**LEG C.8. SECURITY SERVICE AGREEMENT**

NOTE: All Directors/CoMs/HoOs are accountable and responsible for personally ensuring that the instructions in IN/99 Rev. 2 on *Delegation of Authority for Concluding Contracts and Agreements* (“IN 99 Rev 2”) and IN/168 Rev 3 or the *Procurement Manual* (“IN 168 Rev 3”)are followed. In case of uncertainty whether the proposed contract fully aligns with an IOM template or previously approved terms and conditions, please refer the draft contract to LEG Contract Law Division (LEG CR) for advice.

**Per Article 11.1 of the IN 168 Rev 3, there is no need to refer this Agreement to LEG CR for for review and issuance of an approval code *provided that this template is used without deviation.* In cases of deviation from the template or a need for a new template, please contact LEG CR for assistance and/or advice.**

If subcontracting, please check the funding donor agreement for any donor requirement regarding a subcontract (i.e., use of donor’s logo, reporting requirements, anti-corruption clause or any particular provision to be inserted in a subcontract etc.) and insert in the “Special Provisions” clause any specific donor requirements which must be flowed down to IOM’s subcontractors.

|  |  |
| --- | --- |
| IOM office-specific Ref. No. |  |
| IOM Project Code |  |

**SECURITY SERVICE AGREEMENT**

**between**

**The International Organization for Migration**

**and**

**[*Name of the Other Party*]**

**on**

**Provision of Security Services**

**at**

**[insert location(s)]**

This Security Service Agreement is entered into by the **International Organization for Migration,** a related organization of the United Nations, acting through its [insert office name, e.g., 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 Other Party**], [Address], represented by [Name, Title of the representative of the Other Party], 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
   1. The Service Provider agrees to provide IOM with *Security Services* at [location] in accordance with the terms and conditions of this Agreement and its Annexes, if any.
   2. The following documents form an integral part of this Agreement:

|  |  |
| --- | --- |
| 1. **Annex A** | Terms of Reference and Delivery Schedule |
| 1. **Annex B** | Price Schedule |
| 1. **Annex C** | IOM’s Data Protection Principles |
| 1. **Annex D** | Advance Payment Bank Guarantee Template |
| 1. **Annex E** | Performance Security Template |
| 1. **Annex F** | IOM Terms and Conditions for European Union Funded Service Type Agreements |
| 1. **Annex G** | [*add or delete as required*] |

In the event of conflict between the provisions of any Annex and the terms of the main body of the Agreement, the latter shall prevail.

1. Services Supplied
   1. For the provision of Security Services (the “**Services**”), the Service Provider shall:

[Add/delete applicable Services as outlined below. Where relevant, include location and how frequently etc. services are to be provided. List all the deliverables and their date of submission, if applicable. It may be necessary to attach a more detailed description of the Services as an Annex. In that case, please ensure to include reference to the Annex in Art. 1.2 and label accordingly]

1. Provide armed/unarmed [delete inapplicable option] security guards for the IOM offices/warehouse/accommodation [adapt as needed] (“**IOM Premises**”) as outlined by Article 2.2 who shall perform the following tasks:

[add/delete from (i)-(iv) as needed and ensure subsequent enumeration is correct]

