where relevant, the contractor should also demonstrate that personnel have an understanding on the differentiated use of force and the escalation of the use of force, including through the evidence of training and risk mitigation strategy.**2.4.9.** Based on the principles above (Section 2.4-2.4.8), the contractor develops and implements a tailored use of force policy for its personnel, which is annexed to this contract. The use of force policy at least conforms to the above human rights principles and to any applicable national law. In the context of an armed conflict, IHL rules will apply to the conduct of hostilities.<sup>21</sup>

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**2.5. Subcontracting, liability & insurance****2.5.1.** The contractor adheres to the following conditions for subcontracting:

- a.** The contractor communicates to the client in advance any intention of subcontracting, and obtains necessary approval, to engage with subcontractors as part of the service agreement;
- b.** The contractor demonstrates that subcontractors comply with equivalent requirements as the contractor initially contracted by the client;
- c.** The contractor is liable (as appropriate based on applicable law) for the conduct of its subcontractors.

Specific terms and conditions of the performance guarantee can be annexed to the contract.

**2.5.2. Performance guarantee:** the contractor provides at its sole cost and expense a performance guarantee to the client in the sum of [INSERT SUM IN CURRENCY] before [INSERT DATE]. The performance guarantee secures the performance by the contractor of its obligations in accordance with the terms and conditions of this contract, and provides a source of compensation for the client for any failure by the contractor to perform its obligations. The performance guarantee remains valid and in force until [INSERT DATE 60-180 DAYS FROM THE END OF CONTRACT] or subject to extension as per Section 1.2 of this contract.**2.5.3.** The contractor obtains and maintains policies of insurance with reputable insurance companies in good financial standing for the duration of this contract and any extension as per Section 1.2 of this contract. The following insurance policies are required: [INSERT REQUIRED INSURANCE POLICIES BASED ON CONTRACT CONTEXT AND NEEDS].**2.5.4.** Prior to commencement of any services under the contract, the contractor provides satisfactory evidence of any insurance required under this contract.



# 3

## CLIENT'S ROLES & RESPONSIBILITIES

- 3.1.1. Information sharing:** at the request of the contractor, the client shares with the contractor all information necessary related to the contracted services.
- 3.1.2. Payment:** the client pays [INSERT AMOUNT/PER MONTH] to the contractor for the services agreed upon in this contract.
- 3.1.3.** The contractor submits to the client a monthly invoice for payment. all payments due are made by the client within [INSERT NUMBER OF DAYS] days of the date of the monthly invoice.

# 4

## MONITORING

The client reserves the right of inspection relevant to the services provided. For example, where armed PMSC services are provided, a right to inspect the weapon storage facilities may be necessary.

Where the client is a state, the following is obligatory:

- 4.1.1. Inspection:** the client has the right to review all performance executed by the contractor on the following schedule [INSERT MONTHLY/WEEKLY SCHEDULE OR INSERT 'UNNANOUCED PERFORMACE REVIEW'].
- 4.1.2. Self reporting by contractor:** the contractor reports without delay to the client on the status of performance of the contract. The contractor prepares a written operations report no later than the 10th day of each calendar month of the contract duration. The written operations report will detail the services performed and include the following information:
- Any changes in personnel;
  - Any establishment of subcontracting;
  - Whether there has been use of force, firearms or other weapons by personnel in the course of their duties. If so, the report details the circumstances, causes and follow-up actions;
  - Whether there has been personnel misconduct, and how this misconduct has been addressed.

The client retains the right to monitoring and inspection. When the client is a state, the client can supersede the findings of the contractor's internal monitoring and reporting where that state is dissatisfied with the process or results.

**4.1.3. Reporting on incidents or unlawful acts by the contractor:**

At a minimum, the contractor shall report the following incidents:

- a. The use of any weapon, which includes the use of SALW, equipment, and less lethal weapons under any circumstance (except authorised training), any breach of the use of force policy or

escalation of the use of force, damage to equipment or injury to persons, traffic accidents, and incidents involving other military and/or security forces.

