

Section V – Pro-forma Contract

FPU.SF.19.20

IOM office-specific Ref. No.:	
IOM Project Code:	
LEG Approval Code / Checklist Code	

SERVICE AGREEMENT
Between
the International Organization for Migration
And
[Name of the Service Provider]
On
[Type of Services]

This Service Agreement is entered into by the **International Organization for Migration**, Mission in *[XXX]*, *[Address of the Mission]*, represented by *[Name, Title of Chief of Mission etc.]*, hereinafter referred to as “**IOM**,” and *[Name of the Service Provider]*, *[Address]*, represented by *[Name, Title of the representative of the Service Provider]*, hereinafter referred to as the “**Service Provider**.” IOM and the Service Provider are also referred to individually as a “**Party**” and collectively as the “**Parties**.”

1. Introduction and Integral Documents

The Service Provider agrees to provide IOM with *[insert brief description of services]* in accordance with the terms and conditions of this Agreement and its Annexes, if any.

The following documents form an integral part of this Agreement: *[add or delete as required]*

- (a) Annex A - Bid/Quotation Form*
- (b) Annex B - Price Schedule*
- (c) Annex C - Delivery Schedule and Terms of Reference*
- (d) Annex D - Accepted Notice of Award (NOA)*

2. Services Supplied

- 2.1 The Service Provider agrees to provide to the IOM the following services (the “**Services**”):

[Outline services to be provided. Where relevant, include location and how frequently etc. services are to be provided. List all the deliverables and their date of submission, if applicable. Description needs to be as detailed as possible to provide for a reliable yardstick to measure compliance. It may be necessary to attach a description of the Services as an Annex.]

- 2.2 The Service Provider shall commence the provision of Services from *[date]* and fully and satisfactorily complete them by *[date]*.
- 2.3 The Service Provider agrees to provide the Services required under this Agreement in strict accordance with the specifications of this Article and any attached Annexes.

3. Charges and Payments

- 3.1 The all-inclusive Service fee for the Services under this Agreement shall be *[currency code] [amount in numbers] ([amount in words])*, which is the total charge to IOM.
- 3.2 The Service Provider shall invoice IOM upon completion of all the Services. The invoice shall include: *[services provided, hourly rate, number of hours billed, any travel and out of pocket expenses, (add/delete as necessary)]*
- 3.3 Payments shall become due *[insert number of days in numbers] ([write figure in words])* days after IOM's receipt and approval of the invoice. Payment shall be made in *[Currency code]* by *[bank transfer]* to the following bank account: *[insert the Service Provider's bank account details]*.
- 3.4 The Service Provider shall be responsible for the payment of all taxes, duties, levies and charges assessed on the Service Provider in connection with this Agreement.
- 3.5 IOM shall be entitled, without derogating from any other right it may have, to defer payment of part or all of the Service fee until the Service Provider has completed to the satisfaction of IOM the services to which those payments relate.

4. Warranties

4.1 The Service Provider warrants that:

- (a) It is a company financially sound and duly licensed, with adequate human resources, equipment, competence, expertise and skills necessary to provide fully and satisfactorily, within the stipulated completion period, all the Services in accordance with this Agreement;
- (b) It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement;
- (c) In all circumstances it shall act in the best interests of IOM;
- (d) No official of IOM or any third party has received from, will be offered by, or will receive from the Service Provider any direct or indirect benefit arising from the Agreement or award thereof;
- (e) It has not misrepresented or concealed any material facts in the procurement of this Agreement;
- (f) The Service Provider, its staff or shareholders have not previously been declared by IOM ineligible to be awarded agreements by IOM;
- (g) It has or shall take out relevant insurance coverage for the period the Services are provided under this Agreement;
- (h) It shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child;
- (i) The Price specified in Article 3.1 of this Agreement shall constitute the sole remuneration in connection with this Agreement. The Service Provider shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or the discharge of its obligations thereunder. The Service Provider shall ensure that any subcontractors, as well as the personnel and agents of either of them, similarly, shall not receive any such additional remuneration.

4.2 The Service Provider further warrants that it shall:

- a) Take all appropriate measures to prohibit and prevent actual, attempted and threatened sexual exploitation and abuse (SEA) by its employees or any other persons engaged and controlled by it to perform activities under this Agreement (“other personnel”). For the purpose of this Agreement, SEA shall include:
 - 1. Exchanging any money, goods, services, preferential treatment, job opportunities or other advantages for sexual favours or activities, including humiliating or degrading treatment of a sexual nature; abusing a position of vulnerability, differential power or trust for sexual purposes, and physical intrusion of a sexual nature whether by force or under unequal or coercive conditions.
 - 2. Engaging in sexual activity with a person under the age of 18 (“child”), except if the child is legally married to the concerned employee or other

personnel and is over the age of majority or consent both in the child's country of citizenship and in the country of citizenship of the concerned employee or other personnel.