1. Control access to IOM Premises, perform security checks for bags and packages brought by visitors and staff in and outside of the IOM Premises, issue passes, direct visitors to appropriate areas, and complete visitor log entries; However, it is understood that the guards and supervisors shall not be entitled to inspect IOM diplomatic pouches or mail delivered to the IOM premises;
2. Ensure that all visitors and staff vacate the building after office hours;
3. Perform regular security check on all doors, windows, gates, CCTV and other relevant security installations, especially when no IOM personnel is present;
4. Log and report all incidents relating to security. The guards shall maintain accurate log books to record each of the following:
5. the chain of custody of the keys and other equipment provided by IOM, referencing the names of the guards, and the dates and times at which they received and returned the keys and radio equipment;
6. entry and exit of all personnel and visitors (including guards and supervisors reporting for duty and ending shifts), including names, dates and times of entry and exit;
7. all goods or materials brought into the IOM offices/sub-offices, including the names of the delivery personnel, the dates and times of delivery, and the nature of the items delivered;
8. entry and exit of all vehicles (including those of the guards and supervisors), including the identities of the drivers and the passengers, and the make and plate numbers of the vehicles; and
9. any security incidents, including a detailed report on the incident, including the names of the persons involved.
10. Any security related incident needs to be reported immediately to the relevant IOM security focal point whose name shall be communicated to the Service Provider by IOM. In case of emergencies (fire, theft, sabotage, attack, bombing alert, flood, etc.), security guards shall first attend to the emergency, ensure maintenance of proof and evidence of crime, and shall immediately notify the IOM Field Security Officer, Local Fire Department, and the Local Police Department of the incident;
11. Always establish coordination with, and receive work-related instructions from the IOM security focal point, shall accommodate the instructions given, and shall inform the IOM security focal point of any issues that may arise that are beyond their capacity or authority to resolve;
12. Get acquainted with the IOM staff working at the Premises immediately and other people shall be regarded as customers and visitors;
13. Act professionally and in a formal and respectful way with the staff, customers and visitors;
14. Wear appropriate identification badges;
15. Regularly monitor the movements in and around the building, maintain general security, be responsible for all the IOM properties/assets within the offices, and be prepared for emergencies at any time;
16. The guards and supervisors shall report to their assigned posts at least 30 (thirty) minutes prior to the start of their shift for security briefing by their shift supervisor. They shall remain at their designated post at all times until they are replaced by the next shift. Should it be necessary for any guard to leave his post for a valid reason, which shall be for no more than 10 minutes, he shall not vacate his post without another guard to temporarily assume his duties. Any guard or supervisor who is absent from his post for no valid reason and without a replacement, is caught sleeping at his post, is negligent in his duties, or performs his duties with a standard of vigilance less than that required by his duties, or reports for duty under the influence of alcohol or narcotic substances, shall be reported to the Service Provider for immediate replacement.
17. Conduct appropriate, regular training (including refresher trainings) of the security guards to be assigned to IOM which enables them to effectively perform their duties and proficiently handle their equipment. Such training shall include, but shall not be limited to, their specific tasks and duties, the security requirements of IOM, the security situation in the area, standard operating procedures, particularly when there is a security incident involving IOM property or staff, and IOM’s Data Protection Principles. The guards shall be properly licensed, in accordance with local law, to perform security services, including but not limited to, the carrying of firearms. The Service Provider shall conduct thorough background checks on the guards and their supervisors prior to assigning them to IOM to ensure that they have no history of criminal activity;
18. Provide health insurance scheme for the security guards;
19. Prepare a list of security guards to be assigned to IOM and submit the same to IOM, showing the age of every security guard and certificate of last class attended prior to their deployment;
20. Employ a separate reserve pool of equally competent staff members to relieve security guards who are either on sick or vacation leave, withdrawn by the Service Provider from the list of assigned guard personnel, or separated from service. IOM may, at any time, request in writing for the withdrawal or replacement of any personnel of the Service Provider assigned to perform work or services under this Agreement. The Service Provider shall, at its own cost and expense, immediately withdraw or replace such personnel forthwith without contest. A request by IOM for withdrawal or replacement of the Service Provider's personnel shall not be deemed a termination of this Agreement;
21. Assign to IOM security guards who can communicate effectively in English and required local language(s);
22. Issue to each security guard the following equipment:
    * + 2 (two) uniforms per year (incl. immediate replacement of damaged uniforms)
      + 1 (one) properly licensed semi-automatic handgun including ammunition
      + 1 (one) handheld radio
      + (one) mobile phone
      + (one) baton
23. Maintain a proper organizational structure and exercise thorough supervision;
24. Maintain an established procedure for disciplinary measures;
25. Render 24/7 security service to the IOM Premises and its property and bears responsibility or liability through proper public liability insurance; and
26. Ensure the safety and security of the IOM Premises, IOM personnel and staff, and all IOM assets within the IOM Premises.
    1. The Service Provider agrees to provide the following personnel for the provision of Services: [adapt table below as needed, content is example only]

|  |  |  |
| --- | --- | --- |
| **Location** | **Guards** | **Shift** |
| Location A | 2 (two) male guards, 1 (one) female guard, 1 (one) supervisor | 08:00 AM – 08:00 PM |
| Location A | 2 (two male guards) | 08:00 PM – 08:00 AM |
| Location B | 3 (three) male guards, 1 (one) supervisor | 07:00 AM – 07:00 PM |
| Location B | 1 (one) male guard | 07:00 PM – 07:00 AM |

* 1. The Service Provider shall commence the provision of Services from **[date]**and fully and satisfactorily complete them by **[date]**.
  2. 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.

*[Optional for Long-Term Agreements (please delete if not applicable)]*

* 1. Nothing in this Agreement shall be interpreted as creating an exclusive relationship between the Parties. IOM does not guarantee and is not obliged to request any minimum quantity of Services during the term of this Agreement.

*[Optional for Piggybacking for other UN agencies (please delete if not applicable)]*

2.6 If any United Nations (“UN”) entity wishes to avail of services which are of the same type as the Services through their own contracting formats, the Service Provider shall extend such services to them at prices and on terms no less favourable than those provided in this Agreement for the Services. For this purpose, IOM shall be entitled to disclose information related to this Agreement to any other UN entity.