Additionally, the following shall be reported:

- b.** Child labour: If the contractor, its personnel or any subsidiaries/subcontractors are engaged in any practice inconsistent with national and international law, including the rights set forth in the Convention on the Rights of the Child, in particular Article 32 which requires that a child shall be protected from performing any work that is likely to be hazardous, or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
- c.** Sexual exploitation: if the contractor, its personnel or any subsidiaries/subcontractors are engaged in sexual exploitation or abuse of any of its employees or any other persons engaged and controlled by the contractor to perform services under this contract.
- d.** Torture or other cruel, inhuman or degrading treatment or punishment: If the contractor, its personnel or any subsidiaries/subcontractors are engaged in torture or other cruel, inhuman or degrading treatment or punishment, or other violations or abuses of international or national law.
- e.** Trafficking in persons: If the contractor, its personnel, or any subsidiaries/subcontractors are involved in trafficking in persons. For the purposes of the contract, trafficking in persons is the recruitment, transportation, transfer, harbouring or receipt of a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>22</sup>
- f.** Slavery and forced labour: If the contractor, its personnel, or any subsidiaries are engaged in slavery, forced or compulsory labour or are complicit in another entity's use of such labour.
- g.** Prohibited weapons: If the contractor, its personnel, or any subsidiaries are engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines or other prohibited weapons under international and national law.

**4.1.4. Timeline for reporting on abusive or unlawful acts, or violent incidents:** The contractor reports without delay or within [INSERT NUMBER OF DAYS] to the client on any abusive or unlawful acts or violent incidents. The contractor also reports to the appropriate governmental body within this timeframe. The written incident report will include the following information:

- Detailed description of the incident;
- Whether there has been use of force, SALW or other less lethal weapons by personnel in the course of their duties;
- The names of the personnel and other persons involved;
- The plan for follow-up on the incident, including putting into place contractor internal control procedures.

The client retains the right to investigating abusive or unlawful acts or violent incidents. The contractor has an obligation to comply with investigations i.e. by producing relevant documents or participating in the interviews conducted by the client. When the client is a state, the client can supersede the findings of the contractor's internal investigations where that state is dissatisfied with the process or results.

# 5

## OPTIONS IN CASE OF NON-COMPLIANCE

**5.1.1. Procedures for non-compliance:** if the services performed by the contractor do not conform to the requirements of the contract, without prejudice to and in addition to any other rights and remedies available under the contract or otherwise, the client has the following options to be exercised at its sole discretion:

- Require the contractor to reimburse the client for any and all damage caused to the client due to the failure to conform to requirements and/or;
- Economic or financial penalties and/or;
- Suspension of the contract and/or;
- Termination of the contract for cause.

Notwithstanding any provision to the contrary contained in the contract, the contractor provides, at its sole cost and expense, any service required to rectify errors arising from or relating to any acts or omissions on the part of the contractor or personnel.

**5.1.2. Resolution of dispute:** any initial attempts at resolving disputes, controversies or claims under this contract are resolved in accordance with the following procedures:

- The representative of the party informs the other party's representative in writing regarding any such issue.
- Within [INSERT TIMEFRAME IN DAYS] days of receiving the notice in writing, the receiving party's representative will propose a written plan of action for resolving the issue, including a timeframe for resolution. The client and contractor coordinate and agree on the timeframe for resolution.
- Should there be failure to resolve the issue within the agreed timeframe, the contractor and client's representatives escalate the issue to the appropriate superiors.
- If any material default occurs on the part of the contractor under the terms and conditions of this contract which is not resolved in Section 5.1.2-5.1.5 above, the client reserves the right to terminate this contract upon [INSERT TIME IN DAYS] days written notice to the contractor.

**5.1.3. Referral to Governmental Body:** notwithstanding Section 5.1.1-5.1.6 of this contract, the client will refer information related to the contractor and/or personnel to a governmental body where criminal misconduct on the part of the contractor or personnel is reported, including violations of IHL and human rights abuses.