- b) Strongly discourage its employees or other personnel having sexual relationships with IOM beneficiaries.
- c) Report timely to IOM any allegations or suspicions of SEA, and investigate and take appropriate corrective measures, including imposing disciplinary measures on the person who has committed SEA.
- d) Ensure that the SEA provisions are included in all subcontracts.
- e) Adhere to above commitments at all times. Failure to comply with (a)-(d) shall constitute grounds for immediate termination of this Agreement.

4.3 The above warranties shall survive the expiration or termination of this Agreement.

5. Assignment and Subcontracting

- 5.1 The Service Provider shall not assign or subcontract the activities under this Agreement in part or all, unless agreed upon in writing in advance by IOM. Any subcontract entered into by the Service Provider without approval in writing by IOM may be cause for termination of the Agreement.
- 5.2 In certain exceptional circumstances by prior written approval of IOM, specific jobs and portions of the Services may be assigned to a subcontractor. Notwithstanding the said written approval, the Service Provider shall not be relieved of any liability or obligation under this Agreement nor shall it create any contractual relation between the subcontractor and IOM. The Service Provider remains bound and liable thereunder and it shall be directly responsible to IOM for any faulty performance under the subcontract. The subcontractor shall have no cause of action against IOM for any breach of the subcontract.

6. Delays/Non-Performance

- 6.1 If, for any reason, the Service Provider does not carry out or is not able to carry out its obligations under this Agreement and/or according to the project document, it must give notice and full particulars in writing to IOM as soon as possible. In the case of delay or non-performance, IOM reserves the right to take such action as in its sole discretion is considered to be appropriate or necessary in the circumstances, including imposing penalties for delay or terminating this Agreement.
- 6.2 Neither Party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure is caused by *force majeure*, such as civil disorder, military action, natural disaster and other circumstances which are beyond the control of the Party in question. In such event,

the Party will give immediate notice in writing to the other Party of the existence of such cause or event and of the likelihood of delay.

7. Independent Contractor

The Service Provider shall perform all Services under this Agreement as an independent contractor and not as an employee, partner, or agent of IOM.

8. Audit

The Service Provider agrees to maintain financial records, supporting documents, statistical records and all other records relevant to the Services in accordance with generally accepted accounting principles to sufficiently substantiate all direct and indirect costs of whatever nature involving transactions related to the provision of Services under this Agreement. The Service Provider shall make all such records available to IOM or IOM's designated representative at all reasonable times until the expiration of 7 (seven) years from the date of final payment, for inspection, audit, or reproduction. On request, employees of the Service Provider shall be available for interview.

9. Confidentiality

All information which comes into the Service Provider's possession or knowledge in connection with this Agreement is to be treated as strictly confidential. The Service Provider shall not communicate such information to any third party without the prior written approval of IOM. The Service Provider shall comply with IOM Data Protection Principles in the event that it collects, receives, uses, transfers or stores any personal data in the performance of this Agreement. These obligations shall survive the expiration or termination of this Agreement.

10. Intellectual Property

All intellectual property and other proprietary rights including, but not limited to, patents, copyrights, trademarks, and ownership of data resulting from the performance of the Services shall be vested in IOM, including, without any limitation, the rights to use, reproduce, adapt, publish and distribute any item or part thereof.

11. Notices

Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and received by the other Party at the following address:

International Organization for Migration (IOM)

Attn: *[Name of IOM contact person]*

[IOM's address]

Email: *[IOM's email address]*

[Full name of the Service Provider]

Attn: *[Name of the Service Provider's contact person]*

[Service Provider's address]