1. Charges and Payments
   1. The all-inclusive [monthly/yearly] Service fee for the Services under this Agreement shall be **[currency code] [amount in numbers] ([amount in words])***,* which is the total charge to the IOM.
   2. The Service Provider shall invoice IOM [monthly/bimonthly/…] upon completion of all the Services during the relevant period. The invoice shall include: [*services provided in relevant period, daily rate per guard / supervisor, number of hours billed, any travel and out of pocket expenses, (add/delete as necessary)*]
   3. Payments shall become due [insert number of days]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:

|  |  |
| --- | --- |
| Bank Name: |  |
| Bank Branch: |  |
| Bank Account Name: |  |
| Bank Account Number: |  |
| Swift Code: |  |
| IBAN Number: |  |

Any change to the bank account shall be formalized by an amendment to this Agreement.

* 1. 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.
  2. IOM shall be entitled, without prejudice to any other rights or remedies it may have, to withhold payment of part or all of the Fee until the Service Provider has completed to the satisfaction of IOM the Services to which those payments relate.

1. Advance Payment Bank Guarantee and Performance Security

4.1 Advance Payment Bank Guarantee (IF APPLICABLE)

The Service Provider shall provide IOM with a bank guarantee to secure the requested advance payment (the “Bank Guarantee”) in an amount equivalent to the total amount advanced, to be issued by a reputable bank or financial entity acceptable to IOM, based on the template in Annex E, or as otherwise accepted by IOM in writing. The Bank Guarantee shall be effective until [insert date of Services completion], following which the Bank Guarantee will be released by IOM. IOM shall not be obliged to make any advance payment until the Bank Guarantee is received and approved by IOM.

4.2 Performance Security (IF APPLICABLE)

4.2.1 The Service Provider shall provide IOM with a performance security in the amount equivalent to 10% (ten percent) of the Service Fee, to be issued by a reputable bank or surety company in a form acceptable to IOM (the “Performance Security”).

4.2.2 The Performance Security shall serve as the guarantee for the Service Provider’s satisfactory performance and compliance with the terms and conditions of this Agreement. The amount of the Performance Security shall not be construed as the limit of the Service Provider’s liability to IOM in any event. The Performance Security shall be effective from the date of commencement of the Services until [insert a date 30 days from the completion of Service Provider’s obligations] following which it will be released by IOM.

1. Warranties
   1. The Service Provider warrants that:
      1. 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;
      2. It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement;
      3. In all circumstances it shall act in the best interests of IOM;
      4. 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;
      5. It has not misrepresented or concealed any material facts in the procurement of this Agreement;
      6. The Service Provider, its staff or shareholders have not previously been declared by IOM ineligible to be awarded agreements by IOM;
      7. It will maintain reasonable and appropriate organizational, administrative, physical, and technical safeguards to ensure the integrity and confidentiality of the information shared pursuant to this Agreement. The safeguards shall be designed to protect against any foreseeable threats or risks to the security and integrity of such information as well as the unauthorized access, use or disclosure thereof. If requested by IOM at any time during the term of this Agreement, the Service Provider shall provide IOM with copies of its policies, protocols, records, and other relevant materials implementing the safeguards;
      8. It has or shall take out relevant insurance coverage for the period the Services are provided under this Agreement;
      9. The Price specified in 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.
      10. It shall respect the legal status, privileges and immunities of IOM as an intergovernmental organization, such as inviolability of documents and archive wherever it is located, exemption from taxation, immunity from legal process or national jurisdiction. In the event that the Service Provider becomes aware of any situation were IOM’s legal status, privileges or immunities are not fully respected, it shall immediately inform IOM.
      11. It is not included in the most recent United Nations Security Council Consolidated List nor is it the subject of any sanctions or other temporary suspension. The Service Provider will disclose to IOM if it becomes subject to any sanction or temporary suspension during the term of this Agreement.
      12. It must not employ, provide resources to, support, contract or otherwise deal with any person, entity or other group associated with terrorism as per the most recent United Nations Security Council Consolidated List and all other applicable anti-terrorism legislation. If, during the term of this Agreement, the Service Provider determines there are allegations or suspicions that funds transferred to it in accordance with this Agreement have been used to provide support or assistance to individuals or entities associated with terrorism, it will inform IOM immediately who in consultation with the donors as appropriate, shall determine an appropriate response. The Service Provider shall ensure that this requirement is included in all subcontracts.
   2. The Service Provider warrants that it shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any fraudulent, corrupt, discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child. The Service Provider shall immediately inform IOM of any allegation or suspicion that the following practice may have occurred or exist:
2. fraudulent practice, defined as any act or omission, including misrepresentation or concealment, that knowingly or recklessly misleads, or attempts to mislead, a natural or legal person in the procurement process or the execution of a contract party to obtain a financial gain or other benefit, or to avoid an obligation or in such a way as to cause a detriment to IOM;
3. corrupt practice defined as the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another natural or legal person in the procurement process or in contract execution, such as through bribery;
4. collusive practice defined as an arrangement between two or more bidders, or other natural or legal persons designed to achieve an improper purpose, including influencing improperly the actions of another natural or legal person or artificially altering the results of the procurement process to obtain a financial gain or other benefit;
5. coercive practice defined as impairing or harming, or threatening to impair or harm, directly or indirectly, any natural or legal person or the property of any such person to influence improperly its actions or impact the execution of a contract;
6. obstructive practice defined as acts or omissions intended to materially impede the exercise of IOM’s contractual rights of audit, investigation and/or access to information, including deliberately destroying, falsifying, altering or concealing of evidence material to IOM investigations, or making false statements to IOM investigators in order to materially impede a duly authorized investigation into allegations of fraudulent, corrupt, collusive, coercive or unethical practices; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation;
7. unethical practice defined as a practice contrary to the IOM Unified Staff Regulations and Rules or UN Supplier Code of Conduct, such as those relating to conflict of interest, gifts, hospitality, post-employment provisions, abuse of authority, harassment, discriminatory or exploitative practices or practices inconsistent with the rights set forth in the Convention on the Rights of the Child;
8. money laundering practice defined as the conversion or transfer of property knowing that such property is derived from any offence(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any persons who are involved in such offence(s) to evade the legal consequences of their actions. Property shall include, but not be limited to money.
   1. The Service Provider further warrants that it shall:
9. Take all appropriate measures to prevent sexual exploitation and sexual abuse (SEA), as those terms are defined in section 1 of ST/SGB/2003/13 (the “SG Bulletin”),[[1]](#footnote-1) and sexual harassment (SH), as that term is defined in section 1 of the UN System Model Policy on Sexual Harassment,[[2]](#footnote-2) by its employees or sub-contractors, consultants, interns or volunteers associated with or working on behalf of the Service Provider to perform activities under this Agreement (“Associated Personnel”);
10. accept and follow the standards of conduct listed in section 3 of the SG Bulletin;
11. Promptly and confidentially report to IOM any allegations or suspicions of SEA or SH concerning its employees or Associated Personnel; promptly investigate any credible allegations of SEA or SH concerning its employees or Associated Personnel, and inform IOM of the outcome of such investigation; take appropriate corrective measures, including imposing disciplinary measures on any of its employees or Associated Personnel who has committed SEA or SH, and inform IOM of such corrective measures;
12. Provide to IOM, on written request, all relevant information to determine whether the Implementing Partner has taken appropriate investigative and corrective action in cases of SEA or SH. Failure to take appropriate investigative or corrective action to the satisfaction of IOM shall constitute material breach of this Agreement;
13. Ensure that the SEA and SH provisions contained in this Article are included in all sub-contracts related to this Agreement;
14. Adhere to the provisions of this Article for the duration of this Agreement.