At a minimum, the following situations referred to in Section 4.1.3 shall be referred to a relevant governmental body.

The Parties may wish to include a right to terminate the contract for convenience.

**5.1.4. Termination of the Contract:** Each of the Parties is entitled to terminate the contract subject to a written termination notice period of [INSERT TIME IN DAYS] days. Where a party terminates the contract, it must not be held liable to the other party for compensatory damages.

## ENDNOTES

**1 |** See Montreux Document on pertinent legal obligations and good practices for states related to operations of private military companies during armed conflict (2008), International Code of Conduct for Private Security Service Providers (2010).

**2 |** Interested practitioners and corporate clients of PMSCs are encouraged to use Recommendations for Hiring Private Security Providers (Geneva Centre for the Democratic Control of Armed Forces (DCAF), International Committee of the Red Cross (ICRC), Socios Peru, and PeaceNexus, 2016). This guide contains recommendations, good practices, checklists and performance indicators to help ensure the process of selecting, hiring and working with private security effectively integrates all relevant human rights considerations and, in situations of armed conflict, those arising from international humanitarian law.

**3 |** In their field operations, states, IOs and NGOs hire also other types of private military and security service providers, beyond formal PMSC companies. These can also include contract guards who are hired and directly integrated into the client's own staff and personnel. This has the advantage that the client can verify background and performance, ensure adequate training, performance in line with the client's ethical standards, and that military and/or security personnel working conditions are adequate. Other types of private military and security providers have also been encountered by IOs, NGOs and states, such as community security volunteers, or local watch groups. These types of personnel are not covered by this tool.

**4 |** To ensure that violations of international humanitarian law (IHL) are not facilitated by unregulated access to arms and ammunition, it is critical that arms transfer decisions by states include a consideration of whether the recipient is likely to respect IHL. Several regional arms transfer instruments adopted, as well as national laws and regulations, include respect for IHL and human rights law among their transfer criteria. With the adoption of the Arms Trade Treaty (ATT), states have set common international standards for the transfer of conventional arms and ammunition. See ICRC, "Arms Transfer Decisions: Applying IHL and IHRL criteria - A Practical Guide," (Geneva: ICRC, 2016), <https://www.icrc.org/en/publication/0916-arms-transfer-decisions-applying-international-humanitarian-law-criteria>.

**5 |** See United Nations, Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights, 2011, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

**6 |** See Voluntary Principles on Security and Human Rights, <http://www.voluntaryprinciples.org/>.

**7 |** ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd edition, 2016, commentary Common Articles 2 and 3, available at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>; ICRC, *How is the Term "Armed Conflict" Defined in International Humanitarian Law?*, March 2008, pp 1 to 3, <https://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm>; ICRC, *International humanitarian law and the challenges of contemporary armed conflicts*, October 2011, 31IC/11/5.1.2, [www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf](http://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf); and ICRC, *International humanitarian law and the challenges of contemporary armed conflicts*, October 2016, 32IC/15/11, <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>

**8 |** For a complete list, see: <https://www.icrc.org/en/document/what-treaties-make-ihl-what-customary-ihl>

**9 |** For a complete list of relevant instruments, see the United Nations, Office of the High Commissioner for Human Rights, Universal Human Rights Instruments, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>.

**10 |** The following good practice documents may be instructive: Geneva Centre for the Democratic Control of Armed Forces and International Committee of the Red Cross, *Addressing Security and Human Rights Challenges in Complex Environments Toolkit*, Third edition, Chapter III, Working with Private Security Providers, Risk and Impact Assessment, 89-92; Voluntary Principles on Security and Human Rights: Implementation Guidance

Tools, Module 4, Private Security Providers; European Interagency Security Forum, Security To Go, Module 1 “Security Risk Management Process,” and Module 3, and “Risk Assessment Tool,” 2015, <https://www.eisf.eu/library/security-to-go-a-risk-management-toolkit-for-humanitarian-aid-agencies/>.