Email: *[Service Provider's email address]*

12. Dispute resolution

- 12.1. Any dispute, controversy or claim arising out of or in relation to this Agreement, or the breach, termination or invalidity thereof, shall be settled amicably by negotiation between the Parties.
- 12.2. In the event that the dispute, controversy or claim has not been resolved by negotiation within 3 (three) months of receipt of the notice from one party of the existence of such dispute, controversy or claim, either Party may request that the dispute, controversy or claim is resolved by conciliation by one conciliator in accordance with the UNCITRAL Conciliation Rules of 1980. Article 16 of the UNCITRAL Conciliation Rules does not apply.
- 12.3. In the event that such conciliation is unsuccessful, either Party may submit the dispute, controversy or claim to arbitration no later than 3 (three) months following the date of termination of conciliation proceedings as per Article 15 of the UNCITRAL Conciliation Rules. The arbitration will be carried out in accordance with the 2010 UNCITRAL arbitration rules as adopted in 2013. The number of arbitrators shall be one and the language of arbitral proceedings shall be English, unless otherwise agreed by the Parties in writing. The arbitral tribunal shall have no authority to award punitive damages. The arbitral award will be final and binding.
- 12.4. The present Agreement as well as the arbitration agreement above shall be governed by internationally accepted general principles of law and by the terms of the present Agreement, to the exclusion of any single national system of law that would defer the Agreement to the laws of any given jurisdiction. Internationally accepted general principles of law shall be deemed to include the UNIDROIT Principles of International Commercial Contracts. Dispute resolution shall be pursued confidentially by both Parties. This Article survives the expiration or termination of the present Agreement.

13. Use of IOM Name

The official logo and name of IOM may only be used by the Service Provider in connection with the Services and with the prior written approval of IOM.

14. Status of IOM

Nothing in this Agreement affects the privileges and immunities enjoyed by IOM as an intergovernmental organization.

15. Guarantee and Indemnities

15.1 The Service Provider shall guarantee any work performed under this Agreement for a period of 12 (twelve) months after final payment by IOM under this Agreement.

15.2 The Service Provider shall at all times defend, indemnify, and hold harmless IOM, its officers, employees, and agents from and against all losses, costs, damages and expenses (including legal fees and costs), claims, suits, proceedings, demands and liabilities of any kind or nature to the extent arising out of or resulting from acts or omissions of the Service Provider or its employees, officers, agents or subcontractors, in the performance of this Agreement. IOM shall promptly notify the Service Provider of any written claim, loss, or demand for which the Service Provider is responsible under this clause. This indemnity shall survive the expiration or termination of this Agreement.

16. Waiver

Failure by either Party to insist in any one or more instances on a strict performance of any of the provisions of this Agreement shall not constitute a waiver or relinquishment of the right to enforce the provisions of this Agreement in future instances, but this right shall continue and remain in full force and effect.

17. Termination

17.1 IOM may terminate this Agreement at any time, in whole or in part.

17.2 In the event of termination of this Agreement, IOM will only pay for the Services completed in accordance with this Agreement unless otherwise agreed. Other amounts paid in advance will be returned to IOM within 7 (seven) days from the date of termination.

17.3 Upon any such termination, the Service Provider shall waive any claims for damages including loss of anticipated profits on account thereof.

18. Severability

If any part of this Agreement is found to be invalid or unenforceable, that part will be severed from this Agreement and the remainder of the Agreement shall remain in full force.

19. Entirety

This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the subject matter of this Agreement.

20. *Special Provisions (Optional)*

1. Terrorist Financing Clause (Standard) (APR 2011)

U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the responsibility of the Recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all contracts or sub agreements issued under the award.

2. Trafficking in Persons

a. To the extent the grantee uses USAID-provided funding under this award to provide grants to, or enter into contracts with, third parties that are private entities, such third parties may not, during the period of time that the award is in effect, engage in:

- (1) Trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organization Crime);
- (2) Procurement of a commercial sex act; or
- (3) Use of forced labor

b. If USAID determines that there is a reasonable basis to believe that any subgrantee or contractor has violated a prohibition in paragraph a. of this provision or that an employee of the subgrantee or contractor has violated such a prohibition where that employee's conduct is associated with the performance of this award or may be imputed to the subgrantee or contractor, USAID may terminate this award in accordance with the Termination Procedures provision set forth herein.

3. Investment Promotion (APR 2011)

a. Except as specifically set forth in the award or otherwise authorized by USAID in writing, the recipient may not use funds or other support that the award provides for any activity that involves investment promotion in a foreign country.

b. If the Recipient is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether an activity would be consistent with the limitation set forth above, then the Recipient must notify the Agreement Officer and provide a detailed description of the proposed activity. The Recipient must not proceed with the activity until USAID advises that it may do so.

C. The Recipient must ensure that its employees and any sub-recipients or contractors providing investment promotion services under the award are made aware of the restrictions set forth in this clause and must include this clause in all contracts and other sub-agreements.

4. Prohibition on Police Assistance (Apr 2011)

No funds or other support provided under the award may be used for support to any police, prison authority, or other security or law enforcement forces, unless specific written approval is received from the AOR, based on statutory or other legal authority for providing such assistance.