5.4 The Service Provider expressly acknowledges and agrees that breach by the Service Provider, its employees or its Associated Personnel, of any provision contained in Articles 5.1, 5.2 or 5.3 of this Agreement constitutes a material breach of this Agreement and shall entitle IOM to terminate this Agreement immediately on written notice without liability. In the event that IOM determines, whether through an investigation or otherwise, that such a breach has occurred then, in addition to its right to terminate the Agreement, IOM shall be entitled to recover from the Service Provider all losses suffered by IOM in connection with such breach.

5.5 IOM shall have the right to investigate any allegations (including but not limited to SEA, SH, fraud and corruption) involving the Service Provider, its employees or its Associated Personnel, notwithstanding related investigations undertaken by the Service Provider or national authorities. The Service Provider shall provide its full and timely cooperation with any such investigations. Such cooperation shall include, but shall not be limited to, the Service Provider's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant access to the Service Provider's premises at reasonable times and on reasonable conditions in connection with such access to the Service Provider's personnel and relevant documentation. The Service Provider shall require its agents, including, but not limited to, the Service Provider's attorneys, accountants or other advisers, to reasonably cooperate with any such investigations carried out by IOM.

1. Assignment and Subcontracting
   1. The Service Provider shall not assign or subcontract the activities under this Agreement in whole or in part or all, unless agreed 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.

* 1. Notwithstanding a written approval from IOM, the Service Provider shall not be relieved of any liability or obligation under this Agreement nor shall it create any contractual relation between any subcontractor and IOM. The Service Provider shall include in an agreement with a subcontractor all provisions in this Agreement that are applicable to a subcontractor, including relevant Warranties and Special Provisions. The Service Provider remains liable as a primary obligor under this Agreement, and it shall be directly responsible to IOM for any faulty performance under any subcontract. The subcontractor shall have no cause of action against IOM for any breach of the subcontract.