**11** | Additional criteria may need to be considered, either as good practice or as required by law. See, for example, Geneva Centre for the Democratic Control of Armed Forces and International Committee of the Red Cross, *Addressing Security and Human Rights Challenges in Complex Environments Toolkit*, Third edition, Chapter III, Working with Private Security Providers, Risk and Impact Assessment, 89-92.

**12** | Ibid.

**13** | Though specifically intended for law enforcement officials, the following documents may be instructive under certain circumstances and so long as personnel are authorised to assist in the exercise of a state’s law enforcement authority: Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress, Havana, Cuba, 27 August to 7 September 1990; United Nations Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979; International Committee of the Red Cross (ICRC), Advisory Service on International Humanitarian Law, The Use of Force in Law Enforcement Operations, 23 September 2015.

**14** | The following good practice document may be instructive: Geneva Centre for the Democratic Control of Armed Forces and International Committee of the Red Cross, *Addressing Security and Human Rights Challenges in Complex Environments Toolkit*, Third edition, Chapter III, Working with Private Security Providers, Training, 116-121; UN Office on Drugs and Crime, Chapter IV, Training, in *State Regulation Concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety*, (United Nations: Vienna, 2014); International Committee of the Red Cross Training Centre, Module 1, “Basic Rules and Principles of IHL.” Though specifically intended for law enforcement officials, the following document may be instructive under certain circumstances and so long as PMSC personnel are authorised to assist in the exercise of a state’s law enforcement authority: Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 5/Add. 3, “Human Rights Standards and Practice for the Police: Expanded Pocket Book on Human Rights for the Police, UN: New York and Geneva, 2004.

**15** | Though specifically developed for states, the following documents may be also be instructive under certain circumstances: International Committee of the Red Cross, “Arms Transfer Decisions: Applying IHL and IRHL Criteria– A Practical Guide” (Geneva: Switzerland, 2016).

**16** | According to Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, firearms shall not be used “against persons except in self-defence or defence of others against the imminent threat of death or **serious** injury, to prevent the perpetration of a **particularly serious** crime **involving grave threat to life**, to arrest a person **presenting such a danger** and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life” (emphasis added).

**17** | See in particular the World Trade Organisation’s Agreement on Government Procurement (GPA), [https://www.wto.org/english/tratop\\_e/gproc\\_e/gproc\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm).

**18** | Additional criteria may need to be considered, either as good practice or as required by law. See, for example, Geneva Centre for the Democratic Control of Armed Forces and International Committee of the Red Cross, *Addressing Security and Human Rights Challenges in Complex Environments Toolkit*, Third edition, Chapter III, Working with Private Security Providers, Risk and Impact Assessment, 89-92.

**19** | Though specifically intended for law enforcement officials, the following document may be instructive under certain circumstances and so long as PMSC personnel are authorised to assist in the exercise of a state’s law enforcement authority: Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,

Adopted by the Eighth United Nations Congress, Havana, Cuba, 27 August to 7 September 1990; United Nations Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979; International Committee of the Red Cross (ICRC), Advisory Service on International Humanitarian Law, The Use of Force in Law Enforcement Operations, 23 September 2015.

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**21 |** The international legal regime governing the conduct of hostilities in armed conflicts has been covered in footnote 8. See also ICRC, *International Humanitarian Law: A Comprehensive Introduction*, ICRC, Geneva, 2016, available at <https://www.icrc.org/en/document/qa-international-humanitarian-law-comprehensive-introduction> (accessed 23 February 2017); ICRC, *Handbook on International Rules Governing Military Operations*, ICRC, Geneva, 2013, available at <https://www.icrc.org/en/publication/0431-handbook-international-rules-governing-military-operations> (accessed 23 February 2017); ICRC, Expert Meeting: The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms, November 2013, <https://www.icrc.org/eng/assets/files/publications/icrc-002-4171.pdf>

**22 |** Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Art. 3 (a).