5. Prohibition on Assistance to Military or Paramilitary (Apr 2011)

No funds or other support provided under the award may be used for support to any military or paramilitary force or activity.

6. Publications and Media Releases (Apr 2011)

If the Recipient intends to identify USAID's contribution to any publication, video, or other information/media product resulting from the award, the product must state that the views expressed by the author(s) do not necessarily reflect those of USAID. Acknowledgements must identify the sponsoring USAID Bureau/Independent Office or Mission and the U.S. Agency for International Development substantially as follows. "This [publication, video, or other information/media product (specify)] was made possible through support provided by the Office of Transition Initiatives, Bureau for Democracy, Conflict and Humanitarian Assistance, U.S. Agency for International Development, under the terms of award No. AID-OAA-IO-16-00001. The opinions expressed in this [publication, video, or other information/media product] are those of the author(s) and do not necessarily reflect the views of the U.S. Agency for International Development."

b. The Recipient must provide USAID with one copy of all published works developed under the award and with lists of other written works produced under the award.

c. Except as otherwise provided in the terms and conditions of the award, the author or the Recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under the award, but USAID reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for U.S. Government purposes.

7. Standards for Accessibility for Persons with Disabilities in USAID Assistance Awards Involving Construction (Standard) (Apr 2011)

The Recipient must ensure that in all construction or substantial renovation activities appropriate measures are taken, including compliance with, inter alia, host country standards for accessibility, the

International Building Code (IBC) and Article 9 and other requisite articles under the UN Convention on the Rights of Persons with Disabilities (<http://www.un.org/disabilities/documents/convention/convoptprot.pdf>), to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the.

8. Somalia Award Conditions

The Recipient and its implementing partners have sole responsibility and discretion to determine the appropriate level of due diligence and procedures so as to prevent accidental, unintentional, or incidental payments or benefits to excluded parties (as defined below). Further guidance relating to this matter, as well as updates, is available in the Department of Treasury's Office of Foreign Assets Control (OFAC) regulations at title 31, chapter V of the Code of Federal Regulations and/or on OFAC's web site at <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>.

The Recipient agrees to submit informational copies of its due diligence implementation plans to the Agreement Officer.

The parties agree that the following Special Conditions, as amended or otherwise revised by OFAC from time to time, will apply to this award. It is the responsibility of the Recipient to ensure compliance with these Special Conditions and any such amendment:

1. The Recipient agrees that it and/or its implementing partners (including contractors, grantees, subcontractors, and sub-grantees) will not knowingly and voluntarily make payments or provide any other benefits to al Shabaab, or to entities controlled by al Shabaab, or to individuals acting on behalf of al Shabaab (collectively, "excluded parties"). Such prohibited payments or other benefits would include:

(a) cash facilitation fees or other similar fees at roadblocks, ports, warehouses, airfields or other transit points to excluded parties;

(b) purchases or procurement of goods or services from excluded parties; and

(c) payments to excluded parties as the de facto municipal authority.

2. The Recipient and its implementing partners (including contractors, grantees, sub-contractors and subgrantees) agree to exercise enhanced due diligence when providing assistance to Somalia under this award to avoid the accidental, unintentional, or incidental provision of such payments or benefits to excluded parties.

3. In the event that the Recipient or its implementing partners (including contractors, grantees, subcontractors and sub-grantees) becomes aware that it made a payment or provided a benefit to excluded parties, the Recipient shall, in accordance with 2 CFR 200.328 and within ten days after becoming aware of such payment or provision of benefit, notify the Agreement Officer in writing, with a copy to the AOR, of such payment or provision of benefit. This notification shall include the following information:

a) Factual description of each such event;

- b) Amount of funds expended or other benefit provided for each such event;
- c) Safeguards and procedures, including management and oversight systems, that were in place to help avoid the occurrence of such event; and
- d) Explanation of the reasons for each such payment or each such benefit provided, including whether it was made or provided knowingly, voluntarily, accidentally, unintentionally, incidentally, or forced.

21. Final clauses

21.1 This Agreement will enter into force upon signature by both Parties. It will remain in force until completion of all obligations of the Parties under this Agreement unless terminated earlier in accordance with Article 17.

21.2 Amendments may be made by mutual agreement in writing between the Parties.

Signed in duplicate in English, on the dates and at the places indicated below.

For and on behalf of
 The International Organization
 for Migration

For and on behalf of
[Full name of the Service Provider]

Signature

Signature

Name

Position

Date

Place

Name

Position

Date

Place