1. Delays, Defaults and Force Majeure
   1. Time is of the essence in the performance of this Agreement. If the Service Provider fails to provide the Services within the times agreed to in the Agreement, IOM shall, without prejudice to other remedies under this Agreement, be entitled to deduct liquidated damages for delay. The amount of such liquidated damages shall be 0.1% of the value of the total Service Fee per day or part thereof up to a maximum of 10% of the Service Fee. IOM shall have the right to deduct such amount from the Service Provider’s outstanding invoices, if any. Such liquidated damages shall only be applied when delay is caused solely by the default of the Service Provider. Acceptance of Services delivered late shall not be deemed a waiver of IOM’s rights to hold the Service Provider liable for any loss and/or damage resulting therefrom, nor shall it act as a modification of the Service provider’s obligation to perform further Services in accordance with the Agreement.
   2. 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.
   3. 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, which means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, blockade or embargo, strikes, Governmental or state restrictions, natural disaster, epidemic, public health crisis, and any other circumstances which are not caused by nor within the control of the affected Party.
   4. As soon as possible after the occurrence of a force majeure event which impacts the ability of the affected Party to comply with its obligations under this Agreement, the affected Party will give notice and full details in writing to the other Party of the existence of the force majeure event and the likelihood of delay. On receipt of such notice, the unaffected Party shall take such action as it reasonably considers appropriate or necessary in the circumstances, including granting to the affected Party a reasonable extension of time in which to perform its obligations. During the period of force majeure, the affected Party shall take all reasonable steps to minimize damages and resume performance.
   5. IOM shall be entitled without liability to suspend or terminate the Agreement if the Service Provider is unable to perform its obligations under the Agreement by reason of force majeure. In the event of such suspension or termination, the provisions of the Article on Termination shall apply.
2. Independent Contractor

The Service Provider, its employees and other personnel as well as its subcontractors and their personnel, if any, shall perform all Services under this Agreement as an independent contractor and not as an employee or agent of IOM.

1. 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.

1. Confidentiality
   1. 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, stores or otherwise processes any personal data in the performance of this Agreement. These obligations shall survive the expiration or termination of this Agreement.
   2. Notwithstanding the previous paragraph, IOM may disclose the terms of this Agreement and information related to this Agreement, including but not limited to the name and address of the Service Provider, the title of the contract/project, the nature and purpose of the contract/project, and the amount of the contract/project to the extent required by its donors or auditors or in relation to IOM’s reporting mechanisms and commitment to any initiative for transparency and accountability of funding received by IOM provided that such disclosure will be in accordance with the policies, instructions and regulations of IOM.
2. 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.

1. Notices

Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered, or sent by prepaid post or facsimile to the other Party at the following address:

|  |  |
| --- | --- |
| **International Organization for Migration (IOM)** | |
| Attn: | [Name and title/position of IOM contact person] |
| Address: | [IOM’s address] |
| Email: | [IOM’s email address] |

|  |  |
| --- | --- |
| **[Full name of the Service Provider]** | |
| Attn: | [Name and title/position of Service Provider’s contact person] |
| Address: | [Service Provider’s address] |
| Email: | [Service Provider’s email address] |

1. Dispute Resolution

13.1 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.

13.2 In the event that the dispute, controversy or claim is not 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 it be submitted to mediation in accordance with the UNCITRAL Mediation Rules in effect at the time of the dispute.

13.3 In the event that mediation is not successful, either Party may submit the dispute, controversy or claim to arbitration in accordance with the UNCITRAL Arbitration Rules in effect at the time of the dispute no later than 3 (three) months following the date of termination of the mediation as per Article 9 of the UNCITRAL Mediation Rules. The number of arbitrators shall be one and the language to be used in the arbitral proceedings shall be English. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The arbitral tribunal shall have no authority to award punitive damages. The seat of the arbitration shall be Geneva, Switzerland.

13.4 All aspects of the dispute resolution as per paragraphs 1 to 3 of this Article shall be treated as confidential by the Parties and all others involved.

13.5 The present Agreement as well as the arbitration agreement above shall be governed by the terms of the present Agreement and supplemented by internationally accepted general principles of law (including the UNIDROIT Principles of International Commercial Contracts) for issues not covered by the Agreement, to the exclusion of any single national system of law that would defer the Agreement to the laws of any given jurisdiction.

13.6 This Article survives the expiration or termination of the present Agreement.

1. Use of IOM Name, Abbreviation and Emblem

The Service Provider shall not be entitled to use the name, abbreviation or emblem of IOM without IOM’s prior written authorisation. The Service Provider acknowledges that use of the IOM name, abbreviation and emblem is strictly reserved for the official purposes of IOM and protected from unauthorized use by Article 6*ter* of the Paris Convention for the Protection of Industrial Property, revised in Stockholm in 1967 (828 UNTS 305 (1972)).

1. Status of IOM

Nothing in or relating to the Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the International Organization for Migration.

1. Indemnities
   1. 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.

* 1. The Service Provider shall assume full responsibility and hereby agrees and binds to indemnify IOM for any loss, damage, destruction and injury that may be incurred by IOM within the premises being secured, which are attributable to theft, pilferage, robbery other unlawful or illegal acts, or to the acts or omissions of the assigned guards, supervisors, as well as other employees, officers or agents of the Service Provider. However, the Service Provider shall not be liable to IOM where such loss or damage is due to force majeure, such as civil disorder, military action, natural disaster or other circumstances which are beyond the control of the Service Provider, or in any of the following cases:
     + 1. Where such loss occurred inside a closed or locked warehouse, office or building to which the security guards/supervisors have no access and there is no sign of forced entry;
       2. Where the loss or damage was the result of robbery committed by an armed group, mob violence, tumultuous affray, acts of dissidence, war, insurrection, revolution, rebellion, violent uprising, demonstration/rally, or during a calamity/typhoon: (ii) no part of the loss or damage is attributable to the acts or negligence of employees, officers, or agents of the Service Provider; (iii) the acts or negligence of the employees, officers or agents of the Service Provider did not contribute to or aggravate the loss or damage; and (iv) the loss or damage could not have been reasonably prevented by the Service Provider;
       3. Where such loss is of pocketable items, such as, but not limited to, jewelry or cash, except where there is evidence that such acts are attributable to the acts or negligence of employees, officers, or agents of the Service Provider, or such acts or negligence were contributing factors to the loss.

1. 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.

1. Termination

18.1 IOM may at any time suspend or terminate this Agreement, in whole or in part, with immediate effect, by providing written notice to the Service Provider, in any case where the mandate of IOM applicable to the performance of the Agreement or the funding of IOM applicable to the Agreement is reduced or terminated. In addition, IOM may suspend or terminate the Agreement upon thirty (30) days’ written notice without having to provide any justification.

18.2 In the event of termination of this Agreement, IOM will only pay for the Services completed in accordance with this Agreement, unless otherwise agreed in writing by the Parties. The Service Provider shall return to IOM any amounts paid in advance within 7 (seven) days from the notice of termination.

18.3 In the event of any termination of the Agreement, upon receipt of notice of termination, the Service Provider shall take immediate steps to bring the performance of any obligations under the Agreement to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum, place no further subcontracts or orders for materials, services, or facilities, and terminate all subcontracts or orders to the extent they relate to the portion of the Agreement. Upon termination, the Service Provider shall waive any claims for damages including loss of anticipated profits on account thereof.

18.4   In the event of suspension of this Agreement, IOM will specify the scope of activities and/or deliverables that shall be suspended in writing. All other rights and obligations of this Agreement shall remain applicable during the period of suspension. IOM will notify the Service Provider in writing when the suspension is lifted and may modify the completion date. The Service Provider shall not be entitled to claim or receive any Service Fee or costs incurred during the period of suspension of this Agreement.

1. 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.

1. Entire Agreement

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.

1. 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 the Article on Termination.

21.2 Any change to the terms and conditions detailed herein shall be documented in a written amendment to this Agreement.

1. Special Provisions (Optional)

Due to the requirements of the donor financing the project, the Service Provider shall agree and accept the following provisions:

[Insert all donor requirements which must be flown down to IOM’s Service Providers and subcontractors. In case of any doubt, please contact LEGContracts@iom.int]

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*  [Name of Service Provider] |
|  |  |  |
| Signature |  | Signature |
|  |  |  |
| Name: |  | Name: |
| Position: |  | Position: |
| Date: |  | Date: |
| Place: |  | Place: |

**Annex X**

**[Title]**

[Attach the Annex/es and label accordingly]

**Annex C**

**IOM Data Protection Principles**

**1: LAWFUL AND FAIR COLLECTION**

Personal data must be obtained by lawful and fair means with the knowledge or consent of the data subject.

**2: SPECIFIED AND LEGITIMATE PURPOSE**

The purpose(s) for which personal data are collected and processed should be specified and legitimate, and should be known to the data subject at the time of collection. Personal data should only be used for the specified purpose(s), unless the data subject consents to further use or if such use is compatible with the original specified purpose(s).

**3: DATA QUALITY**

Personal data sought and obtained should be adequate, relevant and not excessive in relation to the specified purpose(s) of data collection and data processing. Data controllers should take all reasonable steps to ensure that personal data are accurate and up to date.

**4: CONSENT**

Consent must be obtained at the time of collection or as soon as it is reasonably practical thereafter, and the condition and legal capacity of certain vulnerable groups and individuals should always be taken into account. If exceptional circumstances hinder the achievement of consent, the data controller should, at a minimum, ensure that the data subject has sufficient knowledge to understand and appreciate the specified purpose(s) for which personal data are collected and processed.

**5: TRANSFER TO THIRD PARTIES**

Personal data should only be transferred to third parties with the explicit consent of the data subject, for a specified purpose, and under the guarantee of adequate safeguards to protect the confidentiality of personal data and to ensure that the rights and interests of the data subject are respected. These three conditions of transfer should be guaranteed in writing.

**6: CONFIDENTIALITY**

Confidentiality of personal data must be respected and applied to all the stages of data collection and data processing, and should be guaranteed in writing. All IOM staff and individuals representing third parties who are authorized to access and process personal data, are bound to confidentiality.

**7: ACCESS AND TRANSPARENCY**

Data subjects should be given an opportunity to verify their personal data, and should be provided with access insofar as it does not frustrate the specified purpose(s) for which personal data are collectedand processed.Data controllers should ensure a general policy of openness towards the data subject about developments, practices and policies with respect to personal data.

**8: DATA SECURITY**

Personal data must be kept secure, both technically and organizationally, and should be protected by reasonable and appropriate measures against unauthorized modification, tampering, unlawful destruction, accidental loss, improper disclosure or undue transfer. The safeguard measures outlined in relevant IOM policies and guidelines shall apply to the collection and processing of personal data.

**9: RETENTION OF PERSONAL DATA**

Personal data should be kept for as long as is necessary, and should be destroyed or rendered anonymous as soon as the specified purpose(s) of data collection and data processing have been fulfilled. It may however, be retained for an additional specified period, if required for the benefit of the data subject.

**10: APPLICATION OF THE PRINCIPLES**

These principles shall apply to both electronic and paper records of personal data, and may be supplemented by additional measures of protection, depending *inter alia* on the sensitivity of the personal data. These principles shall not apply to non-personal data.

**11: OWNERSHIP OF PERSONAL DATA**

IOM shall assume ownership of personal data collected directly from data subjects or collected on behalf of IOM, unless otherwise agreed, in writing, with a third party.

**12: OVERSIGHT, COMPLIANCE AND INTERNAL REMEDIES**

An independent body should be appointed to oversee implementation of these principles and to investigate any complaints, and designated data protection focal points should assist with monitoring and training. Measures will be taken to remedy unlawful data collection and data processing, as well as breach of the rights and interests of the data subject.

**13: EXCEPTIONS**

Any intent to derogate from these principles should first be referred to the IOM Legal Affairs Department for approval, as well as the relevant unit/department at IOM Headquarters.

**GLOSSARY**

**Anonymous data** means that all the personal identifiable factors have been removed from data sets in such a way that there is no reasonable likelihood that the data subject could be identified or traced.

**Consent** means any free, voluntary and informed decision that is expressed or implied and which is given for a specified purpose.

**Child** means any person under the age of 18 years.

**Data controller** means IOM staff or an individual that represents a third party who has the authority to decide about the contents and use of personal data.

**Data processing** means the manner in which personal data is collected, registered, stored, filed, retrieved, used, disseminated, communicated, transferred and destroyed.

**Data protection** meansthe systematic application of a set of institutional, technical and physical safeguards that preserve the right to privacy with respect to the collection, storage, use and disclosure of personal data.

**Data protection focal point** means any IOM staff that is appointed by IOM Regional Representatives to serve as a contact or reference person for data protection and who is responsible for monitoring the data protection practices in the region to which they are assigned.

**Data subject** means an IOM beneficiary that can be identified directly or indirectly by reference to a specific factor or factors. These factors include a name, an identification number, material circumstances and physical, mental, cultural, economic or social characteristics that can be used to identify an IOM beneficiary.

**Electronic record** means any electronic data filing system that records personal data.

***Inter alia*** (Latin) means “amongst other things.”

**IOM** means the International Organization for Migration.

**IOM beneficiary** means any person that receives assistance or benefits from an IOM project.

**IOM headquarters** means IOM offices in Geneva, Switzerland.

**IOM staff** means all persons who are employed by IOM, whether temporarily or permanently, including formal and informal interpreters, data-entry clerks, interns, researchers, designated counselors and medical practitioners.

**IOM unit/department** means the structure at IOM headquarters responsible for IOM activity areas.

**Knowledge** means the ability to fully understand and appreciate the specified purpose for which personal data are collected and processed.

**Non-personal data** means any information that does not relate to an identified or identifiable data subject.

**Paper record** means any printed or written document that records personal data.

**Personal data** means any information relating to an identified or identifiable data subject that is recorded by electronic means or on paper.

**Third party** means any natural or legal person, government or any other entity that is not party to the original specified purpose(s) for which personal data are collected and processed. The third party that agrees in writing to the transfer conditions outlined in principle 5, shall be authorized to access and process personal data.

**Vulnerable groups** means any group or sector of society, including children, that are at exceptional risk of being subjected to discriminatory practices, violence, natural disasters, or economic hardships.

**Vulnerable individual** means any IOM beneficiary that may lack the legal, social, physical or mental capacity to provide consent.

**ANNEX D**

**ADVANCE PAYMENT BANK GUARANTEE TEMPLATE**

## Bank Guarantee for Advance Payment

To: *International Organization for Migration ("IOM”)*

*Office in [country]*

*[Address]*

Re: Bank Guarantee for Advance Payment under the *[name of Contract] between the International Organization for Migration and [Name of Contractor] signed on [date].*

International Organization for Migration (IOM):

We have been informed that *[Name of Contractor]* of *[registered address]* (hereinafter called “the Contractor”) has entered into a Contract *[name of Contract]* with theInternational Organization for Migration, a related organization of the United Nations system, with Ref. No. *[number]* (hereinafter called “the Contract”) signed on *[date of signature]* for the execution of *[full description of contract purpose]* (the “Purpose”).

Furthermore, we understand that in accordance with the provisions of the Contract, specifically Article *[number of the clause]* of the above-mentioned Contract, an advance payment in the sum of *[amount in numbers] [amount in words]* (“Advance Payment”) is to be made against a Bank Guarantee for Advance Payment to be deposited by the Contractor with IOM*.*

At the request of the Contractor, we *[Bank or Financial Institution acceptable to IOM]*, having our registered office at *[full physical address]* (hereinafter called “the Bank”) hereby unconditionally and irrevocably undertake to guarantee as primary obligator and not as surety merely, the immediate payment to IOM on its first demand without whatsoever right of objection on our part and without its first claim to the Contractor, the amount not exceeding *[amount of Guarantee] [amount in words]*. We undertake to indemnify you for any cost, loss or liability incurred by you as a result of our failure to comply with the terms of this Guarantee.

We further agree that no change or addition to or other modification of the terms of the Contract (including its annexes) to be performed thereunder, including any extension of the term of the Contract, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification. We confirm that you do not need to proceed against or enforce any other rights or security or claim payment from any person before claiming under this Guarantee.

This Guarantee shall remain valid and in full effect from the date of the Advance Payment under the Contract until *[insert the date of expiry]*, which date may be extended from time to time for such period as may be agreed by IOM and the Contractor. We waive any right we may have to receive notice of such extension and agree that this Guarantee shall remain valid and enforceable notwithstanding such extension. Any claim in respect thereof should reach us not later than the said date. Upon expiry, the Guarantee will be deemed invalid whether the original instrument would have been returned to the Bank or not.

This Guarantee shall not be assigned or transferred.

Nothing in or relating to this Guarantee shall be deemed a waiver, express or implied, of any of the privileges and immunities of the International Organization for Migration as an intergovernmental organization.

Yours truly,

Sealed with the Common Seal of the Bank this……………..(date).

|  |
| --- |
| Signature and seal: |
|  |
| Name and position of signatory: |
| Name of Bank/ Financial Institution: |
| Address: |
| Date: |

**ANNEX E**

**PERFORMANCE SECURITY TEMPLATE**

## Performance Security (Bank Guarantee)

To: *[name and address of IOM Office]*

WHEREAS *[name and address of Contractor]* (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. *[number]* dated *[date]* to execute *[name of Contract and brief description of Works, Services, or Goods]* (hereinafter called “the Contract”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Performance Security by a recognized bank for the sum specified therein as security for compliance with its obligations in accordance with the Contract (the “Performance Security”);

AND WHEREAS we have agreed to give the Contractor such a Performance Security;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of *[amount of Guarantee] [amount in words] (“Guarantee Amount”)*, such sum being payable in the types and proportions of currencies in which the Contract Price (as defined in the Contract) is payable, and we undertake to pay you, immediately upon your first written demand and without cavil or argument, any sum or sums within the limits of *the Guarantee Amount* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein. We further undertake to indemnify you for any cost, loss or liability incurred by you as a result of our failure to comply with the terms of this Performance Security.

We hereby waive the necessity of your demanding the said debt from the Contractor or from any other party before presenting us with the demand. We further confirm you do not need to proceed against or enforce any other rights or security or claim payment from any person before claiming under this Performance Security.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works, Services or Goods (each as defined in the Contract) to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Performance Security, and we hereby waive notice of any such change, addition, or modification.

This Performance Security shall be valid until *[insert the date by which the vendor should complete all the services as indicated in the contract].* Any claims hereunder must be submitted to us not later than the said expiry date, after which date this Performance Security automatically becomes null and void.

Nothing in or relating to this Performance Security shall be deemed a waiver, express or implied, of any of the privileges and immunities of the International Organization for Migration as an intergovernmental organization.

|  |
| --- |
| Signature and seal of the Guarantor: |
|  |
| Name and position of signatory: |
| Name of Bank/ Financial Institution: |
| Address: |
| Date: |

1. Secretary-General’s Bulletin Special measures for protection from sexual exploitation and sexual abuse dated 9 October 2003, [N0355040.pdf (un.org)](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/550/40/PDF/N0355040.pdf?OpenElement) [↑](#footnote-ref-1)
2. UN System Model Policy on Sexual Harassment, [CEB Model Policy (unsceb.org)](https://unsceb.org/sites/default/files/imported_files/UN%20System%20Model%20Policy%20on%20Sexual%20Harassment_FINAL_0.pdf) [↑](#footnote-ref-2)